

#### A.5.11 HCBS: Provider Owned and Controlled Properties

**Responsible Office:** Support Coordination (Case Management)

**Reference:** Intellectual Disabilities (ID) Waiver Appendix F; ADMH Administrative Code: 580-5-30.08(2); Federal Centers for Medicare and Medicaid Services (CMS) has determined that Home and Community-Based Services (HCBS) settings must have all of the qualities specified in 42 CFR §441.301(c)(4); OG

#### 6.3.b. Promotion and Protection of Individual Rights

**Effective:** Historical Practice

**Revised:** July 1, 2024

**Statement:** CMS has determined that HCBS settings must have all of the qualities specified in 42 CFR §441.301(c)(4) (i-v), based on the needs of the individual as indicated in their Person-Centered Plan (PCP). For provider-owned or controlled residential settings that serve individuals who are enrolled in an ADMH-DDD HCBS Waiver program, additional conditions specified in 42 CFR §441.301(c)(4)(vi)(A) through (E) must be met. Specifically, the unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. The State must ensure that a lease, residency agreement or other forms of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law. For individually controlled units, tenants are expected to sign a lease with landlords.

**Purpose/Intent:** This OG defines "Provider-owned or controlled setting" for the purposes of HCBS Waiver services administered through ADMH--DDD. This OG establishes standards to ensure that HCBS Waivers administered by the ADMH-DDD maximize opportunities for enrolled individuals to access the benefits of community living and receive services in the most integrated setting. The OG further outlines the requirement for ADMH-DDD's HCBS Waiver Service residential providers to ensure a legally enforced agreement – lease/rent or residency agreement - with the individual, and guardian if applicable, is in effect when the individual resides in a provider-owned or controlled setting. This OG also outlines the components of said agreement to include the HCBS regulatory requirements for provider owned and/or controlled settings where waiver participants receive residential waiver services.

**HCBS Waiver:** ID, LAH, CWP

#### **Definitions:**

1. Provider-owned or controlled setting: A provider-owned or controlled setting is a physical setting in which the individual resides
  - a. that is owned, co-owned, leased or rented by a provider of HCBS providing services onsite; or
  - b. that is owned, co-owned, leased or rented by a third party that has a direct or indirect financial relationship with a provider of HCBS.
  - c. in which receipt of support services is limited to a specific provider while living at the site; or
  - d. for which occupancy/continued occupancy is contingent upon continuing receipt of support services from the provider.

A setting that meets this definition is a provider-owned or controlled setting, regardless of whether a lease/rent or residency agreement is signed by the individual, and guardian if applicable. The

existence of a residency agreement does not transfer ownership or control from the provider to the individual and/or guardian.

2. Residency Agreement: The document that evidences the complete terms under which parties have agreed as attested by their signature.
3. Room and Board: The cost for the provision of meals, a unit or room to sleep, laundry, basic utilities, housekeeping, pest control, maintenance, insurance, etc., which reflects a proportional allocation of which are shared expenses with other residents/tenants in the same home.
4. Residential Home: The provider owned, and controlled setting chosen by the individual to receive HCBS Waiver services.
5. Provider: The owner and operator of the residential home.
6. Tenant: The individual who has chosen the residential home and is in agreement with the terms set forth by the provider in the lease/rent or residency agreement.
7. Legal representative: The individual's/tenant's court ordered legal representative that must sign along with or on behalf of the Individual.
8. Fair Market Rent (FMR): An amount determined each fiscal year to set payment standards for federal housing assistance programs in Alabama. To determine FMR in a given county, visit <https://www.rentdata.org/states/alabama/2022>.
9. Appeals Process for Adverse Actions – Service Decision and Informal Conference – Services: The operational guidelines to address actions that may negatively impact the waiver participant.
10. Request for Action (RFA): A form completed by the Support Coordinator to request approval from the regional office when there is a need for a change to services being provided.
11. HCBS: Home and Community Based Services.
12. ADMH-DDD: Alabama Department of Mental Health-Division of Developmental Disabilities

**Procedures:**

1. Person-Centered Plans must reflect that the Individual was provided choice of non-disability settings.
2. Person-Centered Plans must support the Individual's/tenant's choice of provider and Residential Home among other providers and settings to include non-disability options.
3. Lease/Rent or Room & Board charges when provider owns or controls property:
  - a. A specific monthly amount must be established for rent/room and board charges as determined by the following:
    - i. Documentation must reflect rent consistent with Fair Market Value (FMV) in the City/location of the property and rent must be fairly allocated among others considered residents in the Residential Home. To determine FMV use the following link <https://www.rentdata.org/states/alabama/2022>
    - ii. Room and board refer to the cost for the provision of meals, a unit or room to sleep, laundry, basic utilities, and housekeeping. It does not mean direct support for daily living skills. Providers should regularly calculate room and board expenditures and ensure those costs are fairly allocated among the number of individuals in the setting.
    - iii. Any damages determined to be in excess of normal wear and tear attributed to individual/tenant will result in a Person-Centered Planning Support Team meeting to determine the most equitable resolution. If damages are the result of challenging/destructive behavior, the support team will develop a Behavior Support Plan

which will be reviewed and approved by both a Behavior Support Plan (BSP) Review Committee and a Human Rights Committee (HRC), consistent with the State of Alabama Department of Mental Health rules, standards, and regulations.

4. Provider Expectations:

- a. When a residential setting is owned or controlled by a provider agency, as defined above, the provider must ensure a written lease and/or residency agreement is in place for each individual/tenant served in the setting.
- b. The Division has developed lease/rental or residency agreement guidelines that are attached to this OG. Providers lease and or residency agreement must include all requirements as described in the attached guidelines.

5. Modification of the Requirements:

- a. As an individual receiving services in a HCBS setting, the individual is afforded the rights as authorized by 42 CFR 441.301(c)(2)(xiii) & 42 CFR 441.530(a)(1)(vi)(F). There may be times when, due to health and safety risks, a right may be limited. A limitation to any of these rights will always be based on a specific assessed need and will not be implemented without the individual's informed, written consent or the informed, written consent of the individual's legal guardian.
- b. If a modification of an individual's rights in the lease/residency agreement is deemed required, it must be justified through the PCP. Further, implementation strategies and the modification must be reviewed by the provider's HRC.
- c. Rights modifications should apply only to the individual with the need for the modification. In addition, no rights modification should be implemented solely because it is convenient for the provider, or legal guardian, if applicable. Implementing a modification without consent of the individual and legal guardian if applicable is prohibited.