

Rental or Residency Agreement Guidelines

In accordance with CMS regulations 42 CFR 441.301 (c) (4) (vi), Landlords/Providers must have a lease or other legally enforceable written agreement providing protections for Tenants/Individuals receiving HCBS Waiver services in provider owned and controlled settings certified by ADMH. Such agreements may take the form of a Rental or Residency Agreement that ensures Tenants/Individuals receiving HCBS Waiver services in provider owned and controlled settings are provided the same protections afforded others under Alabama Tenant Laws, including protections from eviction. The following guidelines shall be followed to ensure a Rental or Residency Agreement complies with CMS regulations.

RENTAL OR RESIDENCY AGREEMENT

The Residential/Residency Agreement must include the following:

1. The individual's/tenant's or legal guardian's name, if applicable, and the landlord's/provider's name for whom the agreement is being entered.
2. The location/address of the property subject to the agreement.
3. Period for which the agreement is binding.
4. The specific monthly rent or room and board to be paid by the individual/tenant.
5. The pro-rated rate for partial month occupancy based on move-in or move-out date.
6. The specific services and supports to be provided in exchange for payment of rent or room and board (e.g., utilities, meals, laundry, etc.)
7. Date by which monthly rent or room and board payment is due and specific penalty, if any, for late payment.
8. The specific conditions under which the rental or room and board rates can be changed. (Note the Landlord/Provider must give the tenant/individual or Legal Guardian, if applicable, at least 30 days prior notice of any rate increase and amend the written agreement to reflect the new rate)
9. The Landlord's/Provider's refund policy in instances of Tenant's/Individual's hospitalization, death, transfer to a nursing facility or other health care facility and/or tenant's/individual's voluntary or involuntary permanent move from the residence.
10. The Landlord's/Provider's policy regarding pets or service animals on property.
11. The Landlord's/Provider's eviction policy or involuntary termination of residency agreement. (Note such must be compliant with applicable Alabama Landlord Tenant Act)
12. If the Landlord/Provider determines that they no longer can provide Residential services to a tenant/ individual, or the landlord/provider follows requirements of Alabama landlord/tenant law relating to eviction as required, the tenant/individual may be required to move. In this event, the tenant/individual will receive advanced notice and have the right to appeal the decision. In the event the individual chooses to initiate an appeal, the landlord/provider may not terminate the Residential services until the appeal process is fully complete and then only if the decision was decided in the landlord/provider's favor. The following steps must occur if the landlord/provider proposes to terminate services:

A. The landlord/provider will notify the individual or legal representative, the ADMH Regional Office, and the Support Coordinator, in writing, of the intended service termination.

B. The notice will be provided at least 30 days before the proposed effective date of service termination.

C. The written notice of a proposed service termination will include all of the following elements:

- I. The reason for the action.
- II. A summary of measures taken to minimize or eliminate the need for service termination, and why these measures failed to prevent the termination (this element will not be required when service termination is a result of the program ceasing operation).
- III. The individual's right to appeal the termination of services.

13. The Rental or Residency Agreement must contain the signatures of both the Landlord/Provider and Tenant/Individual and Date of Signatures.

Note: The above Rental or Residency Agreement must be presented to the Tenant/Individual in language and terms which the Tenant/Individual or Legal Guardian, if applicable, understands.

Rights and Responsibilities Agreement

The Rights and Responsibilities Agreement may be included as a section of the Rental or Residential Agreement or must be in a separate agreement. This agreement must include all Rights as afforded those receiving HCBS Waiver services under CMS Regulations 42 CFR 441.301 (c) (2) (xiii) and CFR 441.503 (a) (1) (vi) (F). The following must be included to comply with CMS regulations:

1. The tenant's/individual's or legal guardian's name, if applicable, and the landlord's/provider's name for whom the agreement is being entered into.
2. Tenant's/Individual's Responsibilities to maintain his/her living space and not engage in activities that may disrupt or potentially cause harm to other individuals/tenants.
3. Tenant's/Individual's Rights to:
 - Live under a legally enforceable agreement with protections substantially equivalent to landlord/tenant laws of the State of Alabama and other applicable laws or rules of the county, city or other designated jurisdiction in which the individual resides.
 - Privacy in their sleeping/living unit; including the right to have entrance doors lockable with individual and only appropriate staff having access to keys. (Note that staff's access to bedroom is limited to situations as described in the residency agreement and to emergencies where the health/safety/well-being of the occupants is jeopardized.)
 - Choice of roommates for individuals sharing units or bedrooms.
 - Freedom to furnish and decorate their living and sleeping areas as long as decorations do not damage the unit. (Note that in common areas of shared living arrangement, tenants/individuals are expected to collaborate with their housemates/roommates.)
 - Freedom and support to control their own schedules and activities.

- Freedom and support to have access to food at any time unless restricted due to modifications in the person-centered plan. (Note that such modifications can include restrictions due to individual's/tenant's personal health, financial plan as included in the person-centered plan and/or exhaustion of board/food allowances as included in the lease/rental agreement)
- Have visitors of their choice at any time. (Note that supports may be needed to protect the rights and privacy of others living in the home)
- Control over Personal Resources, including access and management of their personal funds.

4. There shall be no modifications of the right to live under a legally enforceable agreement as described above. Modifications to any of the other rights articulated above may only occur when a condition presents a significant risk to the individual's health and/or safety that is supported by specific assessed need, justified in the individual's Person-Centered Plan and compliant with all ADMH-DDD Due Process Procedures.

5. The signatures of both the Landlord/Provider and Tenant/Individual and Date of Signature.

Note: The Rights and Responsibilities Agreement must be presented to the Tenant/Individual in language and terms which the Tenant/Individual or Legal Guardian, if applicable, understands.

ADMH Approved: _____ Date: _____