

September 27, 2024

ADULT FOSTER CARE RESIDENTIAL AGREEMENT CHECKLIST

SUMMARY OF NOTIFICATION

In 2014, the Centers for Medicare & Medicaid Services (CMS) issued federal regulations for settings where Medicaid home and community-based services (HCBS) are provided. These regulations are referred to as the HCBS Settings Rule and apply to the STAR+PLUS HCBS program. The HCBS Settings Rule requires states to ensure Medicaid HCBS settings support an individual's full access to the community. This includes opportunities to engage in community life, work in competitive integrated settings, and control personal resources.

STAR+PLUS adult foster care (AFC) providers must meet HCBS Settings Rule requirements that apply to all settings, as well as additional requirements that are applicable to provider owned or controlled settings. Under these additional requirements, all HCBS recipients residing in an AFC must have a residential agreement with their AFC provider that offers the same protections against eviction that tenants have under state landlord/tenant law.

The residential agreement requirement does not apply to an AFC setting in which the AFC service provider is an immediate family member of all individuals receiving AFC services in the setting. In accordance with 42 CFR §1001.2, an "immediate family member" means a person's husband or wife; natural or adoptive parent; child or sibling; stepparent, stepchild, stepbrother, or stepsister; father-, mother-, daughter-, son-, brother- or sister-in-law; grandparent or grandchild; or spouse of a grandparent or grandchild.

SUMMARY OF REQUEST

STAR+PLUS MCOs must ensure their contracted AFC providers have a residential agreement in place with each of the MCOs' members receiving services in the AFC home. For AFC settings, a completed HHSC Form 2327, Individual/Member and Provider Agreement, does not, on its own, meet these requirements. The attached AFC residential agreement checklist provides guidance on HCBS Setting Rule requirements. HHSC requests MCOs share the AFC residential agreement checklist with their contracted AFC providers. For providers that do not currently have residential agreements in place, this checklist can be used to provide assistance on how to create such a document. Please note, neither this guidance nor the AFC residential agreement checklist constitutes legal advice. HHSC recommends AFC providers consult with their MCO or legal counsel regarding the AFC residential agreement checklist.

ACTION

Upon receipt of this notice, MCOs should verify that each of their contracted AFC providers have in place a residential agreement that meets the requirements outlined in this guidance. The MCO may provide a copy of the residential agreement checklist to their contracted AFC providers to provide assistance on how to create a residential agreement. MCOs must be able to produce for HHSC a copy of each AFC provider's agreement upon request.

Notify contracted AFC providers who do not currently have residential agreements with residents, they have 60 days to develop and implement a written lease agreement with each of the MCO's members receiving HCBS in a STAR+PLUS AFC setting.

Obtain and submit a copy of the lease agreement to HHSC's HCBS mailbox at Medicaid_HCBS@hhs.texas.gov. To satisfy this requirement, the provider may submit to the MCO an unsigned lease agreement with an affirmation the lease agreement has been executed with each of your members who receive HCBS. MCOs must ensure the lease agreement meets all requirements outlined in the residential agreement checklist.

This information is due to HHSC 90 days from the date of this notice publication.

ADDITIONAL INFORMATION

Information about HCBS Settings rule requirements can be found at [42 Code of Federal Regulations \(CFR\) 441.301\(c\)\(4\)\(i\)-\(v\)](#).

RESOURCES

[AFC Residential Agreement Checklist](#)