



In reply, please refer to:

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Medicaid I/DD Waiver
Memo No.: FY2023-10
Date: May 3, 2023

TO: Medicaid I/DD Waiver Residential Habilitation (ResHab) Providers

FROM: Mary Brogan, Administrator
Developmental Disabilities Division

SUBJECT: Residency Agreement for Licensed and Certified Residential Settings

The Department of Health, Developmental Disabilities Division (DOH-DDD), has been working with Medicaid 1915(c) Home and Community-Based Services (HCBS) Waiver for Individuals with Intellectual and Developmental Disabilities (Medicaid I/DD Waiver) providers and caregivers to comply with the requirements of the HCBS final rule as stated in 42 CFR §441.301(c).

As required by the regulation issued by Centers for Medicare and Medicaid Services (CMS), the State committed to ensuring that each residential setting controlled or owned by a provider has a legally enforceable agreement with the individual receiving services. The provider must work with every home providing Residential Habilitation (ResHab) services to ensure that there is a signed agreement in place between the caregiver(s) and the Medicaid I/DD Waiver participant, or legal representative, as applicable.

As shared with you previously, the State has been working on a sample template of a residency agreement. Attached is a template residency agreement, that has been determined to meet the compliance requirements of 42 CFR §441.301(c)(4), that providers and caregivers may use. This does not constitute legal advice regarding landlord/tenant law; providers with questions about lease agreements may want to seek independent legal counsel. Providers and caregivers may use the template residency agreement provided or develop their own residency agreement. Providers and caregivers who develop their own residency agreement must ensure that the residency agreement meets the compliance requirements of 42 CFR §441.301(c)(4)(vi)(A),

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requiring a lease, residency agreement or other form of written agreement in place for each HCBS participant, providing protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.

As the federal deadline for compliance with the HCBS final rule was on March 17, 2023, please work with the caregivers and participants to get the residency agreements signed as soon as possible, but no later than thirty (30) days from receipt of this memo.

If you have any questions, please email the Community Resources Branch at doh.dddcrb@doh.hawaii.gov or call (808) 733-2135.

c: Jon Fujii, DHS-MQD
Reid Kaneko, DHS-MQD
DDD Management Team