

Date: November 15, 2025

To: Developmental Disabilities (DD) and Mi Via Waiver Providers and Interested Parties

From: Selina Leyba, Developmental Disabilities Supports Division (DDSD), Community Programs Bureau Chief *SL*

Subject: Clarifications and FAQs on Residency and Lease Agreements

BACKGROUND

On August 1, 2025, the Developmental Disabilities Supports Division (DDSD) issued guidance through Memo 2025-10, Requirement for Lease Agreement Protections, which outlined how housing-related protections are implemented within the 1915c Home and Community Based Services (HCBS) waiver programs per 42 CFR 441.301(c)(4)(i) through (v). This regulation ensures that individuals receiving HCBS have at a minimum, the same responsibilities and protections from eviction that tenants have under landlord/tenant law. The services this applies to in the DD and Mi Via Waivers are supported living, family living, intensive medical living service and in-home living supports.

The Centers for Medicare and Medicaid Services (CMS) issued guidance in “*Themes Identified During CMS’ Heightened Scrutiny Site Visits November 16, 2022*” which defined provider-owned and provider-controlled homes:

- A *provider-owned home* is defined as formally owned by a provider of waiver services.
- A *provider-controlled home* is defined as a home that a provider has influence over whether an individual is accepted for residency or when the landlord has influence over which service providers the individual uses.

The following Frequently Asked Questions (FAQ) are provided to clarify key aspects of the requirements for providers, participants, and stakeholders.

FREQUENTLY ASKED QUESTIONS

1. Are lease agreements required for all waiver participants?

Response: *Lease agreements are required for provider-owned or controlled homes. Waiver participants accessing Supported Living settings, family living settings and Mi*

Via In Home Living Supports (IHLS) homes are required to have a lease/residency agreement.

2. Can lease agreements be called something else?

Response: *Yes. The Centers for Medicare and Medicaid Services (CMS) allows flexibility in terminology. Agreements may be titled “lease,” “residency (transition) agreement,” or “room and board agreement” as long as they include required protections, such as eviction and appeal rights.*

3. If a waiver participant or legal guardian signs a lease directly with a landlord, for a home that is not provider-owned or controlled, is an additional lease agreement needed, or appeal rights required in the lease agreement?

Response: *No. If there is a signed lease agreement between the participant/legal guardian and the landlord, on a residence that is not provider-owned or controlled, no additional lease agreement is necessary.*

4. Are lease agreements required on Tribal Lands or in family homes passed down through generations?

Response: *No. Lease agreements are not required unless the home is provider-owned or controlled. However, if the individual is receiving Family Living or In-Home Living Supports, a “Residency Transition Agreement”, between the service provider and participant/guardian, must be in place.*

A Residency Transition Agreement is a formal written document that outlines the procedures and protections in place when a person receiving Developmental Disabilities Waiver (DDW) services transitions out of a provider-controlled residence. It ensures continuity of care, safeguards the individual's rights, and promotes a person-centered approach to transitions. Residency Transition Agreements must include:

- *A minimum 30-day written notice prior to any planned transition or termination of residency.*
- *Transition requirements, including a formal transition meeting involving the participant, guardian (if applicable), provider, and Interdisciplinary Team (IDT) members.*
- *A transition plan that details steps for securing a new placement, transition dates, and ensures the participant's needs are met throughout the process.*
- *Adequate coverage or support until the new placement is finalized and the transition is complete.*

Residency Transition Agreements are appropriate for scenarios where:

- *The individual resides in a provider-controlled setting such as Family Living or In-Home Living Supports (IHLS).*

- *There is a planned or necessary change in residence, such as provider termination, relocation, contracted provider no longer can provide the service or the participant can no longer live in the home; or change in service delivery.*

5. Are lease agreements between parents/guardians and participants required in Family Living settings? If so, can a guardian, who is Family Living provider, sign the lease? Is there a conflict of interest?

Response: *No. Lease agreements are not required in family living homes however Residency Transition Agreements between the service provider and participant/guardian, must be in place to provide protections to the participant.*

A Residency Transition Agreement is a formal written document that outlines the procedures and protections in place when a person receiving DDW services transitions out of a provider-controlled residence. It ensures continuity of care, safeguards the individual's rights, and promotes a person-centered approach to transitions. Residency Transition Agreements must include:

- *A minimum 30-day written notice prior to any planned transition or termination of residency.*
- *Transition requirements, including a formal transition meeting involving the participant, guardian (if applicable), provider, and Interdisciplinary Team (IDT) members.*
- *A transition plan that details steps for securing a new placement, transition dates, and ensures the participant's needs are met throughout the process.*
- *Adequate coverage or support until the new placement is finalized and the transition is complete.*

Residency Transition Agreements are appropriate for scenarios where:

- *The individual resides in a provider-controlled setting such as Family Living or In-Home Living Supports (IHLS).*
- *There is a planned or necessary change in residence, such as provider termination, relocation, contracted provider no longer can provide the service or participant can no longer live in the home; or change in service delivery.*

6. Does placing provider names on leases create liability concerns?

Response: *Naming a provider on a lease where they do not have an ownership or control of the residence may create confusion about legal obligations and expose the provider to unintended liability. To avoid this, the provider should only be listed on leases where they are the legal owner or have operational control of the home, in cases of provider-controlled homes, such as when supporting participants in Family Living or In-Home*

Living Supports (IHLS), providers can use a Residency Transition Agreement instead of a lease.

The Residency Transition Agreements must include:

- *A minimum 30-day written notice prior to any planned transition or termination of residency.*
- *Transition requirements, including a formal transition meeting involving the participant, guardian (if applicable), provider, and Interdisciplinary Team (IDT) members.*
- *A transition plan that details steps for securing a new placement, transition dates, and ensures the participant's needs are met throughout the process.*
- *Adequate coverage or support until the new placement is finalized and the transition is complete.*

Residency Transition Agreements are appropriate for scenarios where:

- *The individual resides in a provider-controlled setting such as Family Living or In-Home Living Supports (IHLS).*
- *There is a planned or necessary change in residence, such as provider termination, relocation, contracted provider no longer can provide the service or participant can no longer live in the home; or change in service delivery.*

7. Will DDSD provide a generic residency agreement template?

Response: *No. Each provider agency is responsible for creating its own agreements tailored to its settings.*

8. Should lease requirements differ by waiver type?

Response: *Lease requirements and residency agreements apply to both the DD Waiver and the Mi Via Waiver, but they differ based on the type of service and whether the home is provider-owned or controlled. In the DD Waiver, Supported Living settings typically involve provider-owned or controlled homes and therefore require lease or residency agreements that include protections against eviction and appeal rights. In contrast, Family Living homes, often owned by the participant or their family, do not require lease agreements, however Residency Transition Agreements must be in place.*

In Mi Via, In Home Living Supports (IHLS) are provided in homes that are not owned or managed by agencies. Because these homes fall outside provider control, lease agreements are not required, however Residency Transition Agreements must be in place.

9. Why is Fair Hearing language required in lease agreements if it's not in New Mexico's landlord-tenant laws, and does it still apply if Medicaid doesn't pay for rent, room, or board?

Response: *Fair Hearing language is required not because of state landlord-tenant law, but because waiver services are Medicaid-funded services, and any proposed termination, reduction, or suspension of those services, including residential supports in provider-owned or controlled settings, requires federal due process protections under per 42 CFR 441.301(c)(4)(i) through (v). This includes the right to receive advance notice and the opportunity for a Fair Hearing.*

Although Medicaid does not pay for rent, room, or board, it does fund the residential services delivered through New Mexico's 1915(c) waivers. Therefore, if a provider, or their contracted provider, intends to end those services and a participant is required to leave the home, that action constitutes a loss of waiver services and must include Fair Hearing protections. CMS requires that states ensure these rights are included in lease, residency termination agreement, or similar agreements to safeguard individuals from involuntary transitions.

10. What guidance exists for proration of room and board if a participant leaves mid-month?

Response: *The signed agreement between the participant and provider must address proration.*

11. Are room and board payments taxable income for Family Living Providers?

Response: *Tax liability is not addressed in the DD Waiver Service Standards. Family Living providers should consult a tax professional or the Internal Revenue Service (IRS) for guidance.*

12. Who enforces lease agreement compliance?

Response: *DDSD is responsible for ensuring leases are present in all HCBS settings where they are required. Lease agreement compliance is enforced by the lessor (landlord or property owner) and the lessee, or tenant through their contractual agreements.*

13. Are vendor agencies providing In-Home Living Supports (IHLS) responsible for enforcing housing agreements?

Response: *Vendor agencies are not responsible for enforcing private housing agreements such as leases between participants and landlords; however, when providing IHLS, vendor agencies are responsible for implementing protections to participants, such as through Residency Transition Agreements.*

A Residency Transition Agreement is a document between the vendor agency and the participant that outlines process and protections in the event of a vendor provider termination, relocation, contracted provider no longer can provide the service or participant can no longer live in the home; or change in service delivery.

The Residency Transition Agreements must include:

- *A minimum 30-day written notice prior to any planned transition or termination of residency.*
- *Transition requirements, including a formal transition meeting involving the participant, guardian (if applicable), provider, and Interdisciplinary Team (IDT) members.*
- *A transition plan that details steps for securing a new placement, transition dates, and ensures the participant's needs are met throughout the process.*

Adequate coverage or support until the new placement is finalized and the transition is complete.

14. Are agencies required to manage residential agreements between participants and landlords/caregivers? Providers are concerned about being forced into landlord roles. Is this within their scope?

Response: *Living Support providers and In-Home Living Supports vendor agency providers are not responsible for enforcing private housing agreements such as leases between participants and landlords unless the provider owns or controls the residence. In these cases, providers and vendor agencies deliver Medicaid-funded services under 1915(c) Home and Community-Based Services (HCBS) waiver and therefore are responsible for implementing protections related to service delivery and continuity of care including retaining rights to due process, including Fair Hearings when applicable.*

15. Is Smartsheet secure for uploading lease documents?

Response: *Yes. Smartsheet is secure and participant data is not at risk.*

16. Has Health Care Authority (HCA) legal counsel been consulted regarding lease requirements and timelines?

Response: *HCA legal counsel has not been consulted regarding lease requirements and timelines. DDSD's current guidance on lease and residency agreements stems directly from CMS direction following a federal site visit conducted in September 2024. During that visit, CMS identified noncompliance with 42 CFR § 441.301(c)(4)(vi)(A), which requires that in provider-owned or controlled settings, each participant must have a written lease, residency agreement, or similar document that includes protections against eviction and appeal rights comparable to those under landlord-tenant law. DDSD is working to align waiver practices with this federal requirement.*

17. Do lease agreements conflict with person-centered planning or participants' rights to leave a home?

Response: *No. Lease agreements do not conflict with person-centered planning. DDSD fully supports participants' rights to choose their living arrangements, and the person-*

centered planning process ensures that transitions between providers are guided by the participant's preferences and needs. Lease or residency agreements in provider-owned or controlled homes reinforce these rights by including protections against unlawful eviction and ensuring appeal processes. These agreements also help maintain continuity of care during transitions between service providers, safeguarding both housing stability and access to essential supports.

18. Would including eviction/discharge procedures in the DD Waiver Standards meet CMS requirements?

Response: *Yes. DDS is updating the standards to include language on eviction and discharge, however that does not negate the need for written agreements between waiver recipients and providers or landlords. CMS requires residency agreements for provider-owned or controlled homes that include such protections.*