

**An Important Message from
The Texas Health and Human Services Commission (HHSC)**

Adult Foster Care Residential Agreement Checklist

Background

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 constitute 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.

1. 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.
2. 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 (attached)

Additional Questions?

Please contact UnitedHealthcare Customer Service at 888-887-9003, 8 a.m.–6 p.m. CT, Monday–Friday.

Adult Foster Care Residential Agreement Checklist

Background

The Centers for Medicare & Medicaid Services (CMS) issued federal regulations in March 2014. These regulations, collectively referred to as the Home and Community Based Services (HCBS) Settings Rule, include requirements for settings where Medicaid HCBS are provided.

Effective March 1, 2023, the STAR+PLUS Handbook found at <https://www.hhs.texas.gov/handbooks/starplus-handbook/1100-program-overview> requires managed care organizations (MCOs) to ensure settings where HCBS are provided comply with the federal requirements under Title

MCOs are required to ensure each member residing in an adult foster care (AFC) setting has a legally enforceable agreement with their AFC provider. The agreement must provide the same responsibilities and protections from eviction that tenants have under the Texas Property Code as described in Section 1132.2 of the STAR+PLUS Handbook. A completed [HHSC Form 2327, Individual/Member and Provider Agreement](#), does not, on its own, meet these requirements. (See STAR+PLUS Handbook Sections 1132-1139.8 for additional details on requirements for HCBS settings).

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.

Purpose

The AFC residential agreement checklist is designed to help these providers in the STAR+PLUS HCBS program create a legally enforceable agreement ("residential agreement") for each resident in an AFC setting. HHSC recommends AFC providers

review the checklist for suggestions on what to include when developing or revising their residential agreement.

This checklist does not constitute legal advice regarding the content of the residential agreement. An AFC provider should consult with their MCO or legal counsel regarding the residential agreement.

Suggested Provisions

The following are suggested provisions for inclusion in a residential agreement:

- ☐ The physical address of the residence.
- ☐ The name of the resident.
- ☐ The begin date of the residential agreement.
- ☐ The date the residential agreement expires.
 - **Example Language:** This Residential Agreement is between [AFC Provider Name] and [Resident Name] and allows [Resident Name] to rent a room at the residence located at [Street Address, City, TX, Zip Code] starting on [Begin Date] and ending on [Agreement Expiration Date].
- ☐ The amount the individual or LAR is paying for room as specified on [HHSC Form 2327, Individual/Member and Provider Agreement](#).
- ☐ The amount the individual or LAR is paying for board as specified on [HHSC Form 2327, Individual/Member and Provider Agreement](#).
- ☐ The day of the month that the amount for room and board is due as specified on [HHSC Form 2327, Individual/Member and Provider Agreement](#).
- ☐ A provision stating that the agreement is a lease or legally enforceable agreement that subjects both parties to Texas state law governing residential tenancies.
 - **Example Language:** [AFC] and the resident or legally authorized representative (LAR) agree that the residential agreement is a “lease” under Chapter 92 of the Texas Property Code and that the parties to the agreement are subject to state law governing residential tenancies, including Chapters 24, 91, and 92 of the Texas Property Code and Rule 510 of the Texas Rules of Civil Procedure.

- ☐ A provision stating that the resident or LAR is not waiving any right or remedy provided to tenants under state law, including the Texas Fair Housing Act in [Texas Property Code Chapter 301](#), and is not agreeing to any notice period that is shorter than the notice period to which tenants are entitled under state law.

Example language: The resident or legally authorized representative (LAR) is not waiving any right or remedy provided to tenants under state law, including the Texas Fair Housing Act in Texas Property Code Chapter 301, and is not agreeing to any notice period that is shorter than the notice period to which tenants are entitled under state law.

- ☐ The signature of the AFC provider.
- ☐ The signature of the resident and/or the LAR.