

## Lease Protections

According to 42 C.F.R. § 441.301 (c)(4)(vi)(A):

The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.

Concerns were raised at the task force meeting about this provision and the ability of facilities to meet these requirements. In response to that, DCH asked GHPC to look over their sample lease agreements for compliance and recommend any needed changes.

### *Georgia Law*

The lease agreements that DCH asked GHPC to review do not have termination dates. Therefore, according to Georgia Law, they would most likely be considered tenancies at will (O.C.G.A. § 44-7-6). A tenancy at will can be terminated with notice of 60 days from the landlord or 30 days from the tenant (O.C.G.A. § 44-7-7). However, current Georgia regulations of Personal Care Homes allow for a landlord to give a notice of 30 days prior to terminating a residential agreement (Ga. Comp. R. & Regs. r. 111-8-62-.29(1)). These regulations also allow a patient to be immediately discharged if their condition necessitates nursing home care or if their behavior or condition threatens other patients so long as certain procedures are followed (Ga. Comp. R. & Regs. r. 111-8-62-.28). A different law, the "Remedies for Residents of Personal Care Homes Act", grants tenants of personal care homes the right to file a grievance against or request a hearing regarding their treatment by a Personal Care Home (O.C.G.A. § 31-8-130 et seq.).

### *Relevant Current Contract Language*

Under "Financial Details" Section:

Both the management and the resident understand that this agreement may be terminated by either party, only with a thirty-day written notice. **EXCEPTION:** No notice is required if the resident develops a communicable disease or a change in condition that requires continued nursing care.

**REFUND POLICY:** If, after notice as agreed upon, the resident is transferred or discharged, prepaid fees will be prorated and refunded to the resident. No refund will be granted in the absence of a thirty day written notice unless subject to the exception above.

Management further agrees to provide a sixty-day written notice prior to a change in fees. This agreement has been read by and/or fully explained to the resident/surrogate. By signing below, all parties to this agreement acknowledge that they understand and will abide by the conditions outlined in this document.

### *Analysis*

**Our analysis should not be considered legal advice. Any changes to DCH sample contracts should be made in consultation with DCH's legal department only.**

Under the federal rule, even in home and community based settings where landlord tenant laws do not apply, the state must make sure that the lease document "provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law." DCH's current sample contract follows Georgia's Personal Care Home regulations, and only requires a notice of 30 days from a landlord (and tenant) before terminating a lease agreement. Georgia landlord tenant law requires a notice of 60 days from the landlord in order to terminate a lease agreement. Because the federal settings rule requires that states defer to their landlord tenant law, we recommend that this part of the sample contract be changed to reflect Georgia landlord tenant law.

The emergency termination "Exception" provision (regarding communicable disease or change in condition) can likely remain, particularly if its occurrence in Georgia / DCH regulations is backed by a federal rule. Additionally, to leave it out would be to ignore the nature of these facilities and their patients, an outcome that CMS likely did not intend.

Last, if residents are able to take action against a Personal Care Home for an unjust eviction through their rights under the "Remedies for Residents of Personal Care Homes Act", it is important that this be made clear in the lease termination section of the contract. The federal rule requires that residents either have access to the remedies against eviction under state landlord tenant law, or where the law doesn't apply, may access comparable processes and appeals. If the "Remedies for Residents of Personal Care Homes Act" gives residents a comparable venue for Personal Care Home eviction-related matters, this should be prominently stated in the contract.

### *Suggested Updated Language*

Based on our analysis above, DCH may consider the following new language for this section of the contracts:

#### **Lease Termination / Eviction**

Both the management and the resident understand that this agreement may be terminated by either party, with sufficient notice.

- Residents are required to give a thirty-day, written notice in order to terminate this agreement.
- Management is required to give a sixty-day, written notice in order to terminate this agreement.

EXCEPTION: No notice is required if the resident develops a communicable disease or a change in condition that requires continued nursing care.

Residents who believe their rights have been violated by a lease termination may file a grievance or request a hearing in accordance with the Remedies for Residents of Personal Care Homes Act (O.C.G.A. § 31-8-130 et seq.).

Additionally, if state landlord tenant law applies to Personal Care Homes, DCH may add the following sentence:

Additionally, residents have the same responsibilities and protections from eviction that tenants have under Georgia landlord/tenant law (O.C.G.A. Title 44, Chapter 7).

No other changes are recommended at this time. **We reiterate that our analysis and suggested updates are not legal advice, and that any changes to DCH sample contracts be made in consultation with DCH's legal department only.**