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MEMORANDUM

TO: Executive Directors, DSN Board of Case Management
CEOs, Contracted Service Providers of Case Management
Case Management Supervisors

FROM: Lori Manos, Associate State Director-Policy 

DATE: May 22, 2023

SUBJECT: Landlord Tenant Rights

In South Carolina, Residential Habilitation Services are, for the most part, funded by Medicaid through a Home and Community Based Services (HCBS) Waiver program; specifically, either the ID/RD Waiver or the HASCI Waiver. Residential Habilitation Services can be delivered in a variety of settings and through a variety of models (i.e., CTH I, CTH II, SLP I, SLP II or CRCF).

In March 2016, the Centers for Medicare and Medicaid Services (CMS) introduced the Home and Community Based Services Regulations which includes requirements applicable to settings where Medicaid Waiver services are delivered. Some requirements of the Regulations apply only to residential settings that are owned or controlled by the Residential Habilitation Services provider. One such requirement is one which requires that waiver participants supported in provider owned or controlled settings have a lease or legally enforceable agreement that provides similar protections. Here is what the Regulations state:

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.

As you will note, the requirement indicates, the lease or agreement will provide “*protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law*”. The South Carolina Landlord Tenant Act ([SC Act](#)) does not require that those protections be included in the lease. For that reason, many leases for people who receive Residential Habilitation in South Carolina do not specifically address those protections.

As a case manager for those who are supported in settings that are owned or controlled by the Residential Habilitation provider and those who are tenants, it is important for you to understand the terms of the lease or legally enforceable agreement each person has. If someone you support is being evicted from his/her home (including from his/her Residential Habilitation setting) in violation of his/her lease or legally enforceable agreement, you may best support the person by assisting him/her to gain access to legal services. In South Carolina, South Carolina Legal Services (SCLS) provides free legal assistance in a variety of civil (non-criminal) legal matters to eligible low-income residents of South Carolina. You can learn more about SCLS at <https://sclegal.org/>. SCLS, on their website, has specific information about the eviction process in South Carolina. Those resources can be found at <https://sclegal.org/eviction-in-south-carolina/>.

Supporting people to gain access to needed services, including legal services in the event of an eviction, is a billable Waiver Case Management activity when appropriately documented. Thank you for all you do to support South Carolinians with disabilities.

If you have questions, please contact Janet Brock Priest by email at jpriest@ddsn.sc.gov. Thank you.