




Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
www.mass.gov/masshealth

MassHealth
Adult Foster Care Bulletin 27
December 2022

TO: Adult Foster Care Providers Participating in MassHealth
FROM: Amanda Cassel Kraft, Assistant Secretary for MassHealth 
RE: Specific Guidance for Adult Foster Care Providers regarding Certain Home- and Community-Based Services

Introduction

The Centers for Medicare & Medicaid Services (CMS) has issued rules governing certain setting requirements at 42 CFR 441.301(c)(4) related to home- and community-based services (HCBS) for Medicaid-funded long-term services and supports provided in residential and nonresidential home- and community-based settings (the Community Rule). These rules apply to settings where HCBS Waiver participants live and receive HCBS Waiver services.

CMS has specified that settings where an HCBS Waiver participant lives and receives HCBS Waiver services, including a private residence owned or leased by an unrelated adult foster care (AFC) caregiver, are considered provider-owned or provider-controlled settings that must comply with certain Community Rule requirements. CMS requires compliance with the Community Rule by March 17, 2023.

Overview of the Community Rule Setting Provision

The Community Rule requires that all home- and community-based settings meet certain requirements, including

- being integrated in, and supporting full access to, the greater community;
- being selected by the individual from among setting options;
- ensuring individual rights of privacy, dignity, respect, and freedom from coercion and restraint;
- optimizing autonomy and independence in making life choices; and
- facilitating choice about services and who provides them.

The Community Rule includes additional requirements for provider-owned or provider-controlled home- and community-based residential settings. These requirements include

- a lease or other legally enforceable agreement providing similar protections to the individual;
- privacy in the individual's unit, including lockable doors, choice of roommates, and freedom to furnish or decorate the unit;
- the individual controlling their own schedule and having access to food at any time;
- the individual being allowed visitors at any time; and
- a physically accessible setting.

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Any modification to these additional requirements for provider-owned or provider-controlled home and community-based residential settings must be supported by a specific assessed need and justified in the person-centered service plan.

Application of the Community Rule Setting Provision to AFC

To ensure compliance with the Community Rule, AFC providers must identify AFC members who are HCBS Waiver participants. For each AFC member who is an HCBS Waiver participant, the AFC provider must work with the AFC caregiver and AFC member to complete an attestation, in the form and format required by the Executive Office of Health and Human Services (EOHHS), to determine the application of the Community Rule to the AFC-qualified setting (i.e., where the AFC member/HCBS Waiver participant lives, in the home of an unrelated AFC caregiver). If so, the provider must work with the member and caregiver to confirm compliance with the Community Rule.

EOHHS will issue further guidance with details about compliance with the previously listed requirements. These details will include, but will not necessarily be limited to, information about leases and comparable protections for those without a lease; whether and how certain AFC plan of care requirements apply; use of prescribed documentation and related recordkeeping or reporting; and timing for these requirements.

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Questions

If you have any questions about the information in this bulletin, please contact the Long-Term Services and Supports (LTSS) Provider Service Center.

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