



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

MassHealth
Adult Foster Care Bulletin 28
January 2023

TO: MassHealth Adult Foster Care Providers

FROM: Mike Levine, Acting Assistant Secretary for MassHealth

RE: Additional Guidance for Adult Foster Care Providers Regarding Certain Home- and Community-Based Services

Background

As described in [Adult Foster Care Bulletin 27](#), the Centers for Medicare & Medicaid Services (CMS) issued regulations establishing 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 requirements apply to settings where HCBS Waiver participants live and receive HCBS Waiver services.

Under the Community Rule, CMS specified that a setting where an HCBS Waiver participant lives and receives HCBS Waiver services that is a private residence owned or leased by an unrelated adult foster care (AFC) caregiver is considered provider-owned or provider-controlled and must comply with the settings requirements under 42 CFR 441.301(c)(4)(vi). CMS requires compliance with the Community Rule by March 17, 2023.

This bulletin adopts the guidance issued in Adult Foster Care Bulletin 27 and provides further detailed guidance about compliance with the Community Rule.

Application of the Community Rule to AFC

To ensure compliance with the Community Rule’s requirements for provider-owned or provider-controlled settings, adult foster care (AFC) providers must identify all members that they serve who are also HCBS Waiver participants. In the case of a new AFC Prior Authorization request, AFC providers will be notified when the member is an HCBS waiver participant (and thus subject to the Community Rule requirements) via the Prior Authorization noticing process.

For AFC members who are HCBS Waiver participants, the AFC provider must work with the AFC caregiver and AFC member to complete an attestation located on the LTSS provider portal under “Additional Material or Forms” (#7 in the Overview menu), found on the [Adult Foster Care Provider Resources Guest \(masshealthltss.com\)](#) page. This attestation determines whether the Community Rule’s setting requirements apply to the member’s AFC-qualified setting (i.e., whether the AFC member/HCBS Waiver participant lives in the home of an unrelated AFC caregiver). If the member’s AFC setting is subject to the Community Rule’s setting requirements, the AFC provider must work with the member and caregiver to confirm compliance with the Community Rule’s setting requirements. Once the attestation is completed, AFC providers must email the form to the LTSS Support Inbox at support@masshealthltss.com and add a subject of “AFC Community Rule Attestation Form.” Additional guidance and templates of certain documents such as leases and

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residency agreements can be found on the LTSS provider portal under the AFC Provider Resources section at [Adult Foster Care Provider Resources Guest \(masshealthltss.com\)](https://masshealthltss.com).

If a limitation related to a Community Rule requirement is necessary, it must be supported by a specific assessed need and justified in the member's AFC plan of care, to ensure compliance with the Community Rule. HCBS Waiver participants also have a waiver service plan of care. The AFC provider must work with the HCBS case manager as needed and when the HCBS Waiver service plan is required to be updated to include any information related to the Community Rule or other information such as certain types of modifications.

For all AFC members and AFC caregivers who must complete an attestation as required by this bulletin, the attestation described here must be kept in the member's records. A copy of the signed attestation must be uploaded to the LTSS provider portal by March 17, 2023, for existing applicable AFC members. Following that date, AFC providers are also responsible for checking the Electronic Verification System (EVS) before providing AFC services for all applicable AFC members as described above.

MassHealth Website

This bulletin is available on the [MassHealth Provider Bulletins](#) web page.

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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.

Phone: Toll free (844) 368-5184
Email: support@masshealthltss.com
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Home- and Community-Based Services Community Rule Attestation for Waiver Participants Receiving Adult Foster Care Services

AFC Provider Agency Name: _____

AFC Caregiver Name: _____

AFC Member Name: _____

AFC Member MassHealth ID: _____

Residential Address: _____

SECTION 1

Question 1: Is the AFC member an HCBS Waiver participant?

If YES, go to Question 2.

If NO, then STOP.

Question 2: Is the AFC member living in a home that they own, lease, or do they have a tenancy at will (pays rent to a landlord without a written lease)?

If YES, then STOP.

If NO, then go to Question 3.

Question 3: Is the home owned, leased, or rented by a family member who is not the paid AFC caregiver?

If YES, then STOP.

If NO, then go to Question 4

Question 4: Is the AFC caregiver related¹ to the AFC member?

If YES, then STOP.

If NO, then complete Section 2.

SECTION 2

Attest to the setting's compliance with each requirement by checking "Yes" or "No."

The word "setting" refers to the AFC member's residence.

Setting Requirement

The setting is integrated in, and supports full access to, the greater community.

Yes No

- ◆ The home is among other private residences or retail businesses.
- ◆ The AFC member can participate in activities outside the home.
- ◆ The AFC member has transportation to those activities.
- ◆ The AFC member can seek employment.

¹ For the purposes of this attestation, the meaning of "related," is defined broadly, and includes any family relationship, including a significant other or partner. However, federal and state Medicaid rules prohibit legally responsible relatives of the member (including spouses and relatives who are legal guardians) from being AFC caregivers.

Setting Requirement

The setting is selected by the AFC member from among setting options.

Yes No

- ◆ The AFC member has chosen where to live and when to move.

The setting ensures the AFC member's rights of privacy, dignity and respect, and freedom from coercion and restraint.

Yes No

- ◆ The AFC member is treated in a respectful manner. This includes keeping all information about the AFC member private.
- ◆ The AFC member has access to a phone or other communication device and is afforded privacy for personal communication at any time.
- ◆ The AFC member can access and control personal funds.
- ◆ The AFC member receives personal assistance in private, as appropriate.

The setting optimizes autonomy and independence in making life choices.

Yes No

- ◆ The AFC member has access to leisure activities that bring the member enjoyment.
- ◆ The AFC member can come and go at any time.
- ◆ The AFC member can engage in legal activities.
- ◆ The AFC member may choose not to engage in any activities.

The setting facilitates choice regarding services and who provides them.

Yes No

- ◆ The setting does not restrict the services, providers, or supports made available.
- ◆ The AFC member is afforded the opportunity to change their preferences at any time.
- ◆ The AFC provider agency ensures the AFC member receives support to develop plans supporting their needs and preferences.
- ◆ The AFC caregiver is knowledgeable about interests, preferences, and needs of the AFC member.

For homes in which landlord tenant laws do not apply (meaning there is no lease or tenancy agreement), there must be another legally enforceable agreement such as a residency agreement that must:

Yes No

- ◆ inform the AFC member of their rights regarding housing and when they could be required to relocate;
- ◆ inform the AFC member of how to relocate and request new housing; and
- ◆ include language that provides protections to address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant laws.

The AFC member has privacy in their unit including lockable doors, choice of roommates and freedom to furnish or decorate the unit.

Yes No

- ◆ There are locks on bedroom and bathroom doors.
- ◆ The furniture, linens, and other household items reflect the member's preferences.
- ◆ The AFC caregiver only uses a key to enter a private space under limited circumstances.
- ◆ Others always knock and receive permission prior to entering a bedroom, bathroom, or private space.

Setting Requirement

The AFC member controls their own schedule including access to food at any time. Yes No

- ◆ The AFC member chooses when to wake up and when to go to bed.
- ◆ The AFC member chooses what, when, where, and with whom to eat.
- ◆ The AFC member chooses services, supports, and activities that fit their preferred schedule.

The AFC member can have visitors at any time, and Yes No

- ◆ can have private visits with family and friends;
- ◆ are not restricted in visitors' meeting areas; and
- ◆ visitors are welcomed and encouraged.

The setting is physically accessible. This includes Yes No

- ◆ provision of full access to typical amenities of a home (e.g., kitchen, dining area, laundry, and comfortable seating in shared areas);
- ◆ a bathroom with grab bars, if needed; and
- ◆ a safe exit.

If you answered "no" to any of the questions in Section 2, proceed to Section 3.

If you answered "yes" to all the questions in Section 2, proceed to Section 4.

SECTION 3

Are the "no" answer(s) to the questions in Section 2 supported by a specific assessed need and justified in the member's AFC plan of care?

If YES, then go to Section 4.

If NO, then changes must be made to bring the setting into compliance by March 17, 2023.
Please reach out for help: support@masshealthtss.com.

SECTION 4

AFC Provider Agency Signature: _____

Date: _____

AFC Caregiver Signature : _____

Date: _____

AFC Member/Legal Representative Signature: _____

Date: _____