Commonwealth of Massachusetts
Office of the State Auditor
Suzanne M. Bump
Making government work better

Official Audit Report – Issued July 14, 2016

Office of Medicaid (MassHealth)—Review of Paid Claims within MassHealth's Adult Foster Care and Group Adult Foster Care Programs

For the period January 1, 2010 through June 30, 2015

Commonwealth of Massachusetts
Office of the State Auditor
Suzanne M. Bump
Making government work better

July 14, 2016

Ms. Marylou Sudders, Secretary
Executive Office of Health and Human Services (EOHHS)
One Ashburton Place, 11th Floor
Boston, MA 02108

Dear Secretary Sudders:

I am pleased to provide this performance audit of the Office of Medicaid's (MassHealth's) review of paid claims within its adult foster care and group adult foster care programs. This report details the audit objectives, scope, methodology, finding, and recommendations for the audit period, January 1, 2010 through June 30, 2015. My audit staff discussed the contents of this report with management of the agency, whose comments are reflected in this report.

I would also like to express my appreciation to MassHealth for the cooperation and assistance provided to my staff during the audit.

Sincerely,

Suzanne M. Bump
Auditor of the Commonwealth

cc: Daniel Tsai, Assistant Secretary and Director, MassHealth
Alda Rego, Assistant Secretary, EOHHS, Administration and Finance
Teresa Reynolds, Executive Assistant to Secretary Sudders
Joan Senatore, Office of Medicaid, Compliance and Program Integrity

TABLE OF CONTENTS

LIST OF ABBREVIATIONS

ADL	activity of daily living
AFC	adult foster care
BSI	Bureau of Special Investigations
CMR	Code of Massachusetts Regulations
CMS	Centers for Medicare and Medicaid Services
DPH	Department of Public Health
GAFC	group adult foster care
IADL	instrumental activity of daily living
LTC	long-term care
MMIS	Medicaid Management Information System
OSA	Office of the State Auditor

EXECUTIVE SUMMARY

Under Chapter 118E of the Massachusetts General Laws, the Executive Office of Health and Human Services is responsible for the administration of the state's Medicaid program, known as MassHealth. MassHealth provides access to healthcare services to approximately 1.9 million eligible low- and moderate-income children, families, seniors, and people with disabilities annually. In fiscal year 2015, MassHealth paid healthcare providers more than $13 billion, of which approximately 50%[1] was funded by the Commonwealth. Medicaid expenditures represent approximately 38% of the Commonwealth's total annual budget.

The Office of the State Auditor (OSA) has conducted an audit of paid claims for adult foster care (AFC) and group adult foster care (GAFC) services for the period January 1, 2010 through June 30, 2015. These programs provide assistance with activities of daily living to members who are elderly or disabled but do not need the level of assistance provided in a long-term-care (LTC) facility. The purpose of this audit was to determine whether MassHealth paid for AFC and GAFC services in accordance with applicable regulations and other authoritative guidance.

The audit was initiated as the result of a referral from OSA's Bureau of Special Investigations (BSI). BSI is charged with investigating potential fraudulent claims or wrongful receipt of payment or services from public assistance programs. BSI conducted data analytics of AFC and GAFC claims that identified potentially improper payments due to weaknesses in MassHealth's claim-processing system.

This audit was conducted as part of OSA's ongoing independent statutory oversight of the state's Medicaid program. Several of our previously issued audit reports disclosed significant weaknesses in MassHealth's claim-processing system, which resulted in millions of dollars in unallowable and potentially fraudulent claim payments. As with any government program, public confidence is essential to the success and continued support of the state's Medicaid program.

Based on our audit, we have concluded that MassHealth improperly paid a total of $15,201,854 for AFC and GAFC services during the audit period.

1. During the federal government's fiscal year 2015, the Federal Medical Assistance Percentage for Massachusetts was 50%.

Below is a summary of our finding and our recommendations, with links to each page listed.

Finding 1 **Page 7**	MassHealth improperly paid $15,201,854 for AFC and GAFC for members in LTC facilities, i.e., rest homes and nursing homes.
Recommendations **Page 9**	1. MassHealth should not pay for AFC and GAFC services for members who are receiving similar services while residing in LTC facilities. 2. MassHealth should establish and implement system edits to detect and deny claims for AFC and GAFC services provided to members residing in LTC facilities. 3. MassHealth should enact regulations specifically governing the GAFC program.

OVERVIEW OF AUDITED ENTITY

Under Chapter 118E of the Massachusetts General Laws, the Executive Office of Health and Human Services is responsible for the administration of the state's Medicaid program, known as MassHealth. During the audit period, January 1, 2010 through June 30, 2015, MassHealth paid approximately $1.3 billion for adult foster care (AFC) and group adult foster care (GAFC) services for 30,408 members, as detailed below.

Amounts Paid for AFC and GAFC Services

Calendar Year	Paid Amount	Members Served	Number of Claims
2010	$ 173,310,895	12,829	693,404
2011	201,881,956	15,178	965,490
2012	235,260,651	15,776	1,022,611
2013	258,186,291	16,851	1,295,065
2014	291,648,949	17,991	1,474,169
2015*	155,460,736	16,860	791,822
Total	$1,324,749,478	95,485†	6,242,561

* The audit period included only the first six months of 2015.
† Of these 95,485 members, the unduplicated count is 30,408.

Medicaid

Medicaid is a joint federal-state program created by Congress in 1965 as Title XIX of the Social Security Act. At the federal level, the Centers for Medicare and Medicaid Services (CMS), within the federal Department of Health and Human Services, administer the Medicare program and work with state governments to administer their Medicaid programs.

Each state administers its Medicaid program in accordance with its CMS-approved state plan. States have considerable flexibility in designing and operating their Medicaid programs, but must comply with applicable federal requirements established by Section 1902 of Title XIX of the Social Security Act.

AFC and GAFC Programs

The AFC and GAFC programs provide elderly or disabled MassHealth members with assistance performing activities of daily living (ADLs) and instrumental activities of daily living (IADLs). ADLs include activities such as eating, toileting, dressing, bathing, transferring, and walking. IADLs are activities related to

independent living that are incidental to a member's care, such as household-management, laundry, shopping, housekeeping, meal preparation and cleanup, transportation, and medication management. Members are eligible to receive AFC or GAFC services if they require assistance or supervision with at least one ADL. Both programs are designed to provide sufficient assistance to allow members to continue to live independently and avoid the high cost of a long-term-care (LTC) facility.

Members who receive AFC services live in the private residence of caregivers employed by MassHealth-contracted AFC providers and receive 24-hour supervision and assistance with ADLs and IADLs. Each AFC residence may house up to three members. AFC providers must provide nursing and case management services for each member.

Members enrolled in the GAFC program typically live in assisted-living residences or subsidized group housing. Members receive assistance with ADLs and IADLs from GAFC aides for one to two hours each day. GAFC providers also employ nurses and case managers who meet with members at least once every two months to develop and revise member-specific care plans.

LTC Facilities

LTC facilities provide a supportive and protective living environment for the elderly and people with disabilities. The Massachusetts Department of Public Health (DPH) licenses and regulates LTC facilities. DPH regulations require all LTC facilities to provide a baseline level of care for their residents. LTC facilities must have written policies governing the following types of services for residents: pharmaceutical, dietary, restorative, social, recreational, comfort, safety, and accommodations. LTC facilities must also provide a doctor who meets with residents every one to three months, as well as sufficient nursing and supportive care to ensure that residents receive treatments, medications, and diets as outlined in patient-specific care plans; are comfortable, clean, and well groomed; are protected from accident and injury; receive assistance with clothing; are bathed as desired or at least weekly; are kept dry if incontinent; receive assistance with daily walking or movement as their conditions permit; and receive assistance with dental hygiene in the morning and at night. LTC facilities are classified into four levels, depending on the amount of care provided to members. For example, members who exhibit a high degree of independence and need a low level of care reside in level IV facilities, which are referred to as "rest homes."

AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor (OSA) has conducted a performance audit of claims paid by MassHealth for adult foster care (AFC) and group adult foster care (GAFC) services for the period January 1, 2010 through June 30, 2015.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Below is our audit objective, indicating the question we intended our audit to answer; the conclusion we reached regarding the objective; and where the objective is discussed in the audit finding.

Objective	Conclusion
1. Did MassHealth pay for AFC and GAFC services in accordance with applicable laws, rules, and regulations?	**No; see Finding 1**

Methodology

To achieve our objective, we reviewed applicable state laws, rules, and regulations, as well as MassHealth publications and guidelines. We also collaborated with our office's Bureau of Special Investigations, which initially identified potential billing irregularities within MassHealth's AFC and GAFC programs.

We requested documentation from MassHealth that included internal control plans, organization charts, and policies and procedures for both AFC and GAFC services. MassHealth provided us with the regulations governing the AFC program and sub-regulatory guidance for the GAFC[2] program.

The audit team obtained an understanding of internal controls. AFC regulations state that MassHealth does not pay for AFC or GAFC services provided to members residing in long-term-care (LTC) facilities. We had planned to test controls over this restriction; however, MassHealth issued a letter (Appendix A) to providers in 2013 stating that despite its regulations, it would pay for GAFC services for members in LTC

2. During the audit period, MassHealth had not enacted regulations governing the GAFC program.

facilities until it could enact new regulations for the GAFC program. MassHealth also informed us that it had suspended system edits that prevented the payment of these claims for members in LTC facilities. As a result, MassHealth did not have appropriate procedures and controls in place for us to test to ensure that mechanisms were in place to prevent payment for these services for members in LTC facilities. However, this did not prevent us from achieving our audit objective, because we assessed the internal controls as high risk and included all AFC and GAFC claims in our review.

In a prior audit, OSA assessed the reliability of information stored in MassHealth's Medicaid Management Information System (MMIS), tested selected system controls, and interviewed knowledgeable agency officials about the data. The prior audit showed that the data were sufficiently reliable.

We queried all MassHealth AFC, GAFC, and LTC claims from MMIS for the audit period. We performed data analytics on these claims to identify (1) the frequency and cost of services performed by AFC and GAFC providers for members in LTC facilities and (2) service trends and billing anomalies indicating potential fraud, waste, and abuse.

Based on the claim analysis, we selected a risk-based judgmental sample of three GAFC providers and three LTC facilities (rest homes) with which we conducted informational interviews. The purpose of these interviews was to learn what services GAFC providers deliver to MassHealth members who live in rest homes. We also interviewed representatives of the Massachusetts Department of Public Health to learn what services licensed LTC facilities are required to provide to residents.

We performed additional validity and integrity tests on all claim data, including (1) testing for missing data, (2) scanning for duplicate records, (3) testing for values outside a designated range, and (4) looking for dates outside specific time periods. Based on the analyses conducted, we determined that the data obtained were sufficiently reliable for the purposes of this report. Based on the evidence we gathered to form a conclusion on our objectives, we believe that all audit work, in particular the work referred to above, taken as a whole is relevant, valid, reliable, and sufficient and that it supports the finding and conclusion reached in this report.

DETAILED AUDIT FINDINGS WITH AUDITEE'S RESPONSE

1. MassHealth improperly paid approximately $15 million for adult foster care and group adult foster care for members in long-term-care facilities.

During the audit period, MassHealth improperly paid adult foster care (AFC) and group adult foster care (GAFC) providers $15,201,854 for 57,322 claims for services provided to members residing in long-term-care (LTC) facilities, i.e., rest homes and nursing homes.[3] Of this amount, $14,331,826 (94%) was paid to GAFC providers and $870,029 (6%) to AFC providers. These payments were for services that were specifically identified in state licensing regulations as services already performed by LTC facilities. The GAFC providers we spoke with said they provided personal care and assistance with hygiene, bathing, dressing, hair care, shaving, and medication. These were the same services being provided by staff members at the LTC facilities who are responsible for assisting members throughout the day. The AFC and GAFC programs are designed to provide members with sufficient daily assistance to avoid placement in LTC facilities, not to supplement services in those facilities.

Our analysis of the AFC and GAFC claims showed that more than 80% of these improper payments were made to seven GAFC providers at 20 rest homes. A summary of the improperly paid GAFC claims is below.

Improperly Paid GAFC Claims

GAFC Provider	Rest Home	Amount Paid	Identified Claims*
Peabody Residential Services	Dalton Rest Home	$ 2,104,500	1,998
	Crescent Manor Rest Home	692,063	640
	Mill Pond Rest Home	654,314	595
	Hale House	480,976	458
	Tiffany II Rest Home	300,942	646
	Havenwood Rest Home	266,380	258
	Saint Luke's Home	233,269	291
	Elizabeth Catherine Rest Home	162,893	197
Webster Light	Donna Kay Rest Home	1,346,175	6,193
	Westbrook Heights Rest Home	437,984	2,041
	Village Rest Home	432,781	2,336

3. A MassHealth member can receive limited AFC and GAFC services while temporarily receiving care in a hospital or nursing home on a medical leave of absence or while away from home on a nonmedical leave of absence.

GAFC Provider	Rest Home	Amount Paid	Identified Claims*
Citywide Home Care	Cushing Manor Rest Home	1,296,764	1,159
	Burgoyne Rest Home	427,488	377
	Ann's Rest Home	354,140	321
	Melville Rest Home	260,774	231
Senior Home Care Services	St. Julie Billiart	1,226,395	1,240
Greater Lynn Senior Services	Lynn Shore Rest Home	722,754	8,613
	Atlantic Rest Home	317,034	3,763
Metrocare	Pleasant Street Rest Home	362,042	9,592
North Shore Elder Services	Brookhouse Home	197,899	176
Total		$12,277,566†	41,125

* AFC and GAFC providers can submit claims either daily or monthly; this is why one provider can submit a larger number of claims to MassHealth but receive less money than a provider with a lower number of claims.

† The $1 discrepancy in this total is due to rounding.

One owner provided more than $1.3 million in GAFC and rest-home services to the same MassHealth members.

Authoritative Guidance

MassHealth does not have regulations governing the GAFC program and relies on a set of sub-regulatory guidelines to communicate program standards and requirements to GAFC providers. The Group Adult Foster Care Guidelines require GAFC providers to ensure "that all regulations and guidelines of [MassHealth] for the Adult Foster Care Program are met" for the GAFC program as well.

For AFC, MassHealth's Adult Foster Care Manual, Section 408.437 of Title 130 of the Code of Massachusetts Regulations (CMR), states,

> *The MassHealth agency does not pay an AFC provider when . . . the member is a resident or inpatient of a hospital, nursing facility . . . , rest home, group home, . . . or any other residential facility subject to state licensure or certification.*

According to the sub-regulatory GAFC guidelines, this prohibition for AFC providers also applies to GAFC providers.

Reasons for Improper Payment of AFC and GAFC Services

MassHealth did not take appropriate measures to prevent improper payment for AFC and GAFC services provided to members in LTC facilities. MassHealth enabled this improper practice in a letter to GAFC providers dated May 8, 2013. The letter stated that although MassHealth "does not allow GAFC services to be delivered to members living in Rest Homes, Group Homes, [or] nursing facilities," it would nonetheless continue paying for GAFC services to members in LTC facilities. Further, a MassHealth follow-up email dated May 14, 2013 (Appendix B) added that the agency would also pay for GAFC services for any new members living at these same LTCs "[u]ntil new GAFC regulations are in place and clear policy change is communicated." However, almost three years later MassHealth has still not enacted these new regulations or implemented claim-processing system edits that would prevent payment for AFC and GAFC services for members in LTC facilities.

Recommendations

1. MassHealth should not pay for AFC and GAFC services for members who are receiving similar services while residing in LTC facilities.
2. MassHealth should establish and implement system edits to detect and deny claims for AFC and GAFC services provided to members residing in LTC facilities.
3. MassHealth should enact regulations specifically governing the GAFC program.

Auditee's Response

MassHealth respectfully disagrees with [OSA's] inclusion of rest homes within the audit finding of locations where "unallowable" GAFC services were provided, and the corresponding audit finding of $14,331,826. As discussed in further detail below, rest homes are not a Medicaid covered service. While they provide protective housing environments for the elderly, they do not provide the same level of medically necessary assistance with ADLs and IADLS, or the corresponding case management oversight of personal care services that is provided under the GAFC program. MassHealth does not currently prohibit members residing in rest homes from receiving MassHealth funded medically necessary GAFC services.

We agree that up to approximately $879,000 over the audit period, or approximately $195,000 per year, may have been paid for unallowable services. We believe that a portion of this amount is attributable to allowable Medical Leave of Absence (MLOA) and short-term alternative placement days. However, MassHealth did not track these payments during the audit period and therefore cannot determine what portion of these payments may have been allowable.

Notwithstanding these concerns, we concur with the actions [OSA] recommends to prevent payment for unallowable AFC and GAFC services when a member is residing in a LTC facility and have already begun the process of implementing the recommendations.

Provided below is a response to each of [OSA's] recommendations. . . .

[OSA] Recommendation 1: "MassHealth should not pay for AFC and GAFC services when members are receiving similar services while residing in LTC facilities."

MassHealth Response: MassHealth agrees that, with the exception of allowed MLOA Days and Short-Term Alternative Placement Days, AFC and GAFC services are not covered when members are receiving similar MassHealth covered services while residing in an LTC facility, such as a nursing home, or when a member is an inpatient in an acute hospital setting. As noted in response to Recommendation 2, below, MassHealth will be implementing system edits to track payment of MLOA and Short Term Alternative Placement days and to deny AFC and GAFC claims that exceed what is permitted in AFC regulations and GAFC guidelines.

MassHealth respectfully disagrees with the audit finding that GAFC services are not permitted to be provided to members residing in rest homes. Under federal Medicaid rules, rest homes are not considered to be LTC facilities. Federal Medicaid regulations at 42 CFR Part 483, Subpart B Requirements for Long Term Care (LTC) Facilities, define LTC facility for purposes of the Medicaid program, in part, as a facility that provides skilled nursing services. While rest homes are licensed by the Massachusetts Department of Public Health under 105 CMR 150.000 Long Term Care Facilities, because rest homes do not provide skilled nursing services rest homes are not considered LTC facilities under federal Medicaid regulations and do not provide services covered under the MassHealth program.

Accordingly, there are no MassHealth regulations that prohibit GAFC services from being provided in rest homes. Sub-regulatory guidance issued by MassHealth in May of 2013 and referenced in the Draft Report expressly clarified for GAFC providers that GAFC services are permitted to be provided in rest homes.

While rest homes provide a basic level of care, the care provided in rest homes does not overlap with GAFC services, which provide direct 1 to 1 assistance to members pursuant to a plan of care derived from an assessment which is developed to meet the specific, individualized medically necessary personal care needs of the member residing in a group setting. The plan of care must outline other health or supportive services that the member is receiving from other agencies or organizations to ensure what the GAFC is providing is not duplicative of what the member is receiving from other providers.

Removing rest-home related claims from [OSA's] finding would result in a total remaining audit finding of approximately $879,000 over the 4.5 year audit period.

With respect to AFC services, per the MassHealth AFC regulations at 130 CMR 408.419(K) and (L), MassHealth pays for up to 40 days per calendar year for MLOA days and up to 14 "short-term alternative placement days per member per calendar year" (during which times a member may have a short stay in an LTC facility, such as a nursing home). MassHealth believes that a portion of the $870,029 identified by the auditor as "improperly paid" AFC claims is attributable to allowable MLOA and short-term alternative placement days. However, MMIS does not currently track payment of these AFC leave days, and therefore we cannot determine what portion was in fact allowable. As noted below in the response to [OSA] Recommendation 2, MassHealth will add a

modifier to MMIS to track AFC claims for MLOA days and Short-Term Alternative Placement Days and will deny AFC claims for MLOA days for a member after 40 MLOA days in a calendar year and claims for Short-Term Alternative Placement Days for a member after 14 days in a calendar year.

[OSA] Recommendation 2: "MassHealth should establish system edits to detect and deny claims for AFC and GAFC services provided to members residing in LTC facilities."

MassHealth Response: MassHealth agrees with this recommendation to the extent "LTC facility" is defined as an institution providing medical services coverable under the MassHealth program, such as a nursing facility. Specifically, MassHealth will implement system edits to detect and deny payment for AFC and GAFC claims for MLOA days and Short-Term Alternative Placement Days that exceed what is permitted in the AFC regulations and GAFC guidelines.

[OSA] Recommendation #3: "MassHealth should enact regulations specifically governing the GAFC program."

MassHealth Response: MassHealth agrees with this recommendation. MassHealth is in the process of enacting regulations to specifically govern the GAFC program.

Auditor's Reply

Our conclusions are not based on the federal government's definition of an LTC facility. Rather, we conducted our work using the criteria that MassHealth itself established for payments for AFC and GAFC services. Specifically, as MassHealth told us, it uses sub-regulatory guidelines to communicate program standards and requirements to GAFC providers. Section 4 of MassHealth's Group Adult Foster Care Guidelines states that providers of GAFC must follow the same requirements that apply to AFC: "The provider . . . ensures that all regulations and guidelines of the Department for the Adult Foster Care Program are met." And the regulations for AFC, under 130 CMR 408.437, state,

The MassHealth agency does not pay an AFC provider when . . . the member is a resident or inpatient of a . . . rest home . . . or any other residential facility subject to state licensure or certification.

Thus MassHealth's own guidelines indicate that, like the AFC program, the GAFC program cannot pay for services for members in rest homes.

MassHealth asserts in its response that "the care provided in rest homes does not overlap with GAFC services." This is incorrect. Our audit work showed that rest-home services and GAFC services were essentially identical and resulted in duplicative payments of more than $15 million by the Commonwealth; this total has been adjusted to reflect any amounts attributable to allowable medical leaves of absence and short-term alternative placement days. Specifically, during the audit, we met with three of the largest

GAFC providers. Each stated that its primary responsibility was to assist members with their activities of daily living (ADLs) and/or instrumental activities of daily living (IADLs). Some of the specific tasks they mentioned were personal hygiene, dressing, bathing and haircare, shaving, medications, skin/wound care, laundry, and housekeeping. In addition, these GAFC providers employ nurses and social workers who are assigned between 30 and 75 members, with each member receiving an individual care plan. These descriptions by GAFC providers mirrored the service descriptions for rest homes, as detailed below.

To determine whether GAFC services exceeded those received in rest homes, we met with officials at three rest homes where MassHealth members were also receiving GAFC services. We learned that the staff at each rest home was responsible for assisting with both ADLs and IADLs 24 hours a day. The activities included showering, grooming, laundry, bed-changing, room-cleaning, walking, assistance with incontinence, and traveling to appointments. We determined that rest-home personnel assisted with the same level of care that was addressed by GAFC. In fact, one rest-home employee characterized GAFC services as giving the rest-home personnel a respite from their required responsibilities. In addition, each rest home employs a doctor and nurse who complete a medical care plan, similar to the AFC plan of care, for each resident and then visit periodically (every one to three months). Our observations and interviews showed that these services, when provided by GAFC providers, overlapped with rest-home services and resulted in duplicative payments. MassHealth regulations under 130 CMR 450.307(B)(1) forbid providers from "duplicate billing, which includes the submission of multiple claims for the same service by the same provider or multiple providers."

Our conclusion is further supported by the Massachusetts Department of Public Health (DPH) licensing requirements for rest homes. DPH licensing regulations require rest homes to provide the same type of care that GAFC services provide, including the development of patient-specific care plans. Specifically, 105 CMR 150 requires that rest homes perform the following activities:

- Complete a physical exam, medical evaluation, and medical care plan for each resident upon admission. The care plan must include significant conditions, disabilities or limitations, medications, special treatments or procedures, restorative services, dietary services, and special requirements for the resident's health or safety. See 105 CMR 150.005(F)(1).
- Employ sufficient and competent staffs and ensure that residents' needs are met. See 105 CMR 150.002(D)(1).
- Accept only residents for whom they can provide appropriate care and services to address the residents' physical, emotional, and social needs. See 105 CMR 150.003(B).

- Have policies governing pharmaceutical services and medication, dietary services, restorative services, social services, activities and recreation, personal comfort, safety, and accommodations. See 105 CMR 150.004(A).

- Ensure that all residents receive treatments and medications; are comfortable, clean, and well groomed; and are protected from accident and injury. See 105 CMR 150.007(G)(1).

- Provide residents with personal care routines, including bathing, linen changes, assistance with incontinence, assistance with walking, shaving and haircuts, and recreational activities. See 105 CMR 150.007(G)(5).

In addition, MassHealth states that residents in rest homes may receive GAFC services. This is incorrect. Guidelines by the Centers for Medicare and Medicaid Services (CMS) allow GAFC services to be provided in homes or community-based settings, not institutional facilities such as rest homes. CMS has issued the following guidance on the federal rules for homes and community-based settings in its "Fact Sheet: Summary of Key Provisions of the Home and Community-Based Services (HCBS) Settings Final Rule":

> *The final rule requires that all home and community-based settings meet certain qualifications. These include:*
>
> - *The setting is integrated in and supports full access to the greater community;*
> - *Is selected by the individual from among setting options;*
> - *Ensures individual rights of privacy, dignity and respect, and freedom from coercion and restraint;*
> - *Optimizes autonomy and independence in making life choices; and*
> - *Facilitates choice regarding services and who provides them.*
>
> *The final rule also includes additional requirements for provider-owned or controlled home and community-based residential settings. These requirements include:*
>
> - *The individual has a lease or other legally enforceable agreement providing similar protections;*
> - *The individual has privacy in their unit including lockable doors, choice of roommates and freedom to furnish or decorate the unit;*
> - *The individual controls his/her own schedule including access to food at any time;*
> - *The individual can have visitors at any time; and*
> - *The setting is physically accessible.*

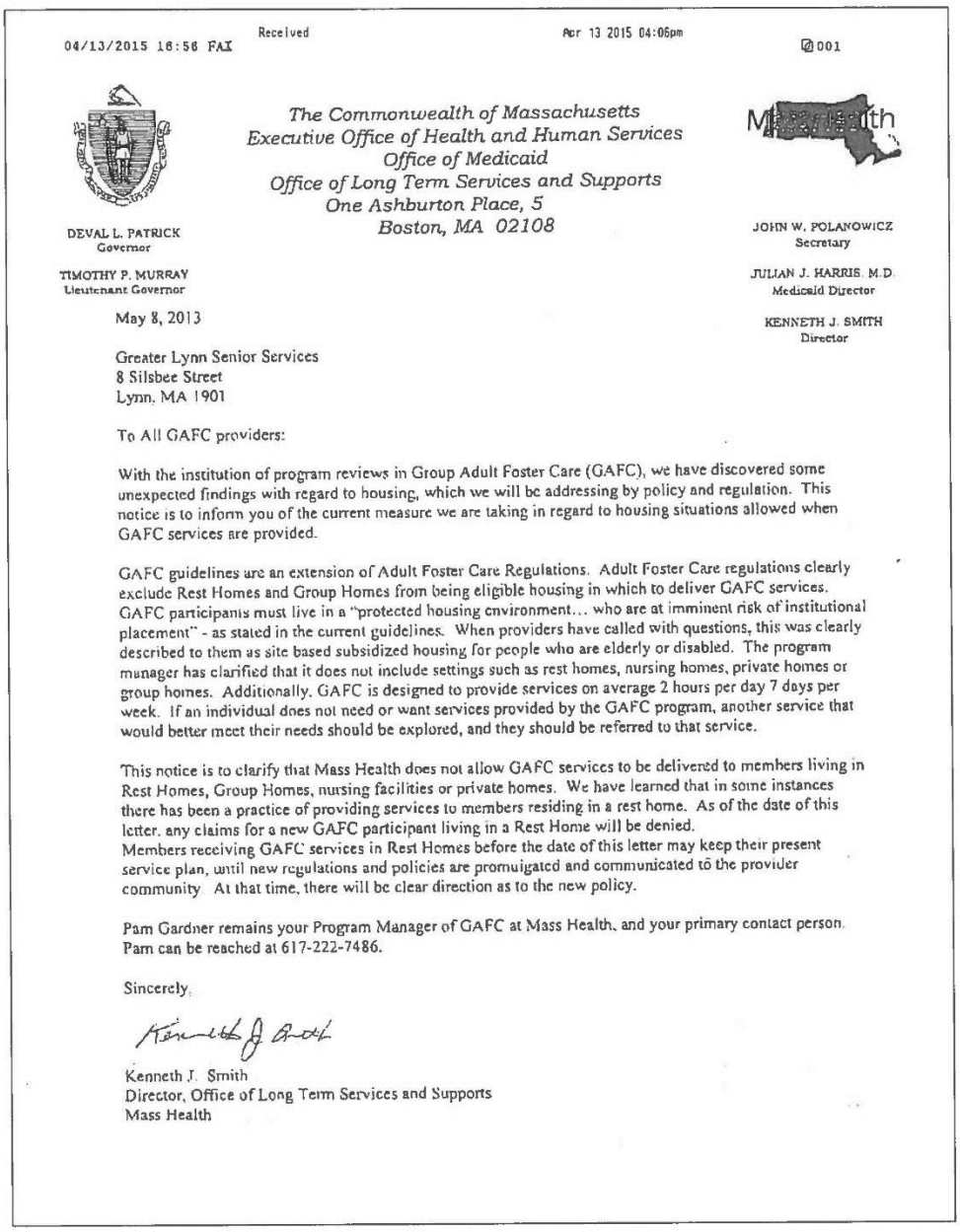
Rest homes cannot meet the majority of these requirements and therefore should not be considered homes or community-based settings. The physical access and privacy requirements in particular are

impossible to meet in rest homes, since members do not have unlimited 24-hour access to the facility and cannot lock their bedroom doors for privacy. Additionally, members do not have "access to food at any time" but rather eat primarily according to menus and schedules established by facilities. In fact, 105 CMR 150.009(I)(6) specifically instructs Level IV facilities—rest homes—to restrict members' access to food.

Finally, MassHealth's response indicates that it "does not currently prohibit members residing in rest homes from receiving MassHealth funded medically necessary GAFC services." This practice is exactly the problem that our report highlights and makes recommendations to resolve. MassHealth's lack of regulations prohibiting payment for GAFC services provided to rest-home residents has allowed these duplicate payments to continue.

APPENDIX A

MassHealth Letter to Providers of Adult Foster Care and Group Adult Foster Care



04/13/2015 16:56 FAX Received Apr 13 2015 04:06pm 001

The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Office of Long Term Services and Supports
One Ashburton Place, 5
Boston, MA 02108

DEVAL L. PATRICK
Governor

TIMOTHY P. MURRAY
Lieutenant Governor

JOHN W. POLANOWICZ
Secretary

JULIAN J. HARRIS, M.D.
Medicaid Director

KENNETH J. SMITH
Director

May 8, 2013

Greater Lynn Senior Services
8 Silsbee Street
Lynn, MA 1901

To All GAFC providers:

With the institution of program reviews in Group Adult Foster Care (GAFC), we have discovered some unexpected findings with regard to housing, which we will be addressing by policy and regulation. This notice is to inform you of the current measure we are taking in regard to housing situations allowed when GAFC services are provided.

GAFC guidelines are an extension of Adult Foster Care Regulations. Adult Foster Care regulations clearly exclude Rest Homes and Group Homes from being eligible housing in which to deliver GAFC services. GAFC participants must live in a "protected housing environment… who are at imminent risk of institutional placement" - as stated in the current guidelines. When providers have called with questions, this was clearly described to them as site based subsidized housing for people who are elderly or disabled. The program manager has clarified that it does not include settings such as rest homes, nursing homes, private homes or group homes. Additionally, GAFC is designed to provide services on average 2 hours per day 7 days per week. If an individual does not need or want services provided by the GAFC program, another service that would better meet their needs should be explored, and they should be referred to that service.

This notice is to clarify that Mass Health does not allow GAFC services to be delivered to members living in Rest Homes, Group Homes, nursing facilities or private homes. We have learned that in some instances there has been a practice of providing services to members residing in a rest home. As of the date of this letter, any claims for a new GAFC participant living in a Rest Home will be denied.
Members receiving GAFC services in Rest Homes before the date of this letter may keep their present service plan, until new regulations and policies are promulgated and communicated to the provider community. At that time, there will be clear direction as to the new policy.

Pam Gardner remains your Program Manager of GAFC at Mass Health, and your primary contact person. Pam can be reached at 617-222-7486.

Sincerely,

Kenneth J. Smith
Director, Office of Long Term Services and Supports
Mass Health

APPENDIX B

MassHealth Email to Providers of Adult Foster Care and Group Adult Foster Care

From: Gardner, Pamela (ELD)
Sent: Wednesday, April 22, 2015 11:34 AM
To: Schulman, Lauren P. (SAO)
Subject: Email:

Lauren.
This email went out to GAFC providers regarding GAFC in the rest home setting.

Thanks.
Pam

From: Velez, Dunia (ELD)
Sent: Tuesday, May 14, 2013 3:06 PM

Cc: Smith, Ken (ELD); Grant, Mary (EHS); Gardner, Pamela (ELD)
Subject: Clarification to the May 8th letter from Ken Smith to GAFC providers

Dear GAFC Providers,

I apologize for the confusion and concerns that the May 8th letter regarding rest homes has caused. Please accept this communication as an official clarification.

For all GAFC providers currently providing services in rest homes, you are grandfathered to continue providing services to current residents as well as new residents eligible for GAFC services. Until new GAFC regulations are in place and clear policy change is communicated, GAFC providers who do not currently provide in this residential setting, may not.

Please call me directly with any questions at 617-222-7413.

Thank you