

Use of ALFs for MFP

The statute, Public Law 109-171, Section 6071 includes as a "qualified residence": "(a)(6)(B) an apartment with an individual lease, with lockable access and egress, and which includes living, sleeping, bathing, and cooking areas over which the individual or the individual's family has domain and control: and (C) a residence, in a community-based residential setting, in which no more than 4 unrelated individuals reside."

There apparently have been efforts to get ALFs with apartment-like settings qualified. CMS is taking the position that an ALF license, in itself, does not disqualify a setting. The problem comes in meeting both CMS expectations and state licensure requirements. CMS was not allow a setting where the facility can discharge the resident because of the resident's needs. The following are examples of CMS's position.

CMS has released some draft operational protocol language with comments. It includes the following: "Assisted living facilities in which individuals lease may qualify as an 'apartment', but not if the facility can discharge the individual if their needs exceed a certain threshold."

CMS's Questions and Answers, the section on Housing, expands on this interpretation:

Q4. Does CMS have a more detailed definition of individual lease vs. a resident contract or a legal distinction between the two?

A. In general, a lease conveys landlord/tenant obligations which are irrespective of the tenant's needs. As long as the tenant is able to abide by the described obligations, such as pay the rent, he/she can continue to rent the residence. By contrast a resident contract tends to describe when a residence has to 'discharge' a resident because it can no longer meet the resident's needs, or the resident's needs have exceeded what is allowed by regulation."

Q5. Qualified Residence-- One of the residences includes a community-based setting in which no more than four unrelated individuals reside. Can a State use an agency-based or provider-owned residence under this demonstration in order to receive the enhanced Federal match.

A. Under the MFP demonstration, States can use either an agency-based or provider-owned residence as a community-based, qualified residence in which no more than four unrelated individuals reside. Please note, however, that these designations are independent of whether or not an enhanced federal match is available. Instead, the match received for a service depends on the type of service category it falls into: "Qualified HCBS Program" and "Demonstration HCBS" services receive enhanced match, whereas 'Supplemental Demonstration Services' receive the regular FMAP. Further, please note that neither Medicaid nor this demonstration pays for room and board for individuals transitioned to the community, but rather pays for services and supports to help transition individuals reside in qualified residences.

Obviously a 4-person ALF can participate in the MFP program. Since the Aged and Disabled Waiver will pay for ALF care, the placement would be qualified for enhanced federal match.

NE Medicaid staff who have looked at the issue have concluded that 5-person+ ALFs will not qualify because they can't meet the "no discharge" requirement.