



HCBS Settings Final Rule Quarterly Update for Quarter Ending 12/31/20

Since its last quarterly update, the Department has taken the following steps to promote systemic compliance with the HCBS Settings Final Rule:

- Continued informally meeting with stakeholders on a remote-only basis to develop (a) the Draft Rule that will codify within Colorado regulations the requirements of the federal HCBS Settings Final Rule and (b) an informed consent template with built-in guidance for providers and case managers.
- At the fourth open meeting (November 18), participants discussed proposed rule updates to clarify the application of the additional rights (in Rule BBB) to private homes, including those owned or rented by paid family caregivers, and to prohibit the use of prone and supine restraints. The discussion then turned to a supplemental crosswalk prepared by the Department to identify potential changes to existing authorities beyond the changes already identified in the original [Systemic Assessment Crosswalk](#). Although the original crosswalk was complete when prepared and its implementation would suffice to bring Colorado's legal authorities in line with the federal rule, it was based on the presumption that the federal rights modification criteria would be added on top of existing state criteria for measures such as rights suspensions and restrictive procedures. The statewide transition toward compliance with the rule has revealed that the separate processes can create confusion and should be streamlined into a single process applicable across waivers. The supplemental crosswalk identifies potential regulatory changes to that end and also delves more into the authorities regulating restraints.
- At the fifth open meeting (January 13), participants further discussed proposed rule updates, along with the Department's proposed revised informed consent template. Most of the proposed changes were based on stakeholder comments submitted in writing or discussed at prior open meetings. Stakeholders asked questions and provided additional comments during the fifth meeting, most of which were addressed in real time. Some comments received during or shortly after the fifth open meeting are still under consideration.
- The Department has now addressed nearly all public comments received to date and has incorporated changes as needed to the Draft Rule and the informed consent template, subject to its consideration of the final comments noted above. With the Draft Rule approaching its expected final form based on the informal stakeholder feedback provided over the past year, the Department is preparing to initiate the formal

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rulemaking process, which will include public notice and an opportunity for further public comment, tribal consultation, and presentation of the Draft Rule to the Medical Services Board (MSB) in approximately March, for an anticipated effective date in summer 2021.

The Department has also taken a number of steps to promote systemic compliance with the requirements relating to rights modifications:

- Updated the Benefits Utilization System (BUS)—a component of the State’s case management system—on December 18 to include new screens that allow for a standardized method of entering the information supporting a rights modification.
- Published an [Operational Memo](#) on December 21 to inform case management agencies (CMAs) of the BUS updates and to inform CMAs and provider agencies of the availability of a standardized template for obtaining informed consent for a rights modification. As stated in the memo:
 - “Beginning January 1, 2021, all CMAs with access to the BUS . . . will be required to begin entering Rights Modification information into the new screens in the BUS, instead of other screens in the BUS that have been used on an interim basis. This information must be entered for all new modifications as they are implemented and for continuing modifications as they come up for review/renewal The [attached document](#) provides screenshots of the new screens and instructions on how to enter the required documentation.”
 - “The Department is providing, as an attachment . . . , [an informed consent template](#) that should be used by all providers and CMAs as of January 1, 2021.”
 - “Beginning January 1, 2021, the new [Rights Modification One-Time Questions](#) should be answered when the case manager is initially using the Rights Modification screens for a member to add or review/renew a Rights Modification for that member. . . . The answers to these questions can be updated as needed on a going-forward basis.”
 - “Beginning [December 21], all CMAs . . . will be required to begin answering new Yes/No questions in the [Log Notes screen](#) when saving new Log Notes.”
- Hosted a technical assistance call on January 13 to provide additional guidance for CMAs on the BUS updates.

Since its last quarterly update, the Department has taken the following steps to complete site-specific assessment, remediation, and verification:

- Continued to work with the Colorado Department of Public Health & Environment (CDPHE) to review and verify Provider Transition Plans (PTPs) in all three categories of affected settings: adult residential, children’s residential, and nonresidential.

- For adult residential PTPs, CDPHE is focusing on verifying provider updates demonstrating that all required changes have been made. CDPHE has been able to verify this for 30.2% of settings; additional provider updates may have been submitted but have not yet been reviewed.
- On November 16, the Department sent follow-up/second reminder emails to nonresidential and children’s residential providers with PTPs still in Draft (unsubmitted) status significantly past their applicable due dates. As with the reminders sent on September 29, these emails were separate from the automatic PTP platform-generated reminders. A few days after the expiration of the November 30 fallback deadline given in the November 16 email, PTPs subject to that email and still in Draft status had their compliance status edited from 7/unknown to a noncompliant status (generally 3, for settings not expected to be subject to heightened scrutiny). Providers can still submit these PTPs with evidence aimed at attaining a different compliance status.
- As reported in an earlier milestone update, at least 95% of children’s residential PTPs had been submitted by December 16. CDPHE has been reviewing these initial submissions to confirm that providers have identified all changes that need to be made.
- By the end of the quarter subject to this report, 91% of nonresidential PTPs had been submitted. The Department expects to achieve the 95% milestone in this category shortly (as soon as 17 more PTPs are submitted). CDPHE has been reviewing these initial submissions to confirm that providers have identified all changes that need to be made.
- Over 95% of the PTPs in the nonresidential category have a compliance status other than 7/unknown, representing achievement of a milestone—*i.e.*, the elimination of the blue wedge in the nonresidential pie chart below. (This is possible even though not quite 95% of nonresidential PTPs have been submitted, in part because some unsubmitted PTPs have been provisionally assigned a noncompliant status, as noted above.) Elimination of the remaining (children’s residential) blue wedge will indicate that substantially all settings have been placed in preliminarily verified compliance categories, or “buckets,” which the Department understands to be the prerequisite—in conjunction with the completion of work currently underway relating to heightened scrutiny—for publication and submission of the final Statewide Transition Plan (STP).
- As of December 31, 2020, site-specific status could be summarized as follows:

	Adult Residential PTPs	Children’s Residential PTPs	Nonresidential PTPs
Number of providers	379	12	216
Number of settings = number of PTPs to be completed	2665	18	419

	Adult Residential PTPs	Children’s Residential PTPs	Nonresidential PTPs
Compliance status of settings			

Compliance status options

- (1) Setting is NOT subject to heightened scrutiny and IS compliant with rule; no further action needed
- (2) Setting is NOT subject to heightened scrutiny and NOT YET compliant with rule; file updated PTP in three months with evidence showing progress
- (3) Setting is NOT subject to heightened scrutiny and NOT timely able to comply with rule; prepare now to transition clients
- (5) Setting IS subject to heightened scrutiny and NOT YET able to overcome institutional presumption; file updated PTP in three months with evidence showing progress
- (7) Not yet known (default) or blank
- Other
 - (4) Setting IS subject to heightened scrutiny and IS able to overcome institutional presumption; evidence should be put forward to the public and/or CMS
 - (6) Setting IS subject to heightened scrutiny and NOT timely able to overcome institutional presumption; prepare now to transition clients
 - (8) Setting has closed because of rule
 - (9) Setting has closed for another reason

All data in table is as of January 4, 2021. Providers and settings may appear in more than one column. The table excludes data relating to PTPs in Retired status.