



# HCBS Settings Final Rule Quarterly Update for Quarter Ending 9/30/20

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

- Submitted a revised set of rule implementation [milestones](#) with updates reflecting the effects of the COVID-19 pandemic.
- Held a series of open, informal stakeholder meetings on a remote-only basis. As announced in an [Informational Memo](#), the purpose of these meetings was to continue the development, started by the Rights Modification Stakeholder Workgroup, of (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. The Department stated:

To facilitate participation by those who did not participate in the Rights Modification Stakeholder Workgroup, the materials that will be discussed at the August 13 meeting (the [Draft Rule](#), [in-progress Listening Log](#), and [informed consent template](#)) will be the same versions as those distributed in connection with the final meeting of the workgroup in June. The Department expects to update these materials going forward based on the input received at the open meetings as well as input already received from workgroup participants but not yet addressed.

- At the first meeting (August 13), the Department and participants discussed Draft Rules XXX (purpose and scope), YYY (definitions), AAA (basic criteria for all HCBS settings), and BBB (additional criteria for specific setting types).
- At the second meeting (September 14), speakers from the provider community, including current providers as well as state staff with experience in the field, gave presentations on anonymized, real-life examples reflecting two themes: (a) many rights modifications, including measures historically categorized in Colorado as rights suspensions, are not necessary after all and can be discontinued; and (b) where these measures are warranted, creativity—including as to ways to help the individual still feel in control—and engaging in ongoing conversations can help everyone arrive at an agreement and avoid recurring power struggles and conflicts. The Department and participants also discussed Draft Rule CCC (rights modifications).
- At the third meeting (October 14), the discussion centered on the informed consent template. To date, feedback about this document has been largely positive. Participants

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also discussed ideas for mitigating concerns about provider liability when an individual does not agree to a rights modification and there is a poor health/safety outcome.

- The Department has scheduled a fourth meeting (November 18) and may schedule more if needed. The Department expects to continue its practice of circulating to participants, about a week in advance of each meeting, updates (if any) to the Draft Rule and/or informed consent template, along with additions to the Listening Log.

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.
- For nonresidential and children’s residential PTPs, CDPHE is focusing on initial submissions to confirm that providers have identified all changes that need to be made.
- On September 29, the Department sent reminder emails to nonresidential and children’s residential providers with PTPs still in Draft (unsubmitted) status significantly past their applicable due dates. These emails were separate from the automatic PTP platform-generated reminders and acknowledged the pandemic, addressed the updated schedule of rule implementation [milestones](#), provided guidance on completing PTPs (including the documentation required to show community integration before and after the pandemic), and explained how to obtain an adjusted due date if needed.
- As of September 30, 2020, site-specific status could be summarized as follows:

	<b>Adult Residential PTPs</b>	<b>Children’s Residential PTPs</b>	<b>Nonresidential PTPs</b>
Number of providers	382	13	229
Number of settings = number of PTPs to be completed	2703	19	454

	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
- (7) Not yet known (default) or blank
- Other
- (3) Setting is NOT subject to heightened scrutiny and NOT timely able to comply with rule; prepare now to transition clients
- (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
- (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
- (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 October 1, 2020. Providers and settings may appear in more than one column. The table excludes data relating to PTPs in Retired status.