



# HCBS Settings Final Rule Additional Information for CMS

Pursuant to [CMS’s May 24, 2022 announcement](#), the Department is submitting information regarding its implementation of the HCBS Settings Final Rule criteria that were not impacted by the direct support professional (DSP) workforce crisis exacerbated by the public health emergency (PHE).

## **HCBS Settings Final Rule criteria not impacted by the PHE/DSP workforce crisis**

As identified by CMS in its announcement, the “non-negotiable” criteria are:

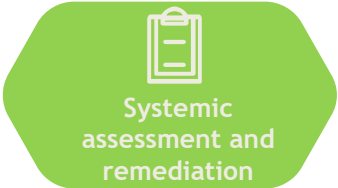
- Privacy, dignity, respect, and freedom from coercion and restraint;
- Control of personal resources;
- A lease or other legally enforceable agreement providing similar protections against eviction (for provider-owned or -controlled residential settings);
- Privacy in the unit, including lockable doors and freedom to furnish or decorate (for provider-owned or -controlled residential settings);
- Access to food at any time;
- Access to visitors at any time;
- Physical accessibility; and
- Person-centered service plan documentation of modifications to relevant regulatory criteria.

## **How Colorado’s oversight systems have been modified to embed these criteria into ongoing operations**

This information is principally captured in the third table within Colorado’s [final Statewide Transition Plan \(STP\)](#), addressing systemic assessment and remediation.

Specifically:

- The Department developed, sought public comment on, and submitted to CMS a Systemic Assessment Crosswalk (Action Items 22-24).
- The General Assembly and Governor enacted the one statutory change identified in the crosswalk (Action Item 25).
- The Department [codified all criteria of the HCBS Settings Final Rule](#) after an extensive informal stakeholder engagement and formal rulemaking process (Action Items 28-38). Compliance with all applicable departmental regulations is a requirement of provider certification, provider agreements, case management contracts, and the like.



- The Department identified critical rule updates and critical waiver amendments to eliminate conflicts between existing authorities and the HCBS Settings Final Rule. [Critical rule updates](#) have gone through informal stakeholder engagement and the initial stages of the formal rulemaking process (Action Items 39-46) and should be in effect by March 10, 2023 (Action Items 47-50). [Critical waiver amendments](#) have gone through public comment and CMS review and should be in effect by January 1, 2023 (Action Items 51-58). Development of non-critical rule and waiver changes—i.e., changes that are more in the nature of streamlining than eliminating conflicts—is underway.
- The Department completed additional work, including coordination with other state agencies, to ensure that authorities, policies, and procedures other than statutes, rules, and waivers are consistent with the HCBS Settings Final Rule (Action Items 59-62).

Additional information on this topic is contained in the fourth table within Colorado’s final STP, addressing training and technical assistance. Specifically, the Department provided training on the HCBS Settings Final Rule to:

- Licensure and certification staff (Action Item 68);
- Case managers (Action Item 69); and
- State Long-Term Care (LTC) Ombudsman and Adult Protective Service (APS) professionals (Action Item 70).

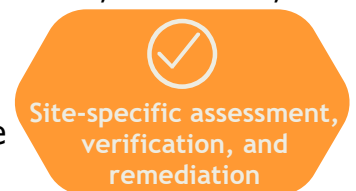


### **How Colorado assesses providers for initial compliance with these criteria and conducts ongoing monitoring for continued compliance**

For settings covered by the transition period, initial compliance is being ensured as stated in the second table within Colorado’s final STP, addressing site-specific assessment, verification, and remediation of existing HCBS residential and nonresidential settings.

This process has included:

- Initial completion of site-specific assessments of all settings via the Provider Transition Plan (PTP) process (Action Item 9);
- Initial validation of these assessments (Action Item 10);
- Updated site-specific assessments with evidence demonstrating changes made to come into compliance (Action Item 13); and
- Validation of these updates (Action Item 14).



Settings with unresolved compliance issues, excluding those settings that have requested and received an extension as stated in Colorado’s [Proposed Corrective Action Plan \(CAP\)](#), have received pre-provisional notices of noncompliance (final warnings), provisional notices of noncompliance (Action Item 15), requests for written response, and final notices of

noncompliance (Action Item 18). Case managers are working to support individuals who need to transition to other settings or funding sources by March 17, 2023 (Action Items 19-21).

For settings not covered by the transition period, initial compliance is being ensured as stated in the fifth table within Colorado’s final STP, addressing ongoing monitoring and inclusion of HCBS Settings Final Rule criteria within the HCBS quality framework. Specifically, with the issuance of its November 2017 Communication Brief, the Department ensured that new HCBS providers (not part of the transition period) were compliant with the HCBS Settings Final Rule from the outset (Action Item 73).

Ongoing monitoring to ensure continued compliance at all settings is described in the same table. Among the measures completed to date are:



- Adopting Colorado’s codification of the federal rule (Action Item 73);
- Including HCBS Settings Final Rule-related performance measures within the 1915(c) waiver Quality Improvement Strategy (QIS) (Action Item 71);
- Developing processes for case managers to confirm with individuals that the settings at which they receive services are compliant (Action Item 72—partially complete with an additional tool to be rolled out before March 17, 2023);
- Changes to the Department’s and the Colorado Department of Public Health & Environment’s (CDPHE’s) websites and materials sent to providers and prospective providers seeking to add/expand their HCBS offerings (Action Item 73); and
- Changes to the tools CDPHE uses to conduct routine provider enrollment and quality assurance surveys, with cross-training of survey staff on HCBS Settings Final Rule criteria (Action Item 73).

### **Members’ recourse to notify the state of provider noncompliance with these criteria and how the state will address such feedback**

First, members need to understand their rights under the HCBS Settings Final Rule. To that end, the Department developed the following videos and other resources for members:

[Part I: My Rights](#)

[Part I: My Rights \(Spanish\)](#)

[Part II: Rights Modifications](#)

[Part II: Rights Modifications \(Spanish\)](#)

[Resource Sheet to Accompany Videos](#)

[Resource Sheet to Accompany Videos \(Spanish\)](#)

The Department publicized these materials in [Informational Memo 22-028](#), the Health First Colorado Member Newsletter, the At a Glance Newsletter, the Office of Community Living Long-Term Services and Supports (LTSS) Stakeholder Newsletter, and on Facebook.

More information on this topic is available in the fifth table in the final STP. As stated in Action Item 74, with updates shown in redline:

Progress/Status	Findings/Results/Outcomes
<p>Individuals can report concerns to their case managers, with whom they already meet regularly under existing case management processes; those available to help resolve grievances and/or complaints and to assist with dispute resolution, if applicable pursuant to existing regulatory processes; independent advocates, such as those affiliated with the Long-Term Care Ombudsman’s Office and local Arcs; the CDPHE complaint line; and the Department, if needed. The Department has also followed up on certain concerns raised by individuals, families, and advocates in the [Individual/Family/Advocate (IFA)] Survey.</p> <p>Case managers can report concerns from individuals, families/advocates, and/or their own observations to their supervisor, other CMA staff, the provider if appropriate, and ultimately the Department and/or CDPHE, if needed.</p> <p>Adult Protective Services (APS) workers and advocates/advocacy groups may also raise concerns via most of the avenues identified above.</p>	<p>Although numerous avenues for reporting potential violations exist, and these options have been mentioned to some extent in trainings and guidance, a more concerted effort would help publicize them. Before the end of the transition period, the Department plans to engage in such an effort. Potential methods to pursue might include one or more of the following:</p> <ul style="list-style-type: none"> <li>• Adding a dedicated section to the Department’s <a href="#">HCBS Settings Final Rule website</a> under a new header such as “Ask a Question/Report a Concern” <a href="#">(to be completed before March 17, 2023)</a>;</li> <li>• Discussing the ways individuals can report concerns as part of a possible training or short video for waiver participants on their rights and the rights modification process (see Row 65) <a href="#">(this information is included in the member videos and resource sheets discussed above)</a>; and/or</li> <li>• Including this information as part of the planned tool/checklist for case managers <a href="#">(to be completed before March 17, 2023)</a>.</li> </ul>

The Department’s response to member concerns will depend on the nature of the concern. Department staff may directly contact the provider or case management agency to correct the noncompliance, and/or file a complaint with CDPHE to initiate an investigation and possible enforcement action. If on review, the member’s concern does not involve noncompliance with the HCBS Settings Final Rule, the Department may refer the concern elsewhere and/or seek to educate the member on what the rule does and does not require. Finally, for recurring concerns, statewide training of providers and/or case management agencies, as well as development of additional resources for members, may be warranted.

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Based on the information above and in the Proposed CAP, the Department is completing the attestations on CMS’s milestones website today, with an “as of” (completion) date of March 17, 2023.