



Draft Community First Choice (CFC) Home and Community Based Settings Standard Review Questions

Introduction: This document is the Department of Health Care Policy and Financing's (HCPF) draft responses to the Community First Choice (CFC) Home and Community-Based Settings Standard Review Questions we received from the Centers for Medicare and Medicaid Services (CMS). These responses will be submitted in mid-2024 alongside the draft CFC State Plan Amendment (SPA) as a part of the official SPA process for CFC. HCPF welcomes all feedback prior to submitting this document to CMS. Please email hcpf_cfc@state.co.us with any feedback.

When responding to Questions 6 and 9, please make sure to provide information regarding both residential and non-residential assessment.

1. Please identify all settings in which an individual may reside.

Individuals may receive CFC in the following residential settings:

- Residential settings owned or leased by individuals receiving Home and Community Based Services (HCBS) or their families (personal homes).
- Certified Foster Care Homes.
- Institutions (individuals may receive only Transition Setup services and authorization for home-delivered meals (HDMs) to be provided after moving out of the institution).

2. Please identify all non-residential settings that will provide services under the CFC benefit.

Individuals may receive CFC in the following nonresidential settings:

- Physical locations that are nonresidential and not owned, leased, operated, or managed by an HCBS provider or by an independent contractor providing nonresidential services. (Locations in the community where HCBS can be provided, examples include grocery stores, parks, and events).
- Day Habilitation settings for individuals with intellectual and developmental disabilities (IDD).
- Adult Day Services and Day Treatment settings for individuals with disabilities.

3. Please identify whether the state's assessment process is reflected in the State's HCBS Statewide Transition Plan applicable to 1915(c) waivers and 1915(i) programs. If so, please reference the specific sections.

Yes, the state's assessment process is reflected in the State's HCBS [Statewide Transition Plan \(STP\)](#) applicable to the 1915(c) waivers and 1915(i) programs. The site-specific assessment process is located in Table 2 (orange) in Colorado's [STP](#), pages 6-17.

Settings Assessments

The assessment process should demonstrate how the settings in which CFC services will be provided meet the federal regulatory requirements listed below:

- a. The setting is integrated in and supports full access of individuals receiving CFC services to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals who do not receive Medicaid HCBS;
- b. The setting is selected by the individual from among setting options, including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board;
- c. An individual's rights of privacy, dignity and respect, and freedom from coercion and restraint are protected;
- d. Individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact are optimized and not regimented;
- e. Individual choice regarding services and supports, and who provides them, is facilitated.

Colorado's site-specific assessment process comprehensively addressed all HCBS Settings Final Rule criteria, including those listed above, for the following setting types relevant to CFC:

- Certified Foster Care Homes.
- Day Habilitation settings for individuals with intellectual and developmental disabilities (IDD).
- Adult Day Services and Day Treatment settings for individuals with disabilities. (For Medicaid-certified settings. Settings that operate exclusively on a private-pay basis were not assessed or verified for compliance with the HCBS Settings Final Rule during the transition period.)

As stated in the [STP](#), certain setting types were presumed compliant during the transition period, including the following setting types relevant to CFC:

- Residential settings owned or leased by individuals receiving HCBS or their families (personal homes).
- Insofar as one on one services are provided there: Physical locations that are nonresidential and not owned, leased, operated, or managed by an HCBS provider or by an independent contractor providing nonresidential services. (Locations in the community where HCBS can be provided, examples include grocery stores, parks, and events). (Group services were not presumed compliant.)

Whether verified or presumed compliant during the transition period, all HCBS settings are subject to ongoing monitoring for compliance as described in Table 5 (gray) of the [STP](#), pages 29-31.

Lastly, institutions were not verified, and are not subject to ongoing monitoring, for compliance with the criteria of the HCBS Settings Final Rule.

4. Systemic Assessment Process - Please describe the process the state used to conduct the systemic assessment (e.g., a review of state statute(s), regulations, policies and provider contracts) to determine settings are compliant with HCB regulatory requirements and describe the outcomes of the review. Please assess regulations or other governing documents for these settings and provide a crosswalk of the components that address specific characteristics of the settings requirements, indicating whether the state documents comply, do not comply, partially comply or are silent on the federal regulation. Describe the changes the state has made to ensure that where the regulations are silent, do not comply and/or are partially compliant to ensure full enforcement of the federal regulation.

HCPF conducted a comprehensive review of the kinds of settings in which HCBS are provided in Colorado and the state statutes, regulations, and waivers that govern the provision of HCBS in these settings. This review included whether these authorities were compliant with, silent on, or in conflict with the HCBS Settings Final Rule requirements. The results of the review are set forth in [Colorado's Systemic Assessment Crosswalk](#).

- The state worked with the General Assembly to implement statutory changes identified in the crosswalk (2018).
- The state engaged in extensive informal and formal stakeholder engagement to codify Colorado's version of the federal rule and informed consent template (2019-2022).
- The state developed a supplement to the Systemic Assessment Crosswalk in 2020.
- HCPF codified critical rule changes and worked with CMS to implement critical waiver updates (2022-23).
- HCPF is developing non-critical rule changes and will then work with CMS to develop non-critical waiver updates, and in conjunction with this work it is developing a final merged crosswalk. For clarity, the critical rule and waiver changes (already implemented) were necessary for ensuring and did ensure Colorado's systemic compliance with the criteria of the HCBS Settings Final Rule. The remaining non-critical changes are more in the nature of streamlining, deduplication, and the like.

For more detail on the Systemic Assessment Process, please see Colorado's [STP](#), pages 17-25 (green table).

5. Site Specific Assessment Process - If applicable, please describe the process the state used to conduct site specific assessments (e.g., licensing reviews, provider self-assessments, support coordination reports, consumer advocacy entities) to determine settings are compliant with HCB regulatory requirements. When the state uses provider self-assessments as part of its site-specific assessment process, there must be a validation process in place for CMS to accept the provider self-assessment. Therefore, describe the validation methods used by the state to confirm results of provider self-assessments. Please describe the outcomes of the review, including which settings/sites are compliant and will be included in the 1915(k). When discussing the site-specific assessment process please identify the entity or entities that conducted the site-specific assessments.

HCPF determined which providers would be required to demonstrate compliance through Provider Transition Plans (PTPs) and the settings for which PTPs would be required. HCPF created a registry of covered providers and settings using various data sources. HCPF developed PTP templates allowing providers to provisionally identify each affected setting's compliance issues under the HCBS Settings Final Rule; develop remedial action plans for these compliance issues; assess the potential application of heightened scrutiny; and where applicable, assess whether the setting should be put forward to the public and/or CMS for heightened scrutiny. PTPs were subject to state review and verification; provider updates; and finally, state verification of the updates.

The PTP process was a four-step process conducted by the Colorado Department of Health Care Policy & Financing (HCPF) and the Colorado Department of Public Health & Environment (CDPHE). First, the provider completed the initial PTP (self-assessment). Second, CDPHE verified with HCPF input and oversight that the PTP identified all compliance issues. This step always included at least a desk review of provider materials (e.g., policies and procedures) and often included site visits. HCPF and CDPHE arranged for the completion of a statistically significant number of randomly selected, in-person site visits. Third, the provider updated the PTP. Providers were required to submit updates every three months, including evidence of changes made (e.g., updated policies and procedures). And lastly, CDPHE verified that the PTP demonstrated complete remediation, following a similar process as the initial verification process, only the state's goal at this stage was to ensure all compliance issues had been resolved. CDPHE verified PTP updates via desk reviews and/or site visits, including remote site visits during the pandemic, with HCPF input and oversight.

For more details on the site-specific assessment process, please review our [HCBS Settings Final Rule Site-Specific Assessment and Heightened Scrutiny Process document](#), along with the orange table in our [STP](#), pages 6-17.

Currently, 99.9% of all covered settings in Colorado (i.e., settings required to prove compliance rather than being subject to a presumption of compliance) have been verified as compliant. This includes 100% of all Certified Foster Care Homes, Day Habilitation settings for individuals with IDD, and Day Treatment settings for individuals with disabilities). A total of three covered settings are not yet compliant. They include one alternative care facility and two adult day programs. These three settings are the last remaining to be verified among the several dozen settings that received extra time pursuant to Colorado's [CMS-approved statewide corrective action plan \(CAP\)](#). {Paragraph to be updated before submission to CMS.}

Provider Owned or Controlled Residential Services Additional Questions

6. For provider owned or controlled residential settings, please provide a description of the State process to ensure the additional regulatory requirements listed below are met. In the description, please identify:
 - a. Whether this process is reflected in the State's HCB Statewide Transition Plan. If so, please reference the specific section;

Yes, the Site-Specific Assessment Process outlined above in response to question 5 applied to provider-owned and -controlled residential settings and is reflected in Colorado's [HCBS Settings Final Rule Site-Specific Assessment and Heightened Scrutiny Process document](#), along with the

orange table in our [STP](#), pages 6-17. This process included verification of compliance with all of the regulatory requirements listed below (numbered i through viii).

Pursuant to the instruction above (“When responding to Questions 6 and 9, please make sure to provide information regarding both residential and non-residential assessment”): Yes, the Site-Specific Assessment Process outlined above in response to question 5 applied to provider-owned and -controlled nonresidential settings and is reflected in Colorado’s [HCBS Settings Final Rule Site-Specific Assessment and Heightened Scrutiny Process document](#), along with the orange table in our [STP](#), pages 6-17. This process included verification of compliance many of the regulatory requirements listed below (numbered i through viii), such as the freedom and support to control one’s own schedules and activities, access to food at any time, visitors at any time, and physical accessibility. Some of the criteria, such as a written lease/residential agreement, cannot sensibly be applied, and were not applied, to nonresidential settings. (As noted above, this process applied only to Medicaid-certified settings. Settings such as Adult Day Service centers that operate exclusively on a private-pay basis were not assessed or verified for compliance with the HCBS Settings Final Rule during the transition period. However, if and when Medicaid-funded CFC services were to be provided in such centers, they would be covered by the state’s codification of the rule, which specifies that “HCBS Setting means any physical location where Covered HCBS are provided.”)

b. Whether the initial process is a component of the State’s CFC Quality Assurance Improvement Plan (in accordance with § 441.585);

As detailed above, during the transition period, the process for ensuring initial compliance for provider-owned or -controlled residential settings (as relevant to CFC) was as follows:

- Certified Foster Care homes: As detailed in Colorado’s [HCBS Settings Final Rule Site-Specific Assessment and Heightened Scrutiny Process document](#), along with the orange table in our [STP](#).
- Institutions: N/A. These settings are not subject to the HCBS Settings Final Rule criteria.

With the conclusion of the transition period, the initial verification process does not naturally fit in the CFC Quality Assurance Improvement Plan. However, the ongoing monitoring process is detailed in that section of the proposed State Plan Amendment.

c. Whether the setting requirements utilized in the assessment are reflected in licensure or certification requirements, and/or other state documents or other official requirements. If so, please reference the specific citations.

Yes, we codified the requirements of the federal rule for all HCBS settings at 10 CCR 2505-10 [Section 8.484](#). All of the regulatory requirements listed below are codified in our rule at [8.484.4](#) (Additional Criteria for HCBS Settings). Specifically, the additional criteria for provider-owned or -controlled residential settings are set out in [8.484.4.A](#), and the additional criteria for provider-owned or -controlled nonresidential settings are set out in [8.484.4.D](#). As noted above, some of the additional criteria, such as a written lease/residential agreement, cannot sensibly be applied, and were not applied, to nonresidential settings. Compliance with all applicable departmental regulations is a requirement of provider certification, provider agreements, case management contracts, and the like. [{Because of the OCL/CMRD rule overhaul, rule numbers will change.}](#)

The following regulatory requirements should be addressed in the response.

- i. The unit or dwelling is a specific physical place that can be owned, rented or occupied under another legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord tenant law of the state, county, city or other designated entity;
 - ii. If there are settings in which landlord tenant laws do not apply, the State ensures that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law;
 - iii. Each individual has privacy in their sleeping or living unit. Units have lockable entrance doors, with appropriate staff having keys to doors as needed;
 - iv. Individuals sharing units have a choice of roommates in that setting;
 - v. Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement
 - vi. Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time;
 - vii. Individuals are able to have visitors of their choosing at any time;
 - viii. The setting is physically accessible to the individual.
7. In relation to provider owned or controlled residential settings, §441.530(a)(vi)(A) specifies that above-mentioned criteria must be met. However, the regulation also recognizes that, at times, modification to these requirements on an individual basis may be necessary and specifies at §441.530(a)(vi)(F) the following requirements that must be met and documented in the plan when modifications are used as noted below.

Please describe:

- a. How the State will assess the appropriateness of such modifications and how the State will ensure adherence to the requirements below.

As detailed in Table 2 (orange) in Colorado's [STP](#), row 10, subrow on rights modification details, page 10:

- HCPF codified the rights modification requirements in rule (10 CCR 2505-10 **8.484.5**) and published an informed consent template to ensure all criteria are documented. Under this codification, modifications to individual rights must be based on an individualized assessed need and comply with the federal requirements for documentation and due process (as identified in items c.i-viii below), including obtaining the individual's informed consent.
- HCPF issued extensive guidance, provided trainings and materials (including mandatory trainings for both providers and case management agencies (CMAs) covering individual rights and the rights modification process), and updated components of the Benefits Utilization System (BUS) (a component of the case management system in place during

the transition period) to support implementation of these requirements. The screens in the BUS ensured that all criteria were documented as required in the person-centered service plan. For additional information on the tools and processes developed for case managers to ensure that rights modifications are appropriately developed, documented, and consented-to, please refer to Table 5 (gray) in Colorado's [STP](#), row 72, pages 29-30.

- Providers must ensure staff are trained on person-centeredness, person-centered practices, and dignity of risk. Compliance with this requirement was verified through the Provider Transition Plan (PTP) process and is a requirement under current rule. In addition, case management agencies (CMAs) must ensure case managers are trained on person-centered planning.
- HCPF verified provider and case management agency compliance with the rights modification requirements through the PTP process. When providers initially submitted PTPs, they were required to include policies and procedures, house rules, and other evidence demonstrating that rights modifications were used, if at all, on an individualized basis and not across-the-board. As part of its initial review and verification process, the Colorado Department of Public Health & Environment (CDPHE) often identified changes needed to these policies and procedures, house rules, etc. to avoid broad-based imposition of rights modifications. CDPHE asked some providers for examples of completed informed consent forms. CDPHE sometimes identified changes needed to the providers' examples. When providers submitted their updated PTPs demonstrating remediation, they were required to submit evidence demonstrating that all rights modifications were fully compliant with the federal criteria. This included updated policies and procedures, house rules, etc., as well as updated informed consent forms for specific individuals if required by CDPHE.

In addition to what was described in the STP, more recent developments include:

- HCPF issued a "MythBusters FAQ" that addressed rights modification misconceptions, among other topics.
- HCPF published videos and resource sheets for members to help them understand their rights and the rights medication process.
- HCPF issued supplemental guidance and presented a training for case managers on entering rights modification information into the BUS.
- HCPF rolled out a new Care and Case Management System (CCM). Pending development of the rights modification screen(s) in this system, case managers are able to upload a PDF file containing the information that ultimately will be entered on the screen(s) (along the lines of what they were entering in the BUS, as described above).
- HCPF made available a new, web-based "Person-Centered Thinking Training for all HCBS Provider Agencies, Transition Coordination Agencies, and Case Management Agencies (CMAs)."
- HCPF has started working with an instructional designer to develop a new self-paced e-learning module for case managers, to be housed in the new case management learning management system (LMS). The training will cover the HCBS Settings Final Rule, rights protected by the rule, rights modifications, and the case manager's role within these areas. (As noted above, prior trainings have also covered these topics.)

b. The State process that will be used to ensure that such modifications are supported by a specific assessed need and documented in the person-centered service plan.

The response to item a, above, details how the State will ensure adherence to the requirements of the federal rule, including identification of a specific and individualized assessed need and documentation in the person-centered service plan. The specific and individualized assessed need must be documented on the informed consent template (for discussion with the individual), and this information (along with the other information on the completed template, if consented-to) must be entered by the case manager into the BUS/CCM.

On the process front specifically, the following additional information may be relevant:

- For participants in certain waivers targeting individuals with IDD, Human Rights Committees (HRCs) review rights modifications.
- Providers and CMAs are subject to ongoing monitoring as stated in Table 5 (gray) of the [STP](#), pages 29-31, and in the response to item #13 below. Among other aspects of ongoing monitoring, HCPF worked with CMS to update certain Quality Improvement Strategy (QIS) performance measures. These measures help ensure that if rights modifications are implemented, they conform to the federal and state requirements for both planning and implementing such modifications.

c. How will the state ensure that the following requirements are adhered to?

- Identify a specific and individualized assessed need;**
- Document the positive interventions and supports used prior to any modifications of the person-centered service plan.**
- Document less intrusive methods of meeting the need that have been tried but did not work;**
- Include a clear description of the condition that is directly proportionate to the specific assessed need;**
- Include regulation collection and review of data to measure the ongoing effectiveness of the modification;**
- Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated;**
- Include the informed consent of the individual; and**
- Include an assurance that interventions and supports will cause no harm to the individual.**

The response to item a, above, details how the State will ensure adherence to the requirements of the federal rule, including items i-viii above. The required points of information must be documented on the informed consent template (for discussion with the individual), and this information (if consented-to) must be entered by the case manager into the BUS/CCM.

Settings Presumed to be Institutional/Heightened Scrutiny

8. 42 CFR 441.530(a)(2)(v) describes settings that are presumed to have qualities of an institution. States may submit information to CMS for review that presents the state's analysis that the settings have the qualities of home and community-based settings, and therefore overcome the presumption of being institutional. The process for CMS' review includes sharing the submitted information with federal partners who have 14 days to review the state's information and provide comments to CMS. CMS has final approval authority.
9. Please explain the state's process for assessing settings to identify settings presumed to have institutional characteristics (e.g., use of geo mapping, surveys, provider self-assessment, etc.)

The state identified residential and nonresidential settings presumed to have institutional characteristics through the site-specific assessment process, as detailed in our [HCBS Settings Final Rule Site-Specific Assessment and Heightened Scrutiny Process document](#), along with the orange table in our [STP](#), row 10, subrow on heightened scrutiny, pages 10-11. To recap, this process included:

- (1) The provider's initial completion of the Provider Transition Plan (PTP), which included self-assessment of the three factors triggering the institutional presumption. Providers had access to a User Manual that, among other things, provided guidance on the application of these three factors.
- (2) Verification of the PTP by the Colorado Department of Public Health & Environment (CDPHE), with input and oversight by HCPF. Verification included at least a desk review, and sometimes also a site visit. Initial verification of factors triggering heightened scrutiny: In conducting desk reviews and (if applicable) site visits, CDPHE applied the heightened scrutiny standards and guidance set out in the User Manual.

To determine whether a setting (i) is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment or (ii) is in a building located on the grounds of, or immediately adjacent to, a public institution, CDPHE drew on information from the following sources:

- The PTP, including the provider's self-assessment of these factors;
- If a site visit was completed, observation of the location and its surroundings, including whether it was in the same building as a hospital, nursing facility, intermediate care facility for individuals with intellectual or developmental disabilities, or other type of inpatient institution, or near a public facility in these categories;
- Fellow staff within CDPHE, who advised the Community Settings Team of settings that appeared to meet the location-based factors; and
- Internet map applications, which revealed the setting's proximity to inpatient institutions.

To determine whether a setting (iii) has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving HCBS, CDPHE drew on information from the following sources:

- The PTP, including the provider’s self-assessment of this factor and the compliance issues on the Community Integration screen;
- The documents attached to the PTP, including the required setting-specific, recent month’s calendar of community activities (or a calendar from shortly before the pandemic, if applicable)—or, for larger nonresidential settings, multiple calendars (to ensure all individuals have the opportunity to interact with others in the community, based on their preferences and interests);
- If a site visit was completed, observation of whether individuals were coming and going; observation of what information about community activities and transportation options was posted for individuals to consider; review of available records relating to community activities and transportation options; asking about community activity opportunities and transportation options during private interviews with individuals; and asking staff about community activities offered, their support for helping individuals be aware of and participate in such activities, and transportation options offered; and
- Fellow staff within CDPHE, who advised the Community Settings Team of settings that appeared to be isolating.

Members of the Community Settings Team worked together to review their observations, calendars, and other documentation to ensure consistency in determining the potential application of heightened scrutiny. In turn, this topic was discussed frequently between CDPHE and HCPF. The state’s determinations, including comments for the provider’s review, were documented in the setting’s PTP.

- (3) Provider submission of updates; and
- (4) CDPHE verification of updates.

10. **Based on the state’s assessment, please answer the following questions for settings in which individuals receiving CFC services may reside or where CFC services may be delivered. Please respond to the following questions with either a yes or no. For each question to which the state answered yes, please provide information to evaluate through a process of heightened scrutiny that the setting does not have the qualities of an institution and has the qualities of home and community-based settings.**

Are any of the settings in which an individual may receive CFC:

1. **In a building that is also a publicly or privately operated facility that provides inpatient institutional treatment? Examples of sharing a building include (but are not limited to) a use of a wing within a facility, or a physical space that shares one building entrance or exit with a facility.**

Yes. As detailed in response to item #1 above, individuals may receive CFC while residing in institutions (Transition Setup services and authorization for home-delivered meals (HDMs) to be provided after moving out of the institution).

We are not aware of any existing HCBS (non-institutional) settings in heightened scrutiny category i in which an individual would receive CFC. However, out of an abundance of caution, we note that Colorado did submit settings in all three categories to CMS, as detailed in response to item 11 below, and settings in this category could come into existence/operation in the future that might be suitable as locations for CFC (e.g., an Adult Day Services center in the same building as a nursing facility). Should this occur, the state would submit the settings for CMS's heightened scrutiny review.

- 2. In a building on the grounds of, or immediately adjacent to, a public institution? Examples of buildings on the grounds of or immediately adjacent include (but are not limited to) buildings separated by a breezeway or that share an outside wall, but have separate entrances and exits, and separate licensure; or building that are on the same campus or grounds, regardless of whether they are physically connected.**

We are not aware of any existing HCBS (non-institutional) settings in heightened scrutiny category ii in which an individual would receive CFC. However, out of an abundance of caution, we note that Colorado did submit settings in all three categories to CMS, as detailed in response to item 11 below, and settings in this category could come into existence/operation in the future that might be suitable as locations for CFC (e.g., an Adult Day Services center on the same campus as a nursing facility). Should this occur, the state would submit the settings for CMS's heightened scrutiny review.

- 3. In any other setting that has the effect of isolating individuals receiving home and community-based services from the broader community of individuals not receiving these services? For additional guidance in evaluating these other settings, please refer to **Guidance on Settings That Have the Effect of Isolating Individuals Receiving HCBS from the Broader Community,**” which is located within the [HCBS Toolkit](#).**

Yes. Individuals may receive CFC in Day Habilitation settings for individuals with IDD, as well as Adult Day Services and Day Treatment settings for individuals with disabilities. Some such settings were determined to have the effect of isolating individuals receiving HCBS from the broader community of individuals not receiving these services. These determinations were made pursuant to CMS guidance superseding that in the link immediately above, as summarized in the updated User Manual mentioned above.

- 11. If the state answered yes to any of the above questions, then it should submit evidence to CMS for the application of the heightened scrutiny process for settings that are presumed not to be home and community-based if the state wishes to use the setting and believes it overcomes the institutional presumption.**

This evidence has been submitted to CMS. Please refer to the orange table in our [STP](#), row 10, subrow on heightened scrutiny, pages 10-11, as well as:

- [Heightened Scrutiny Submission](#) - August 2021
 - In July 2022, CMS requested the evidentiary packages for 17 settings from this batch of determinations. In August 2022, HCPF added CMS and various federal partners to a SharePoint site containing these evidentiary packages. In October 2022, we notified CMS that we had uploaded to the SharePoint site updated summary sheets, as well as

updated PTPs and attachments, for five settings in the original sample of 17 that finished demonstrating compliance (with CDPHE verification) by August 2022.

- [Heightened Scrutiny Submission #2](#) - May 2023

12. CMS will determine if the evidence is sufficient to demonstrate the setting does not have characteristics of an institution and does meet the home and community-based settings requirements. Evidence of a site visit by the state, or an entity engaged by the state, will facilitate the heightened scrutiny process. CMS will consider input from the state and information provided by other stakeholders as part of the heightened scrutiny process. If the state sought public input on this process, please provide a summary of that input and description of how the state responded to the input. CMS has posted Frequently Asked Questions related to the heightened scrutiny process on the [CMS website](#).

HCPF is awaiting CMS’s determinations regarding the sufficiency of the evidence submitted to date. The summary sheet for each setting indicates whether the setting received one or more site visits. The summary sheet for each setting also discusses the public comment(s) received (if any) regarding that setting, as well as HCPF’s response to such input. These summary sheets are available on the HCPF [HCBS Settings Final Rule website](#) under the header “Heightened Scrutiny.” Higher-level summaries of the public input process are available in the two submissions linked above in response to item 11.

Ongoing Monitoring of Settings

13. Please provide a description of the state’s oversight and monitoring process for ensuring continuous compliance of settings. Note: This information should also be included in the Quality Assurance and Improvement Plan section of the SPA

Please address the following:

- i. Ongoing evaluation and monitoring process for both existing settings and newly identified settings

As detailed in the gray table (pages 29-31) in Colorado’s [STP](#), the ongoing monitoring process includes the following initiatives:

- Including HCBS Settings Final Rule-related performance measures regarding rights modifications within the current 1915(c) waiver quality improvement system (QIS).
- Developing process(es) for case managers to confirm with individuals that the settings at which they receive services are compliant.
- Ensuring that after the transition period, settings are monitored by state agencies for compliance with HCBS Settings Final Rule criteria.
- Identifying and publicizing process(es) for waiver participants, case managers, and others to report potential violations of HCBS Settings Final Rule criteria. After the STP was finalized, HCPF added a dedicated “Ask a Question/Report a Concern” section to its [HCBS Settings Final Rule website](#) and explained how individuals can report concerns as part of

new videos and resource sheets for waiver participants on their rights and the rights modification process.

- Monitoring data from member experience surveys related to outcomes relevant under the HCBS Settings Final Rule.

ii. Frequency of monitoring efforts

- Performance measures are assessed annually, as stated in each relevant waiver.
- Case managers assess the adequacy of information supporting a proposed rights modification when they discuss the proposal with the individual and enter that information into the BUS/CCM. This happens for all new rights modifications as they are implemented and for all continuing modifications as they come up for review/renewal (at least every 12 months). An additional tool to support case managers in identifying broader compliance issues at HCBS settings (beyond just rights modification concerns) has been developed and is being finalized. Case managers will be asked to use this tool during quarterly case management monitoring contacts.
- State agency monitoring: CDPHE cross-trained its survey staff on HCBS Settings Final Rule criteria so that they could address these criteria as part of new provider enrollment as well as routine quality assurance surveys. Regarding such surveys:
 - Under an Interagency Agreement (IA) between HCPF and CDPHE, CDPHE surveys prospective HCBS providers before it recommends them to HCPF for certification as Medicaid waiver providers. As relevant to CFC, provider types subject to certification include adult day programs, program approved service agencies (PASAs) serving the waivers for individuals with IDD (providing services such as day habilitation), and home care agencies (HCAs) (providing personal care, homemaker, etc.). These initial certification surveys address compliance with the HCBS Settings Final Rule. (For Medicaid-certified settings. Settings such as Adult Day Service centers that operate exclusively on a private-pay basis are not covered by this process.)
 - In addition, CDPHE routinely surveys provider types subject to (re)certification (see list above) on a three-year cycle. Recertification surveys include visiting private homes where individuals receive Individual Residential Services and Supports (IRSS). Recertification surveys address compliance with the HCBS Settings Final Rule.
 - Similarly, under an IA between HCPF and Colorado Department of Human Services (CDHS), CDHS surveys prospective Children's Habilitation Residential Program waiver (CHRP) residential habilitation providers, and annually resurveys current providers, to confirm their compliance with the applicable regulations. CDHS's regulations for CHRP providers cross-reference HCPF's, which in turn now include the HCBS Settings Final Rule. (If included in the first bullet point above, certain providers may instead be surveyed by CDPHE.)
- Stakeholder reporting of potential violations occurs on an as-needed basis.

- Member experience surveys occur at different times, depending on the survey. The Individual/Family/Advocate (IFA) Survey, which is specific to the HCBS Settings Final Rule, currently remains open and may be completed as often as desired.

iii. Summary of findings

- Performance measures are collected and shared with case management agencies through annual quality improvement strategies. Any identified performance measures falling below 86% compliance are reported to CMS through annual 372 reporting.
- HCPF identified certain concerns regarding case managers' entry of information relating to rights modifications into the BUS. HCPF addressed these concerns in an [Operational Memo](#) and Technical Assistance session ([webinar recording](#); [slide deck](#)). The additional tool mentioned above is not yet in use but is expected to help ensure that even settings excluded from the CDPHE/CDHS IA survey processes still experience ongoing monitoring and oversight.
- To our knowledge, all deficiencies identified in provider surveys are corrected upon being identified.
- We occasionally hear from advocates, case management agencies, and/or providers with questions or concerns that are addressed when raised.
- Reporting on member experience surveys depends on the survey. Reports on and analysis of IFA Survey responses were previously available on the HCPF website, and are available upon request. Updated reporting on that particular survey was disrupted by the pandemic, and the survey currently has little in the way of ongoing uptake/responses.

iv. Activities to address findings—(e.g. quality improvement plans and/or corrective action plans including temporary or provisional licensure or certification).

- Deficiencies in performance on QIS measures are addressed as stated in each relevant waiver and as negotiated with CMS. Approaches to remediation may include a continuous quality improvement plan to correct identified issues.
- HCPF may implement corrective action plans with case management agencies if needed.
- When CDPHE identifies deficiencies in the course of surveys, it ordinarily offers the provider an opportunity to remedy the deficiencies pursuant to a Plan of Correction. If that process proves unsuccessful, CDPHE recommends decertification to HCPF. The process that CDHS follows as to foster care homes is similar.
- HCPF's response to stakeholder concerns depends on the nature of the concern. HCPF 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 concern does not involve noncompliance with the HCBS Settings Final Rule, HCPF may refer the concern elsewhere and/or seek to educate the stakeholder 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.

- Survey responses identifiable to specific providers/settings or case management agencies have been addressed through the Provider Transition Plan (PTP) process, CDPHE investigation work, outreach to case management agencies, and other measures, depending on the type of concern.

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