



Office of Community Living

Home- and Community-Based Services (HCBS) Statewide Transition Plan (STP) and Systemic Assessment Crosswalk

Submitted for public comment May 2016

Department responses to public comments received in June 2016

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Acknowledgement

The Department thanks the people and organizations who took the time and made the effort to provide feedback regarding the Home- and Community-Based Services (HCBS) Statewide Transition Plan (STP) and Systemic Assessment Crosswalk ("Crosswalk"). Without such input, the Department cannot improve its services and supports to help people live everyday lives in the community.

Background

In January 2014, the federal Centers for Medicare & Medicaid Services (CMS) published a rule setting forth new criteria for ensuring that the settings where people live or receive HCBS are integrated in the community and not institutional. CMS established five requirements for all HCBS settings, and several additional requirements for provider-owned or -operated residential settings. Since the issuance of this rule, the Department has worked with stakeholders to draft, revise, and implement a STP and Systemic Assessment Crosswalk for coming into compliance with the rule. More information about the rule, the STP, and the Crosswalk is on the Department's HCBS Settings Final Rule website: www.colorado.gov/hcpf/home-and-community-based-services-settings-final-rule.

Public Comment: Approach

The third version of the STP (STP.3) and the first version of the Systemic Assessment Crosswalk were open for public comment from May 6, 2016 through June 9, 2016. The Department provided public notice of the availability of the full STP and Crosswalk, the comment period, and the ways to comment through the following means:

- Emailing a Communication Brief to the Long-Term Services and Supports Stakeholder list; the Division for Intellectual and Developmental Disabilities Stakeholder list; and providers.
- Publishing a notice on the Department's [website](#).
- Emailing a notice to Tribal Consultation recipients.
- Publishing notices in the newspapers of widest circulation in each city in Colorado with a population of 50,000 or more.
- Publishing a notice in the [Colorado Register](#).

The public could provide comments via the following methods:

Email: STP.PublicComment@state.co.us, Lori.Thompson@state.co.us, or Caitlin.Phillips@state.co.us

Mail/In Person: 1570 Grant Street, Denver, CO 80203,
Attention: Statewide Transition Plan Team

Fax: 303-866-3991, Attention: Statewide Transition Plan Team

Phone: Lori Thompson, 303-866-5142 or Caitlin Phillips, 303-866-6873

The Department received six comments, all via email. In a [document](#) submitted to CMS on June 30, 2016, the Department summarized the comments and its responses. By [letter](#) dated August 30, 2016, CMS asked the Department to provide more detailed responses to some issues. The Department submitted a [letter](#) to CMS on December 26, 2016 that included more detailed information on these issues, as well as a revised STP (STP.4) and revised Crosswalk. On February 9, 2017, CMS emailed a [response](#) asking the Department to submit an updated summary of public comments reflecting its current responses to the comments. By email dated May 25, 2017, CMS confirmed that the only item it required for initial approval of the STP and Crosswalk was the Department's more detailed responses to the June 2016 public comments.

In this document, the Department provides more detailed and current responses to the public comments received in June 2016.

Public Comment: Summary and Response

This document summarizes and responds to all public comments received in June 2016, grouping the comments by theme as determined by the Department. Next to each theme is the number of commenters (out of six) that touched on that theme. Some bullet points under a theme reflect a point made by multiple commenters.

Comments Regarding the Statewide Transition Plan

Theme #1: Stakeholder engagement

Commenters: 3

- It was difficult to track the changes between STP.2 and STP.3.
- The Department should centralize STP-related information on one website.
- It is difficult to find the STP from the Department's homepage.
- Documents referenced in the STP (e.g., the PTP Excel file and User Manual, the site visit protocol, the draft lease template) and correspondence from CMS should be posted on the Department's website.
- Stakeholder and committee meetings, with relevant contact information, should be identified in the STP.
- The Department should develop a plan to provide ongoing education to participants and family members about the new rule.
- Some information in STP.3 was not shared with stakeholders until the STP was issued.

Department Response

Beginning with STP.4, which is the fourth and current version of the STP, the Department published a redlined/track-changes document showing all changes from the prior version, to make it easier to see what changed.

The Department has centralized information relating to the STP on a single page on its [HCBS Settings Final Rule website](#). The Department has added links so that this page can be found from other pages on its website. It also corrected certain links before publishing STP.4 and plans to check the links in the STP before publishing any revised STP.

The Department has posted the PTP Excel files, a pdf showing what the redesigned web-based PTP will cover, and correspondence to and from CMS on its website. The Department is revising the User Manual and the site visit protocol and will post these online when they are complete. As stated in STP.4, the Department plans to answer Frequently Asked Questions (FAQs) in lieu of providing a draft lease; the FAQ responses will be posted online when complete.

The Department has added information about relevant meetings to its website so that interested members of the public can determine whether and how to participate.

Since August 2015, the Department has maintained on its website a [Fact Sheet for Individuals and Families](#) about their rights under the Settings Final Rule. Since early 2017, Department staff have increased their efforts to reach individuals and families by attending the Advocates Communication Meeting, the Disability Community Advocates Meeting, and numerous stakeholder workgroups relating to particular waivers or services. The Department is updating its Communication Plan in an effort to find more ways to reach individuals, families, and advocates.

The Department posts quarterly updates on its website in order to keep stakeholders informed of developments between each issuance of the STP. Nevertheless, some information is not final until a given version of the STP is finalized (e.g., site visit selection methodology); hence, it cannot be shared publicly until the STP is issued.

Theme #2: Schedule

Commenters: 1

- Changes to statutes, regulations, and waivers should occur before providers must train their staff and come into compliance; before anyone must transition to other settings/funding sources; and before the Department changes manuals and provider agreements and develops a lease template.
- The Department should set benchmarks for various Action Items in the STP (e.g., the review of PTPs/updated PTPs) and should report progress toward those benchmarks monthly on its website.

Department Response

On May 9, 2017, CMS issued an Informational Bulletin extending the transition period for compliance with the Settings Final Rule by three years, to March 17, 2022. In light of this bulletin, the Department stated in a June 1, 2017 [Communication Brief](#) that it plans to delay the statewide compliance deadline in the STP by one year, to March 2020, thereby giving the Department and stakeholders an additional year to compile and analyze information about potential costs of compliance. Meanwhile, the Department is continuing to require that providers take steps toward compliance.

The Department does not currently plan to change the ordering or timing of the steps in the STP except as necessary to implement this one-year extension, because (a) progress in one area is not contingent on progress in another; (b) CMS has instructed states to proceed with site-specific assessments and remediation regardless of their progress in remediating systemic issues identified in the Crosswalk, (c) deferring changes to statutes, regulations, and waivers until the Department has gathered more information about cost impacts allows the Department to avoid imposing a potentially unfunded mandate, and (d) individuals at settings that are unable/unwilling to comply with the federal criteria must be given adequate time for an orderly and fair transition.

In the meantime, providers can see what the federal requirements are, how they apply to particular kinds of settings, and how they need to train their staff by referring to the materials available on the [HCBS Settings Final Rule website](#), including the Crosswalk (which outlines proposed statutory and regulatory changes to come), links to CMS guidance and training materials, the Provider Transition Plan (PTP) templates (which help providers identify compliance issues and remedial action plans), departmental trainings, and other materials. The Department has also been offering technical assistance at provider and other stakeholder meetings, and it plans to issue responses to FAQs that have arisen during these meetings and during site visits. As stated in STP.4, the Department plans to answer FAQs in lieu of issuing a draft lease.

The STP already includes target dates, and the Department already submits quarterly progress reports to CMS, which it posts online. The Department has also prepared additional benchmarks (described by CMS as milestones), which have been submitted to CMS and posted on the [HCBS Settings Final Rule website](#).

Theme #3: Provider reimbursement

Commenters: 4

- The assumptions in the current rate structure are not transparent.
- Rates should be increased to offset the costs of the Settings Final Rule.
- Reimbursement rates affect providers' ability to deliver services in the most individualized, integrated manner possible.

- The Supports Intensity Scale (SIS) and related support level determinations are not applied equitably, create perverse incentives, and do not allow for individual services in most cases.
- Under the SIS model and current payment rates, it is impossible to have sufficient staffing and training to prevent the use of restraints.

Department Response

The Department acknowledges the potential connection between rates and the manner in which services are provided. It has reviewed the information submitted in the June 2016 (STP.3) and March 2017 (STP.4) public comment periods, the documents and testimony submitted in March 2017 to the Medicaid Provider Rate Review Advisory Committee (MPRRAC), and cost concerns conveyed by providers during site visits. The Department will also review cost impact data supplied as part of the updated PTP (to be rolled out) in order to determine whether reimbursement should be adjusted. Under the adjusted timeline described under Theme #2 above, the Department's determinations will be reflected in its legislative budget request for fiscal year (FY) 2019-2020, such that any increased payments, if necessary, will be available before the March 2020 compliance deadline.

Department staff are currently reviewing [public comments](#) regarding potential changes to the SIS Assessment and tiered Support Levels approach.

The Settings Final Rule does not prohibit congregate or facility-based settings, and it does not set one-on-one or other minimum staffing requirements. See [CMS, HCBS Final Regulations 42 CFR Part 441: Questions and Answers Regarding Home and Community-Based Settings, pp. 9-10 \(2015\)](#). In most cases, providers serving groups of people can satisfy the federal criteria (including access to the community, optimizing initiative and autonomy, and a non-regimented schedule) by eliminating unnecessarily restrictive and regimented schedules, supporting individuals to act independently and to access transportation and other community resources on their own, adjusting staff responsibilities, and training and supporting staff in person-centered principles.

Theme #4: Individual Transition Plan (ITP)

Commenters: 3

- Provide more detail on the ITP process, including a timeline for developing and implementing the process, which agencies will be involved, what resources will be available, and who will prepare the ITPs.
- Submitting site-specific assessment (including heightened scrutiny) results to CMS in March 2018 will not give individuals enough time to transition by November 2018.

Department Response

In STP.4, the Department provided more detail on the ITP process, including the details identified above. The Department clarified that it expects to develop the process by January 2018 and that implementation will occur through January 2019, and it set out interim steps and deadlines. These dates will be adjusted in connection with the one-year extension described under Theme #2 above.

Theme #5: Provider self-assessment surveys and scorecards

Commenters: 2

- In discussing the survey results, the Department suggested that every provider is in compliance with the Settings Final Rule, or that compliance by some providers means non-compliance by others will not be addressed.
- There are concerns with how the provider scorecards were prepared and with the accuracy of their determinations.
- Can the surveys be reviewed by the general public?
- What will happen to the providers who did not complete the self-assessment survey?
- Providers that did not complete the self-assessment survey should be subject to a site visit and extra monitoring.
- The self-assessment surveys ask questions to which some providers will not have answers (e.g., whether individuals have a choice of where they live).

Department Response

The provider self-assessment surveys are closed. The data they provided were aggregated into scorecards for each waiver (available on the [HCBS Settings Final Rule website](#)) and helped provide an overview of compliance issues throughout the state.

Some providers are not in compliance with the rule. Non-compliance by any provider will not be overlooked; rather, it will be identified and addressed through the process for site-specific assessments, including PTPs and potentially site visits.

Individual providers' responses were used to identify potential areas of concern for some providers, but not to determine that any provider is compliant. The Department does not plan to post these responses, as this information is potentially sensitive.

The Department clarified in STP.4 that providers that did not complete the self-assessment survey, like all other providers, will have to complete PTPs and may (but will not necessarily) be selected for site visits. PTPs will be validated by CDPHE through, at minimum, a desk review.

Providers should know whether individuals feel that they did not have a choice of settings or are receiving services at a given setting against their will.

Theme #6: Individual/Family/Advocate (IFA) Survey

Commenters: 2

- The information at the beginning of the IFA Survey does not provide a sufficient explanation of individuals' rights under the Settings Final Rule.
- The questions in the IFA Survey do not match those in the provider self-assessment surveys, making it difficult to use the former to validate the latter.
- The mismatch between one header in the IFA Survey and the questions that follow could confuse respondents.
- How often will families be reminded to take the IFA Survey?
- Provide detail on the Department's plans to push out the IFA Survey.
- Because providers are interested in the results of the IFA Survey, an independent third party, not providers, should distribute and collect IFA Surveys.
- The Department should use the IFA Survey to validate provider self-assessments.
- The identity of individuals and family members who respond to the survey should be kept confidential.
- Provide a timeline for completion of IFA Survey data analysis and posting of the data for review by the public.
- Provide detail on how the Department will obtain input from individuals, families, and advocates after the transition deadline.

Department Response

The Department has revised the IFA Survey, including by (a) editing the prefatory material to better explain individuals' rights under the Settings Final Rule, (b) adding questions to better explore whether all rights are being respected and to improve the usefulness of the survey as a tool for validating site-specific assessments, and (c) correcting the header/question mismatch. After rolling out the revised survey, the Department instructed case management agencies to remind individuals and their families quarterly that the survey is available.

IFA Survey responses are potentially helpful to site-specific validation, but not always, and they are not the only verification tool available. If IFA Survey respondents elect to identify their setting, then the data can be used to validate the setting's PTP. If respondents elect not to identify their setting, then the data cannot be used for this purpose. Either way, all PTPs are subject to at least desk review by CDPHE.

While poor IFA Survey results could lead to more intense scrutiny of a setting or selection for a site visit, good results will not lead to relaxed scrutiny. Even if a setting is identifiable from completed surveys (respondents may elect to keep themselves and their setting anonymous), and even if it receives good ratings, the setting's compliance will still need to be verified through a completed PTP and, if randomly selected, a site visit. This process allows the Department to address potential compliance issues raised by individuals and families, while mitigating the concern that any lack of such issues in survey results could have been caused by provider pressure on respondents.

Individuals and family members can complete the survey anonymously online or by mail, without returning their answers to their provider. Department and site visit staff are careful not to disclose any identities in discussing any concerns with the provider.

The Department has issued a [report](#) on the first two years' worth of IFA Survey data. Additional reports will be issued in the future.

The Department will provide details on post-transition avenues for individuals, families, and advocates to provide input once the details are developed.

Theme #7: Provider Transition Plan (PTP)

Commenters: 2

- What will happen if the provider does not submit evidence of improvements?
- What is a "reasonable timeframe" for purposes of compliance categories that involve the provider's becoming compliant or overcoming an institutional presumption "in a reasonable timeframe"?
- A chart mapping out the site-specific remediation timeline is recommended.
- Have all providers been notified that they must complete a PTP? How will they know when and how to submit the PTP? Who will review the PTP?

Department Response

If a provider does not submit evidence of compliance, the Department and CDPHE will work with it and help it understand what it needs to do. If a provider cannot or will not show that its setting is compliant or will be within a reasonable timeframe, then it will need to prepare to transition its Medicaid clients to other settings or funding sources.

A provider is expected to become compliant within a reasonable timeframe if it is prepared to take certain steps that it can complete in relatively short order, and no later than March 2020 (e.g., as soon as it can hire a locksmith to install locks on bedroom doors; as soon as its board of directors approves a new residential agreement). The Department and CDPHE are working with providers to ensure that they take practical steps toward compliance and do not unnecessarily defer remedial actions.

The Department will consider preparing a chart on the site-specific remediation process.

Providers know they must complete PTPs because this information is in publicly noticed documents (such as the STP) and has been included in the Department's regular communications (e.g., during provider meetings). The Department has informed providers that they may complete their PTPs using the Excel template available online, or wait until they are invited by email to complete the web-based version of the PTP. CDPHE will review PTPs and determine whether the provider needs to submit additional information/documents and/or prepare additional remedial action plans.

Theme #8: Site visits

Commenters: 3

- The Department must visit any setting where there is reason to believe that the provider may be out of compliance.
- The Department should explain in the STP how clients and other stakeholders are involved in preparing for site visits.
- Who is conducting the site visits in STP.3, Action Item 14?

Department Response

The burden is on each provider to establish that its settings are in compliance. Many providers can do so through completing PTPs and submitting documents, which will be subject to a desk review. In addition, providers can elect not to come into compliance (and not to continue receiving HCBS funding). In either case, a site visit is not necessary. The Department will ask CDPHE to conduct site visits where necessary to provide technical assistance and/or verify compliance.

In setting up and conducting site visits, site visit staff identify individuals receiving services at a setting and invite them (along with interested family members and guardians) to participate in voluntary interviews. Site visit staff also ensure that the provider has distributed the IFA Survey and review the results from that survey as a way to better understand the views of individuals and family members. Additional information about individuals' involvement is included in the site visit protocol, which will be posted online when updated. The STP does not need to include these details.

The site visits in STP.3, Action Item 14 were initially conducted by a contractor (Telligen) on behalf of the Department, and have since been conducted by CDPHE on behalf of the Department. The site visits are in-person, on-site visits that also include a desk-review component to analyze the provider's supporting documents. CDPHE will also be conducting desk reviews of PTPs for settings that are not visited in person.

Theme #9: Heightened scrutiny

Commenters: 1

- The Department should communicate with providers that may be subject to heightened scrutiny before it publicly identifies them.

Department Response

The Department intends to do so.

Theme #10: Other aspects of the STP

Commenters: 4

- Provide more detail on the statement in STP.3, Action Item 24 that the Department is working with CDPHE to modify survey requirements and to review survey cycles. Will survey frequency change for any providers?
- Identify the quality assurance documents and list of modifications mentioned in STP.3, Action Item 24.
- The Department should not “request” that other agencies modify their regulations, because state compliance with the settings rule is not optional.
- Identify the “setting-related outcomes measures” to be included within the waiver quality improvement system (QIS).
- The Department should collect and report on employment data as a way to measure progress in employing individuals in compliant settings.
- Clarify what staff will need licensing and certification.
- The Department should assess the current capacity of non-disability specific settings and develop a plan to increase their capacity.
- Before the end of the transition period, will the Department place a moratorium on new placements in noncompliant settings? If so, when?

Department Response

Department and CDPHE staff have a regular meeting to discuss HCBS provider enrollment, survey, certification, and related issues. Final decisions relating to survey frequency and other details have not yet been made.

The quality assurance documents mentioned in STP.3, Action Item 24 are the review tools that CDPHE uses in conducting routine site visits of enrolling and current providers (apart from the settings-rule-specific visits that CDPHE is conducting under the STP). The Department will add this clarification to the next version of the STP. CDPHE and the Department have discussed potential changes to these documents to incorporate settings rule standards, as well as cross-training of CDPHE’s routine site visit staff on these standards.

While statewide compliance is not optional, it is not clear why “agency MOUs” are necessary (as suggested by the commenter). The process of reviewing and updating regulations must be and is collaborative.

The setting-related outcome measures have not yet been identified. Like other QIS measures, these will go through public notice and comment before being incorporated into each HCBS waiver.

The Department already collects some employment data. The Department is considering options for collecting additional data regarding the number of individuals employed and the characteristics of their employment.

The STP does not change existing licensing and certification requirements. CDPHE licenses and recommends certification for certain kinds of providers. CDPHE staff involved in settings-rule-specific site visits have received training on the rule, and more CDPHE staff will receive such training going forward.

The Settings Final Rule does not prohibit disability-specific settings. It does require that individuals have the opportunity to make an informed choice among options, including non-disability specific settings. This opportunity exists throughout Colorado because virtually all waiver services are available to individuals who live in their own home or family home and who work and engage in other activities in the community; in other words, the Department does not require individuals to receive services in disability-specific setting. Where individuals elect through their person-centered planning process to receive services at a disability-specific setting, they do so because that setting best meets their needs, including needs for habilitative services that will help them achieve even more community integration in the future. The Department plans to further assess the capacity of non-disability specific settings and develop a plan to increase their capacity, including for the few services currently available only in disability-specific settings (e.g., 24-hour protective oversight and potentially adult day/day treatment under certain LTSS waivers).

The Department added a line to STP.4 (Action Item 77) to note that it plans to “[d]esign and implement procedures so that [it] does not pay for HCBS services rendered at noncompliant settings.” As it develops additional details for these procedures, potentially including a moratorium, it will add them to the STP.

Comments Regarding the Systemic Assessment Crosswalk

Theme #11: Crosswalk in general

Commenters: 3

- The Crosswalk should set forth specific proposed regulatory language.
- Changes to rule and waiver language should be consistent.
- Statutes, regulations, and waivers should be changed wherever they are silent with respect to a given federal requirement.

- It is not appropriate for the Crosswalk to consider statutes relating to the redesigned waiver for adults with intellectual and developmental disabilities (IDD), because that waiver does not exist yet.
- The Department is missing an opportunity to update aspects of its rules that do not relate to HCBS settings.

Department Response

The purpose of the Crosswalk is to provide a roadmap for the statutory, regulatory, and waiver changes that waiver participants, providers, and others can expect. When the time comes to make these changes, all stakeholders will have the chance to comment on the specific proposed language through the usual public comment processes for changes to statutes, rules, and waivers.

It is not necessary for all the federal criteria to be set forth in all potentially applicable statutes, regulations, and waivers. It is sufficient for the requirements to be set forth in one location, such as Proposed Rule AAA or BBB.

The Crosswalk appropriately considers statutes relating to the redesigned waiver, because that waiver will eventually exist and will need to conform to the Settings Final Rule.

The Department appreciates the suggestions regarding other aspects of its rules. While they are outside the scope of the STP, they will be taken into account as part of other departmental efforts to review and update rules.

Theme #12: Community integration

Commenters: 5

- Adult day centers co-located on the grounds of an institution should not be prohibited, but may be subject to heightened scrutiny.
- Some people, such as those with medical fragility, might prefer non-integrated, sheltered, segregated, or enclave settings or activities. Therefore, the Department should not change regulations, waivers, and other documents so that they no longer provide for such services.
- Does the Department plan only to delete “non-integrated” language, without actually eliminating noncompliant services?
- The phrase “sufficiently integrated” is unclear, and the Department should issue more concrete guidance on this and other aspects of the rule, such as “to the same degree of access as individuals not receiving Medicaid HCBS.”
- If an individual does not want to participate in community activities, providers must be able to oblige without being deemed noncompliant.

- Provide additional guidance to ensure that secure ACFs comply with the community integration requirement.
- Merely including adult day participants, staff, and guest presenters at on-site activities is not community integration.
- To encourage integration, the Department should allow consumer direction of day program funds, allow nonmedical transportation (NMT) for any activity, and ensure that direct care workers make a living wage.
- The Crosswalk appears not to address the fact that Prevocational Services can be delivered in segregated, facility-based settings.
- Prevocational and Supported Employment Services are not always, and in some cases might never be, compliant with the Settings Final Rule.
- The definition of inclusion in C.R.S. 25.5-10-202(21)(c) should be conformed to that of competitive integrated employment in C.R.S. 8-84-301.
- Views on C.R.S. 13-21-117.5, which limits the liability of Community Centered Boards (CCBs) and providers serving individuals with IDD.
 - The statute encourages CCBs, providers, and individuals to take more risks in order to achieve community integration.
 - The statute inappropriately equates community integration with danger and CCB liability.
- Rule AAA should be changed so that only providers of employment supports must support individuals' opportunity to seek employment and work in competitive integrated settings.
- Views on whether a provider may control a client's money if it is not the SSA-designated representative payee.
 - No.
 - This should be allowed if set forth in the person-centered plan.
 - It may be necessary to allow this, given the lack of rep payees, but providers should not be able to charge for this service and should be subject to SSA standards.
- Views on whether C.R.S. 25.5-10-227, which allows a service agency to hold a person's money and requires it to disburse "reasonable amounts" upon request, adequately protects individuals' ability to control their personal resources.
 - It does not, and the Department should limit provider discretion in determining "reasonable amounts."

- The age of the child should determine how much control they have over their resources.
- Providers do not always know the locations of other Individual Residential Services and Supports (IRSS) settings for purposes of existing rules that seek to prevent conspicuous grouping.
- No Medicaid HCBS resources should go to rural farm/ranch communities.

Department Response

Adult day centers may be co-located with institutions, but will be subject to heightened scrutiny if they are located in a building that provides inpatient institutional treatment; are located on the grounds of, or immediately adjacent to, a public institution; or have the effect of isolating individuals receiving Medicaid HCBS from the broader community.

After March 2022, the Department cannot pay for HCBS services at non-integrated settings. The Department's planned regulatory/waiver amendments will reflect this federal mandate and will reflect that most settings, including day settings and settings frequented by individuals who are considered medically fragile, can and will be integrated within the meaning of the federal rule. The Department plans to ensure that both its issuances and the actual HCBS for which it pays comply with the Settings Final Rule.

The Department has provided guidance about community integration on its [HCBS Settings Final Rule website](#); details may be found there in the links to CMS guidance and training materials, the PTP templates (which help providers identify potential compliance issues and remedial action plans), departmental trainings, and other materials. The Department has also been offering technical assistance at provider and other stakeholder meetings, and it plans to issue responses to FAQs that have arisen during these meetings and during site visits, including questions about community integration. The Department notes, and expects to reiterate in its FAQ responses, that (a) the federal rule does not prohibit congregate or facility-based settings, nor does it force individuals to participate in community activities against their wishes, and (b) so-called "reverse integration," meaning inviting guests to a setting without supporting individuals to leave the setting, is not sufficient to show community integration. The Department used the phrase "sufficiently integrated" in the initial version of the Crosswalk (accompanying STP.3) and deleted it from the revised version (accompanying STP.4). The Department added details to the revised Crosswalk regarding restrictive egress, based on CMS guidance.

The Settings Final Rule does not purport to require consumer direction of day program funds or the provision of NMT for activities other than day programs. This comment has been shared with Department staff who work with the Waiver Implementation Council. On the issue of reimbursement, please see Theme #3 above.

The Crosswalk analyzes Prevocational Services as a subset of Day Habilitation Services and makes clear that the Department plans to change various regulations allowing Day Habilitation Services to be provided in non-integrated settings.

Providers of Prevocational and Supported Employment Services must demonstrate compliance with the federal rule through PTPs and potentially site visits.

The Settings Final Rule does not require changes to C.R.S. 25.5-10-202(21)(c).

To encourage continued efforts toward integration, the Department is not planning to propose changes to C.R.S. 13-21-117.5's limitations on CCB and provider liability.

Community integration is required of all HCBS settings. While a provider might not be expected to provide specifically employment-related supports as part of the services for which it is paid, it still must avoid interfering with individuals' access to employment opportunities (e.g., by not requiring individuals to be present in a setting all day, every day), and it still must support individuals' access to public transportation and other community resources that they may use to go to work or other community activities.

The Department has concluded, as set forth in the revised Crosswalk, that (a) a provider may control a client's money even if it is not the SSA-designated rep payee, provided the terms of the arrangement are agreed-upon and set forth in the person-centered plan, and (b) the individual, provider, and case manager should discuss and set forth in the person-centered plan "reasonable amounts" and any other aspects of the provider's control over the client's funds. A rule (to be proposed) can set out these criteria, making it unnecessary to change C.R.S. 25.5-10-227.

Providers know the locations of the settings with which they work, and they can consult CCBs for more information.

While rural farm/ranch communities may be subject to heightened scrutiny, they may ultimately be deemed compliant with the Settings Final Rule and other applicable requirements, and thus continue to receive HCBS funding.

Theme #13: Individual choice, freedom from restraint, and other requirements applicable to all HCBS settings

Commenters: 4

- People must be informed of more than just "feasible" service options.
- Rule language should reiterate that the person's resources, including whether they can afford to live in a private unit, can be taken into account.
- The rules should acknowledge that location and availability may limit or eliminate choice among Group Residential Services and Supports (GRSS) placements.
- Clarify whether "unit" means a private bedroom or an entire living unit.

- A GRSS provider should have to facilitate choice within the service(s) it provides, but not choice of settings, particularly those operated by its competitors.
- The Department should not limit the use of restraints beyond the limits imposed by current law.
- Is person-centered planning training required for new employees, and is it subject to a monitoring mechanism?
- The standard service plan fields should be changed in order to allow recognition of an individual's life goals and progress toward these goals.
- Informed consent should be documented in each person's annual support plan, with a detailed description of the actions taken to provide and verify informed consent.
- Clarify the phrase "key service outcomes" in C.R.S. 25.5-6-409.3.
- Rule AAA should apply to all HCBS services and not recognize an exception for services permitted to be delivered in an institution, such as respite.
- The list of rights in 10 CCR 2505-10 8.515.80(C) (for the Waiver for People with Brain Injury) should be extended to other waivers.
- If people can only choose center-based (not individualized) adult day services, then they have not truly selected the setting and are being coerced.
- If the Department does not prevent CCBs from "trading" individuals receiving services, CCBs will continue to have conflicts of interest, resulting in coercion and lack of individual choice.

Department Response

According to CMS, states must inform each individual "of the feasible alternatives under the waiver so that the individual . . . can make an informed choice." CMS, *Application for a § 1915(c) Home and Community-Based Waiver: Instructions, Technical Guide and Review Criteria*, 99 (2015) (emphasis added). There is no basis for requiring individuals to be informed of non-feasible options.

Proposed Rule AAA will provide that "setting options . . . are based on the individual's needs, preferences, and, for residential settings, resources available for room and board." A rule reiterating that the person's resources can be taken into account would therefore be repetitive. It also is not necessary for a rule to acknowledge the fact that location and availability may limit choice among residential placements.

A unit is "a specific physical place that can be owned, rented, or occupied," and it could consist of either a private bedroom or an entire living unit, depending on the setting and the terms of the lease or residential agreement.

Under the federal rule, the provider is responsible for facilitating choice regarding services and supports, and who provides them. This responsibility includes facilitating choice among the settings it operates or works with. If an individual expresses interest in receiving services and supports from other providers or at other settings, the provider is responsible for referring the individual to their case manager, who should provide additional information and assistance.

Under CMS guidance received after the publication of the initial Crosswalk, the Department understands CMS's policy to be that compliance with current law (including waivers) is necessary, but not sufficient, for the use of restraints. Any such use must also be based on an assessed need after all less restrictive interventions have been exhausted; be documented in the individual's person-centered plan as a modification of the generally applicable settings criteria, consistent with the standards in Rule BBB; and be reassessed over time. This approach is reflected in the revised Crosswalk.

Training on person-centered thinking and planning is required for all provider employees, both new and experienced. This requirement is being implemented and monitored through the site-specific assessment process. The PTP includes a compliance issue for staff not being trained in PCP principles, along with a corresponding remedial action plan to ensure that staff receive such training.

The Department is considering ways to adjust the standard service plan fields, including those relating to individual goals and informed consent, in connection with its continuing efforts to improve person-centered planning. These comments have been shared with Department staff who are working on these efforts.

C.R.S. 25.5-6-409.3 relates to the redesigned waiver for adults with IDD. Its reference to "key service outcomes" will be addressed, if necessary, in the course of developing and implementing that waiver.

The language of Rule AAA tracks the federal rule, which allows respite to be delivered in settings that do not comply with the settings criteria. The language of Rule AAA is not intended to allow respite to be delivered in any new settings not already allowed by Colorado's statutes, regulations, and waivers; rather, it is intended to allow any respite that these authorities allow to occur in institutional settings to continue without disruption. Palliative/Supportive Care services provided outside the child's home under the Children with Life-Limiting Illness waiver are similar to respite, in that they are generally provided in hospices or hospitals only on a temporary, intermittent basis, and the children receiving these services may come and go at will. For these reasons, and to avoid disruption to these children, the Department does not plan to eliminate hospices and hospitals as allowable settings in which this service may be provided.

As stated in the revised Crosswalk, proposed Rules AAA and BBB will protect for all waiver participants some of the rights in 10 CCR 2505-10 8.515.80(C).

The HCBS Settings Final Rule does not prohibit center-based services, and it does not purport to set one-on-one or other minimum staffing requirements. While some individuals might prefer one-on-one adult day services, they are not being "coerced"

within the meaning of the rule whenever this option is unavailable to them. They may choose among the services available to them, or they may decline services.

The comment regarding CCBs' conflicts of interest does not describe coercion within the meaning of the settings requirements. This comment has been shared with Department staff who work on [conflict-free case management](#).

Theme #14: Protections against eviction

Commenters: 3

- There are concerns about how residency agreements can be enforced and what rights they convey to individuals.
- Leases are less protective of individuals with IDD than the process for terminating services currently required by the Department's rules.
- Individuals with IDD might invoke their right against sudden eviction to continue staying in host homes where they are no longer welcome and where the host home provider is no longer willing to provide services and supports.
- There must be a clear grievance process for situations in which leases are broken or disputes arise.
- If there is abuse or neglect, the person causing it (either staff or client) should be removed.
- Housing and services for individuals with IDD may need to be separated.
- Because children do not sign leases, parents or guardians should sign for them.

Department Response

The Department is planning to issue responses to FAQs that will address the questions and concerns raised in Theme #14. The Department's responses will incorporate any guidance from CMS regarding these issues and the questions asked by the Department in its December 2016 [letter](#) to CMS.

The Department is reviewing existing rules to determine whether they provide protections against eviction that are comparable to local landlord-tenant law. The Department is not planning to require a lease to the exclusion of other forms of agreement; a residential agreement may be used instead.

Existing rules already require case management agencies and/or providers to establish processes for filing grievances and complaints against providers. See 10 CCR 2505-10 8.393.1.1.1 (single entry points (SEPs)); *id.* (CCBs and providers serving individuals with IDD); 12 CCR 2509-4 7.301.3.B (counties serving CHRP participants and other families involved in child welfare system); *id.* 2509-8 7.708.62 (foster children's grievance

procedures); *id.* 7.714.32 (24-hour child care facilities). In addition, lease disputes may be addressed in court.

The Settings Final Rule does not compel the separation of housing and services; in other words, services like those currently provided in group homes and host homes can be consistent with the rule. This comment has been shared with Department staff who work with the Waiver Implementation Council.

The Department has been advised by CMS that leases are not necessary for children.

Theme #15: Other requirements applicable to provider-owned or -controlled residential settings

Commenters: 4

- Provide more detail about the “data” that must be reviewed in connection with modifications of the additional settings criteria.
- It is not clear who has the authority to establish time limits for periodic reviews related to a modification.
- There should be a rule preventing providers from retaliating against people who exercise these new rights.
- Residential settings should have to be more than “home-like” (a term that could be applied to institutions like nursing homes).
- Allow choice of roommates, not just choice “within reason.”
- All residential settings should have two accessible exits to mitigate fire and other dangers.
- The federal requirements for provider-owned or -controlled residential settings should be applied only to ACFs, not all ALRs, unless adopted by the Assisted Living Advisory Committee (ALAC) working with CDPHE.

Department Response

CMS has acknowledged that “[e]ach individual is unique, so considerations for each individual’s person-centered plan will be different, including the appropriate use of interventions,” and it has not prescribed the particular kinds of data to be reviewed in assessing the ongoing effectiveness of a rights modification. [*CMS, HCBS Final Regulations 42 CFR Part 441: Questions and Answers Regarding Home and Community-Based Settings, p. 13 \(2015\)*](#). CMS has noted that “[t]he person-centered planning team may need assistance from specific experts, such as a behaviorist or behavior specialist, to aid in the person-centered planning process (e.g., behavior analysis, crisis intervention plan). These considerations should be documented in the person-centered plan to support the determination of an intervention’s effectiveness.” *Id.*

The federal rule states that “[t]he person-centered service plan must be reviewed, and revised upon reassessment of functional need as required by §441.365(e), at least every 12 months, when the individual’s circumstances or needs change significantly, or at the request of the individual.” 42 C.F.R. § 441.301(c)(3).

The Department’s rules already prohibit retaliation in some circumstances. See 10 CCR 2505-10 8.604.2.D (“No person [with IDD] receiving services, his/her family members, guardian or authorized representatives, may be retaliated against in their receipt of services or supports or otherwise as a result of attempts to advocate on their own behalf.”); see also *id.* 8.605.2.C (individuals with IDD “shall not be coerced, intimidated, threatened or retaliated against because [they have] exercised [their] right to file a complaint or [have] participated in the dispute resolution process”); 8.605.5.C (same). The Department will explore the possibility of expanding this prohibition across waivers.

Residential settings will have to meet the requirements of the federal rule, as set forth in Proposed Rules AAA and BBB, as well as the setting-specific rules in the Crosswalk.

As stated in the revised Crosswalk, the Department plans to strike “within reason” from its regulation, so that choice of roommates is not restricted other than through the person-centered planning process.

The Department is not currently planning to change existing requirements relating to accessible exits, beyond requiring accessibility in general in Proposed Rule BBB.

The Department clarified in the revised Crosswalk that it plans to propose changes only to its ACF regulations. CDPHE and the ALAC will decide whether to make similar changes to the ALR regulations.

Theme #16: Other aspects of the Crosswalk

Commenters: 3

- The Crosswalk does not speak to the extent to which existing DD and SLS waiver language will be incorporated into the redesigned waiver.
- Professional provider offices and clinics do not need to comply with the HCBS Settings Final Rule.
- In order to encourage families to provide services, family caregiver-controlled homes should be considered compliant with the settings criteria.
- Private homes should not be presumed compliant, because an agency is involved with the individual or family-owned home.
- Providers submit data (e.g., on the use of restraints) to state departments without receiving feedback on this data.

Department Response

It would be premature for the Crosswalk to say what the exact language of the new waiver will be, other than that it will comply with the Settings Final Rule, other federal authorities, and the cited state statutory provisions authorizing the new waiver.

All settings where people live or receive HCBS, including professional provider offices and clinics, must comply with the HCBS Settings Final Rule. As stated in the revised Crosswalk, the Department plans to presume compliance at these settings, as well as at private homes, including family caregiver-controlled homes, subject to random site visits to test this presumption, and subject to rebuttal in the case of particular settings.

The Department will consider ways to make data collections more useful for all parties.

Conclusion & Next Steps

The Department plans to implement the approaches set forth in the current STP and Systemic Assessment Crosswalk, with the scheduling adjustment described under Theme #2 above. Please monitor our [HCBS Settings Final Rule website](#) and occasional emailed Communication Briefs for updates.

Appendices

Appendix A—public notices from May 2016

Appendix B—public comments received in June 2016

Appendix A

Public notices from May 2016

TO: All Stakeholders

FROM: The Department of Health Care Policy and Financing

DATE: May 4, 2016

SUBJECT: COMMUNICATION BRIEF-Notification that the Department will be releasing the Statewide Transition Plan (STP) for a third Public Notice period, and the Systemic Assessment Crosswalk for its first Public Notice period.

Purpose: To notify stakeholders that the Department is releasing the Statewide Transition Plan (STP) and Systemic Assessment Crosswalk for a 35-day Public Comment period. The STP has been updated and is being re-released for a third Public Comment period. The Systemic Assessment Crosswalk is being released for its first Public Comment period.

Background: The Centers for Medicare and Medicaid Services (CMS) issued a Final Rule for Home and Community Based Services (HCBS) effective March 17, 2014 to ensure individuals receiving waiver services through HCBS programs have full access to the greater community and reside in home-like residences.

Federal rule requires states to submit a Statewide Transition Plan to meet the federal settings criteria for all relevant HCBS programs under Sections 1915(c), 1915(k), and 1915(i) of the Social Security Act. This plan will outline how the Final Rule will be implemented over the five-year transition period allowed by the rule. In Colorado, there are eight HCBS waivers with residential and non-residential components that will be impacted by the new Federal rules:

- [Brain Injury Waiver \(BI\)](#)
- [Children's Habilitation Residential Program \(CHRP\)](#)
- [Community Mental Health Supports Waiver \(CMHS\)](#)
- [Developmental Disabilities Waiver \(DD\)](#)
- [Supported Living Services Waiver \(SLS\)](#)
- [Elderly, Blind and Disabled Waiver \(EBD\)](#)

- [Spinal Cord Injury Waiver \(SCI\)](#)
- [Children's Extensive Support \(CES\)](#)

The following waivers under which services are provided in children's homes, professional provider offices, and clinics, are presumed to be compliant with the federal settings requirements:

- Children's HCBS (CHCBS)
- Children with Autism (CWA)
- Children with Life Limiting Illness (CLLI)

Information: The Department is providing a 35-day Public Comment period for all stakeholders from **May 5, 2016 to June 9, 2016**. The Public Comment period will afford all stakeholders a chance to review the STP and Systemic Assessment Crosswalk, and provide feedback to the Department. All questions and comments will be compiled into a Listening Log that will also be released to Stakeholders and will include the Department's response. The STP and the Systemic Assessment Crosswalk can be viewed at: www.colorado.gov/hcpf/hcbs-waiver-transition or hard copy or electronic copies can be requested by contacting Lori Thompson at 303-866-5142, by e-mail at lori.thompson@state.co.us, or by U.S. Mail at:

ATTN: Lori Thompson
1570 Grant Street
Denver, CO 80203

Action: Comments regarding the draft Statewide Transition Plan and Systemic Assessment Crosswalk can be emailed directly to STP.PublicComment@hcpf.state.co.us

Comments can also be addressed to the following:

ATTN: HCBS Final Rule Project Team
1570 Grant Street
Denver, CO 80203

Contact Information: Lori Thompson, HCBS Specialist
Caitlin Phillips, MSW, Alternative Care Facility Specialist

Telephone/email: 303-866-5142/Lori.Thompson@state.co.us
303-866-6873/Caitlin.Phillips@state.co.us

Classifieds | Colorado Springs Gazette, News

Categories (/classifieds) > Legal Notices > Legal Notices

May 05 - SUPERIOR COURT OF CALIFORNIA COURT OF HUMBOLDT Case No.: FL160068 NOTICE OF FAMILY LAW CASE MANAGEMENT CONFERENCES Michael Howard, Petitioner, and Cynthia Howard, Respondent. TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD: Please take notice that the above-entitled action has been included in the Family Law Case Management Program of the Humboldt County Superior Court. You are required to comply with the guidelines set forth in this court's Guide to Case Management (Local Form CM - 8.1), Local Rules 800 and 807, Family Code Sections 2450 - 2451 and California Rule of Court 5.83. You are further advised that Case Management Conference are scheduled on the following dates: July 25, 2016 at 1:30 pm in Department #6 and January 23, 2017 at 1:30 pm in Department #C of the above entitled Court. You must personally appear at all Case Management Conferences. Each Party shall file and serve to all parties a family law Case Management Conferences Statement (or jointly file a statement) at least fifteen (15) calendar days prior to the family law Case Management Conference. The parties shall use the Humboldt County Superior Court's mandatory Case Management Conference Statement (Local Form CM-8.3), a local form available on the court's website at <http://www.humboldt.courts.ca.gov> and at the Court Clerk's Office. Date: April 21, 2016 Clerk, By: /s/ Cecile Nessiage Published in Gazette April 29, May 6, 13, 20, 27, 2016

May 05 - EL PASO COUNTY COURT EL PASO COUNTY, COLORADO 270 South Tejon, PO Box 2980 Colorado Springs, CO 80903 CASE NUMBER: 16C1726 DIVISION: R COURTROOM: S280 In the Matter of the Petition of Adult: Amy Elizabeth Zielinski For a Change of Name to: Amy Elizabeth Agape PUBLIC NOTICE OF PETITION OF CHANGE OF NAME Public notice is given on April 26, 2016 that a Petition for a Change of Name of an Adult has been filed with the El Paso County Court. The Petition requests that the name of: Amy Elizabeth Zielinski To be changed to: Amy Elizabeth Agape Lynette D. Cornelius Clerk of Court Chelsea Olstad Deputy Clerk Published in The Gazette: March 4, 5, 6, 2016

May 05 - NOTICE TO THE PUBLIC Fort Carson has prepared an Environmental Assessment and draft Finding of No Significant Impact for construction of an Unmanned Aerial Systems (UAS) training complex at Training Area 17 North on Fort Carson, Colorado. The purpose of the EA and draft FNSI is to document environmentally-related findings and determine whether Fort Carson's proposed action would have a significant impact on the natural and human environment. In order to seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking, this notice is also soliciting comments under Section 106 of the National Historic Preservation Act in accordance with 36 CFR 800.2(d) and 36 CFR 800.3(e). Comments on this action are invited and will be accepted for 30 days from the date this notice is published. A copy of the EA and draft FNSI may be reviewed at: <http://www.carson.army.mil/DPW/nepa.html> Written comments concerning this proposal should be directed to: Fort Carson NEPA Program Manager Directorate of Public Works, Environmental Division (IMCR-PWE) 1626 Evans St., Bldg. 1219, Fort Carson, CO 80913. Or submit by email to: usarmy.carson.imcom-central.list.dpw-ed-nepa@mail.mil. For media queries contact the Fort Carson Public Affairs Office Media Relations Office at (719) 526-7525. Published in CS Gazette May 4, 2016

May 05 - NOTICE OF PUBLIC SALE Pursuant to CRS 38-21-5. Notice is hereby given that the following units will be auctioned. A-RITE PLACE SELF STORAGE, 3132 MALLARD DR., COS, CO 80910 for default of payment. 10-PATRICIA EDWARDS 167-EDWARD/ NIKIA GUERRA 379-WILLIAM HAMPTON 236-JANET BEATTY 250-MARGARET

RINGSRED 258-WILLIAM O'MEARA 282- DAVID HUERTA 307-LARRY GWINN 208-PATRICIA ZELLNER One of our better auctions. Vintage juke boxes, foos-ball table, misc. Sale is May 13 2016 at 11 am sharp. Call for more info details at 719-633-7652 Published in Gazette May 3, 9, 2016

May 05 - EL PASO COUNTY COURT EL PASO COUNTY, COLORADO 270 South Tejon, PO Box 2980 Colorado Springs, CO 80903 CASE NUMBER: 16C776 DIVISION: R COURTROOM: S280 In the Matter of the Petition of Adult: Brittany Shea Brenneman For a Change of Name to: Katsa Juliana Shea Brenneman PUBLIC NOTICE OF PETITION OF CHANGE OF NAME Public notice is given on April 29, 2016 that a Petition for a Change of Name of an Adult has been filed with the El Paso County Court. The Petition requests that the name of: Brittany Shea Brenneman To be changed to: Katsa Juliana Shea Brenneman Lynette D. Cornelius Clerk of Court Chelsea Olstad Deputy Clerk Published in The Gazette: May 6, 7, 8, 2016

May 05 - Newspaper Publication of Notice The Department of Health Care Policy and Financing invites the public to comment on the Home and Community Based (HCBS) Settings Final Rule Statewide Transition Plan (STP) and Systemic Assessment Crosswalk. You may obtain an electronic copy at <https://www.colorado.gov/pacific/hcpf/hcbs-waiver-transition>. You may obtain a paper or electronic copy by calling Lori Thompson at 303-866-5142 or by writing or visiting the Department at 1570 Grant St, Denver, CO 80203. The public comment period is open for 35 days, from May 5, 2016 to June 9, 2016. Comments should be submitted to the Department through the following routes: 1. Email: STP.PublicComment@hcpf.state.co.us (subject line: HCBS Final Rule) 2. Rules Line: 303-866-5142 3. US Mail: Attention: Lori Thompson, 1570 Grant Street, Denver, CO 80203 4. Fax: Attention: Lori Thompson 303-866-3991 Contact Information: Lori Thompson, HCBS Specialist Caitlin Phillips, MSW, Alternative Care Facility Specialist Email/Telephone: lori.thompson@state.co.us / caitlin.phillips@state.co.us Published in CS Gazette May 5, 19, and June 2, 2016

May 05 - FOURTH JUDICIAL DISTRICT DISTRICT COURT EL PASO COUNTY 270 S. Tejon, PO Box 2980 Colorado Springs, CO 80901 CASE NUMBER: 15C4771 Division: R Courtroom: S280 In the Matter of the Petition of Parent/Petitioner: Kylene Larson For Minor Child: Hydn-Lyric Cearen Larson-Focht For a Change of : HydnLyric Cearen Larson-Focht Reese PUBLIC NOTICE OF PETITION OF CHANGE OF NAME Public notice is given on April 15, 2016, that a Petition for a Change of Name of a Minor Child has been filed with the El Paso County Court. The Petition requests that the name of: Hydn-Lyric Cearen Larson-Focht be changed to: HydnLyric Cearen Larson-Focht Reese Lynette D. Cornelius Clerk of Court Chelsea Oldstad Deputy Clerk Published in The CS Gazette May 3, 4, 5, 2016

May 05 - EL PASO COUNTY COURT EL PASO COUNTY, COLORADO 270 South Tejon, PO Box 2980 Colorado Springs, CO 80903 CASE NUMBER: 16C1727 DIVISION: R COURTROOM: S280 In the Matter of the Petition of Adult: Raven Smith For a Change of Name to: Raven Agape PUBLIC NOTICE OF PETITION OF CHANGE OF NAME Public notice is given on April 26, 2016 that a Petition for a Change of Name of an Adult has been filed with the El Paso County Court. The Petition requests that the name of: Raven Smith To be changed to: Raven Agape Lynette D. Cornelius Clerk of Court Chelsea Olstad Deputy Clerk Published in The Gazette: March 4, 5, 6, 2016

May 05 - EL PASO COUNTY COURT EL PASO COUNTY, COLORADO 270 South Tejon, PO Box 2980 Colorado Springs, CO 80903 CASE NUMBER: 16C1573 DIVISION: R COURTROOM: S280 In the Matter of the Petition of Adult: Ryan Matthew Pezzulo For a Change of Name to: Jennifer Ryan Pezzulo PUBLIC NOTICE OF PETITION OF CHANGE OF NAME Public notice is given on April 26, 2016 that a Petition for a Change of Name of an Adult has been filed with the El Paso County Court. The Petition requests that the name of: Ryan Matthew Pezzulo To be changed to: Jennifer Ryan Pezzulo Lynette D. Cornelius Clerk of Court Chelsea Olstad Deputy Clerk Published in The Gazette: 4, 5, 6, 2016

May 05 - DISTRICT COURT EL PASO COUNTY, COLORADO 270 S. Tejon Colorado Springs, CO 80903 Case Number: 2016PR134 Division: W Courtroom: W150 In the Matter of the Estate of: Helga R. Andrew, Deceased NOTICE TO CREDITORS All persons having claims against the above-named estate are required to present them to the Personal Representative or to the District Court of El Paso County, Colorado, on or before October 1, 2016 or the claims may be forever barred. Attorney or Party Without Attorney: Thomas R. Andrew 175 Bella Vista Lane, Colorado Springs, CO 80911 Phone: 719-433-2903 Email: rwakrc@yahoo.com Published in CS Gazette: May 4, 11, 18, 2016

May 05 - DISTRICT COURT EL PASO COUNTY, COLORADO 270 S. Tejon Colorado Springs, CO 80903 Case Number: 2016pr153 Division: W Courtroom: W150 In the Matter of the Estate of: Edwin Duane Cox, Deceased NOTICE TO CREDITORS All persons having claims against the above-named estate are required to present them to the Personal Representative or to the District Court of El Paso County, Colorado, on or before September 2, 2016 or the claims may be forever barred. Attorney or Party Without Attorney: Rebecca Lynn Idler 1204 Desert Candle Court. Pueblo, CO 81001 Phone: 719-691-9176 Email: bidler_lpnlcc@yahoo.com Published in CS Gazette: May 3, 10, 17, 2016

May 05 - DISTRICT COURT EL PASO COUNTY, COLORADO 270 S. Tejon Colorado Springs, CO 80903 Case Number: 2016PR30320 Division: W Courtroom: W150 In the Matter of the Estate of: Kevin Ross Lair, Deceased NOTICE TO CREDITORS All persons having claims against the above-named estate are required to present them to the Personal Representative or to the District Court of El Paso County, Colorado, on or before August 31, 2016 or the claims may be forever barred. Attorney or Party Without Attorney: Michael D. Cucullu 1864 Woodmoor Drive, Suite 215 Monument, CO 80132 Phone: 719-488-9395 Fax: 719-218-9527 Email: mdc@trilakeslaw.com Atty Reg. # 16481 Published in CS Gazette: April 30, May 7, 14, 2016

May 05 - EL PASO COUNTY COURT EL PASO COUNTY, COLORADO 270 South Tejon, PO Box 2980 Colorado Springs, CO 80903 CASE NUMBER: 16C1212 DIVISION: R COURTROOM: S280 In the Matter of the Petition of Adult: Jonathan Paul Bearden For a Change of Name to: Jillian Perrin Bearden PUBLIC NOTICE OF PETITION OF CHANGE OF NAME Public notice is given on April 28, 2016 that a Petition for a Change of Name of an Adult has been filed with the El Paso County Court. The Petition requests that the name of: Jonathan Paul Bearden To be changed to: Jillian Perrin Bearden Lynette D. Cornelius Clerk of Court Chelsea Olstad Deputy Clerk Published in The Gazette: May 3, 4, 5, 2016

May 05 - DISTRICT COURT EL PASO COUNTY, COLORADO 270 S. Tejon Colorado Springs, CO 80903 719-452-5000 Case Number: 2016PR106 Division: W Courtroom: W150 In the Matter of the Estate of: Susan J. Benton, Deceased NOTICE TO CREDITORS

All persons having claims against the above-named estate are required to present them to the Personal Representative or to the District Court of El Paso County, Colorado, on or before, September 1, 2016 or the claims may be forever barred. Attorney or Party Without Attorney: Kole Benton 219 Elmwood Dr. Colorado Springs, CO 80907 Published in CS Gazette: April 30, May 7, 14, 2016

May 05 - DISTRICT COURT EL PASO COUNTY 270 S. Tejon, Colorado Springs, CO 80903 Case Number: 16JA53 Div.: 1 In the Matter of the Petition of: Adam and Patricia Alexander, FOR THE ADOPTION OF A CHILD. NOTICE OF HEARING To: Robert Brown, Parent Pursuant to §19-5-208, C.R.S., you are hereby notified that the above-named Petitioner has filed in this Court a verified Petition seeking to adopt a child. An Affidavit of Abandonment has been filed alleging that you have abandoned the child for a period of one year or more and/or have failed without cause to provide reasonable support for the child for one year or more. You are further notified that an Adoption hearing is set on the 14th day of June 2016, at 4:00 o'clock p.m. in the court location identified above. You are further notified that if you fail to appear for said hearing, the Court may terminate your parental rights and grant the adoption as sought by the Petitioner(s). Published in CS Gazette on: May 3, 2016

May 05 - DISTRICT COURT EL PASO COUNTY, COLORADO 270 S. Tejon Colorado Springs, CO 80903 719-452-5000 Case Number: 2016PR115 Division: W Courtroom: W150 In the Matter of the Estate of: Isabel T. Ash, Deceased NOTICE TO CREDITORS All persons having claims against the above-named estate are required to present them to the Personal Representative or to the District Court of El Paso County, Colorado, on or before, September 4, 2016 or the claims may be forever barred. Attorney or Party Without Attorney: Matthew Ash 6050 Stetson Hills 199 Colorado Springs, CO 80923 Published in CS Gazette: May 3, 10, 17, 2016.

May 05 - COUNTY COURT EL PASO COUNTY COLORADO 270 S. Tejon Street PO Box 2980 Colorado Springs, CO 80901 Case Number: 16C976 Division: R Courtroom: S-280 In the Matter of the Petition of Parent/Petitioner: Laila Y. Lopez Estrada For Minor Child: Julian Daniel Cordova Estrada To change the child's name to: Julian Daniel Lopez Estrada NOTICE TO NON-CUSTODIAL PARENT BY PUBLICATION Notice to: Jerry Abner Cordova, non-custodial parent. Notice is given that a hearing is scheduled as follows: June 24, 2016 at 9:00 am at 270 Tejon Street, Division R, Courtroom 5280, for the purpose of requesting a change of name for Julain Daniel Cordova Estrada. At this hearing the Court may enter an order changing the name of the minor child. To support or voice objection to the proposed name change, you must appear at the hearing. Published in CS Gazette: May 4, 11 18, 25, June 1, 2016

May 05 - DISTRICT COURT EL PASO COUNTY 270 S. Tejon, Colorado Springs, CO 80903 Case Number: 15JA47 Div.: 16 In the Matter of the Petition of: Marc Glenn Abeyta, FOR THE ADOPTION OF A CHILD. NOTICE OF HEARING To: Todd Lee Church, Parent Pursuant to §19-5-208, C.R.S., you are hereby notified that the above-named Petitioner has filed in this Court a verified Petition seeking to adopt a child. An Affidavit of Abandonment has been filed alleging that you have abandoned the child for a period of one year or more and/or have failed without cause to provide reasonable support for the child for one year or more. You are further notified that an Adoption hearing is set on the 30th day of June 2016, at 2:00 o'clock p.m. in the court location identified above. You are further notified that if you fail to appear for said hearing, the Court may terminate your

parental rights and grant the adoption as sought by the Petitioner(s). Published in CS Gazette on: May 4, 2016.

May 04 - SUPERIOR COURT OF CALIFORNIA COURT OF HUMBOLDT Case No.: FL160068 NOTICE OF FAMILY LAW CASE MANAGEMENT CONFERENCES Michael Howard, Petitioner, and Cynthia Howard, Respondent. TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD: Please take notice that the above-entitled action has been included in the Family Law Case Management Program of the Humboldt County Superior Court. You are required to comply with the guidelines set forth in this court's Guide to Case Management (Local Form CM - 8.1), Local Rules 800 and 807, Family Code Sections 2450 - 2451 and California Rule of Court 5.83. You are further advised that Case Management Conference are scheduled on the following dates: July 25, 2016 at 1:30 pm in Department #6 and January 23, 2017 at 1:30 pm in Department #C of the above entitled Court. You must personally appear at all Case Management Conferences. Each Party shall file and serve to all parties a family law Case Management Conferences Statement (or jointly file a statement) at least fifteen (15) calendar days prior to the family law Case Management Conference. The parties shall use the Humboldt County Superior Court's mandatory Case Management Conference Statement (Local Form CM-8.3), a local form available on the court's website at <http://www.humboldt.courts.ca.gov> and at the Court Clerk's Office. Date: April 21, 2016 Clerk, By: /s/ Cecile Nessiage Published in Gazette April 29, May 6, 13, 20, 27, 2016

May 04 - NOTICE TO THE PUBLIC Fort Carson has prepared an Environmental Assessment and draft Finding of No Significant Impact for construction of an Unmanned Aerial Systems (UAS) training complex at Training Area 17 North on Fort Carson, Colorado. The purpose of the EA and draft FNSI is to document environmentally-related findings and determine whether Fort Carson's proposed action would have a significant impact on the natural and human environment. In order to seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking, this notice is also soliciting comments under Section 106 of the National Historic Preservation Act in accordance with 36 CFR 800.2(d) and 36 CFR 800.3(e). Comments on this action are invited and will be accepted for 30 days from the date this notice is published. A copy of the EA and draft FNSI may be reviewed at: <http://www.carson.army.mil/DPW/nepa.html> Written comments concerning this proposal should be directed to: Fort Carson NEPA Program Manager Directorate of Public Works, Environmental Division (IMCR-PWE) 1626 Evans St., Bldg. 1219, Fort Carson, CO 80913. Or submit by email to: usarmy.carson.imcom-central.list.dpw-ed-nepa@mail.mil. For media queries contact the Fort Carson Public Affairs Office Media Relations Office at (719) 526-7525. Published in CS Gazette May 4, 2016

May 04 - EL PASO COUNTY COURT EL PASO COUNTY, COLORADO 270 South Tejon, PO Box 2980 Colorado Springs, CO 80903 CASE NUMBER: 16C1212 DIVISION: R COURTROOM: S280 In the Matter of the Petition of Adult: Jonathan Paul Bearden For a Change of Name to: Jillian Perrin Bearden PUBLIC NOTICE OF PETITION OF CHANGE OF NAME Public notice is given on April 28, 2016 that a Petition for a Change of Name of an Adult has been filed with the El Paso County Court. The Petition requests that the name of: Jonathan Paul Bearden To be changed to: Jillian Perrin Bearden Lynette D. Cornelius Clerk of Court Chelsea Olstad Deputy Clerk Published in The Gazette: May 3, 4, 5, 2016

May 04 - NOTICE OF PUBLIC SALE Pursuant to CRS 38-21-5. Notice is hereby given that the following units will be auctioned. A-RITE PLACE SELF STORAGE, 3132 MALLARD DR., COS, CO 80910 for default of payment. 10-PATRICIA EDWARDS 167-EDWARD/ NIKIA GUERRA 379-WILLIAM HAMPTON 236-JANET BEATTY 250-MARGARET RINGSRED 258-WILLIAM O'MEARA 282- DAVID HUERTA 307-LARRY GWINN 208-PATRICIA ZELLNER One of our better auctions. Vintage juke boxes, foos-ball table, misc. Sale is May 13 2016 at 11 am sharp. Call for more info details at 719-633-7652 Published in Gazette May 3, 9, 2016

May 04 - FOURTH JUDICIAL DISTRICT DISTRICT COURT EL PASO COUNTY 270 S. Tejon, PO Box 2980 Colorado Springs, CO 80901 CASE NUMBER: 15C4771 Division: R Courtroom: S280 In the Matter of the Petition of Parent/Petitioner: Kylene Larson For Minor Child: Hydn-Lyric Cearen Larson-Focht For a Change of : HydnLyric Cearen Larson-Focht Reese PUBLIC NOTICE OF PETITION OF CHANGE OF NAME Public notice is given on April 15, 2016, that a Peti- tion for a Change of Name of a Mi- nor Child has been filed with the El Paso County Court. The Petition requests that the name of: Hydn-Lyric Cearen Larson-Focht be changed to: HydnLyric Cearen Larson-Focht Reese Lynette D. Cornelius Clerk of Court Chelsea Oldstad Deputy Clerk Published in The CS Gazette May 3, 4, 5, 2016

May 04 - EL PASO COUNTY COURT EL PASO COUNTY, COLORADO 270 South Tejon, PO Box 2980 Colorado Springs, CO 80903 CASE NUMBER: 16C1727 DIVISION: R COURTROOM: S280 In the Matter of the Petition of Adult: Raven Smith For a Change of Name to: Raven Agape PUBLIC NOTICE OF PETITION OF CHANGE OF NAME Public notice is given on April 26, 2016 that a Peti- tion for a Change of Name of an Adult has been filed with the El Paso County Court. The Petition requests that the name of: Raven Smith To be changed to: Raven Agape Lynette D. Cornelius Clerk of Court Chelsea Olstad Deputy Clerk Published in The Gazette: March 4, 5, 6, 2016

May 04 - EL PASO COUNTY COURT EL PASO COUNTY, COLORADO 270 South Tejon, PO Box 2980 Colorado Springs, CO 80903 CASE NUMBER: 16C1726 DIVISION: R COURTROOM: S280 In the Matter of the Petition of Adult: Amy Elizabeth Zielinski For a Change of Name to: Amy Elizabeth Agape PUBLIC NOTICE OF PETITION OF CHANGE OF NAME Public notice is given on April 26, 2016 that a Peti- tion for a Change of Name of an Adult has been filed with the El Paso County Court. The Petition requests that the name of: Amy Elizabeth Zielinski To be changed to: Amy Elizabeth Agape Lynette D. Cornelius Clerk of Court Chelsea Olstad Deputy Clerk Published in The Gazette: March 4, 5, 6, 2016

May 04 - EL PASO COUNTY COURT EL PASO COUNTY, COLORADO 270 South Tejon, PO Box 2980 Colorado Springs, CO 80903 CASE NUMBER: 16C1573 DIVISION: R COURTROOM: S280 In the Matter of the Petition of Adult: Ryan Matthew Pezzulo For a Change of Name to: Jennifer Ryan Pezzulo PUBLIC NOTICE OF PETITION OF CHANGE OF NAME Public notice is given on April 26, 2016 that a Peti- tion for a Change of Name of an Adult has been filed with the El Paso County Court. The Petition re- quests that the name of: Ryan Matthew Pezzulo To be changed to: Jennifer Ryan Pezzulo Lynette D. Cornelius Clerk of Court Chelsea Olstad Deputy Clerk Published in The Gazette: 4, 5, 6, 2016

May 04 - DISTRICT COURT EL PASO COUNTY, COLORADO 270 S. Tejon Colorado Springs, CO 80903 Case Number: 2016pr153 Division: W Courtroom: W150 In the Matter

of the Estate of: Edwin Duane Cox, Deceased NOTICE TO CREDITORS All persons having claims against the above-named estate are required to present them to the Personal Representative or to the District Court of El Paso County, Colorado, on or before September 2, 2016 or the claims may be forever barred. Attorney or Party Without Attorney: Rebecca Lynn Idler 1204 Desert Candle Court. Pueblo, CO 81001 Phone: 719-691-9176 Email: bidler_lpnlcc@yahoo.com Published in CS Gazette: May 3, 10, 17, 2016

May 04 - DISTRICT COURT EL PASO COUNTY, COLORADO 270 S. Tejon Colorado Springs, CO 80903 Case Number: 2016PR134 Division: W Courtroom: W150 In the Matter of the Estate of: Helga R. Andrew, Deceased NOTICE TO CREDITORS All persons having claims against the above-named estate are required to present them to the Personal Representative or to the District Court of El Paso County, Colorado, on or before October 1, 2016 or the claims may be forever barred. Attorney or Party Without Attorney: Thomas R. Andrew 175 Bella Vista Lane, Colorado Springs, CO 80911 Phone: 719-433-2903 Email: rwakrc@yahoo.com Published in CS Gazette: May 4, 11, 18, 2016

May 04 - DISTRICT COURT EL PASO COUNTY, COLORADO 270 S. Tejon Colorado Springs, CO 80903 719-452-5000 Case Number: 2015PR445 Division: W Courtroom: W150 In the Matter of the Estate of: Robert Alcott Harris, Deceased NOTICE TO CREDITORS All persons having claims against the above-named estate are required to present them to the Personal Representative or to the District Court of El Paso County, Colorado, on or before, August 29, 2016 or the claims may be forever barred. Attorney or Party Without Attorney: Tanya McCarty P.O. Box 26671 Colorado Springs, CO 80936-6671 Published in CS Gazette: April 28, May 5, 12, 2016

May 04 - DISTRICT COURT EL PASO COUNTY 270 S. Tejon, Colorado Springs, CO 80903 Case Number: 16JA53 Div.: 1 In the Matter of the Petition of: Adam and Patricia Alexander, FOR THE ADOPTION OF A CHILD. NOTICE OF HEARING To: Robert Brown, Parent Pursuant to §19-5-208, C.R.S., you are hereby notified that the above-named Petitioner has filed in this Court a verified Petition seeking to adopt a child. An Affidavit of Abandonment has been filed alleging that you have abandoned the child for a period of one year or more and/or have failed without cause to provide reasonable support for the child for one year or more. You are further notified that an Adoption hearing is set on the 14th day of June 2016, at 4:00 o'clock p.m. in the court location identified above. You are further notified that if you fail to appear for said hearing, the Court may terminate your parental rights and grant the adoption as sought by the Petitioner(s). Published in CS Gazette on: May 3, 2016

1

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Newspaper Publication of Notice

The Department of Health Care Policy and Financing invites the public to comment on the Home and Community Based (HCBS) Settings Final Rule Statewide Transition Plan (STP) and Systemic Assessment Crosswalk. You may obtain an electronic copy at www.colorado.gov/hcpf/hcbs-waiver-transition. You may obtain a paper or electronic copy by calling Lori Thompson at 303-866-5142 or by writing or visiting the Department at 1570 Grant St, Denver, CO 80203. The public comment period is open for 35 days, from May 5, 2016 to June 9, 2016. Comments should be submitted to the Department through the following routes:

1. Email: STP.PublicComment@hcpf.state.co.us (subject line: HCBS Final Rule)
 2. Rules Line: 303-866-5142
 3. US Mail: Attention: Lori Thompson, 1570 Grant Street, Denver, CO 80203
 4. Fax: Attention: Lori Thompson 303-866-3991
- Contact Information: Lori Thompson, HCBS Specialist
Caitlin Phillips, MSW, Alternative Care Facility Specialist
Email/Telephone: lori.thompson@state.co.us / caitlin.phillips@state.co.us

The Tribune
May 5, 19, June 2, 2016

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Major Program (Medicaid, CHP+, etc)	Action Type (SPA, waiver, other)	Category (Eligibility, benefits, rates, etc)	Programmatic Action Title	Brief Description	Important Dates and Timelines	Clearly Foreseeable Tribal Implications	Actionable or Non-Actionable Item - Why
<i>Which program is impacted by the action - HCPF administers Colorado Medicaid, Child Health Plan Plus (CHP+), the Colorado Indigent Care Program (CICP), and other safety net programs</i>	<i>What kind of action is it? A State Plan Amendment (SPA)? Waiver, waiver amendment, or waiver renewal? Some other type of action?</i>	<i>Does the action have to do with reimbursement rates, covered benefits, client eligibility, or something else?</i>	<i>What is the name of the action?</i>	<i>A brief description of the action (e.g., why it's being proposed, what it does, etc.)</i>	<i>When is action expected to be implemented/effective? Estimated date of SPA/waiver submission to CMS?</i>	<i>What clearly foreseeable implications might the action have on the Tribes, Indian Health Program, or clients?</i>	<i>Is this an actionable or non-actionable item? Some changes that HCPF makes are mandated by the Colorado General Assembly and there may not be much opportunity to make changes. In other areas, there is more opportunity for changes to be made.</i>
All relevant HCBS programs under Sections 1915(c), 1915(k) and 1915(i) of the Social Security Act	Statewide Transition Plan(STP) for the Centers for Medicare and Medicaid Services (CMS) final Federal rule; 42 CFR Sections 441.301(c)(4) and (6) and 441.710(a)(1) and (3)	Settings criteria for all HCBS waivers	HCBS Final Rule- Statewide Transition Plan	<p>On March 17th, 2014 the Centers for Medicare and Medicaid Services (CMS) enacted a final Federal rule at 42 CFR Sections 441.301(c)(4) and (6) and 441.710(a)(1) and (3) to ensure individuals receiving Long Term Services and Supports through Home and Community-Based Services (HCBS) programs have full access to the greater community and reside in home-like residencies.</p> <p>In order to satisfy the Federal rule requirement, states must submit a Statewide Transition Plan (STP) to meet new Federal criteria for all relevant HCBS programs under Sections 1915(c), 1915(k) and 1915(i) of the Social Security Act. This plan will outline how the final rule will be implemented over the next five years.</p> <p>The Colorado State Department of Health Care Policy and Financing (the Department) submitted the initial STP on November 19, 2014. CMS sent the Department, guidance on the STP on July 30, 2015. The Department made changes to the STP and resubmitted the STP to CMS on November 16, 2015. Further guidance from CMS was received January 13, 2016 and the Department responded within the STP and informally submitted to CMS March 25, 2016.</p> <p>The proposed STP outlines the Department's process and timelines for working with clients, stakeholders, providers, and other interested parties to implement requirements of the Final Rule for all Home and Community-Based Services. Also posted, is a Systemic Assessment Crosswalk outlining suggested changes to</p>	<p>STP Effective Date: 3/17/2014 STP Implementation completion Date: 3/17/2019 Proposed CMS submission date: 06/30/2015</p>	HCPF does not foresee any negative Tribal Implications as a result of this STP	<p>Any comments or questions are welcome.</p> <p><i>SUBMITTING COMMENTS</i></p> <ul style="list-style-type: none">The Department will have a draft of the STP available for public comment from May 5, 2016 to June 9, 2016 The plan and crosswalk will be posted on the Department's website and found here: www.colorado.gov/hcpf/hcbs-waiver-transitionIndividuals may request the draft STP via email at: STP.PublicComment@hcpf.state.co.usIndividuals may request the draft STP via phone or fax: Fax: 303-866-3991 Attention: HCBS Final Rule Project team Phone: Lori Thompson. 303-866-5142Individuals may request the draft STP by U.S. Mail: ATTN: HCBS Final Rule Project team 1570 Grant Street Denver, CO 80203Comments regarding the draft transition plan can be emailed directly to:STP.PublicComment@hcpf.state.co.usComments can also be addressed to the following:

				Colorado's statutes, regulations and waivers to come into compliance with the Final Rule settings requirements.			ATTN: HCBS Transition 1570 Grant Street Denver, CO 80203 • All comments will be maintained and responses provided in a regularly updated listening log kept on the Department's website: www.colorado.gov/hcpf/hcbs-waiver-transition



COLORADO
Department of Health Care
Policy & Financing

Department of Health Care Policy and Financing

PUBLIC NOTICE

May 10, 2016

HCBS Final Rule Transition Plan

On March 17th, 2014, the Centers for Medicare and Medicaid Services (CMS) enacted a final federal rule at 42 CFR Sections 441.301(c)(4) and (6) and 441.710(a)(1) and (3) to ensure individuals receiving Long Term Services and Supports through Home and Community-Based Services (HCBS) programs have full access to the greater community and reside in home-like residences.

In order to satisfy the federal rule requirement, states must submit a Statewide Transition Plan (STP) to meet the federal settings criteria for all relevant HCBS programs under Sections 1915(c), 1915(k) and 1915(i) of the Social Security Act. This plan will outline how the final rule will be implemented over the five-year transition period allowed by the rule.

BACKGROUND OF PLAN

After a public comment period, the Colorado Department of Health Care Policy and Financing (the Department) submitted the initial STP to CMS on November 19, 2014. Following guidance from CMS received July 30, 2015 and a second public comment period, the Department resubmitted the STP to CMS on November 16, 2015. Further guidance from CMS was received on January 12, 2016 and in various emails after that date.

The current proposed STP outlines the Department's process and timelines for working with clients, stakeholders, providers, and other interested parties to implement requirements of the federal final rule for all Home and Community-Based Services. Also posted is a Systemic Assessment Crosswalk outlining suggested changes to Colorado's statutes, regulations and waivers to ensure compliance with the Final Rule's settings requirements.

SUBMITTING COMMENT

- The Department will have a draft of the STP and Systemic Assessment Crosswalk available for public comment for 35 days, from **May 5, 2016 to June 9, 2016**. The plan and crosswalk will be posted on the Department's website and found here www.colorado.gov/hcpf/hcbs-waiver-transition
- Individuals may request the draft STP and/or Systemic Assessment Crosswalk in electronic or hard copy format via email at STP.PublicComment@hcpf.state.co.us

- Individuals may request the draft STP and/or Systemic Assessment Crosswalk in electronic or hard copy format via phone or fax
Fax: Attention: HCBS Final Rule Project team. 303-866-3991
Phone: Lori Thompson. 303-866-5142
- Individuals may request the draft STP and/or Systemic Assessment Crosswalk in electronic or hard copy format by U.S. Mail
ATTN: HCBS Final Rule Project team
1570 Grant Street
Denver, CO 80203
- Comments regarding the draft transition plan can be emailed directly to STP.PublicComment@hcpf.state.co.us
- Comments can also be addressed to the following:
ATTN: HCBS Final Rule Project team
1570 Grant Street
Denver, CO 80203
- All comments will be maintained and responses provided in a regularly updated listening log kept on the Department's website found at www.colorado.gov/cs/Satellite/HCPF/HCPF/1223894303509.

Appendix B

Public comments received in June 2016



June 9, 2016

Lori Thompson
1570 Grant Street
Denver, CO
Attn: HCBS Final Rule Project Team

RE: Alliance Comments on CO-HCPF's Updated Statewide Transition Plan (STP) and Systemic Assessment Crosswalk on Settings (crosswalk)

Alliance appreciates the opportunity to submit the following comments related to Colorado's transition process to come into compliance with the CMS final rule addressing HCBS settings requirements (RIN 0938-AO53; 0938-AP61). We recognize the significant undertaking this process represents, for both CO-HCPF and providers of Home- and Community-Based Services (HCBS). We look forward to opportunities to collaborate in this process to determine solutions to some of the concerns articulated in these comments, and to help provide clarity for HCBS providers moving forward.

General Comments Related to Colorado's Transition Process

Timeline for Implementation

We recognize that the 5-year implementation deadline established by CMS in the final rule will be difficult for any state to meet, yet every state must work to meet it in the absence of extension from CMS. While we recognize this inherent tension, we have significant concerns about the timeline articulated in the updated STP. Specifically, we are troubled that the deadline to finalize new/amended statutes related to HCBS is just two days before the final implementation date required by CMS (see specific comments on the STP below). This will not give providers time to train their staff as to new requirements or include any new statutory requirements in their policies and procedures before March 17, 2019.

Missed Opportunities to Update Rules

While the STP and crosswalk represent updates to Colorado rules related to HCBS settings, they do not address the fact that a large portion of those rules are outdated as compared to current system operations. For instance, IDD rules still refer to a process by which Community Centered Boards certify Program Approved Service Agencies in their catchment areas, a process that has not existed for years. (Please see Attachment A at the end of this document for specific references to rules that need to be addressed.) We strongly encourage the state to take this opportunity to examine and clean up any rules governing HCBS. With respect to IDD services, we firmly believe that some existing rules do not contribute to improved outcomes for people with IDD but cost providers significant time and money. These rules should be evaluated for their usefulness and, perhaps, eliminated. In so doing, we believe

that significant cost savings could be achieved to allow more funding to go directly to services rather than provider compliance activities.

Additionally, IDD providers submit information and data to State departments on several issues from which they hear no feedback. One example of this is reports of the use of restraints used by providers that CCBs send to CDPHE. However, neither CCBs nor providers ever hear any feedback about this data. This information could be used to establish clear benchmarks for providers with respect to complying with the settings rule's safeguards for the use of restraints. Therefore, while in some cases regulations are out of date or not useful, other regulations collect valuable data that HCPF and other departments should use to help provide clarity for providers about what is expected under the settings rule. We look forward to conversations between Alliance, providers, and HCPF about how to make the best use of this significant opportunity to make Colorado HCBS rules relevant and impactful to the lives of people with IDD.

Objective Measures Needed

In many areas of the crosswalk, terms are used that do not yet have concrete meaning for providers. For example, when the document mentions that HCPF plans to propose redlines to ensure that a setting or service is "sufficiently integrated," that language gives no guidance to providers as to what is expected of them. On webinars and in communications from HCPF to date, providers feel that they have not received answers to some of the more complex questions that arise when tackling questions like, "is the way I'm delivering this service *integrated enough*?" We recognize that CMS has not provided concrete guidance to states on standards for integration, and that it is up to HCPF to define those for HCBS providers. Alliance looks forward to working with HCPF to establish clear guidelines for providers so that they know what is expected of them under the settings rule. We believe that this is an area where collaboration between HCPF and providers can be especially fruitful.

Provider Rates and Resources

Neither the STP nor the crosswalk directly address how provider reimbursement rates affect providers' ability to deliver services in the most individualized, integrated manner. The goal of the settings rule, as we read it, is to advance supports for people receiving HCBS to new standards of integration, individualization, and person-centeredness. While providers would love to offer new and exciting individualized services – such as individual Supported Community Connections – existing provider reimbursement rates simply don't allow it. We recognize that HCPF is not solely responsible provider rate-setting, but to not address this issue within the context of these documents leaves out a significant piece of the implementation puzzle.

The assumptions in our current rate structure are not transparent to providers. Furthermore, in some cases, our SIS and related support level determinations are not applied with equity across the board. For example, when individuals are transitioned out of a state-operated Regional Center waiver homes (which receive HCBS funding), their SIS and support levels are decreased significantly. In the vast majority of cases, if not all, this redetermination is not consistent with a change in the person's support needs. This is an equity issue for men and women with IDD: why should their resources be cut simply by

virtue of moving into a community placement? This type of situation, we believe, directly contradicts the intent of the final rule. We urge HCPF to analyze the assumptions in our rate formulas and make those assumptions transparent to providers. HCPF should consider the assumptions' relation to the way services are provided today, as well as the way HCPF wants services to be provided under the final rule, and ensure equity in the way these structures are applied. HCPF should collaborate with providers to develop realistic expectations for HCBS service standards given current resources and Colorado's state budget constraints.

Further, the documents do not address biases within our rate structures and support-level determinations that create perverse incentives for providers. For instance, when a rights suspension is put into place for an individual, their support level is automatically bumped up, increasing the resources a provider has available to serve that person. What incentive, then, does a provider have to remove rights restrictions if it means having to balance decreasing services for the person or taking a financial hit? We encourage HCPF to take this opportunity to conduct a comprehensive review – with the help of providers – of our rate structures to ensure that they are fair and create incentives for providers to not only comply with, but go above and beyond, the requirements of the settings rule.

Articulate Clear Expectations in Rule

Neither the STP nor the crosswalk articulate specific regulatory language for any of the issues presented. We recognize that this will be an ongoing process. As HCPF works in collaboration with HCBS providers to establish concrete benchmarks and expectations, we urge official promulgation of these expectations in rule. Too often, providers rely on the opinion of a single CDPHE surveyor, outdated guidance, or unofficial statements of policy to design programs and make changes. This unpredictability creates frustration for providers. If clear-cut expectations are wanted (and we argue that they should be established) they must be backed up by official HCPF policy in order to be actionable.

Maintain a Person-Centered Focus

We commend HCPF for its work to bring person-centered trainings to Colorado providers and to begin implementing the tenets of person-centered thinking into its processes. In both the final settings rule and, therefore, the STP and crosswalk, references are made to eliminating non-integrated programs and ensuring "sufficient" integration, choice, and autonomy. While sometimes these types of policies are made with the best intentions of increasing opportunities for the vast majority of people with IDD, they end up creating a system that only recognizes individual choice if it fits within the system's defined outcomes. For example, if a person is afforded the option to participate in community activities, but does not want to, providers must have room to respect that choice without fear of being deemed non-compliant. As HCPF works to develop specific language and definitions, it must keep this philosophy at the forefront of consideration.

Waiver Redesign Considerations

While the crosswalk references existing waiver provisions and the requirement for Colorado to create a new, consolidated adult waiver, it does not speak to the extent to which HCPF plans to incorporate

existing waiver language cited therein into the new consolidated waiver or propose new language. For this reason, it is difficult for us to provide substantive commentary regarding waiver language.

Specific Comments: Systemic Assessment Crosswalk on Settings

We begin by addressing areas that relate to a number of items in the crosswalk:

Proposed Rule AAA

This proposed language does not establish clear-cut standards for providers, however we are not opposed to the creation of a general regulatory provision like this so long as those standards are established and clarified elsewhere in rule. For example, how do we measure “to the same degree as people not receiving HCBS?”

We suggest the following language change in (i) to clarify that integrated employment is not a requirement for providers of other, non-employment supports:

“(i) The setting is integrated in, and supports full access of, individuals receiving Medicaid HCBS to the greater community, including opportunities to engage in community life, control personal resources, receive services in the community, and, with respect to employment supports, seek employment and work in competitive integrated settings, to the same degree of access as individuals not receiving Medicaid HCBS.”

The language in (iv) regarding autonomy and independence in life choices relates to an individual’s service plan development process, as well as others. Currently, Colorado’s required service plan fields do not adequately allow for recognition of a person’s chosen life goals and, importantly, do not include any mechanism for a provider to report progress toward these goals or for the State to track progress toward these goals. This issue must be addressed if Colorado is to achieve its goal – and comply with CMS’s requirement – of providing person-centered services and person-centered service plan development.

The language following New Rule AAA seems to contradict the intent of the settings rule: “New Rule AAA will provide that the above standards apply to all settings in which HCBS services are provided, *except where HCBS services are permitted to be delivered in a setting that is institutional or does not meet the HCBS settings standards*, such as respite.” Our understanding of the settings rule is that it applies to all HCBS services. However, this appears to be making a precedent-setting exception for some services. HCPF should clarify which services meet this exception. Further, respite services cannot be permitted in a segregated setting under the existing HCBS-DD, HCBS-SLS, and HCBS-CES waivers. To allow these respite services to be exempted from the requirements would be back-tracking for a segment of the population accepting Medicaid waiver services.

Limiting the Liability of CCBs & Providers

Section 13-21-117.5 CRS provides CCBs and providers some – but not complete – protection from liability in civil actions occurring as a result of community integration. The effect of this provision is to

encourage CCBs and providers to increase community integration for those who, because of an IDD, are at risk of harm to themselves or others. This provision should not be modified. The goal of the final rule is to increase opportunities for community integration for people accepting HCBS services. If providers are to be compliant with this rule, they must be willing to take more risks - and allow the individuals they support to take more risks - in an effort to help them achieve autonomy and integration. Removing or modifying this provision now would only deter this type of behavior by providers. Further, while this provision provides some protection from providers in private lawsuits, it does not provide any relief in terms of investigations or corrective actions asserted by regulatory agencies. HCPF, CDPHE, DHS, and other relevant state agencies should work together with providers and local law enforcement to determine how they will respond when allowing people to take risks has negative consequences. Their responses should include a person-centered approach that recognizes the dignity of the person involved and the actions taken by the provider to ensure safety.

Provider Control of Personal Resources and Funds

In our estimation, a provider should not control an individual's personal resources or funds unless they are designated as the Representative Payee by the Social Security Administration (SSA), or as identified in an individual's person-centered service plan. With respect to section 25.5-10-227 C.R.S., HCPF should clarify its expectations for this provision after considering the expectations of SSA for representative payees. As written, the provision appears to give discretion to providers to determine what "reasonable amounts" are to be dispersed to the person accepting support. Here, again, there is no definition for what reasonable amounts means and who within the provider agency has the authority to interpret its meaning. For that reason, we do not think it adequately protects the person's ability to control personal resources. HCPF should work with CDPHE and providers to determine a workable solution that clearly outlines provider expectations and protects the person's autonomy over resources. Such a solution will carefully consider the expectations of SSA, HCPF, and CDPHE, and providers' responsibilities to each entity.

Eliminating Non-Integrated Settings and Requiring Integration

In several places in the crosswalk, HCPF refers to eliminating service options that allow for supports to be provided in non-integrated settings. Without more detail about this proposal, it is difficult to provide substantive comments. We have concerns about eliminating non-integrated service options altogether, especially with respect to certain service categories, like Specialized Habilitation. We recognize the need for regulations to establish an assumption that services should be integrated. After all, the intent of the final rule is to move away from traditional, segregated programs. However, eliminating the service option altogether also eliminates a choice that an individual might choose to make for legitimate reasons. For example, people with significant health concerns (sometimes referred to as "medically fragile") may have a difficult time attending activities in the community. A truly person-centered approach does not offer choices that only the IDD system sees fit for the person. Please refer to the discussion above about establishing clear guidelines in rule. Alliance looks forward to discussing this issue further and working with HCPF to come up with a reasonable solution.

Clarifying Rules on Individual Rights, Restraint

In a number of places, HCPF references plans to clarify rule with respect to individual rights. Without additional clarity on the Department's proposal, it is difficult to provide substantive comment. If HCPF plans to propose language that will further limit the use of restraint beyond current law, we have concerns about what this would look like. We strongly agree that restraints should never be used for the convenience of the agency, and should only be used by trained employees in emergencies involving a threat of harm to the individual or others. We are concerned that additional restrictions could have unintended consequences.

Day Habilitation

This document proposes changes to rule but not to the waiver around eliminating non-integrated settings. We are left to presume that this would be the approach under the new consolidated waiver.

The waiver currently includes language around the setting being selected by the individual. We suggest that changes to rule and waiver language be consistent.

Specialized Habilitation

See discussion on eliminating non-integrated settings above.

Supported Community Connections

While no edits are proposed, we encourage the department to consider existing provider rates for this service and how it is delivered as a result. For most individuals, SCC must be delivered in a group format because the rate doesn't support individualized services. We believe that this contradicts the intent of the final rule for a service whose sole purpose is to increase community integration. Please refer to the discussion about rates above.

Prevocational Services

While the document proposes no changes, it appears not to address the fact that prevocational services can be delivered in segregated, facility-based settings. HCPF should provide a better service definition to clarify the expectation of this service as well as evaluate the rate structures supporting it.

Group Residential Services & Supports

With regard to CDPHE's rule governing control of personal resources, please refer back to the general discussion about control of personal resources above. CDPHE and HCPF must collaborate to determine agency roles and expectations for providers, and create consistent rules that are easy for providers to operationalize.

While we agree that personal choice is key when identifying a residential setting, the rules should acknowledge that location and availability may effectively limit or eliminate choice among GRSS placements.

We request clarification on the “key service outcomes” cited under column E: are these currently defined and, if not, what is HCPF’s plan for defining them?

The discussion about choice in column E is unclear. We are unsure if this is a choice of what GRSS setting to choose or choice regarding the services provided within GRSS. Choosing a GRSS provider is work that case managers/support coordinators are involved in, and a provider’s role in helping identify their competitors as alternatives should be limited. Rule language should make clear that the provider’s responsibility is to facilitate choice within the GRSS service it provides.

Individual Residential Services & Supports

Existing rule directs providers to consider the distance from other HCBS settings to avoid conspicuous grouping when helping a person select a residential placement. However, it is highly unlikely that a provider would have knowledge of other IRSS settings nearby. There is no current listing of all IRSS sites. Further, the resources available to HCBS participants limits their choice of neighborhoods in our ever more costly housing market. For these reasons, it will be very difficult for providers to meaningfully consider the distance between settings for IRSS.

How does CMS/HCPF define “unit” – does it include a private bedroom or an entire living unit? Rule language should reiterate that the person’s resources can be taken into account when selecting a residential setting, including whether they can afford to live in a private unit.

Please see the comment regarding provider role in choice under GRSS above.

Private Homes

We agree with HCPF’s presumption with respect to these settings.

Supported Employment

HCPF discusses regulatory language to ensure that SE services are “sufficiently integrated”, yet this term is not defined or standardized. Please refer to the general comment about establishing clear guidelines articulated in rule. HCPF should specify what types of SE settings it is proposing to eliminate as “non-integrated.” This reference appears to apply only to group SE services, not individual SE. HCPF should be clear on that point. While competitive, integrated employment should be the goal for each individual, we caution that eliminating certain settings will also eliminate work opportunities for individuals accepting supports.

Please refer to the general comments on rates and the assumptions for employment supports that Colorado wants to establish.

Provider Owned or Controlled Settings

Proposed Rule BBB

The final rule's requirements for leases and residency agreements are a particularly sticky subject. Alliance has concerns, which we have voiced in previous comments, about how residency agreements can be enforced and what rights they convey to the individual accepting HCBS services.

In (F)(5), Rule BBB refers to data. HCPF should be specific about what types of data providers are required to collect and review to measure "the ongoing effectiveness of the modification."

In (F)(6), Rule BBB is not clear who has the authority to establish time limits for periodic reviews related to the modification.

Group Residential Services & Supports

Until such time as the state is able to change 13-21-117.5(7) C.R.S., we cannot give people property rights in a GRSS facility. However, we also need to consider whether there is any additional protection provided by giving people living in GRSS facilities leases or property rights. Currently, if an agency wants to terminate services in such a setting, that decision is subject to a lengthy appeal process that can easily drag out for months (8.605.2). In one situation we know of, a group home resident's services were terminated and it took over 3 months from the time of notice until the person moved out. An eviction can be accomplished within a month. Under current rule, a provider must show that attempts have been made to resolve any issues with the resident and the provider is prohibited from removing the resident if they have no other place of abode. A lease offers far less protection than do the rules currently in place. Providing a lease to someone living in a GRSS setting is truly form over substance.

HCPF and CDPHE should consult with provider representatives when developing redlines regarding resident transfers and the issues articulated in columns B-D.

Individual Residential Services & Supports

In the current rules, a person's placement is protected and services can't be terminated if they have no other place of abode. This doesn't necessarily mean they can stay in the same setting but their provider agency must continue to provide them like services. So, again, the final rule is trying to protect the person's ability to stay in their current setting while the IDD rules protect their services, which, we believe, is the more important priority. What the final rule fails to recognize is the impracticality of forcing a provider to continue to provide services. If the person lived independently, the rule makes some sense, but within the context of IRSS, it does not. With these requirements, we are talking about essentially forcing someone to continue to provide services to a person, not just to let them continue to live in a particular place. We are also essentially expecting Host Home Providers to become landlords in addition to providers. If the provider says they are incapable of continuing to provide services, then will the person accepting services use their eviction rights to force the provider to continue providing services? We believe that the family members or guardians of these individuals, if any, wouldn't want them to continue to live in a place where they are no longer welcome. During that timeframe, the

quality of the service provided is likely to be far below our expectations of what it should be. HCPF should carefully consider the implications of these rights compared to existing protections in rule to determine a path forward.

Private Homes

We do not think it's appropriate to apply the same standards to Family Care Giver controlled homes. To do so would create real barriers that would discourage people from choosing the FCG option, even though it might be what they want. If we want to encourage family-provided services, our regulatory structures need to allow it. We think that they likely should be considered compliant for site-specific assessments.

Specific Comments: Updated Statewide Transition Plan

Line 15 – The Department should set benchmarks for the review and response to Provider Transition Plans, and should report progress toward those benchmarks monthly on the Department's HCBS Setting Final Rule website. A defined provider universe of 1,222 (STP, page 8) would equate to roughly 135 PTP reviews per month, based on the Department's timeframe of 4/13/2016 – 1/1/2017. The Department should also report on the number of Provider Transition Plans that required updates, and which the Department has determined to be in compliance.

Line 16 – The Department should set benchmarks for the review and response to updated Provider Transition Plans and should report progress toward those benchmarks monthly on the Department's HCBS Setting Final Rule website. The Department should also report on the number of updated Provider Transition Plans that require additional updates, and which the Department has determined to be in compliance.

Line 17 – The Department should not decide that an agency needs to transition individuals in advance of the target to have revised statutes and rules in place. The decision to transition individuals cannot be made when the state has not codified expectations.

Line 18 – The Department should clarify that it will communicate with providers who may have the potential to be referred for heightened scrutiny upon completions of the providers PTP and updated PTP(s), prior to providing public notice of those agencies.

Line 19 – The Department should reconsider the projected end date for notifying CMS for providers the Department is putting forward for heightened scrutiny. An end date of 3/5/2018 for this action item, and projected end date of 11/1/2018 for transitioning individuals provides less than 12 months to transition.

Line 20 – The Department should clarify that there will be a timeline to develop a process for transitions, as well as a timeline for implementing those transitions. The development of the process should precede the implementation of the transitions, and the timelines should reflect this. Individuals and program approved service agencies should be allowed at least 9-12 months to implement successful transitions, should they be required. If the Department plans to have transitions completely by

11/1/2018, the process should be defined by November 2017, which means the Department should have a transition process developed and finalized by October 2017.

Line 24 – Please identify the quality assurance documents identified and the list modifications that the Department has developed. The Department should identify benchmarks for the review of these documents and processes and provide monthly progress reports toward these benchmarks on the Department’s HCBS Settings Final Rule website.

Line 26 –Compliance with the settings rule is not an option for the state; the Department should be leading a collaborative review of statutes and rule with other state departments through agency MOUs, not simply “requesting” that other agencies complete reviews.

Line 27 – The timelines identified by the Department to finalize new regulations and proposed amendments does not support other action items identified by the Department to complete (Line 30 – publish, implement revisions to manuals, etc. 7/31/2017). The Department has well documented timetables for how long it takes a rule revision to clear through the MSB, and should plan to have necessary rule changes finalized through the MSB 1 year in advance of the compliance date of 3/17/2019. How does the Department plan to provide training and technical assistance in the absence of codified rules?

Line 28 – See comments regarding Line 27.

Line 29 - The Department needs to address the restrictions on property rights identified in CRS 13-21-117.5 prior to developing a lease template for agencies to use.

Line 30 – The Department should set benchmarks for the development, review and release of manuals, provider agreements and other materials, and should report progress toward those benchmarks monthly on the Departments HCBS Setting Final Rule website. Please identify the specific documents to be revised or created, and implemented. Each document or material should have its own start and end date. How does the Department intend to revise and implement new materials prior to codifying new/revised statutes and rules?

Lines 31/32 – The Department should identify each of these items separately with start and projected end dates, set benchmarks for the development, review and implementation of these processes and materials, and should report progress toward those benchmarks monthly on the Departments HCBS Setting Final Rule website. Projected end do not match with the end dates for codifying statutes and rule. These changes should be made and providers trained/educated on new processes and expectations in advance of the compliance date.

Line 33 – The Department should set benchmarks for providing training on person centered practices and should report progress toward those benchmarks monthly on the Departments HCBS Setting Final Rule website. Would expect and end date sooner than 2 days prior to compliance deadline.

Line 35 – The Department should set benchmarks for providing training and technical assistance and should report progress toward those benchmarks monthly on the Departments HCBS Setting Final Rule website.

Line 36 – The Department should have statutes and rules codified prior to providing training to licensure/certification staff.

Line 37 – Please identify the outcomes measures. Are these individual or provider specific, or are these aggregated for the state? The Department should make use existing data to establish baseline and benchmark goals for specific providers, as well as in the aggregate.

Line 38 - See comment for Line 36.

Line 39 – See comment for Line 36.

Alliance is a statewide association of Community-Centered Boards (CCBs) and Program-Approved Service Agencies (PASAs) who provide services and supports to individuals with intellectual and developmental disabilities.

www.AllianceColorado.org

1410 Grant Street, Suite 305-B, Denver, CO, 80203



Attachment 1: References to specific sections of Rule that need to be addressed.

"Referral and Placement Committee (RPC)" means an interdisciplinary or interagency committee authorized by a community centered board or the department to make referral and placement recommendations for persons receiving services.

Removal of 8.602.1 SELECTION AND APPROVAL OF SERVICE AGENCIES BY COMMUNITY CENTERED BOARDS

Substantial revision to: 8.602.4 CHOICE OF SERVICE AGENCIES FOR SUPPORT SERVICES FOR AN INDIVIDUAL and 8.603.4 CONTRACTS/WRITTEN AGREEMENTS

8.607.5 A and B (RPC)

8.608.3 REQUIREMENTS WHEN USING RESTRAINT – Review and revision to ensure compliance with HCBS Settings Final rule

8.609.2 SUPPORT SERVICES GENERAL PROVISIONS D. (Needs review and revision)

Individuals, parents of a minor or guardians shall have the opportunity to choose and direct services necessary to meet their identified and prioritized needs and to choose among qualified service providers. Provision of services by family members, as defined in section 25.5-10-202(16), C.R.S., living in the same household (under the same roof and same physical address) with the program participant shall be on an exception basis only and in accordance with the requirements of the applicable Medicaid waiver.

8.609.7 (A) 3 (c) Distance from other homes (e.g., apartments, houses) of persons receiving services so that persons with developmental disabilities are not grouped in a conspicuous manner.

The Department should defer to municipal and county zoning code with respect to land use issues.

8.609.8 B. A community residential home for individuals with developmental disabilities shall not be located within 750 feet of another such group home or within 750 feet of facility-based day programs or other program services operated for people with developmental disabilities unless previously approved by the Department

The Department should defer to municipal and county zoning code with respect to land use issues.

June 7, 2016

The Arc of Larimer County
1721 W. Harmony Rd.
Unit 101
Fort Collins, CO 80526



To Caitlin Phillips and Lori Thompson -

The Arc of Larimer County would like to thank The Department of Health Care Policy and Financing for the hard work that went into Colorado's Statewide Transition Plan. We understand that most recent version of the STP took quite a large amount of collaboration, and we're appreciative of the thought that has gone into this document.

We would also like to thank HCPF for the opportunity to provide public comment on the STP. We are very optimistic that with further stakeholder input, Colorado's Home and Community Based Services will not only be brought into compliance with the CMS Final Rule, but also ensure that individuals receiving HCBS programs are full participants in the community.

To try to make our comments as helpful as possible, we've broken our comments out by Action Item Number. If you have any questions, please don't hesitate to contact us.

Thank you again for your continuous engagement,

Marilee Boylan
Executive Director
The Arc of Larimer County



970-204-6991

1721 W. Harmony Rd.
Unit 101
Fort Collins, CO 80526

Action Item:

#3

- It is still very difficult to find the STP from the main website: www.colorado.gov/hcpf. Rather, you need to navigate to "About Us," then "Public Notices," then to the public register, then to the actual official notice, and then finally to the dedicated website. There is a link under "Providers," under "Provider Information" but we cannot find anything under "Stakeholders." Additionally, the link under, "Progress/Status" of Action Item #3 does not work.

#7

- Collecting and reporting on employment data would create a baseline to measure progress against current numbers and future success as more individuals are transferred into compliant employment settings.

#11

- What will happen to the 145 providers who did not complete the self-assessment survey?
- Can the self-assessment survey be reviewed by the general public and/or advocates?
- We are confused by the 2nd paragraph under "Findings/Results/Outcomes." The language used suggests that every single resident provider is in compliance with certain final settings rules. We are concerned that general compliance across the multiple providers is creating a situation where non-compliance by a minority of providers is not being addressed.

#12

- How often will families be reminded/requested to take the survey? Multiple reminders over the course of several months and reaching out to newly enrolled families will be necessary as families are likely to forget or not know that this survey is available.

#14

- We would like to express several concerns with the provider scorecards:
 - It seems that the provider scorecards cannot be reviewed/viewed by the general public. It's hard for us to understand exactly what the scorecards are measuring without viewing the cards.
 - We are very concerned how the provider scorecards are being scored. There's no clarity given for exactly what, "indicators of isolation" are and how these indicators are scored to reach the provider percentage rate.
 - We are concerned about the "Status of All areas of Potential Noncompliance by Number of Providers." The "Key" at the bottom of the score card states that green means, "Does not need attention (Less than 10.0%)." Even one provider being out of compliance even a little bit needs attention, but this key seems to suggest that there is a threshold for how many providers need to be out of compliance before action is taken.
 - We are concerned that if providers only had to complete a scorecard once, and not a scorecard for every eligible service, then potential violations and/or areas of non-compliance could have been missed.
 - We are concerned that the 4th paragraph under, "Findings/Results/Outcomes" reads, "The Departments reserves the right – but not the obligation – to add site visits if it believes a particular provider may be out of compliance." Shouldn't The Department carry the obligation to add site visits if there is a belief that a provider is out of compliance? Otherwise, how will the provider be brought into compliance?

- There is concern that the scorecard data may not accurately reflect some instance where some individuals on a waiver were offered a service, but other individuals on the same waiver with the same provider were not offered the same service. Just because the provider offers one person a service does not guarantee that ALL individuals with that provider on the same waiver are offered the same service. It's possible that the scorecard gives full credit for this service being offered even if it was only selectively offered.

#16

- What if no evidence is given by the provider of improvements? What will happen then?

#17

- What will be considered a "reasonable timeframe"?

#21

- We strongly suggest that Colorado continues our movement towards becoming an "Employment First" state. This includes a policy shift that places emphasis on Competitive Integrated Employment (as defined in C.R.S. 8-84-301 by SB16-077) over other options while still allowing for personal choice.
 - One such change could include altering the definition of "Inclusion" as found in C.R.S. 25.5-10-202 (21)(c) to match the definition of "Competitive Integrated Employment."
 - We are concerned that the implementation of "Prevocational Services" (as defined in 10 CCR 2505-10 8.500.5.A(2)(e)) may not always match the intent of "Prevocational Services" and may not always be in compliance with HCBS settings rules.
 - We are concerned that "Supported Employment" (as found in 10 CCR 2505-10 8.500.5A(7) and 10 CCR 2505-10 8.500.94A(14)) may never be able to be "sufficiently integrated" when delivered in "enclaves" or "mobile crews."
 -

#24

- We want to clarify if "deleting references to 'non-integrated work services programs [that] provide paid work in sheltered/segregated settings,'" means that the mentions of the programs will be simply deleted or if the actual programs will be deleted.
- Where can these "quality assurance" documents be found?

#29

- Families, guardians, and individuals need a clear grievance process in place for if/when leases are broken and/or disputes arise.

#33

- Is this training required for new employees? Is there a monitoring mechanism to ensure that trainings have been performed?

#36

- We want to clarify what staff will need licensing and certification.

General Comments:

- Was Item #43 ("Monitor person-centered planning and integrated employment requirements through a routine review of data to measure effectiveness of supports") from the last STP deleted or combined with another area?
- It was difficult to track the changes between the last and the current STP as many action items seem to be moved, combined with other action items, or sometimes even deleted. This makes it difficult to track progress and see the status of old action items.

Pogoriler, Leah

From: Julie Reiskin <jreiskin@ccdconline.org>
Sent: Thursday, June 09, 2016 6:01 AM
To: STP, PublicComment; Lori Thompson
Cc: Gerrie Frohne; Joshua Winkler; Linda Skaflen; Darla Stuart; Dawn Howard
Subject: Comments on transition plan
Attachments: CO Systemic Assessment Crosswalk on Settings-May 2016CCDC.pdf

Follow Up Flag: Follow up
Flag Status: Completed

To Whom It May Concern

Attached is a document with comments embedded where requested. There are a few themes.

- 1) Protection against restraint. The only way to protect against restraint is to have adequate staffing and training of staff. Under the current SIS model this will be impossible. People who have behavioral needs are rated too low if they do not have physical problems, this forces clients to receive services in non-integrated group settings. Many clients do not do well in group settings and as a result act out from over stimulation. Also the low wages lead to staff turnover and staff with fewer skills.
- 2) Protection of client funds and allowing providers to hold client money if client cannot manage money and there is no rep payee. Unfortunately we may need to allow providers to hold money because there are not enough payees. The CCB should try to find a free payee and providers should not be allowed to charge clients the \$37 a month for managing the funds. The providers should be forced to use the SSA criteria for money management which says after the bills are paid the client decides how money is spent.
- 3) Children do not sign leases, of course parents or guardians should be part of lease signing for children.
- 4) If someone needs to be removed due to abuse or neglect it should be staff not clients. If a client is abusing another client then it is fine to remove the abusive client.
- 5) In order to get away from segregated day activities the current model of day programs should change and clients should be allowed to consumer direct day program funds. Some clients might choose to do things in the community such as go to a rec center, a gym, or take a class at a community college. NMT should be offered for any activity --not only day programs. The SIS scores and rates that require clients to accept group day services instead of individual services must end. Any set up that would not allow the direct care worker to earn a living wage should be considered to lead to group services. If the rate does not allow a worker to make at least \$15 an hour then this is absolutely going to cause a non-integrated setting.
- 6) There may need to be a separation between housing and services for DD. If an agency does not want to serve a client but the client lives in a group home the agency may need to just find other staff for that client instead of moving a client if a client has not violated his or her lease. This will be very difficult to manage which is good and may make agencies think before dumping clients. In our experience client dumping is usually the result of advocacy and high expectations on the part of parents.
- 7) It is very concerning that we are equating activities and involvement in the community with CCB liability. CCBs and any organization should be liable for negligence and not for accidents that could not have

been prevented. Again, the current SIS problem with rates that are too low to provide the appropriate individual services put them in a no win situation. However integration is equated with LESS not MORE risk of harm. Increased integration should not equate for a need for less liability exposure. When we entertain these discussions it adds to the misconception that there is something inherently dangerous about PWD being part of the community. This is exactly the kind of myth that the ADA is there to counter.

There may be more issues, unfortunately less than a month to review these extensive policies is not adequate for organizations that do not have full time paid lobbyists.

CCDC also agrees with the comments submitted by Gerrie Frohne.

Thank you for the ability to submit comments.

Sincerely,

Julie Reiskin, Executive Director
Colorado Cross-Disability Coalition
1385 S. Colorado Blvd. Suite 610-A Denver, CO 80222

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Systemic Assessment Crosswalk on Settings

In January 2014, the Centers for Medicare & Medicaid Services (CMS) published a rule to ensure that Home and Community Based Services (HCBS) are provided in settings that meet certain criteria. 79 Fed. Reg. 2948 (Jan. 16, 2014). The rule went into effect in March 2014, and states have five years—until March 2019—to ensure that their HCBS settings are compliant with the rule.

The Colorado Department of Health Care Policy & Financing (HCPF or “the Department”) has developed a Statewide Transition Plan (STP) for bringing Colorado’s HCBS settings into compliance with the HCBS Settings Rule. Under the STP, the Department has conducted a comprehensive review of the kinds of settings in which HCBS services are provided in Colorado and the state statutes, regulations, and waivers that govern the provision of HCBS services in these settings. The results of this systemic review are set forth below. Summaries and paraphrases of state legal authorities are for convenience only and are not intended to be complete or authoritative for any purpose outside of this crosswalk.

In addition to the Department, other state agencies, such as the Colorado Department of Public Health and Environment (CDPHE) and the Colorado Department of Human Services (CDHS), are involved in ensuring compliance with the HCBS Settings Rule. The Department plans to work with these agencies to ensure that their relevant statutes and regulations promote compliance. Although the Department has begun coordinating with CDPHE and CDHS on this endeavor, this crosswalk is issued only by the Department and is not a joint publication with CDPHE or CDHS.

The following notes are intended to make it easier to review and comment on the crosswalk:

1. Certain criteria in the HCBS Settings Rule apply to all HCBS settings. These criteria are set out below in red font above Table 1. Within Table 1, all affected HCBS settings are listed alphabetically from top to bottom. From left to right, the crosswalk summarizes existing state statutes, regulations, and waivers, stating whether they are consistent with, silent with respect to, or in conflict with each federal criterion.
2. Additional criteria in the HCBS Settings Rule apply only to provider-owned or -controlled residential HCBS settings. These criteria are set out below in orange font above Table 2. Within Table 2, all affected provider-owned or -controlled residential HCBS settings are listed alphabetically from top to bottom. From left to right, the crosswalk summarizes existing state statutes, regulations, and waivers, stating whether they are consistent with, silent with respect to, or in conflict with each federal criterion.
3. The Department is proposing to take a “belt and suspenders” approach to ensuring that all HCBS settings conform to the federal requirements.
 - a. Pursuant to this approach, the Department plans to propose two new regulations: 10 CCR 2505-10 AAA, requiring all HCBS settings to comply with set 1 of the federal criteria (see red text above Table 1), and 10 CCR 2505-10 BBB, requiring all provider-owned or -operated residential HCBS settings to comply with set 2 of the federal criteria (see orange text above Table 2). “AAA” and “BBB” are placeholders for numbers to be assigned later.
 - b. In addition, the Department plans to propose piecemeal edits to its regulations governing particular HCBS settings, and to work with other agencies that are involved with such settings, as set out in the two tables below. These edits are described below as “redlines.” The Department hopes that these redlines will be relatively uniform across different kinds of settings, but it invites comment on whether different language or considerations should apply to particular settings.
4. For the sake of efficiency and uniformity, the Department expects the bulk of the redlines to affect its own regulations and those of other agencies. The Department plans to seek changes to statutes and waivers only where necessary to mitigate possible conflicts with federal requirements, and not to address mere silence in a statute or waiver vis-à-vis federal requirements (which will be addressed via regulatory amendments). Working with CMS, the Department may eventually seek to amend its waivers so that similar requirements are addressed with similar language, and so that services that are provided under multiple waivers are described in a consistent way.
5. Where a statute, regulation, or waiver is silent with respect to two or more federal requirements, the silence is noted in the first column in the table; subsequent columns in the table that direct the reader to “see Column X” (prior column) mean that the authority is also silent with respect to the additional federal requirements.
6. Where the crosswalk indicates that the Department plans to propose redlines or work with another agency to do so, the public will have an opportunity down the road to review and comment on the actual proposed redlines (e.g., during a rulemaking proceeding or the notice-and-comment period for waiver amendments). Therefore, while you may comment on all aspects of this crosswalk, you may find it most efficient to focus now on big-picture issues, and to save particular wording preferences for the comment periods to come.

Set 1 of federal criteria: standards applicable to all HCBS settings (42 C.F.R. § 441.301(c)(4))

Home and community-based settings must have all of the following qualities, and such other qualities as [CMS] determines to be appropriate, based on the needs of the individual as indicated in their person-centered service plan:

- (i) The setting is integrated in and supports full access of individuals receiving Medicaid HCBS 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 not receiving Medicaid HCBS.
- (ii) 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.

(iii) Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.

(iv) Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.

(v) Facilitates individual choice regarding services and supports, and who provides them.

New Rule AAA will provide that the above standards apply to all settings in which HCBS services are provided, except where HCBS services are permitted to be delivered in a setting that is institutional or does not meet the HCBS settings standards, such as respite. See 79 Fed. Reg. at 3011. Palliative/Supportive Care services provided outside the child’s home (under the Children with Life-Limiting Illness waiver) are similar to respite, and new Rule AAA will not apply to such services.

Table 1: standards applicable to all HCBS settings

Type of setting	A.Integrated	B.Selected by individual	C.Ensures individual s rights	D.Optimizes autonomy in life choices	E.Facilitates choice regarding services and supports
<p>1. Adult day services centers (alternatives to nursing facilities)—includes basic and specialized adult day services centers</p> <p>The Department has convened a stakeholder workgroup to ensure that the rules relating to this type of setting comply with the HCBS Settings Rule.</p>	<p>Statute: C.R.S. 25.5-6-303(1) generally requires that all federal requirements be met, but does not specifically list integration, etc. C.R.S. 25.5-6-313(1.5) requires the Medical Services Board to regulate restricted environments and restrictive egress alert devices at adult day care centers.</p> <p>Regs: 10 CCR 2505-10 8.491 and 8.515.70 do not specifically require integration, etc. The Department plans to propose redlines to accomplish this, in addition to adding a reference to new Rule AAA. For this particular setting and federal requirement (integration), the Department also plans to propose redlines that specify concrete, desired outcomes. The Department also plans to propose a rule under C.R.S. 25.5-6-313(1.5) to regulate restricted environments and egress alert devices in a manner consistent with the federal HCBS Settings Rule.</p> <p>Waiver: BI Waiver, EBD Waiver, SCI Waiver, and CMHS Waiver are silent with respect to integration, etc.</p>	<p>Statute: See Column A.</p> <p>Regs: See Column A; the Department plans to propose redlines.</p> <p>Waiver: BI Waiver, EBD Waiver, SCI Waiver, and CMHS Waiver at App. B-7 and App. D-1, items b & c confirm that people are informed of feasible service alternatives provided by the waiver and the choices of either institutional or home and community-based services, and that the case manager provides a choice of providers.</p>	<p>Statute: C.R.S. 26-20-103 limits the use of restraints by state agencies as well as public or private entities that contract with or are licensed/certified by state agencies. Otherwise, see Column A.</p> <p>Regs: 6 CCR 1011-1 Chapter 02 Part 8 limits the use of restraints in all licensed health care facilities, and 10 CCR 2505-10 8.491.20(B)(12) requires a restraint-free environment. Otherwise, 8.515.70 is silent on this issue; see Column A; the Department plans to propose redlines.</p> <p>Waiver: BI Waiver, EBD Waiver, SCI Waiver, and CMHS Waiver at App. G-2 describe statutory and regulatory protections for certain rights, including freedom from restraint.</p>	<p>Statute: See Column A.</p> <p>Regs: 10 CCR 2505-10 8.491.14(F) provides that clients have the right to choose not to participate in social and recreational activities. 8.515.70 is silent on autonomy. The Department plans to propose redlines to one or both of these provisions.</p> <p>Waiver: See Column A.</p>	<p>Statute: See Column A.</p> <p>Regs: See Column A; the Department plans to propose redlines.</p> <p>Waiver: See Column A.</p>
<p>2. Alternative care facilities (ACFs)/assisted living residences (ALRs)</p> <p>The Department has convened a stakeholder workgroup to ensure that the rules relating to this type of setting comply with the HCBS Settings Rule.</p>	<p>Statute: C.R.S. 25-27-104 is silent with respect to integration, etc. C.R.S. 25.5-6-303(3) generally requires that all federal requirements be met, but does not specifically list integration, etc.</p> <p>Regs: <u>Input is invited</u> on whether to amend the CDPHE and Departmental rules below beyond adding reference to new Rule AAA.</p> <p>6 CCR 1011-1 Chap 07 1.104(5)(m) requires ACF to have a policy on restrictive egress alert devices, and 1.108 regulates secured environments; <u>input is invited</u> on whether changes are needed for community integration. 1.106(1)(l) protects resident’s right to make visits outside the facility. 1.107(2) requires ACF to provide opportunities for social and recreational activities within and outside the facility.</p> <p>Under 10 CCR 2505-10 8.495.1, protective oversight includes resident choice and ability to travel and engage independently</p>	<p>Statute: See Column A.</p> <p>Regs: Client chooses to live in an ACF, per 10 CCR 2505-10 8.495.2.B and 8.495.4.A(1). Otherwise silent; the Department plans to propose redlines.</p> <p>Waiver: EBD Waiver and CMHS Waiver at App. B-7 and App. D-1, items b & c confirm that people are informed of feasible service alternatives provided by the waiver and the choices of either institutional or home and community-based services, and that the case manager provides a choice of providers.</p>	<p>Statute: C.R.S. 25-27-104(e) requires promulgation of regs to protect individual rights but does not specify which rights. C.R.S. 26-20-103 limits the use of restraints by state agencies as well as public or private entities that contract with or are licensed/certified by state agencies.</p> <p>Regs: No redlines needed. Under 6 CCR 1011-1 Chap 07 1.104(5)(g), ACFs must have written policies on resident rights that incorporate the provisions of Section 1.106(1), which address privacy, dignity, respect, and freedom from restraint; see <i>also</i> 6 CCR 1011-1 Chapter 02 Part 8 and Chap 07 1.106(3) (limiting use of restraints); 10 CCR 2505-10 8.495.6.E. (protecting privacy during phone calls and visits and in bedroom). Also, 6 CCR 1011-1 Chap 07 1.102(3)(b)(iv), 1.104(5)(j), 1.105(3), and 1.106(1)(m) protect residents’ control of their money and property. And under 10 CCR 2505-10</p>	<p>Statute: See Column A.</p> <p>Regs: No redlines needed. Under 10 CCR 2505-10 8.495.4.A, ACF must foster client independence, promote individuality and lifestyle, and avoid reducing personal choice and initiative.</p> <p>Waiver: EBD Waiver at App. G-2, item a requires ACF to be homelike and provide choice about care and lifestyle. CMHS Waiver at App. G-2, item a-ii, requires ACF to “comply with the home-like and person centered environment requirements.”</p>	<p>Statute: See Column A.</p> <p>Regs: No redlines needed. Under 10 CCR 2505-10 8.495.4.A, ACF must promote choice of care.</p> <p>Waiver: See Column D.</p>

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	<p>in the wider community. 8.495.2.B requires an assessment of whether the ACF meets the person’s need for independence and community integration. 8.495.6.F requires ACF to encourage and assist client’s participation in activities within the wider community, when appropriate.</p> <p>Waiver: EBD Waiver, App. G-2, item a requires ACF to facilitate community integration. CMHS Waiver at App. G-2, item a-ii, states that a survey tool administered by CDPHE ensures that ACFs “comply with the home-like and person centered environment requirements and support community integration.” CMHS Waiver at App. G-2, item c, states that ACF “must facilitate community integration; protect the health, welfare and safety of the client; and be home-like and person-centered.” The Department plans to delete references to ACFs in the BI Waiver (with ACFs being replaced by SLPs and TLPs).</p>		<p>8.495.4.B, clients shall be informed of their rights.</p> <p>Waiver: EBD Waiver and CMHS Waiver at App. G-2 describe statutory and regulatory protections for certain rights, including freedom from restraint.</p>		

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<p>3. Child Residential Habilitation settings</p> <ul style="list-style-type: none"> Foster Care Homes (no more than 3 foster care children) Kinship Foster Care Non-certified Kinship Care Specialized Group Facilities (SGFs) <ul style="list-style-type: none"> Group Homes (up to 6 children if three are in CHRP program) Group Centers (up to 7 children if two are in CHRP program or 9 children if one is in CHRP program) Residential Child Care Facilities (RCCFs) <p>The Department plans to work with CDHS on regulatory and/or waiver edits that will have minimal impact on the numerous foster care homes, SGFs, and RCCFs that serve children who are not enrolled in the CHRP waiver.</p>	<p>Statute: C.R.S. 25.5-10-201 declares the General Assembly’s intent that individuals with IDD be included in community life, but does not specify integration as a requirement for particular settings. C.R.S. 25.5-10-227 allows a service agency to hold person’s money and requires it to disburse “reasonable amounts” on request; <u>input is requested</u> on whether this adequately protects children’s ability to control personal resources.</p> <p>Regs: The Department plans to work with CDHS to add references to new Rule AAA.</p> <p>10 CCR 2505-10 8.608 and the service plan require providers serving people with IDD to promote community inclusion.</p> <p>Under 12 CCR 2509-8 7.701.200, children in foster care are entitled to participate in appropriate cultural and social activities. Facilities providing residential care must use a “reasonable and prudent parent standard” in deciding whether to allow participation. <i>Id.</i> 7.708.38 and -.39 specify educational and community participation rights for children in foster care; work must be approved by foster parent(s) and the county designee.</p> <p>12 CCR 2509-8 7.708.33, 7.708.67, and 7.708.68 (for foster care) and 7.714.31 and 7.714.7 (for SGFs and RCCFs) protect children’s right to keep and use their possessions, subject to certain limits, and be allowed to spend a “reasonable sum” of their own money; <u>input is requested</u> on whether this adequately protects children’s ability to control personal resources.</p> <p>12 CCR 2509-8 7.714.2, 7.714.6, & 7.714.7, applicable to SGFs and RCCFs, require facilities to have policies on participation in recreational & religious activities & community life; to provide for educational & vocational programs in the most appropriate & least restrictive setting; & to encourage participation in community activities. 7.709.25 provides for children in SGFs to participate in school & community activities.</p> <p>Waiver: CHRP waiver does not expressly address integration, although it states in App. C-2 that “[a] group home is located within a community and provides an environment that is similar to a foster or familial home. The children [like those in a foster home] [have] access to activities in the community.”</p>	<p>Statute: Statutes do not address whether the child chooses the residential habilitation setting.</p> <p>Regs: No redlines needed. 12 CCR 2509-8 7.708.61 (for children in foster care), 7.714.2 (for children in SGFs and RCCFs), and the service plan require placement agreement to be developed with the involvement of the child and parent(s) or guardian(s).</p> <p>Waiver: CHRP Waiver, App. B-7, provides that “[w]hen an individual is determined to be likely to require a level of care as indicated in the waiver, the individual or his/her legal representative will be: a. informed of any feasible alternatives under the waiver; and b. given the choice of either institutional or home and community-based services.” In some circumstances, the legal guardian or custodian making this choice may be the county.</p> <p><i>The age of the child should dictate how much control they have over their resources.</i></p>	<p>Statute: C.R.S. 25.5-10-216 through -240 protect the rights of individuals with IDD in general (-218), and in particular with respect to privacy (-223) and freedom from coercion and restraint (-221). Dignity and respect are protected through C.R.S. 25.5-10-201 and -216 through -240 as a whole.</p> <p>C.R.S. 26-6-106(2)(g) authorizes child care facility licensing rules to “safeguard the legal rights of children served,” but does not specify which rights. C.R.S. 26-6-106(2)(k) authorizes rules to set standards for short-term confinement of children.</p> <p>C.R.S. 26-20-103 limits the use of restraints by state agencies as well as public or private entities that contract with or are licensed/certified by state agencies.</p> <p>Regs: the Department plans to work with CDHS to propose redlines to clarify points below.</p> <p>10 CCR 2505-10 8.604.1 (relating to people with IDD) reiterates that people receiving services have the same rights as others; 8.604.2 requires providers to protect rights in C.R.S. 25.5-10-218 through -231 (<u>input requested</u> on whether this should be C.R.S. 25.5-10-216 through -240); and 8.608.3 thru 8.608.5 limit the use of restraints.</p> <p>In 10 CCR 2505-10 8.500.15, 8.500.105, and 8.503.150, add reference to C.R.S. 25.5-10-216 through -240.</p> <p>10 CCR 2505-10 8.508.180 seeks to protect privacy, dignity, and other rights, and makes rights in CDHS Social Services Staff Manual, Section 7.714.50, “CHILDREN’S RIGHTS” (12 CCR 2509-8) applicable. This cross-reference should be updated.</p> <p>12 CCR 2509-8 7.708.33 thru -.37 (for foster care) and 7.714.31 thru 7.714.4 & 7.714.52 (for SGFs and RCCFs) explicitly protect privacy, implicitly protect dignity and respect, and limit coercion & restraint.</p> <p>6 CCR 1011-1 Chapter 02 Part 8 limits the use of restraints in all licensed health care facilities. Also, 12 CCR 2509-8 7.714.53 <i>et seq.</i> sets out conditions under which restraints are allowed in foster care, SGFs, and RCCFs.</p> <p>Waiver: CHRP waiver, App. C-2, refers to CDHS’s rules for group homes, including rights protections as described above. CHRP waiver is silent with respect to rights in other CHRP settings.</p>	<p>Statute: See Column B.</p> <p>Regs: No redlines needed. 10 CCR 2505-10 8.608 requires providers serving people with IDD to work to help these clients make increasingly sophisticated and responsible choices, exert greater control over their life, and develop and exercise their competencies and talents.</p> <p>12 CCR 2509-8 7.708.61 (for children in foster care) and 7.714.2 (for children in SGFs and RCCFs) require care to be provided in the least restrictive, most appropriate setting in order to meet the child’s needs.</p> <p>Waiver: CHRP waiver is silent with respect to autonomy.</p> <p>Properly staffing and training can eliminate the need for restraint in more than 95% of the time.</p>	<p>Statute: See Column B.</p> <p>Regs: CDHS child welfare regulations do facilitate some degree of choice regarding services and supports, but the Department plans to work with CDHS to propose redlines to make this more explicit and thorough.</p> <p>Waiver: See Column D.</p>
<p>4. Day Habilitation/treatment centers for individuals with IDD—including 3 subcategories, below</p>	<p>Statute: C.R.S. 25.5-10-206(1)(D) and 27-10.5-104(1)(c) require day services and supports to support community integration.</p>	<p>Statute: C.R.S. 25.5-6-409.3 requires new consolidated adult IDD waiver to incorporate freedom of choice over living</p>	<p>Statute: C.R.S. 25.5-6-409.3 is silent with respect to individual rights. However, C.R.S. 25.5-10-216 through -240 protect</p>	<p>Statute: C.R.S. 25.5-6-409.3 requires new consolidated adult IDD waiver to incorporate freedom of choice over living</p>	<p>Statute: C.R.S. 25.5-6-409.3 requires new consolidated adult IDD waiver to provide support to organize resources and achieve</p>

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Why would limits of liability be connected to community involvement. The current system supports LACK of integration in the community because teh SIS levels create incentive to serve clients in groups even when tha is not appropriate and certainly not integrated.	<p>Also, C.R.S. 25.5-6-409.3 requires new consolidated adult IDD waiver to support employment and community integration. (N/A to children.) See <i>also</i> C.R.S. 25.5-10-201 & -202(21) (General Assembly’s intent that individuals with IDD be included in community life). In addition, C.R.S. 13-21-117.5 encourages community integration by limiting the liability of CCBs & providers serving individuals with IDD. <u>The Department seeks input</u> on the effect of this provision and whether it should be modified.</p> <p>C.R.S. 25.5-10-227 allows a service agency to hold a person’s money and requires it to disburse “reasonable amounts” upon request; <u>the Department seeks input</u> on whether this provision adequately protects the person’s ability to control personal resources. <u>The Department also seeks input</u> on whether a provider may control a client’s money if it is not the SSA-designated representative payee.</p> <p>Regs: 10 CCR 2505-10 8.608 requires providers serving people with IDD to promote community inclusion. 8.609.9(A)(1) requires day habilitation services to be provided outside the home unless otherwise indicated by documented need. The Department plans to change 8.609.9(A)(3), which provides for non-integrated, sheltered, and/or segregated settings for activities. The Department plans to propose redlines to eliminate non-integrated settings and require integration, in addition to adding a reference to new Rule AAA.</p> <p>Waiver: SLS Waiver, App. C, provides that day habilitation “takes place in a non-residential setting, separate from the participant's private residence or other residential living arrangement, except when due to medical and/or safety needs.” See <i>also</i> DD Waiver, App. C (similar).</p>	<p>arrangements and social, community, and recreational opportunities; individual authority over supports and services; and maximum personal control. (N/A to children.)</p> <p>Regs: Day habilitation regs are silent with respect to selection by individual. The Department plans to propose redlines to conform to federal rule and state statute.</p> <p>Waiver: SLS Waiver, App. D-1, items c, d, and f, confirm that the CCB must provide information to participants about the potential services, supports, and resources that are available, and that the participant or his/her guardian are offered free choice from among qualified providers. See <i>also</i> DD Waiver, App. D-1, items c, d, and f (same).</p> <p>Ideally providers would not hold people's money but there is a dramatic lack of available SSA payees available. If there is no payee and a client is not capable they could lose benefits. The providers should be required to use SSA standards. SSA says once bills are paid client can do what they want the with the money</p>	<p>the rights of individuals with IDD in general (-218), and in particular with respect to privacy (-223) and freedom from coercion and restraint (-221). Dignity and respect are protected through C.R.S. 25.5-10-201 and -216 through -240 as a whole. In addition, C.R.S. 26-20-103 limits the use of restraints by state agencies as well as public or private entities that contract with or are licensed/certified by state agencies.</p> <p>Regs: The Department plans to propose redlines to clarify points below.</p> <p>10 CCR 2505-10 8.604.1 (relating to people with IDD) reiterates that people receiving services have the same rights as others; 8.604.2 requires providers to protect rights in C.R.S. 25.5-10-218 through -231 (<u>input requested</u> on whether this should be C.R.S. 25.5-10-216 through -240); 8.608.3 thru 8.608.5 limit the use of restraints; and 8.609.5(B)(6) presumes that people can manage their own funds and possessions unless their plan documents limitations and a plan to increase this skill.</p> <p>In 10 CCR 2505-10 8.500.15, 8.500.105, and 8.503.150, and perhaps in 8.600.5(B), add reference to C.R.S. 25.5-10-216 through -240.</p> <p>6 CCR 1011-1 Chapter 02 Part 8 limits the use of restraints in all licensed health care facilities.</p> <p>Waiver: SLS Waiver, App. G-2, describes statutory protections for certain rights, including freedom from restraint. See <i>also</i> DD Waiver, App. G-2 (same).</p>	<p>arrangements and social, community, and recreational opportunities; individual authority over supports and services; and maximum personal control. (N/A to children.)</p> <p>Regs: No redlines needed. 10 CCR 2505-10 8.500.5.A(2) and 8.500.94.A(3) require day habilitation environments to foster independence and personal choice. Also, 10 CCR 2505-10 8.608 requires providers serving people with IDD to work to help these clients make increasingly sophisticated and responsible choices, exert greater control over their life, and develop and exercise their competencies and talents.</p> <p>Waiver: SLS Waiver, App. C, provides that day habilitation “[a]ctivities and environments are designed to foster the acquisition of skills, appropriate behavior, greater independence, and personal choice.” See <i>also</i> DD Waiver, App. C (same).</p> <p>again, proper staffing and training eliminates needs for restraints, but the current SIS levels and low rates for people without medical issue: causes people who are not properly trained to staff and forces people to be served in groups. For some clients forcing them into groups causes behavior that leads to restraints. Proper rates and elimination or dramatically changing the SIS will be necessary to serve people in integrated settings that do no violate rights.</p>	<p>“key service outcomes.” (N/A to children.)</p> <p>Regs: See Column B; the Department plans to propose redlines.</p> <p>Waiver: SLS Waiver and DD Waiver are silent with respect to obligation on provider’s part to facilitate choice regarding services and supports.</p>
<ul style="list-style-type: none"> (a) Specialized Habilitation centers 	<p>See Row 4, above, with the following additional points:</p> <p>Regs: The Department plans to add a reference to new Rule AAA. Also, under 10 CCR 2505-10 8.500.5.A(2) and 8.500.94.A(3), specialized habilitation is provided in a non-integrated setting where a majority of the clients have a disability; the Department plans to change this to eliminate non-integrated settings and require integration. Also, the Department plans to change 8.609.4, which provides for non-integrated activities.</p> <p>Waiver: SLS Waiver, App. C, provides that specialized habilitation is “generally provided in non-integrated settings where a majority of the persons have a disability, such as program sites.” The Department plans to change this to eliminate non-integrated settings and require integration. See <i>also</i> DD Waiver, App. C (same).</p>				
<ul style="list-style-type: none"> (b) Supported Community Connections (SCC) (adults and children) 	<p>See Row 4, above, with the following additional points:</p> <p>Regs: No redlines needed beyond a reference to new Rule AAA. Under 10 CCR 2505-10 8.500.5.A(2) and 8.500.94.A(3), SCC services help the client access typical activities and functions of community life, such as those chosen by the general population, including community education or training, retirement, and volunteer activities. The services are conducted in a variety of settings in which the client interacts with persons without disabilities.</p> <p>Waiver: SLS Waiver, App. C, provides that SCC “supports the abilities and skills necessary to enable the participant to access typical activities and functions of community life such as those chosen by the general population, including community education or training, retirement and volunteer activities. [SCC] provides a wide variety of opportunities to facilitate and build relationships and natural supports in the community, while utilizing the community as a learning environment to provide services and supports as identified in a participant’s Service Plan. These activities are conducted in a variety of settings in which participants interact with non-disabled</p>				

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	individuals (other than those individuals who are providing services to the participant). These types of services may include socialization, adaptive skills and personnel to accompany and support the participant in community settings, resources necessary for participation in activities and supplies related to skill acquisition, retention or improvement.” See <i>also</i> DD Waiver, App. C (similar); CHRP waiver, App. C (similar); CES waiver, App. C (similar).				
<ul style="list-style-type: none">(c) Prevocational Services centers	See Row 4, above, with the following additional points: Regs: No redlines needed beyond a reference to new Rule AAA. Under 10 CCR 2505-10 8.500.5.A(2) and 8.500.94.A(3), prevocational services are provided in a variety of non-residential locations. Waiver: Under SLS Waiver, App. C., prevocational services “are provided in a variety of locations separate from the participant’s private residence or other residential living arrangement.” See <i>also</i> DD Waiver, App. C (same).				
5. Day treatment facilities under BI waiver The Department has convened a stakeholder workgroup to ensure that the rules relating to this type of setting comply with the HCBS Settings Rule.	Statute: C.R.S. 25.5-6-703(7) is silent with respect to integration, etc. Regs: 10 CCR 2505-10 8.515.80 is silent with respect to integration, etc. The Department plans to propose redlines to address this, in addition to adding a reference to new Rule AAA. Waiver: BI waiver is silent with respect to integration, etc.	Statute: See Column A. Regs: See Column A; the Department plans to propose redlines. Waiver: BI Waiver at App. B-7 and App. D-1, items b & c confirms that people are informed of feasible service alternatives provided by the waiver and the choices of either institutional or home and community-based services, and that the case manager provides a choice of providers.	Statute: C.R.S. 26-20-103 limits the use of restraints by state agencies as well as public or private entities that contract with or are licensed/certified by state agencies. Otherwise, see Column A. Regs: No redlines needed. 10 CCR 2505-10 8.515.80(C) enumerates individual rights, including privacy and freedom from restraint; dignity and respect are protected though not explicitly listed. In addition, 6 CCR 1011-1 Chapter 02 Part 8 limits the use of restraints in all licensed health care facilities. <u>The Department seeks input</u> on whether the list of rights in 10 CCR 2505-10 8.515.80(C) should be extended to other services and waivers (by codifying it in a more general provision, and changing the BI-day-treatment specific “treatment plan” to “person-centered plan”). Waiver: BI Waiver at App. G-2 describes statutory and regulatory protections for certain rights, including freedom from restraint.	Statute: See Column A. Regs: See Column A; the Department plans to propose redlines. Waiver: See Column A. yes this should apply to all waivers and services	Statute: See Column A. Regs: See Column A; the Department plans to propose redlines. Waiver: See Column A.
6. Group Residential Services and Supports (GRSS) community residential homes for four to eight people Liability limitations and integration are separate issues and allowing them to be related adds to the misconceptions about integration.	Statute: C.R.S. 25.5-6-409.3 requires new consolidated adult IDD waiver to support employment and community integration. (N/A to children.) See <i>also</i> C.R.S. 25.5-10-201 & -202(21) (General Assembly’s intent that individuals with IDD be included in community life). Also, C.R.S. 25.5-10-214(5)(a) requires regulation of the distance between such homes. In addition, C.R.S. 13-21-117.5 encourages community integration by limiting the liability of CCBs & providers serving individuals with IDD. <u>The Department seeks input</u> on the effect of this provision and whether it should be modified. C.R.S. 25.5-10-227 allows a service agency to hold a person’s money and requires it to disburse “reasonable amounts” upon request; <u>the Department seeks input</u> on whether this provision adequately protects the person’s ability to control personal resources. <u>The Department also seeks input</u> on whether a provider may control a client’s money if it is not the SSA-designated representative payee. Regs: 10 CCR 2505-10 8.608 requires providers serving people with IDD to promote community inclusion. 8.609.8(B) also prevents conspicuous grouping of GRSS	Statute: C.R.S. 25.5-6-409.3 requires new consolidated adult IDD waiver to incorporate freedom of choice over living arrangements and social, community, and recreational opportunities, and individual authority over supports and services. (N/A to children.) Under C.R.S. 25.5-10-216(7) and 27-10.5-110(2), a person shall not be admitted to a Regional Center without a court order. Regs: The Department is considering revising 10 CCR 2505-10 8.609.5(B)(8) to be more explicit that the setting is selected by the individual. Waiver: DD Waiver, App. D-1, items c, d, and f, confirm that the CCB must provide information to participants about the potential services, supports, and resources that are available, and that the participant or his/her guardian are offered free choice from among qualified providers. see earlier comments	Statute: C.R.S. 25.5-6-409.3 is silent with respect to individual rights. However, C.R.S. 25.5-10-216 through -240 protect the rights of individuals with IDD in general (-218), and in particular with respect to privacy (-223) and freedom from coercion and restraint (-221). Dignity and respect are protected through C.R.S. C.R.S. 25.5-10-201 and -216 through -240 as a whole. C.R.S. 26-20-103 limits the use of restraints by state agencies as well as public or private entities that contract with or are licensed/certified by state agencies. Regs: The Department plans to propose redlines to clarify the points below. 10 CCR 2505-10 8.604.1 (relating to people with IDD) reiterates that people receiving services have the same rights as others; 8.604.2 requires providers to protect rights in C.R.S. 25.5-10-218 through -231 (<u>input requested</u> on whether this should be C.R.S. 25.5-10-216 through -240); 8.608.3 thru 8.608.5 limit the use of restraints; and 8.609.5(B)(6) presumes that people can manage their own funds and possessions unless their plan documents limitations and a plan to increase this skill. see earlier comments	Statute: C.R.S. 25.5-6-409.3 requires new consolidated adult IDD waiver to incorporate freedom of choice over living arrangements and social, community, and recreational opportunities; individual authority over supports and services; and maximum personal control. (N/A to children.) Regs: No redlines needed. Under 10 CCR 2505-10 8.500.5.A(5), residential habilitation services assist clients to reside as independently as possible in the community, including through self-advocacy training and community access services. Also, 10 CCR 2505-10 8.608 requires providers serving people with IDD to work to help these clients make increasingly sophisticated and responsible choices, exert greater control over their life, and develop and exercise their competencies and talents. Waiver: Under DD Waiver, App. C, residential habilitation services, which include GRSS, “are designed to assist participants to reside as independently as possible in the community” and include self-advocacy training (which may include training “to make increasingly responsible choices”) and cognitive services (which	Statute: C.R.S. 25.5-6-409.3 requires new consolidated adult IDD waiver to provide support to organize resources and achieve “key service outcomes.” (N/A to children.) Regs: Regs for GRSS community residential homes are silent with respect to facilitating choice regarding services and supports. The regs for case planning cover this, but the Department plans to add this point to the regs for this setting as well. Waiver: DD Waiver is silent with respect to obligation on provider’s part to facilitate choice regarding services and supports.

Type of setting	A.Integrated	B.Selected by individual	C.Ensures individual s rights	D.Optimizes autonomy in life choices	E.Facilitates choice regarding services and supports
	<p>homes near other DIDD settings. 8.600.4 (definition of Regional Center)—should say that CDHS, not HCPF, operates Regional Centers.</p> <p>6 CCR 1011-1 Chap 08 Section 10 requires policy on resident funds but does not explicitly provide for resident control of personal resources; <u>input</u> is invited on whether and how CDPHE might edit this section.</p> <p>The Department plans to work with CDPHE to propose redlines to address the above points, and to add a reference to new Rule AAA.</p> <p>Waiver: DD Waiver, App. C-2, item c-ii, cites rule above regarding community inclusion. Also, under App. C, residential habilitation services, which include GRSS, “are designed to assist participants to reside as independently as possible in the community” and include community access services to “explore community services available to all people, natural supports available to the participant, and develop methods to access additional services/supports/activities needed by the participant.”</p>	<p>Use the SSA language on what payees may and may not do and require written policies and some monitoring,. This includes allowing people to make decisions that others might not like.</p>	<p>In 10 CCR 2505-10 8.500.15, 8.500.105, and 8.503.150, and perhaps in 8.600.5(B), add reference to C.R.S. 25.5-10-216 through -240.</p> <p>6 CCR 1011-1 Chap 08 Section 9 protects resident rights set forth 6 CCR 1011-1, Chapter II, Part 6 (includes dignity, privacy, & freedom from inappropriate restraint), and C.R.S. 25.5-10-218 through 225 (<u>input requested</u> on whether this should be C.R.S. 25.5-10-216 through -240). Also, 6 CCR 1011-1 Chapter 02 Part 8 limits the use of restraints in all licensed health care facilities.</p> <p>Waiver: DD Waiver, App. G-2, describes statutory protections for certain rights, including freedom from restraint.</p>	<p>may include training in “planning and decision making”).</p>	
<p>7. Individual Residential Services and Supports (IRSS) homes for up to 3 people</p> <ul style="list-style-type: none"> • Host homes • Homes owned or leased by agency • Family homes (see Row 8) • Own homes (see Row 8) 	<p>Statute: C.R.S. 25.5-6-409.3 requires new consolidated adult IDD waiver to support employment and community integration. (N/A to children.) See <i>also</i> C.R.S. 25.5-10-201 & -202(21) (General Assembly’s intent that individuals with IDD be included in community life). In addition, C.R.S. 13-21-117.5 encourages community integration by limiting the liability of CCBs & providers serving individuals with IDD. <u>The Department seeks input</u> on the effect of this provision and whether it should be modified.</p> <p>C.R.S. 25.5-10-227 allows a service agency to hold a person’s money and requires it to disburse “reasonable amounts” upon request; <u>the Department seeks input</u> on whether this provision adequately protects the person’s ability to control personal resources. <u>The Department also seeks input</u> on whether a provider may control a client’s money if it is not the SSA-designated representative payee.</p> <p>Regs: No redlines needed beyond a reference to new Rule AAA. 10 CCR 2505-10 8.608 requires providers serving people with IDD to promote community inclusion; 8.609.7(B) requires the same for IRSS providers. Also, 8.609.7(A)(3) makes community inclusion and distance from other settings (to avoid conspicuous</p>	<p>Statute: C.R.S. 25.5-6-409.3 requires new consolidated adult IDD waiver to incorporate freedom of choice over living arrangements and social, community, and recreational opportunities, and individual authority over supports and services. (N/A to children.)</p> <p>Regs: The Department is considering revising 10 CCR 2505-10 8.609.5(B)(8) to be more explicit that the setting is selected by the individual, and revising 8.609.7(A)(3), which refers to individual choice, to specify that 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, etc.</p> <p>Waiver: DD Waiver, App. D-1, items c, d, and f, confirm that the CCB must provide information to participants about the potential services, supports, and resources that are available, and that the participant or his/her guardian are offered free choice from among qualified providers.</p>	<p>Statute: C.R.S. 25.5-6-409.3 is silent with respect to individual rights. However, C.R.S. 25.5-10-216 through -240 protect the rights of individuals with IDD in general (-218), and in particular with respect to privacy (-223) and freedom from coercion and restraint (-221). Dignity and respect are protected through C.R.S. 25.5-10-201 and -216 through -240 as a whole.</p> <p>C.R.S. 26-20-103 limits the use of restraints by state agencies as well as public or private entities that contract with or are licensed/certified by state agencies.</p> <p>Regs: The Department plans to propose redlines to clarify the points below.</p> <p>10 CCR 2505-10 8.604.1 (relating to people with IDD) reiterates that people receiving services have the same rights as others; 8.604.2 requires providers to protect rights in C.R.S. 25.5-10-218 through -231 (<u>input requested</u> on whether this should be C.R.S. 25.5-10-216 through -240); 8.608.3 thru 8.608.5 limit the use of restraints; and 8.609.5(B)(6) presumes that people can manage their own funds and possessions unless their plan documents limitations and a plan to increase this skill.</p> <p>In 10 CCR 2505-10 8.500.15, 8.500.105, and 8.503.150, and perhaps in 8.600.5(B), add</p>	<p>Statute: C.R.S. 25.5-6-409.3 requires new consolidated adult IDD waiver to incorporate freedom of choice over living arrangements and social, community, and recreational opportunities; individual authority over supports and services; and maximum personal control. (N/A to children.)</p> <p>Regs: No redlines needed. Under 10 CCR 2505-10 8.500.5.A(5), residential habilitation services assist clients to reside as independently as possible in the community, including through self-advocacy training and community access services. Also, 10 CCR 2505-10 8.608 requires providers serving people with IDD to work to help these clients make increasingly sophisticated and responsible choices, exert greater control over their life, and develop and exercise their competencies and talents.</p> <p>Waiver: Under DD Waiver, App. C, residential habilitation services, which include IRSS, “are designed to assist participants to reside as independently as possible in the community” and include self-advocacy training (which may include training “to make increasingly responsible choices”) and cognitive services (which may include training in “planning and decision making”).</p>	<p>Statute: C.R.S. 25.5-6-409.3 requires new consolidated adult IDD waiver to provide support to organize resources and achieve “key service outcomes.” (N/A to children.)</p> <p>Regs: IRSS regs are silent with respect to facilitating choice of services and supports. The regs for case planning cover this point, but the Department plans to add it to the regs for this setting as well.</p> <p>Waiver: See Column B.</p>

Type of setting	A.Integrated	B.Selected by individual	C.Ensures individual s rights	D.Optimizes autonomy in life choices	E.Facilitates choice regarding services and supports
	<p>grouping) considerations in selecting a setting.</p> <p>Waiver: DD Waiver, App. C-2, item c-ii, cites rule above regarding community inclusion. Also, under DD Waiver, App. C, residential habilitation services, which include IRSS, “are designed to assist participants to reside as independently as possible in the community” and include community access services to “explore community services available to all people, natural supports available to the participant, and develop methods to access additional services/supports/activities needed by the participant.”</p>		<p>reference to C.R.S. 25.5-10-216 through -240.</p> <p>Waiver: DD Waiver, App. G-2, describes statutory protections for certain rights, including freedom from restraint.</p>		
8. Private homes belonging to clients or their families, professional provider offices, and clinics	<p>Colorado’s statutes, regulations, and waivers do not expressly require that private homes, professional provider offices, and clinics be integrated, selected by the individual, etc. Colorado understands CMS’s position to be that if HCBS services are provided in a private home, professional provider office, or clinic, the setting must meet the HCBS settings requirements set forth in 42 C.F.R. § 441.301(c)(4). Colorado plans to promulgate new Rule AAA making these requirements applicable to all settings in which HCBS services are provided. For purposes of site-specific assessments (<i>e.g.</i>, Provider Transition Plans and site visits), Colorado plans to draw on its understanding of the way most private homes, professional provider offices, and clinics operate in presuming that they are compliant with these requirements. Anyone may seek to rebut this presumption by providing information about a particular setting to the Department.</p>				
<p>9. Supported Employment/vocational services locations</p> <ul style="list-style-type: none"> Group Individual 	<p>Statute: C.R.S. 25.5-6-409.3 requires new consolidated adult IDD waiver to support employment and community integration. (N/A to children.) See <i>also</i> C.R.S. 25.5-10-201 & -202(21) (General Assembly’s intent that individuals with IDD be included in community life). In addition, C.R.S. 13-21-117.5 encourages community integration by limiting the liability of CCBs & providers serving individuals with IDD. <u>The Department seeks input</u> on the effect of this provision and whether it should be modified.</p> <p>C.R.S. 25.5-10-227 allows a service agency to hold a person’s money and requires it to disburse “reasonable amounts” upon request; <u>the Department seeks input</u> on whether this provision adequately protects the person’s ability to control personal resources. <u>The Department also seeks input</u> on whether a provider may control a client’s money if it is not the SSA-designated representative payee.</p> <p>Regs: The Department plans to propose redlines to address the points below, and to add a reference to new Rule AAA.</p> <p>10 CCR 2505-10 8.608 requires providers serving people with IDD to promote community inclusion.</p> <p>Under 10 CCR 2505-10 8.500.5.A(7) and 8.500.94.A(14), supported employment may be delivered in a variety of settings in which clients interact with individuals without disabilities to the same extent that individuals without disabilities employed in comparable positions would interact; occurs outside of a provider facility; and is provided in community jobs, enclaves, or</p>	<p>Statute: C.R.S. 25.5-6-409.3 requires new consolidated adult IDD waiver to incorporate freedom of choice over living arrangements and social, community, and recreational opportunities, and individual authority over supports and services. (N/A to children.)</p> <p>Regs: Regs are silent with respect to supported employment setting being selected by individual; the Department plans to propose redlines.</p> <p>Waiver: SLS Waiver, App. D-1, items c, d, and f, confirm that the CCB must provide information to participants about the potential services, supports, and resources that are available, and that the participant or his/her guardian are offered free choice from among qualified providers. See <i>also</i> DD Waiver, App. D-1, items c, d, and f (same).</p>	<p>Statute: C.R.S. 25.5-6-409.3 is silent with respect to individual rights. However, C.R.S. 25.5-10-216 through -240 protect the rights of individuals with IDD in general (-218), and in particular with respect to privacy (-223) and freedom from coercion and restraint (-221). Dignity and respect are protected through C.R.S. 25.5-10-201 and -216 through -240 as a whole. Also, C.R.S. 26-20-103 limits the use of restraints by state agencies as well as public or private entities that contract with or are licensed/certified by state agencies.</p> <p>Regs: The Department plans to propose redlines to clarify points below.</p> <p>10 CCR 2505-10 8.604.1 (relating to people with IDD) reiterates that people receiving services have the same rights as others; 8.604.2 requires providers to protect rights in C.R.S. 25.5-10-218 through -231 (<u>input requested</u> on whether this should be C.R.S. 25.5-10-216 through -240); 8.608.3 thru 8.608.5 limit the use of restraints; and 8.609.5(B)(6) presumes that people can manage their own funds and possessions unless their plan documents limitations and a plan to increase this skill.</p> <p>In 10 CCR 2505-10 8.500.15, 8.500.105, and 8.503.150, and perhaps in 8.600.5(B), add reference to C.R.S. 25.5-10-216 through -240.</p> <p>Waiver: SLS Waiver, App. G-2, describes statutory protections for certain rights, including freedom from restraint. See <i>also</i> DD Waiver, App. G-2 (same).</p>	<p>Statute: C.R.S. 25.5-6-409.3 requires new consolidated adult IDD waiver to incorporate freedom of choice over living arrangements and social, community, and recreational opportunities; individual authority over supports and services; and maximum personal control. (N/A to children)</p> <p>Regs: No redlines needed. 10 CCR 2505-10 8.608 requires providers serving people with IDD to work to help these clients make increasingly sophisticated and responsible choices, exert greater control over their life, and develop and exercise their competencies and talents.</p> <p>Waiver: SLS Waiver, App. C, and DD Waiver, App. C, are silent with respect to autonomy in connection with supported employment.</p>	<p>Statute: C.R.S. 25.5-6-409.3 requires new consolidated adult IDD waiver to provide support to organize resources and achieve “key service outcomes.” (N/A to children.)</p> <p>Regs: See Column B; the Department plans to propose redlines.</p> <p>Waiver: See Column B.</p>

Type of setting	A.Integrated	B.Selected by individual	C.Ensures individual s rights	D.Optimizes autonomy in life choices	E.Facilitates choice regarding services and supports
	mobile crews. The Department plans to propose redlines to ensure that these settings are sufficiently integrated. Also change 8.609.4 and 8.609.9(A)(3), which provide for non-integrated, sheltered, and/or segregated work services, to eliminate non-integrated settings and require integration. Waiver: SLS Waiver, App. C, describes supported employment as established in the above-cited regulations. The Department plans to propose redlines to ensure that these settings are sufficiently integrated. See <i>also</i> DD Waiver, App. C (same).				
10. Supported Living Program (SLP) facilities under BI waiver (note that SLP providers must be licensed as an ALR (see Row 2 above) or a Home Care Agency (HCA) Class A (see 6 CCR 1011-1, Ch. 26), but the latter option is being removed from the regulation) The rules relating to this type of setting are currently being revised.	Statute: C.R.S. 25.5-6-703(9) is silent with respect to integration, etc. of supportive care campus. Regs: No redlines needed beyond a reference to new Rule AAA. Under 10 CCR 2505-10 8.515.85.F, SLP must be integrated in and support full access to the greater community. Under 8.515.85.H, it must have certain policies on management of client funds and property. Also, under 8.515.85.A, protective oversight includes the client's choice and ability to travel and engage independently in the wider community; and under 8.515.85.C, SLP services include community participation. Waiver: BI Waiver at App. C-2, item c(ii) requires SLP facility to facilitate community integration.	Statute: See Column A. Regs: No redlines needed. Under 10 CCR 2505-10 8.515.85.F, SLP must be selected by the client from among setting options. Waiver: BI Waiver at App. B-7 and App. D-1, items b & c confirms that people are informed of feasible service alternatives provided by the waiver and the choices of either institutional or home and community-based services, and that the case manager provides a choice of providers.	Statute: C.R.S. 26-20-103 limits the use of restraints by state agencies as well as public or private entities that contract with or are licensed/certified by state agencies. Otherwise, see Column A. Regs: No redlines needed. Under 10 CCR 2505-10 8.515.85.F, SLP must ensure client rights of privacy, dignity, and respect, and freedom from coercion and restraint. Also, 6 CCR 1011-1 Chapter 02 Part 8 limits the use of restraints in all licensed health care facilities. Waiver: Per BI waiver App. G-2, SLP is prohibited from the use of restraints and seclusion.	Statute: See Column A. Regs: No redlines needed. Under 10 CCR 2505-10 8.515.85.F, SLP must optimize individual initiative, autonomy, and independence; also, under 8.515.85.C, SLP services include independent living skills training. Waiver: BI Waiver at App. C-2, item c(ii) requires SLP facility to be homelike and provide choice about care and lifestyle.	Statute: See Column A. Regs: No redlines needed. Under 10 CCR 2505-10 8.515.85.F, SLP must facilitate client choice regarding services and supports. Waiver: BI Waiver at App. C-2, item c(ii) requires SLP facility to be homelike and provide choice about care and lifestyle.
11. Transitional Living Program (TLP) facilities under BI waiver (note that TLP providers must be licensed as an ALR (see Row 2 above)) The rules relating to this type of setting are currently being revised.	Statute: C.R.S. 25.5-6-703(10) is silent with respect to integration, etc. of transitional living facility. Regs: The Department plans to propose redlines to address the points below, and to add a reference to new Rule AAA. Under 10 CCR 2505-10 8.516.30(E)(6), TLP services "will occur in the community or in natural settings and be non-institutional in nature." Add redline to state that setting will be integrated, etc., per federal rule. <u>The Department seeks input</u> on whether 8.516.30(C)(4) needs to be clarified to protect client's control over finances. Waiver: BI Waiver at App. C-2, item c(ii) requires TLP facility to facilitate community integration.	Statute: See Column A. Regs: 10 CCR 2505-10 8.516.30 is silent with respect to being selected by individual; the Department plans to propose redlines. Waiver: BI Waiver at App. B-7 and App. D-1, items b & c confirms that people are informed of feasible service alternatives provided by the waiver and the choices of either institutional or home and community-based services, and that the case manager provides a choice of providers.	Statute: C.R.S. 26-20-103 limits the use of restraints by state agencies as well as public or private entities that contract with or are licensed/certified by state agencies. Otherwise, see Column A. Regs: No redlines needed. 10 CCR 2505-10 8.516.30(H) makes rights in 8.515.80(C) (for day treatment facilities under BI waiver) applicable, and adds more privacy in correspondence. Also, 6 CCR 1011-1 Chapter 02 Part 8 limits the use of restraints in all licensed health care facilities. Waiver: Per BI waiver App. G-2, TLP is prohibited from the use of restraints and seclusion.	Statute: See Column A. Regs: Per 10 CCR 2505-10 8.516.30(G)(3), TLP helps client work toward goals that include personal and living independence. The Department plans to propose redlines to clarify that the TLP must optimize individual initiative, autonomy, and independence (in the present, not just in the future). Waiver: BI Waiver at App. C-2, item c(ii) requires TLP facility to be homelike and provide choice about care and lifestyle.	Statute: See Column A. Regs: See Column B; the Department plans to propose redlines. Waiver: BI Waiver at App. C-2, item c(ii) requires TLP facility to be homelike and provide choice about care and lifestyle.
12. Youth Day Service settings under the Children's Extensive Support (CES) Waiver • Child's home (see Row 8)	Statute: C.R.S. 25.5-10-201 declares the General Assembly's intent that individuals with IDD be included in community life, but does not specify integration as a requirement for particular settings.	Statute: Statutes do not address whether the child chooses the Youth Day Service setting. Regs: See Column A. CDHS's child care center regulations do not address whether the child chooses the setting.	Statute: C.R.S. 25.5-10-216 through -240 protect the rights of individuals with IDD in general (-218), and in particular with respect to privacy (-223) and freedom from coercion and restraint (-221). Dignity and	Statute: See Column B. Regs: See Column A. Waiver: See Column A.	Statute: See Column B. Regs: See Column A. Waiver: See Column A.

Type of setting	A.Integrated	B.Selected by individual	C.Ensures individual s rights	D.Optimizes autonomy in life choices	E.Facilitates choice regarding services and supports
<ul style="list-style-type: none">• Provider’s home (see Row 8 and regulations at right regarding family child care homes)• Other child care centers <p>The Department’s rule relating to the Youth Day Service is currently being drafted for eventual public notice and codification at 10 CCR 2505-10 8.503.40.A.</p>	<p>Regs: The Youth Day Service rule has not yet been promulgated. When it publishes this rule, the Department plans to include a reference to new Rule AAA and to specify that integration, etc. are required.</p> <p>CDHS regulates child care centers at 12 CCR 2509-8 7.702 <i>et seq.</i>, family child care homes at 7.707 <i>et seq.</i>, and school-age child care centers at 7.712 <i>et seq.</i> Under 7.702.51(C), the child care center must make a reasonable effort to integrate children with IDD with other children.</p> <p>Waiver: CES Waiver is silent w/r/t integration, etc.</p>	<p>Waiver: CES Waiver, App. B-7, provides that the child’s parents, guardian, or representative are informed of any feasible alternatives under the waiver and given choice of either institutional or home and community based services. The case manager provides the child’s parents, guardian, or representative with a choice of providers as well as choice of whether these services will be provided in the community or in an Intermediate Care Facility for Individuals with an Intellectual Disability (ICF/IID).</p>	<p>respect are protected through C.R.S. 25.5-10-201 and -216 through -240 as a whole.</p> <p>C.R.S. 26-6-106(2)(g) authorizes child care facility licensing rules to “safeguard the legal rights of children served,” but does not specify which rights.</p> <p>C.R.S. 26-20-103 limits the use of restraints by state agencies as well as public or private entities that contract with or are licensed/certified by state agencies.</p> <p>Regs: See Column A.</p> <p>Also, 10 CCR 2505-10 8.604.1 (relating to people with IDD) reiterates that people receiving services have the same rights as others; 8.604.2 requires providers to protect rights in C.R.S. 25.5-10-218 through -231 (input requested on whether this should be C.R.S. 25.5-10-216 through -240); and 8.608.3 thru 8.608.5 limit the use of restraints. And 6 CCR 1011-1 Chapter 02 Part 8 limits the use of restraints in all licensed health care facilities.</p> <p>Also, 12 CCR 2509-8 7.702.56, 7.707.8, and 7.712.55 forbid child care centers, family child care homes, and school-age child care centers from using harmful, humiliating, or frightening measures against a child.</p> <p>Waiver: CES Waiver, App. G-2, describes statutory and regulatory protections for rights. This description should be updated; for example, 2 CCR 503, Volume 16, has been repealed (with the transfer of DIDD (then DDS) from CDHS to the Department.</p>		

Set 2 of federal criteria: standards applicable to provider-owned or controlled residential settings (42 C.F.R. § 441.301(c)(4))

Home and community-based settings must have all of the following qualities, and such other qualities as [CMS] determines to be appropriate, based on the needs of the individual as indicated in their person-centered service plan: . . .

(vi) In a provider-owned or controlled residential setting, in addition to the qualities at §441.301(c)(4)(i) through (v), the following additional conditions must be met:

- (A) The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a 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. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction’s landlord tenant law.
- (B) Each individual has privacy in their sleeping or living unit:
- (1) Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.
 - (2) Individuals sharing units have a choice of roommates in that setting.
 - (3) Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.
- (C) Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.

- (D) Individuals are able to have visitors of their choosing at any time.
- (E) The setting is physically accessible to the individual.
- (F) Any modification of the additional conditions, under §441.301(c)(4)(vi)(A) through (D), must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan:
- (1) Identify a specific and individualized assessed need.
 - (2) Document the positive interventions and supports used prior to any modifications to the person-centered service plan.
 - (3) Document less intrusive methods of meeting the need that have been tried but did not work.
 - (4) Include a clear description of the condition that is directly proportionate to the specific assessed need.
 - (5) Include regular collection and review of data to measure the ongoing effectiveness of the modification.
 - (6) Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.
 - (7) Include the informed consent of the individual.
 - (8) Include an assurance that interventions and supports will cause no harm to the individual.

New Rule BBB will provide that the above standards apply to all provider-owned or controlled residential settings in which HCBS services are provided, except where HCBS services are permitted to be delivered in a setting that is institutional or does not meet the HCBS settings standards, such as respite. See 79 Fed. Reg. at 3011. Palliative/Supportive Care services provided outside the child’s home (under the Children with Life-Limiting Illness waiver) are similar to respite, and new Rule BBB will not apply to such services.

Table 2: standards applicable to provider-owned or -controlled residential settings

Type of setting	A. Landlord/tenant rights	B. Privacy in sleeping/living unit	C. Freedom over schedule and access to food	D. Visitors at any time	E. Physically accessible	F. Documented justification for any modification to these conditions
1. Adult day services centers	N/A—this type of setting is not residential.					
2. Alternative care facilities (ACFs)/assisted living residences (ALRs) The Department has convened a stakeholder workgroup to ensure that the rules relating to this type of setting comply with the HCBS Settings Rule.	Statute: 25-27-104.5 contemplates leases but does not require them or require that they provide protections comparable to landlord/tenant law. Regs: The Department plans to work with CDPHE to propose redlines to address the points below, and to add a reference to new Rule BBB. 6 CCR 1011-1 Chap 07 1.104(5)(i) requires ACF to have a policy for eviction, and 1.105(6) limits discharge of residents, but they do not say that the policy must comply with landlord/tenant rights; 1.105(2) requires a written resident agreement but does not require that it provide protections comparable to landlord/tenant law. The Department plans to work with CDPHE to propose redlines to comply with federal rule. Waiver: EBD Waiver is silent with respect to landlord/tenant rights. CMHS Waiver, Attach. 2, notes plans to “support providers in documenting protections and appeals comparable to those provided under Colorado landlord tenant law.”	Statute: 25-27-104 and 25-27-104.5 are silent with respect to privacy in unit. Regs: No redlines needed. Under 10 CCR 2505-10 8.495.4, the ACF must allow capable clients to lock their doors and control access to their quarters, accommodate roommate choices within reason, and allow clients to decorate and use personal furnishings in their bedrooms. Note that under 10 CCR 2505-10 8.495.6.H, doors to bedrooms in secured ACFs shall not be locked unless the resident is able to manage the key independently. Waiver: EBD Waiver at App. G-2, item b requires ACF to be homelike and provide privacy. CMHS Waiver at App. G-2, item b-i refers to regulatory protections for privacy in general (see Table 1, cell C-2 above).	Statute: See Column B. Regs: Under 10 CCR 2505-10 8.495.4 and 8.495.6.E(9), capable clients shall have access to food at all times and access to food prep areas. Under 8.495.6.E(1), ACFs must maintain a home-like quality and feel. <u>The Department seeks input</u> on whether to be more explicit about control over schedule and activities. Waiver: EBD Waiver and CMHS Waiver do not address freedom over schedule (except in CDASS context) or access to food.	Statute: See Column B. Regs: 6 CCR 1011-1 Chap 07 1.106(1)(k) protects right to visitors, but not necessarily at any time. The Department plans to work with CDPHE to propose redlines to conform to federal rule. Waiver: EBD Waiver and CMHS Waiver at App. G-2, item b, refer to visitors, but not necessarily at any time.	Statute: See Column B. Regs: No redlines needed. 6 CCR 1011-1 Chap 07 1.106(1)(g) and 1.112(2) protect right to use of and access to dining room, other common areas, and building. Waiver: EBD Waiver, and CMHS Waiver are silent with respect to physical accessibility.	Statute: See Column B. Regs: 10 CCR 2505-10 8.495.6.E(10) provides for client’s cooking capacity to be assessed and limited if necessary, and for the foregoing to be contained in care plan. Otherwise silent with respect to documenting modifications to the additional conditions; the Department plans to propose redlines. Waiver: See Column E.

Type of setting	A. Landlord/tenant rights	B. Privacy in sleeping/living unit	C. Freedom over schedule and access to food	D. Visitors at any time	E. Physically accessible	F. Documented justification for any modification to these conditions
	The Department plans to delete references to ACFs in the BI Waiver (with ACFs being replaced by SLPs and TLPs).					
<p>3. Child Residential Habilitation settings</p> <ul style="list-style-type: none"> Foster Care Homes (no more than 3 foster care children) Kinship Foster Care Non-certified Kinship Care Specialized group facilities <ul style="list-style-type: none"> Group Homes (up to 6 children if three are in CHRP program) Group Centers (up to 7 children if two are in CHRP program or 9 children if one is in CHRP program) Residential Child Care Facilities (RCCFs) <p>The Department plans to work with CDHS on regulatory and/or waiver edits that will have minimal impact on the numerous foster care homes, SGFs, and RCCFs that serve children who are not enrolled in the CHRP waiver.</p>	<p>Statute: Statutes are silent with respect to landlord/tenant rights, etc. for child residential habilitation settings.</p> <p>Regs: The Department plans to work with CDHS to propose redlines to address points below, and to add a reference to new Rule BBB.</p> <p>CDHS child welfare regulations are silent with respect to landlord/tenant rights, etc. for child residential habilitation settings. <u>Input is invited</u> on whether and how to add such rights within 12 CCR 2509-8 (e.g., should a parent, guardian, or some other person or entity, rather than the child, be a party to the lease or similar agreement; or should the requirement of a lease or similar agreement be eliminated for children, with appropriate documentation in the person-centered plan?).</p> <p>Note that under 10 CCR 2505-10 8.604.3(B)(5) (relating to people with IDD), services may not be suspended if doing so would put person at risk of loss of abode.</p> <p>Waiver: CHRP waiver is silent with respect to landlord/tenant rights, etc. for child residential habilitation settings.</p>	<p>Statute: See Column A.</p> <p>Regs: 12 CCR 2509-8 7.708.33 (for foster care) and 7.714.31 (for SGFs and RCCFs) provide that “[e]very child has the right to a reasonable degree of privacy.” The Department plans to work with CDHS to propose redlines to more explicitly conform to federal rule criteria.</p> <p>Waiver: CHRP waiver, App. C-2, provides that “children residing within a group home have access to the same amenities as those children residing in a foster home such as . . . privacy to the extent that is appropriate according to the child's needs.” For group homes, CHRP waiver, App. C-2, also refers to CDHS licensing requirements, including “a reasonable degree of privacy.” CHRP waiver does not explicitly provide for the detailed privacy criteria set forth in the HCBS Settings Rule.</p> <p>of course a parent should be involved if the client is a child, children do not sign leases.</p>	<p>Statute: See Column A.</p> <p>Regs: See Column A; the Department plans to work with CDHS to propose redlines.</p> <p>Waiver: CHRP waiver is silent with respect to freedom over schedule and access to food.</p>	<p>Statute: Under C.R.S. 25.5-10-223, person has right to reasonable and frequent (but not unlimited) opportunities to meet with visitors.</p> <p>Regs: 12 CCR 2509-8 7.708.33 (for foster care) and 7.714.31 (for SGFs and RCCFs) protect children’s right to have convenient opportunities to meet with visitors (but not at any time). The Department plans to work with CDHS to propose redlines to conform more closely to federal rule. <u>Input is invited</u> on how to implement such rights in an individualized and age-appropriate manner.</p> <p>Waiver: CHRP waiver, App. C-2, provides that in group homes, “[v]isitors are allowed in the home, however, visitation maybe is dependent upon the child’s court orders if there are concerns about a child’s safety.” For CHRP settings generally, CHRP waiver cites the CDHS regulations cited above.</p>	<p>Statute: See Column A.</p> <p>Regs: See Column A; the Department plans to work with CDHS to propose redlines.</p> <p>Waiver: See Column C.</p>	<p>Statute: See Column A.</p> <p>Regs: 10 CCR 2505-10 8.604.3(A) (relating to people with IDD) and 8.608.2 (same) requires that any suspension of rights and restrictive procedures be documented in plan and monitored. Also, 12 CCR 2509-8 7.714.31 (for SGFs and RCCFs, but not foster homes) requires that restriction of certain (not all) rights be documented. The Department plans to work with CDHS to propose redlines to the foregoing regs to conform more closely to list of requirements in federal rule.</p> <p>Waiver: CHRP waiver at App. G-1 provides that certain rights may be restricted by foster homes and group homes/centers (does not refer to RCCFs). The Department plans to work with CDHS to propose redlines to ensure that restrictions do not inappropriately limit rights in Table 1, and limit rights in Table 2 only according to CMS’s requirements that limitations be set forth and justified in personal plan.</p>
4. Day Habilitation/treatment centers for individuals with IDD	N/A—this type of setting is not residential.					
5. Day treatment facilities under BI waiver	N/A—this type of setting is not residential.					
6. Group Residential Services and Supports (GRSS) community residential homes for four to eight people	<p>Statute: C.R.S. 25.5-10-214 is silent with respect to landlord/tenant rights, etc.</p> <p>The Department plans to propose redlines to or deletion of C.R.S. 13-21-117.5(7) in order to conform to federal rule (currently provides that “[i]n any civil action brought against a provider, a person with [IDD] who is served in a residential setting owned or leased by a provider shall not be considered a tenant of the provider and statutes regarding landlord-tenant relationships shall not apply. . . . No real property rights shall accrue to a person with [IDD] by virtue of placement in a residential setting.”). <u>The Department seeks input</u> on whether and how to propose modifications to C.R.S. 13-21-117.5(1) (providing that CCBs and service agencies may remove a person with IDD from a residential setting if they believe that the person “may be at risk of</p>	<p>Statute: See Column A.</p> <p>Regs: 6 CCR 1011-1 Chap 08 regs are silent with respect to privacy in sleeping/living unit; the Department plans to work with CDPHE to propose redlines.</p> <p>Waiver: DD Waiver is silent with respect to privacy in sleeping/living unit.</p>	<p>Statute: See Column A.</p> <p>Regs: 6 CCR 1011-1 Chap 08 section 13.8 requires reasonable access to food supplies and between-meal snacks, but could be more explicit about access to food at any time. Regs are silent with respect to freedom over schedule. The Department plans to work with CDPHE to propose redlines.</p> <p>Waiver: DD Waiver is silent with respect to freedom over schedule and access to food.</p>	<p>Statute: Under C.R.S. 25.5-10-223, person has right to reasonable and frequent (but not unlimited) opportunities to meet with visitors.</p> <p>Regs: See Column B; the Department plans to work with CDPHE to propose redlines.</p> <p>Waiver: DD Waiver is silent with respect to right to visitors at any time.</p>	<p>Statute: See Column A.</p> <p>Regs: No redlines needed. 6 CCR 1011-1 Chap 08 section 22.10 protects right to use of and access to dining room, other common areas, and building.</p> <p>Waiver: DD Waiver, App. C-2, item c-ii requires accessibility.</p>	<p>Statute: See Column A.</p> <p>Regs: 10 CCR 2505-10 8.604.3(A) (relating to people with IDD) and 8.608.2 (same) requires that any suspension of rights and restrictive procedures be documented in plan and monitored; the Department plans to propose redlines to conform more closely to list of requirements in federal rule.</p> <p>Waiver: DD Waiver, App. G-2, item b-i states that rights suspensions must be justified, reviewed, and documented in plan, and that “the informed consent of the participant [or] his/her guardian for the use of the restrictive procedure” must be obtained. But this description relies on 2 CCR 503, Volume 16,</p>

Type of setting	A. Landlord/tenant rights	B. Privacy in sleeping/living unit	C. Freedom over schedule and access to food	D. Visitors at any time	E. Physically accessible	F. Documented justification for any modification to these conditions
	<p>abuse, neglect, mistreatment, exploitation, or other harm in such setting," and limiting liability for such removals).</p> <p>Regs: The Department plans to work with CDPHE to propose redlines to address the points below, and to add a reference to new Rule BBB.</p> <p>6 CCR 1011-1 Chap 08 Section 9.1(B) and (C) and 18.3 relating to resident transfers and 10 CCR 2505-10 8.609.5(B)(8) are silent with respect to landlord/tenant rights, etc. The Department plans to work with CDPHE to propose redlines to ensure federal criteria are met.</p> <p>Note that under 10 CCR 2505-10 8.500.9(A)(4), a provider under DD waiver may discontinue services only after documented efforts to resolve the situation. And under 10 CCR 2505-10 8.604.3(B)(5) (relating to people with IDD), services may not be suspended if doing so would put person at risk of loss of abode.</p> <p>Waiver: DD Waiver is silent with respect to landlord/tenant rights, etc.</p>	<p>why not remove the staff not the client?</p> <p>this will need to be changed</p>				<p>which has been repealed (with the transfer of DIDD (then DDS) from CDHS to the Department); citations should be updated.</p>
<p>7. Individual Residential Services and Supports (IRSS) homes for up to three people</p> <ul style="list-style-type: none"> Host homes Homes owned or leased by agency Family homes (see Row 8) Own homes (see Row 8) 	<p>Statute: See Row 6, above.</p> <p>Regs: <u>The Department seeks input</u> on how to implement landlord/tenant rights and the other federal requirements in this table in the context of host homes. Currently, the Department plans to propose redlines to address the points below, and to add a reference to new Rule BBB.</p> <p>10 CCR 2505-10 8.609.5(B)(8) is silent with respect to landlord/tenant rights, etc. The Department plans to propose changes to ensure federal criteria are met.</p> <p>Note that under 10 CCR 2505-10 8.500.9(A)(4), a provider under DD waiver may discontinue services only after documented efforts to resolve the situation. And under 10 CCR 2505-10 8.604.3(B)(5) (relating to people with IDD), services may not be suspended if doing so would put person at risk of loss of abode.</p> <p>Waiver: DD Waiver is silent with respect to landlord/tenant rights, etc.</p>	<p>Statute: Statute is silent with respect to privacy in sleeping/living unit, etc.</p> <p>Regs: See Column A; the Department plans to propose redlines.</p> <p>Waiver: DD Waiver is silent with respect to privacy in sleeping/living unit.</p>	<p>Statute: See Column B.</p> <p>Regs: See Column A; the Department plans to propose redlines.</p> <p>Waiver: DD Waiver is silent with respect to freedom over schedule and access to food.</p>	<p>Statute: Under C.R.S. 25.5-10-223, person has right to reasonable and frequent (but not unlimited) opportunities to meet with visitors.</p> <p>Regs: See Column A; the Department plans to propose redlines.</p> <p>Waiver: DD Waiver is silent with respect to right to visitors at any time.</p>	<p>Statute: See Column B.</p> <p>Regs: No redlines needed. 10 CCR 2505-10 8.609.7(A)(9) requires accessibility.</p> <p>Waiver: DD Waiver, App. C-2, item c-ii requires accessibility.</p>	<p>Statute: See Column B.</p> <p>Regs: 10 CCR 2505-10 8.604.3(A) (relating to people with IDD) and 8.608.2 (same) requires that any suspension of rights and restrictive procedures be documented in plan and monitored; the Department plans to propose redlines to conform more closely to list of requirements in federal rule.</p> <p>Waiver: DD Waiver, App. G-2, item b-i states that rights suspensions must be justified, reviewed, and documented in plan, and that "the informed consent of the participant [or] his/her guardian for the use of the restrictive procedure" must be obtained. But this description relies on 2 CCR 503, Volume 16, which has been repealed (with the transfer of DIDD (then DDS) from CDHS to the Department); citations should be updated.</p>
8. Private homes belonging to clients or their families, professional provider offices, and clinics	<p>N/A—private homes belonging to clients or their families are not generally provider-owned or -controlled, and professional provider offices and clinics are not residential. <u>The Department seeks input</u> on the potential application of the federal standards for provider-owned or controlled residential settings to situations where a family caregiver owns the home in which he or she provides services to a family member. Should these standards generally apply (subject to modification through the person-centered plan)? If so, should family-caregiver-owned homes be presumed compliant for purposes of site-specific assessments (e.g., Provider Transition Plans and site visits), subject to rebuttal if information is provided about a particular home?</p>					

Type of setting	A. Landlord/tenant rights	B. Privacy in sleeping/living unit	C. Freedom over schedule and access to food	D. Visitors at any time	E. Physically accessible	F. Documented justification for any modification to these conditions
9. Supported Employment/vocational services locations	N/A—this type of setting is not residential.					
10. Supported Living Program (SLP) facilities under BI waiver (note that SLP providers must be licensed as an ALR (see Row 2 above) or a Home Care Agency (HCA) Class A (see 6 CCR 1011-1, Ch. 26), but the latter option is being removed from the regulation) The rules relating to this type of setting are currently being revised.	Statute: C.R.S. 25.5-6-703(9) is silent with respect to landlord/tenant rights, etc. for “supportive care campus.” Regs: No redlines needed beyond a reference to new Rule BBB. Under 10 CCR 2505-10 8.515.85.F, SLP must put in place a lease or other written agreement that addresses eviction processes and appeals. Waiver: SLP is provided under BI waiver, which is silent with respect to landlord/tenant rights, etc.	Statute: See Column A. Regs: No redlines needed. Under 10 CCR 2505-10 8.515.85.F, SLP must ensure privacy in the client’s unit including lockable doors, choice of roommates, and freedom to furnish or decorate the unit. Waiver: BI Waiver at App. C-2, item c(ii) requires SLP facility to be homelike and provide privacy.	Statute: See Column A. Regs: No redlines needed. Under 10 CCR 2505-10 8.515.85.F, SLP must ensure that clients have the freedom and support to control their own schedules and activities, and have access to food at any time. 8.515.85.J(1)(a) limits cooking. Waiver: BI Waiver at App. C-2, item c(ii) requires SLP facility to be homelike and provide access to food and kitchen facilities.	Statute: See Column A. Regs: No redlines needed. Under 10 CCR 2505-10 8.515.85.F, SLP must enable clients to have visitors of their choosing at any time. Waiver: See Column A.	Statute: See Column A. Regs: No redlines needed. Under 10 CCR 2505-10 8.515.85.F, SLP must be physically accessible. Waiver: See Column A.	Statute: See Column A. Regs: Under 10 CCR 2505-10 8.515.85.F, there must be documentation for modification to conditions. The Department plans to propose redlines to conform more closely to list of requirements in federal rule. Waiver: See Column A.
11. Transitional Living Program (TLP) facilities under BI waiver (note that TLP providers must be licensed as an ALR (see Row 2 above)) The rules relating to this type of setting are currently being revised.	Statute: C.R.S. 25.5-6-703(10) is silent with respect to landlord/tenant rights, etc. for transitional living facility. Regs: 10 CCR 2505-10 8.516.30 is silent with respect to landlord/tenant rights for TLP facility. The Department plans to propose redlines and add a reference to new Rule BBB. Waiver: TLP is provided under BI waiver, which is silent with respect to landlord/tenant rights, etc.	Statute: See Column A. Regs: See Column A; the Department plans to propose redlines. Waiver: BI Waiver at App. C-2, item c(ii) requires TLP facility to be homelike and provide privacy.	Statute: See Column A. Regs: See Column A; the Department plans to propose redlines. Waiver: BI Waiver at App. C-2, item c(ii) requires TLP facility to be homelike and provide access to food and kitchen facilities.	Statute: See Column A. Regs: See Column A; the Department plans to propose redlines. Waiver: See Column A.	Statute: See Column A. Regs: See Column A; the Department plans to propose redlines. Waiver: See Column A.	Statute: See Column A. Regs: See Column A; the Department plans to propose redlines. Waiver: See Column A.
12. Youth Day Service settings under the Children’s Extensive Support (CES) Waiver	N/A—this type of service is not residential. To the extent that the service is provided in the child’s or provider’s home, see Row 8.					

Global updates: in 10 CCR 2505-10 8.500 *et seq.*, 8.500.90 *et seq.*, and 8.503 *et seq.* (regulations for DD, SLS, and CES waivers), and 8.600 *et seq.* (regulations for individuals with IDD), the Department plans to update definitions and references involving the Division for Developmental Disabilities and the Operating Agency (*i.e.*, the former DDD within CDHS) to the Division for Intellectual & Developmental Disabilities (*i.e.*, the current DIDD within HCPF). In these regulatory sections and in 10 CCR 2505-10 8.100.1 (Definitions), the Department also plans to update references involving intermediate care facilities for the mentally retarded (ICF/MRs or ICF-MRs) to intermediate care facilities for individuals with intellectual disabilities (ICF/IIDs).



June 9, 2016

Statewide Transition Plan Team
1570 Grant St.
Denver, Colorado 80203
STP.PublicComment@state.co.us

RE: Comments to May 5, 2016 Statewide Transition Plan

Dear Sir/Madam:

Thank you for the opportunity to comment on Colorado's May 5, 2016 Statewide Transition Plan (STP) outlining Colorado's plan to ensure that Medicaid Home and Community Based Services are provided in settings, and pursuant to a person-centered planning process, that meet the Centers for Medicare and Medicaid Services' March 2014 rule.

Disability Law Colorado (DLC) is the designated Protection and Advocacy (P&A) System for Colorado under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 ("DD Act"), 42 U.S.C. 15001 *et seq.*, the Protection and Advocacy for Individuals with Mental illness Act ("PAIMI Act") 42 U.S.C. §10801 *et seq.*, and 29 U.S.C. § 794e, *et seq.*, the Protection and Advocacy of Individual Rights Program ("PAIR"). DLC has the authority to conduct investigations of allegations of abuse, neglect, and rights violations of people with disabilities, and to advocate for the rights of individuals with disabilities. Since its designation as Colorado's P&A System, DLC has represented more than 25,000 people with disabilities, provided information and technical assistance to more than 130,000 people, and reached more than 100,000 Coloradans through education programs and publications. As the P&A, DLC has worked with many individuals receiving services in a variety of Medicaid-funded settings, and assisted many individuals to assert their right to self-determination and live in a more integrated setting.

DLC provides the following comments regarding the STP.

INFRASTRUCTURE: STAKEHOLDER ENGAGEMENT AND OVERSIGHT

1. All STP documents should be available for public comment

Many documents cited in the STP, which are an integral part of the Department of Health Care Policy and Financing's (the Department's) transition plan, are not posted on the Department's website, or otherwise readily available for public review. DLC recommends that all documents referenced in the STP be made available for public review and comment. For example, the following documents are referenced in the STP but not available on the website:

- The Provider Transition Plan ("PTP") Excel file and PTP User Manual, referenced in Box 13 of the May 5, 2016 STP.

- The Protocol for Site Visits and Heightened Scrutiny, including the Checklist for site visitors, referenced in Box 13 of the May 5, 2016 STP.
- The draft template with minimum requirements for a residential agreement, referenced in Box 29 of the May 5, 2016 STP.
- The protocol and draft template for managing ongoing non-compliance issues with the HCBS Setting Rule, referenced in Box 48 of the November 16, 2015 STP.

It is difficult to provide meaningful comments to the STP without having access to these documents. Among other important aspects of the STP, these documents contain the self-assessment questions asked of providers and the instructions for the site visits. DLC obtained these documents through a public records request on May 20, 2016, leaving far less than 30 days for it to review the documents and complete its comments by June 9, 2016. The public should not have to make a public records request in order to review and comment on these important pieces of the STP.

Additionally, the Department should make sure that all information related to the STP that the Department has already posted on its website is available from one central location on the website. The Department has some information regarding the state's transition plan available at www.colorado.gov/hcpf/home-and-community-based-services-settings-final-rule, and some information at www.colorado.gov/hcpf/hcbs-waiver-transition. At the very least, there should be links from each website to the other so the public can easily access all of the information that the Department is making available regarding its STP.

2. Stakeholder meetings and committee meetings should be identified in the STP and contact information provided in the STP.

The STP refers throughout to several stakeholder meetings and advisory committee meetings. See Lines 4, 7, and 8 of May 2016 STP. For example, the Department states that it “is talking about adding a standing agenda item to the *regular stakeholder meeting*.” See Box 8 in May 2016 STP. The Department states that it has held “stakeholder workgroups” for residential and non-residential settings to discuss concerns, best practices and other issues. Additionally, the STP refers to a stakeholder workgroup regarding supported employment, and that part of the group’s mission was to create best practices. See STP Box 7 of May 2016 STP. Information about how to find out about the groups’ members, the meetings, and the work produced by the workgroup or committee should be provided in the STP, including contact information for the Department staff person in charge of the meeting so the public is readily able to obtain information about the group and its work.

3. The Department should make correspondence from CMS public.

In the Summary of Changes to Home and Community Based Services (HCBS) Statewide Transition Plan (STP) from November 2015 to May 2016 found on the Department’s website www.colorado.gov/hcpf/home-and-community-based-services-settings-final-rule, the Department reports that CMS provided comments to the November 15, 2016 STP.2 via a letter

DLC Comments to May 5, 2016 STP

dated January 12, 2016 and subsequent emails. CMS is also requiring the Department to submit quarterly updates. CMS's correspondence to the Department on the STP, particularly the January 12, 2016 letter, should be made available to the public and posted on the Department's website so the public can understand CMS's concerns, better understand the Department's STP, and provide more meaningful input to the STP.

INFRASTRUCTURE: SITE SPECIFIC ASSESSMENTS

1. *The STP does not describe what will happen to the 145 providers who did not complete the self-assessment surveys or whose responses could not be linked to a provider.*

The STP does not break down this number to specify how many providers failed to complete the self-assessment and how many surveys could not be linked to a provider. The STP should explain that, as well as explain how the problem of linking responses to providers will be remedied in the future. The latter is particularly important so that survey responses from participants, family members, and advocates can be linked to a specific provider.

In its Change Log dated November 16, 2015, the Department indicated that providers who did not complete surveys 1 and 2 would be reminded to complete the survey, and that those who did not complete the self-assessment would be considered non-compliant. Four months later, the March 2016 provider scorecards still shows that 145 providers did not respond to the survey.

It is not clear from the May 5, 2016 STP if the state is allowing these providers an additional opportunity to complete a self-assessment. If the state is allowing the providers who failed to respond to the first two surveys an additional opportunity to complete a survey through the provider transition plan (STP May 2016, Box 13 "the provider transition plan is an Excel document that the provider completes in order to assess its compliance with the HCBS Settings Rule, assess the potential application of heightened scrutiny, and set out a remedial action plan and timeline"), then the Department should include these providers in the site visits, and not rely on them being randomly selected for a site visit. The providers' failure to complete two surveys already sent to them indicates a reluctance or inability to take necessary steps to comply with the HCBS rule, and warrants a site visit for validation of the self-assessment. The Department should also be more active in overseeing these providers' development of a transition plan, having reviews more frequently than just every six months.

2. *The STP does not explain how clients or other community stakeholders are involved in preparing for site visits.*

The Department states in Box 13, which action item entails preparing for on-site surveys, that client and other community stakeholders are key stakeholders in conducting the work, but the STP does not explain how clients and other community stakeholders are involved. There is no indication in the plan that clients or 'other community stakeholders' were allowed to provide any input in developing the provider self-assessments or the participant, family, and advocate survey tool, or the provider transition plan, or PTP User Manual or Protocol for Site Visits and Checklist for site visits, all referred to in Box 13 of the May 5, 2016 STP. The STP should explain how these stakeholders will be involved in preparing for the site visits.

3. *An independent party should distribute and collect individual and family surveys, and the identity of individuals and family members who respond to the survey should be kept confidential.*

It appears that the Department is actively seeking input from participants of all providers, not just those providers who are randomly selected for site visits. *See* HCBS Provider Transition Plan User Manual, Appendix D. This is particularly important in light of the Department's decision to reduce the number of site visits it conducts.

However, the STP indicates that the Department is seeking individual and family member input by "asking all providers to work with the individuals receiving waiver services to complete the survey." *See* Box 12 of May 5, 2016 STP. The Colorado HCBS Final Rule Provider Validation Process explains that the providers will be required to distribute the individual and family survey to clients and is responsible for getting clients and clients' families to complete the survey. *See* p. 4. The Department should not have providers distribute and collect the survey, or encourage providers to be directly involved in assisting recipients in completing the survey, due to the conflict of interest. The provider has a financial interest in the outcome of the survey and also has control over many aspects of that participant's life. Asking providers to work with participants to complete the survey creates a potential for biased results.

The Department does not explain how the provider will collect the individual and family surveys while protecting the identity of the individual or family member from the provider. The Department will also require that the site visit team have a detailed review of the individual and family survey results with the provider. *See* Colorado HCBS Final Rule Provider Validation Process, at 5. This should only be done if it can be done without revealing the identity of the client or family member.

Failure to protect the identity of participants who respond to the survey lends itself to biased results, because participants may not feel comfortable providing candid responses if their identities are not protected.

The Department also described in its November 16, 2015 plan, Box 13, that it would 'push out' the survey to families and individuals on a quarterly basis. The STP does not explain what it means by "push out," and the plan to push out the survey is not included in the May 5 2016 survey.

The Department should explain its plan to obtain ongoing input from clients, family members and advocates after the March 2019 transition deadline.

4. *The Department should develop a plan to provide ongoing education to participants and family members about the new rule.*

The STP indicates that the Department is engaging in numerous efforts to educate providers about the HCBS regulations, an important piece of the transition plan, but not much effort specifically designed as outreach and education to participants. There does not seem to be a clear plan to educate participants about their rights to receive services in fully integrated settings so that they can provide meaningful feedback.

The information provided on the front of the individual and family survey does not provide a sufficient explanation of the HCBS rule and individual rights. For example, the chart lists characteristic of the home as “you can be active in the community” and “you have legal rights and protections.” These vague terms need to be clarified through examples.

5. *The Department should use the participant survey to validate the provider self-assessments given that the Department has reduced the number of site visits it will conduct.*

The STP is contradictory about whether the state intends to use the participant surveys to validate provider self-assessments. *Compare* Change Sheet dated November 16, 2016, p. 2 (“Data from individual, Family and Stakeholder survey and from NCI will be used to track over all implementation through the state, but not to validate particular providers’ responses”) and May 5 2016 STP, Box 12, (“results [of individual and family surveys] will inform processes and providers and/or locations that need additional support” and “Many survey respondents have elected to identify the particular setting at which they or their family member receive services, which allows their responses to be used in the site-specific assessment process”). Because the state is reducing the number of site visits it will conduct, the independent surveys completed by participants, family, and advocates become a more important tool to assess provider compliance with the HCBS regulations.

DLC is pleased to see that the Department is willing to consider adding site visits based on client or family responses or public input, even if a setting was not part of the 231 randomly selected settings selected for a site visit.

6. *The provider survey in the provider transition manual asks questions some providers will not have information about and does not match the participant survey.*

The provider survey in the provider transition manual asks questions that the provider is not necessarily going to know the answer to. For example, the provider transition manual asks “Do individuals have a choice of where they live?” *See* HCBS Provider Transition Plan User Manual, Appendix B, p. 19 and Appendix C, p. 31. A host home provider or group home provider is not going to have information about what choice an individual was given of where to live. The provider is not a good source of this information. Nor is the host home provider or group home provider going to know whether the individual visited other settings before making his or her choice. *Id.*

The provider survey in the HCBS Provider Transition Plan User Manual and the participant, family, and advocate survey do not ask the same questions. The participant survey does not ask about a lease agreement. The participant survey does not ask if restraints are used. The participant survey does not ask if the participant can lock his/her bedroom door. These questions are asked in the provider survey. Additionally, the term “personal choice” in the participant survey is not really explained with examples as it is in the provider survey. For example, the provider survey asks whether individuals can decorate their bedrooms as they choose and wear the cloths that they want. The participant survey does not have these questions. Because the surveys do not match, it makes it more difficult to validate the provider self-assessment.

7. *The individual and family survey appears to have significant design flaws that could confuse respondents.*

The Department's Survey for Individuals, Families, and Advocates section titled "**Questions about the Workplace**" has headings listed in grey that talk about the home, instead of the workplace. For example, one heading states "Choice: The regulations require that you have a choice of where you live. The following questions are designed to find out if your home is in line with the requirement." The questions below this heading ask "Do you feel you have the support to seek a volunteer opportunity, paid job, or participate in a day program in the community?" The mismatch between the heading "Questions about the Workplace" and the questions about the home could cause confusion for survey responders.

8. *Additional comments*

The STP does not leave enough time for the heightened scrutiny process to be completed. The Department proposes to wait until March 2018 to submit the list of providers who will undergo heightened scrutiny to CMS. This does not leave enough time to complete all the tasks necessary in order to ensure all individuals are in appropriate settings before March 2019. Specifically, that leaves only one year after the Department submits the list of providers for heightened scrutiny to CMS for review, the Department to determine whether individuals will be transitioned, the Department to assess capacity for the services to be provided by another provider, and transition to be completed.

The Department should assess current capacity of non-disability specific settings and develop a plan to increase capacity of those settings.

The STP does not explain at what point before the March 2019 it will place a moratorium on new placements in settings found to be noncompliant and not able to reach compliance.

Thank you for your consideration of DLC's comments.

Sincerely,



Claire Dickson
Attorney Coordinator
Protection and Advocacy for People with
Developmental Disabilities (PADD) Program

xc: Ondrea Richardson, Centers for Medicare and Medicaid Services

Crosswalk Public Comment 06-2016 from Gerrie Frohne, volunteer advocate, PADCO (Parents of Adults with Disabilities in Colorado)

- I. HCBS Settings Rule (all settings; red font)
 1. Adult Day Services:
 - a. CMS requires “integrated...to the same degree of access as individuals not receiving Medicaid HCBS”. Colo Statute, Regs and Waivers do not specify “integration”, and this MUST BE ADDED to all these.
 - b. CMS: “Setting is selected by the individual” = ADS ONLY allows ONE choice, Center Based Services. Alternatives such as individually chosen services MUST be included in Adult Day Services.
 - c. CMS: “freedom from coercion”. With ADS Center Based Services being the only option, referring service recipients who desire an individualized alternative, to ADS constitutes coercion.
 - d. CMS: access to “the greater community” as individuals not receiving Medicaid HCBS. ADS Center Based Services pretend to offer “community” activities, while actually merely including their same participants, plus paid (or volunteer) staff, and an occasional guest presenter. This is obviously NOT “the greater community”.
 2. Alternative Care Facilities (ACFs; ALRs)
 - a. (See #1.a., above which applies here also)
 - b. The Waiver references “home-like environment”. Upscale Nursing Facilities (and SNFs) offer “home-like” environments, BUT that would not be “receiving services in the community to the same degree of access as individuals not currently receiving Medicaid HCBS” (CMS). Given “preferences” (CMS), no one chooses “home-like” instead of HOME.
 3. Child Residential Habilitation settings (I defer to those with more experience and expertise on Children’s HCBS services)
 4. Day Habilitation for Individuals with IDD
 - a. Statute section references “new consolidated adult IDD waiver”. This Waiver Redesign project is in the early planning stages, with no date of implementation nor any defined benefit standards, nor wording that can be related to CMS Settings Rule language. NOT APPROPRIATE to include this theoretical waiver reference in the Crosswalk.
 - b. Colo Statute allows a service agency to hold a person’s money and disperse “reasonable amounts” upon request. CMS: The setting supports full access of individuals to “control personal resources”. So, NO, an agency SHALL NOT control resources (money) of a person in services, UNLESS they are the SSA designated representative payee.
 - c. In Crosswalk 4., D., “Optimizes autonomy in life choices,” you state that “No Redlines Needed.” However, although Regs require day hab environments to foster independence and personal choice, that DOES NOT OCCUR in current IDD reality. Individuals receiving services in Support Levels 1 & 2, and sometimes, 3,

cannot choose individualized services due to limited funding. This is discriminatory against these individuals, who may only choose “grouped” services, often at odds with the medical necessity of their diagnosed disability. In order to conform to CMS Settings Rule requirements, Colo needs to fund legitimate choice of services. “Silence” in the SLS and HCBS-DD Waivers on “choice” MUST be corrected by amendment, ASAP.

5. Day Treatment facilities under BI Waiver
 - A. The list of rights in 10 CCR 2505-10 8.515.80 (C) should be extended as described in the Crosswalk document.
6. Group Residential Services and Supports
 - a. Since Statute requires regulation of the distances between such homes “to avoid conspicuous grouping”, any current or planned congregate GRSS needs to follow this regulation, especially rural farm or ranch communities. No Medicaid HCBS resources should be dedicated to such residential arrangements, EVER.
 - b. Agencies and individual’s money: See 4 b, above.
 - c. The Crosswalk states that, “The department is considering”...Regs...”to be more explicit that the setting is selected by the individual.” The current Colo. Plan to resolve Conflict Free Case Management provides that one CCB cannot provide Case Management AND Service Provision for the same person. However, since CCB #1 can provide CM, and CCB #2 can provide SP, by “trading” persons in services, individuals can still be directed to “favorite” providers by Case Managers. This obvious Conflict Of Interest contradicts CMS’ requirement for services based on personal preferences and choice, and results in unacceptable coercion.
 - d. References in the Crosswalk to the new consolidated adult IDD waiver need to be deleted or described as “potential”; See 4.a, above.
 - e. From Crosswalk: “Regs for GRSS community residential homes are silent with respect to facilitating choice regarding services and supports.” CMS Settings Rule emphasizes CHOICE, so HCPF needs to UN-SILENCE this issue.
7. Individual Residential Services and Supports (IRSS) for up to 3 people
 - a. Revise Regs to explicitly specify that the setting is selected by the individual from setting options including non-disability specific settings and an option for a private unit in a residential setting, etc.
 - b. Please include all comments in #6 (GRSS), above, duplicative, for IRSS, here in #7.
8. Private homes belonging to clients or their families, professional provider offices, clinics.
 - a. No additional comments, as HCPF plans to add new Rule AAA, here.
9. Supported Employment/vocational services locations
 - a. I defer my comments to people with more expertise in SE & vow services.

10. Supported Living Program facilities under BI Waiver

a. The Waiver confirms that people are informed of “feasible” service alternatives.

CMS expects more than “feasible” alternatives, and stipulates, “services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.”

b. The Waiver uses the term, “homelike”: see my comments in #2 b., above.

11. Transitional Living Program facilities under BI Waiver

a. Assuming HCPF’s fulfilling commitment to Redline improvement, I have no further comments.

12. Youth Day Service settings under the CES Waiver: I defer to those with expertise with CES

II. Standards applicable to provider-owned or –controlled residential settings.

1. N/A

2. Alternative care facilities

a. CMS state “a choice of roommates”, but Colo Regs state “accommodate roommate choices within reason.” It is advisable to change to the CMS requirement here.

b. Colo Regs need to be more explicit about control over schedule and activities, including the wording from CMS on these topics. Also, amend EBD and CMHS Waivers to include control over schedule, access to food, etc. (as differentiated from CDASS option where more choice and control is available.)

c. Physical accessibility is a Settings requirement from CMS. EBD and CMHS Waivers must be amended to include this Settings wording, and not remain silent on this.

3. Child Residential Habilitation settings: I defer to those with expertise on this Waiver.

4. Day Habilitation/treatment centers for individuals with IDD: N/A as not residential setting

5. Day treatment facilities under BI Waiver: N/A as not a residential setting

6. Group Residential Services and Supports (GRSS) community residential homes for 4-8 people

a. CMS requires “INCLUDE THE INFORMED CONSENT OF THE INDIVIDUAL.” in Set 2 of the Federal criteria. Truly validating the Informed Consent of an individual, is a lengthy, complex, and potentially expensive process, BUT IT IS INVALUABLE to the person in services. I suggest that Informed Consent be documented in each person’s annual Support Plan, with a detailed description of the actions taken to provide and verify Informed Consent. One cannot become informed without actually experiencing a variety of Settings, and receiving input from other service recipients who have chosen various Settings. With the threat of Case Management coercion (see I. #6, c,

above), Informed Consent can be either tacit or actual, and CMS is looking for "actual".

- b. HCPF needs to address "silence" regarding Privacy in sleeping/living unit, freedom over schedule, and access to food, in the HCBS-DD Waiver to comply with CMS thoroughly.
 - c. Per CMS, "Individuals are able to have visitors of their choosing at any time." The HCBS-DD Waiver needs amending to un-silence with respect to visitors, perhaps with specifics documented in one's annual Service Plan.
 - d. Accessibility needs to be reviewed in Colo's Statute, Regs and Waivers. All residential settings need to have TWO accessible exits to mitigate fire and other hazardous danger.
7. Individual Residential Services and Supports (IRSS) homes for up to 3 people: Include my comments from I, #6, a. thru e., I, #7, a. and b.; II, #6, a. thru d. for IRSS Settings here.
8. Private homes belonging to clients or their families, professional provider offices, and clinics.
 - a. There should be NO PRESUMPTION OF COMPLIANCE, because an agency is involved with the individual or family owned home, and this raises issues of avoiding or getting-around CMS Settings Rule requiring high quality standards.
9. Supported Employment/vocational services locations: N/A re residential concerns.
10. Supported Living Program facilities under BI Waiver include my comments from I, #10, a. and b., above.
11. Transitional Living Program facilities under BI Waiver: Include my comments from I, #11, a., above
12. Youth Day Service settings under the CES Waiver: N/A re residential issues; served in child's or provider's home.



TO: HCBS Final Rule Project Team

FROM: Deborah Lively, Director of Public Policy & Public Affairs, LeadingAge Colorado

DATE: June 8, 2016

SUBJECT: Comments on Draft Statewide Transition Plan and Systemic Assessment Crosswalk

Thank you for the opportunity to provide comments on the Draft Statewide Transition Plan and Systemic Assessment Crosswalk. At LeadingAge Colorado, we appreciate the intent of the Centers for Medicare and Medicaid Services (CMS) Home- and Community-based (HCBS) Services final rule. We understand the desire of the agency in attempting to offer Medicaid beneficiaries choice and access to community-based services that provide person-centered care in the most integrated setting.

However, as the Colorado Department of Health Care Policy & Financing (HCPF) moves forward with implementation, we ask that an increase in Medicaid rates paid to HCBS providers be considered. We understand that HCBS rates are scheduled to be reviewed by the Medicaid Provider Rate Review Advisory Committee in the coming months and we look forward to the implementation of the final rule being part of those discussions. The requirements of the final rule will be extensive on some types of providers and the Medicaid rates paid should be increased to help offset those costs. HCBS providers did not receive an increase this year and labor, training and utility costs continue to rise. According to our members, Medicaid doesn't currently cover the costs to provide care to HCBS recipients and this deficit could potentially grow with the implementation of the final rule.

If HCBS providers can no longer afford to offer care to Medicaid recipients because of budgetary challenges, choice and access disappear for our most frail and vulnerable citizens. This undermines state policy and the intent of the final rule that centers on helping elderly and disabled adults receive care in the community for as long as possible.

Specific comments from LeadingAge Colorado on the Statewide Transition Plan (STP) and Systemic Assessment Crosswalk on Settings appear below.

Statewide Transition Plan

Program Component: Stakeholder Engagement and Oversight

Action Item #8: Develop and update on a regular basis an external stakeholder communication plan.

Comment: Some stakeholder meetings are held every other month or quarterly. Therefore, updates may not be shared in a timely manner. Information and updates contained in this version of the STP were not shared with stakeholders at these meetings or posted on HCPF's website. Examples include documents listed in Action Item #13: Provider Transition Plan (PTP) Excel file, PTP User Manual, the Protocol for Site Visits and Heightened Scrutiny and the checklist for site visitors. Action Items #13 and 14: the sampling methodology for site visits and the selection of contractor Telligen to conduct the

site visits. It is recommended that updates be shared at stakeholder meetings and these types of documents be posted on the website.

Program Component: Infrastructure

1. Site-specific assessments of existing HCBS residential and non-residential settings

Action Item #12: Develop and conduct survey for individuals and families to provide input on settings by type and location.

Comment: Provide a timeline for completion of data analysis and posting of the data for review by stakeholders and providers.

Action Item #13: Prepare for on-site surveys.

Comment: See comment above under Action Item #8. Describe what kind of information that is contained in the PTP Excel file and where the information comes from. The PTP User Manual, Protocol for Site Visits and Heightened Scrutiny, including the checklist for site visitors, should be made available to all providers and stakeholders. It is recommended that these documents be posted on the website.

Action Item #14: Conduct on-site surveys.

Comment: Provide clarification regarding the second paragraph under "Progress/Status" that states, "The Department will conduct site visits to verify survey results and to further assess particular settings. A statistically significant number of randomly selected site visits will be completed." Is this site visit different from the site visit conducted by Telligen or is HCPF conducting site visits to verify survey responses for all site visits conducted by Telligen? Or is HCPF conducting site visits to verify survey responses from providers that completed the initial and secondary surveys but will not be having site visits? Are the surveys onsite, offsite or both?

Further explain the intent of the sentence at the bottom of chart that states, "For the purposes of site-specific assessments (e.g., Provider Transition Plans and site visits), Colorado plans to draw on its understanding of the way most private homes, professional provider offices and clinics operate presuming that they are compliant with these requirements." It is not our understanding that professional provider offices and clinics were required to comply with the Final Rule.

2. Site Specific remediation for existing HCBS Residential and Non-Residential Settings

General Comment: A chart that maps out the entire timeline from beginning to end is recommended.

Action Item #15: Provider Transition Plans (PTPs) will be completed with all providers (including those not subject to the site visits). PTPs will include determinations of whether providers are potentially subject to heightened scrutiny and whether they need to make any changes to attain compliance and/or to be put forward to CMS for heightened scrutiny.

Comment: See comments under Action Item #8 and #13 regarding making the PTP user manual, Site Visit and Heightened Scrutiny Protocol and checklist for site visitors available to stakeholders and providers. Have all providers been notified that they must complete a PTP? For those providers that will not have a site visit, how will they know when to submit the PTP and to whom? Is it Telligen or HCPF that reviews the PTP and determines whether it is approved or needs more information?

Action Item #20: Develop a process to support a stable transition for individuals to new settings as appropriate.

Comment: Although it is not known how many individuals will need to be transitioned and HCPF has not yet established a timeline for relocation, we want to note that relocation is a difficult process for those involved, especially for vulnerable individuals. Please provide information on how HCPF or other state agencies will be involved in this process, what resources will be made available to the providers and those being transferred and who is expected to be involved in the development of the individual transition plans (ITP) with the beneficiaries.

3. Systemic assessment of existing Colorado statutes, regulations, waivers and other authorities

Action Item #24: To the extent not already addressed in Row 21, work with other agencies as appropriate to analyze existing provider enrollment/re-enrollment, validation, survey, quality assurance, licensure and certification standards, processes and frequency; and to determine where changes could be made to promote and monitor ongoing compliance with HCBS settings requirements, both for current providers and new/potential providers.

Comment: Under the Progress/Status column it states “The Department is working with CDPHE to modify survey process and review survey cycles.” Provide more information on what this will look like and how a determination will be made for modifying the survey process. State law (HB1294) requires CDPHE to establish a tiered or extended survey cycle for licensed facilities so that facilities that meet certain criteria are surveyed less often (for ALRs up to every three years). Is HCPF developing additional criteria that will be used to determine the survey frequency? For example, will providers that fall under heightened scrutiny be surveyed more frequently?

Systemic Assessment Crosswalk on Settings

Table 1: Standards applicable to all HCBS Settings

1. Adult day services centers (alternatives to nursing facilities) – includes basic and specialized adult day services centers
 - A. Integrated

Comment: LeadingAge Colorado appreciates HCPF’s intention to propose a rule that will provide for and regulate restricted environments and egress alert devices in a manner consistent with the federal HCBS settings rule. The Colorado General Assembly passed the law to allow for these types of settings in adult day centers in 2010.

As the stakeholder group is reviewing and revising the adult day center rules, we respectfully request that adult day centers co-located on the grounds of an institution are not prohibited in the state rules. LeadingAge Colorado’s understanding of the final rule is that such settings are not prohibited, but are presumed to have the qualities of an institution unless determined by the state and CMS through a “heightened scrutiny” process to be a HCBS setting.

2. Alternative care facilities (ACFs)/assisted living residences (ALRs)
 - A. Integrated

Comment: Secured ACFs provide a valuable and necessary option for individuals with dementia and LeadingAge Colorado supports HCPF’s decision to allow them to continue to operate upon demonstration of compliance with the final rule. It is recommended that additional clarification be provided to ensure that secured ACFs are complying with the community integration requirement, while they are also protecting participants that have been determined to benefit from restricted egress due to safety concerns. For example, the ACF has the responsibility to ensure participants with exit-seeking

behaviors continue to have opportunities to engage in the community in accordance with their individual preferences, as set forth in the person-centered care plan.

Table 2: Standards applicable to provider-owned or controlled residential settings

General Comment: The ALR regulations should not be revised to address CMS requirements that pertain only to ACFs. Any additional certification requirements dictated by CMS should be added only to the ACF rules. This comment particularly pertains to 2. Alternative care facilities A. Landlord/tenant rights, 2. ACF D. Visitors at any time.

Although ACF's must comply with both the ALR and ACF regulations, ALRs that do not participate in the Medicaid program and should only have to meet the state licensing requirements. They should not be required to meet certification standards that are dictated by the state and its federal partners pertaining to the particular needs of Medicaid recipients if an ALR does not provide care to that population. While some of the requirements set forth in the ACF rules may be appropriate for the ALR rules, those should be proposed as part of CDPHE's Assisted Living Advisory Committee that is currently working on revising those requirements.