



## INFORMATIONAL MEMO

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<b>TITLE:</b>	<b>HCBS SETTINGS FINAL RULE—MILESTONE UPDATE 3</b>
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### **Purpose and Audience:**

The purpose of this Informational Memo is to inform waiver participants, advocates, Case Management Agencies, and providers serving the Home and Community-Based Services (HCBS) waivers of a federal extension to the deadline for statewide compliance with the HCBS Settings Final Rule because of the COVID-19 pandemic, as well as the State's related publication of an updated schedule of milestones for implementation of the rule. This update reflects some changes to the expected path under the Statewide Transition Plan (STP) toward complete implementation of the rule in Colorado.

### **Information:**

#### Background

The Department of Health Care Policy & Financing (Department) last published an [updated milestones schedule](#) in February 2020. Since then, the Department has continued its work to implement the HCBS Settings Final Rule, including in the areas of stakeholder engagement and oversight; site-specific assessment, verification, and remediation; systemic assessment and remediation; and the provision of training,

guidance, and other technical assistance. For example, the Department rolled out the Provider Transition Plan (PTP) platform to all remaining affected providers and worked with the Colorado Department of Public Health & Environment (CDPHE) and members of the Rights Modification Stakeholder Workgroup to develop materials that include a Draft Rule and an informed consent template, with built-in guidance for providers and Case Managers.

Nevertheless, the COVID-19 pandemic has caused certain delays in the rule implementation process. For example, in Colorado:

- All providers have had to focus intensely on protecting participant and staff health and safety, obtaining personal protective equipment (PPE), and complying with new COVID-19-related guidance from the Department and CDPHE. These efforts have reduced the time and resources available for HCBS Settings Final Rule implementation. Because of this concern, the Department canceled one meeting of the Rights Modification Stakeholder Workgroup and held the remaining meetings on a later schedule than originally planned. In addition, CDPHE has been giving providers case-by-case extensions, as needed, on their PTPs.
- Nonresidential services, such as congregate day programs, have been particularly impacted. Many providers have temporarily closed, and all have had to be flexible in how they provide services to individuals. Some providers have expressed uncertainty about the long-term financial viability of their programs. These changes have complicated the process of nonresidential providers' self-assessment of compliance with community integration and other requirements of the rule, as well as CDPHE's verification of these assessments. These providers need time to determine which settings will remain open and how they will operate in the long term, and CDPHE has had to develop an approach for conducting site visits remotely.

Recognizing these issues, the Centers for Medicare & Medicaid Services (CMS) issued a [State Medicaid Director Letter](#) extending the deadline for statewide compliance with the HCBS Settings Final Rule to March 2023 and extending certain intermediate deadlines relating to heightened scrutiny.

#### New schedule

To reflect these developments, the Department is proposing an updated schedule of milestones. In determining the dates by which certain tasks are expected to be completed, the Department balanced its commitment to implementing the rule with its recognition that the process must be workable and not unduly disruptive to HCBS

providers and Case Management Agencies responding to the pandemic. The Department identified mandatory deadlines (such as the statewide compliance deadline and the deadlines for submitting certain heightened scrutiny materials to CMS) and worked backward from these points to determine the dates by which certain information would have to be publicly noticed, verified by CDPHE and the Department, and—in the first instance—submitted by providers.

Through this process, the Department determined that there is not an extra year (or large portion of a year) for nonresidential and children’s residential providers to submit their initial PTPs. Specifically,

- CMS expects states to submit information about settings in two heightened scrutiny categories (settings that are located in a building that is also a facility that provides inpatient institutional treatment or are located on the grounds of, or immediately adjacent to, a public institution) by March 31, 2021.
- The Department must publicly notice that information and allow time for public comment and for addressing all input received. Therefore, public notice should occur around December 31, 2020.
- Public notice requires the Department to have identified all settings in the two heightened scrutiny categories (at minimum) and verified affected providers’ plans to come into compliance. This means CDPHE needs to have completed its initial review of all remaining PTPs, which will take several months. In addition, for settings subject to heightened scrutiny, providers will need to work with CDPHE through an iterative process of ensuring that their remedial action plans meet the requirements to be put forward to the public and CMS. To achieve this timeline, all initial PTPs must be submitted by October 2020, and many must be submitted earlier so that CDPHE can conduct a rolling review. The need for CDPHE review to be underway now would make a blanket extension unworkable.

Additionally, to protect the rights of individuals receiving services, the Department does not want to delay the schedule more than necessary. Many nonresidential and children’s residential initial PTPs have already been submitted, indicating that not every provider needs more time and that an across-the-board extension to due dates is not warranted. However, the Department recognizes that some providers are still facing difficulties because of the pandemic. Providers that need more time can work with CDPHE on a case-by-case basis to determine workable due dates.

It is important for providers to remember that in submitting their initial PTP(s), they do not have to demonstrate full compliance with all aspects of the HCBS Settings Final Rule. They are required only to identify their plan for coming into compliance. As

providers are already identifying their approaches for the “new normal,” this is an opportune time for them to describe their plans and verify that they will comply with the rule. After initial PTPs are submitted and verified, these providers will have ample time under the CMS extension and the new milestones schedule to demonstrate that they have made all required changes.

In an effort to implement the rule in accordance with federal expectations while also supporting those providers that may need additional time, the Department identified certain milestones that could proceed on either of two different timetables: target and alternate. For these milestones, the target date represents the Department’s goal of implementing the rule and submitting information to CMS as promptly as possible. The alternate date reflects the possibility that more time will be needed by some providers. While working diligently toward the target dates, we will keep the alternate dates in mind as a backstop.

The Department will be submitting this schedule for CMS approval.

**Attachment(s):**

Milestones Update III

**Department Contact:**

Inquiries may be sent to the following shared inbox:  
[hcpf\\_STP.PublicComment@state.co.us](mailto:hcpf_STP.PublicComment@state.co.us).