



## INFORMATIONAL MEMO

---

<b>TITLE:</b>	<b>HCBS SETTINGS FINAL RULE—RULE UPDATES</b>
<b>SUPERSEDES NUMBER:</b>	N/A
<b>EFFECTIVE DATE:</b>	<b>JUNE 30, 2022</b>
<b>DIVISION AND OFFICE:</b>	<b>STRATEGIC OUTCOMES DIVISION, OFFICE OF COMMUNITY LIVING</b>
<b>PROGRAM AREA:</b>	<b>HCBS WAIVERS</b>
<b>KEY WORDS:</b>	<b>HOME AND COMMUNITY-BASED SERVICES, HCBS, HCBS SETTINGS FINAL RULE</b>
<b>INFORMATIONAL MEMO NUMBER: HCPF IM 22-023</b>	
<b>ISSUE DATE: JUNE 30, 2022</b>	
<b>APPROVED BY: HAYLEY GLEASON</b>	

---

*HCPF Memo Series can be accessed online: <https://www.colorado.gov/hcpf/memo-series>*

### **Purpose and Audience:**

The purpose of this Informational Memo is to inform stakeholders of opportunities for informal discussion of proposed rule updates under the Home and Community-Based Services (HCBS) Settings Final Rule. Interested stakeholders may include HCBS waiver participants, relatives and guardians of participants, advocates, and providers and case management agencies (CMAs) serving individuals enrolled in the HCBS waivers.

### **Information:**

#### Background

In 2014, CMS published a [rule](#) requiring HCBS to be provided in settings that meet certain criteria. The criteria ensure that HCBS participants have access to the benefits of community living and live and receive services in integrated, noninstitutional settings. They also ensure that residential settings are truly homelike.

The rule requires that all HCBS settings meet specific criteria, including that they:

- Be integrated in and support full access to the greater community;
- Be selected by the participant from among setting options;

- Ensure individual rights of privacy, dignity, and respect, and freedom from coercion and restraint;
- Optimize autonomy and independence in making life choices; and
- Facilitate choice regarding services and who provides them.

In addition, provider-owned or -controlled residential settings must meet additional criteria, including that they:

- Have a lease or other written agreement providing similar protections for the individual that address eviction and appeals processes;
- Ensure privacy in the individual's unit, including lockable doors, choice of roommates, and freedom to furnish and decorate the unit;
- Ensure that individuals have freedom and support to control their own schedules and activities, and have access to food at any time;
- Protect individuals' ability to have visitors of their choosing at any time; and
- Be physically accessible.

Some of these additional criteria are also relevant to settings that are not provider-owned or -controlled residential settings.

The Department codified the federal criteria in a rule, [10 CCR 2505-10 section 8.484](#), that went into effect in January 2022.

### Information

As noted in the [Statewide Transition Plan](#) (see Row 23 and above Row 39), the Department plans to make a small number of critical changes to existing rules. Specifically, under the federal HCBS Settings Final Rule and Colorado's codification of the rule, all HCBS settings must be integrated in and support full access of individuals to the greater community. As noted in Colorado's [Systemic Assessment Crosswalk](#) (2016), some existing regulatory text appears to allow for non-integrated settings. This language is outdated and creates confusion. In addition, all HCBS settings must be physically accessible, but some existing rule text appears to allow for inaccessible settings. To ensure statewide compliance with the federal rule, the Department is proposing revisions to these provisions—as shown in the attachment to this memo—to go into effect before the end of the transition period. Critical waiver amendments, along the same lines, will be proposed as part of the Fall 2022 waiver amendment cycle.

Stakeholders interested in commenting on the proposed rule amendments may join one or both of two informal, open meetings:

- **August 8, 2022** from 3:00 to 4:00 p.m. ([join online](#) or by phone at 1-877-853-5257 (toll free); meeting ID 993 1700 7314; passcode 396389)

- **August 11, 2022** from 3:00 to 4:00 p.m. ([join online](#) or by phone 1-877-853-5257 (toll free); meeting ID 993 1700 7314; passcode 396389)

All are welcome. All public comments received by the Department through this process are subject to the Colorado Open Records Act and may be disclosed. Commenters are encouraged to bear that in mind when giving personal information in a public comment. Reasonable accommodations will be provided upon request for persons with disabilities. Auxiliary aids and services for individuals with disabilities and language services for individuals whose first language is not English may be provided upon request. Please notify [John Barry via email](#) or by phone at 303-866-3173 or the [504/ADA Coordinator via email](#) at least one week prior to each meeting to make arrangements.

Comments may also be sent by email to [HCPF\\_STP.PublicComment@state.co.us](mailto:HCPF_STP.PublicComment@state.co.us). Please provide your feedback by **August 12, 2022**.

After the Department has reviewed and addressed the feedback and made any necessary changes to its proposed rule updates, it plans to conduct a formal stakeholder engagement process, culminating in expected adoption of the rule updates by the Medical Services Board (MSB).

The Department will then turn to noncritical revisions that will eliminate duplication of regulatory language and streamline processes and procedures (for example, rolling up existing terminology and processes for restrictive procedures and rights suspensions into the federal rights modification terminology and process). Although the noncritical updates are expected to make compliance with the federal rule easier for affected providers and CMAs, they are not essential for compliance and do not need to be made before the end of the transition period. The Department plans to make these changes as part of a larger overhaul of many rules administered by the Office of Community Living (OCL). The larger overhaul will include a number of de-duplication, streamlining, and other changes, such as updates related to [case management redesign \(CMRD\)](#), that are not necessarily driven by the HCBS Settings Final Rule. To avoid making serial major revisions to its rules, OCL will implement all such changes at the same time.

**Attachment(s):**

Proposed Critical Rule Updates

**Department Contact:**

[HCPF\\_STP.PublicComment@state.co.us](mailto:HCPF_STP.PublicComment@state.co.us)