



INFORMATIONAL MEMO

TITLE:	HCBS SETTINGS FINAL RULE—SCHEDULE UPDATES
SUPERSEDES NUMBER:	N/A
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DIVISION AND OFFICE:	STRATEGIC OUTCOMES DIVISION, OFFICE OF COMMUNITY LIVING
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Purpose and Audience:

The purpose of this Informational Memo is to update stakeholders regarding the schedule for completing implementation of the HCBS Settings Final Rule. Interested stakeholders may include participants in Home and Community-Based Services (HCBS) waivers, relatives and guardians of participants, advocates, providers serving individuals enrolled in the HCBS waivers, and case management agencies (CMAs).

Information:

The schedule for implementing the HCBS Settings Final Rule is set forth in the [Statewide Transition Plan \(STP\)](#). Key upcoming deadlines **are in effect** and include:

Milestone	Completed By
The Colorado Department of Public Health & Environment (CDPHE) will complete verification of updated Provider Transition Plans (PTPs)	<ul style="list-style-type: none"> September 14, 2022 for residential settings October 14, 2022 for nonresidential settings

The Colorado Department of Health Care Policy & Financing (Department) will send provisional notices to providers that have settings determined to be noncompliant, as well as to individuals receiving services at these settings (and/or guardians and any other legally responsible parties) via their case managers	<ul style="list-style-type: none"> • September 21, 2022 for residential settings • October 21, 2022 for nonresidential settings
The Department will complete its informal reconsideration of settings and send final notices to providers and individuals, beginning the individual transition process where necessary	<ul style="list-style-type: none"> • November 17, 2022 for residential settings • December 16, 2022 for nonresidential settings
End of transition period, with termination of Medicaid HCBS funding at noncompliant settings	<ul style="list-style-type: none"> • March 17, 2023

On May 24, 2022, the Centers for Medicare & Medicaid Services (CMS) [announced](#) that because of the “direct-service workforce crisis exacerbated by the COVID-19 PHE,” states could request a single cross-waiver corrective action plan (CAP) allowing for extra time to implement the HCBS Settings Final Rule. Specifically, while states, providers, and settings must be “fully compliant” with most of the settings criteria by the original end of the transition period in March 2023, they need only be compliant “to the fullest extent possible” with a few very specific criteria, for which they may request an extension of the deadline for full compliance.

In recognition of the difficulties that providers have faced, the Department plans to request a one-year CAP from CMS. The purpose of doing so is to minimize unnecessary disruption to waiver members whose settings would be compliant but for the pandemic/workforce crisis. **The requested CAP will be extremely limited in scope and will not affect the timeline for 96% of active settings.**

Last week, the Department sent “pre-provisional notices”/final warnings to residential providers at the email address(es) on file in the PTP platform, and these will be followed in September by nonresidential providers. These warnings identify settings that have not been verified as fully compliant and advise providers to immediately finish submitting their updates for these settings.

In these messages, the Department is identifying the **very few** settings (4% of active settings) that are potentially eligible for additional time. These settings have qualifying open compliance issues, have **no** disqualifying open compliance issues, and are not

host homes.¹ Providers may request extra time for these settings. Providers will only receive extra time if they follow the request process set out in the “pre-provisional notices”/final warnings that were sent out/will be sent out next month. **Providers should not assume that any of their settings will qualify for additional time.**

Providers should look for an email with the subject line “FINAL WARNING—HCBS Settings Final Rule.” Providers that are expecting an email but not aware of receiving one by now (for residential settings)/by the end of September 2022 (for nonresidential settings) should check their spam/junk mail folders, then reach out to their CDPHE staff lead as identified in the PTP system.

* * *

The Department is committed to implementing the HCBS Settings Final Rule and is pleased to note that providers have been able to finish demonstrating compliance for 71% of covered settings, despite the pandemic and workforce crisis. Providers should be able to demonstrate compliance soon for the vast majority of remaining settings. Doing so is especially important given the fundamental rights and values protected by the rule. Delay is detrimental to these rights, and the Department does not plan to allow for any further delay outside of the CAP for very few providers.

¹ In the interest of clarity and transparency, here is how the Department is determining whether a setting is potentially eligible for additional time. The setting must have all three characteristics listed here:

(i) It has qualifying open compliance issues: The set of compliance issues qualifying for additional time under CMS guidance is extremely limited. For example, for adult residential settings, it consists of only the following four compliance issues:

- RA-6: The setting does not offer individualized supports that enable individuals to choose activities of their own interests (with a group or individually);
- CI-1: Individuals interact only with people with disabilities and paid staff, not counting incidental contact;
- CI-3: Setting does not ensure that residents have the opportunity to be engaged in community activities outside the setting with individuals without disabilities; and
- CI-4: Individuals’ community activities offer only incidental contact with non-disabled, non-staff members of the community due to the type of activities or the number of individuals participating.

(ii) It has no disqualifying open compliance issues: The handful of catchall compliance issues phrased as “otherwise noncompliant with” a given requirement are neither qualifying nor disqualifying for extra time. **All other compliance issues are disqualifying.** And,

(iii) It is not a host home: Host homes are presumed not to have had the types of staffing issues faced by congregate settings.

Attachment(s):

None

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