



INFORMATIONAL MEMO

TITLE:	HCBS SETTINGS FINAL RULE — PROVISIONAL NOTICE REMINDER FOR CASE MANAGERS
SUPERSEDES NUMBER:	N/A
EFFECTIVE DATE:	SEPTEMBER 23, 2022
DIVISION AND OFFICE:	OFFICE OF COMMUNITY LIVING
PROGRAM AREA:	HOME- AND COMMUNITY-BASED SERVICES (HCBS) WAIVERS
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APPROVED BY: AMANDA LOFGREN	

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Purpose and Audience:

The purpose of this Informational Memo is to remind Case Management Agencies (CMAs) of provisional notices that involve them. All CMAs providing home and community-based services (HCBS) case management should review this memo.

Information:

Background

In 2014, the federal Centers for Medicare & Medicaid Services (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, non-institutional settings.

The rule went into effect in March 2014, and states originally had five years—until March 2019—to ensure that their HCBS settings were compliant with the rule. In May

2017, CMS issued an [Informational Bulletin](#) extending the transition period for statewide compliance by three years, to March 2022. In July 2020, CMS issued a [State Medicaid Director Letter](#) extending the transition period by another year, to March 2023. In May 2022, 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 rule. As stated in [Informational Memo 22-029](#), the Department of Health Care Policy & Financing (Department) plans to request a one-year CAP from CMS. The requested CAP will be extremely limited in scope and will affect the timeline for very few settings.

With the end of the transition period approaching for most settings, the Department is working with the Colorado Department of Public Health & Environment (CDPHE) to determine which settings have not demonstrated compliance yet and have not received extra time under the planned CAP. Individuals living or receiving HCBS at such settings will have to transition to other settings or funding sources by the end of the transition period, unless the Department is able to change its determination soon based on information provided during the informal reconsideration process.

Reminder for case managers

Please look for provisional notices from the Department directed to each CMA.

- On September 21, 2022, the Department sent provisional notices to residential providers with noncompliant settings. These notices instruct providers to inform individuals that certain settings where they live or receive HCBS have been provisionally determined to be noncompliant with the HCBS Settings Final Rule, and that if this determination is not altered through the informal reconsideration process, the member will have to transition to a different setting or funding source. Providers are instructed to copy individuals’ case managers when they provide this information.
- To ensure that all affected individuals are informed, the Department is asking CMAs, through their case managers, to give a similar message to individuals.
- Details regarding the message to be conveyed to individuals, as well as identification of the affected providers and settings, are included in the provisional notices. The provisional notice for each CMA identifies specific providers and settings that may serve members supported by that CMA, based on catchment area and recent billing records. Where multiple CMAs appear to have members placed with a given provider and its settings, that provider and its settings are identified in the provisional notices sent to all of those CMAs.

- **Individuals do not have to transition yet.** If they need to do so down the road, they will be supported through an Individual Transition Plan (ITP) process. An ITP tool is forthcoming, and the Department will be providing training, technical assistance, and support to CMAs with affected members. As detailed in the table below, the Department will send final notices to CMAs in November/December 2022 identifying the settings whose members will be affected by this process.

As set out in the final [Statewide Transition Plan \(STP\)](#) and [Informational Memo 22-029](#), key dates in the HCBS Settings Final Rule implementation schedule 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 September 21, the Department issued provisional notices covering 231 residential settings. Subject to continued efforts to support providers to finish demonstrating compliance, the Department expects to issue provisional notices covering up to 112 nonresidential settings in October.

Attachment(s):

None

Department Contact:

HCPF_STP.PublicComment@state.co.us