



## OPERATIONAL MEMO

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<b>TITLE:</b>	<b>HCBS SETTINGS FINAL RULE — INDIVIDUAL TRANSITION PLAN (ITP) GUIDANCE FOR CASE MANAGEMENT AGENCIES</b>
<b>SUPERSEDES NUMBER:</b>	N/A
<b>EFFECTIVE DATE:</b>	<b>NOVEMBER 10, 2022</b>
<b>DIVISION AND OFFICE:</b>	<b>OFFICE OF COMMUNITY LIVING</b>
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### **Purpose and Audience:**

The purpose of this Operational Memo is to provide case management agencies (CMAs) with an Individual Transition Plan (ITP) tool to support individuals who receive home and community-based services (HCBS) at settings that have been determined noncompliant with the HCBS Settings Final Rule. This memo also provides related guidance for CMAs and announces an associated technical assistance session. Case managers with Community Centered Boards (CCBs) and Single Entry Points (SEPs) may be affected by 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 federal transition period ends on March 17, 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 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.

As discussed in [Informational Memo 22-031](#), the Department sent **provisional notices** to providers and individuals (via their CMAs) regarding settings that had neither demonstrated compliance nor received extra time under the planned CAP. The Department sent provisional notices on Sept. 21, 2022, for residential settings and on Oct. 21, 2022, for nonresidential settings. The Department is currently working with the Colorado Department of Public Health & Environment (CDPHE) to review information submitted by providers and/or individuals in connection with **informal reconsideration** requests. Through this process, the Department hopes to be able to determine that a number of settings have finished demonstrating compliance.

It is possible that by the time the Department finishes informal reconsideration and makes its final determinations, some settings will still be noncompliant and will have not received extra time under the CAP. As of Nov. 3, 2022, 72 residential settings and 58 nonresidential settings are potentially in this category. Under the federal rule, individuals living or receiving HCBS at these settings will have to transition to other settings or funding sources by the end of the transition period (March 17, 2023).

The Department is committed to making the individual transition process as seamless as possible for affected members and case managers. To that end, the Department is offering the guidance set out in this Operational Memo.

### Information

The Department will send **final notices** to providers and individuals (via their CMAs) regarding settings that have not demonstrated compliance and have not received extra time under the planned CAP. **The Department expects to send these notices by Nov. 17, 2022, for residential settings and Dec. 16, 2022, for nonresidential settings.** This process will be largely similar to that described in [Informational Memo 22-031](#) for provisional notices, with some changes to better support CMAs to identify and meet with affected members:

- The final notices will instruct providers to inform individuals that certain settings where they live or receive HCBS were subject to a final determination of noncompliance with the HCBS Settings Final Rule, and that these individuals will have to transition to a different setting or funding source. Providers will be instructed to copy individuals' case managers on these communications. In addition, providers will be instructed to list for the Department all members served at affected settings, so that the Department can convey this information to CMAs.
- To ensure that all affected individuals are informed, the Department will instruct each CMA, through its 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, will be included in the final notices to both providers and CMAs.
- The final notice for each CMA will identify the specific settings that may serve members supported by that CMA, based on catchment area, recent billing records, and (for residential settings) known member addresses. In addition, as the Department receives providers' lists of affected members, per the first bullet point above, it will convey that information to relevant CMAs. The Department will again be posting on its SharePoint sites for CMAs the spreadsheet containing the information it has as of the date it sends the final notices, with supplements as needed based on provider-supplied member information. Although the Department will identify members for CMAs based on data currently available, this data can be incomplete (e.g., there can be gaps when the provider does not promptly bill for its services), and CMAs should check their records to ensure all affected members are identified.
- The Department will also share with CMAs the statewide list of all settings subject to a final notice, so that case managers can avoid referring individuals to such settings.

Case managers are required to work with affected individuals to support their transition using the **Individual Transition Plan (ITP)** tool attached to this memo. The ITP tool is a guide for the case manager's conversations with the individual, not a form to fill out. Using the tool will allow the case manager to make any necessary updates, reflecting new providers/settings/funding sources, to the individual's Person-Centered Support Plan in the case management system. The topics covered in the tool must be discussed with affected individuals **within 30 days of the final notice to each CMA.**

Additional steps include:

- **Ensuring each transition is complete by March 17, 2023.** Medicaid HCBS funding will not be available after this date at noncompliant settings.
- **Weekly progress reporting by the CMA** to the Department on the status of all individual transitions it is handling. A report template will be shared with affected CMAs.
- **Weekly check-ins with the individual by the case manager** after each individual completes their transition, for up to a month, to ensure individuals' needs are being met (if desired by the individual, and according to their preferred cadence).

### Reimbursement

The Department has determined that discussion(s) using the ITP tool (the conversation(s) covering all topics in the ITP tool) and follow-up work to implement transitions fit within the scope of CMA monitoring as required by regulations and contracts. CMAs may bill for these activities as the optional second annual monitoring contact, for individuals served by SEPs, or as one of the four quarterly face-to-face visits, for individuals served by CCBs.

Additional supports to help with individual transitions may be available under Transition Services, depending on the circumstances of the move and the member's waiver. The following Transition Benefits are available to help support members who are experiencing a major life event in connection with their move from one community-based setting to another: Life Skills Training, Home Delivered Meals, and Peer Mentorship. Additional information about these services and what qualifies as a major life event is available on the Department's [Transition Services website](#).

### Technical Assistance (TA)

The Department will host a targeted technical assistance session on **Nov. 21, 2022, at 1 p.m. MT** to review the ITP tool and address any questions regarding the steps described in this memo. [Register here](#). After registering, participants will receive a confirmation email containing information about joining the webinar.

**Attendance at this session is mandatory only for case managers who will be helping individuals with HCBS Settings Final Rule-related transitions.** As a rule of thumb, these will be a subset of the case managers who were previously asked to convey provisional notices to individuals (either residential or nonresidential), as the

settings that will be subject to final notices will be a subset of those that were subject to provisional notices. To help CMAs determine which case managers may need this technical assistance, the Department will shortly be posting to the SharePoint sites it hosts for CMAs spreadsheets identifying providers and settings currently slated to receive final notices, organized by CMA catchment area. These spreadsheets are subject to adjustment by Nov. 17 (for residential settings)/Dec. 16 (for nonresidential settings), as the Department identifies which settings in the queue ultimately received final notices, and as the Department adds known member IDs (which may cause a setting to be relevant to CMAs beyond the one initially identified based on catchment area). The Department plans to record the TA session to support case managers unable to attend the live session; affected case managers should review the recording as soon as possible.

For settings that receive additional time under the CAP, the entire process described in this memo—including provisional notices, informal reconsideration, final notices, and individual transitions—will occur no later than one year after the dates set out above. The Department will provide updates and guidance down the road for such settings.

The Department will provide additional technical assistance and support to CMAs on an as-needed basis. Please contact us at the email address listed below to add a question to the agenda for the technical assistance session and/or to follow up regarding any remaining questions or concerns.

**Attachment(s):**

Individual Transition Plan (ITP) tool

**Department Contact:**

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