



HCBS Settings Final Rule Quarterly Update for Quarter Ending 12/31/22

On November 23, 2022, the Department submitted a [proposed corrective action plan \(CAP\)](#) outlining an approach for taking additional time to implement certain HCBS Settings Final Rule criteria that were affected by the pandemic and the direct care workforce crisis. On December 28, 2022, the Department submitted [additional information](#) and completed attestations as required by CMS.

Since its last quarterly update, the Department has taken the following steps to promote systemic compliance with the HCBS Settings Final Rule:

- On November 8, 2022, published an [Operational Memo](#) reminding case managers of requirements relating to entering rights modification information into the Benefits Utilization System (BUS). The Department presented trainings on this topic on December 6 and 8, 2022 ([slide deck](#); [recording](#)). In light of the questions raised during the trainings, the Department expects to prepare additional guidance and/or trainings.
- Received [initial approval](#) from the Medical Services Board (MSB) on December 9, 2022 and [final approval](#) on January 13, 2023 for [critical rule updates](#) to eliminate or revise regulatory provisions that are in tension with the HCBS Settings Final Rule. The Department plans to publish the rule updates in the Colorado Register with an expected effective date on or before March 17, 2023.
- Received approval from CMS for critical waiver updates along the same lines, effective January 1, 2023. See [Informational Memo](#); [Developmental Disabilities \(DD\) Waiver](#); [Supported Living Services \(SLS\) Waiver](#).
- In early January 2023, began sharing proposed noncritical rule updates with stakeholders. These updates are designed to streamline processes, modernize terminology, and eliminate redundant language, and it is not essential that they be in effect before the end of the transition period. The changes related to the HCBS Settings Final Rule are being proposed as part of a larger rule overhaul effort principally aimed at case management redesign in Colorado. This stakeholder engagement process will be extensive and is expected to yield a new section of rules effective October 10, 2023.

Since its last quarterly update, the Department has taken the following steps to complete site-specific assessment, remediation, and verification:

- On October 21, 2022, emailed provisional notices to providers and case management agencies (CMAs) regarding 66 nonresidential settings that had not yet been verified as compliant and had not received additional time under the proposed CAP. These notices noted the determination of noncompliance and explained how both providers and



individuals could request informal reconsideration. The notices required providers to notify the members they serve, with a copy to the relevant case manager, and they required CMAs to also notify members through case managers. The Department sent hard copies of these provisional notices via certified mail on October 25, 2022.

- On October 28, 2022, sent Requests for Written Response to providers regarding 84 adult residential settings not yet verified as compliant or granted extra time under the proposed CAP. These letters gave providers one last opportunity to avoid a final notice.
- On November 10, 2022, published an [Operational Memo](#) and [Individual Transition Plan \(ITP\) tool](#). The Department hosted a technical assistance session regarding this tool on November 21, 2022 ([slide deck](#); [recording](#)).
- On November 17, 2022, after completion of informal reconsideration for residential settings, emailed Final Notices of HCBS Settings Final Rule Noncompliance and Notice of Adverse Action to providers and CMAs regarding 35 adult residential settings not yet verified as compliant or granted extra time under the proposed CAP. The notices informed providers of various consequences, including that by March 17, 2023, “[c]ase managers will have helped affected individuals transition to compliant settings or alternative funding sources. The Department will suspend Medicaid HCBS reimbursement for services at the identified setting(s). [And the] Department will terminate your provider agreement, along with any applicable program approval and/or certification, for good cause.” The notices required both providers and CMAs to notify members of the need to begin transitioning to other settings or funding sources. The Department identified potentially affected members for CMAs. The Department sent hard copies of these notices via certified mail on November 22, 2022.
- On November 23, 2022, sent Requests for Written Response to providers regarding 45 nonresidential settings not yet verified as compliant or granted extra time under the proposed CAP. Again, these letters gave providers a last chance to avoid final notices.
- On December 16, 2022, emailed Final Notices of HCBS Settings Final Rule Noncompliance and Notice of Adverse Action to providers and CMAs regarding 25 nonresidential settings not yet verified as compliant or granted extra time under the proposed CAP. The Department sent hard copies of these notices via certified mail on December 20, 2022.
- The Department has been reaching out to providers with settings subject to Final Notices to provide technical assistance and other information as needed. As a result, a number of settings have been able to finish demonstrating compliance and/or qualify for additional time under the proposed CAP. In these cases, the Department has been advising the relevant CMA(s) that affected members may elect to continue transitions already underway or stay at their original setting.

- As of December 31, 2022, site-specific status could be summarized as follows:
 - Consolidating the three Provider Transition Plan (PTP) categories, 96% of all covered settings in Colorado have been verified as compliant.
 - Details are in the following table.

	Adult Residential PTPs	Children’s Residential PTPs	Nonresidential PTPs
Number of providers	357	9	205
Number of settings = number of PTPs to be completed	2139	13	346
Compliance status of settings			

Compliance status options consolidated within green wedges

- (1) Setting is NOT subject to heightened scrutiny and IS compliant with rule
- (4) Setting IS subject to heightened scrutiny and IS able to overcome institutional presumption

Compliance status options consolidated within rust-colored wedges

- (2) Setting is NOT subject to heightened scrutiny and NOT YET compliant with rule
- (3) Setting is NOT subject to heightened scrutiny and NOT timely able to comply with rule
- (5) Setting IS subject to heightened scrutiny and NOT YET able to overcome institutional presumption
- (6) Setting IS subject to heightened scrutiny and NOT timely able to overcome institutional presumption
- (7) Not yet known (default) or blank
- (8) Setting has closed because of rule
- (9) Setting has closed for another reason

All data in table is as of January 4, 2023. Providers and settings may appear in more than one column. The table excludes data relating to PTPs in Retired status.

Within the “Other” wedges above, a total of 64 settings have requested and received extra time under the proposed CAP, accounting for 2.6% of all active settings in the PTP platform, or 63.4% of all active settings not yet verified as compliant. The remaining noncompliant settings are still subject to the consequences laid out in the final notices described above, and individual transitions are underway.