



HCBS Settings Final Rule Quarterly Update for Quarter Ending 12/31/23

Since its last quarterly update, the Colorado Department of Health Care Policy & Financing (HCPF) took the following steps to ensure systemic compliance with the HCBS Settings Final Rule:

- On October 13, 2023, previewed the Office of Community Living's (OCL's) overhauled HCBS rules for the Medical Services Board (MSB). The overhaul was prompted by OCL's case management redesign initiative and includes some streamlining and clarifications relating to the HCBS Settings Final Rule. The MSB initially adopted [the new rules](#) on December 8, 2023. After making some changes in response to stakeholder input, HCPF obtained final adoption of [the revised rules](#) today. The rules will have an effective date in March 2024. HCPF expects to conduct a follow-up rulemaking this summer that will include striking existing rules that have been superseded by the new rules. HCPF's codification of the HCBS Settings Final Rule is changing from section 8.484 to section 8.7001.B of 10 CCR 2505-10.
- On December 13, 2023, published [draft responses to CMS's Community First Choice \(CFC\) Home and Community Based Settings Standard Review Questions](#). HCPF reviewed the draft responses with stakeholders during the January 3, 2024 CFC Council Meeting. There were no questions or concerns regarding the draft responses.
- Began developing updates to the four waivers up for renewal in Spring 2024: Children's Extensive Support (CES), Children's Habilitation Residential Program (CHRP), Persons with Developmental Disabilities (DD), and Supported Living Services (SLS). The planned updates include:
 - Deleting the language formerly contained in Attachment #2: Home and Community-Based Settings Waiver Transition Plan;
 - Updating language in Appendix C-5: Home and Community-Based Settings to describe (i) the setting types at which services under each waiver are provided, along with the services offered at each setting type; and (ii) the process for ongoing monitoring for compliance with all HCBS Settings Final Rule requirements at each setting type; and
 - Updating language in Appendix G-2: Safeguards Concerning Restraints and Restrictive Interventions to reflect HCPF's codification of the HCBS Settings Final Rule.

HCPF expects to publish the proposed updates in late January/early February 2024, for submission to CMS in March 2024.



- Continued working with instructional designers to develop new self-paced e-learning modules for case managers, to be housed in the new case management learning management system (LMS).

Since its last quarterly update, HCPF took the following steps to complete site-specific assessment, remediation, and verification for settings receiving extra time under the approved [Corrective Action Plan \(CAP\)](#):

- Worked with the Colorado Department of Public Health & Environment (CDPHE) to support providers in finishing demonstrations of compliance. As of December 31, 2023, all covered settings but one have been verified as compliant or closed. The remaining setting is a nonresidential setting.

Pursuant to the schedule in the CAP:

- HCPF sent provisional notices to two nonresidential providers and to affected members (via their case management agencies) on October 20, 2023. Provisional notices explained how to request informal reconsideration. One provider submitted a request for informal reconsideration, which was denied because, among other concerns, it failed to include evidence that the setting was in fact fully compliant with the HCBS Settings Final Rule.
- HCPF sent Requests for Written Response (RWRs) to these two providers on November 9, 2023, providing another opportunity to demonstrate compliance.
- After confirming the closure of one of the two nonresidential settings, HCPF sent final notices to the remaining provider and to 12 members receiving services from this provider (via their case management agencies) on December 15, 2023. This last provider has indicated that it plans to stop participating in the Medicaid program by March 15, 2024.
- HCPF will be monitoring the case management agencies' work to ensure that all affected members complete their transitions to other settings or funding sources by March 15, 2024.