



HCBS Settings Final Rule

Quarterly Update for Quarter Ending 3/31/21

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

- Put into clearance the Draft Rule that will codify within Colorado regulations the requirements of the federal HCBS Settings Final Rule. This version of the Draft Rule reflects numerous refinements made in the course of over a year of informal stakeholder engagement, including the Rights Modification Stakeholder Workgroup meeting series and the Open Meeting series. After clearance is complete, the Draft Rule will move into the formal rulemaking process, which will include public notice and an opportunity for further public comment, tribal consultation, and presentation of the Draft Rule to the Medical Services Board (MSB), for an anticipated effective date later this summer.
- Published an [Operational Memo](#) on March 17 to inform case management agencies (CMAs) and provider agencies of the availability of an [updated template](#) for obtaining informed consent for a rights modification.

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

- Continued to work with the Colorado Department of Public Health & Environment (CDPHE) to review and verify Provider Transition Plans (PTPs) in all three categories of affected settings: adult residential, children's residential, and nonresidential.

Heightened scrutiny

- Determined which settings in all three categories are potentially subject to heightened scrutiny. The tally includes:
 - Thirty-eight adult residential settings, of which about half are in categories i or ii (location-based) and half are in category iii (otherwise isolating).
 - Forty-five nonresidential settings, of which the great majority are in category iii.
 - No children's residential settings.

Not all of these settings will be moving forward in the heightened scrutiny process, in part because some of the affected providers have indicated that they plan to close their affected settings or stop serving Medicaid HCBS participants at such settings.



- For settings in all three categories that are potentially subject to heightened scrutiny but have not yet demonstrated full compliance, the Department sent reminder emails on March 24. The emails asked providers to promptly submit any remaining updates needed to show compliance.
- Heightened scrutiny packets are currently being prepared for settings that are expected to continue serving Medicaid HCBS participants and are expected to be (or have already been determined to be) compliant with the federal settings criteria.
- The Department expects to make the packets available for public review and comment, including at informal town hall or panel meetings (to be scheduled), in June. We plan to notify CMS when the public notice issues, as previously requested by CMS.
- We expect to submit the required information for CMS review in July, after taking some time to review and respond to the public input. Under this schedule, packets for settings in categories i and ii (location-based) will be submitted to CMS somewhat later than set forth in our [milestones schedule](#), and packets for settings in category iii (otherwise isolating) somewhat earlier.

Other

- The Department sent warning notices via email (on March 26) and certified mail (on April 1) to the small number of providers that still have not submitted their initial PTPs. The notices stated, in part, that the Department “is in the process of issuing a new rule requiring compliance with the federal settings criteria that is targeted to be effective this summer. Those settings with a PTP submitted by the time the rule goes into effect will have additional transition time to finish coming into full compliance. Any settings without PTPs submitted by that point, having made no demonstrated effort to participate in the transition period, will be required to be in full compliance as of the effective date of the rule.”
- As of April 15, initial PTPs were completed for substantially all (95% or more) of the open settings in the nonresidential category, which was the last category for which this milestone was still outstanding.
- For PTPs on file, CDPHE has continued to verify that they identify all compliance issues (initial PTPs) and have shown proof of remediating all such issues (PTP updates).
- As of March 31, 2021, site-specific status could be summarized as follows:

	Adult Residential PTPs	Children’s Residential PTPs	Nonresidential PTPs
Number of providers	374	11	215
Number of settings = number of PTPs to be completed	2608	17	412

	Adult Residential PTPs	Children’s Residential PTPs	Nonresidential PTPs
Compliance status of settings			

Compliance status options

- (1) Setting is NOT subject to heightened scrutiny and IS compliant with rule; no further action needed
- (2) Setting is NOT subject to heightened scrutiny and NOT YET compliant with rule; file updated PTP in three months with evidence showing progress
- (3) Setting is NOT subject to heightened scrutiny and NOT timely able to comply with rule; prepare now to transition clients
- (5) Setting IS subject to heightened scrutiny and NOT YET able to overcome institutional presumption; file updated PTP in three months with evidence showing progress
- (6) Setting IS subject to heightened scrutiny and NOT timely able to overcome institutional presumption; prepare now to transition clients
- (7) Not yet known (default) or blank
- Other
 - (4) Setting IS subject to heightened scrutiny and IS able to overcome institutional presumption; evidence should be put forward to the public and/or CMS
 - (8) Setting has closed because of rule
 - (9) Setting has closed for another reason

All data in table is as of April 1, 2021. Providers and settings may appear in more than one column. The table excludes data relating to PTPs in Retired status.