



HCBS Settings Final Rule Quarterly Update for Quarter Ending 3/31/23

On March 14, 2023, CMS approved the Department's [corrective action plan \(CAP\)](#). The Department expects to submit CAP updates on the same quarterly cadence as during the transition period.

Since its last quarterly update, the Department took the following step to ensure systemic compliance with the HCBS Settings Final Rule:

- Ensured that [critical rule updates](#) went into effect on March 15, 2023. These updates reflect that some settings are receiving additional time under the CAP and eliminate or revise certain regulatory language in tension with the HCBS Settings Final Rule. As previously noted, noncritical updates (aimed at streamlining and not required to establish systemic compliance) are still underway.

The Department took the following steps to bolster monitoring for ongoing compliance:

- On March 3, 2023, added an "Ask a Question/Report a Concern" section to the Department's [HCBS Settings Final Rule website](#), thus completing publication of avenues for members and advocates to report potential violations.
- Developed a draft tool for case managers to use during monitoring visits with members. The tool includes high-level summaries of key expectations, example red flags and positive signs to aid in issue-spotting, and guidance on how to escalate concerns. The Department is still refining this tool and expects to clear and publish it soon.

Since its last quarterly update, the Department took the following steps to complete site-specific assessment, remediation, and verification for settings not receiving extra time under the CAP, and to ensure the timely completion of individual transitions from such settings to the extent the settings could not be verified as compliant:

- On February 17, 2023, emailed a courtesy reminder to providers with settings still not verified as compliant or approved for extra time under the CAP; emailed a reminder to case management agencies (CMAs) with affected members; and posted to its secure SharePoint sites for CMAs (a) the current statewide list of settings still not verified as compliant or approved for extra time under the CAP and (b) updated CMA-specific lists of affected members.
- On February 23, 2023, emailed another reminder to CMAs with individual transitions outstanding.



- During the week of February 27 through March 3, 2023, called CMA leadership as needed, where CMAs still had individual transitions outstanding.
- During the week of March 10 through March 17, 2023, checked the Benefits Utilization System (BUS) for individual transition information not reflected in CMA trackers and called CMAs as needed.
- On March 17, 2023, sent one last reminder email to CMAs.
- Throughout the entire transition period, up to and including March 17, 2023, the Department and the Colorado Department of Public Health & Environment (CDPHE) worked with providers to help them finish demonstrating compliance, or at least sufficient compliance to qualify for extensions under the CAP. This process was largely successful and mooted the need for most of the members originally identified in November-December 2022 to transition. As of March 17, 2023, the only settings not verified as compliant or approved for extra time under the CAP were: 3 adult residential settings (originally serving 14 members) and 13 nonresidential settings (originally serving 68 members). Most affected individuals chose to transition to a different setting or funding source. Some chose to stop receiving the affected service altogether.
- As a backstop to the individual transition process, the Department on March 17, 2023 implemented additional measures, such as inactivating provider agreements and end-dating certain provider specialties, depending on the noncompliant service and setting type at issue and any other services offered/locations served by the provider. Where such measures might inadvertently affect funding for other, compliant services offered by a given provider, the Department plans instead to verify through site visits that noncompliant services have ceased.
- As of March 31, 2023, site-specific status could be summarized as follows:
 - Consolidating the three Provider Transition Plan (PTP) categories, 98.4% 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	353	9	196
Number of settings = number of PTPs to be completed	2135	13	328

	Adult Residential PTPs	Children’s Residential PTPs	Nonresidential PTPs
Compliance status of settings	<p>Other, 1.2% Verified as compliant (includes HS and non-HS), 98.8%</p>	<p>Verified as compliant (includes HS and non-HS), 100.0%</p>	<p>Other, 3.7% Verified as compliant (includes HS and non-HS), 96.3%</p>

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

All data in table is as of April 3, 2023. Providers and settings may appear in more than one column. The table excludes data relating to PTPs in Retired status. The PTPs for the 3 adult residential settings and 13 nonresidential settings that were not verified as compliant or approved for extensions by March 17, 2023 are now in Retired status.

The “Other” wedges above encompass a total of 38 settings, most of which have requested and received extra time under the CAP. A handful of settings are receiving extra time under the CAP despite not having formally requested or been approved for an extension under [the approach the Department outlined in November 2022](#). For example, some such settings were verified as compliant before Final Notices were sent in November/December 2022 and later found to have new compliance issues; or were subject to Final Notices, then provisionally verified as compliant (leading to notices to CMAs that the affected individuals would not have to transition), and later found to have compliance issues after all. To avoid whipsawing individuals or requiring them to transition without adequate advance notice, the Department is treating these settings as approved for extensions. This approach is similar to how the Department handled settings subject to pending requests for informal reconsideration during the period leading up to Final Notices.

Finally, pursuant to the schedule in the approved CAP, the Department plans to publish for public comment a small second batch of heightened scrutiny determinations by April 25, 2023, for submission to CMS by May 31, 2023.