



HCBS Settings Final Rule

Quarterly Update for Quarter Ending 6/30/19

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

- On April 10, 2019, published a [fourth volume of answers to frequently asked questions \(FAQs\) regarding the rule](#). This publication addresses questions from providers, case management agencies, and other stakeholders regarding employment-related services. The Department would be grateful for any thoughts the Centers for Medicare & Medicaid Services (CMS) and the Administration for Community Living (ACL) may have regarding the fourth volume of FAQs.
- On June 4, published an [Operational Memo](#) regarding one-on-one (1:1), line-of-sight, and 24-hour supervision under the HCBS Settings Final Rule.
- On June 6, hosted a roundtable with providers, case management agencies, representatives of the Colorado Division of Criminal Justice's Office of Domestic Violence and Sex Offender Management, and the Colorado Department of Public Health & Environment (CDPHE) to discuss issues relating to HCBS participants with a history of sex offenses. The Department is considering the possibility of additional roundtables.
- On July 8, published an [Operational Memo](#) regarding rights modification deadlines and documentation.

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

- Worked with the Governor's Office of Information Technology (OIT) to develop, test, and roll out defect fixes and functionality enhancements to the Provider Transition Plan (PTP) platform. Some improvements have been implemented and some are still in progress.
- Drafted an Interagency Agreement (IA) with OIT to formalize scheduling and resources for the extension of the PTP platform to nonresidential and children's residential settings. The agencies are currently finalizing this agreement. Once the IA is executed, the Department will be in a position to finalize, publish, and submit to CMS the remainder of its milestones for implementation of the HCBS Settings Final Rule.

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- Sent a letter via email and hard copy to most of the providers that still had adult residential PTPs in Draft status as of the end of May. The letter stated, in part:

Your complete PTP with supporting documents for each of the above settings must be submitted through the PTP platform by June 30, 2019, or your Medicaid HCBS funding for those settings will be at risk. This deadline is designed to ensure that subsequent steps required by [CMS] and the Statewide Transition Plan (STP)—including provider updates demonstrating completion of remedial actions, review and verification by CDPHE, notice to affected individuals receiving HCBS at noncompliant settings, and an orderly process for individuals to transition to other settings or funding sources if needed—can occur within the available time.

Settings for which complete PTPs have not been submitted by **June 30, 2019** will be identified in the PTP platform as noncompliant with the HCBS Settings Final Rule. Unless the Department is able to change this status through new evidence you or other stakeholders submit in time for review, the Department will, at a later date, send letters to notify you and the case managers working with Medicaid HCBS participants receiving services at your setting that (a) the participants will have to begin transitioning to other settings or funding sources—a process for which the Department expects to provide roughly a year—and (b) new participants may not begin receiving services at your setting. In accordance with the federal rule, the Department will not pay for HCBS provided at noncompliant settings after March 17, 2022.

In response to this letter, numerous providers reached out to the Department and initiated or completed work on their adult residential PTPs. The Department is identifying the remaining Draft PTPs that should have their compliance status changed in accordance with the letter.

- As of June 30, 2019, site-specific status could be summarized as follows:

	Adult Residential PTPs (on G-Suite platform)	Children’s Residential PTPs (on SharePoint platform)	Nonresidential PTPs (on SharePoint platform)
Number of providers	390	20	251
Number of settings = number of PTPs to be completed	3318	36	596

	Adult Residential PTPs (on G-Suite platform)	Children’s Residential PTPs (on SharePoint platform)	Nonresidential PTPs (on SharePoint platform)
Compliance status of settings	<p>Other (aggregated), 3.4%</p> <p>(2) Setting is NOT subject to heightened scrutiny and NOT YET compliant with rule; file updated PTP in three months with evidence showing progress, 18.2%</p> <p>(7) Not yet known (default) or blank, 78.4%</p>	<p>Other (aggregated), 2.8%</p> <p>(2) Setting is NOT subject to heightened scrutiny and NOT YET compliant with rule; file updated PTP in three months with evidence showing progress, 5.6%</p> <p>(7) Not yet known (default) or blank, 91.7%</p>	<p>Other (aggregated), 7.7%</p> <p>(2) Setting is NOT subject to heightened scrutiny and NOT YET compliant with rule; file updated PTP in three months with evidence showing progress, 13.6%</p> <p>(7) Not yet known (default) or blank, 78.7%</p>

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
- (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
- (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
- (8) Setting has closed because of rule
- (9) Setting has closed for another reason

All data in table is as of July 1, 2019. Providers and settings may appear in more than one column. The table excludes data relating to PTPs in Retired status.

While many adult residential PTPs have an unknown/blank compliance status (number 7), 92% of these PTPs have been completed and submitted by the provider and are awaiting CDPHE review or have been reviewed by CDPHE and sent back to the provider for additional information. As CDPHE and providers complete this iterative process, PTPs will be assigned to one of the other compliance statuses. As for the remaining 8%, which are still in Draft status, many will have their compliance status bulk-edited to a noncompliant status (*e.g.*, number 2) pursuant to the letter quoted above.

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The Department understands that respite services are exempt from the HCBS Settings Final Rule. *See* 79 Fed. Reg. 2948, 3011 (Jan. 16, 2014). In prior versions of its Statewide Transition Plan (STP) and systemic assessment crosswalk, the Department noted that Palliative/Supportive Care services provided outside the child’s home under the Children with Life Limiting Illness (CLLI) Waiver would also be treated as exempt, given these services’ similarity to respite.

On further review, the Department has determined that Youth Day services within the Children's Extensive Supports (CES) waiver are also similar to respite and should be treated as exempt from meeting the requirements of the HCBS Settings Final Rule. The Youth Day service is designed to provide care and supervision for children ages 12-17 while their primary caregiver is at work or seeking employment. The providers of this service are required to have the same qualifications as respite care providers, and the two services are often provided in the same settings.

The Department expects to include this change in the next published version of the STP and systemic assessment crosswalk.