



HCBS Settings Final Rule Quarterly Update for Quarter Ending 6/30/22

On June 8, 2022, the Department submitted its [Statewide Transition Plan \(STP\)](#) and related materials, including [responses to public comments](#), for CMS's final approval. On July 12, 2022, CMS sent the Department a [letter](#) reflecting final approval of the STP. We appreciate CMS's expeditious granting of approval and look forward to implementing the remaining action items in the STP.

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

- On May 9, 2022, jointly published a memo with the Colorado Department of Human Services (CDHS). The [joint memo](#) sets out a unified approach for Children's Habilitation Residential Program (CHRP) Waiver providers to comply with both the HCBS Settings Final Rule and existing child welfare authorities.
- On June 20, 2022, published an [Informational Memo](#) kicking off an informal public comment opportunity for the Department's [proposed critical updates to existing regulations](#). As described in the final STP, these updates will eliminate/revise rule language that appears to be in tension with the HCBS Settings Final Rule. Similar updates to waivers will be proposed as part of the Fall 2022 waiver amendment cycle. To ensure systemic compliance, these changes will go into effect before March 2023. Noncritical updates to rules and waivers, such as streamlining and de-duplication efforts, will be made later, as part of a larger overhaul.
- On June 30, 2022, completed development of two short animated videos for Medicaid waiver members. The first, "My Rights," features a fictional Medicaid waiver member discussing her life and the rights she enjoys. The second, "Rights Modifications," shows how she went about deciding whether to consent to a proposed rights modification. There are English and Spanish versions of each video. Once the Department completes certain accessibility components and resources to accompany the videos, it will share the videos with members, case managers, and others.
- On July 15, 2022, published a [Policy Memo](#) with attached [responses to frequently asked questions \(FAQs\)](#). The FAQ takes a "MythBusters" approach to addressing questions received by the Department.



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

- Conducted manual outreach (via email and/or telephone call) to a number of providers that have not finished providing PTP updates demonstrating full compliance with the HCBS Settings Final Rule.
- Continued to work with the Colorado Department of Public Health & Environment (CDPHE) to review and verify PTP updates.
- As of June 30, 2022, site-specific status could be summarized as follows:
 - Consolidating the three PTP categories, over 65% 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	360	10	208
Number of settings = number of PTPs to be completed	2230	15	365
Compliance status of settings	<p>Other, 1.7% (1) No HS, compliant, done, 66.1% (2) No HS, not yet compliant, in progress, 32.2%</p>	<p>(1) No HS, compliant, done, 80.0% (2) No HS, not yet compliant, in progress, 20.0%</p>	<p>Other, 11.2% (1) No HS, compliant, done, 55.6% (2) No HS, not yet compliant, in progress, 33.2%</p>

	Adult Residential PTPs	Children’s Residential PTPs	Nonresidential PTPs
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			
Other			
(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, 2022. Providers and settings may appear in more than one column. The table excludes data relating to PTPs in Retired status.			

Heightened scrutiny updates

- On August 20, 2021, the Department submitted for CMS’s review summary sheets regarding 51 settings subject to heightened scrutiny. On July 5, 2022, CMS identified a sample of 17 settings for which it requested the evidentiary packages on which the summary sheets were based. As noted in our July 7, 2022 response, we can provide the original evidence from last summer as soon as we know where we should upload it. In addition, we plan to update the summary sheets and evidentiary packages for certain settings that have undergone material changes in the interim (e.g., completing verification of full compliance).
- Since last summer, the Department has identified a small handful of additional settings for which public comment and CMS review would be appropriate. We are preparing the corresponding summary sheets for public comment, which we expect to initiate later this summer, for submission to CMS this fall.

Other

- On May 24, 2022, [CMS announced](#) that because of the “direct-service workforce crisis exacerbated by the COVID-19 PHE,” states could request a single cross-waiver corrective action plan (CAP) allowing for extra time to implement the HCBS Settings Final Rule. Specifically, while states, providers, and settings must be “fully compliant” with some of the settings criteria by the original end of the transition period in March 2023, they need only be compliant “to the fullest extent possible” with other criteria, for which they may request an extension of the deadline for full compliance. The Department is considering various paths forward under this announcement and expects to notify stakeholders and CMS shortly of the approach it proposes to take.