



HCBS Settings Final Rule Quarterly Update for Quarter Ending 9/30/21

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

- As stated in an [Informational Memo](#), held live question-and-answer sessions on individual rights and the rights modification process for the following groups: individuals participating in HCBS waivers (August 24, 2021); parents, families, and guardians of waiver participants (August 25, 2021); and providers and case management agencies (August 26, 2021). The sessions were well-attended and helped us identify areas where additional guidance may be needed.
- Formally published [Colorado's codification of the federal rule](#) in advance of the September 20, 2021 [Public Rule Review Meeting](#) (occurring via email during the pandemic). We then initially presented the rule to the Medical Services Board (MSB) on October 8, 2021. ([MSB agenda](#); [presentation](#).) In connection with this presentation, we received two public comments (one during the MSB session and one via email). The MSB expressed appreciation for our extensive stakeholder engagement process, as reflected in the lengthy listening log we shared, and it initially adopted the rule. We are considering the last two public comments and the suggestions of the Colorado Attorney General's Office, which reviews all proposed rules, as we finalize the rule. Next, we will present the updated rule to the MSB for expected final adoption on November 12, 2021. The rule will then be published in the Colorado Register and should go into effect by late 2021 or early 2022.
- On September 24, 2021, published an [Operational Memo](#) informing providers of the need to use the updated versions of any documents they have revised for purposes of HCBS Settings Final Rule compliance (for example, by posting updated house rules once approved and removing superseded postings).

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

Heightened scrutiny

- On August 20, 2021, submitted 51 heightened scrutiny determinations to CMS. On September 16, 2021, we submitted corrections relating to a handful of CMS-identified discrepancies. We look forward to hearing your feedback on our determinations.



Other

- On July 20 and 21, 2021, emailed reminders to providers that still had to submit Provider Transition Plan (PTP) updates demonstrating that they had made all remaining required changes.
- Continued to work with the Colorado Department of Public Health & Environment (CDPHE) to review and verify PTP updates in all three categories of affected settings: adult residential, children’s residential, and nonresidential.
- As of September 30, 2021, site-specific status could be summarized as follows:

	Adult Residential PTPs	Children’s Residential PTPs	Nonresidential PTPs
Number of providers	370	10	212
Number of settings = number of PTPs to be completed	2389	13	397
Compliance status of settings	<p>Other, 2.7%</p> <p>(1) No HS, compliant, done, 47.4%</p> <p>(2) No HS, not yet compliant, in progress, 49.9%</p>	<p>(1) No HS, compliant, done, 38.5%</p> <p>(2) No HS, not yet compliant, in progress, 61.5%</p>	<p>(6) HS, not on track to comply, 6.0%</p> <p>Other, 11.1%</p> <p>(1) No HS, compliant, done, 38.3%</p> <p>(2) No HS, not yet compliant, in progress, 44.6%</p>

	Adult Residential PTPs	Children’s Residential PTPs	Nonresidential PTPs
Compliance status options			
<ul style="list-style-type: none"> ■ (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 ■ (6) Setting IS subject to heightened scrutiny and NOT timely able to overcome institutional presumption; prepare now to transition clients ■ Other <ul style="list-style-type: none"> (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 (7) Not yet known (default) or blank (8) Setting has closed because of rule (9) Setting has closed for another reason 			
<p>All data in table is as of October 5, 2021. Providers and settings may appear in more than one column. The table excludes data relating to PTPs in Retired status.</p>			