



COLORADO

Department of Health Care
Policy & Financing

Summary of Public Notice and Comment Regarding Revised Home and Community Based Services Statewide Transition Plan (STP)

The Colorado Department of Health Care Policy & Financing's (the Department's) revised Home and Community Based Services (HCBS) Statewide Transition Plan (STP) and Systemic Assessment Crosswalk was open for public comment from May 6, 2016 through June 9, 2016.

The Department provided public notice through the following means:

- Emailing a communication brief on May 6, 2016 to the Division of Long Term Services and Supports Stakeholder list; the Division for Intellectual and Developmental Disabilities Stakeholder list; and providers, advising the recipients of the availability of the full STP, the comment period, and the ways to comment.
- Publishing a notice on May 6, 2016 on the Department's website advising the public of the availability of the full STP, the comment period, and the ways to comment.
- Emailing a notice on May 6, 2016 to Tribal Consultation recipients advising them of the availability of the full STP, the comment period, and the ways to comment.
- Publishing notices on May 5, 19 and June 2, 2016 in the newspapers of widest circulation in each city in Colorado with a population of 50,000 or more advising the public of the availability of the full STP, the comment period, and the ways to comment.
- Publishing a notice on May 10, 2016 in the Colorado Register advising the public of the availability of the full STP, the comment period, and the ways to comment.

The Department stated in all notices and emails described above and in the STP itself, that the full STP and Systemic Assessment Crosswalk was available on the Department's website at www.colorado.gov/hcpf/hcbs-waiver-transition. Individuals could also obtain an electronic or hard copy of the STP through requests accepted by

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email, phone, fax, or US Mail. The Department received and fulfilled two requests for a hard copy of the STP.

As also stated in the notices and emails described above and in the STP itself (Action Item 5), the public could provide comments via email, phone, fax, or US Mail.

Public Comments

The Department received a total of 97 comments from 6 sources including 4 advocacy organizations, 1 trade organization, and Colorado's designated protection and advocacy agency for people with disabilities, on the updated STP as well as the Systemic Assessment Crosswalk.

1. The Department received 24 comments which addressed the Assessment portion of the STP:
 - 2 comments expressed concern regarding the 145 settings that have not responded to the self-assessment surveys and how their compliance will be validated.
 - 4 comments addressed the Department's findings from the self-assessment surveys, wanting assurance that the Department is addressing non-compliance in the minority as well as the majority of providers. Comments also addressed the timeframe for completing on-site reviews and what will happen to providers who give no evidence of improvement.
 - 1 comment requested clarification on who will be involved in the process of transitioning individuals to a compliant setting.
 - 6 comments regarding the provider scorecards. These comments ranged from difficulty finding them on the website, to the generality of the information on the score cards, specific providers and services not being named, and how the information on provider scorecards will relate to the Department's remediation plan.
 - 6 comments addressed the Individual, Family, and Advocate (IFA) survey including clarity of language, frequency in which the Department will remind individuals to take the survey, and improving ways to outreach individuals and their families. Some comments addressed the way the IFA surveys have been distributed thus far, noting that a third party should distribute these to individuals as opposed to case managers or providers in order to avoid a conflict of interest. Also, that it is necessary to protect the identity of participants while figuring out how to use the information to validate the provider's compliance. Comments also addressed the timeline for data analysis and posting of findings from the IFA survey.
 - 5 comments addressed the on-site reviews, Provider Transition Plans (PTP's) and Heightened Scrutiny process. Comments note the change in language from

the self-assessment survey when translated to the PTP. Other comments request clarification as to who will be completing the on-site reviews and if they will be completed only to validate the self-assessment information or if providers who did not respond to the self-assessment survey will also get a site visit. Comments also commend the Department's decision to involve stakeholders in the on-site reviews if they are involved with that particular setting.

A summary of the Department's response to stakeholders regarding comments addressing Assessments in the STP follows:

- The Self-Assessment surveys are completed and closed. Going forward, compliance of all providers, including non-respondents, will be validated through the PTP's and/or site visits as well as Individual, Family, and Advocate (IFA) surveys.
- Providers who show no signs of improvement and/or who choose to withdraw from Medicaid participation rather than coming into compliance with the Final Rule will need to start preparing to transition clients to compliant settings. The Department, providers, and case managers will work together to ensure that clients are given full informed choice throughout this process.
- The Department will ensure that at a minimum the individual, the provider, the individual's case manager, and the Department are involved in the transitioning to a compliant setting. Any involvement of additional parties will be dictated by the individual.
- The provider scorecards may be found at www.colorado.gov/hcpf/home-and-community-based-services-settings-final-rule. The scorecards were created to provide general demographic, waiver, and residential vs. non-residential service information on Final Rule compliance. Trends produced from these scorecards show variances in compliance in metro vs. rural areas so the Department may view and address trends of non-compliance in these areas accordingly.
- The Department will clarify the information it is seeking through the IFA surveys and will further identify ways to outreach participants to take the IFA survey.
- Site visits are currently being completed by the Department's contractor Telligen. As of July 1, 2016, the Colorado Department of Public Health and Environment (CDPHE) will assume the responsibility for site visits. The Department's goal to complete the initial on-site review is December 31, 2016 to provide 1 year for updates to the PTP's and a determination of which providers will be subject to Heightened Scrutiny.

2. The Department received 11 comments which addressed the Stakeholder Communication portion of the STP:

- 1 comment addressed an inability to access the HCBS Final Settings rule information through the Department's website.
- 2 comments addressed the Department ensuring that Final Settings rule information is disseminated adequately throughout stakeholder meetings and in between meetings, to ensure adequate time for stakeholders to process information as well as putting stakeholder meeting information into the STP.
- 5 comments addressed the Department's website postings and requested posting of all documents referenced within the STP such as the Site Visit Protocol and Heightened Scrutiny Request process, PTP, and PTP User Manual.
- 1 comment asked that the Department make communication from CMS accessible to the public regarding feedback from the STP to ensure the public adequately understands CMS's concerns.
- 2 comments addressed the Department's need to educate participants as actively as providers and other stakeholders.

The Department's response regarding comments addressing Stakeholder Communication in the STP:

- The Department will maintain the most current and relevant information on the website and is improving the website for user accessibility. Regarding the links noted in the comments as non-functional, the Department has re-tested them to ensure they are working.
 - The Department is developing a more effective communication plan which will be implemented beginning August 1, 2016.
 - The Department is reviewing and preparing the documents referenced in the STP surrounding the site visits for public posting by July 15, 2016.
 - The Department will post finalized information communicated from CMS to the public website as it is received.
 - The Department will further identify methods to increase participant involvement in the Final Rule and will incorporate those methods into practice by September 1, 2016.
3. The Department received 3 comments which addressed the Training and Technical Assistance portion of the STP:
- 1 comment requested clarification for Person Centered trainings with Single Entry Point (SEP)/Community Center Board (CCB) case managers and their frequency.

- 1 comment requested clarification around licensing and certification and which staff will need to complete.
- 1 comment surrounded benchmarks for person centered training, training and technical assistance as well as goals for providers.

The Department's response regarding comments addressing the Training and Technical Assistance in the STP:

- The Department is currently working with SEP and CCB case managers to complete Person Centered Training, and plans to make the training required for new hires going forward.
- The Department clarified that the reference in the STP to complete licensing and certification was not to provide licensing and certification to provider agencies, but to provide training to licensing and certification agencies such as the Department and CDPHE staff.
- The Department is utilizing Person Centered Planning (PCP) training and benchmarks to create goals for the future.

4. The Department received 9 comments which addressed rules and processes referenced in the STP:

- 2 comments addressed implications of Colorado Employment First legislation and possible Final Rule compliance issues with prevocational and supportive employment services related to community integration.
- 1 question asked where "quality assurance documents" could be found.
- 6 comments addressed the Department's collaboration with other state agencies to promulgate rules throughout the transition period and timelines for updating the Department's rules for Final Rule compliance. The Department was also asked what it would look like to "review survey cycles" with Colorado Department of Public Health and Environment (CDPHE).

The Department's response regarding comments addressing the Rules portion of the STP:

- The Department is represented on the Employment First Advisory Partnership, established by the Employment First legislation to participate in developing the state-wide strategic plan. Part of that work involves coordinating with all partners to ensure integration and access to employment in the community in alignment with the STP and compliance with the Final Rule.
- The "Quality Assurance" documents referenced in the STP can be found by contacting CDPHE. www.colorado.gov/cdphe

- The Department is currently working with CDPHE to update Department rules for Final Rule compliance, as well as updating current program process .The Department works with CDPHE to review adequate survey frequency to ensure ongoing Final Rule compliance.
5. Comments received on the Systemic Assessment Crosswalk are grouped as follows: Client Rights, Informed Choice, Community Integration, and Other.

The Department received 13 comments under the theme of Client Rights:

- 2 comments were received on “protection against restraint” noting this is an educational opportunity for staff. One commenter noted concern about more restrictive language for protection against restraint due to there being a need for restraint when appropriately applied to individuals by trained staff.
- 2 comments were received regarding the management of resident funds. The comments noted that while residential providers should not be managing resident funds that there is a lack of available payee’s for residents without family support. It is also noted that if a residential provider is the payee, specific parameters need to be defined that are in line with the Social Security Administrations (SSA) regulations for payee services.
- 4 comments were received on the topic of legally enforceable residential agreements. Comments noted general concern as to how agreements will be enforced and the rights that are conveyed to the individual within the agreement. Comments also addressed the individual vs. provider protections within a legally enforceable agreement, and the lack of practicality of expectations of the provider to continue to provide services until the resident finds suitable alternative placement.
- 2 comments were received regarding modification to the Person Centered Care Plan requesting more specific information on appropriate documentation, as well as who establishes the time limits for periodic review of a modification.
- 3 comments addressing the systemic crosswalk regarding where rules were “silent”. It was noted that these areas of the rule needed to be “unsilenced.” It was noted that informed consent needed to be added to documentation of the person centered service plan.

The Department’s response to comments and concerns surrounding Client Rights in the Systematic Assessment Crosswalk.

- Concerns related to the use of restraints require additional attention during the work to implement the Final Rule. Regulations, policy and training will be updated to ensure appropriate parameters are in place which will protect individual civil rights while also protecting health and safety when needed.

- Concerns regarding the management of resident funds require additional attention during the work to implement the Final Rule. Regulations, policy and training will be updated to ensure appropriate application. Currently CDPHE’s Assisted Living Residence (ALR) regulations has a section on the management of resident funds which can be used as a baseline for Final Rule compliance.
- Concerns in the area of legally enforceable resident agreements require additional attention during the work to implement the Final Rule. . Regulations, policy and training will be updated to ensure appropriate application. Currently CDPHE’s Assisted Living Residence (ALR) regulations include a section for resident agreements which can be used as a baseline for Final Rule compliance.
- Current guidance requires that any modifications to the HCBS Setting requirements in the Person Centered Care Plan must include; 1) a Specific and individualized assessed need, 2) positive interventions and supports used prior to any modifications to the care plan, 3) and less intrusive methods of meeting the need that have been tried but unsuccessful. The time limits for periodic review can differ depending on the individual and the severity of the modification. The Department will explore best practices in restrictions to Person Centered care plans to clarify these guidelines.
- Any areas of the Systemic Assessment Crosswalk that reference “silence” in Rules, Waivers, or Statute implies the intention to change that portion of the Rule, Waiver or Statue. The Crosswalk will be updated to reflect that information on its next submission.

6. The Department received 3 comments under the theme of Informed Choice:

- 1 comment notes a necessary language change regarding “feasible” service alternatives by removing “feasible” and only noting “alternatives.”
- 2 comments specifically note Group Residential Supports and Services (GRSS) and Individual Residential Supports and Services (IRSS) and clarification of provider roles in assuring choice. The Department’s response to comments and concerns regarding Informed Choice in the Systemic Assessment Crosswalk.

The Department’s response to comments and concerns related to Community Integration in the Systemic Assessment Crosswalk follows:

- The term “feasible” references all qualified providers available and willing to deliver services. The Department will include language when updating the Rules, Waivers, and Statute to require that individuals receive fully informed choices of the options for service delivery in their area.

- The Department is in the process of assessing access to services and network adequacy as part of the work to redesign Colorado’s Home and Community Based Services waivers. That work will also inform the work to come into compliance with the Final Rule by indicating where in the state the Department can focus efforts to build provider capacity.

7. The Department received 31 comments under the theme of Community Integration:

- 2 comments were asking that the Department propose a rule that will regulate environments with restrictive egress.
- 1 comment asked the Department to not prohibit co-located settings in the rule as these are not “prohibited “ but “presumed institutional” and settings can dispute this presumption through Heightened Scrutiny.
- 1 comment asked that settings that are licensed by CDPHE and certified by the Department only have new rules written into the Department’s regulations and not also included in the CDPHE regulations.
- 3 comments related to Specialized Habilitation settings for individuals with intellectual and developmental disabilities (IDD). There is a concern that these settings cannot provide the amount of community integration required by the Final Rule due to being “center-based”. It is suggested that these programs be made more “consumer-directed” and rates for these services be reviewed so the supervision required to comply with full community integration can be provided.
- 3 comments requested more specific information under proposed rules “AAA” and “BBB” for provider expectations and how these rules are applied to that specific service setting.
- 3 comments agreed with the Departments presumption of private homes being in compliance although noted that services provided by a family member should not be held to the same standard as it would create barriers to access and discourage choice among caregiver options.
- 18 of the 31 comments addressing the Community Integration section of the Systemic Assessment Crosswalk note agreement with the Department’s suggested modifications to the rule.

The Department’s response to comments and concerns related to Community Integration in the Systemic Assessment Crosswalk follows:

- The Department is seeking additional guidance from CMS regarding settings with restrictive egress in the community considering the presumption of isolation it presents.



- The Department is seeking additional guidance from CMS regarding co-located settings considering the presumption of isolation it presents.
- The Department is working with CDPHE to identify the portions of the rule to be included in CDPHE vs the Department regulations. It is important to note that CDPHE reviewed the Systemic Assessment Crosswalk prior to public noticing.
- The Department’s ability to increase reimbursement rates is dictated by the legislature. The Department has a Rate Review committee to provide stakeholder input for all Medicaid rates. This committee was formed in the Fall of 2015; more information can be found at the following website: www.colorado.gov/hcpf/medicaid-provider-rate-review-advisory-committee
- The Department is developing the proposed rules “AAA” and “BBB” and will post them for public comment.

The Department considered all concerns expressed by commenters and has determined that changes to the existing STP and Systematic Assessment Crosswalk are not needed

Availability of Materials

- The draft STP and Systemic Assessment Crosswalk were open for public comment until June 9, 2016. The STP and Cross were posted on the Department’s website here: www.colorado.gov/hcpf/hcbs-waiver-transition
- To request a paper or electronic copy of any materials, including the STP and Crosswalk please contact Caitlin Phillips at 303-866-6873, Email: STP.PublicComment@state.co.us
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