

# Home and Community- Based Settings Rule Update



ISAC  
August 17, 2021

## Overview Of The Rule

- CMS published the HCBS final rule amending regulations on January 16, 2014
- The rule ensures that individuals receiving services through waiver programs have full access to the benefits of community living
- The rule further expands the opportunities for meaningful community integration in support of the goals of the ADA and the Supreme Court decision in *Olmstead*

# Steps Accomplished

## Creating the foundation

- Initial Statewide Transition Plan approved by CMS
- Everyday Lives: Values in Action
- Waiver renewals and amendments to align services with the rule
- Provider self-assessments for Residential and CPS settings
- Chapter 6100 and licensing regulations



## HCBS Requirements – Integration and Community Access

**The setting is integrated in and supports full access of individuals to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community...**

- Covered in Chapters 2380, 2390, 6100, 6400 and 6500
  - Individual Rights
  - Orientation and Annual Training Requirements
  - Access to or the use of an individual's personal property
  - Facility Services (2380 and 2390)
  - Facilitating personal relationships (6100.186, 6400.44)
  - Access to the community (6100.261, 6400.44, 6400.181)

# ➤ HCBS Requirements - Rights

**The setting ensures an individual's rights of privacy, dignity, and respect, and freedom from coercion and restraint.**

- Covered in Chapters 2380, 2390, 6100, 6400 and 6500
  - Individual Rights
  - Orientation and Annual Training Requirements
  - Access to or use of an individual's personal property
  - Abuse
  - Incident Report and Investigation
  - Restrictive Procedures, including Human Rights Teams and Behavior Support Component of the Individual Plan

# ➤ HCBS Requirements - Choice

**The setting facilitates individual choice regarding services and supports, and who provides them.**

**The setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.**

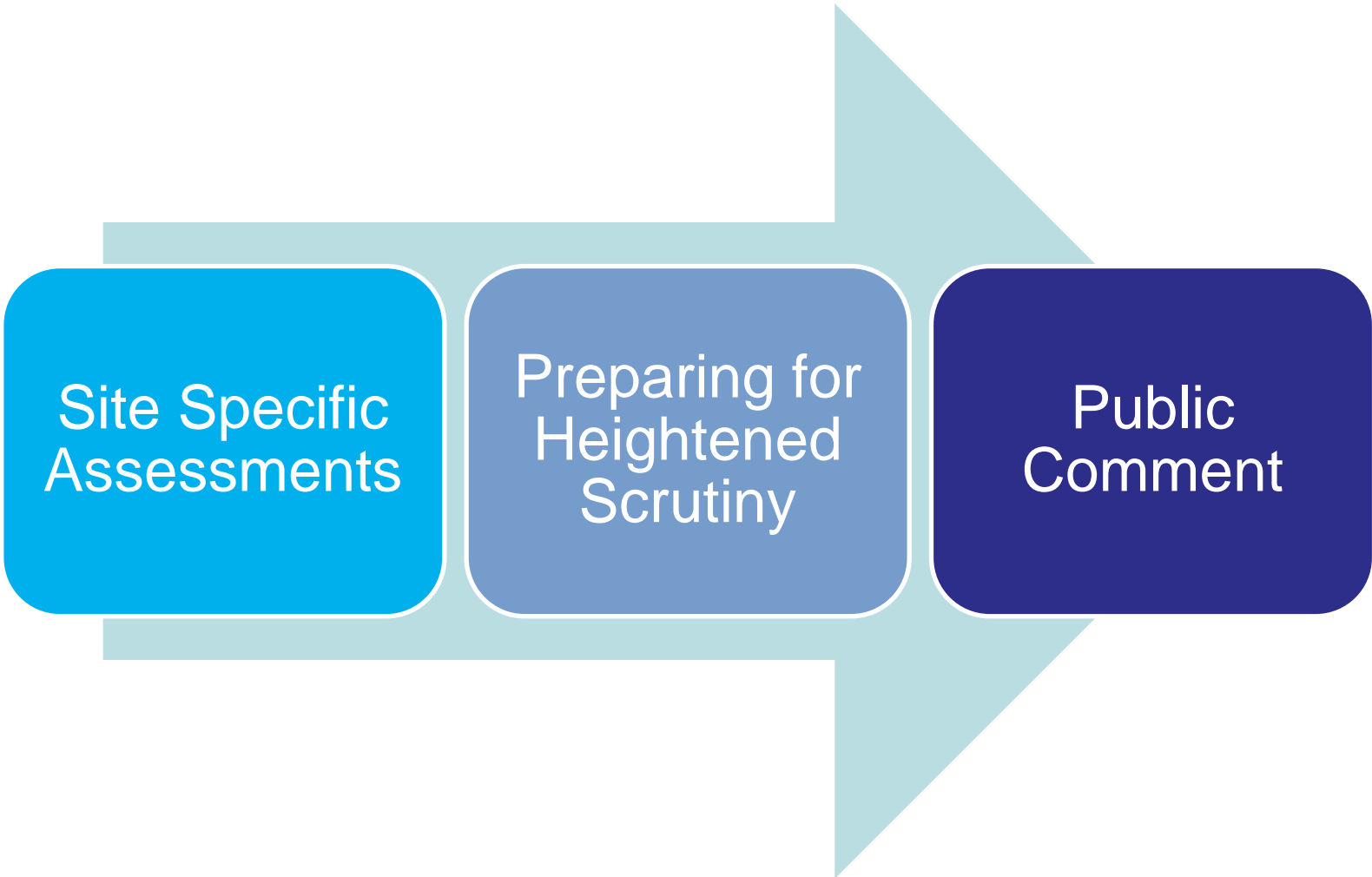
- Covered in Chapters 2380, 2390, 6100, 6400 and 6500
  - Individual Rights
  - Orientation and Annual Training Requirements
  - Individual Plan Process
  - Facilitating personal relationships (6100.186, 6400.44)

# HCBS Requirements for Residential Settings

**Each individual has privacy in their sleeping or living unit. Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time. Individuals are able to have visitors of their choosing at any time. The setting is physically accessible to the individual.**

- Covered in Chapters 6100, 6400 and 6500
  - Rights of the individual (6400 and 6500)
  - Additional Rights of the individual in a residential service location
  - Involuntary transfer or change of provider
  - Special accommodations (6400 and 6500)

# Final Approval of Statewide Transition Plan





# Site Specific Assessments - Licensing

- To submit a final statewide transition plan, CMS requires states to complete comprehensive, statewide, site-specific assessments.
- Requirements to comply with the HCBS rule were incorporated into regulations effective February 1, 2020
- We are working on a report that provides results for licensing on-site reviews from July 1, 2020 through June 30, 2021
  - Includes Renewal Inspections and Partial Inspections

## Using 6400 and 6500 Inspection Data for Site Specific Summaries

- As noted above, there are regulatory requirements that connect directly to the HCBS final rule.
- There are about 90 regulatory requirements that relate to the HCBS final rule in Chapter 6400.
- There are about 30 regulatory requirements that relate to the HCBS final rule in Chapter 6500.
- ODP used licensing data to find out how many inspections identified HCBS final rule violations between July 1, 2020 and June 30, 2021.

## 6400 – Number of HCBS Violations Found

Number of HBCS Final Rule Violations	Homes	Percent of Homes
0	2,458	86.4%
1	304	10.7%
2	46	1.6%
3	13	0.5%
4	10	0.4%
5	10	0.4%
6	2	0.1%
7	1	0.0%
<b>Total</b>	<b>2,844</b>	<b>100.0%</b>

# 6500 – Number of HCBS Violations Found

Number of HBCS Final Rule Violations	Homes	Percent of Homes
0	516	90.8%
1	30	5.3%
2	16	2.8%
3	4	0.7%
4	1	0.2%
5	1	0.2%
<b>Total</b>	<b>568</b>	<b>100.0%</b>

# Top Licensed Residential HCBS Violations

The home shall inform and explain individual rights and the process to report a rights violation to the individual, and persons designated by the individual, upon admission to the home and annually thereafter.

Regulatory Chapter	Inspections Where Cited	Homes Where Cited	Corrected (by inspection)	Not Corrected
6400	181	179	174	7 4 did not correct the violation  4 were issued a provisional license
6500	26	26	26	0

# Top Licensed Residential HCBS Violations

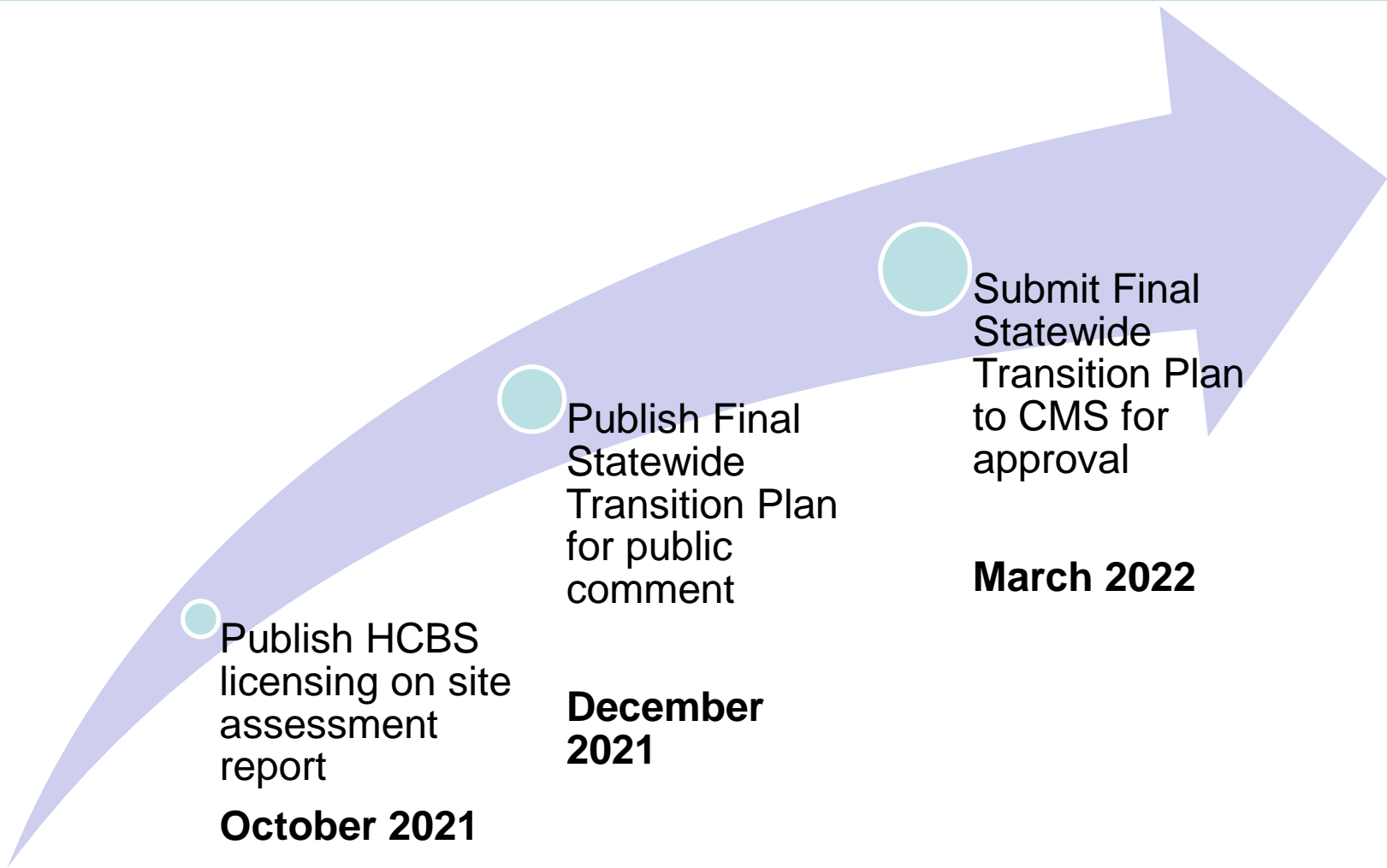
An individual has the right to lock the individual's bedroom door.

Regulatory Chapter	Inspections Where Cited	Homes Where Cited	Corrected	Not Corrected
6400	53	53	53	0
6500	21	21	20	1 – issued a provisional license

# Correcting Regulatory Violations

- Providers must create and implement a plan of correction for each regulatory violation.
- The specific way a regulation was violated vary based on the unique inspection findings. There is no standard plan of correction for violations.
- However, all plans of correction do include common elements. For example:
  - A plan of correction for failure to inform an individual of their rights would typically include making sure that all other individuals were informed of their rights and developing a process to make sure rights notifications occurred in the future.
  - A plan of correction for bedroom door locks would typically include adding a lock to the door and verifying that other doors were equipped with locks, as well as making sure each individual understood their right to have a lock on their door.

# Timeline for Final Statewide Transition Plan





# Heightened Scrutiny - Residential

Providers identified on the self-assessment that the homes were a farmstead or located on a campus.

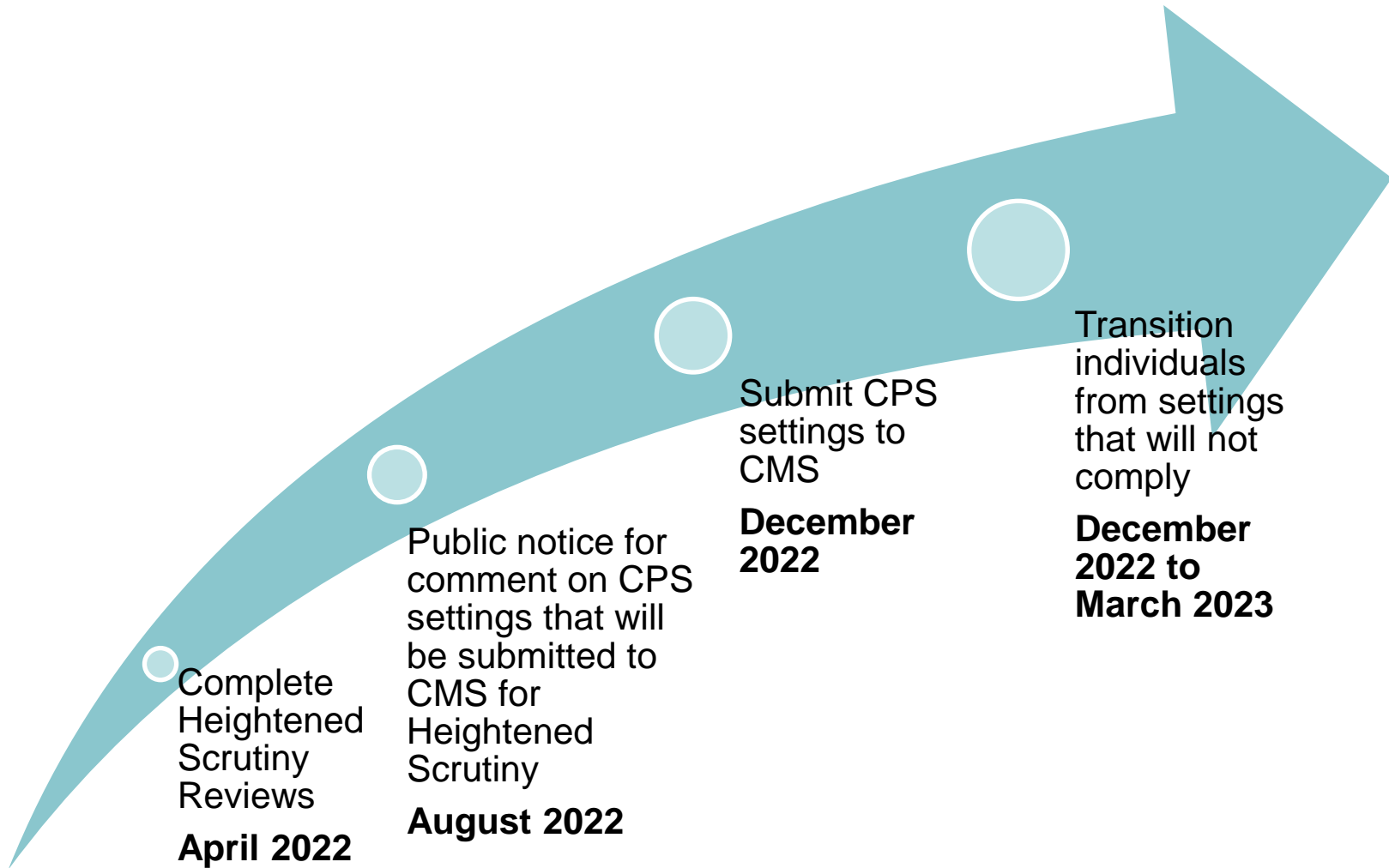
- 1 Life Sharing setting reviewed and deemed to be integrated and compliant with HCBS requirements
  - Will not need to be submitted for Heightened Scrutiny
- 1 Residential Habilitation setting to be reviewed in August



# Heightened Scrutiny – CPS

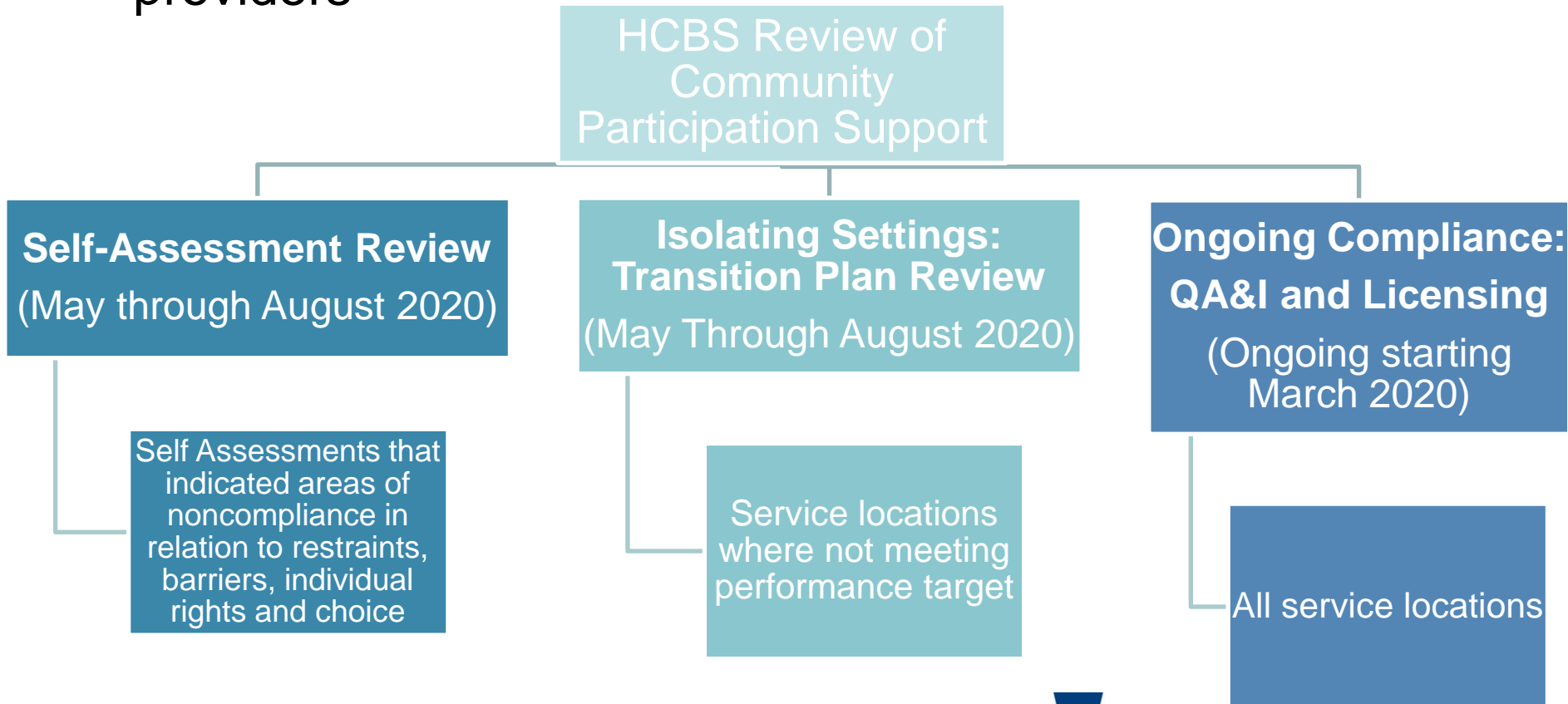
- Heightened Scrutiny required for Community Participation Support service locations co-located or adjacent to Skilled Nursing Facility, ICF/ID, Institute for Mental Disease, Hospital
- Received Public Comment on those settings
  - List is down to 25 service locations
  - Some providers closed their facilities, some stopped providing services through ODP's waivers, others have moved locations.
- Original plan to complete these April 2020 through July 2020
  - Due to COVID this had to be delayed. Reviews now must be completed by April 2022
  - ODP will post finalized onsite tools soon

# Timeline – Heightened Scrutiny



# Full HCBS Compliance Reviews for CPS

- COVID impacted other plans for assessing full HCBS Compliance for Community Participation Support providers



# Full HCBS Compliance Reviews for All Settings

- Build HCBS compliance questions into Quality Assessment and Improvement Cycle 2 Year 1
  - Includes unlicensed residential settings
- Annual HCBS Compliance Reports Starting Fall 2022
  - Licensing data
  - Quality Assessment and Improvement Data
  - NCI Data
  - IM4Q Data

# Questions?

