

State of Tennessee

**Statewide Transition Plan and Heightened Scrutiny Milestone Tracking**

Quarterly Report

## Tennessee’s Statewide Transition Plan and Heightened Scrutiny Milestone Tracking Document Systemic Remediation Tracking

The following chart, taken directly from the Milestone Document submitted to CMS in February 2016, reflects the State’s progress with systemic Transition Plan milestone and remediation activities. The status of each milestone and remediation activity is indicated in the far right column and will be updated as applicable with each quarterly report submission.

General Milestones				
Statewide Transition Plan Milestones	Start date	End date	STP/SR Page #	Milestone Status
Hold seven provider information meetings across the state on the HCBS Rule, State assessment process, Transition Plan development and public input activities	07/08/2014	07/24/2014	2	Completed
Post the information PowerPoint presentation on TennCare website	07/25/2014	07/25/2014	2	Completed
Post public letter to TennCare website	7/25/2014	07/25/2014	3	Completed
Post draft proposed Waiver specific Transition Plan and initial Assessment Tool documents on TennCare website	07/25/2014	07/25/2014	3	Completed
Accept public comment on Transition Plan and Assessment Tool	07/25/2014	09/19/2014	3	Completed
Email public (introduction) letter to assist with informing consumers and families of consumer/family friendly webinars, and the initial draft proposed STP and self-assessment tools to providers and advocates for dissemination.	07/28/2014	07/28/2014		Completed
Post consumer and family information material on TennCare website	08/11/2014	08/11/2014	2-3	Completed
Conduct two consumer and family information open forum conference call meetings <sup>2</sup>	08/12/2014	08/14/2014	3	Completed
Post revised waiver specific Transition Plan	09/18/2014	09/18/2014	3	Completed
Finalize documents, post on TennCare website and submit waiver specific Transition Plan and Assessment Tools to CMS	10/01/2014	10/01/2014	3	Completed
Submit waiver renewal with changes to waiver provider qualifications and service definitions to two of three 1915(c) waivers to CMS (Waiver control numbers TN.0128 and TN.0357)	10/01/2014	10/01/2014	9	Completed

Contracted entity person-centered plan self-assessment process	11/21/2014	03/31/2015	11-15	Completed
Contracted entity internal self-assessment on compliance with final rule process	10/01/2014	03/31/2015	11-15	Completed
Submit amendments to third 1915(c) waiver to CMS (Waiver control number TN.0427)	10/15/2014	10/15/2014	9	Completed
Revised Self- assessment tools posted and made available to providers for provider self-assessment process. Providers were encouraged to review materials prior to training session	10/01/2014	10/01/2014	3	Completed
Conduct training sessions on Provider Self-Assessment Tool and Validation Process for contracted entities	10/22/2014	10/22/2014	15-16	Completed
Conduct webinar training sessions on Provider Self-Assessment Tool and Validation Process for providers	10/28/2014	11/13/2014	15-16	Completed
Contracted Entities conduct validation process of reviewing, working with providers on any necessary revisions and approving the provider self-assessment and provider transition plan if applicable	11/01/2014	09/30/2015	18-19	Completed
Post draft STP for comment, email stakeholders, advocacy organizations and provider associations	12/23/2014	01/23/2015	4	Completed
Amend Contractor Risk Agreement with MCOs to incorporate person-centered planning language that clarifies services are provided in an integrated setting	01/01/2015	07/01/2015	10-11	Completed
Propose legislation to amend TN Code (Titles 33, 68, and 71)	01/15/2015	01/15/2015	9	Completed
Distribute revised Needs Assessment and Plan of Care Protocols to MCOs	01/01/2015	01/01/2015	11	Completed
Individual Experience Assessment process	02/01/2015	01/31/2016	30	Completed
Submit Interagency Agreement revisions to DIDD for review/discussion	02/28/2015	02/28/2015	10-11	Completed
Provider Self-Assessment process complete and all submissions received by designated reviewer entities	03/31/2015	03/31/2015	16	Completed
Add STC to 1115 waiver	06/23/2015	06/23/2015	SR 3	Completed
Amendments to CRA to include HCBS Settings Rule provisions become effective	07/01/2015	07/01/2015	10	Completed
Execute amended 1915(c) Waiver Interagency Agreement with DIDD	07/01/2015	07/01/2015	11	Completed
Implement problem solving focus groups of providers and consumers and family members to aid in compliance strategies	07/01/2015	12/31/2016	31	Completed
Promulgate new rules, including collecting stakeholder input	07/01/2015	01/01/2017	10	Completed
MCO revised HCBS Provider Agreements to include HCBS Settings Rule requirements and execute with all HCBS providers	07/01/2015	07/01/2015	11	Completed
Post draft amended Statewide Transition Plan for 30 day public comment	11/02/2015	12/04/2015	4-5	Completed

period				
Email amended STP to stakeholders, advocacy organizations and provider associations for review and dissemination	11/04/2015	11/04/2015	4	Completed
Post revised amended STP (to include heightened scrutiny process) for public comment	11/13/2015	11/13/2015	4	Completed
Email revised amended STP to stakeholders, advocacy organizations and provider associations	11/13/2015	11/13/2015	4	Completed
Received request from provider organization to extend public comment period time. Submitted request to CMS.	12/11/2015	12/11/2015	5	Completed
Received approval from CMS to extend public comment period to 01/13/2016.	12/15/2015	12/15/2015	5	Completed
Submit an amendment to the Statewide Transition Plan with specific remediation activities and milestones for achieving compliance with the HCBS Settings Rule and a summary of public comment	02/01/2016	02/01/2016	SR 9	Completed
<b>Remediation</b>	Start date	End date	STP/SR Page #	Remediation Status
DIDD will bring its policies into alignment with all CQL Basic Assurances ® for CQL Accreditation (which aligns with HCBS Settings Rule)	08/01/2012	12/31/2017	15, 23	Completed
DIDD will implement CQL Personal Outcome Measures (POMs ®) on an individual and systemic level (There are two pieces to this milestone. The first (systemic) was implemented 1/1/2014 and the second (individual) will be implemented when the provider manual is posted—by 12/31/16)	01/01/2014	12/31/2016	23	Completed
Proposed legislation to amend TN Code (Titles 33, 68, and 71) passed and became effective	04/02/2015	04/16/2015	7, 9	Completed
Add provisions to CRA requiring MCOs to add language to their provider agreements/provider manuals requiring HCBS providers to comply with the HCBS Settings Rule	07/01/2015	07/01/2015	8, 11	Completed
MCO implementation of credentialing and re-credentialing provider monitoring became effective in CRA	07/01/2015	07/01/2015	14, 26-27	Completed
CRA HCBS Settings Rule compliance monitoring	07/01/2015	Ongoing	8, 10	Ongoing
Final validation of provider self-assessments and transition plans due from contracted entities	09/30/2015	09/30/2015	16	Completed
Relocation information due to TennCare	09/30/2015	09/30/2015	SR 9	Completed
Complete changes to DIDD provider manual	09/30/2015	12/31/2016	10	Completed
Contracted Entities monitor provider transition plan implementation	09/30/2015	03/01/2019	31-32	Ongoing

Begin work on amending DIDD Provider Agreement to include reference to the HCBS Settings Rule	11/01/2015	3/31/2016	11	Completed
Post for public comment additional changes to the current 1915(c) employment and day services to further strengthen compliance for non-residential settings in the three 1915(c) waivers	11/13/2015	12/14/2015	10	Completed
Collaborate to assist other state departments in revising rules, as applicable, or take necessary steps to otherwise plan for transition if compliance cannot be achieved	12/01/2015	01/31/2017	9	Completed
Relocation Process for non-compliant settings	07/01/2016	TBD	28-29	Completed
Provider Forums to kick off Heightened Scrutiny process	01/08/2016	01/28/2016	22	Completed
Conduct training session for MCOs and DIDD on Heightened Scrutiny process	02/11/2016	02/11/2016	22	Completed
Conduct 4 consumer/family webinars/conference sessions on Heightened Scrutiny specific to facility-based day and sheltered workshops	02/17/2016	02/26/2016	22	Completed
Provide 5 provider Heightened Scrutiny information/training sessions	03/02/2016	03/11/2016	22	Completed
TennCare Internal Heightened Scrutiny process	04/01/2016	03/31/2017	20-22	Completed
Circulate revised Provider Manual to DIDD providers	12/31/2016	12/31/2016	10	Completed
Execute amended DIDD Provider Agreement with contracted providers.	7/1/2016	7/1/2016	11	Completed
Deadline for achieving full compliance	3/17/2019	3/17/2019	SR 4	In process

## Site Specific Compliance Tracking

*For the purpose of STP Quarterly Report submissions, this page will always remain the same as historical context.*

Tennessee completed the provider self-assessment and validation process September 30, 2015. At that time, 14% of provider settings were determined to be fully compliant with the Final Rule. The total number of HCBS settings assessed was 1,247. The original number reported was 1,245 but that number did not include two additional Adult Care Homes, one of which was originally counted as one with the same company that has two settings.

In November of 2015, TennCare notified consumers, families, providers and advocates of the State’s intent to conduct heightened scrutiny reviews. As a result of that communication and training, many settings identified for heightened scrutiny elected not to proceed as anticipated with provider specific transition plans and opted to wait until receiving the results of the heightened scrutiny review. As reflected in the charts below, progress towards provider transition plan implementation was made more aggressively with those settings that were not identified for heightened scrutiny review.

The chart below represents Tennessee’s provider compliance status as of the completion of the provider self-assessment and validation process September 30, 2015.

Setting Type	Total number of settings	Total compliant 9/30/2015
Adult Care Homes	3	2
Adult Day Care	42	12
Assisted Care Living Facilities	99	12
Community Based Day	167	29
Facility Based Day	86	11
Family Model Residential	290	45
In-home Day	147	24
Supported Employment	99	19
Supported Living	144	19
Residential Habilitation	170	9

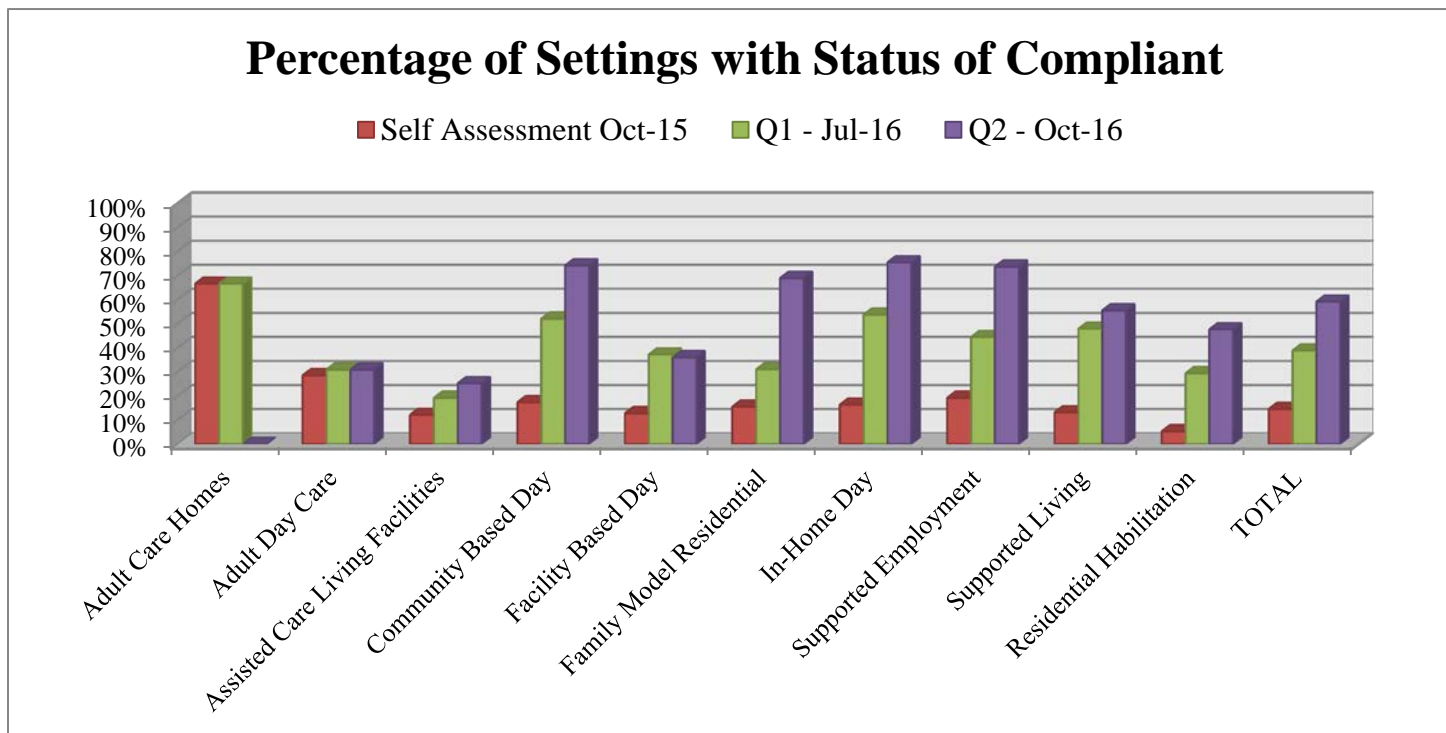
The chart below represents Tennessee’s current provider compliance status as of March 31, 2017. It also indicates the number of provider settings that are implementing a transition plan, have no intent to comply, and have closed. Providers with “No intent to Comply” may be closing that line of business entirely (e.g., a sheltered workshop or other facility-based program), or may be remaining in business but will only be serving private pay individuals and will no longer be participating in Medicaid reimbursed HCBS for that component of its operations. A provider with no intent to comply that is closing the particular line of business will move into the “Closed” column once the process is complete. Providers categorized as “Closed” are those who are no longer in business providing the service indicated. Beyond that movement as providers progress through the process, some of the numbers have shifted between the “Closed” and “No Intent to Comply” categories, and the total number across both categories has increased for this reporting period. This is due in large part to correcting previous errors in data reporting by contracted entities, based on their (mis)understanding of category definitions, as well as provider responses to information received through the Heightened Scrutiny reviews. For example, 2 additional Assisted Care Living Facility providers have indicated “No Intent to Comply.” As importantly, however, the number of Facility Based Day providers that previously indicated “No Intent to Comply” has dropped from 20 to only 10, with additional providers deciding to move forward with steps to achieve compliance. Some facility-based providers who may have previously thought they would not be able to achieve compliance without closing their day settings have now identified ways to move forward. There are now a total of 19 Facility Based Day service providers who have elected not to come into compliance with the HCBS Settings Rule. Ten (10) of the 19 have transitioned their model of business to Community Based Day and/or Employment services, or are continuing their line of business with private pay individuals. The number of individuals impacted by facility-based day programs that closed or indicated they had no intent to comply increased from the last reporting period to 1,251. (Please see correction to the previous reporting period as well.) Of those, 419 have transitioned to community based day/employment/in-home day services with the same provider, 720 are still receiving facility-based day services from the same provider and are pending transition, and the remaining 112 are either receiving services from another provider or are no longer receiving day services at all. Also important, the number of residential providers (including Adult Care Home, Assisted Care Living Facility, Family Model Residential, Supported Living and Residential Habilitation) deciding to close or not come into compliance has increased—from 52 to 70, with many unrelated to the HCBS settings rule.

We continue to work with our contracted entities (MCOs and DIDD) to refine their reporting processes and ensure the integrity of compliance data. Further, as explained in the previous quarterly report, provider compliance status has and will continue to change as a result of the Heightened Scrutiny process. The number of settings with a status of “Compliant” has decreased from 840 to 806, while the number of settings with a status of “Implementing Transition Plan” has increased from 294 to 318. TennCare expects that numbers will continue to follow this trend as feedback reports from the Heightened Scrutiny reviews are released to providers and until more providers begin completing their transition plans and compliance is achieved.

<b>Provider Compliance Status as of 3/31/2017</b>					
<b>Setting Type</b>	<b>Total # of settings</b>	<b>Compliant</b>	<b>Implementing Transition Plan</b>	<b>No Intent to Comply</b>	<b>Closed</b>
Adult Care Home	2		2		
Adult Day Care	48	12	16	16	4
Assisted Care Living Facility	89	22	50	17	

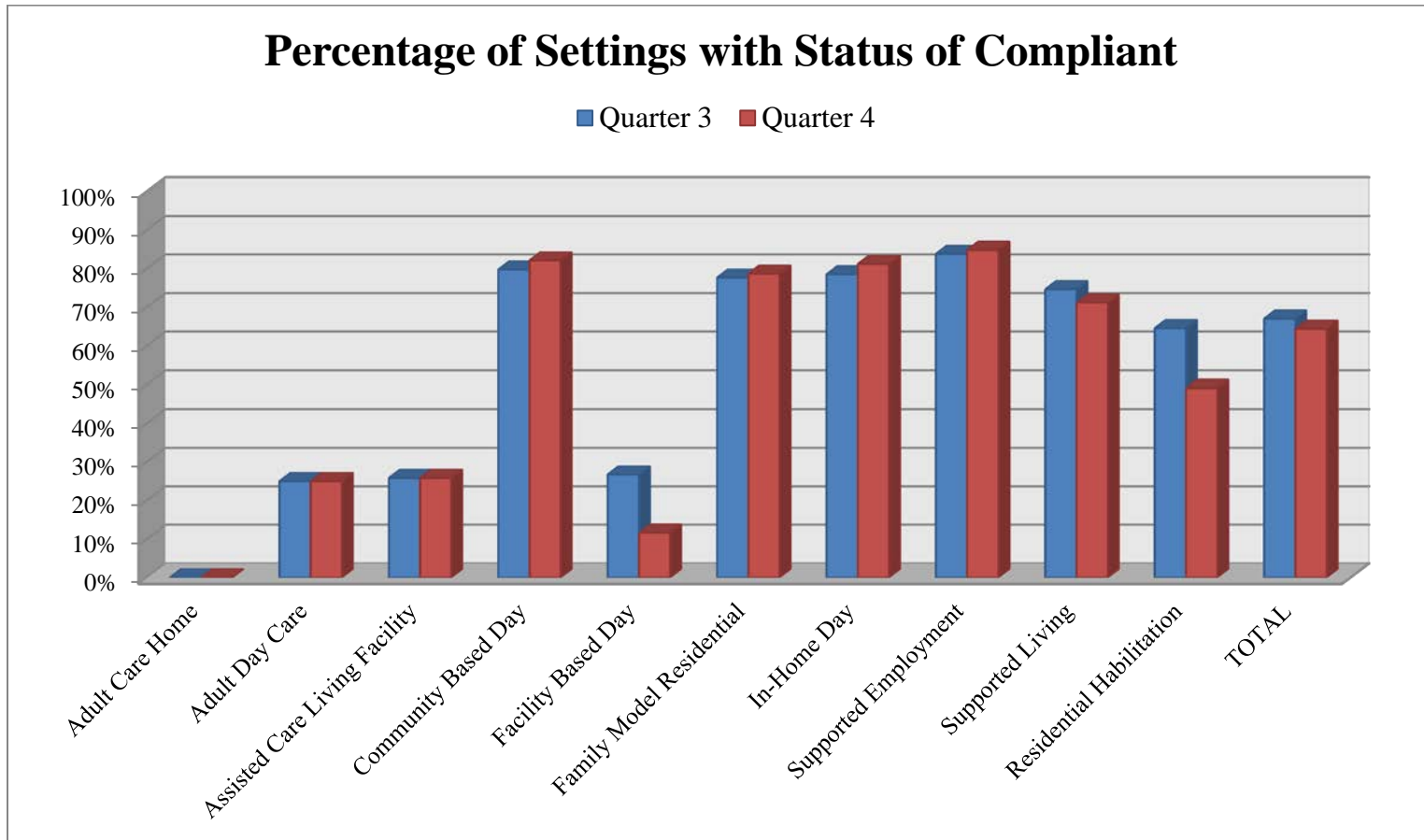
Community Based Day	168	138	21		9
Facility Based Day	86	10	57	10	9
Family Model Residential	291	229	35		27
In-Home Day	149	121	19	1	8
Supported Employment	99	84	13		2
Supported Living	146	104	35		7
Residential Habilitation	175	86	70		19
<b>TOTALS</b>	<b>1253</b>	<b>806</b>	<b>318</b>	<b>44</b>	<b>85</b>

As explained in the previous report (Quarter 3), changes were made to the total number of settings originally reported in the Statewide Transition Plan and reports for Quarters 1 and 2. These changes were identified after improvements were made to our data collection process. The chart below represents the progress of provider compliance status from the initial provider self-assessment and validation period through the end of Quarter 2. It is included here for historical reference.





The updated chart below demonstrates provider compliance status for the period of January 1, 2017 through March 31, 2017 (Quarter 4) compared to the period of October 1, 2016 through December 31, 2016 (Quarter 3). It is not being shown in comparison to the progress of provider compliance status from the initial provider self-assessment and validation period through the end of Quarter 2 because the total number of settings has changed.



## Heightened Scrutiny Milestone Tracking

<sup>2</sup>The first 3 Heightened Scrutiny milestones should be completed prior to resubmitting the STP to CMS, which is the fourth HS milestone.

<b>Heightened Scrutiny<sup>2</sup></b>			
<b>Milestone</b>	<b>Description</b>	<b>Proposed End Date</b>	<b>Completion Date</b>
Identification of settings that overcome the presumption and will be submitted for heightened scrutiny and notification to provider	Complete identification of heightened scrutiny settings and notify providers.	10/02/2017	
Complete gathering information and evidence on settings requiring heightened scrutiny that it will present to CMS	<p>TennCare Heightened Scrutiny Process; ends 3/31/2017.</p> <p>TennCare Heightened Scrutiny process includes:</p> <ul style="list-style-type: none"> <li>• On-site assessments and interviews will be conducted April 2016 through March 31, 2017.</li> <li>• Data compilation and on-site assessment and interview results will be summarized with state recommendation and submitted on an ongoing basis to the Advocacy Review Committee through 06/30/2017.</li> <li>• Review committee activities will be ongoing through 09/29/2017.</li> </ul>	09/29/2017	
Incorporate list of settings requiring heightened scrutiny and information and evidence referenced above into the final version of STP and release for public comment	<p>Revised STP will be posted for 30 day public comment period 10/02/2017 through 11/01/2017.</p> <p>Settings identified for heightened scrutiny review include:</p> <ul style="list-style-type: none"> <li>- Assisted Care Living Facilities</li> <li>- Adult Day Care</li> <li>- Facility Based Day</li> <li>- Residential Habilitation with &gt; 4 residents</li> <li>- Residential Habilitation and Supported Living sites in close proximity</li> <li>- Adult Care Homes</li> </ul>	10/02/2017	
Submit STP with Heightened Scrutiny information to CMS for review	Public comments will be reviewed and any revisions to the STP based on public input will be made by 11/10/2017.	11/10/2017	

<b>Quarterly updates on the HS Review On-site</b>	<b>Report Date</b>	<b>Date Range of HSRs</b>	<b># Total Reviewed</b>	<b>Facility Based Day</b>	<b>Assisted Living Care Facilities</b>	<b>Res Hab with &gt; 4 residents</b>	<b>Homes in close proximity</b>	<b>Adult Day Care</b>	<b>Adult Care Homes</b>
Quarterly progress update <i>[First quarter after initial and final approval.]</i>	7/13/16	04/01/2015 – 06/30/2016	<b>25</b>	9	11			5	
Quarterly progress update <i>[Second quarter after initial and final approval.]</i>	10/13/16	07/01/2016 – 09/30/2016	<b>64</b>	20	11	11	17	5	
Quarterly progress update <i>[Third quarter after initial and final approval.]</i>	1/31/17	10/01/2016 - 12/31/2016	<b>99</b>	23	32	10	21	11	2
Quarterly progress update <i>[Fourth quarter after initial and final approval.]</i>	4/28/17	01/01/2017 - 03/31/2017	<b>108</b>	18	18	37	29	6	
Quarterly progress update <i>[Fifth quarter after initial and final approval.]</i>	7/13/17	04/01/2017 - 06/30/2017							
Quarterly progress update <i>[Sixth quarter after initial and final approval.]</i>	10/13/17	07/01/2017 – 09/30/2017							
Quarterly progress update <i>[Seventh quarter after initial and final approval.]</i>	1/13/2018	10/01/2017 - 12/31/2017							

<b>Quarterly updates on the HS ARC Review</b>	<b>Report Date</b>	<b>Date Range of HSRs</b>	<b># Total Reviewed</b>	<b>Facility Based Day</b>	<b>Assisted Living Care Facilities</b>	<b>Res Hab with &gt; 4 residents</b>	<b>Homes in close proximity</b>	<b>Adult Day Care</b>	<b>Adult Care Homes</b>
Quarterly progress update <i>[First quarter after initial and final approval.]</i>	7/13/16	04/01/2015 – 06/30/2016	0						
Quarterly progress update <i>[Second quarter after initial and final approval.]</i>	10/13/16	07/01/2016 – 09/30/2016	0						
Quarterly progress update <i>[Third quarter after initial and final approval.]</i>	1/31/17	10/01/2016 - 12/31/2016	0						
Quarterly progress update <i>[Fourth quarter after initial and final approval.]</i>	4/28/17	01/01/2017 - 03/31/2017	0						
Quarterly progress update <i>[Fifth quarter after initial and final approval.]</i>	7/13/17	04/01/2017 - 06/30/2017							
Quarterly progress update <i>[Sixth quarter after initial and final approval.]</i>	10/13/17	07/01/2017 – 09/30/2017							
Quarterly progress update <i>[Seventh quarter after initial and final approval.]</i>	1/13/2018	10/01/2017 - 12/31/2017							

<b>Quarterly updates on the HS Review ARC Approved for CMS</b>	<b>Report Date</b>	<b>Date Range of HSRs</b>	<b># Total Approved</b>	<b>Facility Based Day</b>	<b>Assisted Living Care Facilities</b>	<b>Res Hab with &gt; 4 residents</b>	<b>Homes in close proximity</b>	<b>Adult Day Care</b>	<b>Adult Care Homes</b>
Quarterly progress update <i>[First quarter after initial and final approval.]</i>	7/13/16	04/01/2015 – 06/30/2016	N/A						
Quarterly progress update <i>[Second quarter after initial and final approval.]</i>	10/13/16	07/01/2016 – 09/30/2016	N/A						
Quarterly progress update <i>[Third quarter after initial and final approval.]</i>	1/31/17	10/01/2016 - 12/31/2016	N/A						
Quarterly progress update <i>[Fourth quarter after initial and final approval.]</i>	4/28/17	01/01/2017 - 03/31/2017	N/A						
Quarterly progress update <i>[Fifth quarter after initial and final approval.]</i>	7/13/17	04/01/2017 - 06/30/2017							
Quarterly progress update <i>[Sixth quarter after initial and final approval.]</i>	10/13/17	07/01/2017 – 09/30/2017							
Quarterly progress update <i>[Seventh quarter after initial and final approval.]</i>	1/13/2018	10/01/2017 - 12/31/2017							

**1. Reviewing progress made to-date in the state's completion of its proposed milestones:**

The Statewide Transition Plan implementation milestones have been completed as indicated in the chart on pages 1-3 of this report. Out of the 23 Remediation milestones, 2 are ongoing and 1 is in process. (see chart on pages 3-4 of this report for specific Remediation milestone status). As discussed in the previous quarterly report, one milestone, *Send the 6 approved DIDD/HCBS protocols to providers and post on the DIDD website*, has been removed from the tracking chart as a result of developments which impact their use and subsequent discussion with our sister agency, the Department of Intellectual and Developmental Disabilities (DIDD). These protocols were initially developed and implemented to ensure compliance with a longstanding Consent Decree entered in federal court. The protocols set forth criteria used by DIDD staff reviewing support plans to determine the medical necessity of services provided under the Section 1915(c) waivers, which was required under the terms of the federal Court Order. Certain of these protocols—those pertaining to residential and day services—were not aligned with the Home and Community Based (HCBS) Settings Rule and as a practical matter, were largely used to determine the rate of reimbursement paid to a provider and not whether a service should be authorized. The consent decree which had given rise to these protocols was dismissed due to an agreed exit plan in December 2016, allowing the State to reconsider its approach in achieving compliance with the new Rule. Upon discussion, TennCare and DIDD agreed the best course of action for the residential services protocols would be to discontinue their use in the service authorization process, and to instead develop and implement guidance documents for plans reviewers pertaining to residential services rates. These guidance documents must comport with the HCBS Settings Rule. The protocol for Employment and Day Services was modified to comport with the HCBS Settings Rule, but may also be discontinued in favor of rule-compliant guidance. As a result, this milestone has been removed from the tracking chart. During this reporting period, the State completed implementation of the milestone; *DIDD will bring its policies into alignment with all CQL Basic Assurances ® for CQL Accreditation (which aligns with HCBS Settings Rule)*. The most significant accomplishment for the reporting period, however, is the completion of all 296 Heightened Scrutiny site reviews. This has been a significant undertaking that required a tremendous year-long investment of resources from TennCare as well as contracted entities. While issuance of final reports to all entities is still in process, we believe the process has yielded invaluable insight at all levels of the system, with opportunities for the State to better understand and assess compliance, and for providers to better understand compliance expectations, as well as steps to achievement.

**State Statutes:**

During the previous quarter, a formal request to revise non-compliant provisions was sent to the Commissioners of the Tennessee Department of Health, and Tennessee Department of Human Services. The Department of Health and the Department of Human Services still need to complete the rule revision and promulgation process.

Tennessee Department of Health (DOH): There are three sections that need to be amended in order to bring the State into compliance with the HCBS Settings Rule. The first section concerns secure units in Assisted Care Living Facilities (ACLFs). The second section concerns secure units and ensuring controlled-egress is addressed as a modification to the HCBS Settings Rule. This section also includes limitations on the hours in which ACLF residents can access certain areas of the ACLF, when ACLF residents can receive visitors, and access to common areas and food at any time. The third section concerns residents' rights in Adult Care Homes, specifically related to access to common areas. In addition, DOH Rules can be

strengthened by amending language concerning resident rights and conditions required for provider-owned and/or controlled residential setting to include reference to the rights and conditions provided in the HCBS Settings Rule.

As of the date of this report, the Tennessee Department of Health is still deliberating on whether to incorporate HCBS Settings Rule language into its State administrative rules or whether notice outside of the rule would adequately inform Medicaid-reimbursed providers of the HCBS Settings Rule requirements at the licensure phase. On April 18, 2017, a member of TennCare LTSS staff attended the Tennessee Department of Health's Board for Licensing Health Care Facilities-Performance Improvement Issue and Assisted Care Living Facilities Standing Committee Meeting to contribute to the board's discussion of incorporating HCBS Settings Rule language into the State administrative rules relating to Assisted Care Living Facilities. The TennCare LTSS staff member presented on the requirements of the HCBS Settings Rule, inconsistencies present in the State administrative rule compared to the requirements of the HCBS Settings Rule, and proposed language to account for these inconsistencies. Subsequent to the meeting, TennCare LTSS provided administrative rule language already incorporated into Tennessee Department of Intellectual and Developmental Disabilities and Department of Mental Health and Substance Abuse Services' administrative rules as guidance to Tennessee Department of Health's Assistant General Counsel, and additionally offered to assist the Tennessee Department of Health in drafting language for its rules. TennCare LTSS staff anticipate being requested to attend a final board hearing on the incorporation of this language into rule.

Tennessee Department of Human Services: There are two sets of provisions that need to be amended in order to bring the State into compliance with the HCBS Settings Rule. The first set of provisions concern the physical location of adult day centers receiving Medicaid HCBS reimbursement and the second involves strengthening language around Medicaid HCBS reimbursed members' rights in adult day centers under the HCBS Settings Rule.

During the quarter, the Department of Human Services contacted TennCare to discuss incorporating HCBS Settings Rule language into the State administrative rules relating to Adult Day Care. At this time, the Department has stated they do not plan to amend their rule language because it does not contain any delineation between Medicaid and non-Medicaid providers. The Department has instead expressed intent to issue this language via written notice to existing providers and to include on the application going forward. TennCare intends to continue these discussions during the next quarter.

As outlined in the Statewide Transition Plan, the State amended its Contractor Risk Agreement (CRA) with the Managed Care Organizations (MCOs) to include HCBS Settings Rule language effective January 1, 2015. Additional amendments became effective July 1, 2015, including the process for ensuring final rule compliance prior to credentialing and re-credentialing providers. Prior to executing a provider agreement with any HCBS provider seeking Medicaid reimbursement for HCBS, the MCO is required to verify that the provider is compliant with the HCBS Settings Rule. The CRA has since been amended to extend that requirement to ECF CHOICES members. Subsequent amendments included a requirement that the person-centered planning process should include the review of the appropriateness of any modifications to a member's rights under the HCBS Settings Rule. Beginning in 2015, TennCare requested that contracted entities assess each member's experience in receiving Medicaid HCBS using an Individual Experience Assessment as part of the annual person-centered planning process. Effective in January of 2017, the CRA was amended to require that all members receive the assessment and that MCO staff address any issues regarding compliance with the HCBS Settings Rule. In addition, as part of ongoing monitoring of compliance with the HCBS Settings Rule, the MCOs are required to identify trends relating to member concerns with particular providers or provider settings and report those issues to the State along with steps for remediation to address those

concerns.

Finally, as described in the Statewide Transition Plan, the DIDD Provider Agreement was amended to include a provision requiring providers to maintain compliance with the HCBS Settings Rule. In addition, HCBS Settings Rule language has been added to the DIDD Provider Manual that sets requirements related to person centered planning, individual rights, and modifications to the rule. The State approved these revisions and the Provider Manual was posted on the DIDD website for public comment in January of 2017. Currently, revisions are being contemplated and/or made based on those comments. During the quarter, TennCare and DIDD identified the need for further discussion regarding the functions of the Human Rights Committee section of the manual. Through collaborative discussions, TennCare and DIDD agreed that revisions to a separate Human Rights Committee Policy were needed to include specific guidance on informed consent and a detailed process for evaluating restrictions and deciding an outcome. The DIDD Provider Manual has been revised to replace the Human Rights Committee section with reference to the Human Rights Committee Policy which is in the process of being revised.

## **2. Discussing challenges and potential strategies for addressing issues that may arise during the state's remediation and relocation processes.**

To date there have been no known challenges for the state's remediation and relocation process for residential settings. The TennCare Person Centered Practices team began the relocation process on June 23, 2016. The MCOs have been aware of the process since it was developed for the STP and TennCare has kept them abreast during monthly MCO/TennCare meetings. The Director of Person Centered Practices sent a request to each MCO to identify members requiring transition from residential sites which had self-identified as non-compliant and did not intend to come into compliance with the HCBS Settings Rule. All members in residential settings impacted by non-compliant providers have transitioned to their new residential setting.

The TennCare Person-Centered Practices team tracked each step of the relocation process for members impacted by the provider self-identifying as not compliant with the final rule. The state's completion goal was October 31, 2016, but we allowed for extensions if requested by the member for extenuating circumstances. The last member transition occurred on November 6<sup>th</sup>, 2016. An extension was granted due to the member's process of choosing a provider. The State will continue to monitor members who may be impacted should there be additional providers who cannot or refuse to come into compliance.

TennCare has identified concerns regarding remediation and relocation of individuals in non-residential settings, specifically those receiving services from facility-based day providers. Many providers are struggling with how to achieve compliance, and how to effectively transition to a community based and employment model. During the quarter, we began to receive feedback from contracted entities regarding an approach that many facility-based day providers have proposed to achieving compliance. We have found that providers are either revising or ending their facility-based programs in favor of a "hub" concept where a particular location (sometimes the building formerly utilized for facility based services) would instead be used as a hub for a community based day program. This approach has been described as a central location where individuals meet each day before they go out into the community. The "hub" could also be utilized for individuals to meet to have lunch, and would be a place to gather at the end of the day before going home. Some providers have proposed using their own buildings as hubs, while others have proposed utilizing community space, like a church or library, as the hub. TennCare is currently reviewing transition plans that adopt the hub concept and are discussing the



potential impact of these plans with contracted entities and stakeholders. Additionally, we have released guidance to contracted entities to ensure they are sharing appropriate information with providers on the HCBS Settings Rule. Waiver funding is not available for the provision of vocational services delivered in facility based or sheltered work settings, where individuals are supervised for the primary purpose of producing goods or performing services. This should not be interpreted to necessarily mean that facility-based settings are never capable of achieving compliance with the HCBS Settings Rule and must close. They must, however, achieve and maintain compliance with the HCBS Settings Rule in order to receive Medicaid funding. As facility-based day programs are closing, we are also concerned about the potential for isolation. We want to see people moving to community services, and ensure they are not sent home where they will have more limited interaction.

**3. Adjusting the heightened scrutiny process as needed to assure that all sites under each of the three prongs have been identified, the rationale of why and how the state has assessed and categorized settings based on each of the three prongs under heightened scrutiny (particularly those settings under the third “prong” of heightened scrutiny, i.e. “any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS”), and the state’s progress in producing the evidence necessary for submission to CMS under heightened scrutiny review.**

As previously reported, the decision to review certain setting types under the heightened scrutiny process came from state leadership. TennCare along with its contracted entities understood CMS guidance regarding physical location as it pertained to heightened scrutiny, and felt comfortable with the provider self-assessment and contracted entity review process when determining whether these settings were compliant with the rule or if transition plans were adequate to bring non-compliant settings into compliance. However, TennCare along with statewide advocates had concerns with settings presumed not HCBS as it related to settings that have the effect of isolating members who receive Medicaid funded HCBS from the broader community of people who do not receive Medicaid funded HCBS. TennCare determined the following settings are potentially presumed not HCBS until a heightened scrutiny review has been conducted by the state and evidence either confirms that the setting does not isolate and therefore does not require heightened scrutiny review by CMS, or is likely to isolate, but evidence is sufficient to support that the setting overcomes the presumption, and will be submitted to CMS:

- Adult Day Care: Primarily these settings are designed for and serve exclusively people who are elderly or have a disability. Participants appear to have limited, if any, interaction with the broader community.
- Assisted Care Living Facilities: Some of these setting are located adjacent to an inpatient treatment setting and have the potential to isolate residents from the broader community. Other settings may be located within the broader community, but residents have limited, if any, interaction with the broader community.
- Facility-based Day: These settings are designed specifically for people with disabilities, individuals in the setting are primarily people with disabilities, and people in the setting have limited interaction with the broader community.
- Supported Living and Residential Habilitation homes within close proximity: These settings are designed specifically for people with disabilities, individuals in the setting are primarily people with disabilities and the settings have the potential to isolate people receiving Medicaid HCBS from the broader community.

- Residential Habilitation with more than four (4) residents: These settings are designed specifically for people with disabilities, individuals in the setting are primarily people with disabilities and the settings have the potential to isolate people receiving Medicaid HCBS from the broader community.
- Adult Care Homes: These settings are designed specifically for people with disabilities, individuals in the setting are primarily people with disabilities and the settings have the potential to isolate people receiving Medicaid HCBS from the broader community.

#### **Evidence to CMS:**

TennCare's heightened scrutiny process began April 1, 2016. TennCare, contracted entities and the provider all work together to develop an electronic heightened scrutiny report for the purpose of submission to CMS. The heightened scrutiny review process has several steps: 1) secondary review of policies and procedures; 2) on-site review, including interviews with participants and staff of all levels; 3) initial provider review report completed by TennCare and review team; 4) provider response to initial report; 5) final provider review report completed by TennCare and review team; and 6) Advisory Review Committee review and determination of compliance or non-compliance.

Following the completion of the initial heightened scrutiny visits and the review of feedback from providers and review teams, the State has finalized the review report template which will be populated with data to demonstrate evidence that all settings submitted to CMS for review have, based on the State's review process and Advocacy Review Committee review results, overcome the presumption of having institutional qualities and are in fact, HCBS in nature.

#### **4. Providing feedback to CMS on the status of implementation, including noting any challenges with respect to capacity building efforts and technical support needs.**

Heightened scrutiny reviews commenced in May 2016 and continued monthly with the exception of the month of September which was spent implementing improvements to the process as reported in Quarter 2. Reviews resumed in October 2016 with the implementation of the revised process for coordinating and conducting reviews.

TennCare continues to improve its efforts to track progress on individual provider transition plan implementation. During Quarter 3, TennCare revised the HCBS Settings Rule Compliance Tracking Report template that is used by contracted entities to continuously track the status of provider compliance with the HCBS Settings Rule to better capture needed information. The report requests data to demonstrate progress on achievement of provider transition plan milestones. It was designed to be used as a tool to assist contracted entities with tracking provider compliance, but also to be used by TennCare to collect valuable information about the process overall. For example, TennCare has been able to capture instances where a provider initially self-assessed and was validated as compliant, but was later required to create a transition plan following the results of the on-site heightened scrutiny review. Contracted entities submit the report to TennCare each quarter and the data is used to inform TennCare's STP Deliverable Quarterly Status Report to CMS.

TennCare’s Heightened Scrutiny process began April 1, 2016 and as of March 28, 2017, 100% of all on-site reviews have been completed. The chart below has been updated to show that 100% of all on-site reviews have been completed. Please note that the total number of Heightened Scrutiny Reviews has changed from the previous quarter due to settings that closed or indicated they had no intent to comply prior to the completion of their Heightened Scrutiny Review.

<b>Completed Heightened Scrutiny Reviews by Setting as of 3/31/2017</b>			
<b>Setting Type</b>	<b>TOTAL Reviews</b>	<b>Reviews Completed</b>	<b>Percent Completed</b>
Adult Care Homes	2	2	100%
Adult Day Care	27	27	100%
Assisted Care Living Facilities	72	72	100%
Facility Based Day	70	70	100%
Residential Habilitation > 4 persons	58	58	100%
Supported Living and Residential Habilitation in Close Proximity (# of Clusters)	67	67	100%
<b>Total</b>	<b>296</b>	<b>296</b>	<b>100%</b>

On-site review reports are in the process of being released to providers. Any areas of partial or non-compliance identified during the on-site review require the provider to submit a revised transition plan. MCOs and DIDD, contracted with TennCare for purposes of operating the 1115 and 1915(c) waivers, are reviewing their contracted providers’ submissions. They will be sent to the Advocacy Review Committee for review and comment during the next quarter. Based on the State’s review process and Advocacy Review Committee review results, a final report will be developed for each provider that has a transition plan that includes evidence they will, upon implementation of their transition plan, have overcome the presumption of having institutional qualities and are home and community-based settings.

Some settings assessed as compliant during the self-assessment process are now being asked to create or revise existing transition plans based on areas of partial or non-compliance identified during their heightened scrutiny review. MCO and DIDD staff are currently working with providers on transition planning and are making recommendations to TennCare about whether the plans are sufficient to bring each setting into compliance. TennCare staff will then review the recommendation and either accept or send it back to the provider for additional information. If a transition plan is approved, TennCare staff will revise the feedback report to include information from the transition plan and prepare the report for review by the Advocacy Review Committee. Advocacy Review Committee members will receive training on the review process in April, and will begin reviewing

and providing feedback on evidentiary packets in Quarter 5. Providers that are unable to reach an acceptable transition plan will be notified that they have not been able to provide sufficient evidence to demonstrate that they have overcome the presumption of having institutional qualities and are HCBS in nature. At that point, MCO and DIDD staff will initiate the relocation process for all impacted members.

Much has been learned from initiating this part of the process. Specifically, we have found some inconsistencies in the report feedback drafted by heightened scrutiny review teams. The complexity of the rule has resulted in the need to provide ongoing technical assistance to our contractors and to revise feedback reports to ensure consistency before releasing them to providers. This secondary report revision process, review of revised transition plans, and preparation of reports for the Advocacy Review Committee have required the use of additional staff resources and time. While more staff time is needed than originally planned, it has become clear that this is a necessary and important step to ensure we have collected sufficient evidence for each setting and have effectively communicated with stakeholders. TennCare is currently in the process of evaluating progress on remaining milestones to determine if any revisions are needed to the timeline.

Undoubtedly, some of the changes at the federal level have led to confusion regarding the Rule, with at least one provider association misadvising that the Rule is being withdrawn. While we have taken steps to correct the misinformation, we are monitoring closely to ensure that providers do not begin delaying implementation of their transition plans in hopes they will not have to comply.

The final and more recent concern relates to compliance regarding HCBS provided in the family home. We have seen a few instances where restrictive interventions are being applied by families in the home, in which the families have been unwilling to engage in a planning process that might provide for less restrictive approaches. We have requested CMS guidance as to the provision of HCBS in these settings in order to ensure that they are handled in the appropriate manner.