



State of Tennessee

Statewide Transition Plan and Heightened Scrutiny Milestone Tracking

Quarterly Report

Division of TennCare
March 2019 - Final

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 ² | 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 |
| Remediation | 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 | Completed |

| | | | | |
|--|------------|------------|-------|-----------|
| 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 | Completed |

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 final provider compliance status as of March, 17, 2019. It also indicates the number of provider settings that have no intent to comply or have closed. Providers with “No intent to Comply” may have closed that line of business entirely (e.g., a sheltered workshop or other facility-based program), or are remaining in business, but will only serve private pay individuals and will no longer be participating in Medicaid-reimbursed HCBS for that component of its operations. Providers categorized as “Closed” are those who are no longer in business providing the service indicated.

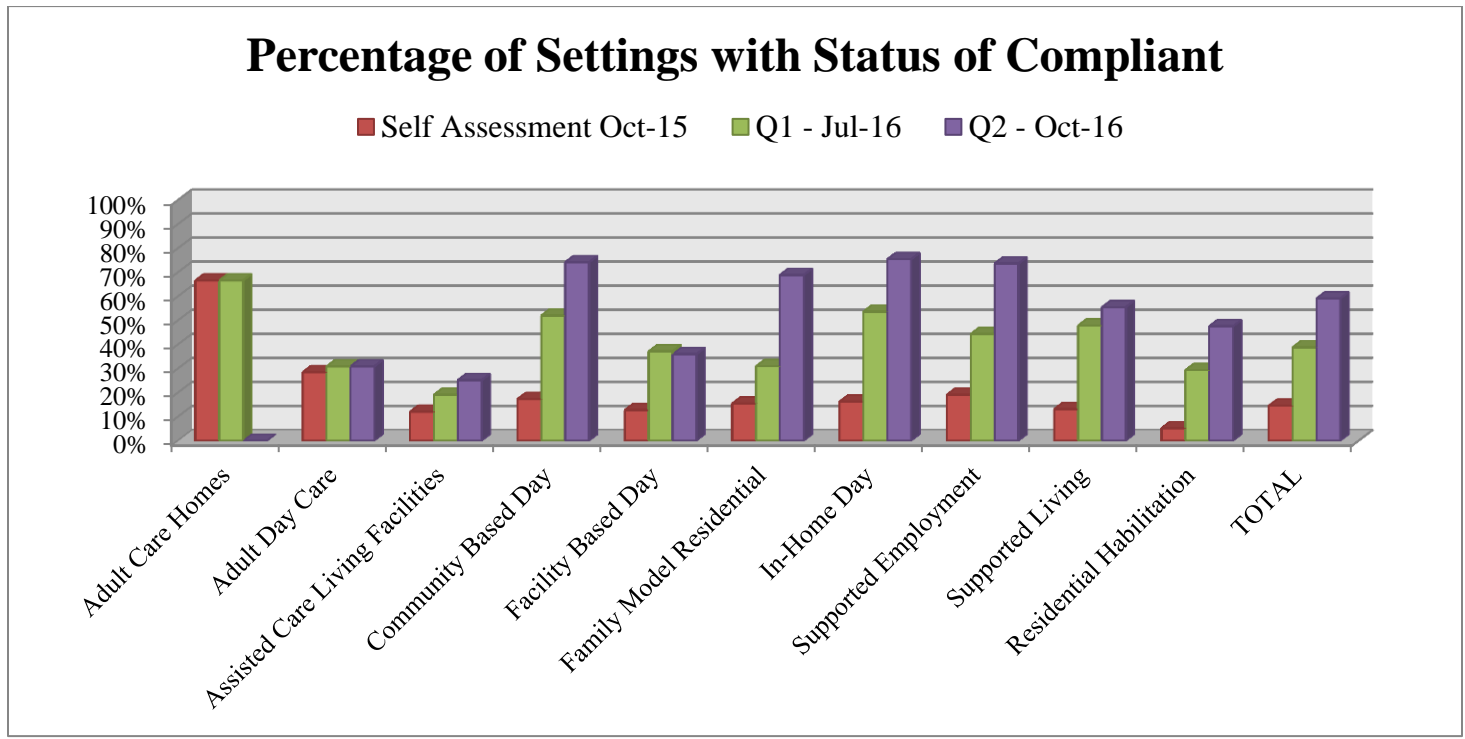
There are a total of 30 Facility-Based Day provider settings who have elected not to come into compliance with the HCBS Settings Rule (including those with a status of “Closed”). Twenty-three of the 30 have transitioned their model of business to community-based day and/or employment services, or are continuing their line of business with private pay individuals only. The number of individuals impacted remains at 1,026. Of the 1,026 total individuals impacted, 858 have transitioned to community-based day/employment/in-home day services with the same provider, and the remaining 168 are either receiving services from another provider or are no longer receiving day services at all.

In the report previously submitted for quarter 10, the State reported a total of 1,042 compliant settings and 37 settings still working to implement an approved transition plan. As of March 17, 2019, TennCare and contracted entities have confirmed that those 37 settings have demonstrated full implementation of their transition plans and are compliant. The chart below shows the total number of provider settings for each setting type by compliance status as of 3/17/19.

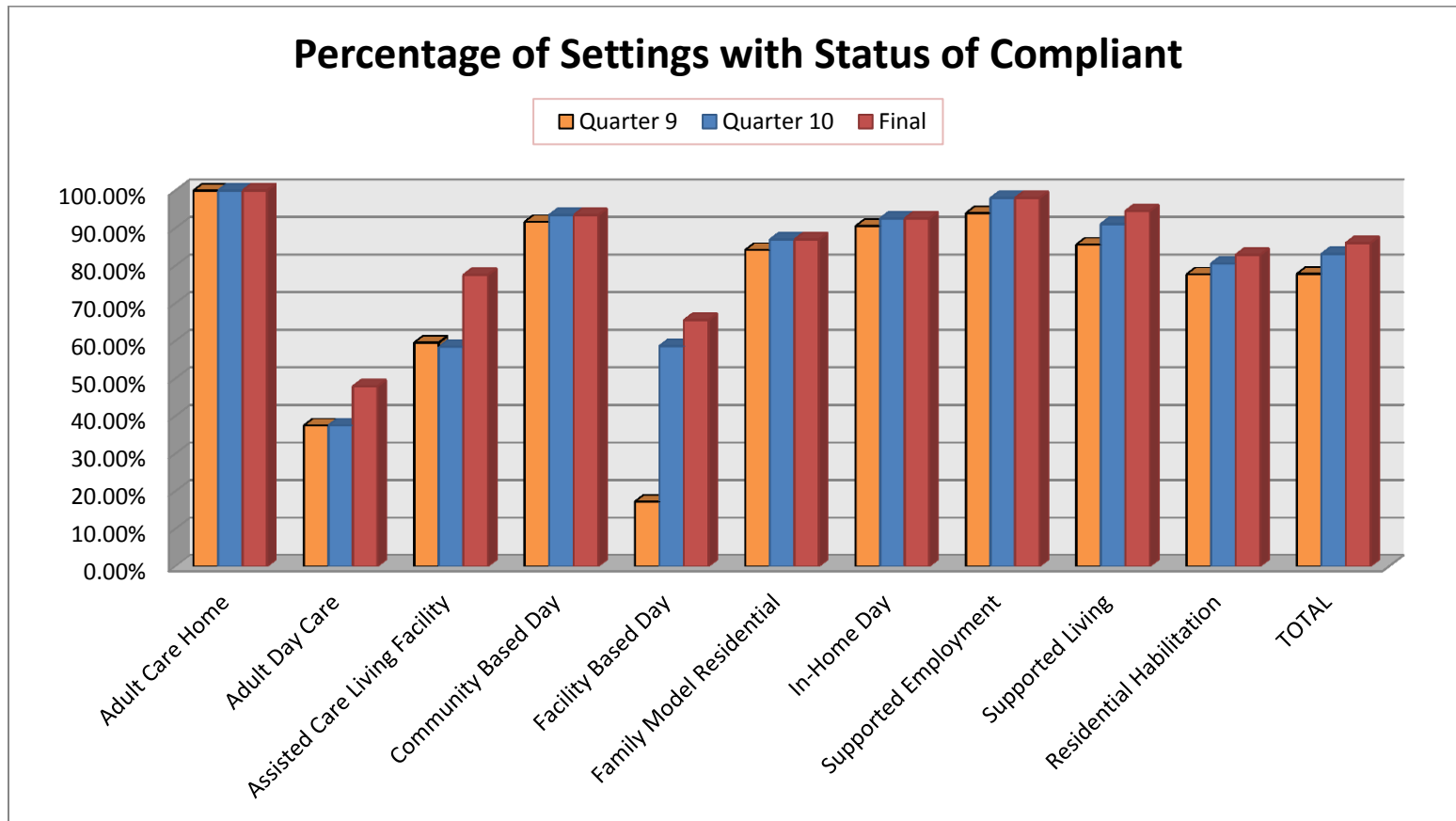
| Provider Compliance Status as of 3/17/2019 | | | | | |
|---|----------------------------|------------------|-------------------------------------|----------------------------|---------------|
| Setting Type | Total # of settings | Compliant | Implementing Transition Plan | No intent to Comply | Closed |
| Adult Care Home | 2 | 2 | | | |
| Adult Day Care | 48 | 23 | | 20 | 5 |
| Assisted Care Living Facility | 89 | 69 | | 20 | |
| Community-Based Day | 168 | 157 | | | 11 |
| Facility-Based Day | 87 | 57 | | 10 | 20 |
| Family Model Residential | 291 | 253 | | | 38 |
| In-Home Day | 148 | 137 | | | 11 |

| | | | | | |
|--------------------------|--------------|--------------|----------|-----------|------------|
| Supported Employment | 100 | 98 | | | 2 |
| Supported Living | 146 | 138 | | | 8 |
| Residential Habilitation | 175 | 145 | | | 30 |
| TOTALS | 1,254 | 1,079 | 0 | 50 | 125 |

As explained in the quarter 3 report, 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 the current percentage of compliant settings as compared to the previous two quarters. It also shows that as of March 17, 2019, 86% of settings reviewed have achieved full compliance and 14% have elected not to come into compliance or have decided to close.



Heightened Scrutiny Milestone Tracking

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

| Heightened Scrutiny² | | | |
|---|---|--|------------------------|
| Milestone | Description | Proposed End Date | Completion Date |
| 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. | Original date: 10/02/2017 Revised date: 7/15/2018 | Completed 7/15/2018 |
| Complete gathering information and evidence on settings requiring heightened scrutiny that it will present to CMS | TennCare Heightened Scrutiny Process; ends 3/31/2017. TennCare Heightened Scrutiny process includes: <ul style="list-style-type: none"> • On-site assessments and interviews will be conducted April 2016 through March 31, 2017. • 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. • Review committee activities will be ongoing through 09/29/2017. | Original date: 09/29/2017 Revised date: 5/15/2018 | Completed 5/15/2018 |
| Incorporate list of settings requiring heightened scrutiny and information and evidence referenced above into the final version of STP and release for public comment | Revised STP will be posted for 30 day public comment period 10/02/2017 through 11/01/2017. Settings identified for heightened scrutiny review include: <ul style="list-style-type: none"> - Assisted Care Living Facilities - Adult Day Care - Facility Based Day - Residential Habilitation with > 4 residents - Residential Habilitation and Supported Living sites in close proximity - Adult Care Homes | Original date: 10/02/2017 Revised date: 7/31/2018 (Pending CMS Approval) | Completed 7/31/18 |
| 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. | Original date: 11/10/2017 Revised date: 7/31/2018 (Pending CMS Approval) | Completed 7/31/18 |

| Quarterly updates on the HS Review On-site | Report Date | Date Range of HSRs | # Total Reviewed | Facility Based Day | Assisted Living Care Facilities | Res Hab with > 4 residents | Homes in close proximity | Adult Day Care | Adult Care Homes |
|---|--------------------|---------------------------|-------------------------|---------------------------|--|--------------------------------------|---------------------------------|-----------------------|-------------------------|
| Quarterly progress update <i>[First quarter after initial and final approval.]</i> | 7/13/16 | 04/01/2015 – 06/30/2016 | 25 | 9 | 11 | | | 5 | |
| Quarterly progress update <i>[Second quarter after initial and final approval.]</i> | 10/13/16 | 07/01/2016 – 09/30/2016 | 64 | 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 | 99 | 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 | 108 | 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 | 1 | 1 | | | | | |
| Quarterly progress update <i>[Seventh quarter after initial and final approval.]</i> | 1/13/2018 | 10/01/2017 - 12/31/2017 | | | | | | | |

| Quarterly updates on the HS ARC Review | Report Date | Date Range of HSRs | # Total Reviewed | Facility Based Day | Assisted Living Care Facilities | Res Hab with > 4 residents | Homes in close proximity | Adult Day Care | Adult Care Homes |
|---|--------------------|---------------------------|-------------------------|---------------------------|--|--------------------------------------|---------------------------------|-----------------------|-------------------------|
| 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 | 0 | | | | | | |
| Quarterly progress update <i>[Sixth quarter after initial and final approval.]</i> | 10/13/17 | 07/01/2017 – 09/30/2017 | 0 | | | | | | |
| Quarterly progress update <i>[Seventh quarter after initial and final approval.]</i> | 1/13/2018 | 10/01/2017 - 12/31/2017 | 0 | | | | | | |
| Quarterly progress update <i>[Eighth quarter after initial and final approval.]</i> | 4/30/18 | 1/1/2018 – 3/31/2018 | | | | | | | |

| | | | | | | | | | |
|---|---------|----------------------|------------|----|----|----|----|----|---|
| <i>approval.]</i> | | | | | | | | | |
| Quarterly progress update <i>[Ninth quarter after initial and final approval.]</i> | 7/30/18 | 4/1/2018 – 6/30/2018 | 230 | 50 | 63 | 53 | 43 | 19 | 2 |

| Quarterly updates on the HS Review ARC Approved for CMS | Report Date | Date Range of HSRs | # Total Approved | Facility Based Day | Assisted Living Care Facilities | Res Hab with > 4 residents | Homes in close proximity | Adult Day Care | Adult Care Homes |
|--|--------------------|---------------------------|-------------------------|---------------------------|--|--------------------------------------|---------------------------------|-----------------------|-------------------------|
| 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 | N/A | | | | | | |
| Quarterly progress update <i>[Sixth quarter after initial and final approval.]</i> | 10/13/17 | 07/01/2017 – 09/30/2017 | N/A | | | | | | |

| | | | | | | | | | |
|---|-----------|-------------------------|------------|----|----|----|----|----|---|
| Quarterly progress update <i>[Seventh quarter after initial and final approval.]</i> | 1/13/2018 | 10/01/2017 - 12/31/2017 | N/A | | | | | | |
| Quarterly progress update <i>[Eighth quarter after initial and final approval.]</i> | 4/30/2018 | 1/1/2018 – 3/31/2018 | | | | | | | |
| Quarterly progress update <i>[Ninth quarter after initial and final approval.]</i> | 7/30/2018 | 4/1/2018 – 6/30/2018 | 230 | 50 | 63 | 53 | 43 | 19 | 2 |

Quarterly progress reporting updates

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

Systemic Remediation Milestones:

Out of the 23 systemic remediation milestones, 22 are Completed and 1 is ongoing. The chart on pages 1-4 of this report shows the specific milestone status.

Contracted Entities Monitor Provider Transition Plan Implementation - Status: Completed

We have continued to work with our contracted entities (MCOs and DIDD) to track and report progress on provider transition plan implementation each quarter (detailed on pages 5-9 of this report), and have worked with them to refine their reporting processes to ensure the integrity of compliance data. TennCare and contracted entities have confirmed that all provider settings with an approved transition plan have demonstrated full implementation of that plan by the individual plan’s final milestone completion date.

CRA HCBS Settings Rule Compliance Monitoring - Status: Ongoing

TennCare and contracted entities will ensure that all provider settings maintain compliance with the HCBS Settings Rule on an ongoing basis. As outlined in the Statewide Transition Plan, TennCare amended its Contractor Risk Agreement (CRA) with the MCOs to include HCBS Settings Rule language effective January 1, 2015. Additional amendments became effective July 1, 2015, including the process for ensuring compliance with the HCBS Settings Rule prior to credentialing and re-credentialing providers. Also, prior to executing a provider agreement with any HCBS provider seeking Medicaid reimbursement, the MCOs are required under the CRA to verify that the provider is compliant with the HCBS Settings Rule using checklists approved by TennCare. Along with the implementation of the State's second managed long-term services and supports program for individuals with intellectual and developmental disabilities, Employment and Community First CHOICES (ECF CHOICES), the CRA has been amended to extend this credentialing and re-credentialing compliance review requirement to ECF CHOICES providers as well. As ECF CHOICES was approved and implemented after the effective date of the HCBS Settings Rule, settings in this program must already be in compliance at the onset of operations and providers do not have the opportunity to transition to compliance.

On July 1, 2016, the CRA was amended to require the MCOs to create settings compliance committees to conduct reviews of person-centered support plans and behavior support plans, as applicable, that include restrictive interventions, as well as all proposed or emergency right restrictions and restraints not contained in a person-centered support plan or behavior support plan. The committees must review any information from the provider's human rights committee, as applicable, identify and address potential compliance concerns, make recommendations regarding less restrictive interventions or referrals for appropriate services, and ensure informed consent for any restrictions. Settings compliance committees must also periodically review data regarding the use of interventions to determine ongoing effectiveness and whether such restrictions should be discontinued, review and make recommendations to the prescribing professional regarding potential instances of inappropriate utilization of psychotropic medications, review and make recommendations regarding complaints received pertaining to restrictive interventions or settings compliance concerns, and ensure that any proposed restriction, including restrictions in provider-owned or controlled residential settings, is the least restrictive viable alternative and is not excessive. TennCare also requires the MCOs to provide quarterly updates to TennCare on committee recommendations and actions.

TennCare and DIDD also amended their 1915(c) Waiver Interagency Agreement to include HCBS Settings Rule language effective July 1, 2015. The Provider Agreement for Section 1915(c) waiver providers was similarly amended effective July 1, 2016 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 individual rights and modifications to the Rule.

Compliance at the individual member level will continue to be assessed through oversight of the person-centered planning process and review of member experience data. Beginning in 2015, TennCare required that MCOS and DIDD assess each member's experience in receiving Medicaid HCBS using the Individual Experience Assessment (IEA). As part of each HCBS Medicaid recipient's annual person-centered plan review, the Care Coordinator, Support Coordinator, Independent Support Coordinator, or Case Manager, as applicable, completes an assessment of each Medicaid-reimbursed individual's experience receiving Medicaid HCBS using the IEA. The survey is intended to measure each individual's level of awareness of and access to rights provided in the HCBS Settings Rule, freedom to make informed decisions, community integration, privacy requirements, and other member experience expectations as outlined in the HCBS Settings Rule.

MCOs and DIDD review IEA survey responses for all Medicaid recipients receiving HCBS and investigate each “No” response that indicates a potential area of non-compliance or potential rights restriction. MCOs and DIDD investigate these responses to determine if the provider is in compliance with the HCBS Settings Rule, and with respect to restrictions, to ensure the restriction has gone through the HCBS Settings Rule modifications procedure, and is appropriately included in the person-centered support plan. If the restriction has not gone through the modification process and is not supported in the person-centered support plan, the MCOs and DIDD remediate the individual concerns by working with the provider and the person supported and his or her representative, if applicable. 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 TennCare along with steps for remediation to address those concerns. TennCare’s review and analysis of this data will inform targeted technical assistance as well as ongoing systems transformation efforts.

Status of Remaining State Administrative Rule Changes

Tennessee Department of Health (DOH):

As previously reported, DOH has delayed consideration of adding rule language around the HCBS Settings Rule. Currently, all licensed TennCare-reimbursed providers must comply with the applicable Home and Community-Based Services Settings Rule. TennCare will continue to work with DOH toward an agreement to include a compliance statement and a link to the TennCare HCBS Settings Rule website on the licensure web page to ensure this information is available to providers, including entities that are considering becoming providers so that they have information on the rule and understand the compliance expectations before they apply.

1915c Waiver amendments—Completion of the design and implementation of a new reimbursement approach

In an effort to increase flexibility, encourage individual choice and freedom, and promote integrated employment and engagement in community life, consistent with the goals of the HCBS Settings Rule, TennCare is continuing to work with stakeholders to implement revised service definitions and a new reimbursement approach for Employment and Day Services in the Section 1915(c) waivers. Most importantly, the new approach will align payment with important system values and individual outcomes, including employment and community integration, by providing higher rates of reimbursement for individual integrated employment supports and community-based day services.

Using an approach very similar to that used in the newly implemented Employment and Community First CHOICES program (an MLTSS program for people with Intellectual and/or other Developmental Disabilities), Supported Employment services will include critical pre-employment services including Employment Exploration and Discovery, as well as Job Development when it is not available to waiver participants through vocational rehabilitation. Pre-employment services covered under Supported Employment will be paid on an outcome basis. Supported Employment Job Coaching rates will be restructured to incentivize fading and adjust payment based on the level of acuity of the individual and the length of time the individual has held the job for which coaching supports are being provided. All Employment and Day services will have new definitions, and transition from per diem units of service to quarter hour units across all Employment and Day services will allow providers greater flexibility in meeting the specific individualized needs of members related to employment and community living goals. Waiver participants will have the option to use their home as their base (rather than a facility), but incentives for employment and community participation will also be implemented to prevent

isolation at home. Community Participation Supports will also be incentivized through the rate structure, to encourage and support meaningful community involvement.

After gathering feedback from stakeholders on an initial proposal, TennCare worked with DIDD and with stakeholders to finalize the proposed new reimbursement structure. In quarter 5, TennCare collected data directly from waiver providers to be used to model the proposed new rates and anticipated utilization changes. (Our ability to accurately model rate impact using claims data is hampered by the current billing structure, which obscures the actual types of services that are being reimbursed within a per diem payment.) The quarter 5 data collection effort aided in accurate cost modeling. During quarter 6, the data was reviewed, validated, and used to build a cost model that compares utilization and costs within the current approach with the proposed new value-based approach. The results were shared with DIDD and providers in February of 2018. During quarter 8, TennCare did additional work with stakeholders to make final adjustments and convened implementation workgroups in preparation for amending all three waivers with the new Employment and Community services stated above.

During quarter 9, implementation workgroups were ongoing. On May 18, 2018, the State posted the proposed 1915(c) waiver changes, along with the full waiver amendment application for all three waivers for public review and comment. The proposed changes were posted on the TennCare website; sent directly to advocacy groups with a request to distribute to waiver participants and families; and to Tennessee Community Organizations, a statewide trade association for service provider organizations that support people with I/DD, with a request to share with their members and to ask those providers to share with persons supported and families. DIDD included notice in Open Line, an electronic newsletter distributed weekly to providers, advocacy organizations, and other stakeholders. The 30 day public comment period closed on June 18, 2018. A total of forty (40) comments on the proposed waiver amendment applications were received from HCBS providers, Independent Support Coordinator agencies, direct support professionals, family members/representatives, advocacy organizations, and persons supported. Many of the comments were operational in nature (regarding implementation, billing, documentation, etc.), and responses provided additional detail regarding how the changes would be implemented, but did not result in changes to the proposed waiver amendments. Detailed responses to the comments reiterate the importance of person-centered planning and service delivery based on the individualized needs and preferences of persons supported, as well as alignment with expectations of the federal HCBS Settings Rule and the Americans with Disabilities Act to provide services in the most integrated setting appropriate. On July 5, 2018 all three proposed waiver amendments were submitted to CMS.

CMS approved all three waiver amendments on September 25, 2018. The CMS approved waiver amendments became effective April 1, 2019 with the exception of the new employment and day services as implementation has been further delayed due to an Executive Order by the Governor of Tennessee that requires a hold on any rule change until at least 90 days of the date of the Executive Order. The Department of Intellectual and Developmental Disabilities is currently working to update their rules with the rate methodology for the new employment and day services which cannot occur until after the Governor's Executive Order expires and DIDD's rule updates are approved. The Governor's Executive Order is set to expire on May 1, 2019 and DIDD's rules are expected to be promulgated in August of 2019.

Heightened Scrutiny Milestones:

Each of the 4 Heightened Scrutiny Milestones on page 10 of this report have been completed.

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

The State’s remediation and relocation processes are complete.

- 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.**

Evidence to CMS:

The State completed all Heightened Scrutiny Milestones in its approved Statewide Transition Plan and on August 30, 2018, submitted a final Evidence Packet on Compliance with the Home and Community-Based Services Settings Rule to the Centers for Medicare and Medicaid Services (CMS) for review. The evidence packet included a summary of the State’s process for assessing Medicaid-reimbursed Home and Community-Based Services (HCBS) providers and each of the settings in which services are provided for compliance with the HCBS Settings Rule.

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

On August 30, 2018, the State submitted a final Evidence Packet on Compliance with the Home and Community-Based Services Settings Rule to the Centers for Medicare and Medicaid Services (CMS) for review. The evidence packet included a summary of the State’s process for assessing Medicaid-reimbursed Home and Community-Based Services (HCBS) providers and each of the settings in which services are provided for compliance with the HCBS Settings Rule.

To demonstrate the detail of individual settings review resulting from the self-assessment and Heightened Scrutiny review processes, six individual settings evidence packets were also included for CMS review – one packet for each of the six setting types that were subject to Heightened Scrutiny. Each evidence packet contained the evidence the State considered for the setting in making its compliance determination and included:

- The provider’s self-assessment results;
- The provider’s Heightened Scrutiny review tool results;
- The provider’s transition plan;
- Supporting documentation for the transition plan; and
- A sample of the most recent IEAs for Medicaid-reimbursed individuals receiving services in the setting.

As of March 17, 2019, the State’s evidence packet is awaiting final approval from CMS. TennCare and contracted entities will continue to ensure that all provider settings maintain full compliance with the HCBS Settings Rule on an ongoing basis.

Ongoing Compliance Monitoring

TennCare and contracted entities will ensure that all provider settings maintain compliance with the HCBS Settings Rule on an ongoing basis. As outlined in the Statewide Transition Plan, TennCare amended its Contractor Risk Agreement (CRA) with the MCOs to include HCBS Settings Rule language effective January 1, 2015. Additional amendments became effective July 1, 2015, including the process for ensuring compliance with the HCBS Settings Rule prior to credentialing and re-credentialing providers. Also, prior to executing a provider agreement with any HCBS provider seeking Medicaid reimbursement, the MCOs are required under the CRA to verify that the provider is compliant with the HCBS Settings Rule using checklists approved by TennCare. Along with the implementation of the State’s second managed long-term services and supports program for individuals with intellectual and developmental disabilities, Employment and Community First CHOICES (ECF CHOICES), the CRA has been amended to extend this credentialing and re-credentialing compliance review requirement to ECF CHOICES providers as well. As ECF CHOICES was approved and implemented after the effective date of the HCBS Settings Rule, settings in this program must already be in compliance at the onset of operations and providers do not have the opportunity to transition to compliance.

On July 1, 2016, the CRA was amended to require the MCOs to create settings compliance committees to conduct reviews of person-centered support plans and behavior support plans, as applicable, that include restrictive interventions, as well as all proposed or emergency right restrictions and restraints not contained in a person-centered support plan or behavior support plan. The committees must review any information from the provider’s human rights committee, as applicable, identify and address potential compliance concerns, make recommendations regarding less restrictive interventions or referrals for appropriate services, and ensure informed consent for any restrictions. Settings compliance committees must also periodically review data regarding the use of interventions to determine ongoing effectiveness and whether such restrictions should be discontinued, review and make recommendations to the prescribing professional regarding potential instances of inappropriate utilization of psychotropic medications, review and make recommendations regarding complaints received pertaining to restrictive interventions or settings compliance concerns, and ensure that any proposed restriction, including restrictions in provider-owned or controlled residential settings, is the least restrictive viable alternative and is not excessive. TennCare also requires the MCOs to provide quarterly updates to TennCare on committee recommendations and actions.

TennCare and DIDD also amended their 1915(c) Waiver Interagency Agreement to include HCBS Settings Rule language effective July 1, 2015. The DIDD Provider Agreement was similarly amended effective July 1, 2016 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 individual rights and modifications to the Rule.

Compliance at the individual member level will continue to be assessed through oversight of the person-centered planning process and review of member experience data. Beginning in 2015, TennCare required that MCOS and DIDD assess each member's experience in receiving Medicaid HCBS using the IEA. As part of each HCBS Medicaid recipient's annual person-centered plan review, the Care Coordinator, Support Coordinator, Independent Support Coordinator, or Case Manager, as applicable, completes an assessment of each Medicaid-reimbursed individual's experience receiving Medicaid HCBS using the IEA. The survey is intended to measure each individual's level of awareness of and access to rights provided in the HCBS Settings Rule, freedom to make informed decisions, community integration, privacy requirements, and other member experience expectations as outlined in the HCBS Settings Rule.

MCOs and DIDD review IEA survey responses for all Medicaid recipients receiving HCBS and investigate each "No" response that indicates a potential area of non-compliance or potential rights restriction. MCOs and DIDD investigate these responses to determine if the provider is in compliance with the HCBS Settings Rule, and with respect to restrictions, to ensure the restriction has gone through the HCBS Settings Rule modifications procedure, and is appropriately included in the person-centered support plan. If the restriction has not gone through the modification process and is not supported in the person-centered support plan, the MCOs and DIDD remediate the individual concerns by working with the provider and the person supported and his or her representative, if applicable. 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 TennCare along with steps for remediation to address those concerns. TennCare's review and analysis of this data will inform targeted technical assistance as well as ongoing systems transformation efforts.