

Tennessee Home and Community Based Services Settings Rule Transition Plan

Tennessee's State Medicaid Agency (SMA), the Bureau of TennCare (TennCare) submits this proposed Transition Plan in accordance with requirements set forth in the Centers for Medicare and Medicaid Services (CMS) Home and Community Based Services (HCBS) Settings Rule released on January 16, 2014.

In preparation for development of the state's proposed Transition Plan, TennCare completed certain activities believed to be pertinent to the development of the Transition Plan. Those activities are detailed below. Detailed Provider Self-Assessment and Individual Experience tools and the Assessment Worksheet, including instructions with timelines, will be submitted separately to the CMS regional project officer.

Section 1: Transition Plan Development and Public Input Activities (Forms of Public Notice)

1) Provider information meetings

- a) Invitations were posted on the TennCare website and distributed through provider and advocacy organizations, the Department of Intellectual and Developmental Disabilities (DIDD) and contracted Managed Care Organizations (MCOs). They will be submitted separately to the CMS regional project officer.
- b) Seven separate meetings were held across the state between July 8-24, 2014.
- c) 628 attendees in total
- d) Power point presentation was posted on the TennCare website on July 25, 2014 and submitted separately to the CMS regional project officer.

2) Consumer and family information materials and meetings

- a) Consumer/family friendly materials were developed with input from provider and advocacy organizations.
- b) Materials were posted on the TennCare website and distributed through provider and advocacy organizations, DIDD and MCOs.
- c) TennCare hosted 2 open forum conference calls to educate consumers and families on the HCBS Settings Rule and the importance of their public input.
 - i. There were a total of 251 distinct phone numbers that accessed the calls, but since there were several participants who were gathered in groups, the actual number of participants is unknown, but greater than the number represented by distinct phone numbers.
 - ii. HCBS providers participated in these calls as well as consumers and families.

- d) Some providers held family meetings as well.
- e) Copies of these materials were submitted separately to the CMS regional project officer.

3) State posting of draft transition plan and assessment tools for public comment

- a) All Transition Plan and Assessment Tool documents were posted at: <https://tn.gov/tenncare/topic/transition-plan-documents-for-new-federal-home-and-community-based-services>. Individuals could provide comments online through the website, via the US postal service, or by emailing program staff directly.
- b) The comment period extended from July 25, 2014 – September 19, 2014 as an interactive, working time between the state, providers, advocates, consumers and families. TennCare updated documents based on comments received and reposted the documents to the TennCare website as updated drafts.
 - i. The Transition Plan was revised based on:
 - 1. Public comments received regarding timelines and assessment activities; and
 - 2. Feedback received from CMS, including removal of Person-Centered Planning (PCP) components.
 - 3. The proposed Transition Plan was revised and reposted on September 18, 2014.
- c) Documents were finalized (with any additional comments received), posted and entered into CMS web portal with waiver submission October 1, 2014.
- d) Cover letter, assessment tools and assessment tools instructions were submitted separately to the CMS regional project officer.
- e) The final version of the Transition Plan submitted to CMS was posted on the TennCare website.

Section 2: Transition Plan Components

Part A: SMA Self-Assessment and Remediation

- 1) SMA self-assessment process: Ongoing – February 28, 2015
 - a. The state has initiated ongoing internal strategy meetings to prepare for and begin assessing all rules, regulations, policies, protocols, practices and contracts.
 - b. The state will develop and implement strategies for consumer and family, provider, advocate, and other stakeholder input into the self-assessment of state standards, requirements and practices.
 - c. Components of the SMA Self-Assessment shall include, at a minimum, the following:

- i. HCBS definitions and provider qualifications: Proposed changes to waiver definitions are included in waiver renewal applications and amendments. Any subsequent changes identified will be submitted as waiver amendments.
- ii. State law: The SMA will work in collaboration with DIDD as it relates to Title 33. Statutory revisions (including authority to revise licensure and other rules, as applicable) will be submitted during the upcoming legislative session. Tennessee's legislative session is January – April/May each year. State regulations: Rules requiring modification may include those that are under the authority of another state department. In addition to promulgating revised regulations under its own purview, as determined to be appropriate, the SMA will provide appropriate education and explanation to other state departments regarding need for any rule revisions, which the SMA will formally request in writing, in order to allow the state to come into compliance as applicable. Proposed legislation in the upcoming session will provide statutory obligation and authority to make such rule revisions.
- iii. Policies, protocols, and practices (including Quality Management practices)
- iv. Training requirements
- v. Contracts, rate methodology, and billing practices: This will include contracts/Interagency Agreements the SMA currently holds with DIDD and the MCOs.
- vi. Information Systems
- vii. Specific timelines and milestones for achieving compliance with the new federal rules will be established as needed changes are identified, and included in an amendment to the State Transition Plan.

Part B. Contracted Entity Self-Assessment and Remediation

- 2) Contracted entity self-assessment process: October 1, 2014 – March 31, 2015
 - a. The DIDD and MCOs will be required to review all policies, procedures and practices (including Quality Management practices), training requirements, contracts, billing practices, person-centered planning requirements and documentation, and information systems to determine their compliance with the HCBS Settings Rule. Each entity will be required to submit its assessment along with evidence of compliance to the SMA. Each entity will also be required to identify any modifications needed to achieve compliance with the HCBS Settings Rule. The SMA will review each entity's self-assessment and evidence of compliance to ensure that all aspects of the system are congruent with CMS expectations and will allow the State to operate HCBS programs in a manner which comports with the HCBS Settings Rule. The SMA will request any

additional information needed to assess compliance. Any changes needed to achieve compliance will be incorporated in an amendment to the State Transition Plan, including specific timeframes and milestones.

- b. All revisions to policies, procedures, training requirements, etc. needed to achieve compliance with the new Rule will be submitted to the SMA for review and approval, and implementation will be tracked by the State in accordance with approved timeframes.
- c. Upon approval, final versions will be completed and distributed to providers.
- d. Provider education/training will be conducted as appropriate. All education and training materials will be led by or reviewed and approved by the SMA.
- e. Specific to DIDD, in instances where a change in rule or policy requires a public comment period, time lines will be adjusted accordingly to accommodate time needed to process and respond to public input and incorporate such comments into document revisions.

Part C. Provider Self-Assessment and Remediation

3) Provider self-assessment process: October 15, 2014 – March 31, 2015

- a. The State will conduct statewide provider education and training sessions on how to complete the Provider Self-Assessment Tool. These training sessions will be conducted between October 15, 2014 – November 15, 2014.
- b. Providers will receive the applicable Provider Self-Assessment Tool with the Assessment Tool instructions and time lines. At a minimum, all HCBS residential, employment and day program, and PA providers will be required to complete a self-assessment.
- c. Providers will be required to include persons served, family members/representatives, advocates, and other stakeholders in their assessment process.
- d. Providers will be required to include in their self-assessment a description of their self-assessment process, including participation of the aforementioned persons.
- e. Providers will submit their respective Self-Assessment along with specific evidence of compliance for further review by the SMA or its designee (DIDD or MCOs). Additional evidence may be requested or further reviews conducted as needed to further assess and validate compliance with these rules.
- f. Providers who self-report or are assessed to be non-compliant with the HCBS Settings Rule will be required to submit a Provider Transition Plan identifying the area(s) of non-compliance and describing their proposed plan for coming into compliance along with associated time lines. Information regarding Provider Transition Plans and specific timelines for achieving compliance will be incorporated in an amendment to the State Transition Plan.

- g. All completed and validated Provider Transition Plans will be reviewed and approved by the DIDD or MCO as applicable, and implementation will be monitored based on approved timeframes, with oversight by the SMA.
- h. Providers needing assistance to achieve compliance may request such assistance from the entity with whom they are contracted (DIDD or MCO), another (compliant) provider of the same service type, and/or consumers and family members or advocates.
- i. Providers assessed to be unwilling or unable to come into compliance, will be required to cooperate with transition assistance to ensure all individuals served are transitioned to an appropriate provider type, maintaining continuity of services.
 - i. The SMA, in conjunction with DIDD or the MCOs, as applicable, will oversee all necessary transition processes:
 - 1. A minimum of 30 days notice will be given to all persons needing to transition between providers. More notice may be granted in instances when residential services are being secured.
 - 2. A description of the process and choice of appropriate providers will be included with each notice. The person's ISC, case manager or care coordinator, as appropriate, will conduct a face to face visit as soon as possible to discuss the transition process and ensure they understand any applicable due process rights.

Part D. Individual Experience Assessment

- 4) Individual Experience Assessment process: November 1, 2014 – October 31, 2015
 - a. Each individual's ISC, case manager or care coordinator, as applicable, will assist the individual and his/her family member/representative, as appropriate, in completing an initial Individual Experience Assessment. Service provider staff may participate as requested by the individual and his/her family member/representative.
 - b. Such assessments will be conducted, beginning November 1, 2014 during the individual's annual person-centered plan review, or sooner if an amendment or plan review is conducted prior to the annual review.
 - c. This initial assessment period will be ongoing for one year to allow each ISC, case manager and care coordinator the opportunity to conduct the Individual Experience Assessment while completing a scheduled annual review or needed amendment.
 - d. For provider owned/controlled settings, any proposed modification of requirements set forth in the HCBS Settings Rule for the individual shall be reviewed to confirm that:
 - i. There is a specific individualized assessed need for such modifications;

- ii. Prior interventions and supports including less intrusive methods have been tried and demonstrated to be unsuccessful;
 - iii. The proposed modification is appropriate based on the specific need identified; and
 - iv. The proposed modification, including interventions and support will not cause harm to the individual.
 - e. Each of the above items (i.-iv.) shall be documented in the person-centered plan, along with:
 - i. The method of collecting data on an ongoing basis to measure the effectiveness of the modification; and
 - ii. A specific time limit for periodic review of the data and the effectiveness of the modification to ensure it continues to be appropriate.
 - f. The individual shall provide informed consent of the proposed modification.
 - g. If a modification to the HCBS Settings Rule is determined to be inappropriate based on the person's individualized needs (and in accordance with the requirements above), the area identified as non-compliant will trigger a new assessment of the provider, as applicable, and a Transition Plan developed by the provider to address any issues of non-compliance will be submitted to the contracting entity for review, approval and monitoring of implementation.

Part E. Achieving Initial Compliance

No later than December 31, 2015, upon review and validation of State, contracted entity, and provider self-assessments, the State will submit an amendment to the State Transition Plan with specific remediation activities and milestones for achieving compliance with the HCBS Settings Rule.

In addition, no later than December 31, 2015, the State will submit an amendment to this waiver that will include the fully developed State Transition Plan, with timelines and milestones for achieving compliance with the HCBS settings requirements in the final rule.

For providers needing assistance to come into compliance the state proposes to implement the following strategies, January 1, 2015 – December 31, 2016:

- Facilitate focus groups of non-compliant and compliant providers who can talk through provider specific issues and problem-solve how to achieve compliance together. Participation will be voluntary and can include consumers and family members who may aid in the problem solving process.
- Provide one-on-one technical assistance (TA) (TA will be provided upon request by the DIDD, MCO and or SMA as appropriate)

Part F. Assuring Ongoing Compliance

Once overall compliance is achieved, strategies to ensure ongoing compliance will include:

- Incorporating the Individual Experience Assessment (as described above) into all initial and annual person-centered plan reviews
- Quality assurance methodologies will incorporate monitoring performance measures that ensure compliance with HCBS Settings and PCP Rules
- Annual consumer/family satisfaction surveys
- The State will also explore the use of Core Indicators data and national accreditation standards to support its ongoing compliance monitoring efforts.

Transition Plan Public Comments

The State received 35 online comments, 21 comments via mail, and 4 comments via email, totaling 60 written public comments. (These were written comments from 60 submitting entities; most entities submitted multiple comments/recommendations.) These included three letters from advocacy groups: one from The Arc Tennessee; another from the Tennessee Parent Coalition encompassing parents of individuals with I/DD across the state, including Nashville, Memphis, and Chattanooga; and the third from the TennesseeWorks Partnership Team and Employers and Providers Workgroup. The vast majority of comments received were from family members, conservators, or representatives of individuals with disabilities served in the state's HCBS programs.

Of the 60 written comments received, 5 were not applicable to the Transition Plan or Assessment documents, and 21 were specific to concerns about the potential elimination of facility based day services under the new HCBS setting regulation. Comments were also received during face-to-face meetings with various provider groups and during statewide informational calls targeted to individuals with I/DD and their family members or conservators. A summary of the comments pertaining directly to the Proposed Transition Plan and changes to the Transition Plan based on those comments is below.

Summary of Comments on Transition Plan and Changes Made

In order to help organize comments for incorporation into the Transition Plan, the State asked entities submitting comments to answer certain questions regarding the Transition Plan. Entities were also encouraged to submit any other comments or recommendations beyond the scope of these questions.

1. Are the suggested timelines appropriate?

- Almost all of the commenters focused on the timeline set forth in the regulation for achieving compliance with the HCBS Setting Rule, rather than the specific timelines

proposed in Tennessee's Transition Plan. The majority of these commenters stated that they believe the full 5 years will be necessary for transition and 3 years at minimum. *(The State has not yet established a deadline for achieving full compliance, and recognizes that any proposed date is subject to CMS approval. This date will be determined based on state, contracted entity, and provider self-assessments, as well as action steps and timelines for achieving compliance, but will occur no later than March 17, 2019.)*

Concerns were expressed, however, with the proposed timeframes for completing provider self-assessments and contracted entity self-assessments. Based on these comments, the State modified the Transition Plan to extend the timelines for submission of these self-assessments, incorporating a training period for providers on the new tool, as further described below. These changes in the Transition Plan are addressed in Part B, 2 and Part C, 3 with the extension of Contracted Entity Self-Assessment and Provider Self-Assessment activities, respectively, from December 31, 2014 to March 31, 2015.

2. The best methodology/process for completing the assessments?

- The majority of commenters declined to make specific recommendations regarding the process.
- Several commenters recommended training for providers on the self-assessment process prior to its implementation. *(This comment was addressed in Part C, 3) with the addition of "a. The State will conduct statewide provider education and training sessions on how to complete the Provider Self-Assessment Tool. These training sessions will be conducted between October 15, 2014 – November 15, 2014.")*
- Several commenters also affirmed the importance of self-advocate and family involvement in all aspects of the assessment process, and recommended that the Transition Plan reflect ways to ensure that their perspective would be included in the assessment of compliance with the new rule. *(This comment resulted in a change in Part C, 3, c. Providers will be required to include persons served, family members/representatives, advocates, and other stakeholders in their assessment process.)*
- Some commenters expressed concern regarding individuals who may be required to transition to new providers should their current providers not come into compliance with the new rule. *(This comment resulted in the addition of a new i. under Part C, 3, i., reflecting the oversight of the SMA, in conjunction with DIDD or the MCO, as applicable,*

in all necessary transition processes.)

3. Strategies for initial achievement of compliance and assurance of ongoing compliance?

The majority of commenters responded that they need more guidance from CMS, particularly on non-residential services. Providers and families expressed significant concern regarding the potential impact of the new rule on facility-based day services, and whether such services will continue to be permitted under HCBS programs. *(TennCare received verbal guidance from CMS on non-residential service compliance which will be addressed in provider training, and is proceeding accordingly. The State will incorporate into its Transition Plan assessment and compliance processes any additional written guidance that may be issued by CMS, as it becomes available.)*

Many commenters expressed satisfaction with the current services provided in Tennessee, affirming their belief that programs are person-centered and operating in compliance with the new rule, and are concerned that changes related to the rule will disrupt services for members—in particular, facility-based day services.

- There were recommendations that the State also consider other ways of measuring ongoing compliance in addition to the individual experience assessments. *(This resulted in the addition of a 4th bullet under Part F, exploring the use of Core Indicators data and national accreditation to support ongoing compliance monitoring efforts.)*

4. OTHER comments

- The overwhelming majority of commenters again expressed concern about the effect the HCBS Setting Rule will have on facility-based day services. Most of these commenters are concerned that Tennessee will do away with facility-based day programs in part or altogether, and strongly oppose such changes. *(This comment did not impact changes necessary to the Proposed Transition Plan; verbal guidance received from CMS will be addressed in provider training and ongoing communication with stakeholder groups.)*
- Other comments requested changes in certain language, e.g., not using “plan of care.” *(“Plan of care” has been changed to “person-centered plan” throughout the Transition Plan.)*