Tennessee’s Approved HCBS Settings Rule
Statewide Transition Plan

On April 13, 2016, the Centers for Medicare & Medicaid Services (CMS) granted both initial and final approval to Tennessee’s statewide transition plan (STP). Tennessee’s approved plan reflects a comprehensive approach to both systemic and site-specific assessments, and includes elements for monitoring ongoing compliance.

In its approval letter, CMS noted that they granted this approval because:

- Public comment, input, and summary requirements have been met
- The STP is sufficient
- Systemic and/or site-specific assessments have been completed
- Settings that are presumed to have institutional characteristics have been identified
- Information regarding heightened scrutiny or the state’s decision to let the presumption stand, and clear remedial steps with milestones have been delineated
- The state has laid out a comprehensive validation process for the site specific assessment involving managed care organizations, the Department of Intellectual and Developmental Disabilities (the Operational Administrative Agency for the state’s waivers), and the Bureau of TennCare

Following this approval, the state must provide quarterly written updates and participate in quarterly phone discussions with CMS to review the state’s progress in implementing the STP. In addition, the state must work collaboratively with CMS to identify any areas that may need strengthening with respect to the state’s remediation, relocation, and heightened scrutiny processes (the quarterly discussions and updates will focus on four key areas that are outlined in the letter from CMS to TN).

Tennessee’s approach to compliance shows strong evidence of transparency (including detailed and comprehensive analysis of public comments/responses), robust partnerships, accountability, thorough assessments, milestones and timelines, clear articulation of approach to heightened scrutiny reviews, ongoing monitoring, and individual and family engagement.

This summary highlights elements which could be translatable lessons used to inform other state efforts during this important transition period (pre and post STP approval).
### Table of Contents

- **Transition Plan Development and Public Input Activities**
  - Meetings
  - Public Comment

- **Assessment Process, Outcomes, and Remediation**
  - TennCare’s Systemic Assessment Process
    1) SMA Self-Assessment
      - Outcomes
      - Remediation Milestones and Timelines
    2) Contracted Entity Self-Assessment
      - Outcomes
      - Remediation Milestones and Timelines
  - CQL accreditation
  - Provider Self-Assessment, Outcomes and Remediation
    - Heightened Scrutiny Process
    - Outcomes
    - Remediation Milestones and Timelines
    - Refusal to come into compliance
  - Individual Experience Assessment

- **Achieving Initial Compliance and Assuring Ongoing Compliance**
  - Focus groups
  - Trainings
  - TA
  - Family Engagement

- **Public Comment**
  - Collection methods
  - Responses
Transition Plan Development and Public Input Activities

Meetings – TN held several provider information and training meetings, and consumer and family information meetings that provided clear and concise information

- 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) (later referred to as contracted entities)
- Seven separate meetings were held across the state that addressed the federal regulation, and two open forum conference calls to educate consumers and families on the HCBS Settings Rule and the importance of their public input
  - Number of attendees for all meetings were documented
  - Providers also held separate family meetings
- Meetings were posted on the TennCare website and submitted to the CMS regional officer
- Consumer/family friendly materials were developed with input from provider and advocacy organizations
  - Materials were posted on the TennCare website and distributed through provider and advocacy organizations, including independent support coordinator agencies, DIDD and MCOs

Public Comment – All Transition Plan and Assessment Tool documents were posted on the TennCare website and were updated as needed based on comments received and reposted to the website as “updated drafts”

- Individuals could provide comments online (through the website), via the US postal service, or by emailing/calling program staff directly
- Transition Plans were revised based on public comments regarding timelines and assessment activities; and feedback from CMS on Person-Centered Planning components

Assessment Process, Outcomes, and Remediation

TennCare’s Systemic Assessment Process included two primary components: 1) State Medicaid Agency (SMA) Self-Assessment, and 2) Contracted Self-Entity Self-Assessment (both including outcomes and remediation).
1) **SMA Self-Assessment**
   a. The state initiated ongoing internal strategy meetings to assess all rules, regulations, policies, protocols, practices and contracts
   b. The State developed and implemented strategies for obtaining consumer and family, provider, advocate, and other stakeholder input into the self-assessment of state standards, requirements and practices.
   c. TennCare presented specialized webinars to engage stakeholders and asked for input on the development of STP, timelines, assessment tools, and settings presumed not HCBS
   d. The State’s systemic assessment included a review of state statutes, 1915(c) waivers, rules, contracts, rate methodologies, and billing practices, protocols, policies and procedures across all departments involved in the licensure and administration of Medicaid-reimbursed HCBS (detailed on page 6)

   - **SMA Self-Assessment Outcomes** (detailed on pages 6-9) identified amendments to several HCBS definitions, statutory revisions, the need for state department education and training, determinations of compliance, and areas that needed strengthening of the TennCare’s Needs Assessment and Plan of Care Protocols, and DIDD Provider Manual
   - **SMA Self-Assessment Remediation Milestones and Timelines** (detailed on pages 9-11) identified changes the state needed to make in order to amend 1915(c) definitions, state statutes, contracts, and protocols, procedures and policies

2) **Contracted Entity Self-Assessment** – During this process, TN assigned several tasks to the following entities: LTSS contracted entities, Managed Care Organizations (MCOs under the 1115 Waiver) and the Department of Intellectual and Developmental Disabilities (DIDD under the State’s three 1915 (c) Waivers)
   a. DIDD and MCOs were required to review all policies, procedures and practices, training requirements, contracts, billing practices, person-centered planning requirements and documentation, and information systems to determine their compliance with the HCBS Settings Rule
   b. Each entity was required to submit its assessment along with evidence and also required to identify any modifications needed
   c. TennCare reviewed each entity’s self-assessment and evidence to ensure congruency with CMS expectations

   - **Contracted Entity Self-Assessment Outcomes**
     o MCO – reviewed, amended, and created policies, protocols, procedures, and training documents; TennCare LTSS staff reviewed the documentation and
responded with edits and comments and visited each MCO on-site in order to remediate all non-compliant processes
  
  o DIDD – reviewed its policies, provider manual, procedures and practices, contracts, billing practices, and information systems and found areas of compliance and also necessary changes in order to comply (detailed on page 13 - 14)

• Contracted Entity Remediation Milestones and Timelines
  
  o To ensure compliance on an ongoing basis, TennCare worked with MCOs to ensure the HCBS Settings Rule is embedded in MCOs’ contracting, credentialing, and monitoring processes for both new and current provider sites (contract language is detailed on page 14)
  
  o MCO compliance is monitored through routine audits that are incorporated into the monitoring structure, and through credentialing and re-credentialing activities
  
  o DIDD submitted all provider manuals and medical protocols that were deemed non-compliant to TennCare for review, and also included a provision to the Provider Agreement language that requires providers maintain compliance

**CQL accreditation:** DIDD partnered with The Council on Quality and Leadership (CQL) and has been working on network accreditation and submitted a Personal Outcome Measure Plan in order to implement it on an individual and systemic level. The plan includes policy and process actions in the areas of: 1) People Exercise Rights; 2) People Choose Where and with Whom to Live; and 3) People Choose Personal Goals

**Provider Self-Assessment, Outcomes and Remediation:** TN conducted mandatory trainings for HCBS residential and day program service providers on the Provider Self-Assessment and Validation process

  • A recorded version was posted to the TennCare website for providers to access anytime
  
  • TennCare’s contracted entities (DIDD and the MCOs) then worked with providers on validating the self-assessment and approving any provider transition plan as applicable (the process and settings assessed are detailed on pages 16-17)
  
  • TennCare implemented a multi-layered (pre and post) validation processes to ensure responses from providers represented complete and accurate interpretations of the final rule requirements (this process is outlined in detail on pages 18-20)
An additional phase of TennCare’s validation process utilized the Individual Experience Assessment, which was used to crosswalk responses from the provider self-assessment outcomes

**Heightened Scrutiny Process:** TennCare incorporated questions regarding the presumption of institutional characteristics and the living arrangements area into the provider self-assessment tool (questions on page 20).

- Any negative or positive responses that were not appropriately supported by documentation during the validation review were addressed by the assigned contracted entity reviewer and remediation steps were captured in the provider’s transition plan
- TennCare only recognized exceptions to methods utilized as safety measures for individuals with the approval of a Human Rights Committee (methods and settings identified on page 21)
- Intensive Behavioral Residential Services was also subject to this review to ensure full compliance with the final rule
- The Heightened Scrutiny review utilized by TennCare includes:
  - review of data pertaining to services utilized by all persons receiving services in the specified setting, a review of data to determine the number of individuals in one setting as well as a combination of settings, and the relative percentage of persons and time spent in each such setting;
  - an on-site visit and assessment of physical location and practices;
  - review of person-centered plans and individual experience assessments
  - interviews with service recipients;
  - a secondary review of policies, training and other applicable service related documents; and
  - additional focused review of the agency’s proposed transition plan
- The Heightened Scrutiny review began on April 1 and will conclude by March 31, 2017. This will allow time for the state to conduct a thorough review, including an on-site visit, of each applicable setting and spend the time needed with each individual provider to ensure an adequate transition plan is in place
- In March of 2016 TennCare held comprehensive trainings that focused on the heightened scrutiny review process
- In February 2016, TennCare also held four targeted information/training sessions for persons supported and family members as well as a comprehensive training session with contracted entities (DIDD and the MCOs)
Provider Self-Assessment Outcomes are outlined on pages 23-25 and highlight the number of settings assessed, of those which are compliant and which are not, the number of provider transition plans received, and analysis from the contracted entities.

- Based on the analysis from the MCOs, community activities outside the setting and transportation resources and how to utilize transportation resources were all areas that needed more training and clear policy development and implementation.
- Based on the DIDD analysis, community integration also appeared to be one of the biggest opportunities for improvement (noted in detail on pages 24-25).
  - There was one self-defined disability community.
  - Community integration was lacking; public transportation education was not being pursued; individual rights and privacy lacked adequate provider understanding, up-to-date policy, and lack of appropriate implementation.
  - Longstanding trend of placing restrictions for an extended amount of time rather than finding ways to phase out the plans and/or look at least restrictive methods.

Provider Self-Assessment Remediation Milestones and Timelines – Provider level transition plans were required when there was a deficiency in any of the provider self-assessment compliance areas.

- For each area, there were specific indicators that needed to be met at 100%.
- If indicators were not met, the deficiency needed to be addressed in the provider transition plan, which was reviewed by the contracted entity for approval or additional TA.
- Transition Plan timelines, tracking, and monitoring are outlined on pages 25-26.
  - Contracted entities are responsible for ensuring provider transition plans are implemented effectively.
  - The regional office provider support teams monitor the plans on a monthly basis and roll their findings into a quarterly summary for discussion and review.
    - Quarterly meetings are held to provide plan implementation updates and to discuss data to determine if additional TA is warranted.
- TN is working with MCOs to develop a standard HCBS Settings compliance tool and process for credentialing and re-credentialing providers (whereas currently an individual HCBS Settings Rule criterion is used).
- Basic Assurances: As part of DIDDs partnership with CQL, the Department has submitted a network accreditation – Basic Assurances – that addresses 1) the organization supports people to exercise their rights and responsibilities; 2) staff recognize and honor...
people’s rights; 3) the organization upholds due process; 4) decision-making supports are provided to people as needed; 5) people have meaningful work and activity choices; and 6) policies and practices facilitate continuity of natural support systems.

- **Targeted training**: Following the completion of the compliance process, targeted training began in areas that appeared to be most critical
  - TennCare contracted with a national employment expert and with a national expert on person-centered planning to help build capacity in these critical areas
  - TennCare worked with the contract entities (DIDD and the MCOs) to develop targeted trainings as well as facilitate focus groups
  - Training will also look at how the providers assessed themselves versus how the contracted entity’s assessed the provider

- **Refusal to come into compliance**:
  - If a provider site is not in full compliance, the expectation is that the provider will come into compliance as evidenced by an approved transition plan with reasonable timelines and a clear mechanism in place to provide on-going support
  - If the provider cannot or refuses to come into compliance, TennCare will use its process for transitioning people from the non-compliant setting to a setting that meets all requirements
    - A transition letter will be sent to the individuals impacted and their family if applicable, as well as a letter to the provider
    - TennCare monitors the transition process during its monthly status calls
    - TennCare, in conjunction with DIDD or the MCOs, oversees all necessary transitions (Transition instructions are detailed on pages 29-30)

**Individual Experience Assessment** (on pages 30-31) provides an outline of the assessment process, partnerships, review process, and outcomes

- Family members/representatives and the individual were the primary stakeholders involved along with the individual’s case manager/coordinator (as applicable), and if requested, the service provider staff participated as well
- Assessment period was ongoing (for one year) and conducted during the individual’s annual person-centered plan (PCP) review
- If any proposed modifications were set forth a review took place that confirmed:
  - There is a specific individualized assessed need for such modifications;
o Prior interventions and supports (including less intrusive methods) were unsuccessful;
o Proposed modification is appropriate based on the specific need identified; and
o Proposed modification, including interventions and support will not cause harm to the individual
o Note: each of these items need to be documented in the PCP along with method of data collection, timeline for review of effectiveness, and informed consent
  ▪ If a modification is determined to be inappropriate, it triggers a new assessment, review, approval, and subsequent monitoring

Achieving Initial Compliance and Assuring Ongoing Compliance

Following review and validation of the state, contracted entities, and provider self-assessments, TennCare submits an amendment to the originally proposed STP with setting specific outcomes, remediation activities, and milestones for achieving compliance. The state also submitted an amendment to its three 1915(c) waivers (Statewide, Comprehensive Aggregate Cap, and Self-Determination Waivers) with timelines and milestones for achieving compliance and incorporation of waiver revisions based on public comments where appropriate.

• For providers that needed assistance to come into compliance the state implemented (and is continuing to implement):
  o Focus groups of non-compliant and compliant providers to talk through provider specific issues and problem-solve how to achieve compliance together
    ▪ DIDD hosted a facility-based day workgroup focused on achieving compliance through conversion strategies
    ▪ National subject matter experts were asked to present methods for converting day programs from congregated and segregated to full integration into the community
    ▪ **Family Engagement** – participation included consumers and family members who could aid in the problem solving process
    ▪ Primary focus – residential settings in the living arrangements category and on non-residential settings in regards to facility based day and sheltered workshop services
  o Training on HCBS Setting requirements and heightened scrutiny review process
    ▪ Held in each region during the regularly scheduled DIDD Quarterly Provider meetings

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Each training offered a presentation by current DIDD providers that have converted their facility-based day services to community-based services

- One-on-one TA provided upon request by the DIDD, MCO and or TennCare (as appropriate)
- Following overall compliance, strategies to ensure ongoing compliance will include:
  - Incorporating the Individual Experience Assessment into all initial and annual person-centered plan reviews
  - Quality Assurance monitoring methodologies will incorporate the addition of monitoring performance measures that ensure compliance with HCBS Settings and PCP Rules
  - TennCare has renamed and expanded the role of an existing Care Coordination Unit (now referred to as the Person-Centered Practices team) to monitor and ensure PCP practices are implemented effectively
  - Plan of Care document utilized by the MCOs is being revised to a standardized template that aids in facilitating PCP practices
  - Annual consumer/family satisfaction surveys
  - Training of the TennCare Audit & Compliance staff and the LTSS Person-Centered Practices staff in Person-Centered Thinking, Planning and Practices in order to ensure staff are knowledgeable

Public Comment (questions and summary or comments/responses found on pages 33-56)

TN asked stakeholders to answer 12 questions regarding the amended STP and offered opportunity to comment on each question as well. Stakeholders were also encouraged to submit any other comments or recommendations beyond the scope of the 12 questions. Comments were accepted via online survey, US postal service, or phone. Those who submitted comments included: family members, non ISC (Independent Support Coordinator) providers, advocacy organizations, ISC/CM (Case Manager)/CC (Care Coordinator), Consumers, and Other (the “Other” category was solely comprised of provider staff). TennCare tracked all the responses to the survey questions, as well as the corresponding comments and applied them where appropriate.

TennCare recognized the complexity of this transition and that the impact of the rules on certain settings are difficult to understand and are concerning to families and providers who have relied on these settings for decades. They took into consideration the concerned voice of stakeholders and responded with letters and FAQs to each consumer and family and also conducted information/training sessions to help alleviate and clarify some of these concerns.