

SUMMARY OF CHANGES
Effective 3/27/2015

All revisions to the State’s HCBS waivers are effective immediately upon CMS approval (3/27/2015), unless otherwise indicated.	Effective at Later Date
<p>CENTERS FOR MEDICARE AND MEDICAID SERVICES (CMS) HCBS SETTINGS AND PERSON CENTERED PLANNING FINAL RULE</p>	
<p>Modified service definitions and other applicable waiver sections in order to ensure compliance with the Final Rule released by the Centers for Medicare and Medicaid Services (CMS) on HCBS Settings and Person Centered Planning requirements.</p> <p>New language incorporated throughout the waiver to address compliance with the HCBS Setting Rule: “...services are selected by the person supported ... and which supports the person’s independence and full integration into the community, ensures the person’s choice and rights, and comports fully with standards applicable to HCBS settings delivered under Section 1915(c) of the Social Security Act, except as supported by the individual’s specific assessed need and set forth in the person-centered Individual Support Plan (ISP).”</p> <p>Standard language: “All individual goals and objectives, along with needed supports shall be established through the person-centered planning process and documented in the person-centered ISP and shall include opportunities to seek employment and work in competitive integrated settings, engage in community life, and control personal resources, as applicable based on the needs and preferences of the individual.</p> <p>Standard language: “Supports shall be provided in a manner which ensures an individual’s rights of privacy, dignity, respect and freedom from coercion and restraint; and which optimizes individual initiative, autonomy, and independence in making life choices. ”</p>	
<p>DEPARTMENT OF LABOR (DOL) FAIR LABOR STANDARDS ACT FINAL RULE</p>	
<p>Modified service definitions and other applicable waiver sections in order to clarify Family Model Residential Services as it relates to compliance with the Department of Labor’s Final Rule pertaining to the Fair Labor Standards Act.</p> <p>The Department of Labor published a Final Rule on October 1, 2013 extending minimum wage and overtime pay protections under the Fair Labor Standards Act (“FLSA”) to many direct care workers (such as home health aides, personal care assistants, and workers in similar occupations) who provide essential home care assistance to people with disabilities and older adults. Specifically, the rule narrowed the “companionship services” that were exempt from overtime pay in the FLSA. The Rule took effect on January 1, 2015.</p>	

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<p>Providers are encouraged to familiarize themselves with the provisions of the Final Rule as the penalties for non-compliance could be significant.</p>	
<p>NON-SUBSTANTIAIVE CHANGES THINGS PROVIDERS SHOULD KNOW</p>	
<p>Changed the official name from Home and Community Based Services Waiver for the Mentally Retarded (Arlington Waiver) to Comprehensive Aggregate Cap Waiver Changed the official name from Home and Community Based Services Waiver for the Mentally Retarded and Developmentally Disabled to Statewide Waiver.</p>	
<p>Language changes throughout the waiver were made in response to public comment:</p> <ul style="list-style-type: none"> • Address the individuals supported in the waiver as “persons supported.” <p>Per quarter” has been defined throughout the waiver as “once every 3 months”.</p> <ul style="list-style-type: none"> • “Plan of care” has been changed throughout to “Individual Support Plan”. • “Waiver year” has been defined throughout the waiver as “calendar year”. • “30 days” has been defined throughout the waiver as “calendar days” vs. “business days”. • Changed “ICF/MR” to “ICF/IID” throughout the waiver. • Changed MR language to IID throughout the waiver. 	
<p>SUBSTANTIVE CHANGES TO THE WAIVERS CHANGES THAT IMPACT PROVIDERS</p>	
<p>Implemented in the Statewide Waiver only, an individual cost neutrality cap based on the average cost of private ICF/IID services in Tennessee. The individual cost neutrality cap is effective upon enrollment for anyone enrolled on or after March 27, 2015. In order to minimize the potential for disruption in services for Statewide waiver participants, individuals currently enrolled in the Statewide Waiver identified by the state as receiving services in excess of the new individual cost cap will transition to the Arlington (renamed “CAC”) Waiver (0357), which will continue to have an aggregate cost cap</p>	<p>Individual cost neutrality cap effective May 21, 2015 for current enrollees.</p>

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<p>Changes Made to Waiver Services Definitions</p> <p>If a waiver service is not listed then substantive changes were not made to the service definition that impact providers.</p> <ul style="list-style-type: none"> • Behavior Respite Services • Behavior Services • Employment and Day Services • Family Model Residential • Intensive Behavioral Residential Support • Medical Residential • Nursing Services • Personal Assistance • Residential Habilitation • Respite • Semi-Independent Living Services • Specialized Medical Equipment • Supplies and Assistive Technology • Support Coordination • Vision Services 	
<p><u>New language was added in response to stakeholder feedback in order to add flexibility for residential providers:</u></p> <p>“Individuals receiving services may choose to receive services in a shared living arrangement with other persons who need differing levels of support, differing types of waiver services, or who participate in different HCBS programs, as permitted in state licensure law and regulation, as long as there is a willing, qualified provider who can safely meet the needs of each resident in the home.” The new flexibility applies to all residential services.</p>	

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<p><u>Shared Living Arrangement Scenarios:</u></p> <ul style="list-style-type: none"> • A person receiving Medical Supported Living services may reside with a person receiving Supported Living. • A person receiving Medical Residential Services may reside with a person receiving Residential Habilitation. • A person receiving Supported Living, Semi-Independent Living, Family Model or Residential Habilitation may reside with a person receiving Choices CLS. • A person receiving Residential Habilitation may not reside with someone receiving Family Model or Supported Living <p>The following residential services may be provided out-of-state for a maximum of 14 days per person per waiver (calendar) year: Family Model Residential, Medical Residential, Residential Habilitation, and Supported Living. Trips to casinos and other gambling establishments are no longer excluded.</p>	
<p>Semi Independent Living Services</p> <p>In response to stakeholder feedback, Semi-Independent Living was added as a service in the Statewide and CAC Waivers.</p> <p>The service definition includes the following information for consistency with the modifications made to other residential service definitions:</p> <ol style="list-style-type: none"> 1. Added language to demonstrate compliance with the HCBS Settings and Person Centered Planning Rules. 2. Provider oversees the health care needs of the person supported. This is not a new requirement, rather a clarification of existing expectations. 3. Person supported may receive services in shared living arrangement with people who need differing level of support, different types of waiver services, or who participate in different HCBS programs (Community Living Supports) available through the TennCare CHOICES waiver. 4. For person supported transitioning from 24-hour residential services providers will be reimbursed an enhanced transition period rate for no more than 30 days. 5. A one-time per person supported "Transition to Independent Living" incentive payment will be made to providers after a person supported who transitions from 24-hour residential services to SILS has spent 6 consecutive months in SILS and is still in SILS at 	<p>DIDD will provide written guidance.</p>

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<p>the time of billing. More information on this payment is available ...</p>	
<p>Family Model Residential Support</p> <p>Modified the service definition as follows:</p> <ol style="list-style-type: none"> 1. Added language to demonstrate compliance with HCBS Settings and Person Centered Planning Rules and to ensure compliance with the Department of Labor FLSA Rule, clarifying that the provider is restricted from: <ol style="list-style-type: none"> a. Determining whether a caregiver chooses to participate in the program. b. Determining whether a caregiver will bring a particular person supported in his or her home. c. Directing Day-to-day activities of the home. d. Directing or manage the delivery of services and supports. e. Leasing a residence in which the service and supports will be provided. f. Making frequent visits or phone calls to the home (unless related to the monitoring of service delivery and quality assurance purposes). g. Instruct the caregiver about particular tasks to perform or ways to fulfill or not fulfill duties. <p>Further guidance on FLSA will be distributed via memo from the State as it becomes available.</p> 3. Services may be provided out-of-state. 	
<p>Medical Residential Services</p> <p>Modified the service definition as follows:</p> <ol style="list-style-type: none"> 1. Added language to demonstrate compliance with HCBS Settings and Person Centered Planning Rules and flexibilities recommended by stakeholders. 2. Nurse may perform non-skilled services including assistance with eating, toileting, grooming and other activities of daily living. 3. Person supported may receive services in shared living arrangement with people who need differing level of support, different types of waiver services, or who participate in different HCBS programs (Community Living Supports) available through the TennCare CHOICES waiver. 4. Service may be provided out-of-state. 	

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<p>Supported Living</p> <p>Modified the service definition as follows:</p> <ol style="list-style-type: none"> 1. Added language to demonstrate compliance with HCBS Settings and Person Centered Planning Rules and flexibilities recommended by stakeholders. 2. Provider oversees the health care needs of the person supported. 3. Person supported may receive services in shared living arrangement with people who need differing level of support, different types of waiver services, or who participate in different HCBS programs (Community Living Supports) available through the TennCare CHOICES waiver. 4. When approved by special exception, a person supported may live with other family members when the family member is a minor child living with a parent receiving services or spouse of a person receiving services. 5. Supported Living Companion Homes: <ol style="list-style-type: none"> a. Removed the requirement that only the live-in caregiver may reside in the home where the person lives. b. Removed the requirement that only persons receiving supported living services are allowed to live in the supported living home. c. The implications for this are that for companion model, the companion's spouse, family or significant other can live in the home as long as the person supported agrees. 	
<p>Intensive Behavioral Residential Support</p> <p>Modified the service definition as follows:</p> <ol style="list-style-type: none"> 1. Added language to demonstrate compliance with HCBS Settings and Person Centered Planning Rules. 2. IBRS may only be selected when alternative approaches have been tried and unsuccessful. 	
<p>Personal Assistance</p> <p>Modified the service definition as follows:</p> <ol style="list-style-type: none"> 1. Added language to demonstrate compliance with HCBS Settings and Person Centered Planning Rules and flexibilities 	

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<p>recommended by Stakeholders.</p> <ol style="list-style-type: none"> 2. A single personal assistant may provide PA services to more than one individual residing in the same home at the same time, provided each person's needs can be safely and appropriately met. 3. Only one unit of service will be billed for each unit of service provided, regardless of the number of persons supported. Documentation must be maintained for each person supported. 4. Person supported may receive services in shared living arrangement with people who need differing level of support, different types of waiver services, or who participate in different HCBS programs (Community Living Supports) available through the TennCare CHOICES waiver. 	
<p>Respite</p> <p>Modified the service definition as follows:</p> <ol style="list-style-type: none"> 1. Clarified expectations around hours for Level 2 and Level 3 respite services. 2. Maximum allowable 30 days per calendar year (clarification). 3. For hourly respite the use of any part of a day constitutes the use of one of the 30 days per calendar days per person. 	
<p>Employment and Day Services</p> <p>Modified the service definition as follows:</p> <ol style="list-style-type: none"> 1. Name changed to Employment and Day Services 2. Added language to demonstrate compliance with HCBS Settings and Person Centered Planning Rules and flexibilities recommended by Stakeholders 3. Flexibility in scheduling; no longer restricted to weekdays between 7:30 am – 6:00 pm 4. Except for students who have graduated prior to May of 2014, Day Services for school aged persons (i.e., under the age of 22) are limited to regular school break periods. 5. Supported Employment: job coach employed by Day Service provider on-site at work location and defines SE oversight for individuals that do not require an on-site job coach and minimum contact requirements. 6. Supported Employment: incentive payments for vocational related measureable outcomes 	<p>Implementation of flexible schedules for day service hours and weekdays on October 1, 2015.</p> <p>Supported Employment Incentives: October 1, 2015</p> <p>Facility Based day services</p>

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<ul style="list-style-type: none"> a. One-time payment to employment provider when individual obtains employment as a result of provider's direct involvement b. Stipends paid to employers that are passed through to individuals on the work site who function as a work place support c. A one-time payment to employment provider when an individual has been employed consecutively for one year <ul style="list-style-type: none"> 7. Facility Day: Education and preparations start immediately, all plans must be compliant with time limits 8. Facility Day: only when person supported needs time-limited pre-vocational training. 9. Facility Day: opportunity to move to integrated setting evaluated annually. 	<p>must be evaluated every 6 months and re-approved: July 1, 2016</p> <p>DIDD will provide written guidance.</p>
<p>Nursing Services</p> <p>Modified the service definition as follows:</p> <ul style="list-style-type: none"> 1. Added language to demonstrate compliance with Person Centered Planning Rule and flexibilities recommended by Stakeholders. 2. Nurse responsible for provision of non-skilled services including eating, toileting, grooming and other activities of daily living. Amount of services authorized and provided shall only be based on skill nursing needs of the person. 3. A single nurse may provide services to more than one person living in the same residence as long as each person's needs can be safely and appropriately met. 4. Services apportioned based on an assessment of a person's need and the apportioned amount included in the ISP of each person supported, as applicable. 	
<p>Specialized Medical Equipment Supplies and Assistive Technology</p> <p>Modified the service definition as follows:</p> <p>Removed stander or standing table from waiver definition</p>	
<p>Vision Services (CAC Waiver only)</p> <p>Modified the service definition as follows:</p> <p>Removed Vision Services.</p>	

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<p>Behavior Services</p> <p>Modified the service definition as follows:</p> <ol style="list-style-type: none"> 1. Added language to demonstrate compliance with the Person Centered Planning Rule. 2. Behavior Support Plan (BSP) developed through person centered planning process. 3. Describes conditions under which BA services may be provided and billed in the absence of the person supported (i.e., completion of the Behavior Assessment Report and person supported specific training of staff, except in instances in which the Behavior Analyst can demonstrate appropriate interventions in real time). 4. Only behavior analysts can conduct behavior assessment and create the BSP. 5. Defines behavior specialists' duties: training, data collection and plan implementation. 	
<p>Behavior Respite Services</p> <p>Modified the service definition as follows:</p> <ol style="list-style-type: none"> 1. Added language to demonstrate compliance with the Person Centered Planning Rule. 2. Service provider shall help plan, coordinate, and prepare for the individual's transition back to residential setting. 	
<p>Support Coordination</p> <p>Modified the service definition as follows:</p> <ol style="list-style-type: none"> 1. Added language to demonstrate compliance with the HCBS Settings and Person Centered Planning Rules. 2. At least annual assessment of the individual's experience to confirm compliance with HCBS Settings Rule. 3. Providers ensure employees receive effective guidance, mentoring, and training including training required by DIDD. Effective training includes opportunities to practice support coordination duties. 4. Specific tasks outlined for ISCs which include coordination of benefits with MCOs, timely access to medical and behavioral health services, addressing opportunities for the person supported to seek employment and notifying provider management if the ISP is not being implemented as well as contacting DIDD when resolution is not achieved. 5. The ISC conducts initial (i.e., as part of the State's transition plan for compliance with the new federal HCBS Setting rule) and at 	

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<p>least annual assessment of the individual’s experience, in accordance with timeframes outlined in State Protocol, to confirm that that the setting in which the person supported is receiving services and supports comports fully with standards applicable to HCBS settings delivered under Section 1915(c) of the Social Security Act, including those requirements applicable to provider-owned or controlled homes, except as supported by the individual’s specific assessed need and set forth in the person-centered ISP.</p>	
<p>Residential Habilitation</p> <p>Modified the service definition as follows:</p> <ol style="list-style-type: none"> 1. Added language to demonstrate compliance with the HCBS Settings and Person Centered Planning Rules and flexibilities recommended by Stakeholders and proposed in concept paper. 2. Person supported may receive services in shared living arrangement with people who need differing level of support, different types of waiver services, or who participate in different HCBS programs (Community Living Supports) available through the TennCare CHOICES waiver. 3. Service may be provided out-of-state. 	
<p>SAFEGUARDS FOR PERSONS SUPPORTS</p> <p>MEDICATION ADMINISTRATION AND USE OF RESTRAINTS</p>	
<p>Updated language related to medication administration and error reporting and use of restraints.</p> <p><u>Use of Restraints</u></p> <ol style="list-style-type: none"> 1. Must be identified in the person-centered plan. 2. Must be done only to ensure the safety of the person or others. 3. Plan must indicate what positive interventions are used prior to use of restraint. 4. Plan must indicate what has been tried before but did not work. 5. Plan must establish timelines for periodic reviews to determine if restraints are still necessary and plans must be reviewed on an individual basis. 	

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<p>6. Must ONLY be used as specified in the plan for emergency circumstances and NOT as an ongoing intervention or treatment. 7. All staff supporting the person must be trained in its use.</p>	
<p>QUALITY MANAGEMENT STRATEGY STATE REPORTS TO CMS</p>	
<p>Changes related to annual reporting, per the CMS Modifications to Quality Measures and Reporting in §1915(c) Home and Community-Based Waivers, released in March 2014, are incorporated throughout.</p> <ol style="list-style-type: none"> 1. Additions, deletions and revisions to the performance measures the State reports to CMS each year. 2. A new requirement that Quality Improvement Plans must be developed and implemented for any performance measure falling below 86% for more than 3 months in a year. 3. A greater emphasis on the Health & Welfare Assurance. 4. New performance measures were designed to track and report practices that are already in place related to identifying, addressing and preventing instances of abuse, neglect and exploitation, demonstrating a strong incident management system, prohibiting the use of restricted interventions and establishing overall healthcare standards and oversight. 5. Establish consolidated reporting across the state's three 1915(c) waivers (0128, 0427, and 0357) for the Qualified Providers assurance area. This change was proposed because DIDD providers are approved to support individuals in all three waivers; therefore there are not separate networks. Under the current system, performance is tracked and any area of noncompliance is reported and counted three times. 	
<p>PERFORMANCE MEASURES</p>	
<p>Per the CMS guidance released in March 2014, these measures need to be tracked by the State but not reported to CMS.</p> <p>Discontinue Reporting on Performance Measure LOC a.i.b.1 Discontinue Reporting on Performance Measure LOC a.i.c.6 Discontinue Reporting on Performance Measure SP a.i.b.1. Discontinue Reporting on Performance Measure SP a.i.b.2.</p>	

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<p>Discontinue Reporting on Performance Measure SP a.i.b.3. Discontinue Reporting on Performance Measure SP a.i.b.6. Discontinue Reporting on Performance Measure SP a.i.b.7. Discontinue Reporting on Performance Measure SP a.i.e.1.</p> <p>The following measure has been deleted as a Performance Measure because it was duplicative with other measures: Delete Performance Measure HW a.i.14.</p>	
<p>Per the CMS guidance released in March 2014, these measures have been added as areas that will be tracked by the State and reported to CMS. Note: these measures reflect existing processes and therefore do not require new actions, only new tracking and reporting.</p> <p>Add Performance Measure QP a.i.a.16. Newly employed (or reassigned) direct support staff serving waiver participants (persons supported) with federal List of Excluded Individuals/Entities (LEIE) checks completed prior to, but no more than 30 calendar days in advance of employment, or a change in assignment to direct support.</p> <p>Add Performance Measure HW a.i.19. Number and percentage of Plans of Correction related to substantiated investigations, required to be submitted by DIDD providers, which are accepted by DIDD after review.</p> <p>Add Performance Measure HWa.i.20 Number and percentage of DIDD providers surveyed by DIDD who demonstrate regular review of their critical incidents, as required by DIDD.</p> <p>Add Performance Measure HWa.i.21 Number and percentage of DIDD providers surveyed who demonstrate they are implementing preventive/corrective strategies when applicable.</p> <p>Add Performance Measure HWa.i.22 Number and percentage of behavior support plans (BSPs) developed for waiver participants that comply with State policies and procedures regarding the use of restrictive interventions.</p> <p>Add Performance Measure HWa.i.23 Number and percentage of reported critical incidents NOT involving the use of prohibited restrictive interventions.</p> <p>Add Performance Measure HWa.i.24 Number and percentage of DIDD providers who develop and maintain policies, and implement practices, in accordance with the DIDD Provider Manual and policies that achieve outcomes related to health care management and</p>	

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<p>oversight. Add Performance Measure FAa.i.4: Number and percentage of rates approved that are consistent with the approved rate methodology throughout the five year waiver cycle. Note this measure is tracked and reported by TennCare.</p>	
<p>The following existing measures were revised to more accurately reflect the state’s processes. Revisions made are in red: Revise Hwa.i.9. Number and percentage of completed investigations for which abuse, neglect, and/or exploitation was substantiated, total and by type. Percentage = number substantiated allegations, total and by type / number of investigations, total and by type. Revise Hwa.i.10. # and % of substantiated investigations, by total and type, for which appropriate corrective actions approved by DIDD were verified within 45 days of issuance of the investigation report. Percentage = # of substantiated allegations for which appropriate corrective actions were verified within 45 days of issuance of the report / total # of corrective actions verified during the reporting period. Revise Hwa.i.13. Number and percentage of deaths reviewed and determined to be of unexplained or suspicious cause. Percentage = number of deaths of unexplained or suspicious cause / total number of deaths.</p>	
<p>FINANCIAL ACCOUNTABILITY Update Independent Audit requirement from \$500,000 to \$750,000: “The Department of Intellectual and Developmental Disabilities (DIDD) requires providers receiving \$750,000 or more in aggregate state and federal funds to obtain an independent audit of the organization and to submit copies of the independent audit to the Tennessee Office of the Comptroller and to the DIDD Office of Risk Management and Licensure.” There are two different thresholds for two different audits: <ul style="list-style-type: none"> • DIDD has adjusted the threshold for a FAR audit. Going forward all providers who receive at least \$500,000 in funding will have a FAR audit. • An Independent Financial Audit is required for providers who receive at least \$750,000 in funding. This change was made by the Office of the Comptroller. Both of these audits are based on the amount of state and federal funding the provider receives, not just waiver dollars.</p>	

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For Assistance Contact:

- Behavior Services and IBRS: Bruce.Davis@tn.gov
- Billing/Payment Maintenance Issues: DIDD_Billing.ACR@tn.gov
- Cap Calculation Maintenance Issues: Steve.Lundwall@tn.gov
- Cost Plan Maintenance Issues: DIDD_Business.Services@tn.gov
- CMS Final Rule: Hollie.Campbell@tn.gov
- Day Services: Amy.Gonzalez@tn.gov
- Nursing Services: Bill.Feldhaus@tn.gov
- Residential Services: Barbara.DeBerry@tn.gov or Kimberly.J.Black@tn.gov
- Support Coordination: Courtney.Kelly@tn.gov
- Supported Employment: Amy.Gonzalez@tn.gov
- Therapeutic Services: Karen.Wills@tn.gov
- Quality Monitoring: Pat.Nichols@tn.gov