

The logo consists of a red square containing the letters 'TN' in white, serif font. Below the red square is a thin white horizontal line, and below that is a dark blue horizontal bar. A small 'TM' trademark symbol is located at the bottom right corner of the dark blue bar.

TN

Implementing the  
**HCBS Settings Rule:**  
One State's Approach

# Context for the Discussion

- **Not** here to tell you “how to implement the rule”
  - No “one right way”
  - Every state must determine the approach that makes the most sense for *their* state and *their* HCBS system
- Goal is to provide tools and share experiences that may be helpful in formulating your state’s approach
- Goal is also to learn things from one another that will benefit *all of us* as we continue moving forward

# Agenda

- Vision
- Approach
- How do we get there?
- What should we do first?
- Develop the process: *Plan to assess*
- Education and Input
- Rolling it out: *Assess to plan*
- Discovery/Remediation
- When choice meets rule
- Heightened Scrutiny
- Ongoing Review and Monitoring



# Vision

- **Begin with the end in mind –**  
What's our vision for Tennessee?
- **At the end of the process –**
  - What do we want to be able to say?
  - How do we want to communicate the process and the results?
  - What do we want to achieve?

**Not just compliance, but**

***Better lives for the people we support***

# Approach

- Comprehensive statewide approach across Medicaid programs and authorities
  - 1115 MLTSS (**managed care**) program
  - 3 Section 1915(c) **fee-for-service** waivers
- Full compliance as soon as possible—*before* 2019
- Not just *what we think* but *what we know* (100% assessment and review/validation)
- Leverage contractor relationships (expand capacity)
- Minimize provider (and administrative) burden, where possible
- Leverage technology for data collection and analysis

# Approach

- Inform and engage stakeholders in meaningful ways
- Meet the *spirit and intent* of the regulation
- Leverage *the opportunity* to move the system forward and improve people's lives
- Embed in ongoing processes (not just “one and done,” but a continuous process)

# How do we get there?

- **Determine what is needed to tell the story**
  - Stakeholder input
  - Data
  - Proof of compliance
  - **Member experience**
- **How many people on our team? 5**
- **How many settings? 1245**

# What should we do first?

- **Breathe**
- **Break it down: plan to assess, assess to plan**
  - **Levels of assessment and remediation**
  - **Systemic**
    - State Medicaid Agency
    - Contracted operating entities
      - Managed Care Organizations
      - Department of Intellectual and Developmental Disabilities
  - **Site-Specific**
    - Provider Self-Assessment
    - Individuals receiving HCBS



# What should we do first?

- **Breathe again**
- **Keep breaking it down**
  - Manageable steps
  - Utilize contractor operating entities as Designated Reviewers
  - SMA validation

# Develop the Process: *Plan to assess*

- **The manageable steps**

- Self-assessments

1. State

2. Contractors

3. Providers

- Validation of contractor and provider self-assessments and transition plans

- Individual Experience Assessments

- Monitor implementation of transition plans

- Monitor/assure ongoing compliance

# Develop the Process: *Plan to assess*

- **Training**

- Individuals receiving HCBS and families/representatives
- Designated reviewers (contracted operating entities)
- Providers

# Develop the Process: *Plan to assess*

## State (Systemic) Self-assessment

- What do we need to look at?
  - *Everything* that impacts HCBS
    - Licensure requirements
    - Contracts
      - Managed Care Organizations
      - Department of Intellectual and Developmental Disabilities
      - Fiscal Employer Agent
      - ADRCs - Single Point of Entry
    - State statutes
    - Rules
    - Waiver language

# Develop the Process: *Plan to assess*

## State (Systemic) Self-assessment

- What do we need to look at?
  - *Everything* that impacts HCBS
    - Policies
    - Procedures
    - Protocols
    - Practices
    - Reimbursement methodologies
    - Billing practices
    - ... (yes, there's more)

# Develop the Process: *Plan to assess*

## Contractor Self-assessment

### MCO s (MLTSS—managed care)

- Policies & Procedures
- Provider Agreements
- Provider Manual
- Provider Credentialing Requirements
- Staff Training Materials
- Quality Monitoring materials and processes

### Dept. of I/DD (1915(c)—fee-for-service)

- Policies & Protocols
- Provider Agreements
- Provider Manual
- Provider Credentialing Requirements
- Staff Training Materials
- Quality Monitoring materials and processes

# Develop the Process: *Plan to assess*

## Provider Self-assessment

- **We need data—how will we collect it?**
  - Provider self-assessments
  - Online survey tool (export to excel, slice & dice)
  - Create tool in fillable document that matches survey
    - Specific instructions
- **How do we get proof of compliance?**
  - Document review
  - On-site visits
- **How will know this is accurate?**
  - Require stakeholder involvement
  - *Ask the people receiving HCBS!*

# Develop the Process: *Plan to assess*

## Individual Experience Assessment (IEA)

- Developed from the CMS Exploratory Questions
- Administered by contracted case management entity
  - Independent Support Coordination agency
  - I/DD Dept. Case Manager
  - MCO Care Coordinator
- Phase I - individuals receiving residential and day services
- Phase II - embed in annual planning process for **all** persons receiving HCBS
- Data from IEA is cross-walked to the specific provider/setting in order to validate site-specific provider self-assessment results
- 100% remediation of any individual issue identified; thresholds established (by question) for additional remediation actions, e.g., potential changes in site-specific assessment, transition plan, policies, practices, etc.



# Now what? Education and input

## Tell people about the Rule!

- **Communicate with consumers, families, providers and advocates**
  - Open, posted introductory letter to the new rule
  - Educational materials (FAQs) and training
  - Disseminate through advocacy groups and providers
  - Consumer/family and advocate information sessions (again and again...)
  - Opportunities to ask questions
  - Structure public input, but leave room for more...
  - Accommodations
  - Extension

# Now what? Education and input

And they loved it, right?



- *Adjust the plan as needed based on public comment.*

# Now what? Education and input

## Keep telling people about the Rule!

- **Communicate *again* with individuals and families**
- **Communicate *again* with contractors**
- **Communicate *again* with providers**
  - More information sessions (again and again...)
  - *While this is going on, finish developing all the things you are talking to people about...*

# Rolling It Out: *Assess to plan (Site-specific)*

## Provide *extensive* training

- **Train providers**
  - Detailed walk through of each tool and expectations
    - Self-assessment form (literally, each question)
    - Accessing the survey
    - Validation form
    - Transition plan
  - Demonstration of the survey
  - Expectations for document submissions
  - Stakeholder involvement requirement
- **Implement the provider self-assessment process**
- **Monitor submission progress**

# Rolling It Out: *Assess to plan (Site-specific)*

## Validation process

- **100% validation of self-assessment and transition plan required**
  - Leverage contracted entities for 100% review (versus smaller sampling approach)
  - Standardized template
- **TennCare validation**
  - Initial reviews from each designated reviewer prior to sending to provider
  - Sample review at the conclusion of the process
  - Complicated settings
  - Upon request
- **On-site visits**

# Discovery:

## *What did we learn?*

# Systemic Assessment

# Discovery and Remediation: Systemic Assessment

## HCBS Setting Standards Remediation Crosswalk

- Identifies each of the State's "standards" applicable to each HCBS setting (regardless of State "owner")
  - 1115 and 1915(c) waivers
  - State statute
  - State Administrative Rules
  - State contracts
- Documents assessed compliance of each "standards" document with each applicable provision of the HCBS setting rule
- Identifies specific systemic remediation actions



# Discovery and Remediation: Systemic Assessment

- Additional “opportunities” identified with respect to documents and processes that implement State standards
  - Needs Assessment and Plan of Care protocols
  - Medical Necessity protocols for residential/day services
  - Provider Agreements
  - Provider enrollment processes (1915(c))
  - MCO Credentialing processes
  - QA monitoring/tools
  - HCBS Provider Manual
  - Rate methodologies

# Discovery and Remediation: Systemic Assessment

## Validation of systemic remediation processes

- Review/approval of all 1915(c) policies, protocols, etc.
- Desk review of amended MCO policies, processes, etc.
- MCO onsite readiness assessments, including credentialing and re-credentialing processes
- Review of amended Provider Agreements by Tennessee Department of Commerce and Insurance
- Revise internal audit processes for ongoing compliance monitoring

# Site-Specific Assessment

# Discovery: Provider Self-Assessment Results

## Total Number of Provider Settings Assessed: 1245

- Total Residential Provider Settings: 704
  - Residential Habilitation and Medical Residential: 170
  - Family Model Residential: 290
  - Supported Living: 144
  - Assisted Care Living Facility: 99
  - Adult Care Home: 1
- Total Non-Residential Settings: 541
  - Community-Based Day: 167
  - Facility-Based Day: 86
  - Supported Employment: 99
  - In-Home Day: 147
  - Adult Day Care: 42

# Discovery: Provider Self-Assessment Results

## Reported Compliance among Providers:

- Provider settings deemed 100% compliant with the HCBS Settings Rule - **14%**
- Provider settings who have identified at least one area that is currently out of compliance with the HCBS Settings Rule - **84%**
- Provider settings deemed non-compliant with HCBS Settings Rule and opting not to complete a provider level transition plan - **2%** (27 settings )

Whew...now what?

# Site Specific Remediation: *What do we do about it?*

# Remediation: Transition Plans

## 1048 Transition Plans Received

Areas identified as non-compliant:

- Physical Location: 367 or 35%
- Community Integration: 694 or 66%
- Residential Rights (Residential Only): 408 or 39%
- Living Arrangement (Residential Only): 552 or 53%
- Policy Enforcement Strategy: 936 or 89%

# Remediation: Transition Plans

## Helping providers achieve compliance:

- Educating boards and families
- Technical assistance
- Focus groups



# The elephant in the room:

*Not everyone wants to work or be integrated!*



- What to do when choice meets the rule

# When individual choice meets HCBS Rule:

- A person can decide if they want to work.
- A person can choose the degree of community integration/participation they want.
  - It must be *meaningful* choice.
  - It's easy to choose NOT to do something that's new and different and that you don't really understand.
  - We have to help people understand; provide opportunities.
- A person can choose the setting they want to live in... even institutional. But they can't choose a non-compliant setting and receive Medicaid HCBS funding.

# When individual choice meets HCBS Rule:

- A person can choose where they spend their day, including sheltered employment. Medicaid only pays for *pre-vocational* services in a sheltered setting.
- A person can choose to live in a home in close proximity to another home where people with disabilities live.
  - The setting will have to comport in order to receive HCBS funds...which means offering meaningful support and opportunities for inclusion.
  - Must demonstrate that people are working and participating in community to the extent *they* want AND provider is doing all they can to support that.
  - People who aren't are making those decisions in an informed and meaningful way and documented in the plan of care
  - And we NEVER give up...we keep trying. (Not one and done.)

# Are we there yet?

**More discovery;**  
**More remediation:**  
***Heightened Scrutiny***

# Settings “presumed” to have institutional qualities

- **Settings that have the qualities of an institution (applies to residential and non-residential services):**
  - Located in a public or privately operated building that provides inpatient institutional treatment
  - Located on the grounds of, or immediately adjacent to a public institution
  - Has the effect of isolating members who receive Medicaid funded HCBS from the broader community of people who do not receive Medicaid funded HCBS

# Settings “presumed” to have institutional qualities

- Settings that have the following two characteristics *potentially* have the effect of isolating individuals:
  - The setting is designed specifically for people with disabilities, and often even for people with a certain type of disability.
  - The individuals in the setting are primarily or exclusively people with disabilities and on-site staff provides many services to them.
- Characteristics of settings that isolate:
  - The setting is designed to provide people with disabilities multiple types of services and activities on-site, including housing, day services, medical, behavioral and therapeutic services, and/or social and recreational activities.
  - People in the setting have limited, if any, interaction with the broader community.
  - Settings that use/authorize interventions/restrictions that are used in institutional settings or are deemed unacceptable in Medicaid institutional settings (e.g. seclusion).

# Settings that may be “presumed” institutional

## Services/settings selected by State for potential heightened scrutiny review (based on CMS rule/guidance):

- Adult Day Care (inside inpatient facility/settings that isolate)
- Assisted Care Living Facilities (inside inpatient facility/settings that isolate)
- Critical Adult Care Homes (settings that isolate)
- Facility Based Day (settings that isolate)
- Residential Habilitation settings with more than 4 persons (settings that isolate)
- Supported Living and Residential Habilitation settings in close proximity (settings that isolate)

# CMS Guidance: Settings “presumed not HCBS”

- **Types of evidence** that should be submitted to CMS to demonstrate that a setting does not isolate individuals receiving HCBS from the broader community of individuals not receiving HCBS:
  - The setting is integrated in the community to the extent that persons without disabilities in the same community would consider it a part of their community and not associate the setting with the provision of services to persons with disabilities.
  - The individual participates regularly in typical community life activities outside of the setting **to the extent the individual desires** and activities:
    - Do not include only those organized by the provider agency for a group of individuals with disabilities and/or involving only paid staff
    - Do foster relationships with community members unaffiliated with the setting
  - Services to the individual, and activities in which the individual participates, are engaged with the broader community



# Heightened Scrutiny

## Heightened scrutiny review will consist of:

- A review of data pertaining to services utilized by all persons receiving services in the specified setting
- An on-site visit and assessment of physical location and practices
- A review of person-centered support plans and Individual Experience Assessments for individuals receiving services in the setting
- Interviews with service recipients
- A secondary review of policies and other applicable service related documents
- Additional focused review of the agency's proposed transition plan
  - Including how each of the above is expected to be impacted as the plan is implemented
  - Transition plans may require revisions

# Heightened Scrutiny

## Heightened scrutiny review will consist of:

- State determination regarding:
  - Whether the setting in fact is “presumed to have the qualities of an institution” as defined in rule/guidance
  - Whether the presumption is overcome based on evidence
- Collection of evidence to submit to CMS to demonstrate compliance (**ONLY if the state in fact feels the setting is “presumed not HCBS” AND meets the HCBS requirements**)

# Heightened Scrutiny

## After information is collected and reviewed:

- TennCare will compile and share (in a digestible format) with a Review Committee comprised of representatives from advocacy groups that serve individuals receiving HCBS
  - AARP
  - The Arc of Tennessee
  - Council on Developmental Disabilities
  - Disability Rights Tennessee (Protection & Advocacy)
  - Statewide Independent Living Center
  - Tennessee Disability Coalition
- The Advocacy Review Committee will review the evidence and help advise if each setting meets the requirements of the settings rule (or will once the transition plan is implemented).
- Settings that will be submitted to CMS will be posted (or notification will be provided directly for individual residences) for public comment

# Heightened Scrutiny

## After information is collected and reviewed:

- All settings presumed to have the qualities of an institution (as defined in rule/guidance) will be submitted to CMS for final review **IF** the State determines the presumption is overcome
- Evidence will be packaged in a digestible format including analysis of all evidence compiled during the HS review process, with complete documentation available for more in-depth review

# And now we're done? Not so fast...

## Ongoing review and monitoring:

- Embed in person-centered planning processes
- Embed Individual Experience Assessment in annual person-centered plan review
- Embed in 1915(c) provider enrollment process
- Embed in MCO credentialing process (initial and ongoing)
- Embed in Quality Assurance review processes
- Leverage external survey processes for validation (e.g., National Core Indicators and NCI-AD)

# Working together: Tennessee's materials

- Available at <http://tn.gov/tenncare/topic/transition-plan-documents-for-new-federal-home-and-community-based-services>
  - Updates
  - All posted versions of the Statewide Transition Plan with tracked changes to ease stakeholder review
  - Provider self-assessment tools and resources
  - Individual Experience Assessment
  - Heightened Scrutiny tools and resources
  - Training and education materials

# Questions?