

State of Tennessee

Statewide Transition Plan and Heightened Scrutiny Milestone Tracking

Quarterly Report

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	In process – note date revision. See narrative (page 14, #1) for details.
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	Ongoing
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
Send the 6 approved DIDD/HCBS protocols to providers and post on the DIDD website	12/31/2015	12/31/2016	11	Task being revised and will be removed from Milestone chart in Q4 report. See narrative (page 14, #1) for details.
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	In process
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	In process

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. 14% of provider settings were determined at that time to be fully compliant with the Final Rule. The total number of HCBS settings assessed was 1247. The original number reported was 1245 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

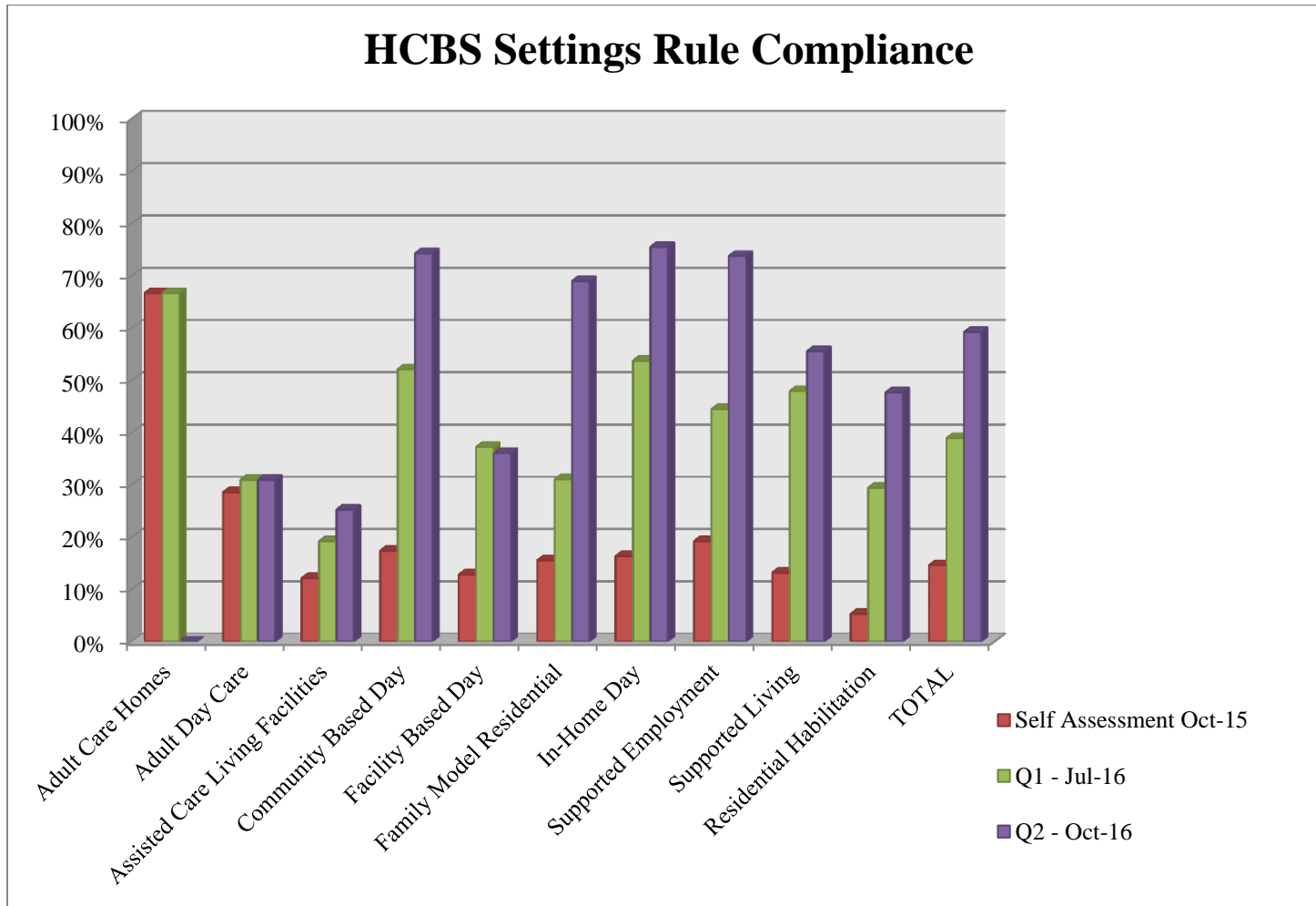
The chart below represents Tennessee’s current provider compliance status as of December 31, 2016. It also indicates the number of provider settings that are implementing a transition plan, have no intent to comply, and have closed. Providers with “No intent to Comply” may be closing that line of business entirely (e.g., a sheltered workshop or other facility-based program), or may be remaining in business but will only be serving private pay individuals and will no longer be participating in Medicaid reimbursed HCBS for that component of its operations. A provider with no intent to

comply that is closing the particular line of business will move into the “Closed” column once the process is complete. Providers categorized as “Closed” are those who are no longer in business providing the service indicated. For example, there are 20 Facility Based Day service providers who have elected not to come into compliance with the final rule, but (some) are continuing their line of business with private pay individuals. There are 16 Facility Based Day service providers who are no longer providing Facility Based Day at all (indicated in the “Closed” column). Some of those providers have closed their business and some have transitioned their model of business to Community Based Day and/or Employment services. 913 Individuals previously receiving Facility Based Day services have transitioned to Community Based Day services with the same provider. There are currently 840 settings with a status of compliant. TennCare expects that this number will continue to change as a result of the Heightened Scrutiny process.

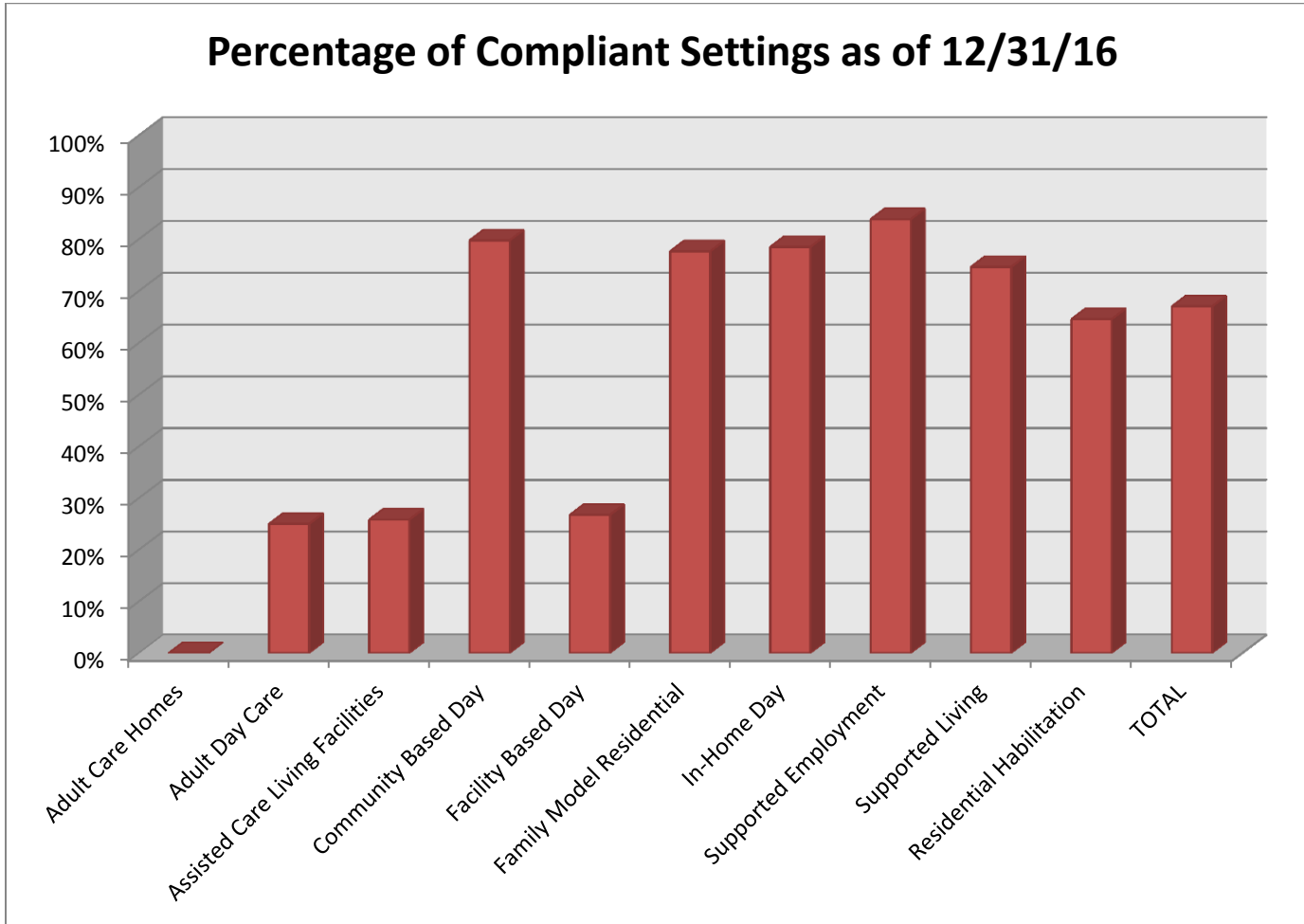
Provider Compliance Status as of 12/31/2016					
Setting Type	Total # of settings	Compliant	Implementing Transition Plan	No intent to Comply	Closed
Adult Care Home	2		2		
Adult Day Care	48	12	17	18	1
Assisted Care Living Facility	89	23	51	15	
Community Based Day	168	134	29		5
Facility Based Day	86	23	27	20	16
Family Model Residential	291	226	40		25
In-Home Day	149	117	27	1	4
Supported Employment	99	83	14		2
Supported Living	146	109	35	2	
Residential Habilitation	175	113	52		10
TOTALS	1253	840	294	56	63

*Please note: Changes have been made to the total number of settings originally reported in the Statewide Transition Plan and previous quarterly reports. These changes were identified after improvements were made to our data collection process. The total number of Assisted Care Living Facilities decreased by 10 as a result of duplication in the original count. The number of Adult Care Homes has changed from 3 to 2 because one was misreported and should have been an Adult Day Care. All other revisions reflect slight increases due to improved data collection methods and the identification of settings that were unintentionally left out of the original count.

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 provider compliance status as of December 31, 2016. It is not being shown in comparison to previous quarters because the total number of settings has changed.



Heightened Scrutiny Milestone Tracking

²The first 3 Heightened Scrutiny milestones should be completed prior to resubmitting the STP to CMS (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.	10/02/2017	
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: Onsite assessments and interviews will be conducted April 2016 through March 31, 2017. Data compilation and onsite 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.	09/29/2017	
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 	10/02/2017	
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.	11/10/2017	

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	24	9	10			5	
Quarterly progress update <i>[Second quarter after initial and final approval.]</i>	10/13/16	07/01/2016 – 09/30/2016	53	19	11	10	8	5	
Quarterly progress update <i>[Third quarter after initial and final approval.]</i>	1/31/17	10/01/2016 - 12/31/2016	113	26	32	10	32	11	2
Quarterly progress update <i>[Fourth quarter after initial and final approval.]</i>	4/13/17	01/01/2017 - 03/30/2017							
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							
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>	4/13/17	01/01/2017 - 03/30/2017							
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							
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 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>	4/13/17	01/01/2017 - 03/30/2017							
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							
Quarterly progress update <i>[Seventh quarter after initial and final approval.]</i>	1/13/2018	10/01/2017 - 12/31/2017							

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

The Statewide Transition Plan implementation milestones have been completed as indicated in the chart on pages 1-3 of this report. Three of the twenty-three Remediation milestones are ongoing or in process (see chart on pages 3-4 of this report for specific Remediation milestone status). One milestone, *Send the 6 approved DIDD/HCBS protocols to providers and post on the DIDD website*, will be removed from the tracking chart as a result of recent developments which impact their use and subsequent discussion with our sister agency, the Department of Intellectual and Developmental Disabilities (DIDD). These protocols were initially developed and implemented to ensure compliance with a longstanding Consent Decree entered in federal court. The protocols set forth criteria used by DIDD staff reviewing support plans to determine the medical necessity of services provided under the Section 1915(c) waivers, which was required under the terms of the federal Court Order. Certain of these protocols—those pertaining to residential and day services—were not aligned with the HCBS Settings Rule and as a practical matter, were largely used to determine the rate of reimbursement paid to a provider and not whether a service should be authorized. The case which had given rise to these protocols ended in December 2016, allowing the State to reconsider its approach in achieving compliance with the new Rule. Upon discussion, TennCare and DIDD agreed the best course of action for the residential services protocols would be to discontinue their use in the service authorization process, and to instead develop and implement guidance documents for plans reviewers pertaining to residential services rates. These guidance documents must comport with the Final Rule. The protocol for Employment and Day Services was modified to comport with the HCBS Settings Rule, but may also be discontinued in favor of rule-compliant guidance. As a result, this milestone will be removed from the tracking chart and will not be in the next Quarterly Report. A second milestone, *DIDD will bring its policies into alignment with all CQL Basic Assurances ® for CQL Accreditation (which aligns with HCBS Settings Rule)*, has been updated with a revised end date of December 31, 2017. The original date was December 31, 2016. The State has identified that some additional modifications are needed on two policies (including one impacted by the aforementioned Court Order) to ensure full alignment with the final rule.

State Statutes: Statutory revisions were submitted (including authority to revise licensure and other rules, as applicable) during the Tennessee's legislative session January through April, 2015. State regulations: Legislation to provide statutory obligation and authority to make such rule revisions was passed in the 2015 legislative session. The approved Statewide Transition Plan outlines several of the provisions TennCare found to be non-compliant. TennCare has provided education and explanation regarding the need for rule revisions to four State Departments. The Tennessee Department of Intellectual and Developmental Disabilities and Tennessee Department of Mental Health and Substance Abuse Services have promulgated new rules which have brought them into compliance with the HCBS Settings Rule. The Department of Health and the Department of Human Services still need to complete the rule revision and promulgation process.

Tennessee Department of Intellectual and Developmental Disabilities: DIDD promulgated new administrative rules which became effective on July 1, 2016, and brought them into compliance with the HCBS Settings Rule.

- Section 0465-02-02-.01(2) concerning the Statement of Authority states that all Medicaid-reimbursed HCBS providers are required to comply with the HCBS Settings Rule, and further states requirements for provider self-assessment, transition plans, and ongoing compliance in subsections (2)(a) and (2)(b).

- Section 0465-02-06-.06(2) concerning Person Supported Rights states that "Medicaid-reimbursed individuals receiving HCBS services shall be afforded the rights referenced in 42 C.F.R. § 441.301(c)(4) of the HCBS Settings Rule", thereby incorporating the protections of the HCBS Settings rule by reference.
- Sections 0465-02-06-.06(4)(b), (c), (d), (e), (f), and (g) state rights provided to individuals under the HCBS Settings Rule, including rights specific to individuals receiving services in provider-owned and/or controlled residential settings, which include rights of community integration, free use of commons areas, the right to decorate one's bedroom/sleeping area, the right to privacy, and the right to receive visitors at any time.
- Section 0465-02-06-.08(1)(d) concerning "Modification or Limitation of Person Supported Rights" states the modification requirements from the HCBS Settings Rule that are required prior to implementing restrictions on residents' rights in a provider-owned and/or controlled setting.

Tennessee Department of Mental Health and Substance Abuse Services: DMHSAS promulgated new administrative rules which will bring them into compliance with the HCBS Settings Rule. The rules will be effective February 28, 2017 and include:

- Section 0940-05-06-.09 concerning "Services or Facilities Providing Home and Community Based Services" states that all Medicaid-reimbursed HCBS providers are required to comply with the HCBS Settings Rule, and 0940-05-06-.09(1) provides that "Medicaid-reimbursed individuals receiving HCBS services shall be afforded the rights referenced in 42 C.F.R. § 441.301(c)(4) of the HCBS Settings Rule", thereby incorporating the protections of the HCBS Settings Rule by reference.
- Section 0940-05-06-.09(2) expressly provides for the right of individuals in residential HCBS Settings to receive visitors at any time.
- Section 0940-05-06-.09(3) states the modification requirements from the HCBS Settings Rule that are required prior to implementing restrictions on residents' rights in a provider-owned and/or controlled setting.

TennCare has also identified additional provisions that are not compliant with the HCBS Settings Rule and will require revision. A formal request to revise non-compliant provisions has been sent to the Commissioners of the Tennessee Department of Health, and Tennessee Department of Human Services.

Tennessee Department of Health (DOH): There are three sections that need to be amended in order to bring the State into compliance with the HCBS Settings Rule. The first section concerns secure units in Assisted Care Living Facilities (ACLFs). The second section concerns secure units and ensuring controlled-egress is addressed as a modification to the HCBS Settings Rule. This section also includes limitations on the hours in which ACLF residents can access certain areas of the ACLF, when ACLF residents can receive visitors, and access to common areas and food at any time. The third section concerns residents' rights in Adult Care Homes, specifically related to access to common areas. In addition, DOH Rules can be strengthened by amending language concerning resident rights and conditions required for provider-owned and/or controlled residential setting to include reference to the rights and conditions provided in the HCBS Settings Rule.

Tennessee Department of Human Services: There are two sets of provisions that need to be amended in order to bring the State into compliance with the HCBS Settings Rule. The first set of provisions concern the physical location of adult day centers receiving Medicaid HCBS reimbursement and the second involves strengthening language around Medicaid HCBS reimbursed members' rights in adult day centers under the HCBS Settings Rule.

The State submitted waiver renewals to CMS on October 1, 2014. Waiver renewal requests and all amendments were approved by CMS on March

27, 2015.

As outlined in the Statewide Transition Plan, the State amended its Contractor Risk Agreement (CRA) with the Managed Care Organizations (MCOs) to include HCBS Settings Rule language effective January 1, 2015. Additional amendments became effective July 1, 2015, including the process for ensuring final rule compliance prior to credentialing and re-credentialing providers. Prior to executing a provider agreement with any HCBS provider seeking Medicaid reimbursement for HCBS, the MCO is required to verify that the provider is compliant with the HCBS Settings Rule. The CRA has since been amended to extend that requirement to ECF CHOICES members. Subsequent amendments included a requirement that the person-centered planning process should include the review of the appropriateness of any modifications to a member's rights under the HCBS Settings Rule.

As outlined in the Statewide Transition Plan, the State also amended its 1915(c) Waiver Interagency Agreement with DIDD to include HCBS Settings Rule language effective July 1, 2015. In January of 2015, DIDD achieved Person-Centered Excellence Network Accreditation, by CQL | The Council on Quality and Leadership. All policies are in alignment with CQL Basic Assurances for CQL Accreditation, which align with HCBS Settings Rule.

Finally, as described in the Statewide Transition Plan, the DIDD Provider Agreement contained non-compliant language. The Provider Manual has been revised to include a provision requiring providers to maintain compliance with the HCBS Settings Rule. In addition, HCBS Settings Rule language has been included that sets requirements related to person centered planning, individual rights, and modifications to the rule. The State has approved these revisions and the Provider Manual has been posted on the DIDD website.

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

To date there have been no known challenges for the state's remediation and relocation process. The TennCare Person Centered Practices team began the relocation process on June 23, 2016. The MCOs have been aware of the process since it was developed for the STP and TennCare has kept them abreast during monthly MCO/TennCare meetings. The Director of Person Centered Practices sent a request to each MCO to identify members requiring transition from residential sites which had self-identified as non-compliant and did not intend to come into compliance with the HCBS Settings Final Rule. All members in residential settings impacted by non-compliant providers have transitioned to their new residential setting.

The TennCare Person-Centered Practices team tracked each step of the relocation process for members impacted by the provider self-identifying as not compliant with the final rule. The state's completion goal was October 31, 2016, but we allowed for extensions if requested by the member for extenuating circumstances. The last member transition occurred on November 6th, 2016. An extension was granted due to the member's process of choosing a provider. The State will continue to monitor members who may impacted should there be additional providers who cannot or refuse to come into compliance (see chart on page 6 of this report).

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.

As previously reported, the decision to review certain setting types under the heightened scrutiny process came from state leadership. TennCare along with its contracted entities understood CMS guidance regarding physical location as it pertained to heightened scrutiny, and felt comfortable with the provider self-assessment and contracted entity review process when determining whether these settings were compliant with the rule or if transition plans were adequate to bring non-compliant settings into compliance. However, TennCare along with statewide advocates had concerns with settings presumed not HCBS as it related to settings that have the effect of isolating members who receive Medicaid funded HCBS from the broader community of people who do not receive Medicaid funded HCBS. TennCare determined the following settings are potentially presumed not HCBS until a heightened scrutiny review has been conducted by the state and evidence either confirms that the setting does not isolate and therefore does not require heightened scrutiny review by CMS, or is likely to isolate, but evidence is sufficient to support that the setting overcomes the presumption, and will be submitted to CMS:

- Adult Day Care: Primarily these settings are designed for and serve exclusively people who are elderly or have a disability. Participants appear to have limited, if any, interaction with the broader community.
- Assisted Care Living Facilities: Some of these settings are located adjacent to an inpatient treatment setting and have the potential to isolate residents from the broader community. Other settings may be located within the broader community, but residents have limited, if any, interaction with the broader community.
- Facility-based Day: These settings are designed specifically for people with disabilities, individuals in the setting are primarily people with disabilities, and people in the setting have limited interaction with the broader community.
- Supported Living and Residential Habilitation homes within close proximity: These settings are designed specifically for people with disabilities, individuals in the setting are primarily people with disabilities and the settings have the potential to isolate people receiving Medicaid HCBS from the broader community.
- Residential Habilitation with more than four (4) residents: These settings are designed specifically for people with disabilities, individuals in the setting are primarily people with disabilities and the settings have the potential to isolate people receiving Medicaid HCBS from the broader community.
- Adult Care Homes: These settings are designed specifically for people with disabilities, individuals in the setting are primarily people with disabilities and the settings have the potential to isolate people receiving Medicaid HCBS from the broader community.

Evidence to CMS:

TennCare’s heightened scrutiny process began April 1, 2016. TennCare, contracted entities and the provider all work together to develop an electronic heightened scrutiny report for the purpose of submission to CMS. The heightened scrutiny review process has several steps: 1) secondary review of policies and procedures; 2) on-site review, including interviews with participants and staff of all levels; 3) initial provider review report

completed by TennCare and review team; 4) provider response to initial report; 5) final provider review report completed by TennCare and review team; and 6) Advisory Review Committee review and determination of compliance or non-compliance.

Following the completion of the initial heightened scrutiny visits and the review of feedback from providers and review teams, the State has finalized the review report template which will be populated with data to demonstrate evidence that all settings submitted to CMS for review have, based on the State's review process and Advocacy Review Committee review results, overcome the presumption of having institutional qualities and are in fact, HCBS in nature.

It is TennCare's intent to submit all reports to CMS on or before October 2, 2017.

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

Heightened scrutiny reviews commenced in May 2016 and have continued monthly with the exception of the month of September which was spent implementing improvements to the process as reported in Quarter 2. Reviews resumed in October 2016 with the implementation of the revised process for coordinating and conducting reviews.

TennCare continues to improve its efforts to track progress on individual provider transition plan implementation. During the quarter, TennCare revised the HCBS Settings Rule Compliance Tracking Report template that is used by contracted entities to continuously track the status of provider compliance with the HCBS Settings Rule to better capture needed information. The report requests data to demonstrate progress on achievement of provider transition plan milestones. It was designed to be used as a tool to assist contracted entities with tracking provider compliance, but also to be used by TennCare to collect valuable information about the process overall. For example, TennCare should be able to capture instances where a provider initially self-assessed and was validated as compliant, but was later required to create a transition plan following the results of the on-site heightened scrutiny review. Contracted entities will submit the report to TennCare each quarter and this data will be used to inform TennCare's STP Deliverable Quarterly Status Report to CMS.

The chart below shows the percentage of heightened scrutiny reviews that have been completed as of December 31st, 2016. Please note that the total number of Heightened Scrutiny Reviews has changed from the previous quarter. This number has and will continue to change until the end of March, 2017 as we learn of settings that close or indicate they have no intent to comply before the Heightened Scrutiny Review is completed.

Completed Heightened Scrutiny Reviews by Setting as of 12/31/2016			
Setting Type	Total Heightened Scrutiny Reviews	Reviews Completed	Percent of Reviews Completed
Adult Care Homes	2	2	100%
Adult Day Care	29	21	72%
Assisted Care Living Facilities	74	53	72%
Facility Based Day	71	54	76%
Residential Habilitation > 4 persons	62	20	32%
Supported Living and Residential Habilitation in Close Proximity (# of Clusters)	67	40	60%
Total	305	190	62%

