Division of TennCare

State of Tennessee

Statewide Transition Plan and Heightened Scrutiny Milestone Tracking

Quarterly Report

Division of TennCare
October 2018

Division of Health Care Finance & Administration

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	Completed
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
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	Completed
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[1]	SR 4	In process

[1] The State plans to maintain the expectation of full provider compliance by March 17, 2019; however this deadline may be extended for individual providers needing additional time to complete implementation of a transition plan. Extensions shall not exceed the CMS compliance deadline of March 17, 2022.

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. At that time, 14% of provider settings were determined to be fully compliant with the Final Rule. The total number of HCBS settings assessed was 1,247. The original number reported was 1,245 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 September, 30, 2018. It also indicates the number of provider settings that are implementing a transition plan, have no intent to comply or 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.

During the quarter, the total number of provider settings indicating "No Intent to Comply" increased by 1 Adult Day Center and 1 Assisted Care Living Facility settings. The Adult Day Center provider had been incorrectly reported by the MCO as "Compliant" in previous quarters. The provider had previously notified the MCO they had no intent to comply and was not serving any Medicaid members; thus no individuals will need to be transitioned. The Assisted Care Living Facility was previously reported as "Implementing Transition Plan"; however, the business was sold and the new owner has chosen to no longer serve Medicaid recipients. At the time of the sale, the provider was not serving any Medicaid members, so no individuals will need to be transitioned.

The total number of settings with a status of "Closed" increased by 18 during the quarter. A total of 11 Family Model Residential providers moved from a status of "Implementing Transition Plan" to "Closed". These providers informed the State that unrelated to the HCBS Settings Rule, they had decided to either sell or end operation of the Family Model Residential Habilitation home and to transition individuals to Supported Living or to another compliant Family Model Residential Setting. A total of 2 Facility-Based Day settings moved to a status of "Closed" during the quarter. The first Facility-Based Day setting chose not to renew the Facility-Based Day license and has transitioned to Supported Employment services. All but one individual stayed with the provider and transitioned to Supported Employment. The one individual who did not stay with the provider transferred to a compliant Facility-Based Day setting with another provider. The second Facility-Based Day setting moved from a status of "Implementing Transition Plan" to "Closed". The provider chose not to renew their Facility-Based Day licensure and transitioned to a blended model of Community-Based Day/Supported Employment. All individuals with the provider chose to remain with the provider and transition to Community-Based Day and Supported Employment. Also during the quarter, 2 Residential Habilitation settings moved to a status of "Closed". Both closures were unrelated to the HCBS Settings Rule and members were transitioned to Supported Living in compliant settings. The remaining 3 settings that moved to closed during the quarter were a Community-Based Day setting, Supported Living setting, and an In-Home Day setting operated by the same provider. The provider was a micro-agency that only served one individual family member who has transitioned to compliant settings with another provider.

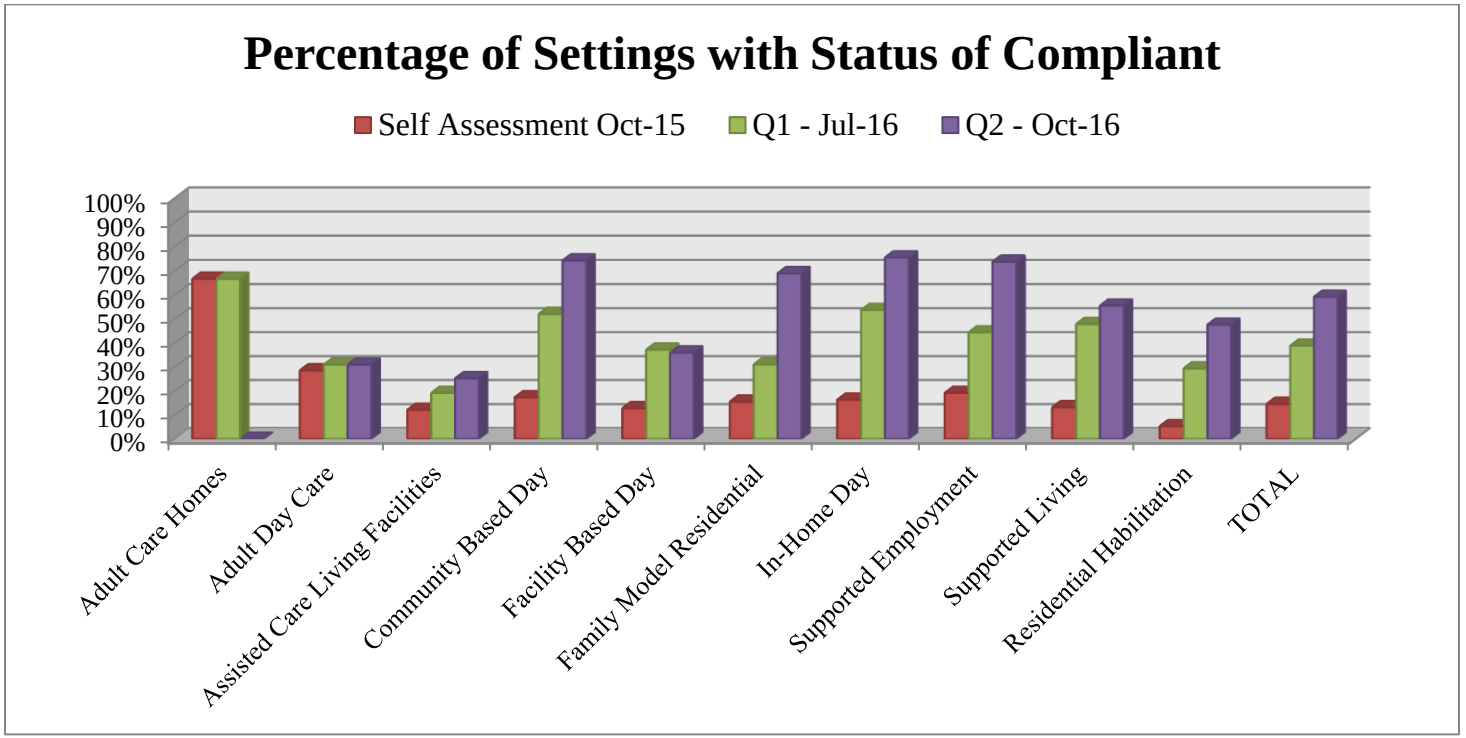
There are now a total of 30 Facility-Based Day provider settings who have elected not to come into compliance with the HCBS Settings Rule (including those with a status of "Closed"). Twenty-three of the 28 have transitioned their model of business to community-based day and/or employment services, or are continuing their line of business with private pay individuals only. The number of individuals impacted increased by 42 from last quarter, from 984 to 1,026. This increase is due to two closures as well as a provider who was reported in the previous quarter as "No Intent to Comply" but the number of individuals impacted was not yet available. Of those impacted, 41 of the individuals remained with the same provider and transitioned to community-based day/employment/in-home day services. One individual transitioned to a compliant Facility-Based Day setting with another provider.

Of the 1,026 total individuals impacted by facility-based day programs that are closed or planning to close, 726 have transitioned to community-based day/employment/in-home day services with the same provider, 182 are still receiving facility-based day services from the same provider and are pending transition, and the remaining 118 are either receiving services from another provider or are no longer receiving day services at all.

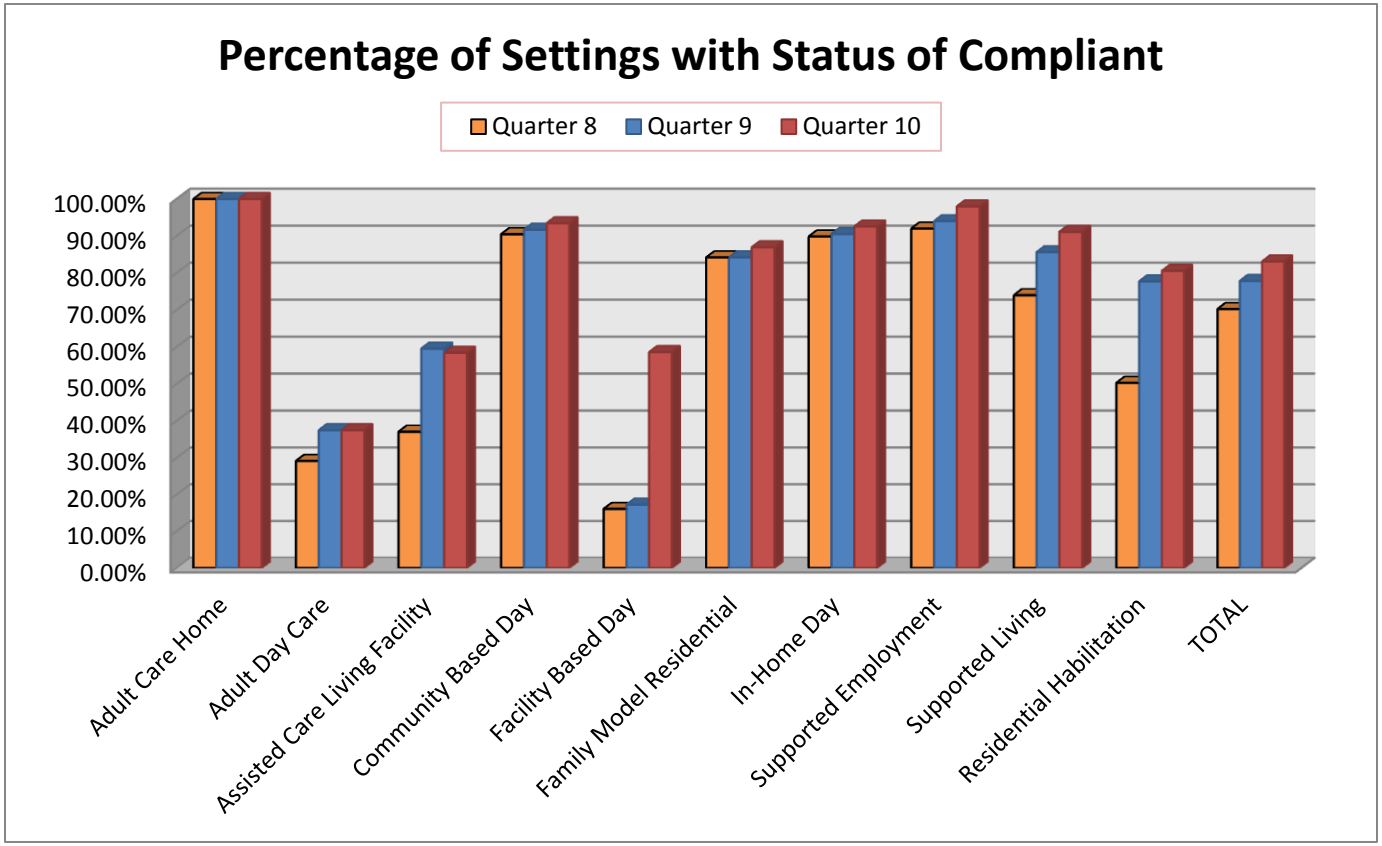
During quarter 10, the total number of "Compliant" settings increased substantially. An additional 64 provider settings completed action steps on a transition plan. The total number of settings with a status of "Compliant" has increased from 978 last quarter to 1,042 this quarter. The number of settings with a status of "Implementing Transition Plan" has decreased from 121 last quarter to 37 this quarter. TennCare expects that numbers will continue to follow this trend as providers complete their transition plan action steps and compliance is achieved. The chart below shows the total number of provider settings for each setting type by compliance status as of 9/30/2018.

Provider Compliance Status as of 9/30/2018					
Setting Type	**Total # of settings**	**Compliant**	**Implementing Transition Plan**	**No intent to Comply**	**Closed**
Adult Care Home	2	2			
Adult Day Care	48	18	5	20	5
Assisted Care Living Facility	89	52	17	20	
Community-Based Day	168	157			11
Facility-Based Day	87	51	6	10	20
Family Model Residential	291	253			38
In-Home Day	148	137			11
Supported Employment	100	98			2
Supported Living	146	133	5		8
Residential Habilitation	175	141	4		30
TOTALS	**1,254**	**1,042**	**37**	**50**	**125**

As explained in the quarter 3 report, changes were made to the total number of settings originally reported in the Statewide Transition Plan and reports for Quarters 1 and 2. These changes were identified after improvements were made to our data collection process. 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 the percentage of settings that had reached full compliance in quarter 10 as compared to the previous two quarters. It also shows that as of September 30, 2018, 83% of all settings had achieved full compliance. Additionally, 3% of settings are in the process of implementing an approved transition plan, and approximately 14% have elected not to come into compliance or have decided to close.


Percentage of Settings with Status of Compliant
Quarter 8
Quarter 9
Quarter 10
100.00%
90.00%
80.00%
70.00%
60.00%
50.00%
40.00%
30.00%
20.00%
10.00%
0.00%
Adult Care Home
Adult Day Care
Assisted Care Living Facility
Community Based Day
Facility Based Day
Family Model Residential
In-Home Day
Supported Employment
Supported Living
Residential Habilitation
TOTAL

Heightened Scrutiny Milestone Tracking

[2]The first 3 Heightened Scrutiny milestones should be completed prior to resubmitting the STP to CMS, which is the fourth HS milestone.

Heightened Scrutiny[2]			
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.	Original date: 10/02/2017 Revised date: 7/15/2018	Completed 7/15/2018
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: • On-site assessments and interviews will be conducted April 2016 through March 31, 2017. • Data compilation and on-site 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.	Original date: 09/29/2017 Revised date: 5/15/2018	Completed 5/15/2018
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: - 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	Original date: 10/02/2017 Revised date: 7/31/2018 (Pending CMS Approval)	Completed 7/31/18
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.	Original date: 11/10/2017 Revised date: 7/31/2018 (Pending CMS Approval)	Completed 7/31/18

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 *[First quarter after initial and final approval.]*	7/13/16	04/01/2015 – 06/30/2016	**25**	9	11			5	
Quarterly progress update *[Second quarter after initial and final approval.]*	10/13/16	07/01/2016 – 09/30/2016	**64**	20	11	11	17	5	
Quarterly progress update *[Third quarter after initial and final approval.]*	1/31/17	10/01/2016 - 12/31/2016	**99**	23	32	10	21	11	2
Quarterly progress update *[Fourth quarter after initial and final approval.]*	4/28/17	01/01/2017 - 03/31/2017	**108**	18	18	37	29	6	
Quarterly progress update *[Fifth quarter after initial and final approval.]*	7/13/17	04/01/2017 - 06/30/2017							
Quarterly progress update *[Sixth quarter after initial and final approval.]*	10/13/17	07/01/2017 – 09/30/2017	**1**	1					
Quarterly progress update *[Seventh quarter after initial and final approval.]*	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 *[First quarter after initial and final approval.]*	7/13/16	04/01/2015 – 06/30/2016	0						
Quarterly progress update *[Second quarter after initial and final approval.]*	10/13/16	07/01/2016 – 09/30/2016	0						
Quarterly progress update *[Third quarter after initial and final approval.]*	1/31/17	10/01/2016 - 12/31/2016	0						
Quarterly progress update *[Fourth quarter after initial and final approval.]*	4/28/17	01/01/2017 - 03/31/2017	0						
Quarterly progress update *[Fifth quarter after initial and final approval.]*	7/13/17	04/01/2017 - 06/30/2017	0						
Quarterly progress update *[Sixth quarter after initial and final approval.]*	10/13/17	07/01/2017 – 09/30/2017	0						
Quarterly progress update *[Seventh quarter after initial and final approval.]*	1/13/2018	10/01/2017 - 12/31/2017	0						
Quarterly progress update *[Eighth quarter after initial and final*	4/30/18	1/1/2018 – 3/31/2018							

approval.]									
Quarterly progress update *[Ninth quarter after initial and final approval.]*	7/30/18	4/1/2018 – 6/30/2018	**230**	50	63	53	43	19	2

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 *[First quarter after initial and final approval.]*	7/13/16	04/01/2015 – 06/30/2016	N/A						
Quarterly progress update *[Second quarter after initial and final approval.]*	10/13/16	07/01/2016 – 09/30/2016	N/A						
Quarterly progress update *[Third quarter after initial and final approval.]*	1/31/17	10/01/2016 - 12/31/2016	N/A						
Quarterly progress update *[Fourth quarter after initial and final approval.]*	4/28/17	01/01/2017 - 03/31/2017	N/A						
Quarterly progress update *[Fifth quarter after initial and final approval.]*	7/13/17	04/01/2017 - 06/30/2017	N/A						
Quarterly progress update *[Sixth quarter after initial and final approval.]*	10/13/17	07/01/2017 – 09/30/2017	N/A						

Quarterly progress update *[Seventh quarter after initial and final approval.]*	1/13/2018	10/01/2017 - 12/31/2017	N/A						
Quarterly progress update *[Eighth quarter after initial and final approval.]*	4/30/2018	1/1/2018 – 3/31/2018							
Quarterly progress update *[Ninth quarter after initial and final approval.]*	7/30/2018	4/1/2018 – 6/30/2018	**230**	50	63	53	43	19	2

Quarterly progress reporting updates

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

Systemic Remediation Milestones:
Out of the 23 systemic remediation milestones, 2 are ongoing and 1 is in process. The chart on pages 1-4 of this report shows the specific milestone status.

Contracted Entities Monitor Provider Transition Plan Implementation - Status: Ongoing

We continue to work with our contracted entities (MCOs and DIDD) to track and report progress on provider transition plan implementation each quarter (detailed on pages 5-9 of this report), and work with them to refine their reporting processes to ensure the integrity of compliance data. TennCare and contracted entities will continue to ensure that all provider settings with an approved transition plan are able to demonstrate full implementation of that plan by the individual plan's final milestone completion date. Requests made by a provider setting to amend or revise a transition plan must be approved by the appropriate contracted entity and TennCare. We will continue to provide quarterly progress updates until all provider transition plans have been fully implemented and all providers move to a status of Compliant.

CRA HCBS Settings Rule Compliance Monitoring - Status: Ongoing

TennCare and contracted entities will ensure that all provider settings maintain compliance with the HCBS Settings Rule on an ongoing basis. As outlined in the Statewide Transition Plan, TennCare amended its Contractor Risk Agreement (CRA) with the MCOs to include HCBS Settings Rule language effective January 1, 2015. Additional amendments became effective July 1, 2015, including the process for ensuring compliance with the HCBS Settings Rule prior to credentialing and re-credentialing providers. Also, prior to executing a provider agreement with any HCBS provider seeking Medicaid reimbursement, the MCOs are required under the CRA to verify that the provider is compliant with the HCBS Settings Rule using checklists approved by TennCare. Along with the implementation of the State's second managed long-term services and supports program for individuals with intellectual and developmental disabilities, Employment and Community First CHOICES (ECF CHOICES), the CRA has been amended to extend this credentialing and re-credentialing compliance review requirement to ECF CHOICES providers as well. As ECF CHOICES was approved and implemented after the effective date of the HCBS Settings Rule, settings in this program must already be in compliance at the onset of operations and providers do not have the opportunity to transition to compliance.

On July 1, 2016, the CRA was amended to require the MCOs to create settings compliance committees to conduct reviews of person-centered support plans and behavior support plans, as applicable, that include restrictive interventions, as well as all proposed or emergency right restrictions and restraints not contained in a person-centered support plan or behavior support plan. The committees must review any information from the provider's human rights committee, as applicable, identify and address potential compliance concerns, make recommendations regarding less restrictive interventions or referrals for appropriate services, and ensure informed consent for any restrictions. Settings compliance committees must also periodically review data regarding the use of interventions to determine ongoing effectiveness and whether such restrictions should be discontinued, review and make recommendations to the prescribing professional regarding potential instances of inappropriate utilization of psychotropic medications, review and make recommendations regarding complaints received pertaining to restrictive interventions or settings compliance concerns, and ensure that any proposed restriction, including restrictions in provider-owned or controlled residential settings, is the least restrictive viable alternative and is not excessive. TennCare also requires the MCOs to provide quarterly updates to TennCare on committee recommendations and actions.

TennCare and DIDD also amended their 1915(c) Waiver Interagency Agreement to include HCBS Settings Rule language effective July 1, 2015. The Provider Agreement for Section 1915(c) waiver providers was similarly amended effective July 1, 2016 to include a provision requiring providers to maintain compliance with the HCBS Settings Rule. In addition, HCBS Settings Rule language has been added to the DIDD Provider Manual that sets requirements related to individual rights and modifications to the Rule.

Compliance at the individual member level will continue to be assessed through oversight of the person-centered planning process and review of member experience data. Beginning in 2015, TennCare required that MCOS and DIDD assess each member's experience in receiving Medicaid HCBS using the Individual Experience Assessment (IEA). As part of each HCBS Medicaid recipient's annual person-centered plan review, the Care Coordinator, Support Coordinator, Independent Support Coordinator, or Case Manager, as applicable, completes an assessment of each Medicaid-reimbursed individual's experience receiving Medicaid HCBS using the IEA. The survey is intended to measure each individual's level of awareness of and access to rights provided in the HCBS Settings Rule, freedom to make informed decisions, community integration, privacy requirements, and other member experience expectations as outlined in the HCBS Settings Rule.

MCOs and DIDD review IEA survey responses for all Medicaid recipients receiving HCBS and investigate each "No" response that indicates a potential area of non-compliance or potential rights restriction. MCOs and DIDD investigate these responses to determine if the provider is in compliance with the HCBS Settings Rule, and with respect to restrictions, to ensure the restriction has gone through the HCBS Settings Rule modifications procedure, and is appropriately included in the person-centered support plan. If the restriction has not gone through the modification process and is not supported in the person-centered support plan, the MCOs and DIDD remediate the individual concerns by working with the provider and the person supported and his or her representative, if applicable. In addition, as part of ongoing monitoring of compliance with the HCBS Settings Rule, the MCOs are required to identify trends relating to member concerns with particular providers or provider settings and report those issues to TennCare along with steps for remediation to address those concerns. TennCare's review and analysis of this data will inform targeted technical assistance as well as ongoing systems transformation efforts.

Status of Remaining State Administrative Rule Changes

Tennessee Department of Health (DOH):

As previously reported, DOH decided to delay consideration of adding rule language around the HCBS Settings Rule. DOH is currently reviewing proposed language from TennCare to include on ACLF and ACH provider applications going forward. TennCare will continue these discussions until a process for achieving compliance has been finalized.

1915c Waiver amendments—Completion of the design and implementation of a new reimbursement approach

In an effort to increase flexibility, encourage individual choice and freedom, and promote integrated employment and engagement in community life, consistent with the goals of the HCBS Settings Rule, TennCare is continuing to work with stakeholders to implement revised service definitions and a new reimbursement approach for Employment and Day Services in the Section 1915(c) waivers. Most importantly, the new approach will align payment with important system values and individual outcomes, including employment and community integration, by providing higher rates of reimbursement for individual integrated employment supports and community-based day services.

Using an approach very similar to that used in the newly implemented Employment and Community First CHOICES program (an MLTSS program for people with Intellectual and/or other Developmental Disabilities), Supported Employment services will include critical pre-employment services including Employment Exploration and Discovery, as well as Job Development when it is not available to waiver participants through vocational rehabilitation. Pre-employment services covered under Supported Employment will be paid on an outcome basis. Supported Employment Job Coaching rates will be restructured to incentivize fading and adjust payment based on the level of acuity of the individual and the length of time the individual has held the job for which coaching supports are being provided. All Employment and Day services will have new definitions, and transition from per diem units of service to quarter hour units across all Employment and Day services will allow providers greater flexibility in meeting the specific individualized needs of members related to employment and community living goals. Waiver participants will have the option to use their home as their base (rather than a facility), but incentives for employment and community participation will also be implemented to prevent isolation at home. Community Participation Supports will also be incentivized through the rate structure, to encourage and support meaningful community involvement.

After gathering feedback from stakeholders on an initial proposal, TennCare worked with DIDD and with stakeholders to finalize the proposed new reimbursement structure. In quarter 5, TennCare collected data directly from waiver providers to be used to model the proposed new rates and anticipated utilization changes. (Our ability to accurately model rate impact using claims data is hampered by the current billing structure, which obscures the actual types of services that are being reimbursed within a per diem payment.) The quarter 5 data collection effort aided in accurate cost modeling. During quarter 6, the data was reviewed, validated, and used to build a cost model that compares utilization and costs within the current approach with the proposed new value-based approach. The results were shared with DIDD and providers in February of 2018. During quarter 8, TennCare did additional work with stakeholders to make final adjustments and convened implementation workgroups in preparation for amending all three waivers with the new Employment and Community services stated above.

During quarter 9, implementation workgroups were ongoing. On May 18, 2018, the State posted the proposed 1915(c) waiver changes, along with the full waiver amendment application for all three waivers for public review and comment. The proposed changes were posted on the TennCare website; sent directly to advocacy groups with a request to distribute to waiver participants and families; and to Tennessee Community Organizations, a statewide trade association for service provider organizations that support people with I/DD, with a request to share with their members and to ask those providers to share with persons supported and families. DIDD included notice in Open Line, an electronic newsletter distributed weekly to providers, advocacy organizations, and other stakeholders. The 30 day public comment period closed on June 18, 2018. A total of forty (40) comments on the proposed waiver amendment applications were received from HCBS providers, Independent Support Coordinator agencies, direct support professionals, family members/representatives, advocacy organizations, and persons supported. Many of the comments were operational in nature (regarding implementation, billing, documentation, etc.), and responses provided additional detail regarding how the changes would be implemented, but did not result in changes to the proposed waiver amendments. Detailed responses to the comments reiterate the importance of person-centered planning and service delivery based on the individualized needs and preferences of persons supported, as well as alignment with expectations of the federal HCBS Settings Rule and the Americans with Disabilities Act to provide services in the most integrated setting appropriate. On July 5, 2018 all three proposed waiver amendments were submitted to CMS.

CMS approved all three waiver amendments on September 25, 2018. Implementation of these amendments will be delayed due to the implementation of a new computer system (Project Titan) by the Department of Intellectual and Developmental Disabilities (DIDD). Only after the new Titan system is implemented and any initial problems are addressed will DIDD begin programming changes that are needed to support the implementation of the 1915(c) waiver amendments—currently projected for April 1, 2019. TennCare and DIDD participate in bi-weekly meetings to ensure that the recently approved amendments are ready for implementation as planned for April 1, 2019.

Heightened Scrutiny Milestones:
Each of the 4 Heightened Scrutiny Milestones on page 10 of this report have been completed.

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

As reported during the previous quarter, one continuing challenge is the interplay between the authority of members' legal representatives, particularly conservators, and the modifications requirements of the HCBS Settings Rule for provider-owned and/or controlled settings. There continue to be cases, in both the two managed care LTSS programs and the 1915c HCBS Waivers, where a conservator has directed a residential provider to put a restriction on a member that would not pass the modifications procedure. Examples include restricting the number of sodas a 23-year old member chose to drink to one per day, despite no diagnoses that would make the intake of more than one soda medically or behaviorally dangerous, and in fact increased aggressive behaviors as a result of the restriction, and a conservator refusing to allow a provider to assist an individual with I/DD to pursue employment despite the member having the capacity and desire to do so. From our experience, such restrictions are more common among conservators to wards with I/DD than conservators for older adults. We welcome technical assistance from CMS in terms of whether conservators' directives must go through the modification procedure for individuals living in provider-owned and/or controlled residences. CMS has previously provided technical assistance concerning restrictions not meeting the modification process requirements in private homes.

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.**

Evidence to CMS:

The State completed all Heightened Scrutiny Milestones in its approved Statewide Transition Plan and on August 30, 2018, submitted a final Evidence Packet on Compliance with the Home and Community-Based Services Settings Rule to the Centers for Medicare and Medicaid Services (CMS) for review. The evidence packet included a summary of the State's process for assessing Medicaid-reimbursed Home and Community-Based Services (HCBS) providers and each of the settings in which services are provided for compliance with the HCBS Settings Rule.

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

During the previous quarter, the State identified the provider settings that have overcome the institutional presumption and would be submitted to the Centers for Medicare and Medicaid Services (CMS) for further review. The list of provider settings TennCare determined to be either fully compliant, or settings that TennCare believes will be compliant upon full implementation of an approved transition plan were released for public comment on June 15th, 2018. The public comment period ended on July 15th, 2018.

The Statewide Transition Plan was updated to include the list of provider settings TennCare determined to be either fully compliant, or settings that TennCare believes will be compliant upon full implementation of an approved transition plan. It was updated to incorporate ARC and public comment and was posted to the TennCare website on July 31st, 2018.

Following the public comment period, TennCare received feedback from DIDD that TennCare should remove four settings – two Facility-Based Day Centers, one Residential Habilitation Setting with more than four residents, and one Supported Living Setting in close proximity – from the final list of approved providers submitted to CMS because these providers' statuses had changed to "Closed", either shortly before or during the public comment process, unrelated to the HCBS Settings Rule. These settings were not supporting persons enrolled in a Section 1915(c) waiver at the time of closure. Therefore, no transitions were needed.

Additionally, TennCare determined after the public comment period had ended that one of the two Adult Day Care sites operated by the same Adult Day Care provider and supporting Medicaid-reimbursed individuals had been excluded from the list. This exclusion resulted from TennCare having inadvertently failed to submit results of that setting's Heightened Scrutiny review to the provider to review and response. TennCare sent the review tool to the Adult Day Care provider on August 14, 2018. The review tool included multiple areas of partial or non-compliance, and based on the provider's determination that it wished to continue operations for Medicaid recipients at that location, TennCare provided technical assistance to the provider and the provider ultimately submitted an approved transition plan on August 28, 2018.

As a result of the preceding changes, the final list of approved provider settings decreased by thee total to account for those four Section 1915(c) providers that dropped due to closure and the addition of the one compliant Adult Day Care provider. The final list of approved providers was updated to account for these changes.

On August 30, 2018, the State submitted a final Evidence Packet on Compliance with the Home and Community-Based Services Settings Rule to the Centers for Medicare and Medicaid Services (CMS) for review. The evidence packet included a summary of the State's process for assessing Medicaid-reimbursed Home and Community-Based Services (HCBS) providers and each of the settings in which services are provided for compliance with the HCBS Settings Rule.

To demonstrate the detail of individual settings review resulting from the self-assessment and Heightened Scrutiny review processes, six individual settings evidence packets were also included for CMS review – one packet for each of the six setting types that were subject to Heightened Scrutiny. Each evidence packet contained the evidence the State considered for the setting in making its compliance determination and included:

- The provider's self-assessment results;
- The provider's Heightened Scrutiny review tool results;
- The provider's transition plan;
- Supporting documentation for the transition plan; and
- A sample of the most recent IEAs for Medicaid-reimbursed individuals receiving services in the setting.

The State's evidence packet is awaiting final approval as of the end of the quarter. TennCare and contracted entities will continue to ensure that all provider settings with an approved transition plan are able to demonstrate full implementation of that plan by the individual plan's final milestone completion date. Requests made by a provider setting to amend or revise a transition plan must be approved by the appropriate contracted entity and TennCare. All settings must demonstrate full implementation of the transition plan and full compliance with the HCBS Settings Rule by March 17, 2019.