

Tennessee Home and Community Based Services Settings Rule Statewide Transition Plan

Tennessee's State Medicaid Agency (SMA), the Bureau of TennCare (TennCare) submits this proposed Statewide Transition Plan in accordance with requirements set forth in the Centers for Medicare and Medicaid Services (CMS) Home and Community Based Services (HCBS) Settings Rule released on January 16, 2014 (see 42 C.F.R. § 441.301(c)).

This proposed Statewide Transition Plan includes additional information identified by CMS in the September 5, 2014 *Statewide Transition Plan Toolkit for Alignment with the Home and Community-Based Services (HCBS) Final Regulation's Setting Requirements*. Tennessee's draft proposed Statewide Transition Plan differs from the previously approved waiver-specific Transition Plan only in the areas specified below:

- Section 1: The description of additional public input activities specific to the Statewide Transition Plan
- The addition of Section G: State Self-Assessment Results and Compliance Activities Summary of Comments on Statewide Transition Plan and Changes Made

In preparation for development of the state's proposed waiver-specific and Statewide Transition Plans, TennCare completed certain activities believed to be pertinent to the development of the Transition Plans. Those activities are detailed below. Detailed Provider Self-Assessment and Individual Experience tools and the Assessment Worksheet, including instructions with timelines, have been submitted separately to the CMS regional project officer.

Section 1: Transition Plan Development and Public Input Activities (Forms of Public Notice)

1) Provider information meetings

- a) Invitations were posted on the TennCare website and distributed through provider and advocacy organizations, the Department of Intellectual and Developmental Disabilities (DIDD) and contracted Managed Care Organizations (MCOs). They will be submitted separately to the CMS regional project officer.
- b) Seven separate meetings were held across the state between July 8-24, 2014.
- c) 628 attendees in total
- d) Power point presentation was posted on the TennCare website on July 25, 2014 and submitted separately to the CMS regional project officer.

2) Consumer and family information materials and meetings

- a) Consumer/family friendly materials were developed with input from provider and advocacy organizations.
- b) Materials were posted on the TennCare website and distributed through provider and advocacy organizations, DIDD and MCOs.

- c) TennCare hosted 2 open forum conference calls to educate consumers and families on the HCBS Settings Rule and the importance of their public input.
 - i. There were a total of 251 distinct phone numbers that accessed the calls, but since there were several participants who were gathered in groups, the actual number of participants is unknown, but greater than the number represented by distinct phone numbers.
 - ii. HCBS providers participated in these calls as well as consumers and families.
- d) Some providers held family meetings as well.
- e) Copies of these materials were submitted separately to the CMS regional project officer.

3) State posting of draft transition plan and assessment tools for public comment

- a) All Transition Plan and Assessment Tool documents were posted at: <https://tn.gov/tenncare/topic/transition-plan-documents-for-new-federal-home-and-community-based-services> . Individuals could provide comments online through the website, via the US postal service, or by emailing program staff directly.
- b) The comment period extended from July 25, 2014 – September 19, 2014 as an interactive, working time between the state, providers, advocates, consumers and families. TennCare updated documents based on comments received and reposted the documents to the TennCare website as updated drafts.
 - i. The Transition Plan was revised based on:
 - 1. Public comments received regarding timelines and assessment activities; and
 - 2. Feedback received from CMS, including removal of Person-Centered Planning (PCP) components.
 - 3. The proposed Transition Plan was revised and reposted on September 18, 2014.
- c) Documents were finalized (with any additional comments received), posted and entered into CMS web portal with waiver submission October 1, 2014.
- d) Cover letter, assessment tools and assessment tools instructions were submitted separately to the CMS regional project officer.
- e) The final version of the Transition Plan submitted to CMS was posted on the TennCare website.

4) State posting of draft Statewide Transition Plan

In addition to public input activities conducted in advance of the previously approved waiver-specific Transition Plan, the proposed Statewide Transition Plan was made available for additional public comment via the following activities:

- 1) The proposed Statewide Transition Plan was posted on the TennCare website at <https://tn.gov/tenncare/topic/transition-plan-documents-for-new-federal-home-and-community-based-services> on December 23, 2014 for a 30 day public comment period. Reviewers were invited to provide comments via the website.
- 2) On December 23, 2014: Emailed directly to stakeholders, including advocacy organizations and provider associations, to share with their membership and the consumers and families they serve. In addition, the draft proposed plan was emailed to the Department of Intellectual and Developmental Disabilities and the State's contracted MCOs to share with their provider networks.

Section 2: Transition Plan Components

Part A: SMA Self-Assessment and Remediation

- 1) SMA self-assessment process: Complete
 - a. The state initiated ongoing internal strategy meetings to assess all rules, regulations, policies, protocols, practices and contracts.
 - b. The state developed and implemented strategies for consumer and family, provider, advocate, and other stakeholder input into the self-assessment of state standards, requirements and practices.
 - c. Components of the SMA Self-Assessment included the following:
 - i. HCBS definitions and provider qualifications: Proposed changes to waiver definitions were included in waiver renewal applications and amendments. Any subsequent changes identified will be submitted as waiver amendments.
 - ii. State law: The SMA will work in collaboration with DIDD as it relates to Title 33. Statutory revisions (including authority to revise licensure and other rules, as applicable) will be submitted during the upcoming legislative session. Tennessee's legislative session is January – April/May each year. State regulations: Rules requiring modification may include those that are under the authority of another state department. In addition to promulgating revised regulations under its own purview, as determined to be appropriate, the SMA will provide appropriate education and explanation to other state departments regarding need for any rule revisions, which the SMA will formally request in writing, in order to allow the state to come into compliance as applicable. Proposed legislation in the upcoming session will provide statutory obligation and authority to make such rule revisions.
 - iii. Policies, protocols, and practices (including Quality Management practices)

- iv. Training requirements
- v. Contracts, rate methodology, and billing practices: This included contracts/Interagency Agreements the SMA currently holds with DIDD and the MCOs.
- vi. Information Systems
- vii. Specific timelines and milestones for achieving compliance with the new federal rules will be established as needed changes are identified, and included in an amendment to the State Transition Plan.

Part B. Contracted Entity Self-Assessment and Remediation

- 2) Contracted entity self-assessment process: October 1, 2014 – March 31, 2015
- a. The DIDD and MCOs will be required to review all policies, procedures and practices (including Quality Management practices), training requirements, contracts, billing practices, person-centered planning requirements and documentation, and information systems to determine their compliance with the HCBS Settings Rule. Each entity will be required to submit its assessment along with evidence of compliance to the SMA. Each entity will also be required to identify any modifications needed to achieve compliance with the HCBS Settings Rule. The SMA will review each entity's self-assessment and evidence of compliance to ensure that all aspects of the system are congruent with CMS expectations and will allow the State to operate HCBS programs in a manner which comports with the HCBS Settings Rule. The SMA will request any additional information needed to assess compliance. Any changes needed to achieve compliance will be incorporated in an amendment to the State Transition Plan, including specific timeframes and milestones.
 - b. All revisions to policies, procedures, training requirements, etc. needed to achieve compliance with the new Rule will be submitted to the SMA for review and approval, and implementation will be tracked by the State in accordance with approved timeframes.
 - c. Upon approval, final versions will be completed and distributed to providers.
 - d. Provider education/training will be conducted as appropriate. All education and training materials will be led by or reviewed and approved by the SMA.
 - e. Specific to DIDD, in instances where a change in rule or policy requires a public comment period, time lines will be adjusted accordingly to accommodate time needed to process and respond to public input and incorporate such comments into document revisions.

Part C. Provider Self-Assessment and Remediation

- 3) Provider self-assessment process: October 15, 2014 – March 31, 2015

- a. The State will conduct statewide provider education and training sessions on how to complete the Provider Self-Assessment Tool. These training sessions will be conducted between October 15, 2014 – November 15, 2014.
- b. Providers will receive the applicable Provider Self-Assessment Tool with the Assessment Tool instructions and time lines. At a minimum, all HCBS residential, employment and day program providers contracted to provide services under any of the State's Section 1915(c) waivers or the CHOICES MLTSS program will be required to complete a self-assessment.
- c. Providers will be required to include persons served, family members/representatives, advocates, and other stakeholders in their assessment process.
- d. Providers will be required to include in their self-assessment a description of their self-assessment process, including participation of the aforementioned persons.
- e. Providers will submit their respective Self-Assessment along with specific evidence of compliance for further review by the SMA or its designee (DIDD or MCOs). Additional evidence may be requested or further reviews conducted as needed to further assess and validate compliance with these rules.
- f. Providers who self-report or are assessed to be non-compliant with the HCBS Settings Rule will be required to submit a Provider Transition Plan identifying the area(s) of non-compliance and describing their proposed plan for coming into compliance along with associated time lines. Information regarding Provider Transition Plans and specific timelines for achieving compliance will be incorporated in an amendment to the State Transition Plan.
- g. All completed and validated Provider Transition Plans will be reviewed and approved by the DIDD or MCO as applicable, and implementation will be monitored based on approved timeframes, with oversight by the SMA.
- h. Providers needing assistance to achieve compliance may request such assistance from the entity with whom they are contracted (DIDD or MCO), another (compliant) provider of the same service type, and/or consumers and family members or advocates.
- i. Providers assessed to be unwilling or unable to come into compliance, will be required to cooperate with transition assistance to ensure all individuals served are transitioned to an appropriate provider type, maintaining continuity of services.
 - i. The SMA, in conjunction with DIDD or the MCOs, as applicable, will oversee all necessary transition processes:
 1. A *minimum* of 30 days notice will be given to all persons needing to transition between providers. Additional time will be provided to complete these transitions as needed and consistent with the State's approved Transition Plan. The State will ensure that

sufficient time is permitted to safely transition individuals to another compliant setting of their choice, and to assure continuity of services. This will include instances where the person's new residential setting must be developed and/or modified to meet their needs.

2. A description of the process and choice of appropriate providers will be included with each notice. The person's ISC, case manager or care coordinator, as appropriate, will conduct a face to face visit as soon as possible to discuss the transition process, and ensure that the person is making an informed choice of an alternate setting that meets the HCBS Settings Rule criteria, as well as ensuring that the person understands any applicable due process rights.
3. The person's ISC, case manager, or care coordinator, as appropriate, will further ensure that any critical services and/or supports are in place in advance of the transition to the person's new residence.

Part D. Individual Experience Assessment

- 4) Individual Experience Assessment process: February 1, 2015 – January 31, 2016
 - a. Each individual's ISC, case manager or care coordinator, as applicable, will assist the individual and his/her family member/representative, as appropriate, in completing an initial Individual Experience Assessment. Service provider staff may participate as requested by the individual and his/her family member/representative.
 - b. Such assessments will be conducted, beginning November 1, 2014 during the individual's annual person-centered plan review, or sooner if an amendment or plan review is conducted prior to the annual review.
 - c. This initial assessment period will be ongoing for one year to allow each ISC, case manager and care coordinator the opportunity to conduct the Individual Experience Assessment while completing a scheduled annual review or needed amendment.
 - d. For provider owned/controlled settings, any proposed modification of requirements set forth in the HCBS Settings Rule for the individual shall be reviewed to confirm that:
 - i. There is a specific individualized assessed need for such modifications;
 - ii. Prior interventions and supports including less intrusive methods have been tried and demonstrated to be unsuccessful;
 - iii. The proposed modification is appropriate based on the specific need identified; and

- iv. The proposed modification, including interventions and support will not cause harm to the individual.
- e. Each of the above items (i.-iv.) shall be documented in the person-centered plan, along with:
 - i. The method of collecting data on an ongoing basis to measure the effectiveness of the modification; and
 - ii. A specific time limit for periodic review of the data and the effectiveness of the modification to ensure it continues to be appropriate.
- f. The individual shall provide informed consent of the proposed modification.
- g. If a modification to the HCBS Settings Rule is determined to be inappropriate based on the person's individualized needs (and in accordance with the requirements above), the area identified as non-compliant will trigger a new assessment of the provider, as applicable, and a Transition Plan developed by the provider to address any issues of non-compliance will be submitted to the contracting entity for review, approval and monitoring of implementation.

Part E. Achieving Initial Compliance

No later than December 31, 2015, upon review and validation of State, contracted entity, and provider self-assessments, the State will submit an amendment to the Statewide Transition Plan with specific remediation activities and milestones for achieving compliance with the HCBS Settings Rule.

In addition, no later than December 31, 2015, the State will submit an amendment to this waiver that will include the fully developed Statewide Transition Plan, with timelines and milestones for achieving compliance with the HCBS settings requirements in the final rule.

For providers needing assistance to come into compliance the state proposes to implement the following strategies, January 1, 2015 – December 31, 2016:

- Facilitate focus groups of non-compliant and compliant providers who can talk through provider specific issues and problem-solve how to achieve compliance together. Participation will be voluntary and can include consumers and family members who may aid in the problem solving process.
- Provide one-on-one technical assistance (TA) (TA will be provided upon request by the DIDD, MCO and or SMA as appropriate)

Part F. Assuring Ongoing Compliance

Once overall compliance is achieved, strategies to ensure ongoing compliance will include:

- Incorporating the Individual Experience Assessment (as described above) into all initial and annual person-centered plan reviews

- Quality assurance methodologies will incorporate monitoring performance measures that ensure compliance with HCBS Settings and PCP Rules
- Annual consumer/family satisfaction surveys
- The State will also explore the use of Core Indicators data and national accreditation standards to support its ongoing compliance monitoring efforts.

Part G. State Self-Assessment Results and Compliance Activities

The State has incorporated the HCBS Settings Rule requirements into several documents and practices to ensure HCBS settings comport with the HCBS Settings Rule. These efforts include the following:

1. **Waiver definitions:** The State amended and submitted to CMS on October 1, 2014, the following Appendix C definitions in two of its three Section 1915(c) waivers to include the HCBS Settings Rule requirements (comparable changes were submitted in an amendment to the State's remaining Section 1915(c) waiver, as applicable, on October 15, 2014):

- Residential Habilitation
- Support Coordination
- Nursing Services
- Employment and Day Services
- Family Model Residential
- Intensive Behavioral Residential Services
- Medical Residential Services
- Semi-Independent Living Services
- Supported Living

2. **State law:** The Governor's Office, on behalf of the SMA, is proposing legislation during the upcoming legislative session (January – April/May of 2015) to amend statutory provisions in Titles 33, 68, and 71 as needed for compliance with the new federal HCBS Settings Rule. The proposed legislations provides the Departments of Health, Human Services, Intellectual and Developmental Disabilities, and Mental Health and Substance Abuse Services (licensing entities for agencies currently delivering Medicaid HCBS) with authority to review and revise their implementing regulations as needed for compliance with the new federal HCBS settings rule.

State rules and regulations: Upon review of SMA rules and regulations, the SMA determined that no SMA rules or regulations are contradictory to the requirements of the HCBS Settings Rule. However, current SMA rules and regulations do not require providers to comply with all aspects of the HCBS Settings Rule. Despite the fact that providers are obligated to adhere to these requirements under federal law, the SMA has identified areas in SMA rules and regulations where language concerning compliance

with the HCBS Setting Rule can be added to set clear expectations for providers to further ensure compliance with the HCBS Setting Rule requirements. To this end, the SMA will propose draft rule changes to include these provisions of the HCBS Settings Rule. Additionally, Departments of Health and Mental Health and Substance Abuse Services Rules that deal with residents' rights and environments have been identified as areas that can be expanded upon to include additional rights under the HCBS Settings Rule. The state rule making process will be followed in order to promulgate any necessary rule changes. This includes a required public notice and rulemaking hearing.

3. **Policies, protocols, and practices (including Quality Management practices):** The SMA is amending its Needs Assessment and Plan of Care Protocols to incorporate the HCBS Settings Rule requirements into the assessment and care planning processes. Revised documents will be distributed to MCOs by February 1, 2015.

Additionally, the Department of Intellectual and Developmental Disabilities (DIDD) has completed draft amendments to the following protocols which concern HCBS Settings to ensure provider compliance with the new HCBS Settings Rule. Upon notification of waiver renewal and Statewide Transition Plan approval, these drafts will be finalized and distributed to providers and posted on the DIDD website:

- Employment and Day Services
- Family Model Residential
- Medical Residential
- Residential Habilitation
- Semi-Independent Living Services
- Supported Living

4. **Training requirements:** The State conducted 6 training sessions on the HCBS Settings Rule via conference line and webinar between October 28 – November 13, 2014. All Residential and Non-Residential HCBS providers in Tennessee were required to participate in at least one training session. Providers were notified of the training sessions through a notice created by the State, which the State sent to the State's MCOs and DIDD for distribution to all HCBS providers prior to the training sessions. Additionally, the notice was posted on TennCare's website prior to the training sessions and included in DIDD's weekly newsletter, *OpenLine*. Each training session involved a comprehensive PowerPoint presentation, which detailed the requirements of the HCBS Settings Rule and the State's process for providers to ensure compliance with the rule and/or develop a transition plan for coming into compliance. That PowerPoint and a recording of the webinar are posted on TennCare's website at <https://tn.gov/tenncare/topic/transition-plan-documents-for-new-federal-home-and-community-based-services> .

5. **Contracts:** The SMA drafted amendments to its Interagency Agreements for operation of the State's Section 1915(c) Waivers with DIDD to require that any licensed residential and non-residential facility in which a waiver enrollee receives services is compliant with the HCBS Settings Rule. Contract revisions are under internal review and will be submitted to DIDD for review/discussion by February 28, 2015. The initial contract period expires June 30, 2015. Amendments to include HCBS Settings Rule provisions will be effective with the contract extension beginning July 1, 2015.

Additionally, the SMA amended its Contractor Risk Agreement with the State's MCOs to include an updated definition of the member's plan of care to ensure that the services are provided in integrated settings in the community and delivered in a manner that reflects the member's personal preferences. This amendment is effective January 1, 2015.

The June 30, 2015 CRA amendment will include provisions requiring MCOs to add language to their provider agreements/provider manuals requiring HCBS providers to comply with the HCBS Settings Rule.

Transition Plan Public Comments

Comments on the Waiver-Specific Transition Plan

The State received 35 online comments, 21 comments via mail, and 4 comments via email, totaling 60 written public comments. (These were written comments from 60 submitting entities; most entities submitted multiple comments/recommendations.) These included three letters from advocacy groups: one from The Arc Tennessee; another from the Tennessee Parent Coalition encompassing parents of individuals with I/DD across the state, including Nashville, Memphis, and Chattanooga; and the third from the TennesseeWorks Partnership Team and Employers and Providers Workgroup. The vast majority of comments received were from family members, conservators, or representatives of individuals with disabilities served in the state's HCBS programs.

Of the 60 written comments received, 5 were not applicable to the Transition Plan or Assessment documents, and 21 were specific to concerns about the potential elimination of facility based day services under the new HCBS setting regulation. Comments were also received during face-to-face meetings with various provider groups and during statewide informational calls targeted to individuals with I/DD and their family members or conservators. A summary of the comments pertaining directly to the Proposed Transition Plan and changes to the Transition Plan based on those comments is below.

Summary of Comments on Waiver-Specific Transition Plan and Changes Made

In order to help organize comments for incorporation into the Transition Plan, the State asked entities submitting comments to answer certain questions regarding the Transition Plan. Entities were also encouraged to submit any other comments or recommendations beyond the scope of these questions.

1. Are the suggested timelines appropriate?

- Almost all of the commenters focused on the timeline set forth in the regulation for achieving compliance with the HCBS Setting Rule, rather than the specific timelines proposed in Tennessee's Transition Plan. The majority of these commenters stated that they believe the full 5 years will be necessary for transition and 3 years at minimum. *(The State has not yet established a deadline for achieving full compliance, and recognizes that any proposed date is subject to CMS approval. This date will be determined based on state, contracted entity, and provider self-assessments, as well as action steps and timelines for achieving compliance, but will occur no later than March 17, 2019.)*

Concerns were expressed, however, with the proposed timeframes for completing provider self-assessments and contracted entity self-assessments. Based on these comments, the State modified the Transition Plan to extend the timelines for submission of these self-assessments, incorporating a training period for providers on the new tool, as further described below. These changes in the Transition Plan are addressed in Part B, 2 and Part C, 3 with the extension of Contracted Entity Self-Assessment and Provider Self-Assessment activities, respectively, from December 31, 2014 to March 31, 2015.

2. The best methodology/process for completing the assessments?

- The majority of commenters declined to make specific recommendations regarding the process.
- Several commenters recommended training for providers on the self-assessment process prior to its implementation. *(This comment was addressed in Part C, 3) with the addition of "a. The State will conduct statewide provider education and training sessions on how to complete the Provider Self-Assessment Tool. These training sessions will be conducted between October 15, 2014 – November 15, 2014.")*
- Several commenters also affirmed the importance of self-advocate and family involvement in all aspects of the assessment process, and recommended that the

Transition Plan reflect ways to ensure that their perspective would be included in the assessment of compliance with the new rule. *(This comment resulted in a change in Part C, 3, c. Providers will be required to include persons served, family members/representatives, advocates, and other stakeholders in their assessment process.)*

- Some commenters expressed concern regarding individuals who may be required to transition to new providers should their current providers not come into compliance with the new rule. *(This comment resulted in the addition of a new i. under Part C, 3, i., reflecting the oversight of the SMA, in conjunction with DIDD or the MCO, as applicable, in all necessary transition processes.)*

3. Strategies for initial achievement of compliance and assurance of ongoing compliance?

The majority of commenters responded that they need more guidance from CMS, particularly on non-residential services. Providers and families expressed significant concern regarding the potential impact of the new rule on facility-based day services, and whether such services will continue to be permitted under HCBS programs. *(TennCare received verbal guidance from CMS on non-residential service compliance which will be addressed in provider training, and is proceeding accordingly. The State will incorporate into its Transition Plan assessment and compliance processes any additional written guidance that may be issued by CMS, as it becomes available.)*

Many commenters expressed satisfaction with the current services provided in Tennessee, affirming their belief that programs are person-centered and operating in compliance with the new rule, and are concerned that changes related to the rule will disrupt services for members—in particular, facility-based day services.

- There were recommendations that the State also consider other ways of measuring ongoing compliance in addition to the individual experience assessments. *(This resulted in the addition of a 4th bullet under Part F, exploring the use of Core Indicators data and national accreditation to support ongoing compliance monitoring efforts.)*

4. OTHER comments

- The overwhelming majority of commenters again expressed concern about the effect the HCBS Setting Rule will have on facility-based day services. Most of these commenters are concerned that Tennessee will do away with facility-based day programs in part or altogether, and strongly oppose such changes. *(This comment did not impact changes necessary to the Proposed Transition Plan; verbal guidance received from CMS will be addressed in provider training and ongoing communication with stakeholder groups.)*

Other comments requested changes in certain language, e.g., not using “plan of care.” (*“Plan of care” has been changed to “person-centered plan” throughout the Transition Plan.*)

Summary of *Additional* Comments on Statewide Transition Plan and Changes Made

Since Section G is the only substantial difference between the initial proposed waiver-specific Transition Plan and the proposed Statewide Transition Plan, the State asked entities submitting comments to address their comments specifically to Section G of the proposed Statewide Transition Plan, while also providing additional opportunity for comment on portions of the Statewide Transition Plan that were previously posted for public comment, i.e.,

1. Please provide any comments/suggestions on Section G of the proposed Statewide Transition Plan
2. OTHER comments

Summary of *Additional* Comments on Statewide Transition Plan

The state received 25 additional online comments in response to the posted Statewide Transition Plan. This included one comment from a family member, 3 comments from Independent Support Coordinators (ISCs, contracted to provide Independent Support Coordination or case management under two of the State’s HCBS waivers) and 21 comments from non-ISC HCBS providers, one of whom indicated they were also a family member.

A summary of these additional comments received and changes to the Statewide Transition Plan based on those comments are as follows:

- The first commenter (an ISC) expressed concern that not all families were aware of public meetings and materials posted on the TennCare website and questioned whether persons submitting comments are representative of the broader population served under the waivers. The ISC also expressed concern regarding community-based day services and support for facility-based day services as a “well-rounded option” for many individuals. Other concerns included ample time for transition if an agency is unable to come into compliance, and additional time for completion of Individual Experience Assessments since they have not yet commenced. (*The Individual Experience Assessment Tool is being revised per feedback received after training sessions were provided and will begin February 1, 2015.*)
- The timeline for completion of the Individual Experience Assessment was also the focus of a second ISC’s comments, noting that the assessments have not yet begun and

recommending that the dates be adjusted to provide for additional time to complete these assessments.

- 2 commenters (an ISC and a non-ISC HCBS provider) had questions about the provider self-assessment process, and one specifically asked about assessments for non-residential providers. *(Comprehensive provider training was conducted and each provider was assigned to a designated reviewer entity, DIDD or an MCO. Each designated reviewer has been in contact with providers to explain their submission process and provide access to the online assessment tool. Representatives from each designated reviewer are available to providers, and individual follow up is conducted on a regular basis with providers. All provider questions will be addressed by designated reviewers. Guidance on the non-residential provider assessment was provided during the provider training sessions and is embedded within the assessment tool as well. Additionally, the “Exploratory Questions to Assist States in Assessment of Non-Residential HCBS Settings” provided by CMS is posted on the state’s website and was distributed to HCBS providers and the link was also included by DIDD in their weekly provider newsletter, Open Line.)*
- 17 comments (all from non-ISC HCBS providers) were identical, with one offering additional detail on the otherwise consistent responses. Each indicated that CMS guidance on the HCB setting rule—in particular, guidance pertaining to non-residential services “lacks clarity.” They reiterated concerns previously expressed in response to the waiver-specific Transition Plan, i.e., *“It is still a concern that ‘an overwhelming majority of commenters again expressed concern about the effect the HCBS Setting Rule will have on facility-based day services’ this was not really addressed in the transition plan.”* Similar concern was also expressed in 3 additional comments from non-ISC HCBS providers, reiterating their support for facility-based programs as a continued choice for individuals receiving HCBS. A few went so far as to say that the new rules will actually constrain the choice of individuals receiving HCBS by making people *“do things they do not want to do”* and *“taking away the CHOICE [sic] of where they want to be and what makes them happy.”* *(Facility Based Day (FBD) settings were specifically addressed in the comprehensive provider trainings that were conducted by the state, guidance on completing the self-assessment for FBD settings was provided during the training and is also embedded within the assessment tool).*

The 17 identical comments (plus 1 additional comment) from non-ISC HCBS providers requested additional training in the assessment of compliance with the new HCB setting rules for providers in non-residential settings.

- These same 18 comments voiced concern that the March 31, 2015 deadline for completion of provider self-assessments is proving to be more challenging than anticipated. *(6 months was provided for completion of these self-assessments. The timeline is necessary in order to allow time for review and validation, and development of corrective actions by the end of 2015. The state and designated reviewers are tracking provider progress and will work individually with agencies struggling to meet the imposed deadline.)*
- The 17 identical comments requested that a FAQ document regarding the provider self-assessment process be posted on state websites. *(A FAQ document will be developed in partnership with the designated reviewers and posted to the TennCare, DIDD and MCO websites by February 6, 2015).*
- These 17 identical comments (plus one from another non-ISC HCBS provider) requested the opportunity to review and provide input on any revisions in state law, rules and regulations, policies, protocols, and practices that might result from state or contracted entity self-assessments. All but one also requested review of any changes in the provider agreement. 17 of the 18 comments expressed appreciation that, as indicated in Part G.2 above, there will be public notice period prior to the implementation of revisions in state rules and regulations.
- The opportunity for public input on any changes in implementing regulations and appreciation for the indication of such in the Transition Plan was the subject of the only additional comment received from a Family Member on the Statewide Transition Plan.

In response to these comments, in addition to ongoing efforts to ensure opportunity for public input and ongoing support and assistance to providers, including a FAQ document regarding the self-assessment process, several adjustments (or clarifications) were made in the Statewide Transition Plan.

First, in Section 2, Part D, 4, the date for completing Individual Experience Assessments has been modified to reflect that such assessments will now commence on February 1, 2015 and continue through January 1, 2016.

Second, in Section 2, Part C, 3.i.i.1., we have emphasized that 30 days advance notice is the *minimum* amount of notice that will be required in instances where a person must transition from a non-compliant provider to a new compliant provider, and that “[a]dditional time will be provided to complete these transitions as needed and consistent with the State’s approved Transition Plan. The State will ensure that sufficient time is permitted to safely transition

individuals to another compliant setting of their choice, and to assure continuity of services. This will include instances where the person's new residential setting must be developed and/or modified to meet their needs."

Finally, Section 2, Part C, 3.b. was modified to clarify that Provider Self-Assessments are applicable to all residential, employment and day program providers in a Section 1915(c) waiver or the State's MLTSS programs and to delete PA providers from the list of providers required to complete a self-assessment. This is based on guidance in a Questions and Answers document developed by CMS which advises that states are not required to assess services provided in a person's private home. Consistent with CMS guidance, we will nonetheless utilize the person-centered planning process to ensure that all services are being provided in a way that supports the person's opportunities for employment and integration into the broader community.