

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

TN

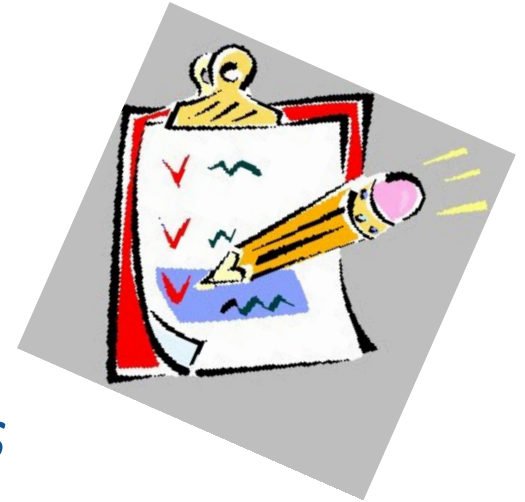
Implementing the HCBS Settings Rule: One State's Approach

Context for the Discussion

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

Agenda

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



Vision

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

Not just compliance, but

Better lives for the people we support

Approach

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

Approach

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

How do we get there?

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

What should we do first?

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

What should we do first?

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

Develop the Process: *Plan to assess*

- **The manageable steps**

- Self-assessments

1. State

2. Contractors

3. Providers

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

- Individual Experience Assessments

- Monitor implementation of transition plans

- Monitor/assure ongoing compliance

Develop the Process: *Plan to assess*

- **Training**

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

Develop the Process: *Plan to assess*

State (Systemic) Self-assessment

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

Develop the Process: *Plan to assess*

State (Systemic) Self-assessment

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

Develop the Process: *Plan to assess*

Contractor Self-assessment

MCO s (MLTSS—managed care)

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

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

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

Develop the Process: *Plan to assess*

Provider Self-assessment

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

Develop the Process: *Plan to assess*

Individual Experience Assessment (IEA)

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

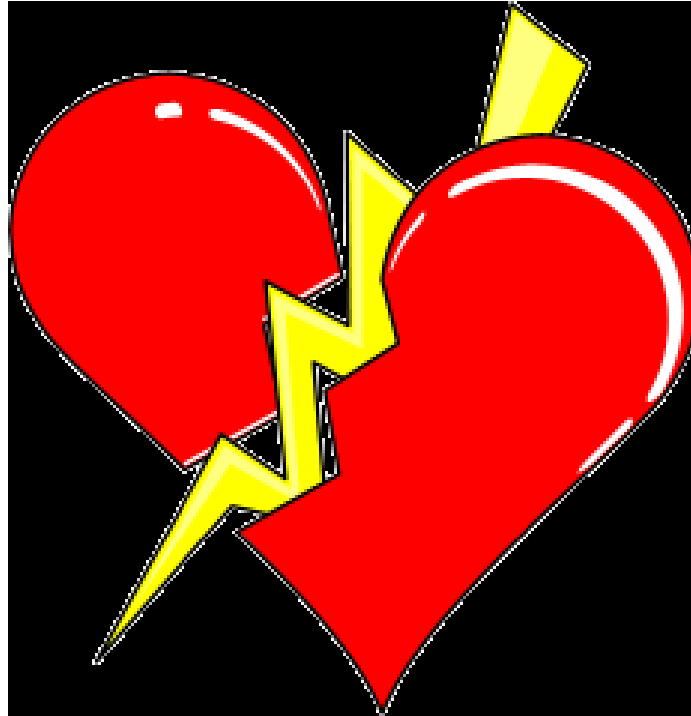
Now what? Education and input

Tell people about the Rule!

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

Now what? Education and input

And they loved it, right?



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

Now what? Education and input

Keep telling people about the Rule!

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

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

Provide *extensive* training

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

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

Validation process

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

Discovery:

What did we learn?

Systemic Assessment

Discovery and Remediation: Systemic Assessment

HCBS Setting Standards Remediation Crosswalk

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

Discovery and Remediation: Systemic Assessment

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

Discovery and Remediation: Systemic Assessment

Validation of systemic remediation processes

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

Site-Specific Assessment

Discovery: Provider Self-Assessment Results

Total Number of Provider Settings Assessed: 1245

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

Discovery: Provider Self-Assessment Results

Reported Compliance among Providers:

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

Whew...now what?

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

Remediation: Transition Plans

1048 Transition Plans Received

Areas identified as non-compliant:

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

Remediation: Transition Plans

Helping providers achieve compliance:

- Educating boards and families
- Technical assistance
- Focus groups

The elephant in the room:

Not everyone wants to work or be integrated!



- What to do when choice meets the rule

When individual choice meets HCBS Rule:

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

When individual choice meets HCBS Rule:

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

Are we there yet?

More discovery;
More remediation:
Heightened Scrutiny

Settings “presumed” to have institutional qualities

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

Settings “presumed” to have institutional qualities

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

Settings that may be “presumed” institutional

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

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

CMS Guidance: Settings “presumed not HCBS”

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

Heightened Scrutiny

Heightened scrutiny review will consist of:

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

Heightened Scrutiny

Heightened scrutiny review will consist of:

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

Heightened Scrutiny

After information is collected and reviewed:

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

Heightened Scrutiny

After information is collected and reviewed:

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

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

Ongoing review and monitoring:

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

Working together: Tennessee's materials

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

Questions?