Tennessee Health and Welfare Site Review Summary Report

July 1, 2024

I.   Executive Summary

The Centers for Medicare & Medicaid Services (CMS) Division of Home and Community-Based Services Operations and Oversight (DHCBSO) conducted the Tennessee Health and Welfare Site Review (H&W SR) in coordination with the Administration for Community Living (ACL). The H&W SR team conducted the on-site portion of the review with a focus on the TennCare III CHOICES, Employment and Community First (ECF) CHOICES, and the Statewide Home and Community-based Services (HCBS) Waiver programs from February 27 to March 1, 2024. The site review included multiple meetings with state leadership and staff responsible for the administration and operation of TennCare III CHOICES and ECF CHOICES managed care programs and the Statewide section1915(c) HCBS waiver. The H&W SR team also held meetings with representatives from Tennessee's licensing entities, protective services entities, the Division of Intellectual and Developmental Disabilities (DIDD) Ombuds and Long-Term Care Ombuds (LTCO), supports planners, case managers, providers, participants, advocacy organizations, and other stakeholders to understand Tennessee's unique processes. Meetings were held to discuss the state's process for reporting, investigating, and resolving critical incident operational practices to ensure the health and welfare for HCBS participants in the state through the lens of stakeholders. The review was conducted as part of a national initiative to provide individualized technical assistance to states on maximizing the health and welfare of Medicaid beneficiaries, and to identify promising practices and challenges to address.

TennCare, as the State Medicaid Agency (SMA), retains administrative authority in overseeing the TennCare III CHOICES, ECF CHOICES and the Statewide section 1915(c) HCBS waiver program. DIDD is the operating agency for the Statewide waiver, and the CHOICES and ECF CHOICES. The three programs are utilizing a managed care delivery system authorized by the TennCare III section 1115 authority. The H&W SR team focused on these programs operated by the SMA and/or operating agency.

During the site review, the H&W SR team identified strengths and promising practices, along with challenges, which are listed below and summarized more fully later in the report.

Strengths and Promising Practices for Ensuring Health and Welfare

- Reportable Events Management (REM) system supports multisystem integration and sharing of information across agencies.

- Dignity of Choice approach to the HCBS program.

- Program and cross-agency collaboration among direct service providers, MCOs, Adult Protective Services (APS), and the operating agencies for the section 1915(c) and 1115 HCBS programs.

- Use of the Substantiated Investigations Review Inquiry (SIRI) system in review of new Direct Service Provider hiring

- Relias Learning Management System (RLMS) provider training data to identify all employers that may be linked to alleged perpetrators.

- Establishment of a DIDD career track for state staff that investigate critical incidents.
- Utilization of a Mortality review processes for the 1915(c) waiver populations.

Challenges

- Oversight of Tier 2 Investigations: Provider investigators are currently charged with entering Reportable Events Form (REF) information into the DIDD system for incidents occurring under their agency leaving risk for events being downgraded and under reporting.
- Investigation Outcomes: Participants and stakeholders expressed concerns pertaining to consistent notification of investigation resolution prior to closing the investigation of reported critical incidents.
- Lack of knowledge on how to report incidents for some stakeholders and participants
- Develop a system that will allow the state to schedule annual refresher trainings and monitor knowledge of the critical incident reporting process.

II.   Background

Before the site review, the H&W SR team reviewed waiver program documents and other materials from the public domain related to the health and welfare assurance of individuals receiving HCBS in Tennessee.

Table 1 includes information about the waiver programs that were reviewed prior to the visit, in addition to the waiver's expiration date, operating agency, and target population.

Table 1. Waiver Review by the H&W SR Team

Waiver Name and Number	Expiration Date	State Medicaid/ Operating Agency	Target Population
Statewide Home and Community Based Services "Statewide" (TN 0128)	December 2024	TennCare/Tennessee Department of Intellectual and Developmental Disabilities (DIDD)	Serves children and adults with intellectual and developmental disabilities, and children under age six with developmental disabilities.
TennCare III CHOICES (Section 1115 demonstration)	December 2030	TennCare	Elderly & Disabled
TennCare III Employment and Community First (ECF) CHOICES (Section 1115 demonstration)	December 2030	TennCare/ Tennessee Department of Intellectual and Developmental Disabilities (DIDD)	Intellectual Disability or Developmental Disability, or Both

The H&W SR team focused on the TennCare CHOICES, ECF CHOICES, and the Statewide HCBS Waiver program. This approach assured that both operating agencies, the DIDD and the Division of TennCare, were involved in the site review.

The **Statewide Home and Community Based Services Waiver** serves children and adults with intellectual disabilities and children under age six with a developmental disability who, absent the waiver, would require placement in an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID). The waiver offers a continuum of services that are designed to support individual independence and integration into the community, including opportunities for employment in competitive integrated settings, consumer-direction of certain services, and engagement in community life. The current waiver effective date is January 1, 2020 to December 31, 2024. The state has been approved to serve approximately 4,500 participants, in 2021 the state reported serving 4, 337 participants on the waiver. The state operates a critical incident management process that requires reporting of incidents. Critical events categorized as abuse, neglect, exploitation, suspicious injury, serious injury of unknown cause and unexpected/unexplained deaths are required to be reported to the DIDD Investigations hotline within four hours of the discovery of the incident. The incident can be reported by telephone, email, fax, or in person. Reports received by the hotline, within one business day, are reviewed and documented on a reportable events form (REF) by an Event Management Coordinator or designee to DIDD Central Office via the FormStack link located on the state's website. For incidents that are not reported as abuse, neglect, exploitation, suspicious injury, serious injury of unknown cause or unexpected or unexplained death, a next business day reporting requirement is in place. Those incidents are reported via the REF by email or fax. The hotline number and REF are located on the DIDD website. If a provider reports an allegation of abuse, neglect, or exploitation, they are required by state law to contact the appropriate authorities such as Adult Protective Services (APS), Child Protective Services (CPS) or law enforcement.

The **TennCare III CHOICES** program provides Managed Long-Term Services and Supports (MLTSS) for persons who are elderly or who have physical disabilities. The program consists of three benefit groups:

- CHOICES Group 1 consists of individuals who meet TennCare's level of care criteria for nursing facility care and who are receiving LTSS in a nursing facility.

- CHOICES Group 2 consists of adults who meet TennCare's level of care criteria for nursing facility care and who are receiving home and community-based services (HCBS) in lieu of nursing facility care.

- CHOICES Group 3 consists of adults who do not meet TennCare's level of care criteria for nursing facility care but who, absent additional supports, are considered at risk of needing institutional care. These individuals receive a targeted package of HCBS intended to prevent or delay the need for nursing facility care.

Under the terms of the TennCare Demonstration, CHOICES Group 3 is open to individuals who are eligible for Medicaid as Supplemental Security Income recipients and to non-Medicaid-eligible individuals who qualify in the CHOICES At Risk Demonstration Group. The purpose of the CHOICES At Risk Demonstration Group is to provide a pathway for individuals who are not otherwise eligible for Medicaid to be eligible for TennCare and to receive CHOICES Group 3 HCBS.

The **TennCare III ECF CHOICES** program provides MLTSS to individuals with intellectual and/or developmental disabilities with an ICF/IID level of care. ECF CHOICES is specifically geared toward promoting and supporting integrated, competitive employment and independent, integrated community living as the first and preferred option for individuals with I/DD. There are six target populations for ECF CHOICES:

1. Children under age 21 with I/DD living at home with family and who meet the NF LOC, except that upon implementation of Katie Beckett (Part A), children described in Section 1902(e)(3) are not included in this target population unless they are already enrolled in ECF CHOICES, age 17 or older, or transitioning from ECF CHOICES Group 7 .

2. Children under age 21 with I/DD living at home with family who qualify for Medicaid under SSI deeming rules and who, in the absence of HCBS, are "at risk of NF placement."

3. Adults aged 21 and older with I/DD who meet the NF LOC and need specialized services for I/DD (except as provided pursuant only to STC 34.c.i.).

4. Adults aged 21 and older with I/DD who, in the absence of HCBS, are "at risk of NF placement."

5. Children under age 21 with I/DD and severe co-occurring behavioral health and/or psychiatric conditions who are living at home with family or other permanent guardian(s) in a long-term family living arrangement,3 and who meet NF LOC and other criteria as defined in STC 34.a.iv or in state rule.

6. Adults aged 21 and older with I/DD and severe co-occurring behavioral health and/or psychiatric conditions who are transitioning out of a highly structured and supervised

   environment and who meet NF LOC and other criteria as defined in STC 34.a.v or in state rule (unless the state makes an exception pursuant to STC 34.c.i), and need and are receiving specialized services for I/DD.

Critical events categorized as abuse, neglect, exploitation, suspicious injury, serious injury of unknown cause and unexpected/unexplained deaths for both programs are required to be reported. Reports can be made by telephone, email, fax, or in person. Reports received by the hotline, within one business day, are documented on a REF by an Event Management Coordinator or designee to the DIDD Central Office via the FormStack link located on the state's website. DIDD will notify the MCO and share the report received through an internal SharePoint system. If an MCO receives an ANE report directly, they are required to share the information with DIDD to ensure a comprehensive approach is used to assign an investigator. Reportable events are monitored by the state, which includes tracking trends and patterns, identifying opportunities for improvement, and implementing strategies to reduce the occurrence of reportable events and improve the quality of the programs.

Tennessee On-Site Review

The H&W SR team conducted the on-site visit over a four day period, as well as a number of virtual meetings before and after the on-site visit. The team met with various state staff, stakeholders, advocates, ombuds, providers, participants, and staff responsible for investigating critical incidents. The following topics were covered in addition to reviewing a sample of critical incident reports:

- Medicaid Agency's oversight of the waiver programs and the critical incident management systems and processes.

- System integration and data information sharing.

- Program and cross-agency collaboration.

- Tennessee's mortality review process.

- Critical incident reporting process (from providers, care managers, participants, and stakeholder perspectives).

- Input from case managers, MCOs, direct service providers, program participants, and state and provider critical incident investigators on the Tennessee Tiered reporting process.

- Best Practices and challenges in relation to the critical incident management system.

The H &W SR team held two separate meetings with self-advocates, families, the protection and advocacy entity, and LTC Ombudsman. One meeting was held with stakeholder/ombuds involved with the CHOICES demonstration. A separate meeting was held with ECF CHOICES demonstration and Statewide HCBS waiver. Both meetings provided the opportunity to receive perspectives on how the entities work together to assure the health and welfare of participants for the various waivers in the state.

III.   State Strengths and Promising Practices for Ensuring Health and Welfare

The following is an overview of the strengths and promising practices identified by the H&W SR team regarding the design or practice of ensuring the health and welfare of HCBS participants in Tennessee.

- **Reportable Events Management (REM) System** The state utilizes the REM to track its critical incidents statewide. The REM is a result of the state's work to merge the three legacy reporting systems under one system and has been successful in improving the abuse, neglect, or exploitation (A/N/E) coordination, tracking and remediation across components. The change to REM created three categories for reportable events used in the state. Tier 1, Tier 2 and additional reportable events. Tier 1 investigations contain a report of egregious incidents of A/N/E, unexplained or unexpected death, serious injury of unknown cause, must include medical intervention and are investigated by state investigators. Tier 2 investigations include reports of A/N/E with individuals that do not require medical treatment or intervention. The individual is also not at continued risk of serious harm. The Tier 2 investigations are conducted by provider investigators within the agency from which the participant receives services. Additional events reported are screened to determine resources required to address the event and are also reported in the state's quarterly monitoring report.

  Reportable events can be received either through a direct call to the hotline, electronic submission of a reportable event forms (REF) from providers and MCOs, or through the submission of the 1215 form utilized by Adult Protective Services (APS). Reports of A/N/E of vulnerable adults in a DIDD licensed home or other HCBS settings are documented on a 1215 incident form. After gathering all pertinent information, APS will notify DIDD investigations using the email function in their separate reporting system

with the completed 1215 form attached. Reportable events are triaged by DIDD into Tier 1 or Tier 2 events for investigation and remediation. The system is utilized by DIDD, TennCare, the MCOs and providers to manage Tier 1 and Tier 2 investigations and track other reportable events.

The state continuously monitors data in the REM system to identify best practices and identify when process adjustments are necessary. For example, last summer, based on its assessment, the state adjusted procedures for handling Tier 2 A/N/E investigations. For a time, the providers had been responsible for reviewing all Tier 2 events for A/N/E events that required medical treatment or intervention. The state evaluated this approach and decided A/N/E with medical treatment or intervention from the providers to the DIDD investigators. Based on its review of the system data the state determined that the relationship held between the DIDD and its APS, police department, and Traumatic Brain Injury (TBI) and behavioral health partners made it better equipped to coordinate, respond and remediate critical incidents involving A/N/E. In addition to making this change, the REM Workgroup (at DIDD) developed a best practices tool to track and trend data received from reported events.

- **Dignity of Choice**-The state noted during the review that it utilized a Dignity of Choice approach in relation to its HCBS programs. This approach is person-centered and designed to facilitate individuals receiving services to make choices for themselves with the same freedoms as individuals who do not have disabilities, but with risk-mitigation in place.

- **Program and Cross-Agency Collaboration-** The state has multiple examples of productive cross-agency collaboration related to its critical incident management system. The state's work to merge the three legacy reporting systems under the REM system has been successful in improving the coordination and tracking of A/N/E cases and remediation across components. The state's REM workgroup meets bi-monthly to strategize on how to improve the reporting system. The system is additionally supported through the maintenance of a Memorandum of Understanding (MOU) between DIDD and APS. During the course of reviews, the state collaborates with APS, state investigators, provider investigators, MCOs Quality Oversight team, and operating agencies for the 1915(c) and 1115 HCBS programs through its establish meetings. Specifically, on a monthly basis, the state holds meetings with the Statewide Continuous Quality Improvement Team with TennCare and MCO representation. Another example of cross-agency collaboration is the state's Vulnerable Adult Protective Investigation Team (VAPIT) developed to coordinate responses and investigations of instances of suspected abuse, neglect or exploitation of adults through review of APS 1215 forms. The VAPIT meetings include members representing APS, DIDD, the Tennessee Bureau of Investigation (TBI), LTC Ombuds, law enforcement, guardians, Department of Mental Health and Substance Abuse Services, and the Collaborative Response to Elder and Vulnerable Adult Abuse (CREVAA).

- **Substantiated Investigations Review Inquiry (SIRI) and Direct Support Provider Oversight**- The state utilizes the SIRI system to capture substantiated incidents that do not rise to the level of a provider being entered onto the abuse registry. Providers are required to check SIRI before hiring new staff to see if they have had substantiated incidents that the provider may need to consider. The state noted that there were times

when a judge may not support an abuse registry entry for a provider, but that SIRI can be utilized to document the provider's agreement not to work in the field anymore. If this provider attempts to apply for a position in the future, they are placed on the abuse registry automatically without a new review. Each SIRI case for entry is reviewed by an attorney prior to being placed in the system.

- **Relias Learning Management System (RLMS) Training-** DIDD utilizes the RLMS to conduct web-based training for providers. RLMS assures both Provider and State Investigators are trained on incident management systems and processes to conduct investigations for human service agencies as well as oversight entities. Additionally, the state utilizes the data captured in the training database to identify all employers that are linked to an alleged perpetrator during its investigation of critical incident to ensure a consistent approach to removing the alleged perpetrator from contact with HCBS participants across providers when warranted.

- **Career Track for Critical Incident Investigators**- The state has worked to develop a career track for its critical incident response team. The track allows for promotion as additional skills are learned with higher likelihood to keep professionals in place.

- **Mortality Review Process-** The H&W SR team met with the lead physician for the Mortality Review while onsite. The 1915(c) HCBS participant mortality review process consists of an in-depth investigation by a review team that includes an independent physician, provider agency representatives, DSP, a quality compliance team member from DIDD, regional director, and a therapeutic team if needed. The team will meet to discuss the incident and develop a clinical death summary. The recommendations in the report are shared with the provider of the deceased with the requirement to respond to the recommendations by a specified date.

IV. State Challenges

The following is an overview of the challenges identified by the H&W SR team regarding the design or practice of ensuring the health and welfare of HCBS participants in Tennessee.

- **Oversight of Tier 2 provider investigations.** Throughout the course of the review, the H&W SR team heard concerns expressed related to the Tier 2 investigations, including the need for increased oversight of Tier 2 investigations by the state. The concerns expressed included:

  o Provider investigators conducting investigations for their agency may advise not reporting an incident or find incidents unsubstantiated in order to keep staff due to ongoing staffing issues statewide. Some individuals interviewed noted they felt unable to escalate cases.

  o DSPs are sending reports through their Provider Investigator instead of reporting directly into the DIDD system. Individuals expressed that discussions between DSP staff reporting and the Provider Investigator lead to downgrading of incidents and/or under reporting.

- **Communication challenges**. The H&W site review participants expressed concern related to communication processes including**:**

- Consistency in informing participants of investigation resolution prior to closing the investigation. Stakeholders felt reporting information and the grievance process is not widely shared, and there is not a tremendous effort to make sure folks understand and know that is an option.

- According to some providers, communication with the MCOs can be challenging due to staff moving around thus making it difficult to contact someone to receive information about reported incidents and investigations.

- Member advocates being MCO staff may not have the best interests or preferences of the participants in mind when addressing critical incident reports

- Delays in routing REF and 1215 forms to responsible parties to increase the response time to investigate critical incidents.

- Process to submit a critical incident report using the REF requires multiple individual steps to save and print copies of reports entered into the electronic system, which users found burdensome.

- MCOs and other responsible parties expressed a need to obtain real-time access to incident reports from DIDD.

- Care managers shared they are not notified consistently of hospitalizations for individuals that were not seen in the emergency room.

- Inconsistency in providing feedback to care managers during mortality reviews.

- **Lack of knowledge on incident reporting--**Even though the state has well developed policies, protocols and procedures for reporting incidents, stakeholders and participants reported that they were not aware of how or to whom to report critical incidents. It is unclear if all direct service providers are familiar with critical incident reporting requirements.
  - Some individuals were unclear on the steps to report critical incidents.

  - Individuals expressed during the visit the role of APS in the critical incident process is unclear.

  - During the site visit CMS learned APS does not have access to SIRI to check provider critical incidents reported and investigation outcomes.

- **Ongoing Critical Incident Training-** The H&W site review participants expressed concern related to ongoing critical incident training**:**
  - Some DSPs shared that annual refresher trainings are not consistently scheduled.

  - Some providers reported they were unclear on the reporting process due to not having many incidents to report.

  - DSPs expressed that an annual training would help with critical incident reporting processes when working in the field. According to some DSPs in-the-field training differs from online or classroom setting trainings and require situational support.

V. Recommendations and Next Steps for Tennessee

CMS appreciates the state's participation in the H&W SR and would like to provide recommendations that would enhance the state's ability to safeguard health and welfare in HCBS waiver programs.

- The state should consider enhancing the mortality review processes to ensure comprehensive coordination between fee-for service and MLTSS waiver populations that increases MCOs formal integration into the process.

- CMS acknowledges the state's current connections with advocates and suggests the state expand the scope of current meetings with participants and stakeholders, to include health & welfare concerns. This will create more formal opportunities for advocacy organizations to provide input/feedback to TennCare and DIDD concerning identified system, policy and procedural issues through their individual contacts with waiver participants.

- The state could schedule critical incident trainings annually to monitor critical incident knowledge required to ensure direct support providers, care managers, provider and state investigators, participants and stakeholders can identify reportable incidents.

- CMS understands the state is working to enhance its REM critical management system. As this work progresses CMS recommends the state consider the follow enhancements:

  o Assess opportunities to provide APS with information captured in the SIRI system to obtain information on provider substantiated incidents that do not rise to the level of a provider being entered onto the abuse registry.

  o Evaluate the ability to offer a one stop reporting button to triage critical incident reports to other entities. This would be especially beneficial for MCOs who would receive the reported incidents earlier.

  o Expand access of the state's Medicaid Eligibility system to other divisions to confirm beneficiary Medicaid program status.

CMS would like to thank the Tennessee for the opportunity to conduct the H&W review. As the state explores options to enhance health and welfare critical incident reporting and management. CMS is available to provide technical assistance on processes as well as provide health and welfare performance measure compliance guidance.