

Supporting Statement A
Annual Report on Section 1915(c) Home and Community-Based Services Waivers and
Supporting Regulations in 42 CFR 440.180 and 441.300-310
CMS-372(S), and OMB 0938-0272

Background

Operating a program of services under the authority of §1915(c) of the Social Security Act permits a state to waive certain Medicaid requirements in order to furnish an array of home and community-based services that promote community living for Medicaid beneficiaries and, thereby, avoid institutionalization. Waiver services complement and/or supplement the services that are available through the Medicaid State plan and other federal, state and local public programs as well as the supports that families and communities provide to individuals. The annual waiver information is needed so CMS may verify that state assurances regarding waiver cost-neutrality are met; to determine the impact of the waivers on the type, amount, and cost of services provided under the State plan, and on the recipients' health and welfare in addition to other required quality assurances; and to assess the waiver programs specifically and on an overall basis.

This 2024 iteration revises the quality section of the online Form CMS-372(S) (Annual Report on Home and Community-Based Services (HCBS) waivers) in the Waiver Management System (WMS). The section will be expanded to list all the corresponding waiver's performance measures and will require states to provide data as evidence for each measure on an annual basis. Additionally, the online form will be updated to allow states to report on separate waiver years for the financial data versus the quality information.

The 2021 collection of information request (approved by the Office of Management and Budget (OMB) on 11/24/2021), included a draft prototype of the quality section updates and informed states of the requirement to provide data as evidence for each quality performance measure on an annual basis. Since that time, CMS has worked with the WMS contractor to develop the online quality section in a more dynamic, user-friendly way. Screenshots of the updated prototype are attached and listed in this 2024 collection of information request as reporting instruments (see Section 12, below). Revisions to the online 372 reporting tool will be released into production upon OMB approval of this renewal.

In the current version of the online form, states are asked to report on performance of health and welfare, qualified providers, and any other quality performance measure with a performance level of less than 86%. When the revised online 372 reporting tool is implemented, the quality section of the form will be prepopulated by WMS with information from the applicable section of the approved §1915(c) waiver. The information will include specific performance measures; frequency of data collection, aggregation and analysis; and the specified sampling approach.

Requiring the detailed quality performance measure evidence in the 372 report on an annual basis will be more efficient for states and CMS. Without the change, states are required to report on the quality assurances annually in the 372 report in addition to providing three-year's worth of performance measure data once per 3 or 5-year waiver cycle for the quality review report. When implemented, CMS will be able to compile information from the 372 reports and use it as

evidence for the quality review report.

There are 6 new §1915(c) waivers as compared to the 2021 approved collection of information request. Therefore, we project an increase of 264 hours (from 253 waivers to 259 waivers) ([Active: 253 waivers x 44 hr/response] – [Revised: [259 waivers x 44 hr/response]]). When factoring the U.S. Bureau of Labor Statistics’ wage increase of plus \$9.34/hr (from \$75.32/hr to \$84.66/hr) we project a cost increase of \$126,323 (from \$838,462 to \$964,785).

A. Justification

1. Need and Legal Basis

As provided in 42 CFR 441.303, “The agency [state] must furnish CMS with sufficient information to support the assurances required by §441.302.” It also provides instructions on how to determine the HCBS waiver’s cost neutrality. Whereas §441.302(h) (which implements section 1915(c)(2)(E) of the Social Security Act) states: “annually, [the state] will provide CMS with information on the waiver’s impact. The information must be consistent with a data collection plan designed by CMS and must address the waiver’s impact on: (1) The type, amount, and cost of services provided under the state plan; and (2) The health and welfare of recipients.”

Additional federal guidance for 1915(c) waiver quality assurances is described in the following resources: Instructions, Technical Guide and Review Criteria for a 1915(c) Home and Community- Based Waiver, version 3.6, January 2019 (Technical Guide v3.6); and the CMS memo on Modifications to Quality Measures and Reporting in 1915(c) Home and Community Based Waivers issued March 12, 2014 (Quality Memo). Per the Technical Guide, the state must assure it will prepare and submit the annual waiver report as a condition of the approval of the waiver. Furthermore, it instructs the state to provide evidence from its own oversight activities related to the quality assurances. All evidence obtained by CMS throughout the waiver period is used to make a determination about the state’s performance and is communicated through a draft report. States are provided the opportunity to respond to the draft report and the response is considered and incorporated into the final report that is issued by CMS to the state at least twelve months prior to the waiver’s expiration. The final report and Form CMS-372(S) Reports are considered for renewal of the waiver. The technical guide CMS memo on Modifications to Quality Measures and Report are part of this waver application’s collection of information request.

2. Information Users

All State Medicaid agencies administering or supervising the administration of HCBS waivers are required to submit an annual Form CMS-372(S) Report in WMS via the 372 reporting tool for each approved waiver. Data must be furnished on a date of service basis. The first report for each waiver must have data from the new or renewed waiver effective date (and, for subsequent reports in the waiver cycle, the anniversary of that date) to the end of one full year thereafter. A separate Form CMS-372(S) Report is required for extension periods granted by CMS while a waiver's renewal is pending if the extension period is not subsumed into the renewal period. A Form CMS-372(S) Report must be submitted for each extension year, plus a separate report for

each additional portion of a year during which the waiver operated on a temporary extension that is not subsumed into the renewal. Similarly, if a waiver only operated for part of a year, a Form CMS-372(S) Report for that portion of the year in which the waiver was in effect must be submitted.

Online 372 Reporting Tool

States have six months after the end of each waiver year to report on quality assurance requirements and an additional 12 months for financial reporting. As a result, the online 372 reporting tool includes quality assurance information for the most recent waiver year and financial information for the prior waiver year. The tool currently only allows selection of one time period for the data and quality sections resulting in waiver year begin and end dates aligning with the financial data section or 18 months after the end of the waiver year. Upon OMB's approval of this 2024 collection of information request, the WMS online 372 reporting tool will be programmed to allow separate time periods to be entered for the data and quality sections.

A review of the report information is completed by CMS. Follow-up with the state is conducted when there are significant variances from the estimates approved in the waiver to the actual amounts in the report. CMS ensures the waiver continues to meet the cost neutrality requirement in §441.301 by comparing actual HCBS waiver and state plan expenditures to the estimated sum of institutional cost, plus associated state plan expenditures for the waiver population served. CMS also reviews the quality information and follows up with the state when there is missing or incomplete information. A final determination of accepting or not accepting the report is issued to the state.

Form CMS-372(S) Report Utilization

The state must have submitted, and CMS accepted the required CMS-372(S) reports. The annual waiver report(s) must demonstrate that the waiver has been cost-neutral and must also provide information on the quality of services. Cost neutrality and assuring health and welfare are fundamental statutory and regulatory requirements. Failure to prepare and submit acceptable and timely annual waiver reports can jeopardize continuation of the waiver and/or delay renewal of the waiver.

The report will be used by CMS to compare actual data to the approved waiver estimates and, in conjunction with the waiver compliance review reports, the information provided will be compared to that in the Transformed Medicaid Statistical Information System (T-MSIS CMS-R-284, OMB number 0938-0345) report and Federal Financial Participation (FFP) claimed on a state's Quarterly Expenditure Report (Form CMS-64, OMB number 0938-1265), to determine whether to continue the state's HCBS waiver. States' estimates of cost and utilization for renewal purposes are based upon the data compiled in the 372 reports.

Additionally, once per 3 or 5-year waiver cycle, CMS drafts a quality review report utilizing the 372 report quality information and other data/evidence gathered and requested during the waiver cycle to determine if the state meets the quality assurances for the waiver. The draft report is provided to the state for review with an opportunity to respond before it is finalized by CMS. A final report is issued to the state at least 12 months prior to the waiver's expiration.

3. Use of Information Technology

States report information concerning the numbers of Medicaid beneficiaries receiving waiver services, the type of services provided and the costs of those services. The information is usually taken from State Medicaid agency data processing systems. This data is summarized and submitted to CMS through the online 372 reporting tool. Data for the quality performance measures are gathered by the state from its own information technology mechanisms.

4. Duplication of Efforts

The data captured on the Form CMS 372(S) Reports are not duplicated through any other public information collection. The form CMS-64 (OMB control number 0938-1265) cannot be used in lieu of the Form CMS-372(S) Report. The CMS-64 is the financial report which the states submit quarterly to request claims for FFP. Additionally, T-MSIS cannot be used because unduplicated section 1915(c) waiver participants per service cannot be identified.

5. Small Businesses

This collection of information does not involve small businesses or other small entities. Rather, information is collected from Medicaid State agencies.

6. Less Frequent Collection

Currently, 46 states and the District of Columbia are required to submit the Form CMS-372(S) Report on an annual basis for their active §1915(c) waivers. A separate form is required for each of the 259 approved waivers currently in operation nationwide.

7. Special Circumstances

There are no special circumstances that would require an information collection to be conducted in a manner that requires respondents to:

- Report information to the agency more often than quarterly;
- Prepare a written response to a collection of information in fewer than 30 days after receipt of it;
- Submit more than an original and two copies of any document;
- Retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;
- Collect data in connection with a statistical survey that is not designed to produce valid and reliable results that can be generalized to the universe of study;
- Use a statistical data classification that has not been reviewed and approved by OMB;
- Include a pledge of confidentiality that is not supported by authority established in statute or regulation that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or
- Submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the

extent permitted by law.

8. Federal Register/Outside Consultation

The 60-day notice published in the Federal Register on June 10, 2024 (89 FR 48899). Comments must be received by August 9, 2024.

9. Payments/Gifts to Respondents

No payments or gifts will be given to respondents.

10. Confidentiality

No personal identifiable information is collected, and no assurances of confidentiality have been provided.

11. Sensitive Questions

There are no sensitive questions associated with this collection. Specifically, the collection does not solicit questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

12. Burden Estimates

Wage Estimates

To derive average costs, we used data from the U.S. Bureau of Labor Statistics' May 2023 National Occupational Employment and Wage Estimates for all salary estimates (http://www.bls.gov/oes/current/oes_nat.htm). In this regard, the following table presents BLS' mean hourly wage, our estimated cost of fringe benefits and other indirect costs (calculated at 100 percent of salary), and our adjusted hourly wage.

Table 1: State Wage Estimates

Occupation Title	Occupation Code	Mean Hourly Wage (\$/hr)	Fringe Benefits and Other Indirect Costs (\$/hr)	Adjusted Hourly Wage (\$/hr)
Business Operations Specialist	13-1000	42.33	42.33	84.66

As indicated, we are adjusting our employee hourly wage estimates by a factor of 100 percent. This is necessarily a rough adjustment, both because fringe benefits and other indirect costs vary significantly from employer to employer, and because methods of estimating these costs vary widely from study to study. Nonetheless, we believe that doubling the hourly wage to estimate total cost is a reasonably accurate estimation method.

Burden Estimates

Currently, there are 259 active §1915(c) waivers in 46 states and the District of Columbia. The

Form CMS-372(S) Report is due for each waiver on an annual basis. CMS estimates a burden of 44 hours at \$84.66/hr for a Business Operations Specialist to complete each Form CMS-372(S) Report submission. The total 44 hour burden is comprised of 25 hours of record keeping, collection and maintenance of data, and 19 hours of record assembly, programming, and completing the Form CMS-372(S) Report in the required format.

In aggregate, CMS estimates an annual burden of 11,396 hours (259 waivers x 44 hours) at a cost of \$964,785 (11,396 hours x \$84.66/hr).

Information Collection Instruments and Instruction/Guidance Documents

Form CMS-372(S) Annual Report on Home and Community-Based Services (HCBS) Waivers (Revised)

Sections of the Form CMS-372(S) Report within WMS and how they relate to the regulatory requirements described in §§441.302 and 441.303, in addition to the Technical Guide v3.6 and Quality Memo are as follows:

a) Online 372 Reporting Tool Summary Section

The online 372 reporting tool Summary Section specifies the waiver year for which the state is submitting cost neutrality data. The report type and state's contact information are also included.

b) Online 372 Reporting Tool Data Section

Information in this section of the online 372 reporting tool is due 18 months following the end of the waiver year. The timeframe allows states to process Medicaid billing and determine the actual costs for waiver services rendered. Data on participants is reported based on annual unduplicated individuals. Each service is specified as it is listed in Appendix J of the approved waiver, and the number of unduplicated waiver participants who received each waiver service is listed. Total waiver expenditures for each service must be reported in whole dollars and must be the total computable expenditures. The 1915(c) waiver cost-neutrality formula is used to compute the average per capita expenditures with and without the waiver using factors D and D' from the Form CMS-372(S) Report and compares to factors G and G' from the approved waiver estimates.

c) Online 372 Reporting Tool Quality Section

Information in this section of the online 372 reporting tool pertains to the most recent waiver year and is due six months following the end of that year. The state provides assurances that all provider standards and health and welfare safeguards have been met and corrective actions have been taken where appropriate. Data is also provided by the state identifying deficiencies detected for any of the waiver's approved performance measures. A deficiency is a performance level of less than 86% or another amount approved in the section 1915(c) waiver. An aggregated number of substantiated instances of abuse, neglect, exploitation and/or death must also be included. The state provides an explanation of how these deficiencies have been or are being corrected as well as the steps taken to ensure they do not reoccur. The Waiver Management System 372(S) Report Screenshots reporting instrument captures a shot of the existing online 372 report's summary,

data and quality sections.

Following renewal of this collection of information request, the online 372 reporting tool quality section will begin collecting data for each of the waiver's approved performance measures. The reporting tool will be prepopulated by WMS with information from the applicable approved section 1915(c) waiver and will include: specific performance measures; frequency of data collection, aggregation, and analysis; and the approved sampling approach. When a performance level is less than the approved performance level, typically 86%, the state will be required to provide information about remediation actions taken to bring it into compliance and steps taken to ensure deficiencies do not reoccur.

The 2021 approved collection of information request included a draft prototype of the updated quality section. That prototype has been replaced in this 2024 issue with screenshots of a more dynamic quality section to be released in WMS (see reporting instrument 372 Report Quality Section Updates). Both instruments were designed to gather the same information, but the latest version is much more user friendly. Additionally, the changes described in this section are included in the Form CMS-372(S) Annual Report HCBS Waivers Crosswalk.

13. Capital Costs

There are no capital costs associated with this collection of information.

14. Cost to Federal Government

The CMS's Division of HCBS Operations and Oversight (DHCBSO) is responsible for performing review of the Form CMS-372(S) Report via the online 372 reporting tool. CMS estimates a burden of 13 hours for a GS-12, Step 4 analyst at \$51.38/hr to complete each Form CMS-372(S) Report review. The 13-hour burden is comprised of reviewing the annual Form CMS-372(S) Report and additional follow-up actions when the report is incomplete or demonstrates a lack of cost neutrality.

The GS-12, Step 4 was determined to be an average grade based on the variety of staff performing 372 report reviews within DHCBSO that includes staff members based out of each of the CMS office locations. Since nearly all states operate HCBS waivers, the \$51.38/hr wage was determined by averaging basic pay rates for a GS-12, Step 4 analyst across the eleven localities of CMS offices as follows:

Table 2: Federal Wage Estimates

Regional Office location	GS 12-4 hourly basic pay based on locality (\$/hr)
Boston	51.78
New York	53.85
Philadelphia	50.44
Baltimore	52.29

Atlanta	48.44
Chicago	52.72
Dallas	49.79
Kansas City	46.55
Denver	50.96
San Francisco	57.05
Seattle	51.32
TOTAL	565.19
Average hourly rate	51.38

The 2024 General Schedule (GS) Locality Pay Tables published by the Office of Personnel Management were used to obtain the hourly basic pay based on locality, see <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2024/general-schedule>. When accounting for fringe benefits, the hourly wage is adjusted by 100% to \$102.76/hr. As such, the cost to the federal government is estimated to be \$345,993 (\$102.76 x 13 hours x 259 waivers).

15. Changes to Burden

The 2021 public notification for renewal of the CMS-372(S) Report already included one additional hour (totaling 44 hours) in anticipation of the more detailed quality section in the online reporting tool. However, the updated online tool has not been implemented yet. Therefore, the estimated time to complete the updated online 372 report tool remains at 44 hours. The quality section update will require states to report data for all performance measures rather than only for health and welfare and deficient measures. Identifying deficiencies requires states to gather and evaluate data for each of the waiver's performance measures approved in the corresponding §1915(c) waiver on an annual basis unless otherwise specified in the waiver. As a result, states should have the information they need to complete the updated quality section. The online 372 reporting tool will also allow states to indicate if no data is available for a specific performance measure.

Requiring the detailed quality performance measure data in the 372 report on an annual basis will be more efficient for states and CMS. Without the change, states are required to report on the quality assurances annually in the 372 report in addition to providing three-year's worth of performance measure data once per 3 or 5-year waiver cycle for the CMS quality review report. When implemented, CMS will be able to compile information from the 372 reports and use it as evidence for the CMS quality review reports.

There are 6 new §1915(c) waivers as compared to the 2021 approved collection of information request. Therefore, we project an increase of 264 hours (from 253 waivers to 259 waivers) ([Active: 253 waivers x 44 hr/response] – [Revised: [259 waivers x 44 hr/response]]). When factoring the U.S. Bureau of Labor Statistics' wage increase of plus \$9.34/hr (from \$75.32/hr to \$84.66/hr) we project a cost increase of \$126,323 (from \$838,462 to \$964,785).

16. Publication/Tabulation Dates

This collection of information is not intended for publication.

17. Expiration Date

There are no exceptions to the expiration date.

18. Certification Statement

There are no exceptions to the certification statement.

B. Collections of Information Employing Statistical Methods

This collection of information does not employ statistical methods.