

Supporting Statement Part A
1915(c) Home and Community-Based Services (HCBS) Waiver Application
CMS-8003, OMB 0938-0449

Background

The 60-day iteration of this collection of information request received public comment. In response, this 30-day iteration sets out a revised Application for a §1915(c) Home and Community-Based Services Waiver. The revisions are intended to improve the quality of the application, remove outdated language, and streamline the review process. We have also revised the application's Instructions, Technical Guide, and Review Criteria document to align with the application changes and to align guidance with current CMS regulations and policy. Details can be found in section 15 of this Supporting Statement and in the attached crosswalks.

A. Justification

1. Need and Legal Basis

Section 1915(c) of the Social Security Act (Act) authorizes the Secretary of Health and Human Services to waive certain Medicaid statutory requirements so that a state may offer home and community based services to state-specified target group(s) of Medicaid beneficiaries who need a level of institutional care that is provided under the Medicaid state plan.

Section 1915(c) HCBS waivers were first authorized in the Omnibus Budget and Reconciliation Act (OBRA) of 1981, with amendments made in 1985, 1986, 1987, 1988, 1990 and 1997. Final regulations for the 1915(c) waiver program were published on July 25, 1994. CMS amended and added to the 1915(c) regulations in a final regulation published on January 16, 2014. Together, the statute and regulations set forth guidance for states regarding the design and implementation of their 1915(c) HCBS waiver programs. In order to adhere to the statute and regulations, states must have mechanisms in place to meet six statutory assurances: Health and Welfare; Financial Accountability; Level of Care of Individuals Served; Service Plans; Qualified Providers; and, Administrative Accountability of the Single State Medicaid Agency.

The waivers are utilized by states as the predominant vehicle for community-based long term care services for vulnerable populations. 1915(c) waivers are submitted and approved through the Waiver Management System (WMS) at <https://wms-mmdl.cms.gov/WMS/faces/portal.jsp>. The Government Accountability Office (GAO) issued a report in 2003 which questioned CMS' oversight of the states in their management and operations of HCBS waivers. The GAO report was expressly critical of the lack of information that CMS collected from states about their waiver operations, and specifically about states' quality assurance and improvement activities. Senators Grassley and Breaux sent CMS correspondence that expressed similar concerns. The report and the letter provided CMS with an opportunity to improve its oversight of the states' HCBS programs through a multi-pronged approach.

In addition to refining CMS guidance and providing states with technical assistance regarding quality, CMS redesigned the HCBS waiver application. Improvements to the application were

essential to obtaining detailed information from states on the waiver programs, and the strategies employed by the state to meet all of the statutory requirements, particularly assuring the health and welfare of individuals served through the waiver.

As such, renewal of the application is essential for the Secretary, and his/her designee at CMS, to determine whether a state's program meets all applicable statutory and regulatory requirements. In addition to the statutory assurances contained in section 1915(c) of the Act, each state's program must comport with all other elements of Medicaid law except for three notable areas for which waivers are permitted under 1915(c): section 1902(a)(10)(B), comparability; section 1902(a)(1), statewideness; and section 1902(a)(10)(C)(i)(III), income and resources for the medically needy.

Under section 1915(c) of the Act, there is a requirement that the state must assure the health and welfare of the individuals served within the waiver. This is a standard unique in Medicaid to 1915(c) waivers, and it establishes a significantly higher threshold for approval than other provisions of Title XIX of the Social Security Act.

CMS must review each waiver on its own merits, and each waiver must be judged against all applicable statutory and regulatory requirements. The web-based application eases the paperwork associated with the submission, review, approval and renewal of waiver applications, while simultaneously providing CMS with the information necessary to determine the scope, structure and operation of each waiver program. In addition to the benefits for each individual waiver, the web-based application provides vital national data on long-term care services across the country.

2. Information Users

The web-based application is used by CMS to review and adjudicate individual waiver actions. In order to submit the waiver application, states first log into the WMS. Once logged in, the state can create, amend (as needed), and renew a waiver application. For more detailed instructions, technical guidance, and information about CMS policy, states can refer to the CMS HCBS Waiver Instructions, Technical Guide, and Review Criteria document. This document is included in a link on the main page of the WMS.

After the state completes their waiver request, they then submit the application to CMS through the WMS.

3. Use of Information Technology

1915(c) waiver applications are submitted by states and approved by CMS through the WMS at <https://wms-mmdl.cms.gov/WMS/faces/portal.jsp>.

The online application provides automated calculation features, reduces the need for redundant data entry, improves transparency and record retention capabilities (for both the state and the federal government), eases submission, eases federal review and approval activities, and simplifies and standardizes data retention activities. CMS makes only the web-based version of the form available for use by states to ensure consistency of information, accessibility of

information, and aggregated information on the country's home and community-based services waiver programs.

4. Duplication of Efforts

The data captured on the waiver application are not duplicated through any other public information collection.

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

The frequency with which data is collected is dictated in statute. States seeking a 1915(c) waiver must submit an initial waiver request, which is approved by CMS for a three or five year period. In order to renew a 1915(c) waiver, the state must submit an application. CMS approves a renewal for a five year period. Amendments, which are done at the states' discretion, may be completed at any time during a waiver's approval period.

Section 1915(c) waivers are entirely discretionary on the part of the state.

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 September 11, 2023 (88 FR 62377). Comments were received. In response, the Application for a §1915(c) Home and Community-Based Services Waiver and the application’s Instructions, Technical Guide, and Review Criteria document have been revised. Details can be found in section 15 of this Supporting Statement and in the attached crosswalks.

The 30-day notice published in the Federal Register on March 18, 2024 (89 FR 19314). Comments must be received by April 17, 2024.

9. Payments/Gifts to Respondents

No payments or gifts will be given to respondents.

10. Confidentiality

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. Collection of Information Requirements and Associated Burden Estimates

Wages

To derive average costs, we used data from the U.S. Bureau of Labor Statistics’ May 2022 National Occupational Employment and Wage Estimates for all salary estimates (https://www.bls.gov/oes/2022/may/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.

Occupation Title	Occupation Code	Mean Hourly Wage (\$/hr)	Fringe Benefits and Other Indirect Costs (\$/hr)	Adjusted Hourly Wage (\$/hr)
Business Operations Specialist	13-1000	40.04	40.04	80.08

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.

Requirements and Associated Burden Estimates

Based on an evaluation of the activities comprising the state recordkeeping and reporting processes, and CMS's review and approval of 1915(c) waivers, as of 2023, there are 258 CMS approved HCBS waivers in 47 states and the District of Columbia.

The following considers the effort for states to prepare and submit their initial and renewal waiver applications.

In addition to the existing pool of waivers, CMS estimates that a total of 4 new waiver applications will be submitted annually by states seeking to expand the array of community-based services available to populations who would otherwise require the level of care provided in institutional settings.

New/Initial Waivers

In order to initiate a new waiver, a state must submit an application to CMS for consideration and approval. The first time a state completes the web-based application, significant time and attention is required to complete all required fields. As indicated above, CMS anticipates 4 new waivers annually. The estimated time to develop a new waiver application is 163 hours.

In aggregate, the annual burden to complete all new waiver applications is estimated at 652 hours (4 waivers/year x 163 hr/response) at a cost of \$52,212 (652 hr x \$80.08/hr). Taking into account the Federal administrative match of 50 percent, the requirement will cost states \$26,106 (\$52,212 x 0.50).

Renewal Waivers

On an annual basis, approximately 60 renewal applications are submitted to CMS for review and approval. All 1915(c) waivers are included in the web-based system. CMS expects that, for the next three years, states will submit 180 waiver applications (again, 60/year) for renewal in the system. Renewals in the WMS are more efficient than new applications since much of the data carries forth from the previously approved application and the state need only make modifications to the data as necessary to reflect changes or improvements to their waiver program. CMS continues to estimate that the burden for renewing waivers in the web-based application would be approximately 78 hours/response.

In aggregate, the annual burden to renew existing waiver applications is estimated at 4,680 hours (60 waivers/year x 78 hr/response) at a cost of \$374,774 (4,680 hr x \$80.08/hr). Taking into account the Federal administrative match of 50 percent, the requirement will cost states \$187,387 (\$374,774 x 0.50).

Summary of Annual Burden Estimates

Requirement	Respondents	Responses	Time per Response (hr)	Total Time (hr)	Labor Cost (\$/hr)	Total Cost (\$)	State Share (\$)
New Waivers	4	4	163	652	80.08	52,212	26,106
Renewal Applications	30	60	78	4,680	80.08	374,774	187,387
TOTAL	34	64	varies	5,332	80.08	426,986	213,493

Collection of Information Instruments and Instruction/Guidance Materials

Application for a §1915(c) Home and Community-Based Services Waiver (Revised)

Instructions, Technical Guide and Review Criteria (Revised)

13. Capital Costs

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

14. Cost to Federal Government

The estimate of annualized cost to the Federal government is \$506,006 for CMS' review of states' new and renewal applications for home and community-based services waivers. This estimate is based on CMS' recent experience in reviewing state cost reports.

New Waivers (Salary/Labor)

4 Applications x 160 hours = 640 hours

\$56.52/hr (Federal hourly rate GS 13-1)*

\$56.52/hr x 640 hours = \$36,173 estimated federal cost for new waiver applications

Web-Based Renewal Applications (Salary/Labor)

60 Applications x 75 hours = 4,500 hours

\$56.52/hr (Federal hourly rate GS 13-1)*

4,500 hours x \$56.52/hr = \$254,340 estimated cost for subsequent web-based renewal app.

Salary/Labor	\$290,513 (\$36,173 + \$254,340)
Computer and Other Administrative Costs	\$ 2,000
<u>Reimbursement for state administrative costs:</u>	<u>+\$213,493 (see section 12)</u>
Total Federal Costs	\$506,006

*The hourly rate was derived from the calendar year 2024 Federal pay scale for the Washington D.C.-Baltimore area. (See https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/24Tables/html/DCB_h.aspx).

15. Changes to Requirements and Burden Estimates

The 60-day iteration of this collection of information request received public comment. In

response, this 30-day iteration sets out a revised Application for a §1915(c) Home and Community-Based Services Waiver. The revisions are intended to improve the quality of the application, remove outdated language, and streamline the review process. We have also revised the application's Instructions, Technical Guide, and Review Criteria document to align with the application changes and to align guidance with current CMS regulations and policy. Details can be found in the attached crosswalks.

We have also adjusted our costs estimates to align with current BLS wage data. This is a non-adjusted change of plus \$2.38/hr (from \$37.66/hr to \$40.04/hr).

For new waivers, we have also reduced the number of responses by minus 4 (from 8 to 4), increased the time per response by 3 hours (from 160 hr to 163 hr), and reduced the total time by 628 hours (from 1,280 hr to 652 hr).

For renewal applications, we have also reduced the number of responses by minus 33 (from 63 to 30), increased the time per response by 3 hours (from 75 hr to 78 hr), and reduced the total time by 45 hours (from 4,725 hr to 4,680 hr).

Requirement	Respondents	Responses	Time per Response (hr)	Total Time (hr)	Adjusted Wage (\$/hr)	Total Cost (\$)	State Share (\$)
Active: New Waivers	8	8	160	1,280	75.32	96,409	48,205
2024: New Waivers	4	4	163	652	80.08	52,212	26,106
<i>Subtotal: New Waivers</i>	<i>(4)</i>	<i>(4)</i>	<i>+3</i>	<i>(628)</i>	<i>+4.76</i>	<i>(44,197)</i>	<i>(22,099)</i>
Active: Renewal Applications	63	63	75	4,725	75.32	355,887	177,944
2024: Renewal Applications	30	60	78	4,680	80.08	374,774	187,387
<i>Subtotal: Renewal Applications</i>	<i>(33)</i>	<i>(3)</i>	<i>+3</i>	<i>(45)</i>	<i>+4.76</i>	<i>+18,887</i>	<i>+9,433</i>
TOTAL CHANGE	(37)	(7)	+6 (3 + 3)	(673)	+4.76	(25,310)	(12,656)

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.