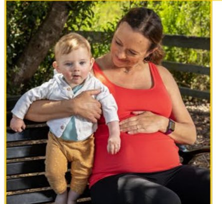
Creating an Optimal Environment for Quality Healthcare for Individuals, Families, and Communities

CMS Quality Oversight for Medicaid Home & Community-Based Services Waivers

COMMUNITIES

FAMILIES



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Creating an Optimal Environment for Quality Healthcare for Individuals, Families, and Communities

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AGENDA

- CMS quality oversight of 1915(c) Home and Community-Based Services (HCBS) Waivers
- Resources
- Question and Answer

Overview

CMS quality oversight of 1915(c) HCBS Waivers:

- State Medicaid Agency quality oversight and improvement requirements
- HCBS quality reporting requirements
- CMS evidence-based review process
- CMS site visits focused on the HCBS health and welfare assurance

Basic HCBS Waiver Facts

- There are 258 HCBS waivers in operation in 46 states and the District of Columbia.
- In 2019:
  - HCBS waivers served more than 1.9 million individuals[1].
  - Approximately 1.33 million people resided in certified nursing homes[2].
- HCBS waivers are the primary vehicle used by states to offer non-institutional services to individuals with significant disabilities.
- Home and community-based services are designed as an alternative to institutional care, support community living & integration and can be a powerful tool in a state's effort to increase community services.

[1] 1915(c) Waiver Programs Annual Expenditures and Beneficiaries Report, Analysis of CMS 372 Annual Reports for 2018-2019 (published June 9, 2023)

[2] https://www.kff.org/other/state-indicator/number-of-nursing-facility-residents/

HCBS Waiver Requirements

The following are regulatory requirements for HCBS waivers:

- HCBS must be “cost neutral” as compared to institutional services, on average for the individuals enrolled in the waiver.
- Individuals must be Medicaid eligible, meet an institutional level of care, and be in the target population(s) chosen & defined by the state.
- Services must be provided in accordance with an individualized assessment and person-centered service plan.
- HCBS participants must have choice of all willing and qualified providers.
- The waiver meets regulatory and sub-regulatory quality assurances that are demonstrated by state developed and CMS approved performance measures.

HCBS Waiver Operational Process

- Typically, waivers are approved for a period of 5 years, by which time they must be submitted for renewal by the state.
- States are required to provide an accounting of their quality oversight activities on an annual basis as part of the 1915(c) approval framework (the "372 report"), with a full evidentiary report submitted to CMS after the first 3 years of waiver operation that delineates the state's oversight actions.
- CMS reviews information associated with state-developed performance measures to evaluate whether the state has met its obligations under the waiver and to understand waiver impact on beneficiaries.

HCBS Waiver 372 Reports

The CMS-372(S) requires states to report the following for each waiver year:

- Financial/statistical information
- Quality assurance deficiencies and remediation

- (a) the unduplicated number of persons who participated in the waiver during the waiver year
- (b) the number of participants who utilized each waiver service
- (c) the amount expended for each waiver service and for all waiver services in total
- (d) the average annual per participant expenditures for waiver service
- (e) the total number of days of waiver coverage for all waiver participants and the average length of stay (ALOS) on the waiver
- (f) expenditures under the state plan for non-waiver services that were made on behalf of waiver participants and average per participant expenditures for such services (based on the number of participants who utilized such services)
- (g) information about waiver quality assurances and the impact of the waiver on health and welfare of waiver participants

Evidence-Based Review Process

- CMS sends the state a letter 24 months before the expiration of a waiver.
- This letter requests evidence (based on the performance measures that were included in the approved waiver) that the waiver is operating in compliance with federal requirements.
- States' data submissions are required for waiver renewal.
- CMS reviews the data and completes a quality review report including the following steps:
  - Draft report
  - State response
  - Final Quality Review Report
- All items identified in the Final Quality Review Report must be addressed by the state before renewal.

HCBS Waiver Quality Guidance

CMS issued quality guidance on March 12, 2014[3] that includes the following information:

- Emphasizes importance of health and welfare monitoring and outcomes
- Describes reporting requirements for individual remediation
  - Although states must remediate issues, reporting on individual remediation to CMS is not required except in substantiated instances of abuse, neglect or exploitation.
- Requires quality improvement projects/remediation when the threshold of compliance with a measure is below 86%.
- Combining quality measures of multiple 1915(c) waivers when waivers are managed and monitored similarly.

[3] Modifications to Quality Measures and Reporting in §1915(c) Home and Community-Based Waivers

Notes on the Word “Assurance”

- By its nature, the term Assurance refers to minimum guarantees.
- Quality Assurance is often the minimum standards to which an organization agrees as the baseline.
- Quality Improvement refers to going above and beyond the assurances.

HCBS Waiver Assurances (1 of 2)

To meet 1915(c) Federal Assurances, the state must demonstrate:

- Appropriate **level of care** determinations by implementing the processes and instrument(s) specified in its approved waiver for evaluating/reevaluating an applicant's/waiver participant's level of care is consistent with care provided in a hospital, nursing facility, or intermediate care facility/intellectual disability-developmental disability,
- An effective system designed and implemented for reviewing the adequacy of **service plans** for waiver participants, and
- It has designed and implemented an adequate system for assuring all waiver services are provided by **qualified providers.**

HCBS Waiver Assurances (2 of 2)

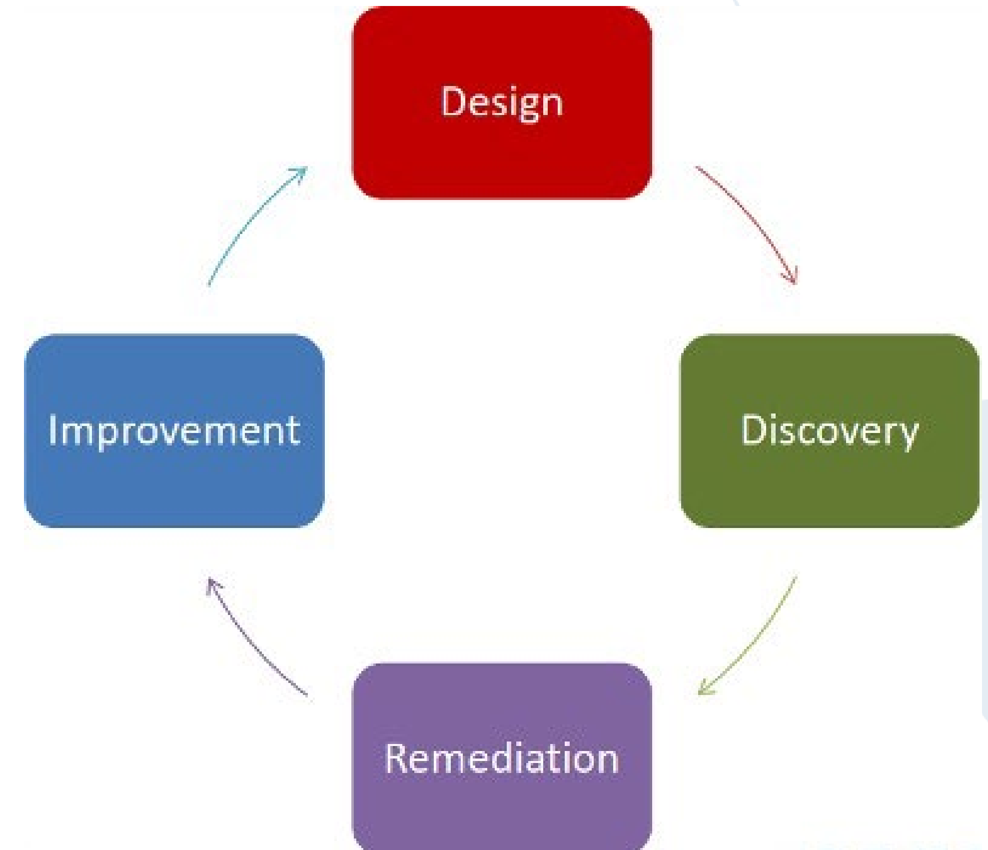
The state must also demonstrate:

- On an ongoing basis the state identifies addresses and seeks to prevent instances of abuse, neglect and exploitation ensuring participants **health and welfare**,
- The Medicaid Agency retains ultimate **administrative authority** and responsibility for the operation of the waiver program by exercising oversight of the performance of waiver functions by other state and local/regional non-state agencies (if appropriate) and contracted entities, and
- State **financial accountability** exists to assure that claims are coded and paid for in accordance with the reimbursement methodology specified in the approved waiver.

All § 1915 HCBS Authorities Must Have a Quality Improvement Strategy

Quality assurance and improvement must describe how state(s) will conduct activities around:

- **Design**–Design of a quality improvement strategy,
- **Discovery**–monitoring and data collection,
- **Remediation**–plan to address deficiencies, and
- **Improvement**–measurable change in quality issues system-wide.



Quality Improvement Strategy

A Quality Improvement Strategy (QIS):

- Minimally, explains how the state will meet **assurances** set forth in Section 1915(c) of the Social Security Act and accompanying regulation, including those codified at 42 CFR 441.301 and 441.302,
- Can exceed the minimum assurances and include areas the **state deems critical** in achieving the **purpose of the waiver,**
- Must be in place at time of application but **expect it will change over time,**
- **Describes the sampling approach** used, for example simple, systematic, stratified, or other methodology, and
- Describes the **roles and responsibilities** of all who have a role in any aspect of discovery, remediation or systems improvement.

Systemic Quality Improvement (QI) Projects

- If compliance on any performance measure is less than 86%, states must conduct further analysis to determine the cause(s) of performance problem(s).
- Based on further analysis, a QI Project must be developed.
- Evidence Report must describe QI Project(s) undertaken & status.
- States are encouraged to mobilize existing state quality activities as available to target identified issues (e.g., a state's fall prevention program).

Compliance Levels

- It is the state's obligation to demonstrate it has met the assurances.
- CMS evaluates the evidence submitted and determines if the state demonstrates or does not demonstrate each assurance.
- CMS may include recommendations for improvement, even if the state demonstrates the assurance.

Compliance Options

Compliance options for CMS to use to ensure enforcement of 1915(c) waiver requirements, including the health and welfare assurances, are as follows:

- Imposition of a moratorium on waiver enrollment until compliance is achieved,
- Other corrective strategies as appropriate to ensure the health and welfare of waiver participants,
- Withholding of a portion of Federal payments for waiver services until compliance is achieved,
- Other actions determined necessary by the Secretary to address non-compliance.

Focus on Health & Welfare

Health & Welfare Sub-Assurances

The Health & Welfare assurance includes the following sub-assurances:

- Demonstrate on an ongoing basis how the state identifies, addresses, and seeks to prevent instances of abuse, neglect or exploitation, and unexplained death
- Demonstrate that an incident management system is in place and effectively resolves reported incidents and prevents further similar incidents to the extent possible
- Demonstrate that policies and procedures for the use of and prohibition of restrictive interventions (including restraints and seclusion) are followed
- Establish overall health care standards and monitors those standards based on the responsibility of the service provider as established in the approved waiver

2018 Joint Report on Health & Welfare

- In January 2018, the HHS Office of Inspector General, Administration for Community Living, and Office for Civil Rights issued a Joint Report entitled: *"Ensuring Beneficiary Health and Safety in Group Homes Through State Implementation of Comprehensive Compliance Oversight".*[4]
- The Joint Report described themes of unreported and unanalyzed critical incidents found across three individual state audits and identified model practices to enhance states' oversight mechanisms to ensure the health and welfare of individuals receiving HCBS in 1915(c) waiver programs.
- Among its recommendations, the Joint Report suggested that CMS form a team to address systemic problems in state implementation and compliance with health and safety oversight, which CMS opted to address with a proactive, technical assistance approach.

[4] https://oig.hhs.gov/reports-and-publications/featured-topics/group-homes/

CMCS Informational Bulletin Issued June 28, 2018

CMCS issued an Informational Bulletin in response to the Joint Report on June 28, 2018[5] and includes guidance on the following topics:

- Incident management and investigation
- Incident Management Audits
- Mortality Reviews
- Quality Assurance

[5] https://www.medicaid.gov/sites/default/files/federal-policy-guidance/downloads/cib062818.pdf

Incident Management and Investigation

- Reporting critical incidents is an important role in quality oversight and should not be perceived as punitive.
- It is an opportunity to help make quality oversight systems stronger.
- Providers and stakeholders are encouraged to report and resolve critical incidents, actively participating in ongoing quality improvement efforts.

Incident Management Audits

- States are encouraged to conduct audits of their incident management systems to ensure all occurrences meeting the state's definition of a critical incident are appropriately
  - Reported,
  - Investigated, and
  - Remediated.
- Reported critical incidents should be used to identify trends and potential system improvement strategies.

Mortality Reviews

- States should require a preliminary review of all beneficiary deaths, investigations should focus on deaths that are determined to be unusual, suspicious, sudden and unexpected, or potentially preventable, including all deaths alleged or suspected to be associated with neglect, abuse, or criminal acts.
- States are encouraged to establish relationships with relevant agencies performing autopsies to maximize the likelihood of their performance upon state request.

Quality Assurance

States are encouraged to:

- Focus on ensuring the provision of person-centered planning and services, and the inclusion of beneficiaries and other stakeholders in the development and implementation of a HCBS quality oversight program
- Establish regular and clear communications with stakeholders, including individuals receiving or on a waiting list for HCBS
- Publish online all reports generated as part of the state's HCBS quality assurance program
- Close feedback loops with individuals who are experiencing difficulties in receiving HCBS

CMS Health & Welfare Site Visits

The **goal of the site visit** is to offer assistance to states to improve how the health and welfare of HCBS participants is assured.

- Site visits are conducted to learn about the state's critical incident management system from various points.
- The site review team will identify:
  - Promising practices,
  - State challenges, and
  - Opportunities to provide technical assistance.

Site Review Activities

The site review activities include:

- Interviewing (virtual and on-site) state agencies, advocates, providers, and participants to learn about what is working well and identify opportunities for improvement related to supporting participant health and welfare,
- Observing how communication systems and processes work, and
- Conducting record reviews of critical incidents.

State Selection Criteria

States are selected based in the following criteria:

- One or more HCBS programs are due for renewal in the following year.
- One or more promising practices have been identified.
- On-site technical assistance has been requested by the state.
- Challenges in monitoring beneficiary health and welfare have been previously identified.

Completed Site Visits

- On-site visits were conducted in California, District of Columbia, Maryland, Massachusetts, Montana, Nebraska, Ohio, Oregon, West Virginia (2019 to early 2020).
- Virtual site visits were conducted in Maine (late 2020/early 2021) and Alaska (March 2023).
- A hybrid site visit (virtual & on-site) was conducted in Washington (September 2023).

Continuing Site Visits

- CMS will conduct additional Health & Welfare site visits throughout calendar year 2024.
- CMS has begun conversations with Tennessee and New Hampshire for upcoming site visits.
- Additional states will be selected based on previously mentioned criteria.

Common Promising Practices Identified

The following common promising practices were identified in two or more states:

- Robust mortality review processes for at least one type of waiver
- Collaboration with Adult Protective Services (APS) and/or Child Protective Services (CPS)
- Collaboration within state's administrative structure/cross agency collaboration
- Definition of critical incidents and practices in state regulations
- Partnering with law enforcement
- Robust critical incident management systems
- Data exchange agreements with hospitals

Common State Challenges

The following common challenges were identified in two or more states:

- Inconsistent reporting by providers
- Poor communication with APS and/or CPS
- Paper-based or under-developed incident management systems
- Inconsistent training/messaging regarding incident reporting policies and processes
- Lack of independent incident investigations, inadequate, or inconsistent investigations

CMS Recommendations

CMS recommendations from the visits include the following:

- Explore enhancing current critical incident management systems, including tracking and trending to identify systemic issues.
- Develop memorandum of understanding or other agreement with investigative agencies such as APS and CPS.
- Address systematically participant and provider education for identifying and reporting abuse, neglect and exploitation.
- Expand mortality review process to all populations.
- Learn from other states in developing and refining an incident tracking system.

Resources

- 1915(c) Waiver Programs Annual Expenditures and Beneficiaries Report, Analysis of CMS 372 Annual Reports for 2018-2019
- Kaiser Family Foundation - State Health Facts
- Modifications to Quality Measures and Reporting in §1915(c) Home and Community-Based Waivers
- 2018 Joint Report on Ensuring Beneficiary Health and Safety in Group Homes Through State Implementation of Comprehensive Compliance Oversight
- June 28, 2018, CMCS Informational Bulletin

Questions?