

Supporting Statement For Paperwork Reduction Act Submissions

General Instructions

A Supporting Statement, including the text of the notice to the public required by 5 CFR 1320.5(a)(I)(iv) and its actual or estimated date of publication in the Federal Register, must accompany each request for approval of a collection of information. The Supporting Statement must be prepared in the format described below, and must contain the information specified in Section A below. If an item is not applicable, provide a brief explanation. When Item 17 of the OMB Form 83-I is checked "Yes," Section C of the Supporting Statement must be completed. OMB reserves the right to require the submission of additional information with respect to any request for approval.

Specific Instructions

A. Background

The Center for Medicaid and State Operations (CMSO) within CMS, is requesting a revision to the OMB approved form 0938-0449, the application utilized by States to apply for a 1915(c) Home and Community Based Services (HCBS) Waiver.

Section 1915(c) authorizes the Secretary of Health and Human Services to waive certain specific 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 statute in the Omnibus Budget and Reconciliation Act (OBRA) of 1981, with amendments made in 1985, 1986, 1987, 1988, 1990 and 1997 [Note: Attachment B to this package contains the full text of Section 1915(c), as amended]. Final regulations for the 1915(c) waiver program were published on July 25, 1994. 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.

As of 2008, there are more than 300 HCBS waivers in 48 States and the District of Columbia. These waivers are increasingly utilized by States as the predominant vehicle for community-based long term care services for vulnerable populations.

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 served to provide CMS with an opportunity to improve 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 began a redesign of the application used by States to request HCBS waivers. 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.

CMS has revised the waiver application for Section 1915(c) HCBS waivers, and has developed a web-based application for States and CMS to use for the submission, review, amendment, renewal and approval of these applications. The revised, web-based application for HCBS waivers contains greater detail on the programs than its paper-based predecessor (developed in 1995). This detail allows CMS to obtain a full breadth of knowledge about the program before rendering a decision on its approval or continuation. Furthermore, the web-based format of the application provides CMS with unprecedented aggregate data regarding the structure and design of these programs, including the anticipated costs and numbers of persons to be served. In addition to the application, CMS has developed a complete set of instructions to accompany the document. These instructions and technical guidance provide specific instructions on how to complete the form, and provide all statutory, regulatory and policy guidance applicable to the waiver program.

B. Justification

1. Need and Legal Basis

As indicated above, this revised form 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), 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, 1902(a)(10)(C)(i)(III), Income and Resources for the Medically Needy.

Within Section 1915(c), 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 will be used by CMS to review and adjudicate individual waiver actions. The web-based application will also be used by States to submit and revise their waiver requests to CMS.

3. Use of Information Technology

The online tool 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 seeks to make 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 programs.

4. Duplication of Efforts

The data captured on the Web-Based 1915(c) 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 for a three year period. In order to renew a 1915(c) waiver, the State must submit an application. Once a waiver is renewed the first time, it moves to a 5-year renewal cycle. 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 involved in the collection of information from the States concerning implementation of their HCBSW.

8. Federal Register/Outside Consultation

We published a notice in the Federal Register on January 16, 2009, giving a 60-day comment period.

Beginning in 2003 through present, CMS has consulted regularly with States and their

representative associations on the redesign to the HCBS waiver application. In addition, CMS commissioned a study of some States who were early users of the web-based form (which became available to State in November 2006, with refinements and revisions made in 2007 and 2008 – reflecting some improvements to the technical aspects of the web-based application). Overall, the feedback on the revised waiver application in its web-based format has been positive. The CMS Central and Regional Office have seen an increased efficiency in the review, negotiation and approval of the waiver applications submitted by States, as well as reliable data storage and retention of all official actions.

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

No questions of a sensitive nature are asked.

12. Burden Estimates (Hours & Wages)

The estimate covers 305 waivers currently in operation in 48 States and the District of Columbia serving over one million recipients at a cost of more than \$25 billion, and is based on an evaluation of the activities comprising the State record keeping and reporting processes, and CMS's review and approval of 1915(c) waivers.

In estimating the burden on the States, we considered a number of factors, including the amount of anticipated staff time and salary level necessary to ascertain and enter required information for all waivers (initial and renewal), the increased ease of the web-based application, the more efficient review and approval process, and the simplified renewal process.

Currently, there are 48 States and the District of Columbia which operate 305 Section 1915(c) waivers. CMS assumes that each of these jurisdictions will utilize the application for waiver continuation. In addition to the existing pool of waivers, CMS estimates that 8 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 Waivers

In order to initiate a 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 8 new waivers annually. The estimated number of hours to develop a new waiver application is 160 hours. Thus, the estimated amount of time spent on new waiver application completion is 1280 hours.

Renewal Waivers

On an annual basis, approximately 63 renewal applications are submitted to CMS for review and approval. As of 2008, 130 or 42.6% of waivers are already included in the web-based system, placed there by States anxious to utilize the revised format and to streamline their future renewal actions. CMS expects that, for the next three years, of the 63 waivers expected annually for renewal, 36 waivers will be seeking approval for the first time on the web-based system, while 27 will be renewing a waiver that has already been approved in the system. The first time that a State uses the web-based application for a renewal waiver, the burden estimate is comparable to the time required to complete a new waiver (160 hours), since many of the fields are new in the application and the introduction of technology into the process requires time to attain familiarity with the application. Subsequent renewals are much more efficient 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 estimates that the burden for renewing waivers that had previously been approved in the web-based application would be approximately 75 hours.

8 New Applications x 160 hours = 1,280 hours for new applications

36 Renewal Applications x 160 hours = 5,760 hours for first time web-based renewal applications

27 Renewal Applications x 75 hours = 2,025 hours for subsequent web-based renewal applications

1,280 hours + 5,760 hours + 2,025 hours = 9,065 total hours of State burden

The estimate of annual cost to the States is \$230,200 for the completion of both new and renewal 1915(c) waiver applications.

New Waivers

Salary/Labor

8 Applications x 160 hours = 1,280 hours

\$74,416 (Federal Salary GS12-3) x 80% = \$64,771 (State Salary)

\$64,771/2080 = \$31.14 x 1.088 (retirement/insurance) = \$33.88 = hourly rate*

\$33.88 x 1,280 hours = Estimated State Cost for New Waiver Applications = \$43,370

First Time Web-Based Renewal Applications

Salary/Labor

36 Applications x 160 hours = 5,760 hours

\$74,416 (Federal Salary GS12-3) x 80% = \$64,771 (State Salary)

$\$64,771/2080 = \31.14×1.088 (retirement/insurance) = \$33.88 = hourly rate*
 5,760 hours x \$33.88 = Est. Cost for First Time Web-Based Renewal App. = \$195,150

Subsequent Web-Based Renewal Applications

Salary/Labor

27 Applications x 75 hours = 2,025 hours

\$74,416 (Federal Salary GS12-3) x 80% = \$64,771 (State Salary)

$\$64,771/2080 = \31.14×1.088 (retirement/insurance) = \$33.88 = hourly rate*

2,025 hours x \$33.88 = Est. Cost for Subsequent Web-Based Renewal App. = \$68,600

Overhead (18% of Salary/Labor) \$55,280

Computer and Other Administrative Costs (49 States x \$2000) \$98,000

Total Estimated State Costs \$460,400

Because CMS reimburses States for 50% of the administrative costs incurred to administer the Medicaid State plan, CMS anticipates the total estimated State costs to be: \$230,200.

*The hourly rate was computed using the calendar year 2008 Federal pay scale for the Washington D.C.-Baltimore area. We divided the annual amount by 2,080 to arrive at the hourly rate.

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 \$648,620 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

8 Applications x 160 hours = 1,280 hours

\$74,416 (Federal Salary GS12-3)

$\$74,416/2080 = \35.78×1.088 (retirement/insurance) = \$38.93 = hourly rate*

\$38.93 x 1,280 hours = Estimated Federal Cost for New Waiver Applications = \$49,830

First Time Web-Based Renewal Applications

Salary/Labor

36 Applications x 160 hours = 5,760 hours

\$74,416 (Federal Salary GS12-3)

$\$74,416/2080 = \35.78×1.088 (retirement/insurance) = \$38.93 = hourly rate*

5,760 hours x \$38.93 = Est. Cost for First Time Web-Based Renewal App. = \$224,240

Subsequent Web-Based Renewal Applications

Salary/Labor

27 Applications x 75 hours = 2,025 hours

\$74,416 (Federal Salary GS12-3)

$\$74,416 / 2080 = \35.78×1.088 (retirement/insurance) = \$38.93 = hourly rate*

2,025 hours x \$38.93 = Est. Cost for Subsequent Web-Based Renewal App. = \$78,830

<u>Overhead (18% of Salary/Labor)</u>	\$ 63,520
<u>Computer and Other Administrative Costs</u>	\$ 2,000
<u>Reimbursement for State administrative costs:</u>	<u>\$230,200</u>
<u>Total Estimated Federal Costs</u>	<u>\$648,620</u>

*The hourly rate was computed using the calendar year 2008 Federal pay scale for the Washington D.C.-Baltimore area.

15. Changes to Burden

The burden estimates for this application are increased from the 1995 version of the application for 1915(c) HCBS waivers. The increase is directly related to the increased information requested in the revised waiver application. As indicated in the 2003 GAO report and in correspondence from Senators Grassley and Breaux, CMS needed to improve its familiarity and oversight of these programs that serve vulnerable citizens. The increased information not only makes the program design proposed by the State transparent to CMS, it also provides a document for use by the public that explains the waiver program, including persons and geographical areas served, services offered, individual rights and, importantly, the mechanisms used by the State to meet all of the statutory requirements of the 1915(c) waiver program.

The utilization of the web-based application minimizes the increased burden, however. The web-based application saves both the State and Federal users' time by eliminating redundant data entry requirements, streamlining the submission and approval processes, and handling data retention requirements. Furthermore, the web-based application provides unprecedented national data aggregation capabilities, providing CMS with information necessary to successfully monitor State program design and trend information.

While CMS regrets an increase in burden, ensuring the safety and well-being of the individuals served in these waivers takes paramount priority. This revised waiver application provides vital information on the structure and operation of these critical programs.

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.

C. Collections of Information Employing Statistical Methods

This collection of information does not employ statistical methods.