

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

Background

The Center for Medicaid and CHIP Services (CMCS) within CMS, requests the reinstatement of its 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. 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.

As of 2020, there are 251 CMS approved HCBS waivers in 47 states and the District of Columbia. These 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, <https://www.medicaid.gov/medicaid/hcbs/guidance/index.html>). 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 redesigned 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.

The current expiration date of this information collection request is June 30, 2020. The purpose of this iteration is to reinstate the information collection request with the following changes:

The Waiver Application is revised to improve the quality of the application, remove outdated language, and streamline the review process. The application's Instructions, Technical Guide, and Review Criteria document is added and revised to align with the waiver application changes and to align guidance with current CMS regulations and policy. Details can be found in the attached crosswalks.

While we are not revising any requirements, we are adjusting our costs estimates based on more recent BLS wage data. All of our time estimates remain as is.

A. Justification

1. Need and Legal Basis

As indicated above, renewal of this 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 is used by CMS to review and adjudicate individual waiver actions. The web-based application is 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 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 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 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 May 12, 2020 (85 FR 28010). We did not receive any comments.

The 30-day notice published in the Federal Register on September 24, 2020 (85 FR 60169).

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. Burden Estimates (Hours & Wages)

Wages

To derive average costs, we used data from the U.S. Bureau of Labor Statistics' May 2019 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 the median hourly wage, the cost of fringe benefits and overhead (calculated at 100 percent of salary), and the adjusted hourly wage.

Occupation Title	Occupation Code	Mean Hourly Wage (\$/hr)	Fringe Benefits and Overhead (\$/hr)	Adjusted Hourly Wage (\$/hr)
Business Operations Specialist	13-1000	36.31	36.31	72.62

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 overhead 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

The estimate covers 251 waivers currently in operation in 47 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 47 states and the District of Columbia which operate 251 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 time to develop a new waiver application is 160 hours.

In aggregate, the annual burden to complete all new waiver applications is estimated at 1,280 hours (8 waivers/year x 160 hr/response) at a cost of \$92,954 (1,280 hr x \$72.62/hr).

Renewal Waivers

On an annual basis, approximately 63 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 189 waiver applications (again, 63/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 75 hours/response.

In aggregate, the annual burden to renew existing waiver applications is estimated at 4,725 hours (63 waivers/year x 75 hr/response) at a cost of \$343,130 (4,725 hr x \$72.62/hr).

Summary of Annual Burden Estimates

Requirement	Respondents	Responses	Time per Response (hr)	Total Time (hr)	Labor Cost (\$/hr)	Total Cost (\$)	Adjusted Cost (\$)*
New Waivers	8	8	160	1,280	72.62	92,954	46,477
Renewal Applications	63	63	75	4,725		343,130	171,565
TOTAL	71	71	varies	6,005	72.62	436,084	218,042

*The cost is adjusted by 50 percent to account for the state share.

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 \$515,428 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

\$49.19/hr (Federal hourly rate GS 13-1)*

\$49.19/R x 1,280 hours = \$62,963 estimated federal cost for new waiver applications

Web-Based Renewal Applications (Salary/Labor)

63 Applications x 75 hours = 4,725 hours

\$49.19/hr (Federal hourly rate GS 13-1)*

4,725 hours x \$49.19/hr = \$232,423 estimated cost for subsequent web-based renewal app.

Salary/Labor	\$295,386 (\$62,963 + \$232,423)
Computer and Other Administrative Costs	\$ 2,000
<u>Reimbursement for state administrative costs:</u>	<u>+\$218,042 (see section 12)</u>
Total Federal Costs	\$515,428

*The hourly rate was derived from the calendar year 2020 Federal pay scale for the Washington D.C.-Baltimore area. (See <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2020/DCB.pdf>)

15. Changes to Burden

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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.