

**Response to 60-Day Public Comments**  
**Annual Report on Home and Community Based Services Waivers and Supporting Regulations**  
**CMS-372 (OMB 0938-0272)**

**Executive Summary**

The Centers for Medicare and Medicaid Services (CMS) has considered public comments received for the CMS-372 Annual Report and decided to move forward with implementing it as proposed. This means that states will be required to report annually on every performance measure for the 1915(c) waiver associated with the 372 report. The following details provide background on the publication, a description of the public comments received, and additional feedback from CMS.

The Paperwork Reduction Act (PRA) requires renewal of the CMS-372 (OMB 0938-0272) Annual Report (372 report) every three years. The current renewal expires December 31, 2021. To meet PRA requirements the 372 report with proposed changes was released for a 60-day public comment period that ended July 19, 2021. Two states and two associations provided a total of four comments. All comments are related to the proposed changes in the quality section of the online 372 report form. Currently, states are required to report on health and welfare, qualified providers and performance deficiencies. The proposed changes require states to report annually on each of the 1915(c) waiver's performance measures. Commenters expressed the following concerns: the need for flexibility in the frequency of reporting on some measures; the ability to provide additional supporting information; the burden estimates for state agencies seems too low; and ill timing of the changes.

States are required to gather and evaluate data for each 1915(c) waiver performance measure on an annual basis to identify deficiencies for reporting in the 372 report. CMS acknowledges that some states might not have been conducting this full evaluation annually, which may result in an increased burden of effort to come into compliance. Furthermore, regarding concerns about the report form's limitations, CMS will be taking them into consideration as enhancements to the quality section of the online 372 report tool are developed.

**Public Notice Comments and CMS Responses**

The following is a more detailed summary for each of the comments received.

**Comment 1:** The State of Colorado asked for the proposed effective date; if the form will be character limited; and if the evidence report timeline will be revised.

**CMS Response:** The changes to the quality section of the online 372 report form will be no sooner than January 1, 2022. When the changes to the quality section are implemented, CMS will continue to conduct the Interim Quality Review mid-waiver cycle and issue a report for every 1915(c) waivers. CMS will utilize the quality evidence already submitted via the waiver's 372 reports for each year in the waiver cycle. The new process will eliminate the need for states to provide three years of evidence when the Interim Quality Review Report is due.

**Actions Taken:** CMS intends to move forward with the original PRA package. Although, in consideration of comments received from the State of Colorado, CMS plans to update the online 372 report form in the Waiver Management System (WMS) to allow a maximum of 60,000 characters in the free format fields. Additionally, CMS plans to allow WMS to accept documents uploaded by states to supplement the data provided in the updated online 372 report form.

**Comment 2:** The State of Minnesota requested the following: a more flexible reporting format that allows for enough information; allowing flexibility when there is a need for multi-stage sampling and multi-year reporting measures; and to consider feasibility of resource investment, resource diversion, and ultimate value associated with more frequent reporting of different types of performance measures that capture widely varying data.

**CMS Response:** Currently the annual 372 report requires states to report performance deficiencies, in addition to assurances for health and welfare and qualified providers. States must evaluate all performance measures annually to accurately identifying deficiencies. The proposed change allows states to provide the data as it is gathered and evaluated rather than providing three years of data at the time of the Interim Quality Review. CMS will work with states on an individual basis as needed to determine the most efficient way for reporting in the online 372 report that also meets the federal requirements.

**Actions Taken:** CMS intends to move forward with the original PRA package. Although, based on comments received from the State of Minnesota, CMS plans to update the online 372 report form in WMS to accept uploaded documents to support the data provided in the report.

**Comments 3 & 4:** State associations, ADvancing States and NASDDDS, expressed the following concerns: an under estimation of the burden estimates for state agencies; ill timing of the changes due to ongoing work of the Medicaid HCBS Waiver Quality Workgroup; and premature implementation of the changes. NASDDDS recommended renewing the CMS-372 Annual Report without the proposed changes to the quality section.

**CMS Response:** Currently the CMS-372 Annual Report requires states to report performance deficiencies, in addition to assurances for health and welfare and qualified providers. To accurately report, all performance measures must be evaluated annually. The change in process allows states to provide the data as it is gathered and evaluated rather than providing three years of data all at once. CMS acknowledges that some states may not have been conducting this full evaluation annually, which may result in an increased burden of effort to come into compliance with existing federal requirements. The burden of effort was calculated based on work of states that have been conducting a complete evaluation of performance measures and are fully compliant. An extra hour of time per 372 report was included in the burden estimate to account for entering the additional data. However, there was an overall decrease in the burden estimate because the total number of active 1915(c) waivers has decreased from 282 in 2018 to the current number of 253.

When changes are made based on work from the Medicaid HCBS Waiver Quality Workgroup, the online 372 report tool and other sections of WMS will be updated to incorporate them. In the interim, states continue to be required to evaluate and report on existing performance measures approved in their active waivers.

Regarding the timing of these proposed changes, they will not be implemented prior to January 1, 2022. Though, standard practices requiring more robust reporting from states with poor quality performance and/or corrective action plans will continue.

**Actions Taken:** CMS intends to move forward with the original PRA package, but plans to account for incremental changes based on the Medicaid HCBS Quality Workgroup's progress. The updated online 372 report will have the ability to process information for performance measures that have been approved utilizing new CMS guidance.