

Supporting Statement for Paperwork Reduction Act Submissions
Annual Report on Home and Community Based Services Waivers and Supporting
Regulations in 42 CFR 440.180 and 441.300-310
CMS-372(S) and OMB 0938-0272

Background

The Center for Medicaid and CHIP Services (CMCS) within CMS, is requesting renewal of the Executive Office of Management and Budget approval of the Form CMS-372(S) Annual Report on Home and Community-Based Services (HCBS) waivers. This annual waiver information is needed so CMS may verify that state assurances regarding waiver cost-neutrality are met; to determine the impact of the waivers on the type, amount, and cost of services provided under the State plan, and on the recipients' health and welfare in addition to other required quality assurances; and to assess the waiver programs on waiver specific and an overall basis.

The information submitted via the Form CMS-372(S) Report provides evidence of the waiver's cost-neutrality and waiver assurances on an ongoing basis. The total cost of waiver services for the waiver year is divided by the unduplicated recipient number (factor C) to determine the average per capita cost for waiver services, which results in factor D. Additionally, the sum of the total expenditures for all other Medicaid services provided to waiver recipients is divided by number of unduplicated recipients receiving State plan services while in the waiver to provide factor D'. Factors D and D' are required for the following cost-neutrality calculation: $D + D' \leq \text{institutional (factor G) + State plan service (factor G') costs} = \text{Cost-neutrality}$.

A separate Form CMS-372(S) Report is required for each new waiver approved after August 23, 1997, and each renewed waiver after August 23, 1999 for each year of the waiver period. The report will be submitted to CMS via the online Waiver Management System's (WMS) online 372 reporting tool at <https://wms-mmdl.cdsvdc.com/WMS/faces/portal.jsp>. The reports are reviewed and analyzed by the Medicaid and CHIP Operations Group's (MCOG), Division of HCBS Operations and Oversight (DHCBSO) in conjunction with other program reports and state data to evaluate the reasonableness and acceptability of the waiver data.

Once it is determined that the report is acceptable, a comparison of the actual formula values to the most recent CMS approved estimated values is performed to evaluate the waiver's cost-neutrality. The result of this comparison is used by CMS in determining the final disposition of waiver amendments and extension requests.

The online 372 reporting tool will be updated to allow states to report on separate waiver years for the financial data versus the quality information. Furthermore, the quality section of the online 372 reporting tool will be updated to display each of the state's quality performance measures approved for the specific HCBS waiver, and states will be required to provide data as evidence for each of those performance measures. This will be an update from the existing online form where states are asked to report on performance of health and welfare, qualified providers, and any other quality performance measure with a performance level of less than 86%. The updates move from requesting general information about the performance measures to requiring data as evidence for each specific performance measure approved in the waiver. Currently, states are providing data as evidence to demonstrate the

required quality assurances both within the online 372 reporting tool and once per waiver cycle outside the system. When the online 372 reporting tool change is implemented, states will only be required to provide quality evidence via the online 372 reporting tool. A prototype of the updates to the online tool is included as a reporting instrument. The updates are expected to result in less of a burden for states and CMS.

Overall, we project a decrease of 29 responses (from 282 waivers to 253 waivers) and 994 hours ([Active: 282 waivers x 43 hr/response] – [Revised: [253 waivers x 44 hr/response]]). When factoring the BLS' wage increase of plus \$5.04/hr (from \$70.28/hr to \$75.32/hr) we project a cost decrease of \$13,753 (from \$852,215 to \$838,462).

A. Justification

1. Need and Legal Basis

As provided in 42 CFR §441.303, “The agency [state] must furnish CMS with sufficient information to support the assurances required by 42 CFR §441.302.” It also provides instructions on how to determine the HCBS waiver’s cost neutrality. Whereas 42 CFR §441.302(h) (which implements §1915(c)(2)(E) of the Social Security Act) states: “annually, [the state] will provide CMS with information on the waiver’s impact. The information must be consistent with a data collection plan designed by CMS and must address the waiver’s impact on:

(1) The type, amount, and cost of services provided under the state plan; and (2) The health and welfare of recipients.”

Additional federal guidance for 1915(c) waiver quality assurances is described in the following resources: Instructions, Technical Guide and Review Criteria for a 1915(c) Home and Community- Based Waiver, version 3.6, January 2019 (Technical Guide v3.6); and the CMS memo on Modifications to Quality Measures and Reporting in 1915(c) Home and Community Based Waivers issued March 12, 2014 (Quality Memo). Per the Technical Guide, the state must assure it will prepare and submit the annual waiver report as a condition of the approval of the waiver.

Furthermore, it instructs the state to provide evidence from its own oversight activities related to the quality assurances. All evidence obtained by CMS throughout the waiver period is used to make a determination about the state’s performance and is communicated through a draft report. States are provided the opportunity to respond to the draft report and the response is considered and incorporated into the final report that is issued by CMS to the state at least twelve months prior to the waiver’s expiration. The final report and Form CMS-372(S) Reports are considered for renewal of the waiver.

2. Information Users

All State Medicaid agencies administering or supervising the administration of HCBS waivers are required to submit an annual Form CMS-372(S) Report in WMS via the 372 reporting tool for each approved waiver. Data must be furnished on a date of service basis. The first report for each waiver must have data from the new or renewed waiver effective date (and, for subsequent reports in the waiver cycle, the anniversary of that date) to the end of one full year thereafter. A separate Form CMS-372(S) Report is required for extension periods granted by CMS while a waiver's renewal is pending if the extension period is not subsumed into the

renewal period. A Form CMS-372(S) Report must be submitted for each extension year, plus a separate report for each additional portion of a year during which the waiver operated on a temporary extension that is not subsumed into the renewal. Similarly, if a waiver only operated for part of a year, a Form CMS-372(S) Report for that portion of the year in which the waiver was in effect must be submitted.

Online 372 Reporting Tool

States have six months after the end of each waiver year to report on quality assurance requirements and an additional 12 months for financial reporting. As a result, the online 372 reporting tool includes quality assurance information for the most recent waiver year and financial information for the prior waiver year. The tool currently only allows selection of one time period for the data and quality sections resulting in waiver year begin and end dates aligning with the financial data section or 18 months after the end of the waiver year. Upon renewal of this PRA package, the WMS online 372 reporting tool will be programmed to allow separate time periods to be entered for the data and quality sections.

A review of the information is completed by CMS. Follow-up with the state is conducted when there are significant variances from the estimates approved in the waiver to the actual amounts in the report. CMS ensures the waiver continues to meet the cost neutrality requirement by comparing actual HCBS waiver and state plan expenditures to the estimated sum of institutional cost plus associated state plan expenditures for the waiver population served. CMS also reviews the quality information and follow-ups with the state when there is missing or incomplete information. A final determination of accepting or not accepting the report is issued to the state.

CMS Form CMS-372(S) Report Utilization

The state must have submitted and CMS accepted the required CMS-372(S) Reports. The annual waiver report(s) must demonstrate that the waiver has been cost-neutral and must also provide information on the quality of services. Cost neutrality and assuring health and welfare are fundamental statutory and regulatory requirements. Failure to prepare and submit acceptable and timely annual waiver reports can jeopardize continuation of the waiver and/or delay the renewal of the waiver.

The report will be used by CMS to compare actual data to the approved waiver estimates and, in conjunction with the waiver compliance review reports, the information provided will be compared to that in the Transformed Medicaid Statistical Information System (T-MSIS CMS-R- 284, OMB number 0938-0345) report and Federal Financial Participation (FFP) claimed on a state's Quarterly Expenditure Report (Form CMS-64, OMB number 0938-1265), to determine whether to continue the state's HCBS waiver. States' estimates of cost and utilization for renewal purposes are based upon the data compiled in the CMS Form 372(S) Reports.

Additionally, once per waiver cycle, CMS drafts a quality review report utilizing the Form CMS- 372(S) Report quality information and other data/evidence gathered and requested during the waiver cycle to determine if the state meets the quality assurances for the waiver. The draft report is provided to the state for review with an opportunity to respond before it is finalized by CMS. A final report is issued to the state at least 12 months prior to the waiver's

expiration.

3. Use of Information Technology

States report information concerning the numbers of Medicaid beneficiaries receiving waiver services, the type of services provided and the costs of those services. The information is usually taken from State Medicaid agency data processing systems. This data is summarized and may be submitted to CMS through the online 372 reporting tool. Data for the quality performance measures are gathered by the state from its own information technology mechanisms.

4. Duplication of Efforts

The data captured on the Form CMS 372(S) Reports are not duplicated through any other public information collection. The form CMS-64 (OMB control number 0938-1265) cannot be used in lieu of the Form CMS-372(S) Report. The CMS-64 is the financial report which the states submit quarterly to request claims for FFP.

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

Currently, 47 states and the District of Columbia are required to submit the Form CMS-372(S) Report on an annual basis. A separate form is required for each of the 253 approved waivers currently in operation.

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 18, 2021 (86 FR 26921).

Comments were received and are responded to in the attached response to comments document. The 30-day notice published in the Federal Register on October 14, 2021 (86 FR 57151). Comments must be received by November 15, 2021.

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

Wage Estimates

To derive average costs, we used data from the U.S. Bureau of Labor Statistics' May 2020 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 mean hourly wage, the cost of fringe benefits and overhead (calculated at 100 percent of salary), and the adjusted hourly wage.

State Wage Estimates Table 1

Occupation Title	Occupation Code	Mean Hourly Wage (\$/hr)	Fringe Benefits and Overhead (\$/hr)	Adjusted Hourly Wage (\$/hr)
Business Operations Specialist	13-1000	37.66	37.66	75.32

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, there is no practical alternative and we believe that doubling the hourly wage to estimate total cost is a reasonably accurate estimation method.

Burden Estimates

Currently, 47 states and the District of Columbia are required to submit the Form CMS-372(S) Report on an annual basis. A separate form is required for each of the 253 approved waivers currently in operation. CMS estimates a burden of 44 hours at \$75.32/hr for a Business Operations Specialist to complete each Form CMS-372(S) Report submission. The total 44 hour burden is comprised of 25 hours of record keeping, collection and maintenance of data, and 19 hours of record assembly, programming, and completing the Form CMS-372(S) Report in the required format.

In aggregate, CMS estimates an annual burden of 11,132 hours (253 waivers x 44 hours) at a

cost of \$838,462 (11,132 hours x \$75.32/hr).

Information Collection Instruments and Instruction/Guidance Documents

Form CMS-372(S) Annual Report on Home and Community-Based Services (HCBS) Waivers (Revised)

Sections of the Form CMS-372(S) Report within WMS and how they relate to the regulatory requirements described in 42 CFR §441.302 and 303 are as follows:

1. Online 372 Reporting Tool Summary Section

The online 372 reporting tool Summary Section specifies the waiver year for which the state is submitting cost neutrality data. The report type and state's contact information are also included.

2. Online 372 Reporting Tool Data Section

Information in this section of the online 372 reporting tool is due 18 months following the end of the waiver year. The timeframe allows states to process Medicaid billing and determine the actual costs for waiver services rendered. Data on participants is reported based on annual unduplicated individuals. Each service is specified as it is listed in Appendix J of the approved waiver, and the number of unduplicated waiver participants who received each waiver service is listed. Total waiver expenditures for each service must be reported in whole dollars and must be the total computable expenditures. The 1915(c) waiver cost-neutrality formula is used to compute the average per capita expenditures with and without the waiver using factors D and D' from the Form CMS-372(S) Report and compares to factors G and G' from the approved waiver estimates.

3. Online 372 Reporting Tool Quality Section

Information in this section of the online 372 reporting tool pertains to the most recent waiver year and is due six months following the end of that year. The state provides assurances that all provider standards and health and welfare safeguards have been met and corrective actions have been taken where appropriate. Data is also provided by the state identifying deficiencies detected for any of the waiver's approved performance measures. A deficiency is a performance level of less than 86%. An aggregated number of substantiated instances of abuse, neglect, exploitation and/or death must also be included. The state provides an explanation of how these deficiencies have been, or are being corrected as well as the steps taken to ensure they do not reoccur. The Form CMS-372(S) Annual Report HCBS Waivers Screenshots reporting instrument captures a shot of the existing quality section.

Upon renewal of this PRA package, the online 372 reporting tool quality section will begin collecting data for each of the waiver's approved performance measures. Each measure will be listed requiring the state to provide data as evidence to indicate the performance level. When a performance level is less than 86%, the state will be required to provide information about remediation actions taken to bring it into compliance and steps taken to ensure deficiencies do not reoccur. A prototype of the revised content required in the quality section of the online 372 reporting tool is included as a reporting instrument. Additionally, the changes described in this paragraph are included in the Form CMS-372(S) Annual Report HCBS Waivers Crosswalk.

13. Capital Costs

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

14. Cost to Federal Government

The CMS's Division of HCBS Operations and Oversight (DHCBSO) is responsible for performing the review of the Form CMS-372(S) Report via the online 372 reporting tool. CMS estimates a burden of 13 hours for a GS-12, Step 4 analyst at \$45.00/hr to complete each Form CMS-372(S) Report review. The 13-hour burden is comprised of reviewing the annual Form CMS-372(S) Report and additional follow-up actions when the report is incomplete or demonstrates a lack of cost neutrality.

The GS-12, Step 4 was determined to be an average grade based on the variety of staff performing Form 372(S) Report reviews within DHCBSO that includes staff members based out of each of the CMS field office locations. Since nearly all states operate HCBS waivers, the \$45.00/hr wage was determined by averaging basic pay rates for a GS-12, Step 4 analyst across the ten localities of CMS field offices as follows:

Federal Wage Estimates Table 1

Regional Office location	GS 12-4 hourly basic pay based on locality (\$/hr)
Boston	45.48
New York	47.19
Philadelphia	44.40
Atlanta	43.03
Chicago	45.29
Dallas	44.02
Kansas City	41.26
Denver	44.78
San Francisco	49.82
Seattle	44.74
TOTAL	450.01
Average hourly rate	\$45.00

The 2021 General Schedule (GS) Locality Pay Tables published by the Office of Personnel Management were used to obtain the hourly basic pay based on locality, see <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2021/general-schedule/>. When accounting for fringe benefits, the hourly wage is adjusted by 100% to \$ 90.00/hr. As such, the cost to the federal government is estimated to be \$296,010.00 (\$90.00 x 13 hours x 253 waivers).

15. Changes to Burden

It is estimated that changes to the online 372 reporting tool will be less of a burden for the states and CMS. The burden calculation includes a burden of hours increase by one hour for states. This results from changes to the quality section requiring data for all performance measures rather than only for health and welfare and deficient measures. States were already required to gather and evaluate data for each of the waiver's performance measures on an annual basis, therefore the increase in burden of hours accounts for entering the additional information into the online 372 reporting tool.

The Form CMS-372(S) HCBS Waivers Screenshots instrument provides a screenshot of the existing quality section in the online reporting tool. Whereas the Form CMS-372(S) HCBS Waivers Quality Section Revision Prototype instrument displays how the quality section of 372-reporting tool will be revised to collect information on all performance measures. As described in Section 12, the hourly increase in burden is offset by an overall lower number of HCBS waivers. This is attributed to a regulatory provision (42 CFR 441.301(b)(6)) effective March 17, 2014, allowing states to combine target groups within one waiver.

An additional burden decrease is associated with the full quality review conducted by CMS once per three- or five-year waiver cycle. For this review, separate evidence for each performance measure must be provided for each completed year in the waiver cycle in addition to information available via the online 372 reporting tool. CMS drafts a quality review report evaluating the evidence to determine if the state meets the quality assurances for the waiver. The draft report is sent to the state for review with an opportunity to respond before it is finalized by CMS.

When the online 372 reporting tool is updated to require data for each of the waiver's approved performance measures on an annual basis, the overall burden of quality reporting will be reduced for the state. This is because the state will be providing the annual data for performance measures on a yearly rolling basis rather than partially with each Form CMS-372(S) Report and again for all performance measures once during the waiver cycle. This change will be less burden for CMS because the online 372 reporting tool will electronically pull the waiver's approved performance measures into the report form for states to complete rather than CMS manually requesting it. The full quality review conducted once per waiver cycle will be written utilizing data provided in the completed Form CMS-372(S) Reports.

Overall, we project a decrease of 29 responses (from 282 waivers to 253 waivers) and 994 hours ([Active: 282 waivers x 43 hr/response] – [Revised: [253 waivers x 44 hr/response]]). When factoring the BLS' wage increase of plus \$5.04/hr (from \$70.28/hr to \$75.32/hr) we project a cost decrease of \$13,753 (from \$852,215 to \$838,462).

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.