



SETTING THE STAGE FOR THE HEALTH AND WELFARE SPECIAL REVIEWS TEAM IN THE CONTEXT OF HOME AND COMMUNITY-BASED SERVICES

Division of Long Term Services and Supports

Disabled and Elderly Health Programs Group

Center for Medicaid and CHIP Services

Training Objectives

- To understand the development of the 1915(c) Home and Community-Based Services (HCBS) Waiver program.
- To provide an update on Health and Welfare concerns as they relate to the Health and Welfare Special Reviews Team (H&W SRT).
- To introduce the H&W SRT Goals and Process.

Health and Welfare in the Social Security Act § 1915(c)

- Under section 1915(c) of the Social Security Act, successful waivers must provide assurances to CMS that the state has necessary safeguards to protect the health and welfare of participants receiving services.
- Waiver authority also requires states to annually report the following to CMS:
 - Information on the impact of the waiver granted;
 - Types and amounts of medical assistance provided; and
 - **Information on the health and welfare of recipients.**

Health and Welfare in 42 CFR § 441.302(a)

- Health and Welfare Safeguards outlined in 42 CFR § 441.302(a) include:
 - Adequate standards for all types of providers furnishing waiver services;
 - Assurance that providers are adequately certified or have met the state's licensure requirements to provide the services under the waiver;
 - Assurance that all facilities providing home and community-based services are compliant with state standards and meet the requirements of 45 CFR part 1397 for board and care facilities;
 - Assurance that the state will be able to meet the unique service needs of individuals that are among different target groups under a single waiver, by providing data on an annual basis in the quality section of the CMS-372(s) report; and
 - Assurance that services are provided in home and community-based settings, as specified in § 441.301(c)(4).

2014 Revised § 1915(c) Waiver Guidance

- On March 12, 2014 CMS issued an Informational Bulletin on “Modifications to Quality Measurements and Reporting in 1915(c) Home and Community-Based Waivers”.
- This document revised the Health and Welfare assurance to read:

“The state demonstrates it has designed and implemented an effective system for assuring waiver participant health and welfare.”

2014 Revised § 1915(c)

Waiver Guidance – *Continued*

- Under the revised Health and Welfare assurance the following four new sub-assurances were identified, requiring a state to:
 - Demonstrate on an ongoing basis how it 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;
 - Demonstrates that policies and procedures for the use of and prohibition of restrictive interventions (including restraints and seclusion) are followed; and
 - Establishes overall health care standards and monitors those standards based on the responsibility of the service provider as established in the approved waiver.

Summary of HHS-OIG Report Findings

- In 2016, the U.S. Department of Health and Human Services Office of Inspector General (HHS-OIG) released several reports on states' compliance with federal or state requirements regarding critical incident reporting.
- The HHS-OIG found that several states did not comply with federal waiver provisions and state requirements for reporting and monitoring critical incidents involving HCBS waiver individuals. The findings included that: ^{2,3,4}
 - Critical incidents were not reported correctly;
 - Adequate training to identify appropriate action steps for reported critical incidents or reports of abuse or neglect was not provided to state staff;
 - Appropriate data sets to trend and track critical incidents were not accessible to staff; and
 - Critical incidents were not clearly defined, making it difficult to identify potential abuse or neglect.

Summary of CMS Audit Findings

- In 2016, CMS conducted three audits based in part or in whole on concerns regarding health and welfare and negative media coverage on abuse, neglect or exploitation issues.
- CMS found that states have had challenges meeting their 1915(c) waiver assurances, similar to findings reported by the OIG.
 - Lack of tracking and trending of unusual incidents.
 - Inappropriate provider or state staffing levels.
- For more detail on the CMS audits and recommendations resulting from these findings, refer to the HCBS Quality 201 training:
 - <http://www.nasuad.org/sites/nasuad/files/Final%20Quality%20201.pdf>.

Summary of GAO Report Findings

- In January 2018, the United States Government Accountability Office (GAO) released a report on a study of 48 states that covered assisted living services.⁵
- This study found large inconsistencies between states in their definition of a critical incident and their system's ability to report, track, and collect information on critical incidents that have occurred.
- States also varied in their oversight methods as well as the type of information they were reviewing as part of this oversight.
- CMS conducts oversight using annual state reports (CMS-372) for each HCBS waiver; however, almost half of the states had limitations in their data reflected in 372 reports.
- The GAO recommended requiring states to report information on incidents (e.g., type and severity of incidents, number of incidents, etc.) to strengthen the effectiveness of state and federal oversight.

Summary of Recommendations from Reports

Findings from the HHS-OIG, GAO reports, and CMS audits highlight the need for states to:

- Conduct additional oversight regarding the administration and operation of their incident management systems;
- Provide clarity and transparency on the operation and collection of information from their incident management systems;
- Standardize definitions and processes for:
 - Responding to incidents; and
 - Annual reporting requirements for HCBS waivers.
- Implement promising practices and performance improvements that help maximize resources and improve current incident management systems.

Synchronicity/Differences between the OIG and GAO Audits

- GAO audited Assisted Living Facilities nationally
- OIG audited 3 states ID/DD group home settings
- Findings for both audits were fairly consistent
- Between the two types of audits, settings serving Individuals with ID/DD, Older Adults, and Individuals with Disabilities were included.

2018 Joint Report

- Issued by OIG, Administration for Community Living, Office of Civil Rights
- Aggregated individual state audits
- Recommended Model Practices for quality oversight framework
- Provided suggestions to CMS
- https://www.hhs.gov/sites/default/files/report_joint_report_hcbs.pdf

Joint Report Recommended Model Practices for States

- Model Practices for State Incident Management and Investigation
- Model Practices for Incident Management Audits
- Model Practices for State Mortality Reviews
- Model Practices for State Quality Assurance

Joint Report Suggestions to CMS

- Encourage states to implement compliance oversight programs, such as the Model Practices
 - See Informational Bulletin issued June 28, 2018
<https://www.medicaid.gov/federal-policy-guidance/downloads/cib062818.pdf>
- **Where there is evidence of systemic problems in state implementation and compliance with health and safety oversight, CMS should form a “SWAT” (Special Review) team to assist the state in addressing the problem effectively.**
- Where there are serious health and safety findings, CMS should take immediate action, using its authorities under 42 CFR § 441.304(g).

Health & Welfare Special Reviews Team

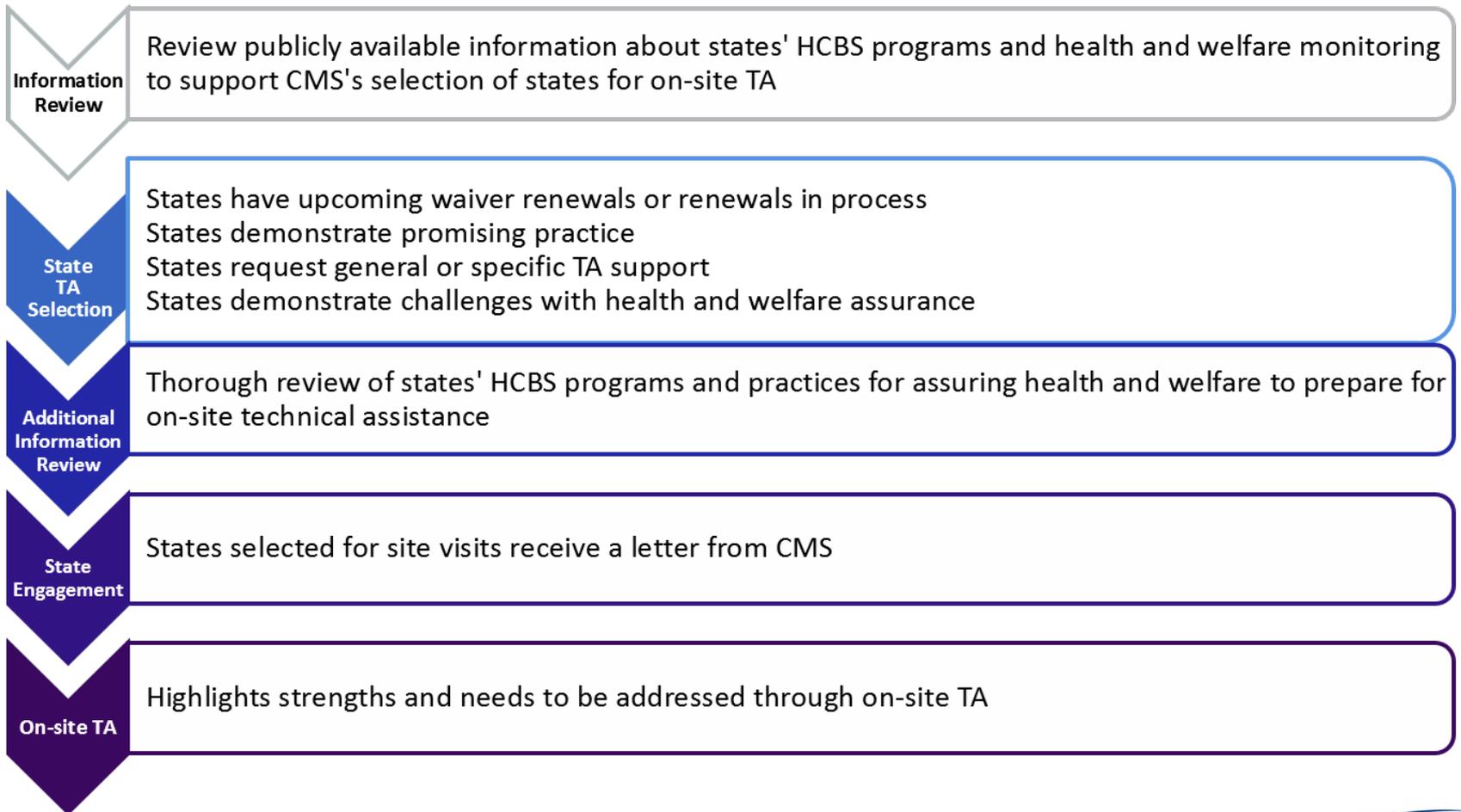
- In an effort to be responsive to the OIG recommendation, CMS considered the benefits of a team that would assist states with their implementation of system of oversight for Health and Welfare.
- The prevailing objective was to assist states in evaluating and addressing issues in their oversight of the health and welfare systems on a proactive basis:
 - Within a three year period, conduct site visits across states.
 - Work with states to proactively ameliorate health and welfare issues,
 - Work with states and CMS to provide a strong technical assistance program based on on-site experience within states, and
 - Support CMS in exercising the agency's oversight and compliance responsibilities in its HCBS programs.

H & W SRT Criteria

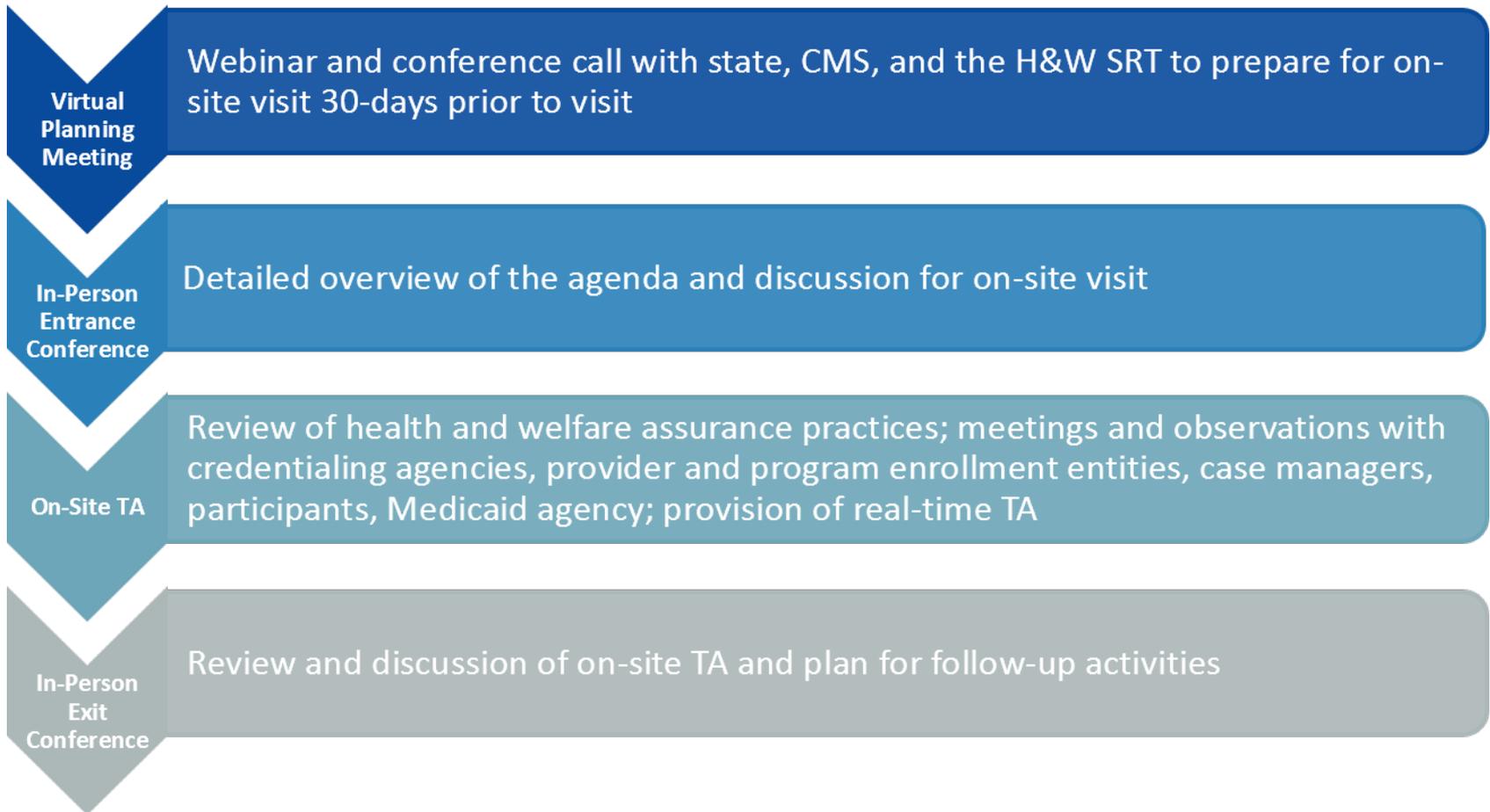
CMS identified the following four criteria to prioritize states for technical assistance across the next 3 years:

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

Research and Analysis



On-Site Technical Assistance



Training and Education



Training Topics and Goal

CMS and the H & W SRT will also develop a variety of training and education materials to support states' learning and growth regarding HCBS participant health and welfare.

Educational efforts will focus on topics:

- Risk assessment and mitigation
- Balancing individual choice and safety, and
- Key components of quality monitoring in oversight of the Health and Welfare systems.

Additional Benefits

- Over time the SRT will develop a cohort of promising practices that are being implemented across the nation
- National trainings to assist states in resolving issues will be created, presented and maintained as resources for states. Topics will include trainings on:
 - Trend Analysis
 - Interventions
 - Promising Practices

Summary

- The H & W SRT is a key tool for CMS and states to improve the health and welfare of HCBS participants.
- Across the next three years, in depth technical assistance will be provided by CMS and its contractors.
- National training and educational materials will be informed by the work of the H & W SRT.

Questions & Answers

References

1. Department of Health & Human Services Office of Inspector General. “Connecticut did not comply with federal and state requirements for critical incidents involving developmentally disabled Medicaid beneficiaries.” May 2016. Available online:
<https://oig.hhs.gov/oas/reports/region1/11400002.pdf>
2. Department of Health & Human Services Office of Inspector General. “Massachusetts did not comply with federal and state requirements for critical incidents involving developmentally disabled Medicaid beneficiaries.” July 2016. Available online:
<https://oig.hhs.gov/oas/reports/region1/11400008.pdf>
3. Department of Health & Human Services Office of Inspector General. “Maine did not comply with federal and state requirements for critical incidents involving developmentally disabled Medicaid beneficiaries.” August 2017. Available online:
<https://oig.hhs.gov/oas/reports/region1/11600001.pdf>

Additional Resources

- Copies of the HCBS Training Series/Webinars presented during SOTA calls are located in below link:
<https://www.medicare.gov/medicaid/hcbs/training/index.html>.
- Social Security Act § 1915(c) is located here:
https://www.ssa.gov/OP_Home/ssact/title19/1915.htm
- 42 CFR § 441.302 is located here: <https://www.gpo.gov/fdsys/pkg/CFR-2002-title42-vol3/pdf/CFR-2002-title42-vol3-part441.pdf>
- The 1915(c) Technical Guide is located here:
<https://www.medicare.gov/medicaid-chip-program-information/by-topics/waivers/downloads/technical-guidance.pdf>
- Modifications to Quality Measures and Reporting in §1915(c) Home and Community-Based Waivers is located here:
<https://www.medicare.gov/medicaid-chip-program-information/by-topics/waivers/downloads/3-cmcs-quality-memo-narrative.pdf>

Thank You

Please let us know how we did today:

- **Immediate Feedback** – Please follow this link to provide your feedback now

<https://www.surveymonkey.com/r/28FD3B7>

- **Feedback at a Later Date** – Email will be sent to all participants on April 26th with the link to the survey if you are unable to complete it now

For Further Information

For questions contact:

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