West Virginia On-site Review Summary Report

I. Executive Summary

The Health and Welfare Special Reviews Team (H&W SRT) conducted a 5-day intensive on-site review of West Virginia's home and community-based services (HCBS) Medicaid waiver programs from February 3 to February 7, 2020. This on-site review was conducted as part of a national initiative to provide individualized technical assistance to states on maximizing the health and welfare of Medicaid beneficiaries, and to identify both promising practices and challenges to address. West Virginia requested this site visit for technical assistance because all three of the state's HCBS waiver programs were due for renewal in July 2020.

The on-site review included multiple meetings with state directors and staff from the following entities responsible for the administration and operation of West Virginia's three section 1915(c) waiver programs:

- The Department of Health and Human Resources, Bureau for Medical Services (BMS) is the state Medicaid agency and operates both the Intellectual/Developmental Disability (I/DD) and the Traumatic Brain Injury (TBI) Waivers.
- The Bureau of Senior Services (BoSS) is the state unit on aging and operates the Aged and Disabled (AD) Waiver under a Memorandum of Understanding with BMS.
- The Keystone Peer Review Organization (KEPRO) is the contracted case management and utilization management entity on the I/DD and TBI Waivers; state staff describe KEPRO as a de facto operating agency because it plays roles in multiple waiver functions, including monitoring critical incidents and health and welfare of waiver participants.

The H&W SRT also held a joint meeting with representatives from West Virginia's protective services entity, the Bureau for Children and Families (BCF); Disability Rights West Virginia, the protection and advocacy entity; and self-advocates. In addition to the state agency meetings, the H&W SRT met with other key stakeholders such as case managers, service coordinators, investigators, providers, and individuals enrolled in waivers (participants). The focus of these meetings was to discuss how the process for reporting, investigating, and resolving critical incidents operates in practice and how health and welfare of HCBS participants are ensured in West Virginia through the lens of these stakeholders. The H&W SRT separated into two groups, with Team A focused on the I/DD Waiver and Team B focused on the AD Waiver and the TBI Waiver. Although state staff members offered introductions for the H&W SRT at these meetings, they did not remain present during interviews with case managers, service coordinators, participants, and providers.

During the on-site review, the H&W SRT identified strengths along with a few challenges, which are listed here and described more fully in the body of the Summary Report.

<u>Strengths and Promising Practices for Ensuring Health and Welfare</u>

A. The state supports robust stakeholder engagement to ensure participant health and welfare.

B. Interviewed participants are aware of what to do in the event of an incident.
C. The state has an established mortality review committee that meets monthly.

Challenges

A. Challenges with the statewide electronic incident management system affect the state's process for monitoring critical incidents.
    1. Incident-based data
    2. User management issues
    3. Incident locked after 14 days
    4. User restrictions
    5. Limited reporting functions
B. Specific to the I/DD Waiver, discrepancies are noted in the definition of *critical incident* across entities.
C. Communication problems that exist between investigative entities potentially weaken the effectiveness of investigations.

Recommendations

A. The state should consider developing standardized training on incident definitions and use of the incident management system to be included in provider agencies' onboarding training for new staff for all waivers.
B. Specific to the I/DD Waiver, the state should consider standardizing communication pathways for incident management across provider agencies.

In all waiver programs, stakeholders were aware of how to respond to a critical incident. Overall, West Virginia demonstrated that it has a system for addressing, tracking, analyzing, and identifying trends in critical incidents. However, the H&W SRT noted that the challenges experienced by users of the electronic critical incident management system affect the process of managing critical incidents in the state.

II. Background

This section provides background information on activities conducted in preparation for the on-site review.

Prior to the on-site review, the H&W SRT reviewed waiver program documents and other material from the public domain related to the health and welfare assurance of individuals receiving HCBS in West Virginia. Table 1 lists the three West Virginia waiver programs that were reviewed prior to the on-site review, along with the waiver's expiration date, operating agency, and target population.

Table 1. Waiver Programs Reviewed by IBM

Waiver Name and Number	Expiration Date	Operating Agency	Target Population
Intellectual/Developmental Disability Waiver (0133)	June 2025	West Virginia Department of Health and Human	Participants who are age 3 years and older with intellectual or

		Resources, Bureau for Medical Services	developmental disabilities
Aged and Disabled Waiver (0134)	June 2025	West Virginia Department of Health and Human Resources, Bureau of Senior Services	Participants who are aged 18 to 64 years with a physical disability or aged 65 years and older
Traumatic Brain Injury Waiver (0876)	June 2025	West Virginia Department of Health and Human Resources, Bureau for Medical Services	Participants who are aged 3 years and older and have a significant functional impairment due to a brain injury

Through a review of preliminary information, the H&W SRT focused on the three waiver programs in West Virginia because of the upcoming renewal dates that were due in July 2020 and the state's request for technical assistance. The H&W SRT concentrated on West Virginia's electronic critical incident management database, established in July 2018. Descriptions of the three waivers are as follows.

The **Intellectual/Developmental Disability (I/DD) Waiver** supports approximately 4,700 participants. The **Traumatic Brain Injury (TBI) Waiver** supports approximately 80 participants. The **Aged and Disabled (AD) Waiver** supports approximately 6,400 participants.

The three waivers use the same database for managing critical incidents. Providers are required to report identified incidents in the West Virginia Incident Management System (WVIMS), an electronic database capable of tracking incidents to resolution. Providers are required to investigate incidents for the participants they serve, starting an investigation within 24 hours of becoming aware of the incident and closing the case in WVIMS within 14 days. If the provider suspects that the incident involves abuse, neglect, or exploitation, the provider is required to immediately notify Adult Protective Services (APS) or Child Protective Services (CPS). Providers are also required to take immediate necessary steps to ensure the health and safety of the participant while investigating the incident, revise the participant's service plan if needed to implement additional support, and implement necessary systemic changes such as additional personal attendant training to prevent future incidents. For simple incidents, such as a medication error requiring no medical treatment, providers are directed to track them internally and discuss them at internal meetings.

Although the three waivers use WVIMS for incident reporting, quality monitoring and oversight of incident management follow different processes depending on the waiver. For providers serving participants enrolled in the I/DD and TBI Waivers, KEPRO generates a monthly report of incidents that is reviewed by BMS and management staff at regular

contract meetings. KEPRO is also responsible for monitoring provider incidents in real time through WVIMS. Providers are required to review their own data and implement necessary systemic changes quarterly. KEPRO monitors providers for compliance with these expectations annually. As part of ongoing quality oversight, KEPRO reviews a representative sample of files annually for compliance on waiver assurances, including compliance with incident management policies. BMS and the Quality Improvement Advisory Council also review and analyze the data. The Office of Health Facility Licensure and Certification (OHFLAC) completes audits of I/DD Waiver providers to ensure compliance with policy and procedures, including incident management, every two years.

For providers serving participants on the AD Waiver, BoSS is notified of all incidents and monitors incidents and investigations in real time through WVIMS. Every incident submitted into WVIMS must be reviewed by the BoSS Quality Improvement Program Manager, who monitors that appropriate and timely steps are taken by providers to ensure health and safety. Per the approved waiver application, providers are required to regularly review and analyze incident reports to identify health and safety trends, and any identified health and safety concerns and plans for remediation must be incorporated into the provider's Quality Management Plan. BoSS generates a monthly report BMS and management staff review to identify and address system issues and concerns and to prevent reoccurrences. The Quality Improvement Advisory Council also reviews quarterly reports. As part of ongoing quality oversight, BoSS reviews a representative sample of files annually for compliance on waiver assurances, including compliance with incident management policies.

III. West Virginia On-site Review

The H&W SRT conducted on-site review activities to better understand how the critical incident process works and to ensure that participants know whom to contact if there is an incident affecting their health and welfare. The activities included meetings with West Virginia staff, providers, participants, and representatives from West Virginia's licensing entity, protective services entity, protection and advocacy entities, and HCBS ombudsman.

The following topics were covered in addition to reviewing a sample of critical incident reports.

- State's handling of allegations of abuse, neglect, exploitation, and unexplained death
- State's mortality review process
- Licensure/contract oversight process and how it intersects with incident reporting and investigations
- Critical incident reporting process (from both the provider and participant perspectives)
- Both teams met with staff from BMS, BoSS, and KEPRO to discuss impressions from the record review and then for an overall exit conference.

During the on-site review, the providers who participated in interviews provided additional documents, specifically copies of their agency's internal incident reporting forms. The providers interviewed also requested the H&W SRT share the following feedback with the state:

- Hold providers accountable when they are poor performers. Providers expressed frustration when they worked hard to comply with established program standards; providers went on to advise that there appeared to be no repercussions when standards were not met
- Explore opportunities to streamline the West Virginia portals that require various pieces of information from the provider agencies related to critical incidents, such as records of provider training in one portal, critical incident reporting in another portal, investigation status by APS in a third and the results of background checks in a fourth portal
- Reconvene the monthly question and answer conference calls with providers because they were found to be helpful and fostered positive partnerships between the providers and the state staff

IV. State Strengths and Promising Practices for Ensuring Health and Welfare

The following is an overview of West Virginia's strengths, identified by the H&W SRT through both the preliminary review and the on-site review.

A. The state supports robust stakeholder engagement to ensure participant health and welfare.

West Virginia demonstrates a culture of robust stakeholder engagement. For example, each waiver has a quality advisory council that includes state staff, providers, advocacy organizations, and participants who are actively involved in advising the state on quality issues. Past councils have requested to review death reports of waiver participants more closely and made recommendations as to what improvements might be made in the management of critical incidents. Members of the quality advisory councils reported that once recommendations are adopted, they review the impact at a later date to ensure that the changes are meaningful. Both BMS and BoSS, supported by KEPRO, facilitate a quarterly provider meeting, during which health and welfare of participants is one topic of discussion. Providers interviewed indicated they feel they have a seat at the table when discussing waiver policies around health and welfare and the state is approachable when challenges are experienced.

B. Interviewed participants are aware of what to do in the event of an incident.

Every participant interviewed during the on-site review knew whom to contact in the event of an incident. Not all participants could verbalize that they would contact the statewide assistance number, but those participants had someone specific in mind, usually a trusted staff or family member, who would assist them in navigating the process of reporting an incident.

C. The state has an established mortality review committee that meets monthly.

The committee reviews all deaths to ensure the cause of death on the death certificate matches the cause of death officially determined. This process was started so data could be tracked for one of the waiver performance measures. While the state believes there could be a better measure to track, they acknowledge the process has required them to take a closer look at deaths and they have built a strong foundation for mortality reviews.

UPDATE: CMS is working with the state to standardize, align and improve performance measures across all waivers.

V. State Challenges and Opportunities

The following is an overview of the challenges and opportunities in West Virginia, identified by the H&W SRT both through the preliminary review and the on-site review.

A. Challenges with the statewide electronic incident management system affect the state's process for monitoring critical incidents.

Both the state and the H&W SRT noted several challenges with WVIMS:

1. **Incident-based data:** WVIMS collects information based on a specific incident, as opposed to aggregating information on a specific participant. This limits the state's and providers' ability to track trends or look at patterns on a participant's incident history and determine whether additional services or different staffing is needed. Providers noted that they could do this type of trend tracking using their incident reporting data collected in-house but not using WVIMS.

2. **User management issues:** The executive director of each provider agency and each service coordinator agency is charged with designating one or more users responsible for entering incident data into WVIMS. Once an incident is entered into WVIMS by a user, updated data can be entered by only this user. Agency-level view of incidents is available to only two staff members: one director and one administrator. This means the person responsible for tracking trends in the agency's data may not have an agency-level view of the data available in WVIMS.

3. **Incident locked after 14 days:** The state and providers noted that the policy for incident resolution requires an incident be closed in WVIMS within 14 calendar days. If after 14 days the incident is still open, WVIMS is programmed to lock the report, and the provider reporting the incident is noncompliant with the timeliness requirement. Providers noted that some investigations are not completed within 14 days for acceptable reasons, such as revisions to a service plan or feedback from the protective services entity. Providers also stated that locking the system after 14 days meant they needed to send an email to the state to request the incident be reopened, and then they had only 24 hours to enter information in WVIMS.

4. **User restrictions:** The system allows users to view only the incidents they have entered in WVIMS; they cannot view incidents or resolutions entered by another person from their agency or from another provider. If an incident occurs with a participant who has multiple providers, none of the providers will be notified about an incident entered unless they communicate outside the system. Also, if a participant chooses to change providers, the providers cannot review the participant's history of incidents.

Furthermore, providers advised that the state has discouraged duplicate reporting of an incident that should have been reported by another provider. For example, a residential services provider might not want to report an incident that occurred at the day program out of concern for duplicative reporting. Providers went on to note that service coordinators are identified as the entity responsible for entering incidents per the state's waiver policy manual, but a follow-up policy clarification published by the state identified the residential services provider as the entity responsible for entering the incident. Providers noted confusion about the discrepancy in these policies. This confusion could result in an incident's not being reported at all.

5. **Limited reporting functions:** The state cannot use WVIMS for reporting, trend tracking, or statewide analyses. The state uses other methods to monitor. For example, BoSS oversees a mortality review process and shares results with other entities, but these are not inclusive of critical incidents entered in WVIMS.

   UPDATE: WV has reviewed the incident reporting requirements with the provider agencies and worked with their Office of Technology to improve the performance of the IMS. A list of system enhancements was developed and some improvements have been accomplished, but the goal is to replace the existing system with a new one. The Commissioner is working on the funding for its procurement.

B. Specific to the I/DD Waiver, discrepancies are noted in the definition of *critical incident* across entities.

Providers and service coordinators serving participants on the I/DD Waiver identified discrepant definitions of incidents as a concern. Incident categories as reflected in WVIMS have one definition, a second definition is used by KEPRO during its provider audits of case notes to identify whether incidents have not been reported, and a third definition is used by OHFLAC during licensing surveys every other year. Multiple providers on the I/DD Waiver noted that if they followed a definition from KEPRO, they were specifically out of compliance with the definition from OHFLAC, resulting in findings of noncompliance during their audit from one entity or another. Providers also cited these discrepancies as affecting their staff trainings, to the point where one agency created a slide to highlight the discrepancies in the different agencies' definitions, which they shared with the H&W SRT while on-site.

UPDATE: CMS has worked with the state to standardize and align critical incident definitions used in the incident management system between KEPRO (for TBI and I/DD Waivers) and OHFLAC (for I/DD Waiver only).

C. Communication problems that exist between investigative entities potentially weaken the effectiveness of investigations.

State staff and providers both noted challenges in communication with other incident investigative entities, specifically APS (for all waiver providers) and OHFLAC (for I/DD Waiver providers only).

WVIMS has a function to automatically download a form when abuse, neglect, or exploitation is suspected, and the form is then faxed to APS. Although most providers reported they generally receive a letter indicating whether a report has been screened in or out for investigation, they advised they rarely receive a findings report to indicate whether an allegation has been substantiated or unsubstantiated. Providers noted there does not seem to be a distinct threshold for whether or not an incident is investigated, reporting incident types that seemed critical to the providers were screened out, whereas items that were less significant were investigated. State staff noted APS is a county-based system and each county has approximately three APS investigators assigned. As a result, few incident reports are investigated, and when they are investigated, there is a lag time of months before an investigation is completed. Providers noted APS often uses the provider's internal investigation findings during its investigation; however, it is important to point out that using a provider's internal investigation as a means to complete an APS investigation reduces the checks and balances of APS completing its independent investigation into an incident.

One AD Waiver provider suggested that building and maintaining rapport can improve communication with APS. This provider sent new staff to meet the APS workers in the county to begin building this relationship. As a result, this provider reported fewer communication challenges than were reported by other providers on the three waivers. Standardizing the expectations for this relationship between providers and APS may be successful in improving the communication between these two entities.

Regarding OHFLAC, I/DD Waiver providers and state staff noted there is a similar function in WVIMS for downloading a form to send to OHFLAC as warranted by the incident. OHFLAC acts as the licensing entity for all providers on the I/DD Waiver, licensing them as behavioral health providers. OHFLAC completes provider surveys every 2 years. Although, they accept complaints or incidents from anyone, including family members or advocates, they do not have a role in WVIMS, and all their reporting is manual and compiled from email, fax, or other paper documents. Investigated incidents largely depend on surveyor resources at the time an incident is submitted. However, OHFLAC will request a provider agency's internal investigation to ensure there is credible evidence within the initial incident report and at a 10-day follow-up the provider is taking immediate action. OHFLAC staff members also look at trends of incidents as the incidents are received, to prioritize those incidents for a closer review when the next on-site survey comes up. BMS reported another limitation of using OHFLAC survey data as a measure of participant health and welfare is that any data regarding provider sanctions or citations published by OHFLAC cannot be distilled to identify specific

performance trends for I/DD Waiver providers. This limits how much BMS or KEPRO can identify and remediate providers who may have issues.

Incidents entered in WVIMS and investigated by the provider agencies are not enough to warrant a direct service provider's placement on the abuse registry. This step requires a substantiated finding from either APS or OHFLAC. Neither entity reported investigating many incidents; therefore, it is unclear how often referrals are made to the abuse registry. Furthermore, few cases are being independently investigated by APS without the influence of a provider's internal investigation.

As a response to the concerns identified by providers, the state should consider working with OHFLAC to standardize the process of when OHFLAC becomes involved in an investigation regarding abuse, neglect, or exploitation of an I/DD Waiver participant. Similarly, the state should work with protective services entities to improve the referral processes necessary for meaningful investigations of suspected abuse, neglect, or exploitation involving participants receiving waiver services on any of the waivers. Improving and standardizing these workflows may result in effective communication about which cases are accepted for investigations, the findings of those investigations, and the recommendations following the investigations. This is especially important when only a finding from OHFLAC or protective services results in a worker being placed on the WV Cares abuse registry.

UPDATE: The state has finalized a memorandum of understanding with BMS and BCF.

VI. H&W SRT Recommendations and Next Steps for Follow-up Technical Assistance

The following are the H&W SRT's recommendations that relate to the challenges described in section V:

A. The state should consider developing standardized training on incident definitions and use of the incident management system to be included in provider agencies' onboarding training for new staff for all waivers.

Providers from the three waivers noted that each had internal policies and procedures for incident management training. Although the operating agency or KEPRO required providers to have these policies for training and approved the provider-developed training curriculum, providers and the state alike may find it clearer and more efficient to develop a standardized training. For example, through a formal set of PowerPoint slides or through a webinar platform, each provider could access the standardized training when onboarding new personnel. Providers noted that new personnel are frequently onboarded to provider agencies, and standardized training resources would ensure that each direct support worker receives the same message from all provider agencies. Finally, the training could include information about any identified or recommended best practices for using WVIMS to address the challenges discussed above.

B. Specific to the I/DD Waiver, the state should consider standardizing communication pathways for incident management across provider agencies.

Providers and service coordinators for participants receiving services on the I/DD Waiver noted significant concern for how incidents will be managed following the move to independent case management. The state should review the waiver policy manual and any existing policy documents to ensure a protocol that establishes a communication pathway between service coordinators and service providers exists. This protocol could assign specific responsibilities in terms of the entity responsible for entering the incident into WVIMS, communicate the meaningfulness of duplicate reporting when it occurs, and dictate the steps to resolve an incident. It is likely that more than one provider agency will be involved in an incident investigation when independent case management is implemented statewide. It is recommended that the state also consider how these investigations will be managed between the agencies and how agencies can resolve instances when there is disagreement about the outcome of an investigation.

The state may find it beneficial to speak with provider agencies who have already implemented independent case management, to hear about any lessons these providers have learned.

To assist the state with next steps regarding the challenges and recommendations, West Virginia may request technical assistance from CMS.