



December 1, 2023

Chiquita Brooks-LaSure, Administrator  
The Center for Medicare and Medicaid Services  
7500 Security Boulevard  
Baltimore, MD 21244

Dear Administrator Brooks-LaSure,

On behalf of the national associations that represent state and territorial agencies that operate Medicaid home- and community-based services (HCBS), the National Association of State Directors of Developmental Disabilities Services (NASDDDS), National Association of Medicaid Directors (NAMD) and ADVancing States are pleased to offer comments on the [Federal Register Notice for HCBS Incident Management Survey \(88 FR 68621\)](#).

NASDDDS, NAMD and ADVancing States strongly support CMS's goal to identify and share best practices related to critical incident management and hope the survey responses will provide meaningful insight into states' current incident management systems. We appreciate CMS' engagement with our associations on this survey during its development and the incorporation of feedback that NASDDDS and ADVancing States provided earlier this year into the current version of the survey.

Please see general comments included below and specific suggested revisions in Attachment 1 to this letter.

**Survey Use and Burden to Complete**

We request CMS provide additional information regarding the planned use of the survey results. Understanding more about the planned deliverable or final product based on the results of this survey would assist states in providing the best possible responses to the survey questions. For instance, it would be helpful for states to understand how responses to this survey will be compared to 2019 survey responses.

We expect completion of the survey will require a substantial amount of time and effort from state staff. The anticipated completion time of 60-90 minutes significantly underestimates the amount of time states will require to develop responses, as state staff will need to coordinate with other agencies or divisions and ensure the appropriate levels of leadership review. States that must submit multiple survey entries will need additional time for these processes. We recommend CMS allow states at least 60 days to complete the final survey.

Further, in several sections of the survey states will need to input information that is already captured in their approved 1915(c) waiver application(s). We request that, to the extent possible, CMS limit the amount of duplicative information it requests from states.

### **Survey Instructions**

We request CMS provide additional specificity to instruct states on how many survey responses to submit to cover all their systems and programs. In addition, we request clarification on whether states may complete the survey for some of their HCBS Waiver incident management systems but not all.

We appreciate the acknowledgement that state systems may not match exactly with some questions asked and find it helpful that there is an opportunity for respondents to describe their individual systems and processes. However, we are concerned that the lack of specificity may cause confusion for respondents. It may also create challenges in drawing meaningful conclusions, as survey responses will likely not be comparable across systems. For example, using the term “reportable incident”, where appropriate throughout the survey may be clearer for respondents to understand the context of the question; however, even with this approach there is concern that data will not be comparable across state systems due to inconsistent definitions of reportable/critical incidents.

### **Distinction between Critical Incidents and Abuse, Neglect & Exploitation (ANE)**

For many states, there is a significant difference between the reportable incident management system and the ANE investigation system. While in most cases investigations of ANE begin with a reportable incident, investigations of ANE are much more in depth and complex than the reportable incident management process, and result in different levels of involvement of providers, case managers, HCBS recipients and their families, the operating agency, etc. The draft survey does not appear to acknowledge this difference.

### **Opportunities for Improvement**

States have expressed concern in the request to describe opportunities for improvement in their incident management systems and processes and we ask that CMS provide additional information about how these responses will be used. Specifically, we request CMS provide clarification and guidance related to any expectations for states to implement an improvement plan or corrective action to remediate weaknesses identified in the survey.

### **Access Rule**

We would highlight that the survey addresses some of the topics included in the proposed Access rule (e.g., data sharing with other agencies) but not all. Assuming the survey may inform sub-regulatory guidance to states related to the Access rule requirements, we recommend further aligning survey questions with proposed Access rule requirements. For instance, CMS may consider adding questions related to secondary investigation processes.

We are hopeful that the data gathered in this type of survey will provide CMS a clear picture of the current landscape of state CIMS, and will inform future policy decisions regarding incident management requirements and implementation timelines. Additionally, we hope the learning gleaned will inform the type and amount of sub-regulatory guidance CMS provides to states regarding the CIMS implementation requirements in the Access rule.

We appreciate the opportunity to provide comments on the draft survey and look forward to continued partnership between CMS and state and territorial agencies in furtherance of our mutual goals to support and improve Medicaid HCBS programs. If you have any questions regarding this letter, please feel free to contact Rachel Neely at [rneely@advancingstates.org](mailto:rneely@advancingstates.org), Dan Berland at [dberland@nasddds.org](mailto:dberland@nasddds.org) or Jack Rollins at [jack.rollins@medicaiddirectors.org](mailto:jack.rollins@medicaiddirectors.org).

Sincerely,



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ADvancing States



Mary P. Sowers  
Executive Director  
National Association of State Directors of  
Developmental Disabilities Services



Kate McEvoy, Esq.  
Executive Director  
National Association of Medicaid Directors

## **Attachment 1: Recommended Revisions**

### **Section I – General Questions**

#### **General Identifiers:**

##### *Questions 3-4*

- We recommend CMS limit the information captured regarding the person submitting the survey response. Many states have a federal relations or similar team who will submit the response, but these staff would likely not be the staff who oversee/operate the incident management system.
- We recommend CMS remove field regarding the length of time the respondent has worked in their position, as this information does not seem relevant to the survey responses, particularly given that the respondent may not be the incident management system administrator.

##### *Question 7-7a.*

- The question numbering appears incorrect and may cause confusion.
- The question stem in question 7a seems to indicate a respondent would only answer this question if they selected "b" for question 7, but sub-bullets indicate otherwise. Also, the question is listed as 7a, but there are "a." and "b." options as sub-questions. We recommend CMS revise the formatting of these questions for clarity.

##### *Question 8*

- We believe the flow between question 7, 7a and 8 may be confusing for states. We assume the response to question 8 is based on the response to question 7. If a state's response to question 7 is (a), then all waivers will be listed. If response to question 7 is (b), the waiver programs listed in question 8 will only include the subset of waivers the person oversees that have the same incident management system. We request CMS confirm whether that operating assumption is correct, and provide clarification to states in the survey instructions.

##### *Question 9*

- We assume this question is asking if the state utilizes a system for the additional authorities listed below. If this is the case, we suggest CMS clarify this is "in addition to 1915(c) waivers as identified #8".
- We request CMS clarify whether this table is specific to system(s) covered in this survey response or in general. If a state submits multiple survey responses there could be duplicate information submitted in this table unless the question provides more specific direction.

### **Section II – System Questions**

#### **Incident Management System Processes:**

##### *Question 11*

- The table includes the header "Case Mgr." We suggest adding the term service coordinator or clarifying in the instructions that "case manager" includes service coordinators and other entities that facilitate the person-centered service planning process.

#### **General:**

##### *Question 12*

- We suggest revising this question to read "Please identify and describe..."

### **Section III – Reporting Questions**

## **Reporting Guidelines:**

### *Question 2*

- Items *a.* through *f.* mirror the critical incident definition proposed in the Medicaid HCBS Access rule. We are glad to see this alignment and encourage CMS to ensure the survey is updated as needed to align with any changes to the critical incident definition made in the final Access rule.
- Item *g.* does not align with language in the proposed Access rule, which states that providers are required to report "any critical incident that occurs during the delivery of services authorized under section 1915(c) of the Act and as specified in the waiver's person-centered plan, or occurs as a result of failure to deliver services authorized under section 1915(c) of the Act and as specified in the waiver's person-centered plan". We recommend CMS revise this item to use the same language as the Access rule.
- In item *m.*, we recommend CMS expand "suicide or suicide attempt" to include suicide ideation or suicide threat.
- We recommend CMS add the following additional incident types: sexual harassment, unsanitary conditions leading to risk, referrals to Medicaid Fraud Control Unit (MFCU), psychiatric emergency, incident resulting in an emergency department visit, an urgent care visit, or a hospitalization (aside from medication error).

### *Question 3*

- Some states may complete the survey for waivers that have different reporting requirements but use the same incident management system. In such cases, should the state specifically note which waiver applies to each item in the table?

### **General:**

### *Question 9*

- We recommend CMS revise this question to read "Please identify and describe..."

## **Section IV – Incident Resolutions Questions**

### **Incident Resolution for ANE:**

### *Question 11*

- We request CMS add a "N/A" option to ensure consistency with question 9 in this section.

### **General:**

### *Question 21*

- We recommend CMS revise this question to read "Please identify and describe..."

## **Section V – Quality Improvement Questions**

### **Creation of Data Reports and Trend**

### *Question 3*

- We recommend CMS add "law enforcement involvement" to the list of trends in this question.
- For consistency, we request CMS use the same terminology for emergency department or emergency room visit. In Section IV of the survey, CMS uses the term "emergency department", therefore we suggest changing the remaining references to the same term.

### **General:**

### *Question 16*

- We recommend revising this question to read "Please identify and describe..."

## **Section VI – Collaboration Questions**

### **Collaboration with Other Agencies**

#### *Question 1-2*

- In question 1, CMS requests the respondent list the agencies from which the state collects information, while question 2 seeks to capture modes used to share information and/or collaborate with other state agencies. The differences in phrasing between these two questions could cause confusion for states. We recommend CMS revise the questions so that respondents can clearly distinguish the entities with which the state actively collaborates and those with which the state shares information. At the very least, we suggest adding “collaboration” to the first question to there is consistent phrasing throughout this section.

#### **General:**

#### *Question 11*

- We recommend revising this question to read “Please identify and describe...”

## **Section VII – Training Questions**

### **Training**

#### *Question 4*

- “Investigative staff” is one group included in the table. We request that CMS provide more information on who would be included under this group, as it could be interpreted broadly. For instance, would this group include case managers who determine an incident needs to be reported or is this specific to Adult Protective Services (APS) or similar staff who conduct investigations following a reported incident?

#### **General:**

#### *Question 12*

- We recommend revising this question to read “Please identify and describe...”

## **Section VIII – Prevention Questions**

### **General:**

#### *Question 14*

- We recommend revising this question to read “Please identify and describe...”

## **Section IX – Mitigation of Fraud, Waste and Abuse Questions**

### **Purpose of this Section**

#### *General Section Comment:*

- We request CMS clarify the distinction between abuse as it is used in the ANE and FWA acronyms in this section.

#### *Question 2*

- We recommend CMS add a response option of “N/A” for consistency with other questions and response options in this section.

#### **General:**

#### *Question 8*

- We recommend revising this question to read “Please identify and describe...”

## **Section X – Closing Comments**

### *General Comment:*

- We recommend the following instruction be included in Section I of the survey, in addition to Closing Comments: “(If answer b is selected for #7 in Introduction) Since you selected that the incident management operations are unique across waivers, please fill out a separate survey for each waiver that has a different system.”