Nebraska On-site Review Summary Report

I. Executive Summary

The Health and Welfare Special Reviews Team (H&W SRT) conducted a 5-day on-site review of Nebraska's home and community-based services (HCBS) Medicaid waiver programs from December 9 through December 13, 2019. For the Nebraska visit, the team focused on the HCBS Waiver for Aged and Adults and Children with Disabilities, Traumatic Brain Injury Waiver, Developmental Disabilities (DD) Day Services Waiver for Adults, and the Comprehensive DD Services Waiver. 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.

Nebraska operates four HCBS waivers. The Department of Health and Human Services is the state Medicaid authority. It operates the HCBS Waiver for Aged and Adults and Children with Disabilities and the Traumatic Brain Injury Waiver operated by Department of Health and Human Services, Division of Medicaid and Long-Term Care (DHHS/DMLTC) and the Developmental Disabilities (DD) Day Services Waiver for Adults and Comprehensive DD Services Waiver operated by the Department of Health and Human Services, Division of Developmental Disabilities (DHHS/DDD).

The on-site review included multiple meetings with state directors and staff responsible for the administration and operation of all four of Nebraska's section 1915(c) waiver programs, including staff from the Nebraska DHHS, DMLTC, and DDD. Each team of the H&W SRT also held a meeting with representatives from the respective licensing entity, protective services entities, protection and advocacy entity, and HCBS ombudsman.

In addition, the H&W SRT met with service coordinators, investigators, providers, and participants. The focus of these meetings was to obtain a sense of how the process for reporting, investigating, and resolving critical incidents operates in practice and how health and welfare are ensured for HCBS participants in Nebraska through the lens of these stakeholders.

During the on-site review, the H&W SRT identified a number of strengths and promising practices along with some challenges, which were discussed in the exit conference at the close of the visit in 2019, are briefly listed here, and described more fully later in this summary report.

Strengths and Promising Practices

A. Continuous quality improvement
B. Cross-collaboration between divisions
C. State-level interaction with providers
D. Service coordination approach incorporates regular in-person health and welfare checks

E. Progressive certification/licensure approach tied to compliance and performance related to assuring health and welfare
F. Broad array of incidents reported to DHHS/DDD
G. Increased focus on integrating health, population health, and health information exchange together into the waiver administration/operation to help assure health and welfare

Challenges and Opportunities

A. Additional/enhanced investigation of reported critical incidents
B. Absence of process to evaluate critical incident data
C. Inconsistent messaging to providers and service coordinators about rules, processes, policies, and interpretations
D. Participants and families' lack of awareness of Adult Protective Services (APS) and its role

Recommendations

The state should consider:

A. enhancing Medicaid managed care plans information sharing regarding incidents and deaths
B. whether increased transparency about incidents could help stakeholders as well as the public
C. pursuing opportunities for increased cross-training and collaboration with law enforcement at the state and local levels
D. ways to enhance providers' access to service-level information regarding participants they serve
E. expanding the mortality review process to assist in identifying trends as well as inform provider education and outreach initiatives

II. Background

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 Nebraska. Table 1 lists all four Nebraska waiver programs that were reviewed prior to the visit, along with the waiver's expiration date, operating agency, and target population.

The H&W SRT reviewed publicly available information about the state's organizational structure and operations. Additionally, the H&W SRT reviewed websites of the state Office of Inspector General (OIG), ombudsman, and protection and advocacy, protective services, and advocacy organizations for information about the health and welfare of participants receiving HCBS.

Table 1. Waiver Programs Reviewed by the H&W SRT

Waiver Name and Number	Expiration Date	Operating Agency	Target Population
HCBS Waiver for Aged and Adults and Children with Disabilities (0187)	July 2026	Division of Medicaid and Long-Term Care	Individuals of any age with physical disabilities
DD Day Services Waiver for Adults (0394)	February 2027	Division of Developmental Disabilities	Individuals aged 21+ years with intellectual disabilities or developmental disabilities (ID/DD)
Traumatic Brain Injury (40199)	September 2023	Division of Medicaid and Long-Term Care	Individuals aged 18–64 years with brain injury
Comprehensive Developmental Disabilities Services Waiver (4154)	February 2027	Division of Developmental Disabilities	Individuals of any age with ID/DD

Based on a review of preliminary information, the H&W SRT determined it best to focus on all four HCBS waiver programs which are described below.

The **HCBS Waiver for Aged and Adults and Children with Disabilities** serves approximately 6,600 participants and is operated by the Department of Health and Human Services (DHHS) Division of Medicaid and Long-Term Care (DMLTC). The waiver provides HCBS to any adult or child with disabilities and to any older adult in Nebraska. It offers a comprehensive benefit package and case management that is provided by contracted entities. The state uses the CONNECT system to report and track critical incidents meeting the criteria for abuse, neglect, or exploitation. Service coordinators have 15 business days to complete the Local Level Incident Form and notify the state HCBS waiver unit. Serious events must be reported in 1 business day. The waiver unit reviews the report within 30 days to determine whether appropriate waiver actions were taken and then informs the local agency staff/service coordinators when a report is finalized/closed.

The **Traumatic Brain Injury (TBI) Waiver** serves approximately 20 participants and is operated by DHHS/DMLTC. The participants receive services from one provider. Services are provided primarily in a residential setting. The critical incident process for the TBI Waiver is the same as for the HCBS Waiver for Aged and Adults and Children with Disabilities.

The **Developmental Disabilities (DD) Day Services Waiver for Adults** (DSWA) serves approximately 968 participants and is operated by the DHHS Division of Developmental Disabilities (DDD). This waiver offers a smaller benefit package than the one provided under the Comprehensive Developmental Disabilities Services Waiver. Services maximize participants' independence to work in their communities, with a focus on competitive, integrated employment. Service coordination is provided by state employees based in each county. DDD's Therap system is used to report and track critical incidents. Providers have 24 hours to submit an incident report into Therap. Providers investigate the incident and must submit an investigation report into Therap within 14 days.

The **Comprehensive Developmental Disabilities Services (CDDS) Waiver** serves approximately 4,000 participants of any age with intellectual or developmental disabilities (I/DD) and is operated by DHHS/DDD. It provides a broad array of services, after recently being amended to unbundle and specify many discrete services, with the goal of maximizing independence as participants live, work, and socialize in their communities. Service coordination is provided by state employees based in each county. The critical incident process for the CDDS Waiver is the same as for the DSWA Waiver.

III. Nebraska On-site Review

The H&W SRT conducted the on-site visit over a five-day period and met with various state staff, stakeholders, advocates, providers and participants. The topics bulleted below were covered in addition to reviewing a sample of critical incident reports.

- State's handling of allegations of abuse, neglect, exploitation and unexplained death
- Licensure/contract oversight process and how it intersects with incident reporting and investigations
- Critical incident reporting process from both the provider and participant perspectives
- State's mortality review process

During the on-site visit, the state provided few additional documents, because many had been provided prior to the visit in response to the State Engagement Letter.

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

The following is an overview of the state's strengths identified by the H&W SRT through both the preliminary review and the on-site visit regarding the design or practice of ensuring the health and welfare of HCBS participants in Nebraska.

A. Continuous quality improvement. In both DMLTC and DDD, staff at the state level and in the field apply continuous quality improvement practices. This was evidenced in both their overview of recent changes as well as plans for future improvements. For example, the state included a broad set of quality improvement goals in a Request for Proposal to hire a Quality Improvement Organization (QIO) for DDD. In the time following the on-site visit, the state amended two of its waivers (NE 0187.R07.03 and NE 40199.R04.10) to add the QIO-like entity to perform duties and tasks associated with mortality and incident reviews. Additionally, state staff were extremely receptive to input

from the H&W SRT and seem committed to being responsive to recommendations from the OIG and Office of the Attorney General reports. They attended the HCBS conference and are receptive to feedback and learning from others.

B. Cross-collaboration between divisions. Each division has representatives on the other division's quality groups. The division staff have cross-waiver discussions and collaboration beyond quality, and they have topic-specific subgroups. Many staff have prior experience working for the other division that they bring to each position they assume. The state implemented a new collaborative mortality review process in June 2018. Staff from both DMLTC and DDD convene bimonthly to review cases selected by each division, share insights, and learn from each other's investigations and processes.

C. State-level interaction with providers. DHHS staff maintain close working relationships with providers and service coordinators in the field through direct oversight of follow-up activities for reported incidents, provider site visits, and record reviews. The providers often referred to state staff by name and indicated that the state is available and responsive to inquiries.

D. Service coordination approach incorporates regular in-person health and welfare checks. The H&W SRT observed a unique, high-touch service coordination contact requirement through which service coordinators are required to make monthly visits or have monthly contacts if in-person visits are not possible. Service coordinators are required to conduct quarterly face-to-face visits to confirm that services are being delivered in accordance with the service plan and to check on the health and welfare of participants. Although these are required only quarterly, most participants receive monthly visits. Likewise, during semiannual and annual service plan review meetings, there is discussion of all incidents that occurred, how they were addressed, and what might need to be changed to prevent them. The approach provides for relationship and trust building, allows for eyes on everyone in a very rural state, and provides a mechanism for continuously checking on health and welfare.

E. Progressive certification/licensure approach tied to compliance and performance related to assuring health and welfare. Nebraska has a progressive approach to its certification of DD providers. A provider must first complete training, gain state approval of its policies, and complete an on-site review to earn a provisional certification, which is valid for 6 months. After 6 months, the Department of Public Health reviews all regulatory compliance items, paying specific attention to incidents reported and how the provider responded. The provider will then receive an initial 1-year certification and receive another review during the following year. Depending on provider performance, the Department of Public Health may award an additional 1-year certification or a 2-year certification. Long-standing providers with a history of strong quality are recertified every 2 years. This process reviews quality, compliance, and performance in preventing, responding to, and reporting incidents.

F. Broad array of incidents reported to DHHS/DDD. By regulation, an extensive list of incidents is classified as "high" and must be reported into Therap to the state DDD.

"medium" and "low" incidents may also be reported into Therap. A comprehensive list of incidents permits significant information to flow to the state for use in investigating, trending, and developing systemic responses to incidents. Response to incidents once classified and reported into Therap remains a work in progress.

G. **Increased focus on integrating physical health, population health, and health information exchange together into the waiver administration/operation to help assure health and welfare.** DDD has a strong focus on integrating physical health into the expectations for the HCBS waivers. The state encourages annual physicals and dental appointments for all HCBS waiver participants. HCBS waiver service coordinators are responsible for monitoring that these appointments occur. HCBS waiver service coordinators must also enter all medical appointments, medication administration, and medical issues in the Therap case management system so that providers know, understand, and meet the physical health needs of individuals they serve. Nebraska is also working on its health information exchange, called NEHII, and developing the means for HCBS waiver providers and service coordinators to access NEHII.

V. State Challenges and Opportunities

The following is an overview of the challenges and opportunities identified by the H&W SRT regarding the design or practice of ensuring the health and welfare of HCBS participants in Nebraska.

A. **Investigation of reported critical incidents.** During the 2019 review, H&W SRT observed the absence of a policy for state-level investigation of critical incidents by the operating agencies at DHHS. Both operating agencies expressed the desire and intention to move toward conducting their own investigations of incidents and critical incidents. As of the time of the visit, the system relies on APS investigations or the provider self-investigations. Attendees across multiple on-site review sessions consistently reported frustration with the limitations in scope of APS. Definitions on what constitutes abuse, neglect, or exploitation within the APS statute do not align with the health and welfare assurance; as a result, many concerns referred to APS are rejected without investigation, with "does not meet definition" being the stated rationale. There was also concern about the high number of cases that are screened out - and the high number of cases that APS deems unfounded after being investigated. There is a near universal agreement that APS should investigate more on reported incidents.

   The H&W SRT is encouraged by Nebraska's awareness of these issues and desire to initiate state-level investigations in the future.

B. **Absence of process to routinely evaluate critical incident data.** DMLTC is missing an opportunity to use data to inform incident trends. The capture and trending of data on incidents that do not reach the level of APS involvement, such as emergency room visits, falls, choking, and injuries, can serve as a source for understanding the areas where focused training and education are needed. These data are currently captured at the provider and service coordinator level but are not aggregated or evaluated to identify trends or address provider or systemic problems. DDD has recently begun this work and

Nebraska's operating agencies are encouraged to work collaboratively to strengthen incident data aggregation and review.

C. **Inconsistent messaging to providers and service coordinators about rules, processes, policies, and interpretations.** The state has been actively making updates and improvements in policies and processes regarding participant health and welfare. Those charged with understanding, implementing, and following the updated and changed policies and processes reported a lack of information and the need for a single source of information about the changes and their impact. Service coordinators disagreed about whether a recent draft policy had been final yet and expressed a lack of confidence that the web sources they use are current. Providers reported trouble finding current or new rules on websites. Providers also reported that some service coordinator interpretations differ, even within the same agency, and that this can be confusing and frustrating. Additionally, the H&W SRT heard about some inconsistency in practice around reporting and investigation processes at the provider level that would benefit from clear communication of requirements and expectations of what is required now and what will be required once the state revises the investigation process. The H&W SRT sees an opportunity for improved provider education and better, more frequent provider communication.

D. **Participants and families' lack of awareness of APS and its role.** Service coordinators and providers want individuals to know of the APS system availability and encourage them to use it. Some DD Waiver participants and family members reported that they do not know what APS is or how they would contact APS if needed. The H&W SRT sees this as an opportunity for DDD to initiate increased transparency and education with the families and the public about rights, reporting processes, and the existence and role of APS.

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

A. **Medicaid managed care plans are inconsistently sharing information regarding incidents and deaths.** The H&W SRT heard about challenges that state staff face in obtaining information from the state's managed care plans (MCPs) related to mortality review efforts and critical incident investigations. MCPs are contracted to provide all Medicaid medical services. The H&W SRT recommends that Nebraska consider enhanced requirements for information sharing, service coordination, integration with MCP case management and service delivery, report or record submission, and potentially involvement in incident reporting. The MCPs have a role in ensuring health and welfare, and Nebraska could benefit from using them better to support efforts to ensure health and welfare.

B. **The state should consider how increased transparency about incidents could help stakeholders as well as the public.** The H&W SRT saw an opportunity around sharing more public information about incidents and potentially offering an opportunity to search substantiated incidents by provider. Service coordinators of DD services reported that

little happens to a provider as a result of a substantiated incident. In response, a common action step is to move the participants served by this provider to another provider. This does not prevent a new participant from being served by the provider where concerns are identified. An accessible database could enable individuals, family, service coordinators, and the public to see the number and nature of incidents by provider (de-identified to refer only to alleged victim, alleged perpetrator, etc.). This may help participants, family members, the general public, providers, service coordinators, APS workers, and law enforcement know more about the provider(s) they are considering, using, recommending, or investigating.

C. **The state should consider pursuing opportunities for increased cross-training and collaboration with law enforcement at the state and local levels.** The H&W SRT learned that there is no cross-training or collaboration with law enforcement regarding health and welfare. Others noted the lack of law enforcement understanding of the populations as well as health and welfare considerations when investigating incidents. These relationships can be developed such that law enforcement becomes a valuable partner in ensuring health and welfare, and Nebraska might consider pursuing these relationships.

D. **The state should consider ways to enhance provider access to service-level information regarding participants they serve.** DD providers expressed frustration at not being able to access information regarding the participants they serve. They are limited to seeing only the information that they enter in Therap. Their concerns focused on their inability to see the full picture of the participants' service plan and case notes that could include reported incidents. Providers reported this as a challenge for responding to incidents that may have upset a participant earlier in the day or preventing an incident by not knowing about the participant's activities or mood from earlier in the day. For example, a provider on an afternoon shift who has previously experienced challenging behaviors with a participant has no way of knowing about the participant's day before the provider arrives. The H&W SRT recommends that Nebraska consider, with provider and service coordinator input, whether additional information could be shared to help providers better respond to and prevent incidents.

E. **A more robust mortality review process could assist in identifying trends and inform provider education and outreach initiatives.** Nebraska's recently initiated process for mortality review appears to be off to a good start. The H&W SRT recommends that the state consider reviewing more than four to six cases a year across the populations of (1) older adults and individuals with a physical disability and (2) individuals with ID/DD to permit more trending and to provide additional opportunities to identify and address problems that might be recognized through more deaths being reviewed. The H&W SRT also encourages Nebraska to consider taking more preventive actions in response to findings. For example, the state can proactively disseminate educational information or reminders about how to prevent deaths related to choking with or without a specific incident or occurrence.

E. **Inconsistent messaging to providers and service coordinators about rules, processes, policies, and interpretations** Service coordinators and providers expressed frustration in the frequency of state updates to and the comprehensiveness of the state website. These groups noted that rules were difficult to locate, difficulty in determining whether policies were finalized or in draft, and noted that the inconsistent messaging led to varying interpretation of state policies. The H&W SRT sees an opportunity for improved provider education and better, more frequent provider communication. The H&W SRT recommends implementing regularly scheduled initial and refresher trainings, that are posted on the state's webpage, adding effective dates to rule postings and regular review of the site to archive outdated policy to ensure its provider community has timely access to needed information.

F. **Participants and families' lack of awareness of APS and its role.** During the review, service coordinators and providers expressed their desire to increase awareness of the APS system. Specifically, they highlighted the need to ensure individuals knew about the APS system availability and that they were encourage them to use it. The H&W SRT sees this as an opportunity for DDD to initiate increased transparency and education with the families and the public about rights, reporting processes, and the existence and role of APS. The state may consider utilizing a portion of its person-centered planning time with participants and their families to revisit the APS information.

As the state considers next steps to the challenges and recommendations outlined above, CMS remains available to provide additional technical assistance and support, if requested by the state.