Home and Community-Based Services (HCBS) Incident Management Systems and Critical Incident Reporting Requirements in the *Ensuring Access to Medicaid Services* Final Rule

September
2024

Background

- The *Ensuring Access to Medicaid Services* final rule (Access final rule) and the *Managed Care Access, Finance, and Quality* (Managed Care final rule) were issued in April 2024
- The final rules establish historic national standards for access to care regardless of whether that care is provided through managed care plans or directly by states through fee-for-service (FFS), including by:
  - Establishing national maximum standards for certain appointment wait times for Medicaid and CHIP managed care enrollees
  - Requiring states to conduct secret shopper surveys of Medicaid and CHIP managed care plans
  - Requiring states to conduct enrollee experience surveys annually for each managed care plan
  - Establishing a framework for states to implement a Medicaid and CHIP quality rating system, a "one-stop-shop" for enrollees to compare Medicaid and CHIP managed care plans
  - Creating new rate transparency requirements for FFS and managed care
  - Strengthening how states use state Medicaid Advisory Committees
  - Strengthening HCBS oversight, monitoring, quality assurance, quality improvement, and payment adequacy

Overview of HCBS Provisions

- Strengthens oversight of person-centered service planning in HCBS
- Requires states to meet nationwide incident management system standards for monitoring HCBS programs
- Requires states to establish a grievance system in FFS HCBS
- Requires that states report on the percentage of payments for certain HCBS that is spent on compensation for direct care workers
- Requires that a minimum percentage of payments for certain HCBS is spent on compensation for direct care workers, subject to certain flexibilities and exemptions
- Requires states to report on waiting lists in waiver programs and on service delivery timeliness for certain HCBS
- Requires states to report on a standardized set of HCBS quality measures and sets requirements for CMS to develop and update the measure set
- Promotes public transparency related to the administration of Medicaid-covered HCBS through public reporting of quality, performance, and compliance measures

HCBS Provisions: Focused on Improving Access and Quality, Promoting Health Equity, and Strengthening the HCBS Workforce

- **Person-Centered Service Planning and Reporting Requirements** (§§ 441.301(c), 441.450(c), 441.540(c), 441.725(c), 441.311(b)(3), 441.474(c), 441.580(i), and
  - 441.745(a)(1)(vii))
- **Incident Management Systems and Critical Incident Reporting Requirements**
  - (§§ 441.302(a)(6), 441.464(e), 441.570(e), 441.745(a)(1)(v), 441.745(b)(1)(i),
  - 441.311(b)(1) and (2), 441.474(c), 441.580(i), and 441.745(a)(1)(vii))
- **FFS Grievance Systems** (§§ 441.301(c)(7), 441.464(d)(5), 441.555(e), and 441.745(a)(1)(iii))
- **HCBS Payment Adequacy Reporting Requirements** (§§ 441.311(e), 441.474(c), 441.580(i), and 441.745(a)(1)(vii))
- **HCBS Payment Adequacy Minimum Performance Level** (§§ 441.302(k), 441.464(f), 441.570(f), and 441.745(a)(1)(vi))
- **Waiting List and Access Reporting Requirements** (§§ 441.311(d), 441.474(c), 441.580(i), and 441.745(a)(1)(vii))
- **HCBS Quality Measure Set and Reporting Requirements** (§§ 441.312, 441.474(c), 441.585(d), 441.745(b)(1)(v), 441.311(c), 441.474(c), 441.580(i), and 441.745(a)(1)(vii))
- **Website Transparency** (§§ 441.313, 441.486, 441.595, and 441.750)

HCBS Access Provisions: Applicability Dates

2026

- FFS grievance systems

2027

- Incident management system
- Critical incident reporting and minimum performance level
- Person-centered planning reporting and minimum performance level
- Waiver waiting list reporting
- Access reporting
- HCBS payment adequacy reporting readiness
- Website transparency

2028

- HCBS Quality Measure Set reporting
- HCBS payment adequacy reporting

2029

- Electronic incident management system

2030

- HCBS payment adequacy minimum performance level

2031

2032

Incident Management Provisions and Critical Incident Reporting Requirements of Access Rule (slide 1 of 3)

((§§ 441.302(a)(6), 441.311(b), 441.464(e), 441.474(c), 441.570(e), 441.580(i), 441.745(a)(1)(v), 441.745(b)(1)(i))

Prior requirements	Final Rule	Applicability Date
No prior regulatory requirement	Requires states to define critical incidents to include, at a minimum: • Verbal, physical, sexual, psychological, or emotional abuse; • Neglect; • Exploitation including financial exploitation; • Misuse or unauthorized use of restrictive interventions or seclusion; • A medication error resulting in a telephone call to, or a consultation with, a poison control center, an emergency department visit, an urgent care visit, a hospitalization, or death; or • An unexplained or unanticipated death, including but not limited to a death caused by abuse or neglect	Beginning July 9, 2027
No prior regulatory requirement	Requires states to operate and maintain an electronic incident management system to identify report, triage, investigate, resolve, track, and trend critical incidents	Beginning July 9, 2029

Incident Management Provisions and Critical Incident Reporting Requirements of Access Rule (slide 2 of 3)

((§§ 441.302(a)(6), 441.311(b), 441.464(e), 441.474(c), 441.570(e), 441.580(i), 441.745(a)(1)(v), 441.745(b)(1)(i))

Prior requirements	Final Rule	Applicability Date
No prior regulatory requirement	Requires providers to report to the state, within state-established timeframes and procedures, any critical incident that occurs during the delivery of services or as a result of the failure to deliver services	Beginning July 9, 2027
No prior regulatory requirement	Requires states to use other data sources (e.g., claims, Medicaid Fraud Control Unit, Child and Adult Protective Services, law enforcement) to the extent permissible under state law to identify critical incidents that are unreported by providers and occur during the delivery of services or as a result of the failure to deliver services	Beginning July 9, 2027
No prior regulatory requirement	Requires states to ensure there is information sharing about the status and resolution of investigations between the state and the entities responsible for investigating critical incidents if the state refers critical incidents to other entities for investigation	Beginning July 9, 2027

Incident Management Provisions and Critical Incident Reporting Requirements of Access Rule (slide 3 of 3)

((§§ 441.302(a)(6), 441.311(b), 441.464(e), 441.474(c), 441.570(e), 441.580(i), 441.745(a)(1)(v), 441.745(b)(1)(i))

Prior requirements	Final Rule	Applicability Date
No prior regulatory requirement	Requires states to separately investigate critical incidents if the investigative agency fails to report the resolution of an investigation within state-specified timeframes	Beginning July 9, 2027
No prior regulatory requirement	Establishes standardized annual reporting requirements and sets a 90% minimum performance level for states related to whether the following occur within state-specified timeframes: • Critical incident investigations are initiated; • Critical incidents are investigated and resolved; and • Corrective actions related to critical incidents are completed	Beginning July 9, 2027
No prior regulatory requirement	Requires states to report on an incident management system assessment every 24 months (may be reduced to every 60 months for states that meet incident management system requirements)	Beginning July 9, 2027

CMS Response To Comments in the *Access Rule* Preamble (slide 1 of 2)

Critical incident definition:

- "We proposed the Federal minimum standard definition of a critical incident at § 441.302(a)(6)(i)(A) to address the lack of a standardized Federal definition for the type of events or instances that States should consider a critical incident that must be reported by a provider to the State and considered for an investigation by the State to assess whether the incident was the result of abuse, neglect, or exploitation, and whether it could have been prevented."
- "We plan to provide technical assistance, as needed, to States if they have questions about the types of incidents that should be included in the standardized definition, and how this definition relates to existing critical incident definitions already in use."
- "We decline to include refusing a service or self-neglect in the minimum standard definition because we intend this definition to focus on incidents that occur during the course of service delivery. However, States may include these events in their own definitions."

CMS Response To Comments in the *Access Rule* Preamble (slide 2 of 2)

Dual eligibles:

- “We proposed that the incident management system requirements, as specified at § 441.302(a)(6) and as finalized in this rule, will apply to section 1915(c)(i), (j), and (k) services delivered through managed care plans. We also note that dually eligible beneficiaries enrolled in managed care plans known as fully integrated dual eligible special needs plans (FIDE SNP) and highly integrated dual eligible special needs plans (HIDE SNP), are subject to the incident management requirements at § 441.302(a)(6) as finalized.”
- “We will provide technical assistance regarding the application of these requirements to beneficiaries in different categories of dual eligibility.”

Integration with grievance systems:

- "While we agree that States may find it useful to have a single, integrated system for grievances, critical incidents, and fair hearings, we are not requiring in this final rule that States do so."

Questions for Discussion (slide 1 of 2)

- What additional information or clarification do you need from CMS to be able to define specific types of critical incidents (e.g., verbal abuse, neglect, etc.)?
- What major changes or enhancements does your state need to make to its existing incident management system(s) in order to meet the Access Rule requirements?
- What resources are needed from CMS in order for your state to develop, operate, and maintain a compliant electronic incident management system?
- What are the various steps states will have to take to implement the critical incident requirements?

Questions for Discussion (slide 2 of 2)

- How do you plan to facilitate coordination with multiple entities (e.g., Child and Adult Protective Services, law enforcement, etc.) to ensure reliable incident reporting?
- What challenges do you anticipate regarding collecting information on the status and outcomes of investigations?
- What additional information or clarification do you need from CMS to be able to meet the minimum performance level?
- The incident management system and reporting requirements apply to both fee-for-service and managed care across 1915(c), 1915(i), 1915(j), 1915(k), and 1115 authorities. How do you plan on consolidating data across multiple authorities and programs in order to meet the reporting requirements?

Questions?

Email HCBSAccessRule@cms.hhs.gov