The Honorable Seema Verma
Administrator
Centers for Medicare and Medicaid Services
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201

May 22, 2018

Dear Administrator Verma,

The American Network of Community Options and Resources (ANCOR) is the national trade association for disability service providers and represents 52 state provider associations. On behalf of over 1,400 providers of community disability services serving over 1 million Americans with intellectual and developmental disabilities (I/DD), ANCOR respectfully requests your immediate attention to the pending implementation of the new electronic visit verification (EVV) law. Enacted under Section 12006 of the 21st Century Cures Act (hereinafter "Section 12006"), penalties to states for lack of compliance with this broad legislation begin in 2019. ANCOR strongly opposes the current timeline and broad application of Section 12006 which directly conflicts with clearly expressed congressional intent. CMS can play an important role in easing the disastrous impact of an EVV implementation plan that is already causing widespread confusion in a community-based system that serves some of our most vulnerable Americans.

ANCOR's concerns revolve around the intent of the law, the timeline for implementation, privacy of beneficiaries, and the lack of public input and participation. We firmly support CMS and legislative action to clarify the intent of Section 12006 of the 21st Century Cures Act, delay implementation, and provide reassurance that privacy and public input concerns are duly incorporated into the process.

Intent of the Law

From the congressional record, one would understand that the coverage of Section 12006 would be strictly reserved to monitoring the delivery of a medical service provided in the home. The Office of Inspector General has documented the need for oversight in this very specific arena where there may be false claims or the service is not provided. In line with that goal,

statements on the record in Congressional discussion of Section 12006 referenced protecting seniors and the integrity of the Medicaid program.

ANCOR members primarily serve adults with intellectual and developmental disabilities (I/DD) through services including day programs, residential supports in a group or host home or other residential settings, employment supports, and daily life supports throughout the community. The services are generally provided daily, often 24/7, and the locations can vary because a primary goal of these services is to integrate the individual in the community in accordance with the Americans with Disabilities Act and subsequent *Olmstead* decision. We are concerned that our programs, the majority that are served under the 1915(c) model, will be wrapped into the EVV compliance requirements despite not having been the intended congressional target. As CMS states, in 2009, nearly 1 million individuals were receiving services under the community waiver and almost every state offers it, with more than 300 programs active nationwide. While we appreciate the clarification in recently released guidance that group homes and congregate settings are not impacted by the EVV requirements, a majority of the services that ANCOR members provide seem to still be drawn in. Further, it is our understanding that certain services are drawn in depending on the state. We believe this is a dangerous application of the legislation and overextends the original intent.

If CMS applies Section 12006 to a broad range of disability services it will not serve the intention of the original statute and will counteract the "minimally burdensome" goals of the legislation and "impede the manner in which care is delivered." I/DD programs already undergo significant oversight and are tremendously underfunded (many have not had rate increases for over a decade). To require a state to implement EVV in their I/DD systems would require extensive training and strain on an already fragile workforce, create unnecessary administrative burden and ultimately enlarge waiting lists as states and disability service providers would have to sacrifice services in order to reallocate funding and resources to implement EVV systems and training. Worst of all, the return on investment for CMS, the states, and providers would be minimal because there are already additional federally funded agencies in place to oversee effective delivery of I/DD services and the predominant concern in this arena is not the falsification of delivery of services, but rather the massive and growing waiting lists for them. **We request that CMS use its authority, in conjunction with history of legislative intent, to narrowly and accurately define the covered class.**

Implementation Timeline

In addressing timeline, we are very concerned about enforcing any level of compliance in 2019 when there has been limited guidance provided to states and the public. Currently as of May 2018, beneficiaries are not aware of any new requirements that would be in place by January 2019. To provide an example, one state that is piloting EVV systems in anticipation of 2019 compliance, issued EVV devices to select beneficiaries without explanation. The beneficiaries then in turn called our provider members panicked about why they received an unknown device. We are also aware of states recently contacting CMS requesting an expected waiver of their I/DD services and we would urge you give significant attention to the letters from

respected organizations like NASDDDS and NASUAD that highlight their own concerns. States are left with unreasonable time "to develop business requirements, seek enhanced federal funding to build the system, procure EVV vendors, and train staff and consumers on the use of the system and equipment" as required under Section 12006. These challenges are compounded for many states due to the timing of their state legislative sessions and for those that only occur on a biannual basis. We recommend, as a result, a delay in implementation. **We believe a delay to provide greater clarity especially when the stakes are so high, is appropriate and necessary. At a minimum, we request no enforcement of the statute for at least one year, and consideration of phased services for compliance.**

Privacy

Our concerns around privacy are shared by a variety of external stakeholders because of the potential to violate expectations of privacy in the reporting and collecting of EVV data. The individuals served by our members are primarily people with significant disabilities that require supports throughout their lifespan. It would be an inappropriate use of federal authority to require tracking of their daily interactions in exchange for these supports. These beneficiaries may begin services in the home if they require dressing or eating support, but they also, for example, go to work, volunteer in the community, and vote. Although in recent guidance CMS set a minimum compliance requirement of start and stop of service tracking, states naturally want to protect the funding of important home health and personal care services and as a result may overly define what services need to be tracked in order to ensure compliance. **ANCOR strongly believes privacy concerns need to be dealt with by CMS and guidance carefully structured before states are asked to implement their own systems.**

Stakeholder Input

Finally, there has been no input sought by the public on any impending changes under Section 12006. The legislation itself requires states to take into account a stakeholder process with input from beneficiaries, family caregivers, individuals who furnish personal care services or home health services, and other stakeholders as determined by the State in accordance with guidance from the Secretary. However, the guidance and timeframe left for implementation do not provide the foundation for meaningful public input. To give you an example of how important public participation is, below is an excerpt of a letter from a family member to a provider when one state attempted to implement EVV in state without public input. "*We never see in writing all of these so called state, and local government add ons that [provider agency] is requiring us to adhere to… The State and the federal government have over stepped their boundaries, and it's time for legal action… If you all implement this, then you are as guilty as the state and federal government of invading personal liberties."* **ANCOR strongly encourages that CMS issue a public input process and also provide strong guidance on stakeholder input to states as suggested by the statute.**

Please note that in addition to the above concerns, ANCOR submitted two separate rounds of input for CMS in October and November of 2017 detailing issues that have been detrimental for

states that have implemented any level of EVV in an I/DD system. These concerns range from mode of EVV and training of staff to self-directed service challenges and limitations and importance of approved vendor lists rather than a sole state system.

We have tremendous respect and appreciation for the incredible team you lead at CMS' Disabled and Elderly Health Program Group that has been heading the challenging work of EVV implementation and we are grateful that they have met with us multiple times, have been open to receiving our perspective, and reflected some of our concerns in initial guidance. Since EVV Section 12006 implementation has become a top concern and priority for our members, we felt it appropriate to now reach out to the highest levels of CMS and request your assistance with the significant remaining issues of implementation. We believe there is still time to avert unintended consequences of implementation and we are thankful for your ongoing leadership and for your attention to our concerns. Please let us know if we can be a resource on this issue. I can be reached at 202-579-7789 or egrant@ancor.org.

Sincerely,

Esmé Grant Grewal, Esq.
Vice President of Government Relations
ANCOR

Cc: Tim Hill, Acting Director for the Center for Medicaid and CHIP Services
Michael Nardone, Director of the Disabled and Elderly Health Programs Group, CMCS
Calder Lynch, Senior Counselor to the Administrator