

SEC. 12006. ELECTRONIC VISIT VERIFICATION SYSTEM REQUIRED FOR
PERSONAL CARE SERVICES AND HOME HEALTH
CARE SERVICES UNDER MEDICAID.

(a) In General.--Section 1903 of the Social Security Act (42 U.S.C. 1396b) is amended by inserting after subsection (k) the following new subsection:

“(l)(1) Subject to paragraphs (3) and (4), with respect to any amount expended for personal care services or home health care services requiring an in-home visit by a provider that are provided under a State plan under this title (or under a waiver of the plan) and furnished in a calendar quarter beginning on or after ~~January 1, 2019~~ **January 1, 2020** (or, in the case of home health care services, on or after January 1, 2023), unless a State requires the use of an electronic visit verification system for such services furnished in such quarter under the plan or such waiver, the Federal medical assistance percentage shall be reduced--

“(A) in the case of personal care services--

“(i) for calendar quarters in ~~2019 and~~ 2020, by .25 percentage points;

“(ii) for calendar quarters in 2021, by .5 percentage points;

“(iii) for calendar quarters in 2022, by .75 percentage points; and

“(iv) for calendar quarters in 2023 and each year thereafter, by 1 percentage point; and

“(B) in the case of home health care services--

“(i) for calendar quarters in 2023 and 2024, by .25 percentage points;

“(ii) for calendar quarters in 2025, by .5 percentage points;

“(iii) for calendar quarters in 2026, by .75 percentage points; and

“(iv) for calendar quarters in 2027 and each year thereafter, by 1 percentage point.

“(2) Subject to paragraphs (3) and (4), in implementing the requirement for the use of an electronic visit verification system under paragraph (1), a State shall--

“(A) consult with agencies and entities that provide personal care services, home health care services, or both under the State plan (or under a waiver of the plan) to ensure that such system--

“(i) is minimally burdensome;

“(ii) takes into account existing best practices and electronic visit verification systems in use in the State; and

“(iii) is conducted in accordance with the requirements of HIPAA privacy and security law (as defined in section 3009 of the Public Health Service Act);

“(B) take into account a stakeholder process that includes input from beneficiaries, family caregivers, individuals who furnish personal care services or home health care services, and other stakeholders, as determined by the State in accordance with guidance from the Secretary; and

“(C) ensure that individuals who furnish personal care services, home health care services, or both under the State plan (or under a waiver of the plan) are provided the opportunity for training on the use of such system.

“(3) Paragraphs (1) and (2) shall not apply in the case of a State that, as of the date of the enactment of this subsection, requires the use of any system for the electronic verification of visits conducted as part of both personal care services and home health care services, so long as the State continues to require the use of such system with respect to the electronic verification of such visits.

“(4)(A) In the case of a State described in subparagraph (B), the reduction under paragraph (1) shall not apply--

“(i) in the case of personal care services, for ~~calendar quarters in 2019~~ **calendar quarters in 2020**; and

“(ii) in the case of home health care services, for calendar quarters in 2023.

“(B) For purposes of subparagraph (A), a State described in this subparagraph is a State that demonstrates to the Secretary that the State--

“(i) has made a good faith effort to comply with the requirements of paragraphs (1) and (2) (including by taking steps to adopt the technology used for an electronic visit verification system); and

“(ii) in implementing such a system, has encountered unavoidable system delays.

“(5) In this subsection:

“(A) The term ‘electronic visit verification system’ means, with respect to personal care services or home health care services, a system under which visits conducted as part of such services are electronically verified with respect to--

“(i) the type of service performed;

“(ii) the individual receiving the service;

“(iii) the date of the service;

“(iv) the location of service delivery;

“(v) the individual providing the service; and

“(vi) the time the service begins and ends.

“(B) The term ‘home health care services’ means services described in section 1905(a)(7) provided under a State plan under this title (or under a waiver of the plan).

“(C) The term ‘personal care services’ means personal care services provided under a State plan under this title (or under a waiver of the plan), including services provided under section 1905(a)(24), 1915(c), 1915(i), 1915(j), or 1915(k) or under a wavier under section 1115.

“(6)(A) In the case in which a State requires personal care service and home health care service providers to utilize an electronic visit verification system operated by the State or a contractor on behalf of the State, the Secretary shall pay to the State, for each quarter, an amount equal to 90 per centum of so much of the sums expended during such quarter as are attributable to the design, development, or

installation of such system, and 75 per centum of so much of the sums for the operation and maintenance of such system.

“(B) Subparagraph (A) shall not apply in the case in which a State requires personal care service and home health care service providers to utilize an electronic visit verification system that is not operated by the State or a contractor on behalf of the State.”.

(b) Collection and Dissemination of Best Practices.--Not later than January 1, 2018, the Secretary of Health and Human Services shall, with respect to electronic visit verification systems (as defined in subsection (l)(5) of section 1903 of the Social Security Act (42 U.S.C. 1396b), as inserted by subsection (a)), collect and disseminate best practices to State Medicaid Directors with respect to--

(1) training individuals who furnish personal care services, home health care services, or both under the State plan under title XIX of such Act (or under a waiver of the plan) on such systems and the operation of such systems and the prevention of fraud with respect to the provision of personal care services or home health care services (as defined in such subsection (l)(5)); and

(2) the provision of notice and educational materials to family caregivers and beneficiaries with respect to the use of such electronic visit verification systems and other means to prevent such fraud.

(c) Rules of Construction.--

(1) No employer-employee relationship established.--Nothing in the amendment made by this section may be construed as establishing an employer-employee relationship between the agency or entity that provides for personal care services or home health care services and the individuals who, under a contract with such an agency or entity, furnish such services for purposes of part 552 of title 29, Code of Federal Regulations (or any successor regulations).

(2) No particular or uniform electronic visit verification system required.--Nothing in the amendment made by this section shall be construed to require the use of a particular or uniform electronic visit verification system (as defined in subsection (l)(5) of section 1903 of the Social Security Act (42 U.S.C. 1396b), as inserted by subsection (a)) by all agencies or entities that provide personal care services or home health care under a State plan under title XIX of the Social Security Act (or under a waiver of the plan) (42 U.S.C. 1396 et seq.).

(3) No limits on provision of care.--Nothing in the amendment made by this section may be construed to limit, with respect to personal care services or home health care services provided under a State plan under title XIX of the Social Security Act (or under a waiver of the plan) (42 U.S.C. 1396 et seq.), provider selection, constrain beneficiaries' selection of a caregiver, or impede the manner in which care is delivered.

(4) No prohibition on state quality measures requirements.-- Nothing in the amendment made by this section shall be construed as prohibiting a State, in implementing an electronic visit verification system (as defined in subsection (l)(5) of section 1903 of the Social Security Act (42 U.S.C. 1396b), as inserted by subsection (a)), from establishing requirements related to quality measures for such system.

SENSE OF CONGRESS ON STAKEHOLDER INPUT REGARDING ELECTRONIC VISIT VERIFICATION SYSTEMS.—It is the sense of Congress that—

(1) the Centers for Medicare & Medicaid Services should—

(A) convene at least one public meeting in 2018 for the purpose of soliciting ongoing feedback from Medicaid stakeholders on guidance issued by the Centers for Medicare & Medicaid Services on May 16, 2018, regarding electronic visit verification; and

(B) communicate with such stakeholders regularly and throughout the implementation process in a clear and transparent manner to monitor beneficiary protections;

(2) such stakeholders should include State Medicaid directors, beneficiaries, family caregivers, individuals and entities who provide personal care services or home health care services, Medicaid managed care organizations, electronic visit verification vendors, and other stakeholders, as determined by the Centers for Medicare & Medicaid Services; and

(3) taking into account stakeholder input on the implementation of the electronic visit verification requirement under the Medicaid program is vital in order to ensure that the Centers for Medicare & Medicaid Services is aware and able to mitigate any adverse outcomes with the implementation of this policy.