



April 4, 2018

Seema Verma
Administrator
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

Dear Administrator Verma,

On behalf of the National Association of State Directors of Developmental Disabilities (NASDDDS) we are writing to respectfully request expedient clarity on the technical expectations necessary for successful compliance with the Electronic Visit Verification (EVV) requirements codified in Section 12006 of the 21st Century CURES Act. We are strongly supportive of the goal to reduce fraud, waste and abuse in the provision of personal care and home health services, and committed to complying with the requirements laid out in the legislation. We know that staff at CMS have been working diligently on these policies, and we thought sharing our members' perspectives on most pressing issues may be of assistance in these efforts.

We are a membership organization representing the state agencies overseeing services to individuals with intellectual and developmental disabilities (I/DD) in the 50 states and the District of Columbia. An estimated 655,000 individuals are receiving Medicaid home and community based services (HCBS) annually through the state I/DD agencies who work in partnership with State Medicaid Agencies in the operation of Medicaid HCBS.

Our members face significant implementation challenges and a short timeline for coming into compliance with the EVV requirements before facing sizable reductions to federal funding for Medicaid personal care services beginning in January 2019. These challenges are compounded by continuing uncertainty regarding the scope of the requirements. While we appreciate the guidance CMS has provided through webinars, verbal communications and sender-specific responses to questions posed through a dedicated email box, there remain sizeable questions for states with a mere eight (8) months remaining before potential penalties ensue.

The EVV requirements originated from concerns, raised by the Office of the Inspector General of the US Department of Health and Human Services (OIG/HHS) in a series of reports that personal care services delivered in consumers' own homes could be fraudulently billed due to the lack of onsite supervision. Section 12006(a) of the 21st Century CURES Act, accordingly, indicates that the new EVV requirements apply to "personal care services or home health care services requiring an in-home visit by a provider" that are provided under a Medicaid State plan or under a waiver of the plan. In home and community based services authorities, personal care consisting of assistance with activities of daily living (ADL) or instrumental activities of daily living (IADL), may occur as a component of or incidental to another service offered by the state,

such as habilitation. The specific service threshold for inclusion in EVV remains unclear, leading states to draw conclusions regarding included services that may or may not comport with Federal expectations.

In addition, the settings in which the EVV requirements apply remain uncertain. During EVV-related question and answer (Q &A) sessions, CMS has left open the prospect that the requirements may apply to settings other than in-home settings, and may include settings operated by agencies on a 24-hour basis such as group homes and assisted living. These settings have shift care staff, typically support multiple clients, often are reimbursed to the provider on a per diem basis, and are licensed and regulated by the state. Including this type of setting in the EVV requirement is likely to be burdensome to both the provider implementing EVV and the state collecting the data, and may not yield data of value in the quest to stem fraud, waste and abuse.

This uncertainty regarding both services and settings is a serious impediment for states seeking to develop and deploy EVV strategies that comport with the law. Implementing the EVV requirements is a costly and time-consuming process, involving many questions of system design. Several states who have begun the process are concerned about the expense of undoing their progress and starting over if they have not correctly anticipated CMS' interpretation of the requirements. Compounding this problem is the challenge of state legislative calendars; many state legislatures are wrapping up their legislative activity for 2018, or have already ended their sessions. These states have effectively missed the window for requesting funds and authority (where necessary) to develop an EVV system.

As we approach the implementation date of January 1st, 2019, it is crucial that states receive clarity regarding what services will be covered by the EVV requirements in the 21st Century Cures Act, and in what settings. CMS has indicated that guidance will be forthcoming in the form of a State Medicaid Director Letter (SMDL) and a compendium of Frequently Asked Questions. These resources will be essential to states as they develop and deploy their approach to EVV. However, it is also important to note that many states are ending legislative sessions without such clarity and therefore states may be lacking the needed resources to implement.

We recommend that consideration of this status be used when determining fiscal impacts to states who will take longer than the January 1, 2019 to secure an implementation strategy. Our association stands ready to assist CMS in any way in the development and dissemination of guidance necessary to ensure full compliance with the personal care provisions of the Act by January 2019.

Sincerely,



Mary Lee Fay
Executive Director
NASDDDS

cc. Tim Hill, Acting Director for the Center for Medicaid and CHIP Services

Calder Lynch, Senior Counselor to the Administrator
Michael Nardone, Director of the Disabled and Elderly Health Programs Group, CMCS