



December 4, 2020

President-Elect Biden's Health & Human Services Transition Team  
*Letter transmitted via email*

Dear HHS Transition Team members:

The members of the EVV coalition want to congratulate President-Elect Biden and Vice President-Elect Harris on their recent election victory. We are eager to work with your new Administration in 2021.

We are writing to urge you to ensure that the Centers for Medicare and Medicaid Services (CMS) delays the implementation of electronic visit verification (EVV) requirements set forth in the 21st Century Cures Act and its penalties for non-compliance until after the COVID-19 pandemic ends. States will begin facing penalties related to these requirements beginning on January 1, 2021. These penalties could not come at a more dangerous time, when state Medicaid systems need more – not less – resources to help people receiving services stay safe during the COVID-19 pandemic. The pandemic is devastating the entire disability community while causing significant changes in how supports to people with disabilities are delivered and has significantly interfered with state capacity to implement the new system required by the Cures Act. While we understand the impetus for quality control that prompted the EVV requirements, focusing on their implementation during this time – and financially penalizing states that have had to redirect efforts away from EVV implementation during the pandemic -- takes away vital staff time and resources from ensuring the health and survival of people with disabilities during this pandemic. Therefore, we strongly recommend that EVV implementation and enforcement be delayed to whatever extent possible and allow for state and program flexibility. Further, the pandemic's effect on the economy has strained state resources, and further impacting states' Medicaid Home and Community-Based Services (HCBS) budgets by assessing these penalties will harm the people who rely on these services.

Members of the EVV coalition include ACCSES, AFSCME, the American Network of Community Options & Resources (ANCOR), the Center for Public Representation (CPR), Easterseals, the National Council on Independent Living (NCIL), SEIU, and The Arc of the United States. Since the beginning of the pandemic, our priority has been ensuring that Medicaid funded long-term supports and services have what they need to keep people with disabilities healthy at home during the pandemic and ensure their well-being until after the crisis has passed.

Medicaid disability providers are facing reduced staff capacity as demand for services increases, leading to less capacity for administrative tasks. With many day and employment supports temporarily closed to comply with social distancing requirements, residential supports are experiencing significantly increased need for staff due to the individuals they support needing more staff hours overall. With the national yearly average turnover for this workforce - Direct Support Professionals (DSPs) - already at 51 percent before the pandemic, this increased demand is pushing supports to the breaking point. Retention and recruitment challenges are further compounded by daycare and schools either being closed or relying on distance learning, reducing the number of shifts DSPs can take. In these dramatic circumstances, it poses an undue burden on supports to take staff away from their vital functions of keeping individuals healthy and safe during the pandemic for EVV training and reporting purposes.

We urge CMS to support people with disabilities, their direct care staff, Medicaid disability providers, and state Medicaid programs with as much flexibility as possible during this pandemic. Because most DSPs' work cannot be performed through social distancing, such as assisting with daily hygiene, DSPs are very much on the frontlines of the pandemic. Given that the Disability and Health Journal found that people with disabilities are more likely to die if they contract the coronavirus, it is urgent that CMS allow DSPs to focus on the well-being of individuals they support at a time when those individuals are facing a lot of disruption and anxiety and risks to their health rather than with administrative tasks such as training for EVV compliance. Furthermore, any financial penalty imposed upon states at this time takes away desperately needed funding for disability services during the pandemic. Several states are struggling to develop EVV systems that meet CMS approval, slowing down the process and extending the amount of time they could be subject to financial penalties. CMS should work closely with states where approval is pending, and take a flexible approach around determining EVV compliance to meet the needs of the state Medicaid programs, providers, and participants.

**Potential flexibilities in EVV implementation and enforcement that CMS may utilize during the COVID-19 pandemic include:**

CMS should explore any waiver authority it has due the Public Health Emergency (PHE) to delay or ease challenges of implementing EVV during a global pandemic. CMS should enable Medicaid providers and consumers to adapt to the shifting methods of service delivery to ensure health and safety and maintain appropriate community inclusion during these unprecedented times. We ask the CMS look to emergency waivers and other tools available in a PHE to lessen the burden of EVV implementation – and particularly financial penalties -- at this time.

CMS may use discretion when enforcing EVV during the PHE. As we have seen in enforcement of previous Medicaid requirements, CMS does have enforcement discretion that may be used when confronting completely unforeseen events. The Department of Labor previously decided to use their enforcement discretion when applying the homecare rule and have publicly announced this decision to ease consumer and provider concerns. We ask that CMS employ a similar approach with EVV implementation and publicly announce a decision to utilize enforcement discretion during the PHE.

CMS should use a broad definition of EVV when assessing compliance during the PHE. During this time of social distancing, it is crucial to the health and safety of people with disabilities that CMS employ an expansive view of EVV implementation if enforcement cannot be delayed. The in-person component of most EVV systems is almost impossible and risky as consumers and providers alike should be quarantining and maintaining social distance as much as possible.

While we again reiterate our understanding of the quality goals of the regulations, until the increasingly rapid spread of the pandemic is halted, EVV implementation is more likely to harm than attain that goal. We hope CMS will be understanding of our request for a temporary reprieve and are happy to answer any questions you may have. Please contact Sarah Meek at [smeek@ancor.org](mailto:smeek@ancor.org) for more information or to discuss further.

Sincerely,

ACCSES  
AFSCME  
American Network of Community Options & Resources (ANCOR)  
Center for Public Representation (CPR)  
Easterseals  
National Council on Independent Living (NCIL)  
SEIU  
The Arc of the United States