



August 13, 2020

Seema Verma
Administrator
Centers for Medicare & Medicaid Services

Calder Lynch
Administrator
Centers for Medicaid & CHIP Services

Dear Administrator Verma and Administrator Lynch:

The members of the Disability Provider Group are writing to urge the Centers for Medicare and Medicaid Services (CMS) to delay the implementation of for electronic visit verification (EVV) regulations required by the 20th Century Cures Act during the COVID-19 pandemic. These regulations took effect on January 1, 2020 – however, the pandemic is devastating the entire disability community while causing significant changes in how supports to people with intellectual/developmental disabilities (I/DD) are delivered. While we understand the impetus for quality control that prompted the EVV requirements, ensuring their implementation during this time takes away vital staff time and resources from ensuring the health and survival of people with I/DD during this pandemic.

Members of the Disability Provider Group include ACCSES, the American Network of Community Options & Resources (ANCOR), the Association of People Supporting Employment First (APSE), Easterseals, Goodwill Industries, The Arc of the United States, and United Cerebral Palsy. Our members support millions of individuals with disabilities to live full lives in the community. 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 after the crisis has passed.

Medicaid disability providers are seeing 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 seeing 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 amount 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 Medicaid disability providers 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 much needed funding for disability services during the pandemic.

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. Medicaid disability providers have found CMS to be overly helpful in enabling providers and consumers 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 at this time.

CMS may use discretion when enforcing EVV during the PHE. As we have seen in enforcement of previous regulations, 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 for more information or to discuss further.

Sincerely,

Kate McSweeney
kmcsweeney@accses.org

Julie Christensen
julie@apse.org

Connie Garner
cgarner@easterseals.org

Sarah Meek
smeek@ancor.org

Nicole Jorwic
jorwic@thearc.org

Armando Contreras
acontreras@ucp.org

Laura Walling
laura.walling@goodwill.org

cc: Anne Marie Costello, CMS
Sen. Chuck Grassley
Sen. Ron Wyden
Rep. Frank Pallone
Rep. Greg Walden