



**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

May 17, 2018

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

Dear Administrator Verma:

The Long-Term Services and Supports, Health and Rights Task Forces of the Consortium for Citizens (CCD) are writing to express our extreme concerns with the lack of timely guidance and official stakeholder input around the implementation of Electronic Visit Verification (EVV) for personal care and home health services. A significant delay in implementation is needed to ensure that the privacy and civil rights of consumers are protected; that the administrative and financial burdens on service providers is neither onerous nor duplicative; and that states are able to design and implement their EVV programs in a thoughtful, deliberative manner.

CCD is a coalition of national organizations working together to advocate for federal public policy that ensures the self-determination, independence, empowerment, integration, and inclusion of the approximately 57 million children and adults with disabilities in all aspects of society.

Designing and implementing an effective and thoughtful EVV program takes careful planning. States must design the EVV system, make changes to Medicaid documents and protocols, seek funding from their legislatures, purchase technology, engage stakeholders (as required by the statute), and educate and train consumers in using the EVV system, among other necessary steps to put a system in place. All of that should occur before EVV implementation begins. That is why, as part of the 21st Century Cures Act of 2016, Congress directed the Center for Medicare and Medicaid Services (CMS) to issue guidance at least a year in advance of the implementation deadline of January 1, 2019.

Even with the recently released subregulatory guidance on May 16, 2018, there is still an alarming lack of clarity on a number of basic requirements of the EVV program less than eight months before the implementation deadline. For example, despite Congressional intent that

EVV was only to be used for personal care services and home health services provided in a person's own home, CMS' guidance greatly expands the requirement beyond the plain language of the statute to apply to any service where assistance with activities of daily living or instrumental activities of daily living is provided even in part in an individual's home. Even under CMS' overly broad application, questions still remain, such as whether a service is subject to EVV just because the provider meets the individual at their home to provide a service elsewhere in the community. Other basic ambiguities remain, including for example, how EVV requirements apply when services are provided in multiple locations during a shift. For both of the prior examples, CMS has simply shifted responsibility to states on these important privacy and civil rights decisions.

Many states have been holding off on making key decisions about their EVV programs, awaiting the CMS subregulatory guidance that was released this week. At this point, states simply do not have enough time before January 1, 2019 to implement effectively their EVV systems, particularly in light of the fact that many states have already missed their legislative cycles to seek funding for the upcoming budget year.

In the handful of states that have begun to implement EVV programs, serious consumer and worker privacy concerns have come to light. For example, EVV systems are tracking the location of consumers and their caregivers engaging in everyday activities throughout the community, like grocery shopping, running errands, and participating in recreational activities. This has been a particular concern in consumer-directed programs. States should only be allowed to track the beginning and end of a shift which both take place in the consumer's own home. In the recently released guidance, CMS neither sanctioned nor prohibited geo-location, offering stakeholders no definitive answers on this key issue.

In addition, it has been reported that some states are using EVV devices with cameras, video capabilities, and microphones. These types of practices are an egregious invasion of privacy and, in some situations, could even put the individuals at risk. Congress did not intend for EVV to be implemented this way. These are exactly the types of issues on which CMS needed to explicitly address, but did not, in the guidance issued this week.

In light of these and other issues, it is clear that states need more time to responsibly and effectively implement EVV. Rushed implementation of EVV to comply with the unrealistic January 1, 2019 deadline for personal care services ultimately hurts consumers. We urge CMS to delay implementation until it has engaged in official rulemaking with notice and comment and states have had sufficient time following that rulemaking to undertake all of the steps identified above to put in place systems that will appropriately protect the rights of individuals receiving services. Such a delay would allow states to:

- work with CMS to resolve questions about EVV implementation and negotiate any necessary approvals to their Medicaid plans and waivers;
- work with their state legislatures to secure funding for the costs not covered by the federal match;
- allow for adequate participation by stakeholder groups as required by the 21st Century Cures Act;
- ensure that all consumers and direct support professionals understand how to use the EVV system that will be implemented;
- protect direct support professionals from having to change the systems and equipment they are using to implement EVV;
- design pilot programs and/or phased roll-outs of implementation; and
- assure that important education on fraud prevention is included in training and education.

Due to the time needed for states to appropriately design programs that meet the requirements and also respect the privacy rights of individuals being served, the undersigned CCD Task Forces strongly encourage CMS, within its authority, to delay the implementation of EVV.

Sincerely,

The Long-Term Services & Supports Task Force Co-Chairs:

Alison Barkoff
Center for Public Representation

Julia Bascom
Autistic Self-Advocacy Network

Nicole Jorwic
The Arc of the United States

Sarah Meek
American Network of Community Options & Resources (ANCOR)

The Health Task Force Co-Chairs:

Bethany Lilly
Bazelon Center for Mental Health Law

Julie Ward
The Arc of the United States

The Rights Task Force Co-Chairs:

Dara Baldwin
National Disability Rights Network

Jennifer Mathis
Bazelon Center for Mental Health Law

Cc: House Energy & Commerce Chair Walden
House Energy & Commerce Ranking Member Pallone
Speaker Ryan
Minority Leader Pelosi
Senate Finance Chair Hatch
Senate Finance Ranking Member Wyden
Senate Majority Leader McConnell
Senate Minority Leader Schumer