



STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
PO Box 45010, Olympia, WA 98504-5010

February 12, 2018

The Honorable Patty Murray
U.S. Senate
154 Russell Senate Office Building
Washington, DC 20510

RE: Electronic Visit Verification (EVV) Implementation

Dear Congresswoman Murray:

We would like to bring to your attention our serious concerns with the implementation of the Electronic Visit Verification (EVV) requirements included in the 21st Century Cures Act (P.L. 114-255), signed into law on December 13, 2016. An EVV system will electronically verify that personal care was delivered to a Medicaid recipient by the person who is claiming payment on the date, and at the times and location, for which payment is claimed. Section 12006 of the Cures Act requires states to implement an EVV system for personal care services delivered in the home of Medicaid beneficiaries by January 1, 2019 or face a progressive reduction of federal matching funds.

Washington State, along with many other states, faces significant implementation challenges and risks a sizable reduction to our federal funding for personal care as a result. The timeline for implementation is prohibitively short, especially in states such as ours with legislative sessions that begin in January. The December 2016 enactment date left no time to seek an EVV appropriation in our 2017 legislative session. It also does not provide sufficient time should our legislature provide funding in the 2018 legislative session to develop business requirements, seek enhanced federal funding to build the system, procure EVV vendors, and train staff and consumers on the use of the system and equipment. Rushing through any of these steps can only result in additional expense to the state and federal governments and frustration for consumers and providers when corrections and changes to the system must be made after roll-out.

This unworkable implementation deadline is exacerbated by the lack of regulation and guidance provided to-date by the Centers for Medicare & Medicaid Services (CMS), which has not had enough time to do more than offer two perfunctory webinars in December and one Question and Answer conference call in January. In fact, CMS has stated that they do not have time to complete the regulatory rulemaking process prior to the 2019 deadline. Instead, CMS plans to release sub-regulatory guidance in the form of a State Medicaid Director Letter and Frequently Asked Questions, which will not provide for any public comment from impacted state agencies, providers, or beneficiaries. To-date, states have received no written guidance from CMS other than copies of PowerPoint presentations. Building a system such as this in the absence of guidance, in an environment where several key requirements remain unclear, is untenable and

can only lead to costly mistakes that will negatively impact service delivery to beneficiaries and the stability of a fragile provider network.

Although the Cures Act includes a potential reprieve from the matching fund reduction for states that made “good faith effort” and encountered “unavoidable delays” in implementing an EVV system, CMS has clarified that the exception is limited and would only apply for one year. Given the extensive amount of time required to secure funding from the legislature, acquire CMS approval for enhanced funding, develop and administer an open and fair procurement, and install the system, we do not believe that this is a reasonable or achievable deadline. Due to the extremely limited timeline for implementation coupled with the delay in federal guidance, we encourage Congress to evaluate an extension of either the 2019 deadline, the exception from federal fund reductions, or both.

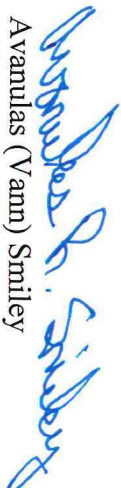
Moreover, Washington and our sister states are also alarmed at the direction CMS may be taking in defining what services are to be subject to an EVV system. Our understanding is that the EVV requirements originated from a fear that personal care services delivered in consumers’ own homes could be fraudulently billed due to the lack of onsite supervision. As a result, the EVV system would enable the state to verify and reconcile personal care hours authorized and provided with the hours that are actually billed. However, based on feedback received during the calls and webinars, we are concerned that CMS may interpret the regulations to apply to settings other than in-home settings.

In-home settings, where a consumer may live alone or with family members, should not be equated with provider-owned or operated settings where providers are required by their license or certification and contracted with the Department to provide 24-hour staffing. In these settings, providers are paid a daily rate to provide care to multiple clients who share the support hours. These residential service options are not paid on an hour per hour basis. Some examples of these settings in Washington include: Assisted Living Facilities, Adult Family Homes, and residential settings for people with Developmental Disabilities, which include Group Homes, and Supported Living. These settings require 24-hour staff presence or availability and must not be swept into the EVV requirements. These settings have supervision built into their service model and are subject to regulatory oversight by state agencies. Requiring these types of providers to disaggregate and verify service increments, such as 15-minute or hourly units of care, would be an inefficient and costly exercise that does not lead to improved program integrity.

Washington State is number one in the nation in providing high-quality and low cost long-term services and supports to our aging and disabled population and is a national leader in services to people with intellectual and developmental disabilities. We serve over 80,000 individuals in community settings and we do it well. To continue that record of high performance, we need well-articulated and sensible requirements prior to building an EVV system, enough time to implement them, a commitment from CMS not to broaden the application of the requirements to provider operated 24-hour care settings, and the flexibility to retain our highly-valued provider pool.

Thank you for any assistance you can provide to help us maintain the progress we have made in supporting Washington state residents to remain in their homes and communities. Please feel free to contact Bea Rector at (360) 725-2272 with any follow-up questions.

Regards,


Avannilas (Vann) Smiley
Chief of Staff

DSHS: *Transforming Lives*

Cc: Congresswoman Maria Cantwell
Congresswoman Jaime Herrera Beutler
Congresswoman Suzan K. DelBene
Congressman Denny Heck
Congresswoman Pramila Jayapal
Congressman Derek Kilmer
Congressman David G. Reichert
Congresswoman Cathy McMorris Rodgers
Congressman Adam Smith