



UPDATES ON SECTION 12006 OF THE 21ST CENTURY CURES ACT: Electronic Visit Verification (EVV)

**Division of Long Term Services and Supports
Disabled and Elderly Health Programs Group
Center for Medicaid and CHIP Services**

EVV Requirement Overview

- The Cures Act requires states to implement an EVV system by January 1, 2020 (as amended by recent legislative action) for Personal Care Services (PCS) and by January 1, 2023 for Home Health Care Services (HHCS).
- Note that the Cures Act is not limited to services explicitly titled PCS or HHCS in the state's waiver or State Plan. If the service includes PCS or HHCS, even if it has a different name or also includes other services, it is subject to EVV.
- States can submit a request for a good faith effort exemption.
 - The Cures Act provision on good faith effort exemptions does not provide CMS with authority to delay EVV implementation for more than one year.

Penalties for Non-Compliance with Section 12006 of the Cures Act

- The Cures Act Section 12006(a)(1)(A) requires that states that **do not comply** with the Cures Act by the applicable deadlines will have their Federal Medical Assistance Percentage (FMAP) reduced, as shown in the table below.
- Reduction percentages **do not** compound each year.

PCS & HHCS FMAP* Reductions per Year

Year	PCS	HHCS
2020	0.25%	-
2021	0.50%	-
2022	0.75%	-
2023	1%	0.25%
2024	1%	0.25%
2025	1%	0.50%
2026	1%	0.75%
2027 & thereafter	1%	1%

* Per 1915(c) Technical Guide page 259, the **FMAP** is the “Federal Medicaid matching rate for medical assistance furnished under the state plan. FMAP rates are recalculated annually under the formula set forth in §1903(b) of the Social Security Act.”

Required Medicaid Authorities per Section 12006 of The Cures Act

Medicaid PCS Authorities Subject to EVV Requirements

- 1905(a)(24) State Plan Personal Care benefit;
- 1915(c) HCBS Waivers;
- 1915(i) HCBS State Plan option;
- 1915(j) Self-directed Personal Attendant Care Services;
- 1915(k) Community First Choice State Plan option;
- 1115 Demonstration.

Medicaid HHCS Authorities Subject to EVV Requirements:

- 1905(a)(7) State Plan Home Health Services;
- Home health services authorized under a waiver of the plan.

Note: EVV requirements do NOT apply to the Program of All-Inclusive Care for the Elderly (PACE).

Which Services Require EVV?

Personal Care Services (PCS) Definition

- Definitions of “personal care services” and “self-directed personal assistance services” at 42 CFR §§440.167 and 441.450 apply, as do any state-specific definitions of the term or similar terms (e.g., personal attendant services, personal assistance services, attendant care services, etc.).
- The definition of “personal care services” is not uniform across all the authorities under which it can be covered as a Medicaid benefit, but in general, it consists of services supporting Activities of Daily Living (ADL), such as movement, bathing, dressing, toileting, transferring, and personal hygiene.
- Personal care services can also offer support for Instrumental Activities of Daily Living (IADL), such as meal preparation, money management, shopping, and telephone use.

Which Services Require EVV?

Personal Care Services (PCS) Definition - Continued

- Note that the Cures Act is not limited to services explicitly titled PCS or HHCS in the state's waiver or state plan.
- If the service includes PCS or HHCS, even if it has a different name or also includes other services, it is subject to EVV.
 - All services requiring an in-home visit that are included in claims under the home health category or PCS categories on the CMS-64 form are subject to the EVV requirement.

Which Services Require EVV?

Personal Care Services (PCS) Definition - Continued

- The following services are not considered PCS for the purposes of EVV implementation and therefore are not subject to EVV requirements.
 - PCS provided in settings offering 24-hour service availability
 - CMS interprets the reference in the statute to an “in-home visit” to **exclude** PCS provided in congregate residential settings where 24 hour service is available with shift-based care reimbursed on a per-diem basis.
 - PCS provided to inpatients or residents of hospitals, nursing facilities, intermediate care facilities (ICFs) for individuals with intellectual disabilities, or an institution for mental diseases (IMD)
 - PCS that do not require an in-home visit.
 - Services consisting of only IADLs (e.g., chore and homemaker services), as long as they are not billed as PCS.

Which Services Require EVV?

Home Health Care Services (HHCS) Definition

- SSA Section 1903(l)(1) specifies that the EVV requirement applies to “Personal care services or home health care services requiring an in-home visit by a provider that are provided under a state plan under this title (or under a waiver of the plan)...”.
- Similarly, section 1903(l)(5)(B) defines home health services for purposes of the EVV requirement to mean “services described in section 1905(a)(7) provided under a state plan under this title (or under a waiver of the plan).”
- Therefore, any home health services that the state has opted to cover under the state plan or under a waiver of the plan, and that require an in-home visit, would be subject to the EVV requirement.

EVV Requirements per Section 12006 of the Cures Act

EVV Systems Must Verify Six Required Data Elements:

- **Type** of service performed;
- **Individual receiving** the service;
- **Date** of the service;
- **Location** of service delivery;
- **Individual providing** the service;
- **Time** the service begins and ends.

EVV Requirements per Section 12006 of the Cures Act (Continued)

Flexibility for States

- States may select their EVV design and implement quality control measures of their choosing.

Stakeholder Input Required

- States are required to seek input from other agencies or entities that provide PCS or HHCS.
- Requires states to seek stakeholder input from:
 - Beneficiaries;
 - Family caregivers;
 - Individuals who furnish personal care services or home health care services;
 - Other stakeholders, as determined by the state in accordance with guidance from the Secretary.

Common EVV Models

- EVV design models vary mostly by state involvement in vendor selection and EVV system management.
- Our research has identified five EVV design models:
 1. Provider Choice;
 2. Managed Care Plan (MCP) Choice;
 3. State Mandated External Vendor;
 4. State Mandated In-House System;
 5. Open Vendor.
- States can choose more than one model.
- For detailed definitions, refer to: May 16, 2018 issued CMCS Informational Bulletin, pages 3 – 5.

<https://www.medicaid.gov/federal-policy-guidance/downloads/cib051618.pdf>

Update on CMS Activities

- In May, 2018, CMS released FAQs and an Informational Bulletin clarifying Cures Act requirements and highlighting promising practices with regards to:
 - EVV model selection and implementation
 - Training and stakeholder engagement
 - Ongoing EVV operations

Update on CMS Activities

- The CIB identified eight promising practices states should consider when selecting an EVV model that is most suitable for their Medicaid PCS and HHCS programs.
 1. Assess EVV systems, if any, currently used by providers.
 2. Evaluate the state's existing vendor relationships.
 3. Define EVV requirements.
 4. Integrate EVV systems with other Medicaid state systems and data.
 5. Understand technological capabilities.
 6. Solicit stakeholder input.
 7. Assess state staff capacity to develop and/or support the EVV system, including providing user training and education.
 8. Roll out EVV in phases and/or pilots (timeline permitting).

Update on CMS Activities

- The CIB identified seven additional promising practices states should consider when developing training for state staff, providers, individuals and their families include:
 1. Inventory all entities / individuals that will be interacting with EVV.
 2. Understand how training responsibilities will vary by EVV model.
 3. Establish a training plan.
 4. Assess state staff capabilities/capacity for developing and delivering training.
 5. Provide training and assistance on an ongoing basis.
 6. Establish an EVV website.
 7. Use multiple approaches for notifying and training individuals and their families.

Update on CMS Activities

- Promising practices identified in the CIB with regards to ongoing EVV operations:
 - To ensure successful operation of an EVV system, states should clearly outline expectations regarding monitoring.
 - States should allow for continuous provider involvement in decisions-making, particularly for states that established state mandated models.

Update on CMS Activities

- In November, 2018 CMS convened an EVV Stakeholder Open Door Forum.
 - 205 emails were received in advance of the call
 - 1,440 participants attended the call.
- Audio and transcript of the call can be found here:
<https://www.cms.gov/Outreach-and-Education/Outreach/OpenDoorForums/PodcastAndTranscripts.html>

Update on CMS Activities

- Common themes identified from stakeholder input in advance of the Open Door Forum included:
 - General opposition to the EVV statute
 - Support for the National Center for Independent Living principals and goals
 - Costs and administrative burdens associated with EVV use
 - Implications for self-direction
 - Clarification on scope of services
 - Concerns regarding GPS & other technologies
 - Determining adequate stakeholder input
 - Applicability of EVV to beneficiaries with live-in caregivers
 - EVV in rural areas/areas with limited connectivity

Update on CMS Activities

- In 2019, CMS began convening Quarterly EVV Learning Collaborative Workgroup Meetings with states and stakeholders
- Topics may include common implementation barriers, EVV training and technology, privacy concerns, and other issues deemed necessary by CMS, advocates, beneficiaries, providers.
- On the first Learning Collaborative, participants and state panelists discussed common challenges and solutions regarding the design and implementation of EVV systems. Promising practices for states identified during the call included:
 - Communicate with all EVV stakeholders
 - Pilot EVV systems with “early adopter” providers
 - Build flexibility into the EVV solution
 - Leverage experience from other program implementations in the state
 - Leverage existing relationships and capacity
 - Define state-specific EVV capabilities to achieve goals beyond compliance with Cures Act requirements

Considerations for Using Location Services in EVV Systems

- The Cures Act does **not** require states to capture each location as the individual is moving throughout the community.
 - Services either starting or stopping in the individual's home are subject to EVV requirements, and capturing the location in which the service is started and stopped is sufficient for meeting the Cures Act's requirements.
 - CMS notes that there is no requirement to use global positioning services (GPS), but it is one approach for implementing EVV requirements.
- CMS notes that states may choose to require more information as a factor to control for fraud, waste, and abuse.
- State Medicaid Agencies have a good deal of discretion in selecting the EVV system(s) that will most effectively meet their needs.

Considerations for Using Location Services in EVV Systems

- CMS conducted interviews with eight (8) EVV vendors regarding location tracking and privacy while using EVV systems and found that:
 - While GPS is the standard method for tracking location of services rendered outside the home (e.g., via a smartphone or tablet-based mobile app), no vendors reported using **active, continuous** GPS tracking.
 - Location is only recorded with GPS at the time the worker checks-in at the start of the service and at the time they check-out at the end of the service.
 - Workers install the mobile app on their personal device or a device issued by the state or the provider agency. Vendors did not require a mobile app installation for the individual or family member's device.
 - Secondary verification (e.g., the individual's electronic signature) is sometimes used with GPS to verify the visit began or ended in the correct location

Considerations for Using Location Services in EVV Systems

- States should consider proactively conducting educational outreach to the stakeholder community to address any concerns and to discuss benefits of EVV.
 - Active location tracking throughout the service is one of the most common misconceptions about EVV technology.
 - One vendor recommended using social media platforms as part of an outreach program.
 - Use stakeholder meetings to not only gather feedback but also as an educational opportunity to discuss:
 - How EVV systems' GPS location tracking operates.
 - Why the state must be compliant with EVV elements required by the Cures Act.
 - How preventing fraud, waste, and abuse can benefit individuals. Less wasted funds potentially means more funding available for additional services, reduction of waiting lists, etc.

EVV System Considerations for Self-Directed Services

- Accommodate PCS or HHCS service delivery locations with limited or no internet access.
- Avoid rigid scheduling rules, as self-directed services are known for accommodating last-minute changes based on individuals' needs.
- Allow individuals to schedule their services between the individual and the provider.
- Accommodate services at multiple locations for each individual (e.g., not only at home but near home or other community locations).
- Allow for multiple service delivery locations in a single visit.
- Include key stakeholders in the conversation when states determine EVV strategies for self-direction and agency directed services.
- Consider allowing the EVV system to notify the state when an individual is not receiving services in the amount, duration, frequency and scope necessary to meet that individual's needs.
- Integrate existing self-direction systems to avoid duplication and burden on Financial Management Service (FMS).

Additional Information Regarding Good Faith Effort Exemption Process

- CMS anticipates soliciting good faith effort requests starting July, 2019. More details to follow regarding format for these requests.
- When reviewing requests, CMS will consider:
 - Actions the state has performed to adopt EVV and meet the requirements at Section 12006(a) of the Cures Act.
 - The state's proposed EVV model (go to: <https://www.medicaid.gov/federal-policyguidance/downloads/cib051618.pdf> for more information on EVV models).
 - Unavoidable system delays/barriers encountered by the state (if you have any questions on what may constitute an unavoidable delay or barrier please email EVV@cms.hhs.gov or contact your CMS Regional Office).
 - The state's stakeholder engagement process.

Additional Resources

1. EVV Resources Website link:
<https://www.medicaid.gov/medicaid/hcbs/guidance/electronic-visit-verification/index.html>
2. [CMCS Informational Bulletin \(CIB\): Cures Act for Electronic Visit Verification, issued on May 16, 2018.](#)
3. [FAQs: Cures Act for Electronic Visit Verification. Issued on May 16, 2018.](#)
4. Copies of the HCBS Training Series – Webinars presented during SOTA calls are located in below link:
<https://www.medicaid.gov/medicaid/hcbs/training/index.html>
5. See below link for a copy of the 21st Century Cures Act:
<https://www.congress.gov/bill/114th-congress/house-bill/34/text>

Questions & Answers
