



Colorado Medical Services Board
Department of Health Care Policy and Financing
303 E. 17th St. 11th floor
Denver, CO 80203

Re: MSB 19-01-03-A

Dear Madam Chair and members of the Medical Services Board:

The Colorado Center on Law and Policy (CCLP) writes in opposition to the current implementation timeline for MSB 19-01-03-A. We propose changes aimed at making it more likely that the Electronic Visit Verification (EVV) program is rolled out successfully, that Colorado complies with federal law, and that implementation does not put members at greater risk of interruptions in services. Federal law does not require immediate implementation and the state must exercise care to avoid impacts on Medicaid members and people with disabilities – a population that is disproportionately affected by the health emergency.

In addition, we note that advocates and providers are hard-pressed during the current health crisis to participate in public processes like this one. A rule change of this scope should not be approved without sufficient stakeholder input.

We request that the Board not approve the rule unless two changes are made to the timeline to allow for successful implementation: a delay in implementation for personal care services until the health crisis has passed, but no later than January 1, 2021 unless federal law permits; and a longer delay in implementation of EVV for home health services until 2023, or at least an additional 12 months after implementation for personal care services. Information provided by the Department at the most recent stakeholder meeting suggests a lack of readiness that could be disastrous for providers and the members they care for.

Federal guidance on implementation of this piece of the 21st Century Cures Act requires EVV for only personal care in 2020, with other home health services added by 2023,¹ and we submit that there are good reasons for that staggered implementation timeline. In addition, Colorado and 48 other states, along with Guam and D.C., have requested and been granted delays in implementation of the 2020 deadline for personal care services, a factor which emphasizes how challenging it is to implement this new requirement.² It appears that most states have set a

¹ CMCS Informational Bulletin, Additional EVV Guidance. August 8, 2019.

<https://www.medicaid.gov/sites/default/files/Federal-Policy-Guidance/Downloads/cib080819-2.pdf>

² Good Faith Effort Exemption Requests: <https://www.medicaid.gov/medicaid/home-community-based-services/guidance/electronic-visit-verification/good-faith-effort-exemption-requests-state-requests/index.html>

January 1, 2021 go-live date for EVV, and CCLP has not identified any state expanding the requirement beyond personal care services. See Iowa’s information page for one example.³

Colorado began with a “soft launch” of the EVV program for the full set of services, presumably so that problems could be identified. However, HCPF staff stated in a training on April 21, 2020 that only 88 providers - 10.51% of providers affected by this rule - had used the EVV system since October 1, 2019, adding “It’s clear we are not on track to see participation gradually increase.” Data provided suggests that half or more of the providers currently using the EVV system during soft launch “would have all their claims denied” if the system were implemented now.⁴ Rather than implementing the program prematurely, we recommend expansion of the soft launch, with providers mandated to participate but reimbursement not at risk.

Personal care services are defined by CMS as those that support activities of daily living (ADLs) such as mobility, bathing, toileting, transferring and personal hygiene, or those that support instrumental activities of daily living (IADL), such as meal preparation, assistance with paying bills, shopping and telephone use. Services that fall under this heading would include Consumer Directed Attendant Support Services (CDASS), homemaker and hospice services, independent living skills training, in-home support services, life skills training, personal care, respite, and youth day services. Other home therapies, such as occupational therapy, physical therapy, speech therapy, and skilled nurse visits, in contrast, are home health services.

A primary reason to have EVV for personal care begin first – but on January 1, 2021 or only after the crisis has abated – and to continue with only the “soft launch” for home health services, is to give the provider community and IT systems the opportunity needed to address glitches involved in implementation of this new technology. Doing so puts no federal dollars at risk. The Department is currently stretched thin and will be unable give implementation of this complex program the time and attention needed. As demonstrated during CBMS Transformation and the MMIS billing system changes, major disruptions can occur even in less fraught times and after careful planning, and those disruptions have resulted in additional costs to the state, as well as increasing providers’ administrative burden and associated costs. We can only surmise what these problems have had on providers’ willingness to provide Medicaid services.

Thank you for the opportunity to comment today.

Very truly yours,

/s/

Bethany Pray

cc: Chris Sykes

Jennifer Weaver, Esq.

³ https://dhs.iowa.gov/sites/default/files/2117-MC-FFS_EVV_Mar_2020_Update.pdf?050420202107. CCLP has not done a national scan of implementation start dates but reviewed several states, and none started EVV for home health simultaneously with personal care.

⁴ Electronic Visit Verification Stakeholder Meeting Closed Captioning Transcript, p. 14. April 21, 2020. <https://www.colorado.gov/pacific/sites/default/files/Electronic%20Visit%20Verification%20Stakeholder%20Meeting-Transcript-April%202020.pdf>