

STATE OF  
COLORADO

Sykes - HCPF, Chris &lt;chris.sykes@state.co.us&gt;

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**RE: Electronic Visit Verification (EVV) Member and Caregiver Subcommittee**

1 message

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**MB Simon** <mbsimon@juno.com>

Wed, Apr 29, 2020 at 3:55 PM

To: chris.sykes@state.co.us

Cc: Julie Reiskin &lt;jreiskin@ccdconline.org&gt;, Joshua Winkler &lt;jkwinkler@gmail.com&gt;, "Stephens, Robin" &lt;radrobins@cripcommentary.com&gt;, bruce&amp;robin bolduc &lt;robinbolduc@msn.com&gt;, Curtis Wolff &lt;curtisl.wolff@gmail.com&gt;, Susan Lontine &lt;susan.lontine.hd1@gmail.com&gt;, Diane Primavera &lt;dianneprimavera@yahoo.com&gt;, "Johnson, Tracy" &lt;tracy.johnson@hcpf.state.co.us&gt;, "Eggers - HCPF, Lana" &lt;lane.eggers@state.co.us&gt;, evv@state.co.us

Mr. Sykes,

Please distribute my comments below regarding the proposed Electronic Visit Verification rule directly to the Board members as I have not received an acknowledgement from staff they received it.

Mark Simon

P.O. Box 15

Golden, CO 80402

303-903-7575

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**From:** MB Simon [mailto:mbsimon@juno.com]  
**Sent:** Wednesday, April 22, 2020 5:39 PM  
**To:** 'Eggers - HCPF, Lana'; 'evv@state.co.us'  
**Cc:** Julie Reiskin (jreiskin@ccdconline.org); 'Joshua Winkler'; Stephens, Robin (radrobins@cripcommentary.com); bruce&robin bolduc (robinbolduc@msn.com); Curtis Wolff (curtisl.wolff@gmail.com); Susan Lontine (susan.lontine.hd1@gmail.com); 'Diane Primavera'; Johnson, Tracy (tracy.johnson@hcpf.state.co.us)  
**Subject:** RE: Electronic Visit Verification (EVV) Member and Caregiver Subcommittee

Regarding the proposed EVV rule scheduled for Medical Services Board May 8, 2020;

Some of the issues I raise the Dept has claimed they cannot do without statutory authorization or are currently prohibited by statute. Could you please provide me with specific statutory citations that you believe either prohibit you or does not give you authority as I am unable to identify them.

Prohibit any data collection or retention beyond the federal minimum requirements. The Dept has already said their system only accept the 6 data points required by the feds. They will not prohibit any home care agency or Fiscal management agency from collect data beyond the minimum required by the federal government. They claim they cannot "require" those agencies to "do anything" without statutory authorization. I cannot find any statutory prohibition on their adopting it in rule and making it a contract requirement that no one will collect or retain data beyond the federal requirements. Any additional data collection is for the provider's benefit, not the state's, not the clients...who works for who? Data will be stolen, not if, but when. If Equifax can be hacked, Dropbox...it shows no data is safe. The more we limit the data collected, the less there is for someone to steal, the less valuable it is, the less saleable it is, the less of a target it is, the less abuse can occur.

Is this kowtowing to the few agencies who don't want to change their systems? Are they wanting to leave it open for changes in the future so they can add more data collected, do geo tracking, geo fencing, find other ways for denial by harassment...or is there another agenda? Even if current staff is genuine in their statements/commitments to us this won't happen, there is no guarantee that the next staff will even acknowledge past commitments. I will point out a year ago staff was saying that pay/claims payments would NOT be tied to EVV, and it is.

Prohibit requiring EVV for services outside the home. Requiring EVV for services outside the home is not required by the feds, contrary, they have issued guidance saying it does not apply. Dept staff has made the decision it will be required anyway. This is a form of Geo tracking and definitely an invasion of privacy. It is not their business if I need to use the toilet at the Capitol and needed help doing it! The rule should again, specifically prohibit collection or retention of ANY data not REQUIRED by the feds. Collection of this data appears to be a concession to the Dept's EVV system vendor, Sandata (who is the one who lobbied the EVV requirements into 21<sup>st</sup> Century CURES Act, and now has the contract to provide the systems in the majority of states! Who works for whom?

The rule needs to mandate if someone meets the live-in caregiver exemption the agency/FMS SHALL exempt them, that it is not optional for the agency/FMS to decide if they will or not. Only 85% of the agencies, and all the FMS' have said that currently they will apply the exemption, but as the rule is written they don't all have to, nor does anything prevent them from deciding they will no longer if they do. And with some current developments it appears there may actually be systemic discouragement by policy (or lack of) for the agencies/FMS' to allow the exemptions.

Also, not exempting Live-ins from tax withholding makes it a bigger hassle for live-ins at tax time, and yes, while they will get any federal income taxes withheld when they file a return, the tax return preparation is more complicated and may cost more, and would they rather have the money in each paycheck, or wait more than a year for it. We cannot do anything that discourages any qualified individual from working in this arena.

There is no provision in the rule for accommodating people with disabilities working as attendants who, due to their disability are unable to use EVV (such as one of my aides who has a traumatic brain injury). We are told again and again any requests for an

accommodation due to disability should be sent to the Dept and they will determine it on a case by case basis, based on state and federal law (which is subject to interpretation). There needs to be requirements the agency/FMS will make the request to the Dept, as well as the attendant or client can make the request, specific minimum criteria, policy and procedure (as well as broader discretion to approve accommodations as well) for making and being granted requests for accommodations, as well as an informal, easily accessible appeal process should it be denied. Failure to provide accommodations could result in liability for the client/employer/AR, the FMS/agency, and the Dept. If that occurs is the Dept going to foot the bill for everyone's defense? Again, we must not do anything that discourages any qualified individual from working in this arena.

Regarding unannounced visits, I should not be expected to waive my 4<sup>th</sup> amendment right to privacy because I need home care services. They want to come in to my house (or truck) without my invitation, get a warrant! They could not even think they have the legal authority to violate my 4<sup>th</sup> amendment rights and invade my home. There was a very similar problem with Division of Wildlife some years ago, and the County Assessors, when seeking to schedule a site visit "neglect" to tell property owners they have the right to deny access. Even if they do get/keep authority to make unannounced visits the Dept should be required to inform the client they have the legal right to refuse entry and they won't unless required to as the previous examples demonstrate. In spite of whatever latitude they believe state law or rule may give them, they still have no more authority to enter my home than any law enforcement officer does. Unless there is a felony in progress, get a warrant!

It also needs to detail who is responsible for what, and who is liable when violations do occur, and what recourses are available. The Dept cannot just say it is the agency's/FMS' responsibility and they are not getting paid, or the client's and they have to pay it back or won't get services, or the aide won't get paid (a huge violation of state and federal labor laws) or have to pay it back, and it is unlikely the client/employer nor the aide have it to pay back anyway. And there needs to be an establish appeal process, not just for the client/employer/AR, but for the employee, the agency/FMS, etc. There needs to be requirement that notice be sent to all of the affected parties and anyone or all can appeal.

We also need a policy statement from MSB stating they want the feds to fully exempt consumer directed homecare programs from EVV.

Thank you for the Board's indulgence.

Cordially,

Mark Simon

P.O. Box 15

Golden, CO 80402

303-903-7575

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**From:** Eggers - HCPF, Lana [mailto:[lane.eggers@state.co.us](mailto:lane.eggers@state.co.us)]  
**Sent:** Friday, March 20, 2020 5:44 PM  
**To:** [evv@state.co.us](mailto:evv@state.co.us)  
**Subject:** Electronic Visit Verification (EVV) Member and Caregiver Subcommittee

Dear Stakeholders,

This email is to confirm the next **Electronic Visit Verification (EVV) Member and Caregiver Subcommittee** meeting.

This meeting is a continuation of the Participant Directed and Family Caregiver Subcommittee. During the last meeting, we discussed expanding the focus of this group to be more inclusive of all members and caregivers impacted by EVV.

The following items are attached to this email:

1. Agenda
2. Draft EVV Rule
3. Draft Live-in Caregiver Attestation

Please note, to help protect the health and safety of participants, this meeting will be call-in only.

Electronic Visit Verification  
**Member and Caregiver Subcommittee**  
Department of Health Care Policy and Financing

**March 31, 2020****10:30 am – 12:00 pm**

Conference Line: Local: 720-279-0026 Toll Free: 1-877-820-7831

Participant code: **869804#**

Best,

Lana Eggers, MPH  
Waiver Administration and Compliance Unit Supervisor  
Office of Community Living

[EVV@state.co.us](mailto:EVV@state.co.us) Please consider the environment before printing this e-mail.

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