

DMAS Electronic Visit Verification Legal Framework



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| 2016 | Congress passed 21 st Century CURES Act that requires states implement EVV for Medicaid personal care services |
|---------------|--|
| | Virginia budget language added for respite care services in 2017 Session |
| Oct. 1, 2019 | DMAS requires compliance for Virginia's personal care, respite care and companion service providers |
| April 1, 2020 | DMAS & MCOs will not accept paper or direct data claims for services after this date; providers must submit complete 837P EDI transactions |

Why Electronic Visit Verification Mandate?

Congress and CMS believe personal care services are ripe for fraud and abuse

- EVV will allow better detection of fraudulent activity
- Consistent with federal government's plan for electronic health records; CMS can aggregate data for analysis

DMAS Electronic Visit Verification Draft Regulations

- DMAS only has draft regulations
- DMAS has issued updated manual provisions for EVV [8/21/2019], CCC Plus Waiver (Chapter V) [8/21/2019], and EPSDT (Personal Care Services) [8/21/2019] manuals
- Along with Medicaid Bulletin [1/3/2020]

- Information remains in draft form
- Some guidance referenced in connection with EVV system does not yet appear in regulations

Electronic Visit Verification Draft Regulations

All providers of personal care, respite care and companion services must comply with all EVV requirements

- Agency-directed
- Consumer-directed

Electronic Visit Verification Draft Regulations

- Agency-directed providers shall choose system that best suits

Medicaid Bulletin, “EVV Update-Revised,” April 22, 2019

The DMAS-90 Provider Aide Record collects times of service by activity and comments or observations on changes in the individual’s physical or emotional condition, daily activities or services provided.

If EVV system captures all components of the DMAS-90, an electronic record will meet the requirements of the paper form.

Electronic Visit Verification Draft Regulations

- Individuals may receive a combination of agency-directed and consumer-directed services.
- Different EVV systems used for each (PPL has own system)

EVV System Requirements

Must have the ability to capture required data in real-time and produce data requested by DMAS in an electronic format upon request of DMAS auditors

EVV System Requirements

EVV must capture:

- Type of service performed
- Individual who received the service
- Service month/day/year
- Service begin and end times
- Location of service delivery at beginning and end of service
- Attendant or aide who provided service

Time of Service Adjustments

Time start or end entries may be modified by person with provider's authority to adjust the attendant's/aide's hours

Time of Service Adjustments

- Agency-directed providers
 - Supervisor or agency owner or designee with authority to make independent verifications
 - Aides or peers are not allowed to adjust reported time

Other EVV System Requirements

- ADA compliant
- HIPAA compliant
- Accessible for input or service delivery
24/7
- Data backups for emergencies and
system malfunctions

EVV System Capabilities

- Handle multiple work shifts per day per individual or aide/attendant combination
- Handle aides/attendants who work for multiple individuals
- Handle individuals who use multiple aides/attendants and multiple agencies

EVV System Capabilities

- Handle multiple individuals and multiple aides/attendants, or both, in the same location at the same time and date

- Minimum of at least daily data backups
- Electronically transmit info to DMAS in required format or transfer info to the provider's billing system
- Data shall be submitted to DMAS with provider's billing submissions

EVV Data Retention

- Retain data for six years from last date of service, or as provided by applicable federal and state law, whichever period is longer
- Records of minors kept for at least six years after individuals reach 18 years of age

EVV Data Retention and Audits

- If audit is initiated within retention period, records must be kept until audit is complete and all exceptions are resolved

- If verification option is not available or accessible, provider must have information on file documenting reason the EVV was not used for the service delivered

Provider Discontinues Service

- Notify DMAS in writing storage location and procedures for obtaining records
- Location, agent or trustee must be within the Commonwealth

Clarifications, Changes and Updates

CCC Plus Waiver Manual
Six Necessary Data Elements for EVV

- 1] The type of service(s) performed
(service procedure code)
- 2] The individual receiving the services
(the member's Medicaid ID)
- 3] The date of the service

CCC Plus Waiver Manual
Six Necessary Data Elements for EVV

4] The location of the service delivery

This is a physical address, city, state and ZIP code and not geographical coordinates. Two (2) locations will be captured in the event that the beginning location is not the same as the ending location.

CCC Plus Waiver Manual
Six Necessary Data Elements for EVV

5] The individual providing the service (the aide's first and last name, and a unique ID association)

6] The time the service began and ended in military format (i.e. 1800 hours)

CCC Plus Waiver Manual Revisions
Chapter V Billing Instructions

If any of these fields are not completed or are incomplete on the 837P, the claim will deny ... effective April 1, 2020.

Starting April 1, 2020, providers are not to submit a CMS-1500 claim form for agency directed personal care and respite services. Paper claims will deny as the new CMS required fields for EVV are not on the CMS-1500. All providers submitting procedure codes associated with EVV must submit electronic EDI claims in the 837-P X12 standard. If billing a second visit for the day use “modifier 76” according to DMAS Medicaid Bulletin.

DMAS: Frequently Asked Questions

- Will the DMAS-90 form, Provider Aide Record, continue to be required with EVV?

Answer: DMAS will continue to require the collection of information required on the DMAS-90 form. The DMAS-90 form collects additional information that is not reported to DMAS such as the activity of service performed and observations of the individual's condition. If the provider's EVV system captures all components of the DMAS-90 form, an electronic record will meet the requirements of the paper form. The EVV system must be capable of electronically capturing the individual's/family member's signature.

- If the DMAS-90 form, Provider Aide Record, is captured in the EVV system, how is this information made available to DMAS?

Answer: The DMAS-90 form is not part of the claim submission process. It is to be retained by the provider and the EVV system must be capable of producing it in a timely manner either in a hard copy or an electronic format when requested by DMAS or its designee.

- The DMAS-90 form, Provider Aide Record, covers a week and collects the four comments only once along with the individual's/family member's signature. Most EVV applications that incorporate the DMAS-90 form collect the four comments by shift. It is burdensome to collect both with each shift.

Answer: The requirement is that the four comments and the individual's/family member's signature are to be recorded weekly. In converting the DMAS-90 form to an electronic record, it is prudent for the EVV vendor and a good practice for the care of the member to require the information by shift.

- If we go paperless, do we have to use the original DMAS-approved forms, DMAS-97A/B (Agency or Consumer Direction Provider Plan of Care), or DMAS-99 (Community-Based Care Recipient Assessment Report), in order to stay compliant, or can we make sure that the required information is inputted into our system?

Answer: EVV does not change the requirements for any existing DMAS forms. If the provider's EVV system captures all of the components of the DMAS-97A/B form and or the DMAS-99 form and the system is capable of replicating the DMAS form layout, the information can be captured electronically. Providers shall be able to produce the forms when requested by DMAS or its designee that meet the requirements of the paper form. The EVV system must be capable of electronically capturing the individual's/caregiver's signature. Additionally, a hard copy of the DMAS-97A/B form and or the DMAS-99 form are required to be kept with the Medicaid member.

- What is an acceptable electronic signature for DMAS forms incorporate within the EVV application?

Answer: DMAS records must be fully signed, and dated (month, day, and year) including the title or affiliation of the signer on the date of service delivery. An electronic signature that meets the following criteria is acceptable for clinical documentation:

- identifies the individual by name and whether they are the member, family member, caregiver, aide or RN;
- assures that the documentation cannot be altered after the signature has been affixed by limiting access to the code or key sequence; and
- provides for nonrepudiation; that is, strong and substantial evidence that will make it difficult for the signer to claim that the electronic representation is not valid.

- Will Virginia Medicaid provide a list of approved EVV vendors?

Answer: Virginia Medicaid does not and will not approve EVV vendor systems. To facilitate the adoption of an EVV system by the provider community, Virginia Medicaid may from time-to-time refer inquiries to a list of EVV systems compiled by a third party. It is the responsibility of the provider to ensure that their system meets Virginia Medicaid's requirements.

- How long must records be maintained?

Answer: Providers will be required to retain EVV data for at least six years from the last date of service. Records of minor individuals must be kept for at least six years after the minor individuals have reached 18 years of age. If an audit is initiated within the required retention period, the records shall be retained until the audit is completed and every exception is resolved. Retention of records apply even if the provider discontinues operation. Providers will be required to produce archived EVV data in a timely manner and in an electronic format when requested by DMAS or its designee.

- Who pays for the EVV system?

Answer: For Agency Directed services, the provider is required to obtain and pay for the use of their own EVV system.

- My agency provides one of the services that requires EVV. Will the Managed Care Organizations (MCOs) allow me to select an EVV system?

Answer: Agency Directed providers are able to choose a system that best meets their own business needs that is compliant with Virginia Medicaid's reporting requirements. The MCO will be responsible for collecting the required EVV information.

- In the event the EVV record needs to be modified, who is authorized to make the adjustment?

Answer: The EVV system must be capable of capturing the aide's actual start and end time. In the event the time needs to be adjusted, the start or end time may be modified by someone who has authority to adjust the aide's hours of pay. This may be an RN, a supervisor, the agency owner or designee who has authority to make independent verification. In no case should coworkers be allowed to adjust each other's time.

EVV Vendor Contract Pointers

- Vendor contract needs to represent and warrant compliance with Virginia DMAS regulations and manual provisions for EVV
- Vendor should agree to update software to meet DMAS updates at **no extra charge**

- Vendor must ensure system is HIPAA compliant
- Vendor should have 24/7 support

EVV Vendor Contract

- If vendor stores data in cloud, vendor should provide a back up location
- Request data be stored in the U.S.
- Vendor should retain data at **two** locations for DMAS mandated timeframes

EVV Vendor Contract

- Request vendor to indemnify for system failure and contract breaches
- No limitations on vendor liability for breaches of contract or loss of data
- Vendor needs to sign BAA

Questions



CHRISTIAN & BARTON, LLP
ATTORNEYS AT LAW

This is provided as an informational service and does not constitute legal counsel or advice, which can only be rendered in the context of specific factual situations.

If a legal issue should arise, please retain the assistance of competent legal counsel.

Thank You



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