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Notice of Intended Regulatory Action (NOIRA)
Agency Background Document

Agency name	Virginia Department of Medical Assistance Services
Virginia Administrative Code (VAC) citation(s)	12 VAC30-60-65 (NEW); 12 VAC 30-80
Regulation title(s)	Standards Established and Methods Used to Assure High Quality Care
Action title	Electronic Visit Verification Requirements
Date this document prepared	

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual.*

Subject matter and intent

Please describe briefly the subject matter, intent, and goals of the planned regulatory action.

The Department of Medical Assistance Services (DMAS) intends to amend the Standards Established and Methods Used to Assure High Quality Care regulations (12VAC30-60) in order to include provisions related to Electronic Visit Verification (EVV) as required by the 21st Century CURES Act, 114 U.S.C. 255, enacted December 13, 2016 (the CURES Act) and the 2017 Appropriations Act Chapter 836, Item 306. YYYY. The CURES Act requires states to implement an EVV system for personal care services by January 1, 2019 and home health care services by January 1, 2023. The 2017 Appropriations Act authorizes DMAS to additionally

require EVV for respite care and companion services. DMAS will modify the appropriate reimbursement regulations if directed to do so by the General Assembly.

The CURES Act requires that the EVV system must verify: 1) The type of service(s) performed; 2) The individual receiving the service(s); 3) The date of the service; 4) The location of service delivery; 5) The individual providing the service, and 6) The time the service begins and ends. DMAS intends to seek input regarding the EVV system from individuals receiving services, family caregivers, providers of personal, respite and companion care services, home health care services, provider associations, managed care organizations, health plans and other stakeholders. DMAS shall seek input on the current use of EVV in the Commonwealth and the impact of EVV implementation.

Legal basis

Please identify the (1) the agency (includes any type of promulgating entity) and (2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

The *Code of Virginia* (1950) as amended, § 32.1-325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. The *Code of Virginia* (1950) as amended, § 32.1-324, authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance according to the Board's requirements. Section 12006 of the CURES Act [114 U.S.C. 255] requires states to implement an EVV system for personal care services and home health care services or face an escalating reduction in the federal medical assistance percentage (FMAP)(federal matching funds). The 2017 Appropriations Act authorizes DMAS to require EVV for personal care, respite care and companion services.

Purpose

Please describe the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, please explain any potential issues that may need to be addressed as the regulation is developed.

As practices evolve and coverage is provided under the State Plan for Medical Assistance, there are times when it becomes necessary to amend regulations to conform them to best practices and new guidance from Centers for Medicare and Medicaid Services (CMS). As stated earlier, the CURES Act [114 U.S.C. 255] § 12006 requires states to implement an EVV system or face an

escalating reduction in FMAP. EVV has become a best practice in the private sector as it: 1) Eliminates the need of paper documents to verify services; 2) Enhances efficiency and transparency of services provided to individuals through quick electronic billing; and 3) Supports individuals using self-direction services and facilitates flexibility for appointments and services. CMS has issued guidance that EVV will assist in the reduction of potential fraud, waste and abuse and has stated that EVV is a "positive step towards safeguarding beneficiaries."

Substance

Please briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

CURRENT POLICY

DMAS does not currently have regulations regarding EVV. The below outlines current DMAS policy regarding EVV implemented through contractual language and provider manuals:

1. The CCC Plus Contract states that the managed care organization shall work with providers of agency directed services and the Department to establish EVV system connectivity, transfer data, and fulfill program requirements.
2. The Elderly or Disabled with Consumer Direction (EDCD) waiver manual states that personal care agencies choosing to utilize HIPAA compliant EVV systems may do so by using a system that records and contains the same elements as the Provider Aide Record Form (DMAS 90) and permits the system to verify the location from which the services are provided and the individual for whom the services are provided. The Manual requires that the EVV shall : 1) Ensure daily back-up for all data collected; 2) Protect data securely and reliability 3) Demonstrate a disaster recovery mechanism allowing for use within twelve hours of disruption to services; and 4) Be capable of producing reports of all services and supports rendered, the individual's identity, the start and end time of the provision of services and supports and the date/s of service in summary fashion that constitute documentation of service that is fully compliant with regulation. Finally, the Manual requires that each personal care aide and individual/family receiving services have a unique personal identification number or a biometric identification system. The personal care aide shall not be able to enter or modify the time and date. The unique identification system shall constitute the necessary electronic signatures for services. No additional electronic or hand written signatures shall be required.

ISSUES

The below outlines the issues for which regulatory language will be proposed:

1. The EVV system must verify the following seven data elements: 1) The type of service(s) performed; 2) The individual receiving the service(s); 3) The date of the service; 4) The

location of the service delivery; 5) The individual providing the service; 6) The time the service begins and ends; and 7) A unique identifier for the visit.
2. The EVV system must be implemented in a manner that is minimally burdensome and HIPAA compliant.
3. States have the choice between five EVV design models: 1) Provider Choice, 2) Managed care organization choice; 3) State mandated external vendor; 4) State mandated in-house system; or 5) Open vendor. States may choose more than one model.

RECOMMENDATIONS

DMAS recommends:

1. A Provider Choice Model: This model allows providers and MCOs to use a HIPPA compliant EVV system of their choice. This allows Virginia to create a higher level system that collates data from multiple vendors and allows providers to choose a system that suits them best. This is often referred to as an open platform model.
2. The EVV system must comply with federal requirements and it should meet best practices by identifying: 1) The type of services identified in the care plan to be performed; 2) The individual receiving the services; 3) The date and time the service begins and ends; 4) The location where services were delivered; 5) The individual providing services; 6) Daily back up for all data; 7) Protection of data securely and reliably; 8) A disaster recovery mechanism; 9) The system does not permit the modification of dates and times except for late entry documentation by a licensed health care professional; and 10) Utilization of unique identification identifier eliminating the requirement for hand written signatures.
3. The suggested regulatory language explicitly exempts respite services provided by a Department of Behavior Health and Development Services (DBHDS) licensed provider in a DBHDS licensed program site such as a group home, sponsored residential home, supervised living, supported living or any similar facility/location licensed to provide respite. This is due to the fact that EVV is not intended to be used to verify service provided at a location other than an individual's home. Procurement, implementation and use of such a system by a provider who does periodic service within their regular program setting, would be sufficiently burdensome to prompt the elimination of the service.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

There are no other alternatives that would allow the implementation of an EVV system for personal care, respite care, companion services and home health care services. Implementation of an EVV system is necessary to ensure that DMAS does not face an escalating reduction in the FMAP. The proposed regulatory action will update DMAS regulations to reflect CMS guidance and best practices.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments. Please include one of the following choices: 1) a panel will be appointed and the agency's contact if you're interested in serving on the panel is Tim Catherman; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulatory proposal.

The agency is seeking comments on this regulatory action, including but not limited to: ideas to be considered in the development of this proposal, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation.

The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: projected reporting, recordkeeping, and other administrative costs; the probable effect of the regulation on affected small businesses; and the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (**http://www.townhall.virginia.gov**), or by mail, phone or email to **Tim Catherman, 600 East Broad Street, 10th Floor, Richmond, Virginia 23219, 804-225-2536, and Tim.Catherman@dmas.virginia.gov**. An interested parties panel has been convened. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.