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Final Regulation
Agency Background Document

Agency name	DEPT OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) Chapter citation(s)	12 VAC 30-60-65; 12 VAC 30-50-130; 12 VAC 30-120-623; 12 VAC 30-120-924; 12 VAC 30-120-930; 12 VAC 30-122-125
VAC Chapter title(s)	Standards Established and Methods Used to Assure High Quality of Care; Amount, Duration, and Scope of Services: EPSDT; Waiver Services
Action title	Electronic Visit Verification
Date this document prepared	November 9, 2020

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

This action conforms the requirements of the Virginia Medicaid program with the *21st Century Cures Act*, section 12006(a) and Public Law 115-222 section 1 as applicable to Title XIX concerning electronic visit verification. The *Cures Act* was signed into law on December 13, 2016, and added § 1903(l) to the *Social Security Act* (SSA). This new SSA section originally mandated that states require the use of electronic visit verification (EVV) for personal care services by January 1, 2019, and for home health services by January 1, 2023. The *Cures Act* also provided for fiscal penalties, applicable to the Federal Medical Assistance Percentage (FMAP rate) (the federal funding rate for Medicaid), applicable to states that failed to implement the federal EVV requirements. Additionally, in compliance with the 2020 Special Session of the General Assembly, live-in caregivers shall be exempt from EVV requirements.

Subsequent to the *Cures Act*, Congress enacted H.R. 6042 to delay for one year the FMAP penalties applicable to personal care services if rendered in the absence of electronic visit verification and the onset of EVV requirements. This delay was signed into law on July 30, 2018, to become Public Law 115-222.

Absent the adoption of the federal EVV mandate as provided in the *Cures Act*, the Department of Medical Assistance Services (DMAS) will be subject to incremental reductions in its Federal Medical Assistance Percentage (FMAP rate) for personal care expenditures. For the period SFY 2017, DMAS expended $438,541,636 for consumer-directed personal care services and $430,148,860 for agency directed personal care services. FMAP reductions via the *Cures Act* penalty would be expected to exceed several million dollars.

DMAS covers personal care, companion care, and respite services under the authority of the Social Security Act § 1915 (b) and (c) via several of its managed care and home and community based care waivers. DMAS covers home health services under the authority of § 1907(a)(7) of the *SSA* via the State Plan for Medical Assistance.

Pursuant to the authority of the *2018 Appropriation Act*, Item 303 LLL, the Commonwealth is also applying the EVV requirements to covered companion services and respite care since these two services are very similar to personal care services. Both respite and companion services help the Medicaid individual with his Activities of Daily Living but under slightly different circumstances.

This requirement also applies to both fee-for-service services via the Early and Periodic Screening, Diagnosis, and Treatment service (12 VAC 30-50-130) as well as waiver services via the Commonwealth Coordinated Care Plus (12 VAC 30-120-630), Commonwealth Coordinated Care Plus Waiver (12 VAC 30-120 30-120-900), Developmental Disabilities (12 VAC 30-122-10), and Medallion 4.0 waivers (12 VAC 30-120-380).

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

'CMS' means Centers for Medicare & Medicaid Services.

'CSBs' means community services boards.

'Cures Act' means the *21st Century Cures Act* (P.L. 114-255 (2016).

'DBHDS' means Department of Behavioral Health and Developmental Services.

'DMAS' means Department of Medical Assistance Services.

'EVV' means Electronic Visit Verification and is a system under which visits conducted as part of personal care and home health services are electronically verified with respect to several specified aspects.

'IADL' means Instrumental Activities of Daily Living.

'MCO' means Managed Care Organization.

'SSA' means Social Security Act.

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

I hereby approve the foregoing Regulatory Review Summary entitled "Electronic Visit Verification" and adopt the action stated therein. I certify that this final regulatory action has completed all the requirements of the Code of Virginia § 2.2-4012, of the Administrative Process Act.

_____ _____

Date

Karen Kimsey, Director

Dept. of Medical Assistance Services

Mandate and Impetus

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously reported information, include a specific statement to that effect.

The Code of Virginia § 32.1 325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance and to promulgate regulations. The Code of Virginia § 32.1-324, grants the Director of the Department of Medical Assistance Services the authority of the Board when it is not in session.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating

agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

Public Law 114-255, § 12006, mandated the adoption of EVV technology applicable to personal care services (effective January 1, 2019) and home health care services (effective January 1, 2023) as provided by Medicaid without regard to whether they are covered via a waiver or the State Plan. Public Law 115-222, § 1 delayed the onset of fiscal penalties and the adoption of EVV technologies for one year (January 1, 2020) over the original statute.

DMAS covers personal care, respite care and companion services under the authority of *Social Security Act* § 1915(b) and (c) managed care and home and community based care waivers. Due to the highly similar nature of waiver companion services and waiver respite services to personal care services, DMAS is also requiring the use of EVV for these services under the authority of Chapter 2 of the *2018 Acts of the Assembly,* Item 303 LLL. Personal care, respite care and companion services are designed to provide services in support of Activities of Daily Living (bathing, dressing, toileting, transferring, and feeding) in slightly different circumstance. The Commonwealth also covers Instrumental Activities of Daily Living (IADLs) (such as meal preparation, money management, shopping, and community activities) under personal care, respite, and companion services for those individuals who require this type of assistance.

Home health care services are federally mandated services for Title XIX programs under the authority of § 1905(a)(7) of the *Act*. This service provides skilled nursing services, aide services, and medical supplies and equipment for individuals in their residences, without requiring that they be homebound, upon their physicians' orders. The application of EVV to home health services takes effect January 1, 2023 so it is not reflected in this regulatory action.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

The purpose of this action is to implement the mandates of the *Act* § 1903(l) regarding EVV as applicable to personal care services across all the waivers and State Plan covered services. Absent the Commonwealth's adoption of this requirement, § 1903(l) also mandates the reduction of federal matching funds for expenditures for personal care services ($869 million). Reductions in Medicaid federal funds, in the absence of EVV, would be expected to exceed several millions of dollars thereby substantially affecting the health, safety, and welfare of Medicaid individuals by service reductions and loss.

Action by the General Assembly in the *2018 Appropriation Act*, Item 303 LLL, applies this EVV requirement also to companion services and respite.

The action that will apply EVV requirements to home health services is to be addressed in the near future in a separate regulatory action because of the January 1, 2023, effective date set out in federal law.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

The sections of the State Plan for Medical Assistance affected by this action is Standards Established and Methods Used to Assure High Quality Care (12 VAC 30-60) with the addition of new section 12 VAC 30-60-65 Electronic Visit Verification and the Amount, Duration, and Scope of Services Early and Periodic Screening, Diagnosis and Treatment services (12 VAC 30-50-130(B)). The state-only regulations affected by this action are: Commonwealth Coordinated Care Plus (12 VAC 30-120-623); Commonwealth Coordinated Care Plus Waiver (12 VAC 30-120-924, -120-930), and; Individuals with Developmental Disabilities Waiver (12 VAC 30-122-125).

CURRENT POLICY

Currently, there are no such requirements in either the State Plan for Medical Assistance nor any related waiver programs because electronic visit verification has not applied to Title XIX prior to the passage of the *Cures Act*.

ISSUES

The *Cures Act* was designed to improve the quality of services and supports provided to individuals through research, enhancing quality control, and strengthening mental health parity. This regulatory action addresses enhancing quality control of services provided to individuals.

One of the federal purposes of electronic visit verification is the reduction of potential fraud, waste, and abuse by means of validating that billed services comport with the individual's Plan of Care and EVV data. Such validation will ensure appropriate payment based on actual service delivery. These systems will enable greater opportunities for enhanced care coordination, data sharing, and improved payment accuracy with the concomitant reduction of billing errors. The Department of Health and Human Services Office of the Inspector General has recognized EVV as a positive step towards safeguarding individuals.

Another federal purpose is the improvement of program efficiencies by reducing the need for paper documentation to verify services, speeding up provider electronic billing and supporting individuals using self-direction services by permitting greater flexibility for appointments and services.

Analysis conducted by the Centers for Medicare and Medicaid Services determined that the following system models exist:

- Provider choice model: major providers currently use different EVV systems which are *Cures Act* compliant;
- MCO choice model: managed care organizations currently use different EVV systems which are *Cures Act* compliant;

- State mandated in-house model: providers not widely using EVV or EVV systems in use do not meet state's needs; state intends to develop its own EVV system;
- State mandated external vendor model: providers not widely using EVV or EVV systems in use do not meet state's needs; state intends to use external vendor; and
- Open vendor model: smaller providers not widely using EVV but may have one or more larger providers using *Cures Act* compliant EVV system.

The *Cures Act* design of EVV requirements allows the states to select their design and implement quality control measures of their choosing. The states are required to consult with other affected entities: (i) other state agencies providing personal care or home health care services, and; (ii) other stakeholders such as family caregivers, individuals receiving and furnishing personal care and home health services, and providers of these services. EVV systems must be minimally burdensome and compliant with HIPAA privacy mandates. EVV systems are not intended to limit the services provided or provider selection, constrain individuals' caregiver choices, or impede the way care is rendered. EVV systems should accommodate personal care and home health care service delivery locations with limited or no internet access. EVV systems should allow individuals to schedule their services directly with their providers, allowing for last-minute changes based on individual needs. EVV systems should accommodate services at multiple approved locations (not just the individual's home) and allow for multiple service delivery locations in a single visit.

DMAS conducted a comprehensive review of the CMS' alternatives permitted to meet the federal requirements and concluded that the open vendor model afforded the most provider flexibility for Virginia. It allows providers that currently use EVV systems to maintain a working relationship with their claims processing vendors as well as permitting all providers to select a system that meets their business needs while being cost effective. In October 2017, DMAS issued a Request for Information (RFI) to learn more about EVV systems available in the marketplace. Several EVV vendors responded, providing information on their systems' capabilities. This was useful in identifying some of the system requirements included in these regulations.

RECOMMENDATIONS

DMAS' recommended adoption of the open vendor model will enable providers, either large or small, to select the EVV system that best suits their business models and operational practices. Affected providers are expected to opt for EVV systems that will smoothly and efficiently link with the electronic billing systems they currently use in order to facilitate a quick, effective electronic billing process.

DMAS has designed a system to receive the required EVV information with the provider’s claim for services.

DMAS' EVV system regulatory requirements comport with § 12006(a)(5) of the Cures Act and do not exceed the minimum requirements contained in federal law.

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

Providers are expected to experience faster claims processing with fewer denied claims and reduced numbers of post-payment review audit recoveries. The primary advantage to the agency and the Commonwealth is avoiding the reduction of Federal matching funds for failure to comply. The advantage to Medicaid individuals is that the personal care services, respite care and companion care services that they receive will comport with their identified needs in their plans of care with few, if any, disruptions.

There are no disadvantages to the agency or the Commonwealth in this action. There are no advantages or disadvantages of this action to individual private citizens.

Implementing this system now for personal care services, respite care and companion services, as required by federal law, will facilitate the implementation of EVV applicable to home health services by 2023.

Requirements More Restrictive than Federal

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.

There are no requirements more restrictive than the federal requirements implemented by the *Cures Act* as discussed above.

Agencies, Localities, and Other Entities Particularly Affected

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously reported information, include a specific statement to that effect.

Other State Agencies Particularly Affected

Several community services boards (CSBs), administered by the Department of Behavioral Health and Developmental Services, will be required to comply with the EVV requirements for the services that they provide.

Localities Particularly Affected

There are no localities uniquely affected by this action as it applies statewide.

Other Entities Particularly Affected

There are numerous public and private agency-directed providers that will be affected. Some of the nonprofit public agencies include the ARCs, disability support organizations, area agencies on aging, and religious affiliated organizations that provide personal care services.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

Commenter	Comment	Agency Response
Kendra Scalia, MPP, disability and healthcare policy analyst; 2 Individuals	"My house is not an outpatient hospital or nursing home. Whatever may come to pass, the disability community is clear. We refuse to be treated as patients in our own homes. My house is not an outpatient hospital or nursing home. There is never a reason for the government or their vendor to have access to the private dealings of my life solely to prove I am disabled and in need of assistance." *"California is the current standard of robust stakeholder engagement. The State has promised to never use GPS or biometrics. Their web portal collects location and start and end times in the broadest interpretation of the law possible."* **"EVV has already pushed many employees out of the home care industry."** *"All of these systems created by the EVV vendor industry wholly ignore the independent living philosophy upon which all disability policies and programming are built." "EVV systems erode the intent of consumer-directed services, walking us back in time 40 years where disabled people are no longer in control of their private lives. Without consumer-directed services or adequate home care employees to assist us in our homes, many disabled people will have no other option than to be placed in a nursing home. This is the antithesis of the spirit of independent living and would violate the Supreme Court Olmstead decision, which requires states to offer services in a home and community-based setting when they also provide nursing home care."* "All of these systems bring into question data security during transmission and storage of information. Who has access to the data regarding our whereabouts? What are they doing with that data?"	The Department of Medical Assistance Services agency and Fiscal Employer Agents have access to the EVV data collected for the services performed. The Electronic Visit Verification data is being collected as required by the 21st Century Cures Act. All EVV systems are required to be HIPAA and ADA compliant to keep all information secure. The use of EVV should not change a member's routine or interfere with where they want to receive services in accordance with their care plan, existing program rules, and wherever the provider can safely accommodate.
608 Individuals; William & Mary University; National ADAPT; Virginians with disabilities; **Noah's Miracle Blog**	The app does not work a good portion of the time and then attendants get emails about noncompliance. Fears have been raised over the role of mobile phones in brain cancer after new evidence revealed rates of a malignant type of tumor have doubled in the last two decades. Phone plans are negatively impacted. Wi-Fi/Internet is unavailable. The website doesn't even want to load to get to the portal. Biometrics and GPS tracking are not okay; location captures are malfunctioning; attendants pay not correct; difficult to get things corrected with CDCN; attendants quitting and individuals losing services because of this EVV system. EVV	EVV does not contain a bio-metric component and does not capture location during a shift, location is only captured when the attendant clocks in and clocks out. An alternative solution to the mobile application would be the telephonic visit verification for Interactive Voice Response System (IVR). Please contact your Fiscal Employer Agent for guidance on their IVR application.

	stands to violate every "invasion of privacy" category that exists. The tracking and monitoring is a civil rights violation. It's harming thousands of people in Virginia.	
146 Individuals; Lawrence Journal World; Disability Law Website	EVV is another reason we don't want to live in government placements. Please let us stay home. Consumer directed services work without EVV. EVV will shut down consumer directed services and make them unusable.	The use of EVV should not change a member's routine or interfere with where they want to receive services in accordance with their care plan, existing program rules, and wherever the provider can safely accommodate.
Jake Metcalf, Researcher in the Law & Ethics in Computational Science	*EVV adds an extra layer of intrusion because it unilaterally alters the labor-management relationship between PCA and client while offloading audit responsibility to the client. EVV establishes distrust as a baseline in a relationship that is fundamentally about trust.* **With EVV, caregivers are providing a record of private and constitutionally protected behavior.** *Collecting information about one group can lead to increased control over another group because data is easily re-purposed. This effect of data collection is often overlooked. Debates about consumer privacy have largely missed the fact that firms' ability to develop a better understanding of consumers also impacts workers' day-to-day experiences, their job security, and their financial well-being.* Refractive surveillance: Surveillance is always adaptable to other purposes. It's rare that data collected for one purpose will be restricted to just that purpose. **People enrolled in EVV programs need to seek assurances that their data will not be repurposed.** *Data analytics collected by one agency for the specific purpose of helping a person receive benefits from the state will place them at* **increased lifetime risk of punitive interventions** *from other agencies. Like much surveillance of citizens who make use of their right to public services, this is a* **punitive model that demands constant justificatory labor from the citizen** *in exchange for the right to live freely in their community.*	The Electronic Visit Verification data is being collected as required by the 21st Century Cures Act. All EVV systems are required to be HIPAA and ADA compliant to keep all information secure. The use of EVV should not change a member's routine or interfere with where they want to receive services in accordance with their care plan, existing program rules, and wherever the provider can safely accommodate.
Disability Legal Studies Articles	This article presents a new framework for analyzing the development and implementation of disability law: the prism of the fear of "the disability con"—popular perceptions of fraud and fakery. DMAS treats us with prejudice thinking the same thing with EVV.	The Electronic Visit Verification data is being collected as required by the 21st Century Cures Act. All EVV systems are required to be HIPAA and ADA compliant to keep all information secure.

Open Society Foundation; 12 Individuals	The development of adequate community-based services should always be undertaken in parallel with institutional closure. It is neither fair nor realistic to expect people, many of whom have lived most of their lives in institutions, to move to the community and thrive without such support. EVV takes away adequate support. Any service that exists in the community that does not allow people with disabilities to make their own decisions, act on their own terms, or that segregates them or marginalizes them, is an institution. EVV marginalizes the disabled. EVV takes away that right support for many consumers. DMAS apparently want us back in institutions by taking away the only service with provider choice and the lowest cost at that. EVV destroys consumer directed attendant care.	The Electronic Visit Verification data is being collected as required by the 21st Century Cures Act. All EVV systems are required to be HIPAA and ADA compliant to keep all information secure.
Individual	The EVV system must be implemented in a manner that is minimally burdensome and HIPAA compliant. There have already been issues with data being breached and letters sent out by CDCN.	The Electronic Visit Verification data is being collected as required by the 21st Century Cures Act. All EVV systems are required to be HIPAA and ADA compliant to keep all information secure. The use of EVV should not change a member's routine or interfere with where they want to receive services in accordance with their care plan, existing program rules, and wherever the provider can safely accommodate.
The Boston Center For Independent Living	*The current law requires that states improve stakeholder outreach to determine the most appropriate model to implement EVV as well. These states have until January 1, 2021 to have "the least burdensome" program in place or they will risk the loss of Medicaid funding. It is one thing if an agency like Home Health Care wants to track their employees, but forcing this model on the consumer directed personal care services program is* **antithetical to consumer control and choice.**	The Electronic Visit Verification data is being collected as required by the 21st Century Cures Act. All EVV systems are required to be HIPAA and ADA compliant to keep all information secure. The use of EVV should not change a member's routine or interfere with where they want to receive services in accordance with their care plan, existing program rules, and wherever the provider can safely accommodate.
Individual	Large nursing agencies are refusing Medicaid Long Term Waiver cases altogether. Maxim and Continuum are too. So, we are relegated to small ones, and many are not licensed for DD waivers. This is a healthcare crisis. These nursing agencies say DMAS is fraught with low pay rates, too many policy changes, red tape, EVV, and paperwork and they can't be bothered with the problems. Where are we consumers supposed to go?	Individuals have the choice of either agency-directed or consumer-directed personal care, respite, and companion care services. Individuals should contact their support coordinators on their options and can search for licensed providers using the Provider Search feature available at virginiamedicaid.dmas.virginia.gov.

10 Individuals	No threatening training meetings; a real forum where folks with disabilities subjected to EVV directly can speak out! We are very intelligent and can make important decisions. We need to be involved in how government decisions affect us personally. We were never given a forum to give our observations or be involved in the whole process introducing EVV. Stakeholders are supposed to be involved and there were no meetings involving us: the ultimate consumers! The so-called agencies that represent us such as ARC, Disability Resource Center, Endependence Center, etc., are not the ultimate consumer and have yet to speak up in our best interest concerning EVV. They do not have to use EVV. They have no idea what it is like nor do they care. Give us a forum and a real chance to speak out against EVV. Call a meeting. Show you care for our input and care about us as human beings!	Virginia developed the EVV requirements with significant input from advocacy groups and provider associations. Notices of the meetings were posted on Virginia's Town Hall. We appreciate your comments in this opportunity to receive input.
Individual	Why are consumers/participants having no say in EVV and it is being forced upon them? They hold the role of EOR and they pay for a portion of their care out of their own funds through patient payments. They deserve the right to have a voice when it comes to EVV.	Virginia developed the EVV requirements with significant input from advocacy groups and provider associations. Notices of the meetings were posted on Virginia's Town Hall.
Individual	EVV is violating the consumer's rights. There is nothing, but wasteful spending to pay for EVV. We can't get a wage that's competitive with a fast food joint. Then Medicaid has said that live ins are exempt, but the fiscal agents want everybody on the same page to make it easier for them. Easier for everyone except the ones doing the work.	The Electronic Visit Verification data is being collected as required by the 21st Century Cures Act. All EVV systems are required to be HIPAA and ADA compliant to keep all information secure. The use of EVV should not change a member's routine or interfere with where they want to receive services in accordance with their care plan, existing program rules, and wherever the provider can safely accommodate.
Individual	I lost my services. I spend all my time home now. I had waiver and did lots of things. My attendants didn't do EVV. My mom could do paper timesheets. We don't have a computer. DMAS shut us out of the service.	The use of EVV should not change a member's routine or interfere with where they want to receive services in accordance with their care plan, existing program rules, and wherever the provider can safely accommodate. An alternative solution to the mobile application would be the telephonic visit verification for Interactive Voice Response System (IVR). Please contact your Fiscal Employer Agent for guidance on their IVR application.
Disability Law Center of Virginia	DLCV strongly supports the Virginia Department of Medical Assistance Services in their stated commitment of conforming requirements of the Virginia Medicaid	The use of EVV should not change a member's routine or interfere with where they want to receive services in accordance with their care plan, existing

	program with the 21st Century Cures Act in an effort to prevent reductions in federal Medicaid reimbursements. However, we believe more must be done to protect Virginians with disabilities who rely upon in home personal care services. Thank you for your thoughtful consideration of DLCV's public comments.	program rules, and wherever the provider can safely accommodate.
Individual	The current coronavirus pandemic is going to stress our healthcare system beyond anything we have seen in our lifetime. The elderly and disabled who receive waivers are among the most vulnerable and likely to suffer disproportionately. Caregivers and attendants will be pushed to their limits, and we will see even greater scarcity of aides willing to do the job for the low pay. Why has DMAS not suspended the EVV requirement during this unprecedented crisis? Why has this unnecessary burden not been lifted for at least live-in caregivers?	The Electronic Visit Verification data is being collected as required by the 21st Century Cures Act. All EVV systems are required to be HIPAA and ADA compliant to keep all information secure. The use of EVV should not change a member's routine or interfere with where they want to receive services in accordance with their care plan, existing program rules, and wherever the provider can safely accommodate.
Individual	DMAS should have an ongoing training program about how to use EVV.	Training programs can be found on the Department of Medical Assistance Services website and your participating Fiscal Employer Agent website.
Individual	**As a mother of my special needs son, life is stressful. EVV is EXTRA added stress.**	The use of EVV should not change a member's routine or interfere with where they want to receive services in accordance with their care plan, existing program rules, and wherever the provider can safely accommodate.

Detail of Changes Made Since the Previous Stage

*List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

Current chapter-section number	New chapter-section number, if applicable	New requirement from previous stage	Updated new requirement since previous stage	Change, intent, rationale, and likely impact of updated requirements
	12 VAC 30-60-65.E.	Information was provided regarding how EVV data shall be submitted to DMAS.	Added the phrase "in a manner that conforms with agency specifications."	The regs were amended to give providers additional billing claim directives.

	12 VAC 30-60-65.B.	Additional language was added to the Applicable Services section.	Added the phrase "unless exempt under Section C, below."	The regs were amended to further clarify any exemptions to Applicable Services.

Detail of All Changes Proposed in this Regulatory Action

*List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

For changes to existing regulation(s), please use the following chart:

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of updated requirements
12 VAC 30-50-130	Amount, Duration, and Scope of EPSDT services	Currently, there is no reference to EVV in the existing regulation.	Adds reference to the EVV requirements in the EPSDT section. Adding the Incorporation by Reference (IBR) to this reg section will clarify its applicability for providers.
12 VAC 30-120-623	CCC+ (new section for new regs)	Currently, there is no reference to EVV in the CCC+ waiver.	Adds reference to the EVV requirements in the -623 section. Adding the Incorporation by Reference (IBR) to this reg section will clarify its applicability for providers.
12 VAC 30-120-924 and -930.	CCC+ Waiver	Currently, there is no reference to EVV in the existing regulations.	Adds reference to the EVV requirements in the -924 and -930 sections. Adding the Incorporation by Reference (IBR) to this reg section will clarify its applicability for providers.
12 VAC 30-122-125	IDD Waiver	Currently, there is no reference to EVV in these new regulations.	Adds reference to the EVV requirements in the 125 section. Adding the Incorporation by Reference (IBR) to this reg section will clarify its applicability for providers.

Even though EVV does apply to managed care organizations, 12 VAC 30-120-380 is not included in this table because the opening paragraph contains a sufficiently broad reference to the State Plan for Medical Assistance that encompasses EVV.

If a new regulation is being promulgated, that is not replacing an existing regulation, please use this chart:

New chapter-section number	New requirements in VAC	Other regulations and law that apply	Intent and likely impact of new requirements
12 VAC 30-60-65	Electronic Visit Verification	§ 1903 (l) of the Social Security Act	To conform the VAC to the requirements of federal law regarding electronic visit verification (EVV).
-65 A	Definitions		New terms defined and existing terms added.
-65 B	Applicable services		Subsection sets out the specific services subject to EVV: personal care, respite, companion and, effective 1/1/2023, home health agency services.
-65 C	Entities exempt from EVV		Schools are exempted under the authority of federal statute. DBHDS facilities are exempted under the authority of state statute.
-65 D	EVV system requirements		Subsection specifies the information to be retained; provides for which provider staff is permitted to edit the information; requires HIPAA compliance; sets out system requirements and functions; provides that individuals' care plans can be changed per changing needs and new provider orders.
-65 E	Agency-directed provider records, audits, reports		Subsection sets out provider documentation requirements.