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Mr. Brian Neale  
Director, Center for Medicaid and CHIP Services  
Centers for Medicare and Medicaid Services  
7500 Security Blvd.  
Baltimore, MD 21244

Dear Director Neale:

In anticipation of the Center for Medicare and Medicaid Services' issuance of guidance regarding Section 12006 of Public Law 114-255, the 21<sup>st</sup> Century Cures Act (CURES), I am writing regarding the electronic visit verification (EVV) program.

The Massachusetts Medicaid Program (MassHealth) has a longstanding commitment to administering personal care and home health programs that support and strengthen the principles of independent living and consumer choice. Since 1974, Massachusetts' MassHealth Personal Care Attendant (PCA) Program has been at the forefront of efforts to support independent living. Today, the PCA Program serves approximately 33,000 MassHealth Members who employ over 44,000 personal care attendants (PCAs). Our PCA program is based on consumer direction, community living and a fundamental belief that people with disabilities understand their needs best. Massachusetts recognizes the benefits of EVV; and, we are working with our stakeholders to implement an EVV system that meets the requirements of the CURES Act, strengthens program integrity, and preserves independent living and consumer direction.

Prior to implementation, there are several areas that we seek federal flexibility in order to meet the needs of our state and be in conformance with federal law. These areas include:

1. **EVV requirements within a self-directed program.** EVV systems and requirements should not restrict consumers to their homes or to a given location and should support consumers living fully within the community. We seek CMS



guidance allowing states to implement EVV in a manner consistent with those principles. In Massachusetts, for example, consumers receiving MassHealth PCA services direct when and where services are needed. We are working closely with our stakeholders to design an EVV solution that ensures consumer control and flexibility.

We request confirmation that EVV requirements for state Medicaid programs will preserve the flexibility required to support self-directed programs.

2. **Alternatives for MassHealth members without access to technological resources.** In some cases, MassHealth members do not have access to internet, cell phone service, or other forms of technology needed to effectively utilize EVV.

Massachusetts seeks flexibility to define EVV requirements and to make appropriate alternatives available to consumers with limited telephone, internet or cellular access.

3. **Safeguarding privacy and data.** Many EVV solutions rely on geo-location to record the service start time and location, as well as the service end time and location. Although geo-location may enhance program integrity, MassHealth members and personal care attendants have raised legitimate concerns about potential privacy implications related to the collection of these data. We share these concerns. In implementing EVV, MassHealth will take all reasonable measures to ensure appropriate safeguards and restrictions are in place regarding the use of any consumer data, and shall comply with all applicable state and federal laws for the safeguarding of consumer privacy and data.

We seek CMS reaffirming state obligations to protect consumer privacy and data.

Given the magnitude of the task of implementing EVV across the spectrum of personal care and home health services provided under state Medicaid programs, coupled with the statutory requirement that EVV be implemented for PCA services in 2019, we seek implementation guidance as soon as possible.

Additionally, we seek responses to the following specific questions:

1. We interpret the CURES Act EVV requirement to apply to Medicaid Personal Care Attendant and Home Health programs as well as to 1915(c) HCBS waiver services. Is our interpretation consistent with CMS?
2. Does the CURES Act EVV requirements extend to circumstances in which the member resides in a provider operated setting and personal care is only a component of a larger waiver service (i.e. part of a bundled service)? For example, is the use of EVV required for residential habilitation waiver services (i.e. group homes) in which the waiver participant resides in a provider operated setting and receives multiple types of assistance from the provider, such as

nursing oversight and medication management, in addition to assistance with personal care? If bundled personal care services fall under the CURES Act EVV requirement, are states required to implement EVV for those services by January 1, 2019, or is there an extended time period for integrating them into EVV?

3. Does the CURES Act EVV requirement apply to personal care services delivered to members residing in the home of a provider-compensated caregiver such as under an Adult Foster Care (AFC) program?
4. Does enhanced funding for EVV technology required under the CURES Act extend both to EVV technology provided by the state as well as state costs associated with the acceptance and integration of data from provider-owned systems? In addition, would federal enhanced funding extend to reimbursements made to individual PCAs for the cost of data used on their personal devices associated with an EVV application?

Massachusetts appreciates CMS' attention and additional guidance regarding this matter. Thank you.

Sincerely,

  
Marylou Sudders

*Thank you for all  
of your assistance!*

cc: Daniel Tsai, Assistant Secretary for MassHealth and Medicaid Director  
Elizabeth Cahn Goodman, DrPH, JD, MSW, Chief of Long Term Services and  
Supports, MassHealth