1915(c) Home and Community-Based Waiver Application Job Aid

Documenting Electronic Visit Verification (EVV) in Appendix I of 1915(c) Waiver Applications

Following statutory requirements in section 1903(l) of the Social Security Act (the Act), as added by section 12006 of the 21st Century Cures Act (Cures Act),[1] states are implementing electronic visit verification (EVV) solutions to verify delivery of personal care services (PCS) and home health care services (HHCS) delivered under several Medicaid authorities. This application job aid focuses primarily on appropriate documentation of EVV implementation efforts within Appendix I of the section 1915(c) home and community-based services (HCBS) waiver application; the section of this application job aid titled "Documenting EVV in Programs under Other Authorities" summarizes expectations for how to document the use of EVV for services delivered under authorities beyond section 1915(c) including sections 1905(a), 1915(i), 1915(j), 1915(k), and 1115 of the Act.

Implementation of a robust EVV solution can help promote fiscal integrity in 1915(c) HCBS waiver programs. Operation of an EVV solution can improve the accuracy, efficiency, and quality of service verification and delivery, as well as yield valuable data in demonstrating compliance with various quality improvement assurances. CMS published a training exploring these areas in February 2020 titled "Leveraging EVV to Enhance Quality Monitoring and Oversight in 1915(c) Waiver Programs."[2]

As states incorporate EVV into their fiscal integrity processes for programs that include services subject to EVV, states are to document compliance with EVV requirements in their 1915(c) HCBS waiver applications, as specified in the **Application for a §1915(c) Home and Community-Based Waiver [Version 3.6, January 2019] Instructions, Technical Guide and Review Criteria** (the Technical Guide).[3] Common sections within Appendix I of the 1915(c) HCBS waiver application where states currently refer to EVV include:

- **Appendix I-1** (Financial Accountability)
- **Appendix I-2a** (Rate Determination Methods)
- **Appendix I-2b** (Flow of Billings)
- **Appendix I-2d** (Billing Validation Process)
- **Appendix I-3b** (Direct Payment)

Appendices I-1 and I-2d, covering post-payment and pre-payment reviews respectively, are most applicable based on states' immediate uses of EVV. As of February 2021, fewer than half of states reference EVV in Appendix I in one or more of their 1915(c) HCBS waivers. Only a quarter of 1915(c) waivers make any reference to EVV, and of these, most only mention the implementation or design of the EVV solution, rather than describe how the state incorporates that solution into billing and claims management and oversight processes. Federal regulations require that states "assure financial

[1] Section 12006 of the 21st Century Cures Act (the Cures Act), P.L. 114-255, added section 1903(*l*) of the Social Security Act (the Act).
[2] Available online: https://www.medicaid.gov/medicaid/downloads/evv-enhance-quality.pdf.
[3] Available online: https://wms-mmdl.cms.gov/WMS/help/35/Instructions_TechnicalGuide_V3.6.pdf.

accountability for funds expended for home and community-based services" and "maintain and make available … appropriate financial records" documenting service delivery information as necessary.[4] States may determine that it is appropriate to describe the use of EVV in other appendices of the waiver application in addition to Appendix I; for example, if a state incorporates EVV as part of the person-centered planning process or uses EVV data to determine whether services are delivered according to the person-centered plan, the state may reference its EVV solution in Appendix D of the waiver application.

This application job aid expands upon guidance provided in the Technical Guide, and highlights additional promising practices identified by review of 56 states' and territories' submissions of attestations of compliance with the Cures Act, to assist states with appropriately documenting EVV in Appendix I of their 1915(c) HCBS waivers.

Documenting EVV in Appendix I-1 or Appendix I-2d of the 1915(c) Waiver

EVV is primarily employed as a pre-payment or post-payment validation system, as data collected by the EVV system can be matched against information submitted with a claim for a service to determine whether the state Medicaid agency or managed care plan (MCP) should pay (or should have paid, in a post-payment review) that claim. This is consistent with the expectation of the Cures Act that data is used to control fraud, waste, and abuse in the state, as EVV is a critical component of states' fiscal integrity processes and oversight.

The Technical Guide and 1915(c) HCBS waiver application differentiate between pre-payment reviews in Appendix I-2d (Billing Validation Process) and post-payment reviews in Appendix I-1 (Financial Integrity and Accountability). Each section covers integrity of payments either before or after payment of the actual claim. Therefore, states may include information relevant to EVV in either of these sections depending on how the state leverages its EVV solution in fiscal integrity. For example, if a state chooses to review and compare EVV data to providers' claims or encounters *prior* to remitting payment, the state should describe its EVV solution in Appendix I-2d. If point-of-service EVV data is used to verify whether services were rendered after the provider has received payment from the state or MCP, then the state should update Appendix I-1 with relevant EVV information. States should describe their EVV solutions in one of these sections. Instructions from the Technical Guide for completing Appendix I-2d include the following language, which specifically references visit verification systems:

> *Billing validation may entail using the [Medicaid Management Information System] MMIS to validate claims (e.g., verifying that the individual for whom the billing was made was eligible for Medicaid on the date of service) and/or additional pre-payment audit activities conducted by other entities (e.g., verifying that the service billed was included in the participant's service plan). States have many pre-payment billing validation options, including:*
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> - *Predictive modeling;*
> - *Pre-payment reviews;*
> - ***Visit verification systems;***[5]
> - *Third party liability processes; and*
> - *Case management systems that interface eligibility, service plan and claims data.*

[4] Language relating to financial accountability and appropriate financial records is included in 42 C.F.R. §441.302(b).
[5] Emphasis on "visit verification systems" added by CMS for the purposes of this job aid.

Some billing validation processes may be conducted post-payment (e.g., surveillance and utilization review), including verification that the service billed was actually rendered. When a validation process that is conducted post-payment reveals a problem with a billing, the state must remove the problem billing from its claim for [Federal Financial Participation] FFP and recoup the inappropriate payment. For post-payment activities, the state may reference its response to Appendix I-1 of the waiver application.[6]

Whether a state uses EVV data prior to payment of claims or after payment, the criteria to include in either relevant section of Appendix I (i.e., Appendix I-1 or Appendix I-2d) is similar and may include the following:

- **Services which must be electronically verified**: Per the Cures Act and implementing CMS guidance, most PCS that assist with activities of daily living (ADLs), alone or in combination with Instrumental ADLs (IADLs) and which are offered in the home, must be verified electronically. Beginning January 1, 2023, HHCS delivered in the home under various authorities including 1915(c) HCBS waiver authority must also be verified electronically.[7] The state should clarify which specific waiver services (including any services beyond those statutorily subject to EVV by the Cures Act) meet this categorization or are otherwise required by the state to be electronically verified.
- **Methods for verification**: EVV solutions may verify service delivery through a number of methods including but not limited to telephonic verification, verification through a fixed or mobile device in the home, verification through a GPS-enabled mobile application, or a combination of these. The state should describe how its solution captures the data elements required by the Cures Act, along with other information required by the state to be collected.
- **Edits and exceptions from electronic visit verification**: Circumstances may arise such that services cannot be verified electronically. For example, an attendant in a rural area may have difficulty connecting to a mobile application, or an attendant may simply forget to electronically "check out" of the service. In such situations, the attendant or their provider agency may need to manually submit service information in order to populate a claim. A state that allows manual edits or exceptions should publish a written policy for providers on those exceptions. If a state allows exceptions, it should detail the policy in these sections and how it maintains oversight of claims paid for services not electronically verified.

To meet Technical Guide directions of comprehensively describing a state's pre-payment validation systems (including meeting the three essential tests of ensuring that (a) the individual was eligible for the Medicaid waiver payment on the date of service; (b) the service billed was included in the participant's approved service plan; and, (c) the services were provided) and post-payment review processes (including methods, scope, and frequency of reviews), states may need to further describe their EVV solutions based on their unique experience.

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[6] Centers for Medicare & Medicaid Services, *Application for a 1915(c) Home and Community Based Waiver: Instructions, Technical Guide and Review Criteria, Version 3.6* (January 2019), p. 271. Available online: https://wms-mmdl.cms.gov/WMS/help/35/Instructions_TechnicalGuide_V3.6.pdf

[7] This date may be delayed until January 1, 2024, upon CMS approval of a state's "good faith effort" to implement EVV for HHCS, as described in the Cures Act.

Documenting EVV in Other Sections of the 1915(c) Waiver

While Appendices I-1 and I-2d may be most relevant for the majority of states, each state's strategy for how to most appropriately incorporate EVV into its quality monitoring and oversight processes is unique. States have documented language relating to EVV in three other sections within Appendix I: Appendix I-2a, Appendix I-2b, and Appendix I-3b.

Appendix I-2a

If a state's implementation of EVV has impacted rates for services subject to electronic visit verification, then a state should complete Appendix I-2a, as appropriate. For example, a state may include an add-on to certain service rates for purposes of reimbursing provider costs for implementing and operating an EVV solution. States with these types of reimbursement approaches should describe in Appendix I-2a how the state calculated the relevant add-on and applied it to the rates for defined services.

Appendix I-2b or I-3b

If a state incorporates EVV within its billing process (rather than billing oversight as described in Appendix I-1 or Appendix I-2d), then a state should complete Appendix I-2b or I-3b, as appropriate. In Appendix I-2b, states must describe the flow of billings for waiver services, specifying whether provider billings flow directly from providers to the state's claims payment system or whether billings are routed through other intermediary entities. If a state's EVV system impacts the flow of billings from providers to the state or vice versa, then it would be appropriate for the state to describe the impact of EVV in this section. If this section is not relevant to the state's use of EVV, then the state should consider moving any language currently included in Appendix I-2b related to EVV into a more suitable section in the waiver application. Similarly, in Appendix I-3b, states must describe the mechanisms employed to make payments to waiver providers; if a state's EVV system impacts the payment to providers from the state for delivered services, then it would be appropriate for the state to describe the impact of EVV in this section.

States may consider consulting with CMS during the waiver renewal or amendment process to determine what information relevant to their EVV solution to include in Appendix I, and where in the Appendix to include that information.

Documenting EVV in Programs under Other Authorities

States may deliver PCS and HHCS under additional authorities in the Act. As the structure of program applications for other authorities differs from the waiver applications for 1915(c) HCBS programs, states will follow different guidance for documenting the use of EVV in fiscal integrity processes for programs under those other authorities as outlined below.

- **1905(a)(24) and 1905(a)(7) State Plan Services**: States may deliver PCS under section 1905(a)(24) of the Act and HHCS under section 1905(a)(7) of the Act. States that are compliant with EVV requirements for state plan PCS or HHCS under section 1905(a) of the Act are expected to include the following language on the applicable State Plan Amendment (SPA) page: "The state/territory complies with the Electronic Visit Verification System (EVV) requirements for [personal care services (PCS) or home health care services (HHCS)]." Please note that states

are not required to submit an amendment specifically to make this change. CMS will work with states during the SPA review process to determine the appropriate placement of the language.

- **1915(i) State Plan Home and Community-Based Services**: States that are compliant with EVV requirements for PCS or HHCS under section 1915(i) of the Act are expected to include the following language in the 1915(i) SPA template: "The state/territory complies with the Electronic Visit Verification System (EVV) requirements for [title of 1915(i) service]." Specifically, the language should be added to the service definition of each service that requires the use of EVV. Please note that states are not required to submit an amendment specifically to make this change.
- **1915(j) Self-Directed Personal Assistance Services Under State Plan**: States that are compliant with EVV requirements for PCS under section 1915(j) of the Act are expected to include the following language on the applicable SPA page: "The state/territory complies with the Electronic Visit Verification System (EVV) requirements for personal care services (PCS)." Please note that states are not required to submit an amendment specifically to make this change. CMS will work with states during the SPA review process to determine the appropriate placement of the language.
- **1915(k) Community First Choice (CFC)**: States that are compliant with EVV requirements for PCS under section 1915(k) of the Act are expected to include the following language on the applicable SPA page: "The state/territory complies with the Electronic Visit Verification System (EVV) requirements for CFC." Please note that states are not required to submit an amendment specifically to make this change. CMS will work with states during the SPA review process to determine the appropriate placement of the language.
- **1115 Demonstration**: CMS expects states to similarly implement EVV solutions, in accordance with Section 12006 of the Cures Act, for HCBS waiver programs authorized under section 1115 demonstrations. CMS encourages states to document their EVV efforts in applications for section 1115 demonstrations that include authorities for HCBS, but states are not required to comply with this provision in order to meet the federal transparency requirements at 42 C.F.R. §431.412 for a complete section 1115 demonstration submission. CMS will work with states during the review of their section 1115 demonstration applications to ensure compliance with all applicable HCBS requirements, including Section 12006 of the Cures Act.

Summary

As states incorporate EVV into their fiscal integrity processes for programs that include services subject to EVV, states are to document compliance with EVV requirements in their 1915(c) HCBS waiver applications, Medicaid state plans, and 1115 demonstrations. Specific to 1915(c) HCBS waivers, the following table outlines which appendices of the 1915(c) waiver application are most appropriate to capture states' operation of an EVV solution, based on the state's employment of EVV in various claims management or fiscal integrity processes.

1915(c) Waiver Appendix	When to Update Appendix	Minimum Criteria to Include in Update
Appendix I-1	• If the EVV solution impacts post-payment validation of service delivery.	• Services which must be electronically verified. • Methods for verification. • Edits and exceptions from electronic visit verification.
Appendix I-2a	• If a state's implementation of EVV has impacted rates for services subject to electronic visit verification.	• Description of how EVV impacts rate methodologies for affected services.
Appendix I-2b	• If a state's EVV system impacts the flow of billings from providers to the state.	• Description of how EVV impacts the flow of billings for affected services.
Appendix I-2d	• If the EVV solution impacts pre-payment validation of service delivery.	• Services which must be electronically verified. • Methods for verification. • Edits and exceptions from electronic visit verification.
Appendix I-3b	• If a state's EVV system impacts the payment to providers from the state.	• Description of how EVV impacts the direct payment of claims for affected services.