

Clearance for Medicaid and CHIP State Plan, Waiver, and Program Submissions  
(CMS-10398, OMB 0938-1148)

**Generic Information Collection # 54**  
**Electronic Visit Verification (EVV) Good Faith Effort Exemption Requests**

Center for Medicaid and CHIP Services (CMCS)  
Centers for Medicare & Medicaid Services (CMS)

## A. Background

The Centers for Medicare & Medicaid Services (CMS) work in partnership with States to implement Medicaid and the Children’s Health Insurance Program (CHIP). Together these programs provide health coverage to millions of Americans. Medicaid and CHIP are based in Federal statute, associated regulations and policy guidance, and the approved State plan documents that serve as a contract between CMS and States about how Medicaid and CHIP will be operated in that State. CMS works collaboratively with States in the ongoing management of programs and policies, and CMS continues to develop implementing guidance and templates for States to use to elect new options available as a result of the Affordable Care Act or to comply with new statutory provisions. CMS also continues to work with States through other methods to further the goals of health reform, including program waivers and demonstrations, and other technical assistance initiatives.

Section 12006(a) of the 21<sup>st</sup> Century Cures Act, signed into law on December 13, 2016, added section 1903(l) to the Social Security Act<sup>1</sup>, which mandates that states require electronic visit verification (EVV) use for Medicaid-funded personal care services and home health care services for in-home visits by a provider. Initially, states were required to implement EVV for PCS by January 1, 2019 and for HHCS by January 1, 2023. However, legislation was signed on July 30, 2018 to delay implementation timelines. States are now required to implement EVV for PCS by January 1, 2020 and HHCS by January 1, 2024. Otherwise, the state will be subject to incremental reductions in Federal Medical Assistance Percentage (FMAP) matching of PCS and HHCS expenditures quarterly over the first five years of the requirement that will eventually reach 1 percent. The 1 percent FMAP reductions will advance forward every quarter until compliance is achieved. This applies to PCS provided under sections 1905(a)(24), 1915(c), 1915(i), 1915(j), 1915(k), and Section 1115 of the Act; and HHCS provided under 1905(a)(7) of the Act or under a demonstration project or waiver (e.g., 1915(c) or 1115 of the Act).

According to the legislation, states that have not implemented EVV for PCS by January 1, 2020 will be subject to FMAP reductions unless they have both made a “good faith effort” to comply and have encountered “unavoidable system delays.” States with good faith effort exemptions will not be subject to FMAP reductions in 2020, however will be subject to incremental FMAP reductions beginning with 0.5 percentage points for calendar quarters in 2021 if they have not implemented an EVV system by January 1, 2021. The provision on good faith effort exemptions does not provide CMS with authority to delay the FMAP reductions for more than one year. Similarly, states that have not implemented EVV for HHCS by January 1, 2023 will be subject to FMAP reductions unless they have both made a “good faith effort” to comply and have encountered “unavoidable system delays.” States with good faith effort exemptions for HHCS will not be subject to FMAP reductions for these services until January 1, 2024.

This collection entails templates that states will be required to complete and submit via email in order to request a good faith effort exemption from electronic visit verification (EVV) requirements specified at section 1903(l) of the Social Security Act. The templates establish the minimum criteria necessary for states to demonstrate they have made a good faith effort to

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<sup>1</sup> [Full text of Section 1903 of the Social Security Act](#)

comply with EVV requirements and have encountered unavoidable system delays in implementing EVV for personal care services (PCS) and home health care services (HHCS) offered in their state plans or applicable waiver programs.

CMS is responsible for determining whether states satisfy the good faith effort provision and are therefore exempt from FMAP reductions in 2020. These templates will serve as the method states will use to apply for a good faith effort exemption should they wish to do so and will allow CMS to make its determinations based on standardized criteria. They will help ensure a streamlined and efficient process for requesting good faith effort exemptions in that it will make clear to states the information that needs to be submitted in order for CMS to make a fair and reasonable determination, thereby reducing the need for follow-up questions with states.

## **B. Description of Information Collection**

The sample will be 100% of the potential respondent universe. The Good Faith Effort Request template will be available to all 51 state Medicaid agencies (50 states and the District of Columbia) and the Medicaid agencies of five US territories. A sampling method will not be used. CMS is requesting that Medicaid Agencies requesting good faith effort exemptions complete one template for their state specific to PCS from July 1, 2019 – November 30, 2019 and one template specific to HHCS from July 1, 2022 – November 30, 2022. States will be required to complete the template in order for CMS to determine whether they have made a good faith effort to comply with the requirements at Section 1903(l) of the Social Security Act. CMS anticipates a response rate of 75%.

The information will be reviewed by the Disabled and Elderly Health Programs Group, and Financial Management Group within the Centers for Medicaid and CHIP Services to determine whether states satisfy the criteria for a good faith effort exemption and whether FMAP reductions will take place starting in 2020 for PCS and 2023 for HHCS. The information will be submitted by states to the [EVV@cms.hhs.gov](mailto:EVV@cms.hhs.gov) email address and stored in an internal SharePoint database. All information will be collected using a Word template that is available for completion electronically. The template includes specific instructions and each item in the template includes prompts to add text or choose prepopulated options from dropdown menus to complete. The template can either be signed using a digital signature or printed and signed manually prior to submitting to CMS via email.

Two data collection periods are necessary in order to align with the timelines specified in Section 1903(l) of the Act for both PCS and HHCS. The first data collection period will take place from July 1, 2019 – November 30, 2019 to give states an opportunity to request a good faith effort exemption prior to the January 1, 2019 effective date of FMAP reductions for PCS. The second data collection period will take place from July 1, 2022 – November 30, 2022 to give states an opportunity to request a good faith effort exemption prior to the January 1, 2023 effective date of FMAP reductions for HHCS. Otherwise, CMS will not be able to determine whether states satisfy the criteria for a good faith effort exemption and are therefore eligible for a delay in FMAP reductions in advance of the effective dates of the FMAP reductions. As a result CMS could be deemed out of compliance with its statutory mandate to administer Section 1903(l) of the Act and states may be unfairly targeted for FMAP reductions.

The template will be disseminated to an up-to-date listserv of state Medicaid agency contacts. The template will be publicized via a monthly webinar series, as necessary, linked to on Medicaid.gov, and disseminated via weekly Medicaid email blasts until completed. CMS will follow-up with state associations (e.g., National Association of Medicaid Directors, National Association of States United for Aging and Disabilities, etc.). States will be required to use the template if they wish to request a good faith effort exemption from FMAP reductions.

**C. Deviations from Generic Request**

No deviations are requested.

**D. Burden Hour Deduction**

The total approved burden ceiling of the generic ICR is 154,104 hours, and CMS previously requested to use 58,344 hours, leaving our burden ceiling at 95,760 hours.

*Wage Estimates*

To derive average costs, we are using data from the U.S. Bureau of Labor Statistics’ May 2017 National Occupational Employment and Wage Estimates for all salary estimates ([http://www.bls.gov/oes/current/oes\\_nat.htm](http://www.bls.gov/oes/current/oes_nat.htm)). In this regard, the following table presents the mean hourly wage, the cost of fringe benefits (calculated at 100 percent of salary), and the adjusted hourly wage.

<b>Occupation Title</b>	<b>Occupation Code</b>	<b>Mean Hourly Wage</b>	<b>Fringe Benefit</b>	<b>Adjusted Hourly Wage</b>
Social and Community Service Managers	11-9151	\$33.91/hr	\$33.91/hr	\$67.82/hr

As indicated, we are adjusting our employee hourly wage estimates by a factor of 100 percent. This is necessarily a rough adjustment, both because fringe benefits and overhead costs vary significantly from employer to employer, and because methods of estimating these costs vary widely from study to study. Nonetheless, we believe that doubling the hourly wage to estimate total cost is a reasonably accurate estimation method.

*Burden (Time and Cost) Estimates*

The template will be available to all state Medicaid agencies. An estimated 11 states have implemented EVV for PCS and therefore would not need to request a good faith effort exemption for these services. We therefore anticipate a maximum of 45 possible respondents (39 states, DC, and five territories) will request a good faith effort exemption for PCS in 2019. If the state wishes to request a good faith effort exemption, the state Medicaid agency will be required to complete and submit the template and respond to follow-up questions. We estimate that it will take on average 8 hours for a social/community service manager to complete the

template and respond to any follow-up questions at \$67.82/hr. We estimate a respondent burden of 360 hours (45 respondents x 8 hr) at a cost of \$24,415 (360 hr x \$67.82/hr).

An estimated two states have implemented EVV for HHCS and therefore would not need to request a good faith effort exemption for these services. We therefore anticipate a maximum of 54 possible respondents (48 states, DC, and five territories) will request a good faith effort exemption for HHCS in 2022. If the state wishes to request a good faith effort exemption, the state Medicaid agency will be required to complete and submit the template and respond to follow-up questions. We estimate that it will take on average 8 hours for a social and community service manager to complete the template and respond to any follow-up questions at \$67.82 per hour. We estimate a respondent burden of 432 hours (54 respondents x 8 hr) at a cost of \$29,298 (432 hr x \$67.82/hr).

In sum, we estimate a total state burden of 792 hours at a cost of \$53,713. Please see the burden summary below:

<b>Requirement</b>	<b>Respondents</b>	<b>Responses</b>	<b>Burden per Response</b>	<b>Total Annual Burden (hours)</b>	<b>Labor Cost (\$/hr)</b>	<b>Total Cost (\$)</b>
Good Faith Effort Requests for PCS in 2019	45	45	8 hr	360	67.82	24,415
Good Faith Effort Requests for HHCS in 2022	54	54	8 hr	432	67.82	29,298
<b>TOTAL</b>	<b>54</b>	<b>99</b>	<b>8 hr</b>	<b>792</b>	<b>67.82</b>	<b>53,713</b>

*Information Collection Instruments and Instruction/Guidance Documents*

- EVV Good Faith Effort Request template for PCS
- EVV Good Faith Effort Request template for HHCS

**E. Timeline**

CMS does not have plans to release any public reports at this time, however plans to post approved good faith effort requests on Medicaid.gov beginning in July 2019 and present on aggregate state data at the NASUAD HCBS Conference held in August/September each year, starting in 2019. This will entail basic descriptive statistics of the number/percentage of states with approved good faith effort requests and their reasons for requesting the good faith effort exemption.