

Electronic Visit Verification Compliance Survey
CMS-10680, OMB 0938-New

Response to Public Comments

The Centers for Medicare and Medicaid Services (CMS) received three comments in response to the public comment request for the Electronic Visit Verification (EVV) Compliance Survey posted to the Federal Register on October 5, 2018. Two comments were from individuals expressing concerns with EVV statutory requirements. The third comment was from an advocacy group called the Consortium for Citizens with Disabilities and it suggested that the EVV Compliance Survey be amended to include specific questions linking back to statutory requirements to ensure that EVV systems are minimally burdensome, protect privacy, and do not inhibit community integration. Additional details and CMS' responses to each of these comments are outlined below:

Comment 1: This individual expressed opposition to EVV citing invasion of privacy and unfair burden on individuals with disabilities.

CMS Response: EVV requirements were included in the 21st Century Cures Act, and any changes to these requirements would require an act of Congress. While CMS acknowledges your concerns, CMS is responsible for implementing the laws passed by Congress. CMS appreciates this feedback and participation during the comment period.

Action(s) Taken: CMS has and will continue to provide guidance to states on EVV implementation. Please visit the [CMS EVV website](#) for guidance issued to date.

Comment 2: This individual expressed concerns with EVV implementation at the present time due to privacy issues, lack of connectivity in rural areas, and waiting lists or cuts for home and community-based services, and specifically asked 1) why states should be penalized, 2) whether State Medicaid Directors will self-report EVV implementation progress, 3) how stakeholders will be able to notify CMS of challenges or successes regarding EVV implementation in real time, and 4) how states will recoup funds for technology misuse and billing glitches.

CMS Response: EVV requirements, including implementation timelines, were included in the 21st Century Cures Act, and any changes to these requirements would require an act of Congress. Please note that the 21st Century Cures Act requires that states' EVV systems must be conducted in accordance with the requirements of HIPAA privacy and security law. In response to the first question above, Federal Medical Assistance Percentage (FMAP) penalties are required by the 21st Century Cures Act and are beyond the scope of CMS to amend. In response to the second question, states will self-report their EVV implementation progress as part of the initial survey process to determine their compliance with the 21st Century Cures Act. With regards to the third question, stakeholders are encouraged to submit feedback to the EVV mailbox at EVV@cms.hhs.gov. Finally, in response to the fourth question, states will have their own processes to address misuse of funds and/or billing issues. CMS does not mandate a specific process.

Action(s) Taken: CMS has and will continue to provide guidance to states on EVV implementation. Please visit the [CMS EVV website](#) for guidance issued to date.

Comment 3: The Consortium for Citizens with Disabilities Long-Term Services and Supports Task Force expressed concerns that the EVV Compliance Survey does not sufficiently address certain provisions of the 21st Century Cures Act, specifically whether states have ensured that their EVV systems are minimally burdensome, protect privacy, do not inhibit community integration, and take into account a stakeholder engagement process. The Task Force suggested that the EVV Compliance Survey be updated to include questions that address these aspects of EVV implementation.

CMS Response: CMS agrees with the Task Force's recommendation to update the survey to include specific questions that address 21st Century Cures Act provisions associated with the above aspects of EVV implementation.

Action(s) Taken: CMS updated the EVV Compliance Survey with the following questions:

1. “Pursuant to Section 12006(a)(2)(A)(i), of the 21st Century Cures Act, please describe how the state has ensured that its EVV system is minimally burdensome.” Please note that per Section 12006(a)(3) of the Act, Section 12006(a)(2)(A) does not apply to states that had an EVV system in place prior to enactment of the 21st Century Cures Act and they therefore will not be required to answer this question. These states will however have the option to provide this information if they wish to do so.
2. “Pursuant to Section 12006(a)(2)(B) of the 21st Century Cures Act, please describe how your state took into account a stakeholder process that included input from beneficiaries, family caregivers, individuals who furnish personal care services or home health care services, and other stakeholders when designing its EVV system.” Please note that per Section 12006(a)(3) of the Act, Section 12006(a)(2)(B) does not apply to states that had an EVV system in place prior to enactment of the 21st Century Cures Act and they therefore will not be required to answer this question. These states will however have the option to provide this information if they wish to do so.
3. “Pursuant to Section 12006(c)(3) of the 21st Century Cures Act, please describe how your state has ensured that its EVV system does not: 1) Limit personal care services or home health care services provider selection; 2) Constrain beneficiaries’ selection of a caregiver, or 3) Impede the manner in which care is delivered.”
4. “Pursuant to Section 12006(a)(2)(A)(iii) of the 21st Century Cures Act, please describe how the state has ensured that the EVV system is conducted in accordance with the requirements of HIPAA privacy and security law (as defined in section 3009 of the Public Health Service Act).” Please note that per Section 12006(a)(3) of the Act, Section 12006(a)(2)(A) does not apply to states that had an EVV system in place prior to enactment of the 21st Century Cures Act and they therefore will not be required to answer this question. These states will however have the option to provide this information if they wish to do so.