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Fast-Track Regulation
Agency Background Document

Agency name	Department of Medical Assistance Services
Virginia Administrative Code (VAC) Chapter citation(s)	12VAC30-60-65
VAC Chapter title(s)	Electronic visit verification
Action title	Electronic Visit Verification (EVV) for Home Health Services
Date this document prepared	January 17, 2024

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), 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.

DMAS is adding language to the Virginia Administrative Code to implement electronic visit verification (EVV) for home health care services across all the waivers and State Plan covered services, in accordance with the *Cures Act.*

Section 12006(a) of the *Cures Act*, signed into law on December 13, 2016, added section 1903(l) to the Social Security Act, which mandated that states require EVV use for Medicaid-funded personal care and home health care services for in-home visits by a provider. States were required to implement EVV for personal care services by January 1, 2020, and for home health care services by January 1, 2023. States that do not comply are subject to incremental reductions in Federal Medical Assistance Percentage (FMAP) matching of personal care and home health care expenditures.

Virginia implemented EVV for personal care services on September 1, 2020 (see 12VAC30-60-65), so that is not reflected in this regulatory action. For home health care services, Virginia applied for and received a one-year Good Faith Effort exemption from the Centers for Medicare & Medicaid Services (CMS) to delay implementation of the home health care services until January 1, 2024. However, Virginia implemented EVV for home health care services on July 1, 2023.

DMAS submitted a state plan amendment (SPA) to the Centers for Medicare & Medicaid Services (CMS) that included EVV for home health care services. The SPA was approved on October 26, 2023, and this regulatory action incorporates the changes in the Virginia Administrative Code.

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 = Centers for Medicare & Medicaid Services
DMAS = Department of Medical Assistance Services
EVV = Electronic Visit Verification
VAC = Virginia Administrative Code

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.

On January 15, 2024, DMAS adopted final amendments to the regulatory action entitled, "Electronic Visit Verification (EVV) for Home Health Services."

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM procedures, "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

Consistent with Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process.

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.

The *Cures Act*, which was signed into law on December 13, 2016, and added § 1903(l) to the *Social Security Act* (SSA), mandated that states require the use of EVV for home health services by January 1, 2023. Virginia applied for and received a one-year Good Faith Effort exemption from the CMS and implemented EVV for home health care services on July 1, 2023.

These regulatory changes are expected to be non-controversial because EVV helps improve program effectiveness relating to quality control and billing services. More specifically, EVV:

- Reduces potential fraud, waste, and abuse by validating that billed services comport with the individual's plan of care and EVV data. Such validation ensures appropriate payment based on actual service delivery.

- Enables greater opportunities for enhanced care coordination, data sharing, and improved payment accuracy and reduction of billing errors.

- Improves 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.

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.

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.

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 is intended to solve.

The purpose of this action is to implement section 1903(l) of the Social Security *Act*, which mandated that states require the use of an EVV system for home health care services across all waivers and State Plan covered services.

This action is essential to protect the health, safety, and welfare of citizens in that it aims to enhance quality control of services provided to Medicaid individuals. More specifically, this action aims to reduce potential fraud, waste, and abuse by validating that billed services comport with the individual's Plan of Care and EVV data. Such validation ensures appropriate payment based on

actual service delivery. EVV systems will enable greater opportunities for enhanced care coordination, data sharing, and improved payment accuracy and reduction of billing errors. The action also improves 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.

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.

Section 12006(a) of the *Cures Act*, signed into law on December 13, 2016, added section 1903(l) to the Social Security Act, which mandated that states require EVV use for Medicaid-funded personal care and home health care services for in-home visits by a provider. States were required to implement EVV for personal care services by January 1, 2020, and for home health care services by January 1, 2023. States that do not comply are subject to incremental reductions in Federal Medical Assistance Percentage (FMAP) matching of personal care and home health care expenditures.

Virginia implemented EVV for personal care services on September 1, 2020 (see 12VAC30-60-65), so that is not reflected in this regulatory action. For home health care services, Virginia applied for and received a one-year Good Faith Effort exemption from the Centers for Medicare & Medicaid Services (CMS) to delay implementation of the home health care services until January 1, 2024. However, Virginia implemented EVV for home health care services on July 1, 2023.

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.

DMAS integrated the following data elements into its EVV system processing and are therefore required to meet EVV compliance: (1) type of service(s) performed; (2) the individual receiving the service(s); (3) date of the service; (4) location of the service delivery (can either be in an individual's home or in a community setting); (5) the worker providing the service; and, (6) the time the service begins and ends.

Virginia is a Provider Choice State, meaning providers may choose an EVV system that best meets their needs as long as it meets DMAS requirements. Providers are responsible for having a system that captures the EVV elements in an electronic record when the visit occurs and maintaining that data in an electronic format for auditing purposes. Because EVV is intended to be an electronic process, manual entries and manual adjustments are expected to decrease over time.

The primary objectives of EVV are cost-savings, fraud reduction, more efficient provider electronic billing, and greater transparency of actual service delivery. EVV also improves program efficiencies by allowing for the validation that billed services align with the individual's Plan of Care and EVV data.

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.

The primary advantages of these changes are that EVV serves to reduce potential fraud, waste, and abuse by means of validating that billed services comport with the individual's home health Plan of Care and EVV data, providers experience faster claims processing with fewer denied claims and reduced numbers of post-payment review audit recoveries, and the home health care services that Medicaid individuals receive comport with their identified needs in their plans of care with few, if any, disruptions. The primary advantage to the public, agency, and the Commonwealth is avoiding the reduction of Federal matching funds for failure to comply with the home health services requirements.

These changes create no disadvantages to the public, the Agency, the Commonwealth, or the regulated community.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There are no requirements in this regulation that are more restrictive than applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

No state agencies, localities, or other entities are particularly affected by this change.

Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.

Impact on State Agencies

For your agency: projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources	None. The EVV computerized aggregator system, which DMAS implemented to monitor providers using multiple EVV systems, required approximately $3.1 million in federal funds. DMAS obtained this funding via a CMS-approved advance planning document. These funds have been expended and no additional funding is required.
For other state agencies: projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	None
For all agencies: Benefits the regulatory change is designed to produce.	This regulatory action will add references to home health requirements in the EVV section of the Virginia Administrative Code (VAC).

Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

Projected costs, savings, fees or revenues resulting from the regulatory change.	None
Benefits the regulatory change is designed to produce.	This regulatory action will add references to home health requirements in the EVV section of the Virginia Administrative Code (VAC).

Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	None
Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million.	None
All projected costs for affected individuals, businesses, or other entities resulting from the	None

regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	
Benefits the regulatory change is designed to produce.	This regulatory action will add references to home health requirements in the EVV section of the Virginia Administrative Code (VAC).

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

No alternatives would achieve the *Cures Act* home health services EVV mandate.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B of the Code of Virginia, describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

This regulatory action is not expected to affect small businesses.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

Consistent with § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

DMAS is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: https://townhall.virginia.gov. Comments may also be submitted by mail, email or fax to Jimeequa Williams, DMAS, 600 E. Broad Street, Richmond, VA 23219, 804-225-3508, Jimeequa.Williams@dmas.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. 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. Use all tables that apply, but delete inapplicable tables.

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
12 VAC 30-60-65		Does not include EVV requirements with respect to home health services.	Text changes made to conform the VAC to the requirements of federal law regarding EVV, with respect to home health services.