

Electronic Visit Verification systems for Personal Care Program Accountability

Medicaid budgets are severely strained and program integrity is on the front-burner for public officials. Alaska, along with many other states, is currently working on Medicaid Reform efforts to ensure that the State Medicaid Program addresses the right services, in the right place, for the right price.

Home and Community Based Personal Care Assistant Services (“PCA”) is a vital service that provides hands-on assistance to seniors and individuals who experience disabilities throughout the state of Alaska. PCA and related services keep the consumers of care from moving into more expensive facility-based care.

Program integrity of Personal Care Services has been on the forefront of the agenda for the Alaska PCA Providers Association for over 10 years. The Alaska PCA Providers are now supporting that the provider agencies and the State cooperate in adopting technology used by several other state Medicaid programs to address cost and integrity in their PCA programs; namely use of Electronic Visit Verification (EVV) systems.

When PCA care in the home is documented manually, it is easier for a fraudulent employee (or consumer) to report to the Provider Employer care that was never delivered. It’s easier for a fraudulent employee to get the consumer to sign a timesheet that is not truthful, as the consumer is likely to be frail or ill. It’s also easier for PCA employees to make mistakes on the timesheets they submit for billing. To thwart deliberate fraud and to improve accountability, PCA Provider agencies (or a state) can choose among many available Electronic Visit Verification systems (EVV), systems that are extremely difficult to fool.

EVV systems electronically verify the time and location of the PCA worker claiming to have provided home care services. EVV systems can be as simple as “telephony” in which a direct service worker calls in from the consumer’s verified land-line phone, to as complex as GPS verification of the location of the worker’s cellular phone being used for worker and client sign-in. EVV systems all aim to facilitate electronic documentation needed to record those services and capture a consumer’s verification.

Several states have mandated the use of EVV systems for documentation of delivery of Home and Community based PCA type services. There are two ways in which these mandates have been addressed by states:

1. **State Medicaid Program mandated single vendor EVV system:** The state Medicaid program contracts with a single EVV vendor and mandates that all Provider Agencies use that vendor. Many in the industry believe that this approach is wasteful and may greatly increase cost and risk to the state Medicaid program.
2. **Standards-Based EVV Mandate:** The state Medicaid program develops technical and functional standards and timelines by which Providers must meet those standards. This approach allows provider agencies to choose the EVV system which best meets their needs. Many times, provider agencies use integrated software programs that perform client/employee scheduling, service tracking, billing, and EVV. Having the state set the

standards, provides assurances that any system selected will feature strong technical controls that guarantee visit verification, thereby minimizing fraud, abuse, and errors. More importantly, it relieves the state from having to incur the upfront costs and risks associated with selecting a single source EVV system and forcing all providers to use it, including providers that already have an EVV system in place.

Benefits for state Medicaid programs: Medicaid personal care services are becoming increasingly more important as the need for them continues to grow. However, there is also growing concern that there may be unacceptable levels of improper payments in this area. Proponents of EVV systems state that these systems will help address these concerns by requiring providers to adopt an EVV system to verify the date, time and site of the visit as well as the individual worker providing the services. Many states already mandate EVV systems and they have seen a decrease in improper payments and significant cost-savings for the states. Supporters believe that this makes these home-care programs more sustainable, accountable, and transparent.

Drawbacks for state Medicaid programs, especially if state chooses a state-mandated and controlled central EVV system: State Medicaid personal care services are often very tightly regulated and controlled by the state Medicaid programs. There are some cautions from the U.S. Department of Labor that state-controlled EVV systems may put the state at a high risk of being deemed a third-party employer.¹ (Some states have been told they are now accountable for any overtime or travel time between clients when a PCA service worker works for more than one PCA provider employer agency.)

There is also concern that the state may have difficulty recruiting or retaining PCA provider agencies in geographic areas that are harder to serve, which could happen in rural Alaska. State-controlled EVV systems will also likely create unnecessary duplication of work, unless the state creates an EVV system so sophisticated that every PCA Provider Agency employer can have real-time access to the worker-input data on the EVV system; for monitoring of their PCA workers and for access to bundles of data that the Provider Agency can use for payroll and billing.

Benefits for Provider Agencies /Consumers: Provider Agencies report that EVV systems assist them in protecting against allegations of fraud and abuse and inappropriately billed services. Consumers are less likely to be fooled by a PCA worker who tries to pad the timesheet. Provider-chosen EVV systems often are already integrated, or can be integrated into back-office scheduling, billing and payroll software, which can significantly improve provider agencies' ability to manage service delivery. Integrated EVV solutions could save staff time and errors from manual entry of time cards, enhance compliance and assist in State audits, and improve service delivery to consumers. Many EVV systems include alerts to advise agencies if workers fail to report timely to duty for high-risk consumers.

Drawbacks for Provider Agencies/Consumer: EVV systems can be costly and complicated to integrate into an agency's current business practices. Staff and direct service workers may have a significant learning curve to overcome to meet compliance in use of the EVV. Agencies would need to develop significant policies and procedures to address compliance and exceptions. Required EVV use may be problematic in areas with limited phone services or other technological limitations.

2016 Proposal by the Alaska PCA Providers' Association Supporting State-mandated use of EVV Systems in Personal Care Services.

The Alaska PCA Providers Association supports the State development of standards for and mandates to use EVV systems for the provision of Medicaid PCA Services in Alaska. We believe that it is best that the State not adopt one state-managed EVV system, but instead move quickly to develop a standards-based EVV mandate with free market solutions, a phased-in approach to implementation, and ample opportunities for Provider Agency input into the development of those standards and their implications for operations.

We would caution that, while EVV systems have potential for cost-savings, there is a cost to PCA Provider agencies in both start-up and continuous implementation of an EVV system. Our support for an EVV mandate is based on trust that the State will adequately address those costs, as other states have in their implementation plans (one state pays six cents extra per unit of service when the claim came from an EVV-using provider agency).

We also expect that special consideration be given to the small agencies/rural providers that may not have the resources to develop or purchase an EVV system to meet a mandate. Some options for the very small or rural provider agencies may include delayed implementation, higher enhanced reimbursement, limited exceptions and/or other options made available to those agencies. The Association has discussed an EVV mandate with Senior and Disabilities Services, and found the division to be receptive. At this time, the PCA Providers Association is seeking Legislative support and direction to DH&SS to move toward an EVV system in Medicaid PCA service delivery (and perhaps to other appropriate services).

For questions, please call or email one or more of the following:

Allison Lee, ResCare Alaska, Chair, Alaska PCA Providers Association
allisonlee@rescare.com 907-978-2556

Connie Sipe, Center for Community, Co-Chair, Alaska PCA Providers Association
csipe@cfc.org 907-966-4232

Kevin Jardell, lobbyist employed by Alaska PCA Providers Association

Footnote (1): Regarding state governments becoming third-party joint employers of Personal Care workers:

U.S. Dept. of Labor Guidance: (year 2015)

The existence of an EVV system is one of many factors that may be relevant to whether a particular entity is an employer of a home care worker. As with all relevant factors, this fact alone is not determinative, but must be considered as part of the complete economic realities analysis, as to which there is no precise formula. (Please see our guidance regarding joint employment by public entities in consumer-directed programs, available at http://www.dol.gov/whd/homecare/joint_employment.htm, for more information about this test and joint employment generally.)

As with any other factor, whether an EVV system is a strong, moderate, or weak indicator of joint employer status depends upon the circumstances. If a state or other public entity runs an EVV system, is the recipient of the information collected, uses that information to track and pay for the work time of home care providers, and the consumer does not verify or approve provider time sheets, that would be a strong indicator of employer status of the state or public entity. If a state or other public entity runs an EVV system but uses the information collected solely as a quality control mechanism (e.g., to ensure that a consumer is receiving the amount of care accounted for in the consumer's plan of care, or to ensure that a consumer is not left unattended inappropriately), and the consumer still retains the ultimate responsibility for verifying or approving provider timesheets, that would be a moderate indicator of employer status of the state or public entity. If an EVV system is run by a fiscal intermediary or other private agency and a state or public entity **does not have access to the information collected**, or there is no EVV system in place at all, that would be a weak indicator of employer status of the state or public entity. Whether any fiscal intermediary or other private agency is a joint employer for purposes of the Fair Labor Standards Act (possibly along with the state or public entity as well as with a consumer) requires a separate analysis of the economic realities test as to that potential employer; for any entity, the facts regarding an EVV system would be one, non-determinative factor to consider when conducting the analysis. T