

December 31, 2021

Representative Diana DeGette
2111 Rayburn House Office Building
Washington, DC 20515

Representative Fred Upton
2183 Rayburn House Office Building
Washington, DC 20515

Dear Representatives DeGette and Upton:

On behalf of the National Association of Medicaid Directors, the National Association of State Directors of Developmental Disabilities Services, and ADvancing States, we are writing you in response to the legislative text of the 21st Century Cures 2.0 Act. Our associations collectively represent the government agencies responsible for administering the publicly funded health care and long-term services and supports (LTSS) for older adults and people with disabilities in every state and territory.

Specifically, I am writing to express our concerns about the proposed electronic visit verification (EVV) policy contained within the language. This proposed legislation includes a provision in Sec. 409 that, “prohibits the use of geographic tracking features and biometrics within EVV systems.” We discussed this provision with DeGette's office and confirmed that the bill intends to ban using global positioning services (GPS) functions within EVV systems. We strongly oppose this proposed modification and request that Congress instead rescind the EVV mandate entirely and leave the decision regarding implementation and system specifications to state agencies.

The legislative language would define EVV as a system where services are, “electronically verified (without the use of geographic tracking or biometrics).” As of December 2021, 40 states were in compliance with the original Cures Act’s mandate to implement EVV. We asked states for feedback and were unable to identify a system that did not utilize GPS (in at least some form) to meet the statutory requirement that the systems electronically verify the location of the Medicaid service. In fact, guidance from the Centers for Medicare and Medicaid Services (CMS) has denied alternative approaches to GPS because the approaches cannot electronically verify the data elements.¹

If GPS is banned, it would require states to significantly alter their existing systems at great cost in terms of staff time and contracting fees. The policy also does not alter the funding penalties for noncompliant systems, so any state utilizing GPS technology would need to disable their system and be subject to the statutory funding penalties. This would therefore result in further costs to states due to reduced Federal matching funds. The enactment of this policy with no time for transition is simply untenable.

Additionally, given the requirement to electronically verify the place of service, it is extremely hard to understand how a system would allow free movement around the community without GPS. ADvancing States received Federal guidance that voice verification could only be used to verify location if it is done from a fixed landline and/or in conjunction with a fixed-location device that can verify the location from which the provider is checking-in. We recognize that there are concerns with privacy related to GPS information, but we are extremely concerned that removing the ability to use GPS would ultimately limit

¹ <https://www.medicaid.gov/federal-policy-guidance/downloads/cib080819-2.pdf>

the ability of individuals to leave their homes and prevent free movement in the community. In sum, CMS' guidance dictates that, without GPS, the only option to verify location in an EVV system is by using fixed-location devices that require a participant and their provider to remain in the same location for check-in and check-out. Such an outcome is undesirable and contrary to the Supreme Court's landmark Olmstead decision.² It would also violate the requirements of 42 CFR 441.301(c)(4)(i) which mandate that services are, "integrated in and [support] full access of individuals receiving Medicaid HCBS to the greater community."

We are unclear about a logical path forward in a system that requires states to verify location but that removes the tool CMS has generally pushed states towards with their guidance and implementation approach. We also note that repealing GPS would significantly increase the costs of implementing EVV. The changes proposed would further increase overall costs to the state and federal governments. States using certain biometric features, such as fingerprint or voice verification, would need to disable and rebuild their existing systems. States using GPS would need to create brand new EVV systems with an alternative approach to verify location, although it is unclear which allowable approaches would not prevent access to the community.

The EVV provision was originally projected to reduce costs due to a reduction in spending on personal care and home healthcare services.³ However, we believe that the cost of developing and implementing the systems has already greatly exceeded the projected savings. Due to all of the challenges discussed above, we believe that there would be positive policy outcomes as well as savings associated with completely repealing EVV instead of moving forward with these proposed changes.

If you have any questions regarding this letter, please feel free to contact Damon Terzaghi at dterzaghi@advancingstates.org, Jack Rollins at jack.rollins@medicaiddirectors.org, or Dan Berland at dberland@nasddds.org.

Sincerely,



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² Olmstead v. L.C., 527 U.S. 581

³ <https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/costestimate/hr34amendment5.pdf>