

**DEPARTMENT OF HUMAN SERVICES, DIVISION OF MEDICAL SERVICES**

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**SUBJECT:** Electronic Visit Verification (EVV) Implementation

**DESCRIPTION:**

Statement of Necessity

Section 12006 of the 21<sup>st</sup> Century Cures Act (42 U.S.C. § 1396b(l)) requires states to implement Electronic Visit Verification (EVV) for in-home personal care services, attendant care, and respite services paid by Medicaid no later than December 1, 2020.

An EVV system is a telephone-, computer-, or other technology-based system under which visits conducted as part of personal care services or home health services are electronically verified with respect to:

1. The type of service(s) performed;
2. The individual receiving the service(s);
3. The date of the service(s);
4. The location of service delivery;
5. The individual providing the service(s); and
6. The time the service(s) begins and ends.

This proposed rule establishes utilization standards for provider agencies to electronically verify home visits and verify that clients receive the services authorized for their support and for which Medicaid is being billed. The Department of Human Services (DHS) has contracted with a vendor to implement an EVV system that uses a smartphone app for an in-home caregiver to check in and out when they go to a client's home to provide services. The smartphone app records the caregiver's GPS coordinates to verify that the caregiver is actually at the client's home.

Rule Summary

The proposed rule is an addition to an amendment of Section I of the Arkansas Medicaid Provider Manual.

- Section 131.000 is amended to clarify that a provider cannot bill a beneficiary for a claim or portion of a claim that was denied or rejected because the provider failed to meet the EVV requirements.
- Section 145.100 outlines the legal basis and scope of the EVV requirement.
- Section 145.200 establishes the steps that a Medicaid provider must take to become eligible to use EVV, which will be a requirement for submitting any claims for reimbursement to Medicaid for in-home personal care services. Providers will be required to obtain a unique identification number for each caregiver employed or contracted by the provider to serve Medicaid beneficiaries, and then ensure that each caregiver uses the EVV app.

- Section 145.300 establishes that any claim for reimbursement filed with Medicaid for in-home personal care services must be verified by EVV and outlines the specific procedure codes that are subject to the EVV requirement.
- Providers will have the ability to use their own EVV system instead of the state system, so long as that system is certified by the DHS EVV Vendor. The certification process is set out in Section 145.400.

**PUBLIC COMMENT:** No public hearing was held on this proposed rule. The public comment period expired on October 4, 2020. The agency provided the following summary of the public comments it received and its responses to those comments.

**Commenter's Name:** Luke Mattingly, Care Link CEO/President

**COMMENT 1:** The hyperlink in section I-2, 145.100, View or print the DHS EVV Vendor contact information, is not functioning. **RESPONSE:** We will contact our Vendor who manages the website to ensure the link is working before the document is posted permanently. The contact information for our vendor, Fiserv, can be found on their website at [https://www.firstdata.com/en\\_us/products/government-solutions/health-care/electronic-visit-verification/authenticare.html](https://www.firstdata.com/en_us/products/government-solutions/health-care/electronic-visit-verification/authenticare.html)

**COMMENT 2:** The federal statute states “to ensure that such system is minimally burdensome.” However, the Arkansas implementation is overly burdensome. For example, requiring personal care aides and service recipients to physically sign after every shift, even if the geofence captured the precise location and the Aide clocked in and out correctly, is not minimally burdensome. One of the benefits of an electronic capture system is to minimize or eliminate such steps. Signatures should only be required for exceptions such as missed clock-in or clock-out or when the system cannot verify data. This just adds another layer of administrative burden and expense that is not necessary, an “electronic signature” is not defined as the actual capture of a physical signature but rather an electronic verification that the service was delivered, i.e. GPS coordinates at a location and from a device registered in the electronic system.

**RESPONSE:** At this time, the requirement for electronic signatures is considered informational only and will not cause a claim to deny. This change was implemented due to the Public Health Emergency and was communicated to providers.

**COMMENT 3:** CareLink has no issue with Aides being required to be assigned a Practitioner Identification Number (PIN). However, the state needs to improve the process for attaining the number, for providers to be able electronically search to verify that a number has already been assigned and to check the status of a submitted application. Currently the position of the state is that it can take up to 30-days after an application is received before a number is issued. If the process is not improved, this will ultimately delay services to older people and adults with physical disabilities. Additionally, numerous submissions are past the 30-day time frame and we are simply instructed to resubmit causing more and more administrative burden.

**RESPONSE:** Currently, DXC’s Provider Enrollment office, along with DMS staff, have processed over 9,000 direct care worker enrollment applications. While some applications may take longer because the application must be returned to the provider due to it being incomplete, most applications are able to be worked well within the 30-day timeframe. If you need assistance with the Provider Enrollment Process, please contact Arkansas Medicaid Provider Enrollment at (501) 376-2211 or (800) 457-4544. When prompted select “0” for other inquiries, then “3” for Provider Enrollment.

**COMMENT 4:** Medicaid reimbursement rates are not sufficient to cover the increased administrative burden of EVV implementation. Although the state is providing a no payment option for the software, the cost of implementing, administering, and maintaining an EVV software system is not covered. The Medicaid reimbursement rate for this service is already loathsome, the EVV implementation is adding significant additional administrative burden without an offsetting rate adjustment further jeopardizing home and community-based services because of rate structure.

**RESPONSE:** DHS continues to work with Providers to get complete information on revenue versus expense to complete a rate study. We also continue to evaluate the impact of minimum wage increases on this rate, as well as the impact of purchasing additional equipment for EVV implementation.

**COMMENT 5:** Also, Aides are minimum wage or close to minimum wage employees and the state expects them to possess a smart phone with a data plan in order to successfully utilize the app for the EVV system, the method to obtain geofencing (GPS coordinates). The current reimbursement rate does not provide for any wage offset to recognize this cost to Aides. **RESPONSE:** While some providers may choose to provide smartphones to their employees, Arkansas has implemented an IVR methodology that allows EVV claims to be submitted using a landline telephone. However, as noted above, DMS is considering the financial impact of EVV implementation on providers.

The agency indicated that CMS approval is not required for this rule change. The proposed effective date is December 1, 2020.

**FINANCIAL IMPACT:** The agency indicated that this rule has a financial impact.

Per the agency, the purpose of this rule is to implement a federal rule or regulation. The cost to implement the federal rule or regulation is \$2,206,487 for the current fiscal year (\$365,729 in general revenue and \$1,840,758 in federal funds) and \$967,200 for the next fiscal year (\$241,800 in general revenue and \$725,400 in federal funds).

The total estimated cost by fiscal year to state, county, and municipal government to implement this rule is \$365,729 for the current fiscal year and \$241,800 for the next fiscal year. Per the agency, this represents the state share of expenditures for EVV implementation and ongoing maintenance and operations.

The total estimated cost by fiscal year to any private individual, entity, and business subject to the proposed rule is \$62,158 for the current fiscal year and \$31,579 for the next fiscal year. The agency indicated that some providers may purchase smartphones or tablets for direct care workers to easily access the EVV system in clients' homes.

The agency indicated that there is a new or increased cost or obligation of at least \$100,000 per year to a private individual, private entity, private business, state government, county government, municipal government, or to two or more of those entities combined. Accordingly, the agency provided the following written findings:

*(1) a statement of the rule's basis and purpose;*

The basis and purpose of this rule is to implement an electronic visit verification (EVV) system for in-home personal care services, attendant care, and respite services paid by Medicaid, as required by section 12006 of the 21st Century Cures Act (42 U.S.C. § 1396b(l)).

*(2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;*

Section 12006 of the 21st Century Cures Act (42 U.S.C. § 1396b(l)) compels the Arkansas Medicaid program to require all personal care providers to use EVV for in-home services on and after December 1, 2020. DHS has no way to implement this requirement except through promulgation of a rule.

*(3) a description of the factual evidence that:*

*(a) justifies the agency's need for the proposed rule; and*

*(b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;*

Section 12006 of the 21st Century Cures Act (42 U.S.C. § 1396b(l)) compels the Arkansas Medicaid program to require all personal care providers to use EVV for in-home services on and after December 1, 2020. The proposed rule reflects the implementation costs as determined through a competitive procurement process, and an estimate of the cost to providers. The costs estimated above are the minimum cost of the state coming into compliance with the EVV mandate.

*(4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;*

The agency is unaware of any less costly alternatives.

*(5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;*

No alternatives have been identified or suggested through public comment to date.

*(6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and*

No existing state rules have created or contributed to the problem the agency seeks to address. The need for this rule is entirely a creation of federal statute.

*(7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:*

*(a) the rule is achieving the statutory objectives;*

*(b) the benefits of the rule continue to justify its costs; and*

*(c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.*

The agency monitors State and Federal rules and policies for opportunities to reduce and control cost.

**LEGAL AUTHORIZATION:** The Department of Human Services has the responsibility to administer assigned forms of public assistance and is specifically authorized to maintain an indigent medical care program (Arkansas Medicaid). *See* Ark. Code Ann. §§ 20-76-201(1), 20-77-107(a)(1). The Department has the authority to make rules that are necessary or desirable to carry out its public assistance duties. Ark. Code Ann. § 20-76-201(12). The Department and its divisions also have the authority to promulgate rules as necessary to conform their programs to federal law and receive federal funding. Ark. Code Ann. § 25-10-129(b).

Per federal law, states must implement electronic visit verification in order to receive the full amount of available federal funding “for personal care services or home health care services requiring an in-home visit by a provider . . . furnished in a calendar quarter beginning on or after January 1, 2020 (or, in the case of home health care services, on or after January 1, 2023)[.]” 42 U.S.C. § 1396b(l)(1).

**QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS  
WITH THE ARKANSAS LEGISLATIVE COUNCIL**

DEPARTMENT/AGENCY Department of Human Services  
DIVISION Division of Medical Services  
DIVISION DIRECTOR Janet Mann  
CONTACT PERSON Alexandra Rouse  
ADDRESS P. O. Box 1437, Slot S295 Little Rock, AR 72203-1437  
PHONE NO. 501-508-8875 FAX NO. 501-404-4619 E-MAIL Alexandra.Rouse@  
@dhs.arkansas.gov  
NAME OF PRESENTER AT COMMITTEE MEETING Mark White  
PRESENTER E-MAIL Mark.White@dhs.arkansas.gov

**INSTRUCTIONS**

- A. Please make copies of this form for future use.
- B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Jessica C. Sutton  
Administrative Rules Review Section  
Arkansas Legislative Council  
Bureau of Legislative Research  
One Capitol Mall, 5<sup>th</sup> Floor  
Little Rock, AR 72201

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- 1. What is the short title of this rule? Electronic Visit Verification (EVV) Implementation
- 2. What is the subject of the proposed rule? Electronic Visit Verification (EVV) Implementation
- 3. Is this rule required to comply with a federal statute, rule, or regulation? Yes  No   
If yes, please provide the federal rule, regulation, and/or statute citation. 42 U.S.C. § 1396b(l)
- 4. Was this rule filed under the emergency provisions of the Administrative Procedure Act?  
Yes  No   
If yes, what is the effective date of the emergency rule? \_\_\_\_\_

When does the emergency rule expire? \_\_\_\_\_

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act?  
Yes  No

5. Is this a new rule? Yes  No   
If yes, please provide a brief summary explaining the regulation. \_\_\_\_\_

Does this repeal an existing rule? Yes  No   
If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does. \_\_\_\_\_

Is this an amendment to an existing rule? Yes  No   
If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

See attached.

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. Arkansas Code §§ 20-76-201, 20-77-107, and 25-10-129

7. What is the purpose of this proposed rule? Why is it necessary? See Attached.

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b).  
<https://medicaid.mmis.arkansas.gov/general/comment/comment.aspx>

9. Will a public hearing be held on this proposed rule? Yes  No   
If yes, please complete the following:

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Place: \_\_\_\_\_

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)  
October 4, 2020

11. What is the proposed effective date of this proposed rule? (Must provide a date.)  
12/1/2020

12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice. See Attached.

13. Please provide proof of filing the rule with the Secretary of State as required pursuant to Ark. Code Ann. § 25-15-204(e). See Attached.

14. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known. Unknown





Total \$2,206,487 Total \$967,200

(b) What is the additional cost of the state rule?

<u>Current Fiscal Year</u>		<u>Next Fiscal Year</u>	
General Revenue	\$ _____	General Revenue	\$ _____
Federal Funds	\$ _____	Federal Funds	\$ _____
Cash Funds	_____	Cash Funds	_____
Special Revenue	_____	Special Revenue	_____
Other (Identify)	_____	Other (Identify)	_____
Total	\$ _____	Total	\$ _____

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

<u>Current Fiscal Year</u>	<u>Next Fiscal Year</u>
\$ <u>63,158</u>	\$ <u>31,579</u>
<u>Some providers may purchase Smartphones or tablets for direct care workers to easily access the EVV system in client's homes</u>	

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

<u>Current Fiscal Year</u>	<u>Next Fiscal Year</u>
\$ <u>365,729</u>	\$ <u>241,800</u>
<u>This represents the state share of expenditures for EVV implementation and ongoing maintenance and operations.</u>	

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes  No

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

(1) a statement of the rule's basis and purpose;

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(2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute; Section 12006 of the 21st Century Cures Act (42 U.S.C. § 1396b(l))

compels the Arkansas Medicaid program to require all personal care providers to use EVV for in-home services on and after December 1, 2020. DHS has no way to implement this requirement except through promulgation of a rule.

- (3) a description of the factual evidence that:
- (a) justifies the agency's need for the proposed rule; and
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- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and No existing state rules have created or contributed to the problem the agency seeks to address. The need for this rule is entirely a creation of federal statute.
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  - (b) the benefits of the rule continue to justify its costs; and
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## **Statement of Necessity and Rule Summary Electronic Visit Verification (EVV) Implementation**

### **Statement of Necessity**

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An EVV system is a telephone-, computer-, or other technology-based system under which visits conducted as part of personal care services or home health care services are electronically verified with respect to:

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### **Rule Summary**

The proposed rule is an addition to an amendment of Section I of the Arkansas Medicaid Provider Manual.

- Section 131.000 is amended to clarify that a provider cannot bill a beneficiary for a claim or portion of a claim that was denied or rejected because the provider failed to meet the EVV requirements.
- Section 145.100 outlines the legal basis and scope of the EVV requirement.
- Section 145.200 establishes the steps that a Medicaid provider must take to become eligible to use EVV, which will be a requirement for submitting any claims for reimbursement to Medicaid for in-home personal care services. Providers will be required to obtain a unique identification number for each caregiver employed or contracted by the provider to serve Medicaid beneficiaries, and then ensure that each caregiver uses the EVV app.
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## NOTICE OF RULE MAKING

The Director of the Division of Medical Services of the Department of Human Services announces for a public comment period of thirty (30) calendar days a notice of rulemaking for the following proposed rule under one or more of the following chapters, subchapters, or sections of the Arkansas Code: §§ 20-76-201, 20-77-107, and 25-10-129.

### **Effective December 1, 2020:**

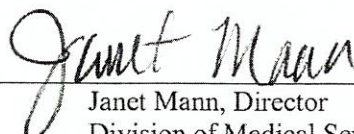
The Division of Medical Services (DMS) of the Arkansas Department of Human Services (DHS) intends to implement an Electronic Visit Verification (EVV) system for in-home personal care services, attendant care, and respite services paid by Medicaid pursuant to section 12006 of the 21<sup>st</sup> Century Cures Act (42 U.S.C. § 1396b(l)). An EVV system electronically verifies the type of service performed, the individual receiving service, date of the service, location of service delivery, the individual providing the service, and the time the service begins and ends. This proposed rule establishes utilization standards for provider agencies to electronically verify home visits, and verify clients receive the services authorized for which Medicaid is billed. DHS contracted a vendor to implement an EVV system that uses a smartphone application or landline phone-based system (IVR) for in-home caregivers to check-in and check-out when providing service at a client's home. The caregiver's GPS coordinates at the home are recorded and verified.

The proposed rule amends sections of the Arkansas Medicaid Provider Manual. Section 131.000 states that a provider cannot bill a beneficiary for a claim or portion thereof if the claim was denied or rejected because the provider failed to meet EVV requirements. Section 145.100 outlines the legal basis and scope of the EVV requirement. Section 145.200 establishes steps a provider must take to become eligible to use EVV. EVV will be required for submitting to Medicaid claims for reimbursement for in-home personal care services. Providers must obtain a unique identification number for each caregiver employed or contracted to serve beneficiaries and ensure that each caregiver uses the EVV system. Section 145.300 establishes that any claim for reimbursement filed with Medicaid for in-home personal care services must be verified by EVV and outlines the specific procedure codes that are subject to the EVV requirement. Section 145.400 establishes a process for providers to use their own EVV system if certified by the DHS EVV vendor.

The proposed rule is available for review at the Department of Human Services (DHS) Office of Rules Promulgation, 2nd floor Donaghey Plaza South Building, 7th and Main Streets, P. O. Box 1437, Slot S295, Little Rock, Arkansas 72203-1437. You may also access and download the proposed rule on the Medicaid website at <https://medicaid.mmis.arkansas.gov/General/Comment/Comment.aspx>. Public comments must be submitted in writing at the above address or at the following email address: [ORP@dhs.arkansas.gov](mailto:ORP@dhs.arkansas.gov). All public comments must be received by DHS no later than October 4, 2020. Please note that public comments submitted in response to this notice are considered public documents. A public comment, including the commenter's name and any personal information contained within the public comment, will be made publicly available and may be seen by various people.

If you need this material in a different format, such as large print, contact the Office of Rules Promulgation at 501-320-6266.

The Arkansas Department of Human Services is in compliance with Titles VI and VII of the Civil Rights Act and is operated, managed and delivers services without regard to religion, disability, political affiliation, veteran status, age, race, color or national origin. 4501960528



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Janet Mann, Director  
Division of Medical Services