Centers for Medicare & Medicaid Services
Electronic Visit Verification (EVV)
Stakeholder Open Door Forum
Wednesday, November 7, 2018
1:00 pm -3:00 pm Eastern Time
Conference Call Only
Moderator: Jill Darling

Operator: Good afternoon. My name is (Miriama) and I will be your conference facilitator today. At this time, I would like to welcome everyone to the Centers for Medicare and Medicaid Services Electronic Visit Verification, EVV Stakeholder Open Door Forum.

All lines have been placed on mute to prevent any background noise. After the speakers' remarks, there will be a question and answer session. If you would like to ask a question during this time, simply press star then the number one on your telephone keypad. If you would like to withdraw your question, please press the pound key. Thank you.

Jill Darling, you may begin your conference.

Jill Darling: Thank you, (Miriama). Good morning and good afternoon everyone, and thank you for joining us today for the stakeholder call.

Before we get into today's presentation, I have one brief announcement. This Open Door Forum is not intended for the press and the remarks are not considered on the record. If you are a member of the press, you may listen in but please refrain from asking questions during the Q&A portion of the call. If you have any inquiries, please contact CMS at press@cms.hhs.gov.

Mike Nardone: Hello, everyone. This is Mike Nardone. And on behalf of CMS, I'd like to welcome you to the Stakeholder Call on Electronic Visit Verification Implementation. I'm the Director of the Disabled and Elderly Health Programs Group in the Centers for Medicaid and CHIP Services.

We greatly appreciate this opportunity to hear from you as implementation activities continue to move forward. CMS is holding this call today in response to congressional language indicating that CMS should have a forum for EVV stakeholder engagement this year.

This language is found in H.R. 6042 which was signed into law this summer and extended the timeline for EVV implementation in Medicaid funded personal care services from January 1st, 2019 to January 1st, 2020.

Since the passage of the 21st Century Cures Act, CMS has engaged a wide variety of stakeholders to understand their priorities and concerns associated with EVV usage and we view this conversation as another opportunity to continue that dialogue.

With me here today are a few members of the team overseeing EVV implementation. I'll let them introduce themselves to the – throughout the call. But right now I'm going to turn the call over to Melissa Harris, who will walk through a few logistical steps. I just want to end by, again, expressing my thanks for your participation on today's call and your assistance in helping to understand where questions and concerns remain. So thank you very much. And Melissa, take it away.

Melissa Harris: Thanks, Mike. So let's go over quickly the structure for today's call. We do want to hear from you, your concerns and your feedback regarding implementation of EVV to help us shape the next step for CMS. We had asked in the advertisement for this call that anyone who wanted to submit feedback in advance of the call could do so over the EVV mailbox. And we received over 200 e-mails in advance of today's call.

And so what we'll do next is go over the major themes of the comments that we received from a wide overview, from providers, beneficiaries, vendors, states et cetera.

And then after that, we will open it up for a discussion about questions and answers, a time for you to share comments. We've got lot of people on the

line today. And so in order to be respectful of everyone's time, we ask that you keep your comments to no more than three minutes each.

We did receive through the mailbox a couple of request to make all e-mails that we received in advance of today's call public. And we do want to address that – hang on one second. We're getting – we're getting an e-mail that folks are having trouble hearing us. Let's just take pause and make sure we're OK logistically.

OK, thanks for that. We make sure we were okay logistically.

So, like I was saying, we did get some questions submitted to us about whether or not we could share the e-mails that we received in advance of the call. We are – hesitant to do that. We don't have plans to do that at this time for two reasons. One being that we did not say to people in advance that there is a chance that we would share what they submitted publically. And number two there were some – in some cases some quite personal information that was submitted to us to illustrate some questions and concerns around EVV. We don't think it's really appropriate to share those publically but we do take your question into account.

One of the – our process has been for questions that we received into the mailbox to provide individual responses and given the volume that we got in advance of today's call, it is not our intention at this moment to provide individual responses back to all of your submission; certainly your comment and your feedback will be taken into account as we are determining next steps for CMS.

However, if you would like a formal, an individual response back to your questions, you would please resubmit it to the mailbox and then we will know that that is a question that we do need to provide an individual response to.

Also note that we received several questions that are really more answerable from the state and asked questions on a specific system that a state is implementing in some other state level decision. And so we will recommend to you that any kind of state specific questions be addressed to the state

Medicaid agency as they are in a better position than CMS to answer these questions.

So, you know, the mailbox had been in existence for some time and will remain in existence. And so please continue to use that as a forum for submitting any questions and concerns. And again that mailbox is evv@cms.hhs.gov. And again if you would like a response to a question that you submitted in advance of today's call, the mailbox is still open.

So we have gotten a couple of e-mails even as we've started that a lot of people are on hold. That is I think a testament to the number of people who are trying to get in. So, people are on various stages of speaking with operators, and so we will try to get those folks in as much as we can. So if anybody is hearing this and is in communication with people who are waiting, you can just let them know that they will be processed in through the operator as soon as possible.

We will also take this opportunity to say that there will be for two days after this call a transcript of this phone call. So for people who had missed a few minutes – people who have missed few minutes, you know, that information will be available. So we'll reiterate all of these logistical issues at the end of the call. So we appreciate people's patience coming in.

So with that, I'm going to turn it over to Kenya Cantwell and she is going to walk through some basics of the Cures Act language and then we'll head into the topics that we received on the mailbox. So, Kenya, are you there?

Kenya Cantwell: I'm here. Thank you, Melissa. This is Kenya Cantwell. And as Melissa mentioned I'm going to provide just a quick overview of the EVV legislation and requirements.

So in 2016, the 21st Century Cures Act was signed into law and it included a requirement that states must implement Electronic Visit Verification for Medicaid Personal Care Services and Home Health Services.

EVV refers to technology that electronically verifies that services are delivered at the right time, to the right place, and to the right person.

Typically, caregivers or providers check in at the start of the service and check out at the end of the service using a mobile app on a phone or tablet, or via the beneficiary's telephone.

Under the new law, states are required to use EVV to verify the type of service performed, the person receiving the service, the date of the service, location of the service, the individual providing the service, the time the service begins and end. And this is for personal care services, and again, for home health services.

The purpose of EVV is to ensure that beneficiaries receive their expected care. It's also used to enhance program integrity. It's helpful with reducing billing errors and mitigate potential fraud, waste and abuse.

States are required to implement EVV for personal care by January 1st, 2020 and January 1, 2023 for home health services, unless they have been granted a good faith effort exemption.

So that's just a brief overview of electronic verification visit requirements. I am now going to turn it over to Ralph Lollar and Ryan Shannahan to provide a summary of the themes that we received via e-mail prior to this call. Thank you.

Ralph Lollar: Thank you, Kenya. So this is Ralph Lollar and the first thing I want to do is welcome all the people who came on between the time we started and now, and to let you know that this recording will be available on Encore for a two-day period and there will be a transcript available.

So, you would come in as a right in the call. The other thing you can pick up on that Encore recording or in the transcript. The important thing now is for you to hear the summary of what we've heard to date and then to be able to align yourself with your comment.

With that being said, I'm going to ask Ryan to give you the major things that we saw in the input that we've received today through the mailbox for this call.

Ryan Shannahan: Sure. Thanks, Ralph. As Melissa mentioned, we received over 200 e-mails in the lead up for today's call organized into themes and we will like to provide a high level CMS response to each of those themes.

So, the first theme was general opposition to the EVV statute where respondents commonly cited discrimination or civil right issues including concerns around Olmsted, ADA, and the Fourth Amendment. Respondents discussed intrusion and invasion of privacy concerns as well as concerns regarding EVV and the context of consumer direction, and the practicality of EVV in that context. They also discussed provider burdens and burdens on beneficiaries and the relationship of that to access to care, and just the lack of evidence supporting EVV as well.

Ralph Lollar: So, while CMS recognizes and acknowledges that these concerns are serious concerns and that should not be taken lightly, CMS does have a responsibility to implement the Cures Act by Congress. As mentioned previously, EVV requirements were included in the 21st Century Cures Act. Any changes to those requirements would require an act of Congress.

Ryan Shannahan: So next we received a number of e-mails in support for the National Center for Independent Living principles and goals, otherwise known as NCIL, and they shared multiple concerns such as those related privacy, Olmsted, impacts with providers, concerns around the use of GPS, data protection. And they also requested more opportunities for stakeholder engagement and greater oversight of state, stakeholder engagements.

Ralph Lollar: So, we're reviewing the feedback. We'll take that into account as we develop the next steps for technical assistance around EVV. So, we appreciate the comments and are – in fact taking that into consideration and incorporating into our process.

Ryan Shannahan: Next respondents expressed concerns around the cost and administrative burdens associated with EVV use, particularly for providers of personal care services. These included concerns regarding administrative cost burdens for providers and beneficiaries and the impact it may have on the provider pool. Challenges associated with using multiple systems, request for guidance on methods states can use for reimbursing EVV cost, for example for devices or training, state obligations for offsetting EVV cost, and request for more guidance on enhanced or regular – federal matching funds.

Ralph Lollar: So as we indicated in the EVV guidance that was released in May, states may apply for federal financial participation for expenditures and receive an enhanced 90 percent federal match for the design, development or installation of an EVV system, and 75 percent match for the operation and maintenance of the system.

State should seek this enhance Federal Financial Participation through the advanced planning document process. Training of employees on EVV system can be reimbursed at 75 percent per SMD16004, however, this is not for training for providers or beneficiaries in the use of the system.

Trainings for providers and beneficiaries may be claimed at the regular 50 percent administrative rate and that begun in several ways including at this part of the state rate methodology for service.

While CMS does not have the authority to provide federal match at any level for costs for providers or individuals, or devices and tablets or things of that nature, costs associated with purchase of devices and/or equipment could be built into the rate paid to the provider for rendering the service. States are encouraged to talk with your RO lead for more details on this. We will be able to give you assistance there.

Ryan Shannahan: Our next theme is regarding implications for self-direction. It included a request to exempt EVV use in self-direction, the need for more guidance around tracking community locations and ensuring privacy, ensuring flexibility and consumer control to accommodate changes and needs and preferences such as options beyond prescheduled locations and the option to

allow for multiple delivery location visits, as well as challenges faced by providers of (healthcare) services.

Ralph Lollar: So we need to start with the basic fact that CMS does not have the authority to circumvent congressional action. And then we would say that the EVV statute does not provide CMS with the authority to exempt self-directed programs from EVV requirements. CMS acknowledges that EVV in self-direction should avoid rigid scheduling rules and be able to accommodate services at multiple locations in order to preserve the flexibility of self-directed services.

Ryan Shannahan: Next, we received a number questions for clarification on scope of services. These included concerns of CMS's interpretation of the statute and request for more clarity and which services are covered such as adult foster home shared living, host-homes, or other 24/7 living arrangements, day services, and congregate residential services. There's also requests for more guidance around services that begin in the home and end in the community or vice versa.

Ralph Lollar: So, while CMS guidance indicates that states are not required to use EVV in congregate care settings or personal care services that occur entirely outside of the home, for instance day services. It did not prohibit states from using EVV in those settings if they wish to do so.

In general, EVV applies to personal care services offered under the different Medicaid coverage categories listed in the Cures Act statute. CMS will not be providing an exhaustive list of services that must be covered by EVV. As state use varying titles and different definitions for services that include assistance with ADLs and IADLs. We'd advise that you follow-up with your state to share those concerns.

The definition for adult foster care and shared living, for instance, vary widely across states. Therefore, CMS reviews this at state request on a case by case basis to determine EVV applicability. CMS is also exploring potential guidance for further clarification around services that begin in the home and end in the community or begin in the community and end in the home.

Ryan Shannahan: Our next theme involves GPS and other technologies (inaudible), including request for CMS guidance on the location requirement of the Cures Act and on the use of GPS, requests to prohibit GPS and other technologies, concerns of state interpretation of CMS requirements to mean that GPS is required and requests for any alternative to GPS.

Ralph Lollar: So we're exploring alternate – alternate method for verifying the location requirements of the EVV statute but we need to be clear about the fact that we cannot prohibit states from using GPS.

Ryan Shannahan: The next theme was regarding determining adequate stakeholder input including requests for CMS to delineate requirements for adequate stakeholder input, and that CMS monitors stakeholder engagement, concerns regarding state-level/stakeholder input to-date and the need for better provider engagement in that stakeholder input, as well as more opportunities from CMS for stakeholder engagement.

Ralph Lollar: So CMS will absolutely assess state/stakeholder engagement effort as part of their APD, the Advance Planning Document, and their good faith effort submissions. We strongly encourage states to follow the promising practices and strategies outlined in the May 2018 CMS Informational Bulletin.

CMS will reach out to states to discuss concerns raised by beneficiaries as needed and we will consider opportunities for future stakeholder engagement on the national level, however we remain available to listen to stakeholder concerns on smaller scales as well.

Ryan Shannahan: The next theme is in regard to the applicability of EVV to beneficiaries of live-in caregivers. This may include complications using EVV in family homes, requests to exempt living caregivers, for example, because such scenarios do not constitute an in-home visit (it was one of the reasons posited) and request for clarification from CMS in whether live-in caregivers are included in the EVV statute.

Ralph Lollar: So we understand the basis for the question and we understand the concerns regarding it, we continue to discuss this issue internally to see what leeway there is.

Ryan Shannahan: Next, we have concerns with regards to EVV in rural areas or areas with limited connectivity and how EVV can be used in that situation.

Ralph Lollar: Most EVV technology allows for stored forwarding or batch forwarding of check in and check out data when there is no connectivity. The worker enters the information into the EVV interface, that data is uploaded into the EVV system once the connection is reestablished.

So if you look at the guidance that we've given you in particular, you'll see some examples of where states have addressed this in frontier areas.

Ryan Shannahan: Next theme was on guidance on ensuring data protection and HIPAA compliance.

Ralph Lollar: So the Cures Act specified that EVV systems must be compliance with HIPAA security and privacy requirements. This means that the EVV data must be protected like any other Medicaid or personal health information data. We advise you to follow-up with your state HIPAA compliance officer for more details and what protections are in place in your particular state. You could also visit www.hhs.gov/HIPAA for more information on this matter.

Ryan Shannahan: Next was a theme around ensuring EVV can accommodate various individual limitations, to ensuring EVV systems are acceptable for all regardless of language, disability, et cetera.

Ralph Lollar: So, we certainly share these concerns. We encourage individuals to reach out to their provider or state Medicaid agency with any questions on how the EVV system will accommodate those needs.

Ryan Shannahan: Next, we received requests for further guidance, regulation from CMS including statements or requirements for EVV, guidance to ensure states do

not overreach, guidance when exemptions or corrections and other areas. And I think CMS will look to this as needed.

We also saw a request for best practices and we recommend referring to the EVV website for current promising practices that's available at medicaid.gov and we will issue further T.A. resources as necessary. And that applies for state expectations for training, outreaching, education, we recommended a numbers of strategies with regard to training, outreach, education in our informational bulletin, so we encourage state to use those strategies to the greatest extent possible.

We also heard concerns regarding how EVV compliance will be assessed, issues with EVV technology and ensuring good EVV roll out.

Ralph Lollar: So we note that the state may set an error rate with the provider when they are learning the system, it'll allow flexibility during that learning process. We also recommend following strategies for piloting that were outlined in the informational bulletin if the timeline permits that. CMS plans to share details and how it will assess state compliance with EVV requirements in the near future.

Ryan Shannahan: It also proposed to use EHRs, or electronic health records, a web-based timesheet that has dual authentication in lieu of EVV.

Ralph Lollar: Any of those systems would need to comply with the statute and be able to electronically verify the six required data elements in order to be used for this purpose.

Ryan Shannahan: And we also – hear concerns regarding the Fair Labor Standards Act and Department of Labor implications including with things like joint employment and clarification whether an individual volunteering as an employer is defined as a provider.

Ralph Lollar: And while we'll explore this further, we really defer to the states. Individuals in the state reach out to the state to consult with its state attorneys regarding the Fair Labor Standards Act in the Department of Labor issues.

OK, we can now move to the period of questions and answers in stakeholder employed. In order to ask question or make statement, please dial …

Female: One.

Ralph Lollar: One. And depending on the issues raise, CMS may not have a formal answer to your questions at this time. If that is the case, we'll ask you to submit that question to the EVV mailbox to facilitate a response.

As a reminder, please limit your comments to no more than three minutes.

Female: OK. Please open the line for Q&A, please.

Operator: As a reminder, ladies and gentlemen, if you would like to ask to question, please press star then one on your telephone keypad. If you would like to withdraw your questions please press the pound key. Please limit your question to one question and one follow-up to allow other participants time for questions. If you require any further follow-up, you may press star one again to rejoin the queue.

Your first question comes from the line of (Gina Brady). Your line is open.

(Gina Brady): I have no question, thank you.

Operator: Your next question comes from the line of (Gaylon Tutle). Your line is open.

(Gaylon Tutle): I think I hit the wrong button too, ma'am. I have no question right now. Hello, hello?

Operator: Your next question comes from the line of (George Snider). Your line is open.

(George Snider): Hi. I just wanted to verify that a neutral aggregation system in validator would qualify fully for the matching funding for a state if they choose to use an aggregation system and let the providers choose an EVV provider?

Ralph Lollar: The answer to that would be yes, but certainly we would say to include it in the APD application so that you get a clear answer.

(George Snider): OK. Thank you.

Ralph Lollar: OK. Thank you.

Operator: Your next question comes from Kendra Scalia. Your line is open.

Kendra Scalia: Thanks. I'm wondering if CMS had been following the California Department of Social Services EVV web portal that they have been creating in conjunction with their consumer and provider advocates. It is one that I consider to be a model for the nation especially considering consumer-directed services and the uniqueness of that program. And I'm also further wondering if CMS is going to consider this California EVV system as a recommended model to the nation.

Ralph Lollar: We are reviewing the California system and have had some interest in it internally. We will be exploring that. Thank you for pointing that out.

Operator: Your next question comes from (Kathy Keith). Your line is open.

(Kathy Keith): Hello. Yes, I wanted to ask the question regarding personal support workers that live with their disabled adopted child.

We're on self-directed programs and I live with my son. So, if I punched in and let the clock run to all the hours that our budgeted are consumed and then punch out, would that be doable based on the fact that you don't pay any taxes under the 2014-7 exemption anyway?

Ralph Lollar: I think that is a question that needs – really needs to be passed on to your state and how they are setting up the process for verification. It sounds like a reasonable – a reasonable question and request but I would definitely reach out to your state. State will be setting up these systems differently.

It'll also – the state may reach back out to CMS and there will be factors like whether the rate is per diem, whether it is considered in an in-home visit. So,

there are several complicating factors there that we would need to discuss. So, we are looking to be as accommodating as we can within the structure of the Cures Act. So, we would recommend an initial reach out to the state and then the state will follow-up with us if they have further questions. Thank you.

(Kathy Keith): I will. Yes? Hello.

Ralph Lollar: Yes?

(Kathy Keith): Oh, I'm sorry. I wasn't sure because in actuality we don't have to do time and a half in overtime. So, to do the EVV system is kind of ridiculous. We live with our adult disabled person. We're with them 24/7.

Ralph Lollar: We really do understand your concerns and really are looking into that with regard to the leeway we have within the statute.

Melissa, did you want to say something there?

Melissa Harris: Yes, thanks. When we issued our guidance over the summer around congregate settings and the fact that congregate settings that use a per diem reimbursement method and used shift work were exempted from the EVV requirement, we got a lot of follow-up questions saying, does that same promise apply to this model and that model, and it became quite clear that we really couldn't opine without having a conversation with the state to understand the nuts and bolts of that particular program.

In the same vein, we've gotten several questions and you may have heard Ryan mention it, that's kind of a theme in some of the mailbox feedback we got, asking about whether individuals who lived with their caregivers and are receiving Medicaid funded personal care or home health could also be exempt from EVV.

And so, similarly, it's pretty difficult for us to say a blanket yes or no without understanding a little more about the variation that existed in some of these models; it is very much on our radar screen that that is a question. And we've

had stakeholders point out some of the rough edges that, you know, need to address at EVV where to apply.

So, we are continuing to pull those threads and, well, we don't have a formal answer today, it's very much something that we know we need to address. So thanks for that.

(Kathy Keith): So you're saying that you don't have an answer as of yet whether or not those individuals could be exempt?

Melissa Harris: That's right. We have been …

(Kathy Keith): OK.

Melissa Harris): … submitted the questions to us in a few cases and we don't have anything confirmed in terms of understanding what kind of feasibility the agency has in making a similar exemption as we did for congregate settings but it's something we continue to pursue.

(Kathy Keith): OK, wonderful. Thank you.

Operator: Your next question comes from (Lisa Culley) with UC Davis. Your line is open.

(Lisa Culley): Would the EVV be implemented in states that have self-directed services such as California potentially or Oregon.

Ralph Lollar: I don't think that there is a simple answer for that. It depends on how the state itself devises the system and grows the system. We urge the state to take a close look at the recommendations regarding how to adjust EVV for a self-directed program.

And frankly, in our conversations with the number of states, we found them to be considerate of them, respectful of their self-directed programs. So, we believe that they will be taking that into consideration but the structure of the specific program depends on the system that state is using and how they are

using it. So I can't give you a simple answer to that. I think that their question will be – would be best posed to your state itself.

(Lisa Culley): Thank you. Thank you.

Ralph Lollar: Thank you.

Operator: Your next question comes from Bill Clark with Department for Vermont health. Your line is open.

Bill Clark: Hi, thank you. You mentioned earlier that you're not quite prepared to discuss all of the exemptions to the EVV process at this point. But I just wanted to stress that I think that's the guidance most states are really looking for right now.

Following a typical EVV process seems like it's pretty clear and easy for most of us. You understand what that would look like. But it's those exemptions that are causing much of us to worry and I just wanted to discuss if that's the guidance that I think we really need from CMS now. So specifically through the self-directed programs some providers and members don't have access to smart phones or telephone lines or other technology typically used by EVV systems.

I think the question to CMS is, are you advising states to deny services to individuals and the circumstances?

Ralph Lollar: No. We certainly are not. Directing or urging a state to deny services to anybody, in fact there are implications for denying services to individuals when you have a documented need.

What we are urging states to do is to ensure that they are rendering services in a manner that allows to the collection of the six data points that are required by congressional action to satisfy the EVV requirement. That is the area that we have to stay within while we work with states and others to ensure that individuals do continue to receive services.

With regard to your other statement about further clarification on the nuances, we understand that. We understand that – and particularly after we got the guidance out on the congregate living setting that there were – we've received a number of calls regarding shared living where the individual lives with just the provider of services or the provider of services lives with the individual. That is on our radar and we are looking at that

But I really have to tell you we have calls from any number of states recently and their services and delivery systems are so nuanced that in some cases one life insurer covers everything from congregate living setting that are 24/7 per diem to simply somebody going into the home eight hours per week to render services.

So it is more complex than we – than a – than in some cases a simple answer that is given on a national basis can satisfy. So where you have the complexities, we urge you to reach out to us. We will tell you if something we're working on for national information. But we will also consider your specific situation when you ask those questions.

Melissa Harris: This is Melissa. What I would add on your first – on your second points about that instances in which beneficiaries may not have technology, you know, that's – that is something that we did hear several times on – over the course of all of our conversations around EVV implementation.

We certainly heard those concerns reiterated in the feedback submitted in advance of this call. And we don't associate that as being limited to the self-directed programs. That really could happen in any state based on internet connectivity, whether the individual already has a cellphone in the home.

It's in the informational bulletin that we released. We try to walk through some technology options that would not rely on a piece of technology already being present in the beneficiary's home, so such as the tablet being distributed to the personal care provider that they would bring into the home of the – the individual.

And so those options exist. It's concerning when we hear assertions that beneficiaries are being asked to pay for things like new cellphones or landlines or some kind of technology because certainly the – one of the first things that invokes is a financial outlay that may or may not be quite difficult for someone to absorb.

So, you know, we certainly encourage states and providers and vendors to be cognizant of the fact that depending on the individual circumstance, there will be a difference in available technology, availability of a cellphone signal, internet signal, et cetera, and to make their selections of the type of system to be used with that in mind that the technology may need to be brought into the home instead of relying on it being there already.

And so we can – we're certainly available to help kind of parse through all of those variables with the information that we've collected so far on implementation options. But we do acknowledge that those concerns, you know, really are national and their potential scope.

Ralph Lollar: In recognizing our initial discussion that we've given you some areas where financial – federal financial participation would assist with some of that technology if it's built in correctly into rates for an APD.

Bill Clark: OK, thank you. I appreciate that. And just a very brief follow up if I can. When you – when we go through CMS certification for the systems once they're all in place, are we then – are we going to be given like a green light status saying that your systems are compliant with 21st Century Cures Act or will there be an additional requirement that every single claims submitted for Personal Care Services be linked to specific EVV data that's collected.

Is it the system that you're looking for compliance with, that we have a compliant EVV system or is it every single individual claim or is it both? And I think this really speaks to the exception process, is the idea that we should have a robust EVV system that there maybe a couple of cases where exceptions occur or is the expectation that 100 percent of our claims for Personal Care Services be matched to EVV data or else we can't claim the full match for that claim.

Ralph Lollar: Good question and what I would say to you is a couple things. Number one, we – I'd ask you to put the question in the mailbox because our experts on APD are not able to weigh in, in this room at this time. But I will also tell you that we expect or we expect states to have an acceptable error rate policy and to have some kind of exceptions policy for where they – where they need to – can verify that the service was rendered but there was some breakdown in that system or in the appliance that was recording. So, we recognized that. We just need a clear policy on it.

Bill Clark: That's great. Thank you very much. I appreciate the time.

Operator: Your next question comes from Colleen Starkloff with Starkloff Disability. Your line is open.

(Steve): Yes. My name is (Steve) and I am a quadriplegic and consumer of Consumer-Directed Services and I have transportation time allotted to me. And many times when my worker drives me to the store or to get my tire fixed, we do not get back in time for my allotted time be in places. Is there an allowance for that?

Ralph Lollar: I think that that is something that would have to be discussed with the state. Pure transportation without personal care services being rendered during that timeframe if the state has a transportation service that would not necessarily be caught up in EVV. at all unless the state determined that they were going to do that type of activity or physical oversight of that service.

In fact if you have – if I've missed your question, I'd ask to offer you time to clarify because I'm not sure I got it or not.

(Steve): (Inaudible) if I could explain (inaudible). And we're not able to work (inaudible) or not having to sometime to (inaudible).

Ralph Lollar: I think that, again, I think even as you're saying that, that is clear that you need a discussion with the state specifically about transportation unless your transportation was blended with Personal Care Services. It doesn't sound

necessary – like that is necessarily the case at all but I'll be having a conversation with my state regarding that.

Melissa Harris: This is Melissa. And certainly the purpose of EVV is not to negatively influence how services are provided or the scope of services or the amount of time that you're allotted for services. So I think that logistical issue for the how to capture the information that is required to be entered into the electronic system depending on the variety of activities that you might have going on in a particular visit.

And so if you are receiving Personal Care Services in your home and then you and your worker, you know, leave that home to go to the grocery store or go to the station for repair or whatever, and you get Personal Care Services as part of your transportation Personal Care Service while in you're in the community. If that – if those services are linked to services that are provided in your home, then that visit might be captured under EVV.

But the point of it is to just capture the specific information that's required in the legislation around when the service started or stopped, where it was provided, who provided it to you. So, the intention certainly is not to limit the actual provision of care.

But as Ralph said you want to talk to not only to your state but, you know, your providers, the people who are explaining the technology to you to make sure that everybody is on the same page with how the various data elements will be captured so that they are not infringing on your receipt of the actual services.

Colleen Starkloff: This is Colleen Starkloff. We're all on this call together at the Starkloff Disability Institute. And I'm very concerned as I listen to this call about people with disabilities not getting the services they need, interpretation that states might make would, for example, say that transportation is when people are – many, many people with disabilities are very dependent on that kind of assistance from their attendants. And I'm also concerned that states as they set these programs up are going to be confused and you're going to have

consumers that will be losing services and they'll lose their attendants if their attendants don't get paid. I'm extremely concerned about this.

Ralph Lollar: We hear and register those concerns. They certainly are forefront in our mind as we are reviewing advance planning documents and as we're reviewing with states as they reach out to us how they are implementing the systems. I think that in – within Medicaid there is the requirement that you – that the service be rendered with respect to – in a manner that respects the individual health and welfare.

And again, in at least some of these cases, the services are rendered as part of a documented plan of care that demonstrates through an assessment tool they need. So simply shutting off the service would not be an acceptable response in any way shape or form. But we hear and register your concern and we'll continue to work with that in mind.

Melissa Harris: And this is Melissa. You know, part of the clarity that we can provide through this call and some other guidance is to articulate the kinds of decisions that had been made legislatively, the kind of decisions that CMS can be making and then the kinds of decisions that states can be making So, it's clear, you know, who really is in a driver's seat with the parameters of how EVV implementation is being rolled out.

That is not to try to, you know, kind of redirect you to someone else but there are so many cases in the – as there was really in all aspects of Medicaid, they are going to be very state specific and CMS may or may not have any kind of ability to shape the types of decisions that are made at state level.

So, part of our responsibility is to continue to articulate the kinds of decisions that CMS has oversight of and can – has the ability, the structural ability to influence and then the types of decisions that really brought to the state level. And, you know, so can you understand really who to most primarily address your concern to. But we appreciate hearing those concerns and, you know, we'll do our best to articulate who's in the best position to respond to them.

Ralph Lollar: And I said we can clarify for everybody on the line that EVV is not an assessment tool for – in this – for how individuals receive services or the amount, duration, scope or frequency of services that are rendered. Assessment tools are an entirely separate issue and they determine the need, and they determine the amount, duration and scope, not EVV.

Colleen Starkloff: This is Colleen Starkloff. I'll just make this supporting comment that I feel like trying to regulate the lives of people with disabilities using some kind of a legislative mandate in a federal set of guidelines doesn't match up to how people will actually live their lives everyday. And I worry about there being lack of flexibility and understanding. If you get sick, you know, and you can't go to work and you need more hours how does that get managed. I'm very, very worried. My husband was quadriplegic. We were together 37 years and this system would have damaged, been damaging to him, but I'll stop.

Ralph Lollar: We would simply say we've heard and understood your concerns. One of the things that we opened with this that – there were some actions that we are not going to be able to respond to your concerns because they will have to be responded to - those changes would have to be made at the congressional level. So, that being said, we really do appreciate your comments and understand that.

Colleen Starkloff: Thank you.

Operator: Your next question comes from Susan Malloy with Arizona SILC. Your line is open.

Susan Malloy: Hello. Thank you. I'd like to make clear I'm not here representing SILC right now. I am SILC member.

I do have some concerns about implementation of this program. I work primarily with people who have been excluded from society because of electrical and chemical hypersensitivities. And many of us do qualify for services at home and caregiving, help with chores and so forth but we have an awkward access problem, at least it will be awkward for you.

Some of the folks with this kind of disability live in tents in remote areas. And that's in order to avoid contact or exposure to any smart meters, or to the 4G and 5G electronic equipment, car fumes, factory emissions things like that.

Sometimes our caregivers can't come in our houses. Sometimes they'll come a 100 feet toward us and we'll make our way 100 feet toward them but it's an atypical situation. We don't have someone who can open the door and let a social worker with EVV equipment come in.

We've had also beneficiaries are unlikely to have a cellphone or any other technologies, unlikely to have cell reception. That cell reception is the reason that people move to remote places in the first place trying to get away from things like that. Or not having cellphones isn't necessarily due to our finances, it's due to safety.

And we've had – I'd like to mention that I very much appreciate the comments made by Mr. Clarks and by Colleen Starkloff about that some of the provisions of the EVV implementation are going to result in denial of services. I think that's very much the case for us. And when you say that if someone has a documented need that we will be given some kind of access, that doesn't make any sense at all.

In our state, at least in Arizona, in other places I've lived the state has no – the state agencies have no concept at all of what environmental hypersensitivity means, we can't interact with them because they won't come to us and we can't go them in the urban areas. That this is preposterous to think that just because Medicaid requires accessibility to services that they'll be in any way available to us.

And overall I'm just extremely concerned about that aspect. I don't think that the state can be counted on to define our access in safety requirements. And so the effect will be excluding us from any kind of home care. Thank you.

Ralph Lollar: And we would urge you to send that question to the mailbox and to your state on that question. Because I think that it – that is a question that really

needs a state specific answer in how they account for that in their EVV system. But please …

Susan Malloy: I…

Ralph Lollar: … please send it in.

Susan Malloy: Sir, I've contacted the state repeatedly with very poor results.

Ralph Lollar: OK. Again, we would urge you not just to send it to your state but to send it to the EVV e-mail box. We'll look into the issue.

Melissa Harris: Yes, the federal EVV mailbox.

Female: Right.

Melissa Harris: Right. And, you know, in CMS we can have conversations with the state as well to figure out how they are, what kind of models of care they're using to provide services right now and how those models, you know, tend to accommodate an EVV overlay and things like that. So, it'll be helpful for us to be able to have these conversations with the state but do, you know, do take us up on our offer and provide a little more time context, you know, for the situation they're describing and then we'll go from there.

Susan Malloy: What's the best way to use that EVV e-mail box.

Ralph Lollar: E-mail the question to …

Ryan Shannahan: Evv@cms.hhs.gov.

Ralph Lollar: dot G-O-V.

Susan Malloy: OK. EVV@cms dot …

Ralph Lollar: HHS dot …

Susan Malloy: HH …

Ralph Lollar: HHS…

Susan Malloy: EVV@cms.hhs dot …

Ralph Lollar: G-O-V.

Susan Malloy: V-O-V.

Ralph Lollar: G, as in government. G-O-V.

Susan Malloy: Thank you. I will try to make my way to a computer somehow and see what I can do about that. And part of the reason you don't hear a lot from people with this kind of disability is that more frequently than not computers make us very sick. And we haven't had much success requesting of the computer builders and designers that they shield the electromagnetic fields and Wi-Fi emissions from this kind of equipment.

Ralph Lollar: Ask your personal attendant could assist with that. So, we need to move on, but thank you.

Operator: Your next question comes from the line of (Julie Shall) with (Creator Services). Your line is open.

(Julie Shall): Yes, my concern was voiced with the lack of internet or cell service in rural areas. Thank you.

Ralph Lollar: Again, I urge you to go …

Operator: Your next question …

Ralph Lollar: Information that we published in May of this year, you'll see some information about how to account for those situations. Go ahead.

Operator: Your next question comes from the line of (Lisa McKinley) with Franklin County. Your line is open.

(Martha Rosap): Thank you. This is actually (Martha Rosap). (Lisa McKinley) is son's case worker and I'm listening in on this conversations.

And my question, I do have the systems in our house and we're going to be working with two different agencies. We're going to have a nursing agency, who is going to be using this as well as an agency that provides homemaker and personal care services. And our nursing agency is really pushing people to use their phones which I was told would require a signature from me as my son's guardian.

My question is, I've told the agency I want to use the EVV device. Does the EVV device require me to do a signature after the employees walk in and out?

Ralph Lollar: If that is the question that is more specific to the state, it depends on how they are requiring it. If they are requiring electronic signature from the guardian, if they're requiring it from the individual when the guardian isn't present, states would have to have a policy or process for how to deal with that. And I really can't answer for your specific state.

(Martha Rosap): So then I should check with the State of Ohio?

Ralph Lollar: Yes. Yes.

(Martha Rosap): That – to see if that the EVV that require a signature for me as well?

Ralph Lollar: Yes, I would check with your state to see what they are going to require, definitely.

(Martha Rosap): And then my other question, like the kind of piggyback that, like if somebody clocked in because my son has 24-hour care, that's going to be monitored because my other question was, is that going to, like, alert somebody to the fact that this caregiver clocks in late, do you understand what I'm saying, does that make any sense?

Ralph Lollar: Sure. And it may. One of the things an electronic or any kind of check-in system does is verifies the time when somebody comes in. So, I would say, yes, that may catch late check-ins. I don't know who would be addressing it, whether it would be the provider …

(Martha Rosap): I'm assuming the two different agencies providing services. And then my last thing is, I heard of and it's saying 4G (inaudible).

Ralph Lollar: That would be something where you definitely have to go back to the state and ask that question in the state.

(Martha Rosap): So is that – can make a (inaudible) maybe instant agent going to be build for that?

Melissa Harris: It sounds like you've got some questions about the actual technology and then some questions about how the – how real life events are going to be treated under the system. You know, going back to your question about, you know, if your personal care provider was late, for any number of reasons. They were stuck in traffic, they got held up in another location, all of those can be perfectly legitimate.

And so how will – what does it mean if the individual was suppose to be there at 1:00 and they sign-in at 1:30, for example. You know, does that automatically, you know, raise the red flag in the system? Is there an ability to say, you know, my worker was late for traffic congestion rather than my worker was late, you know, because he or she, you know, did not come on time. So those were all kind of traffic …

(Martha Rosap): Because they were late.

Melissa Harris: Correct. And so, that could happen as well. So, is there an ability in the system to differentiate, you know, the reason why (a visit) started later but it was authorized. And I think those are all very relevant questions that your state will need to walk you through. We're just a little disadvantaged at the federal level not understanding the specifics of Ohio systems.

(Martha Rosap): Awesome. Thank you.

Operator: Your next question comes from Sheela Gunn-Cushman with EVV (Stoppers). Your line is open.

Sheela Gunn-Cushman: Thank you. I think the – I think that the impression I'm getting based on the comments that have been made here on this call and those that we've heard in theme forum is that not every state is as awesome as California in its attempt to communication with everybody. And even California, I like to see some things get better. And I see that there are a lot of people who are not understanding what's going on despite their pretty good efforts to make it good.

I also like to echo the electrochemical sensitivity stuff and the fact that some people just can't have that equipment around them and their (forward note), and the comment about rural areas. But I would like to bring something else to your attention as well which is that, as a result of these EVV systems going into place, someone is going to have to train the workers. Someone is going to have to train the recipients and/or their, you know, family helpers or whatever that help them understand the systems.

And I'm a recipient myself and so I would have to get the training but I'm blind. And so are things going to be accessible? And if you tell me to go back to my state, I'll be very unhappy, because we have gone to California with these things. And I think a lot of these people are coming to you with these questions because the states aren't clear and they're flailing about.

But when you start these EVV things, you are going to get some data or some data is going to happen going to the states department of social services and the county department of social services that say their recipients were losing workers because the workers are too frustrated to over burden, can't buy the equipment, maybe they don't want to take responsibility for equipment they're not going to own. I don't know. I mean, there's a lot of moving parts there.

And I want that data monitored where if a recipient had a worker before EVV and they lose that worker, why was that worker lost, how was that worker lost, and then I want that recipient to be able to get helped getting a new worker. And that is partially the responsibility of the state, but since the feds are foisting this down our throat, it's the Fed's responsibility as well. And I would like to see that data collated.

The last thing, I'm trying to be fast, I'm sorry, is that we need to have the – damn it, I lost it. OK. Well, I'll find the box. But one more thing that you guys should know is that I was on hold for 10 minutes before I even got to your operators to get in to the call. And so I was 13 minutes late to your thing and I started four minutes before the – I started one minute before the meeting would have begun. And so I missed 13 minutes of your meeting trying to get in.

And so, you're going to have to ask this conference company to have more operators ready for this call when people are coming in. Thanks.

Operator: Your next question comes from the line of (Chris Montreal) with (Jim's) Home Care. Your line is open.

(Chris Montreal): Good afternoon. We're seeking clarification on the start date of EVV here in Florida. ACA has told us that EVV already went into effect as of October 1st which is different from, you know, CMS and the federal information that we've seen. So, can you clarify that for us?

Ralph Lollar: First, I'll say that we're going to go back to the other caller as soon as this is over and respond there. But in response to your call, EVV, the federal requirement for EVV for personal care services is January 1st, 2020. There is a good faith effort exception that if a state is granted could take them to January 1st of 2021. That did not – there is nothing in the statute that prohibits a state from implementing EVV earlier.

So, with regard to whether or not Florida has done an early implementation, I don't have knowledge of that. It is a question that you certainly could send to the mailbox. You're saying that you already asked the state, so I would send it to the mailbox and we will do follow-up.

(Chris Montreal): Thank you.

Ralph Lollar: With regard to the previous caller, we recognize that there was difficulties with individuals getting in, there often is when we have a large number of individuals calling in. We delayed the call by five minutes to account for

some of that. Clearly, we did not capture all of it. So if you came in 15 minutes late you missed 10 minutes of the call.

We do have an electronic Encore presentation that you can get for the next two days that will give you – you can listen, it's audio, so you can listen to the first 10 minutes. It was not a Q&A. It was an introduction. So I think you will be able to capture that information fairly easily. There will also be transcripts available. So, we've taken into account as well as we can the difficulty with doing anything like this on such a large basis.

With regard to the other concerns you had, some of them or all of them you can send into the mailbox. Again, I would have to tell you that we are working to get out national information where it make sense and would be consistent across state systems, where it will not be consistent across state system or where there is latitude for states to determine how they will render the services or the system, we have – we would defer to the state to make that determination. So, that is the best answer I can give you with regard to the concerns that you have expressed.

Operator: Your next question comes from the line of (Denise D'Souza) with Unified Community. Your line is open.

(Denise D'Souza): Hi. My question to you is, when – I missed the date where companies that provide residential and day program (frame with – those) with disability. When is the review will be implemented for those program? And the other thing, I know you guys said you're going to have a transcript, where would we get those so I can share that with our staff?

Ralph Lollar: Do you hear that?

Melissa Harris: So this is Melissa, I know the first part of the question. So, the start date for EVV for Medicaid-funded personal care is July 1, 2020. I'm sorry, January 1, 2020. Unless the state has received a good faith effort which would delay the implementation by another 12 months. Which makes it January 1, 2021.

You mentioned day services and I will caveat that by saying it's not a forgone conclusion that EVV will be applicable to the services provided by day service providers. The congressional requirement is that EVV apply to Personal Care Services that require an in-home visit. And in our prior guidance, we define an in-home visit to include those instances in which personal care, a personal care visit either starts or ends in the home and may continue into the community.

And so depending on individual circumstances, that could encompass personal care services provided in non-residential setting but it's not automatically guaranteed to. So, as a provider of day services, you want to have a conversation with your state to figure out the likelihood of EVV being applied to services that are provided during – when someone is at your non-residential provider and so you'll understand the logistics of that.

I am going to ask Jill to give the logistical information for where you ask the transcript of today's call.

Jill Darling: So, today's …

(Denise D'Souza): I just – I'm sorry. Just one thing I ask before you do the – when you talk personal care does that (inaudible) the residential (inaudible) as a company or just families, personal …

Ralph Lollar: You're breaking up. But what I would say to you and I hope this clarifies this is that the Cures Act talks about Electronic Visit Verification for Personal Care Services that require an in-home visit. So it would be a visit to the individual's residence.

I don't know …

(Dense D'Souza): A private or with the company?

Ralph Lollar: It could be either.

(Denise D'Souza): OK. Thanks.

Ralph Lollar: It could be either. Jill, can you give the context?

Jill Darling: Sure. So, the transcript for today will be available. We have a podcast in transcript webpage. That link is on the announcement that was sent out. So you give us some time to get it posted because we'll have to go through it and make edits, just for spelling goes. And, so that link is on the announcement that was sent out.

(Denise D'Souza): All right. Thank you.

Operator: Your next question comes from (Michael Kasab) with (M&R) Home Assistance. Your line is open.

(Michael Kasab): Hi. I have a few concerns regarding non-English speaking or reading caregivers that I have. So, are they working on some kind of work around? Or are those who wouldn't necessarily be able to get into an app put in like user name or password and, you know, enter in the services that were done. Especially here in Michigan, they're pushing for $15 an hour minimum wage, that much harder to find caregivers at $10 an hour, let's say. So, most of them end up being non-English speaking. So are there, you know, are there any kind of solutions around that?

Ralph Lollar: I think one of the reasons that the – Cures Act calls for stakeholder involvement and that CMS has emphasized that is for issues exactly like this where the state needs to troubleshoot upfront where they're going to have problems in their systems; it's one of the reasons that piloting the program within the time frames allowed which we also suggested so that you could control for those things, where individuals have communication difficulty.

Clearly, the EVV system is going to have to address those difficulties. And it is one of the primary reasons for stakeholder involvement. There isn't a standard answer for that nationally. I think different system have addressed it differently as a different state.

But I – again, urge you to be talking to Michigan regarding this concern because, quite frankly, the state doesn't want to be hit at the end of the period

where they say they are fully aligned with the fact that they have left out a complete population of individuals from the process.

Operator: Your next question comes from the line of (Donna Kelly) with (Southwestern) Behavior. Your line is open.

(Donna Kelly): Thank you. Do you know if CMS has any plans going forward to apply the EVV requirements to providers who are providing behavioral or mental healthcare services in home environments?

Ralph Lollar: With only with regard to whether or not those services include services with ADLs and IADLs. So, if that service is bundled with a personal care aspect to the service, it may be swept into EVV. But CMS is making no plans at this point to extend EVV beyond what is required in the Cures Act which is personal care services and home healthcare services.

(Donna Kelly): Thank you.

Ralph Lollar: You're welcome.

Operator: Your next question comes from the line of (Maria Darnell) with California Associate. Your line is open.

(Maria Darnell): Yes. If a state chooses to go beyond the Cures Act and implement this for hospice services, wouldn't that require a regulatory or state statute change?

Ralph Lollar: It may in your state. I don't know what the state's regulations and statutes read on that matter. But it certainly may. I wouldn't be able to speak to that in a federal level. But it's certainly is something I would be speaking to my state about if I knew that there was intent to do that.

(Maria Darnell): OK. So am I clear that it's only for Medicaid services for home health or personal care?

Ralph Lollar: Yes.

Melissa Harris: That's what the Cures Act required.

Ralph Lollar: That's what a Cures Act required …

(Maria Darnell): Thank you.

Ralph Lollar: … for the services that are rendered as part of its in-home visit.

(Maria Darnell): That's it, thank you.

Operator: Your next question comes from the line of Julie Espinoza with REACH of Plano. Your line is open.

Julie Espinoza: Yes. We are listing up for independent living and we have a question from (Annie Wallace).

(Annie Wallace): My question is who wants this other than the people who are going to be paid to setup the full EVV process? I haven't found any persons with disability there is – all I can say possibilities like myself, I'm legally blind, that actually wants this service implemented other than the people who are going to be paid to set up the services and couldn't – the money be used to give better services instead of setting up another monitoring program because our government already has so many different monitoring programs that just hold up the services from being given properly. So who actually wants this EVV program?

Ralph Lollar: The honest answer that we can give you is that Congress has required it through statute and we are required to implement the desires of Congress. Beyond that, I can't tell you who wanted it, who requested it. That information is beyond my purview or our purview here. Melissa?

Melissa Harris: The only other thing I would add, you know, we're not speaking for Congress and this is, you know, we don't know what was necessarily in their minds. But there are some program integrity nuances to any type of system that will verify that services that are being billed actually happens.

And so we understand and respect all of the concerns and the questions that are associated with implementation and the wording of the actual Cures Act

legislation. Philosophically, you know, the use of the system to make sure that services that are being billed actually provided or were actually provided, you know, is understandable. There is a lot of money associated with the provision of personal care in the Medicaid program across the country.

And if you look at some of the audits of the programs that have been done in the past, you will find some instances of bills being generated for services that were not provided. And so there is something to be said for the implementation of a system that makes sure that to the extent the state is being billed for services and I'm speaking federal reimbursement for those services that there was documentation that they were actually provided.

Again, that's speaking at a very high level philosophically for the support that EVV may have had as being developed for legislation. But the philosophy aside, understanding how the language of the legislation will impact the actual provision of care on the ground and real life concerns of individuals who are going to be using EVV system. It's critical for us to hear to figure out what we can do at the federal level to the extent there are things we can do given the statutory construct.

So, that's an answer based on the best of our abilities. You know, without having any drafter of the legislation on the phone but – and so that's about, you know, all I will say on that.

Jill Darling: Next question, please.

Operator: Your next question comes from (Collin Schwartz) with MassHealth. Your line is open.

(Collin Schwartz): Thank you. Can you clarify how penalties for non-compliance with EVV requirements will be assessed?

Melissa Harris: So in the statute, there are some requirements for a withhold of federal reimbursement from Personal Care Services or Home Health Services. And that withhold is discussed in the statute at certain amounts at certain times.

And so that would be based on the state that was not in compliance with EVV and does not have an approved good faith effort that would give a state an additional 12 months.

So for example, in personal care, the personal care requirements for EVV kick in January 1, 2020. And so if the state did not have a good faith effort approved by CMS, CMS would need to start withholding a percentage of federal reimbursement for your personal care claims based on the numerical figure that is outlined in the statute.

If they did have a good faith effort, that would give the state another 12 months until January 1, 2021 to avoid any kind of federal penalty. So, if the financial implications are spelled out in the statute and they go by fiscal year and there are some figures associated with them. We've been doing our best to figure out to the extent any of those penalties need to be effectuated how we can do them based on the nuances of that particular state.

So, for example, personal care can be provided in many different ways and it could be that there is one program that is in compliance in a state, another program that is not, how can CMS best effectuate any kind of financial penalty as close to a specific program that is not in compliance as possible. In some cases that will require some ongoing discussion with the state and it will be specifically on the state's use of various authorities. But our goal is to be as precise as possible when effectuating any kind of financial withholds but that will depend a lot on the variables of how that state authorizes personal care.

Ralph Lollar: With regard to the specific withhold, in 2020 is point – it is a quarter percent in 2021, it is half a percent in 2022, is it three quarters or .75 of a percent. After that, it is 1 percent. That 1 percent is not continued to add on moving to two or three. It is 1 percent in perpetuity until the state comes into compliance and that is effectuated by quarter.

So, a state could be out of compliance for the first quarter of 2020, come into compliance the second quarter and that penalty would only exist for the first

quarter. CMS is currently in the process of building a system where the state can report their compliance so that we can do the proper assessment.

(Collin Swartz): Thank you. I have a separate question. We actually have a series of questions we submitted to determine if EVV was applicable to certain services. We heard your response earlier that because states have different definitions for different services that you weren't going to respond to those questions in this forum and that's understandable. How can we get those questions answered?

Ralph Lollar: Your first step would be to go to your state but you certainly could send the – I'm sorry, send the question in to the mailbox or if you are the state itself reach out to your CMS regional analyst or contact and they'll arrange a meeting with CMS writ large both central office and the regional office.

So, I would say your two specific options would be the mailbox and/or requesting a meeting be scheduled, we're amenable to either or both.

(Collin Swartz): OK. And then final question. After January 1st, 2020, if we need to certify a new provider for – to improve an access issue, is there a grace period that would be allowed for those providers to become compliant with EVV requirements or do they need to be compliant as soon as they provide services.

Ralph Lollar: What I would say to you see is this, I think that the best way to deal with that is for the state to set up an internal policy and procedure that says how that new entity will demonstrate compliance with EVV. You might want to take a look at your error rate again that you use when you started the system or your exceptions process and determine how that factors in here.

(Collin Swartz): OK. Thank you.

Operator: Your next question comes from Larry Waninger with Southern Indiana Resource Solutions. Your line is open.

Kelly Mitchell: Thank you. Actually, this is Kelly Mitchell. Larry and I are here together. I believe you answered my first clarification. It's my understanding that the federal EVV mandate applies only to in-home services, personal care or home

health care provided in the home and not community-based services or group congregate day services.

But I do have one other question and I'm not certain that you can respond but does the mandate allow an error or exception if a provider would have a caregiver who may forget to clock in or clock out if you will at the home base using the EVV system.

Under Department of Labor, the provider has to pay the individual for services rendered regardless of whether they use the EVV system. Is the provider going to be penalized and not paid and yet liable for paying wages? How would that work?

Ralph Lollar: First, I would urge you to speak with your state representative specifically about this. Second, I would say that we spoke about error rates and exception processes that could be put in place. I think that – when I say exception certain processes, I want to be clear though that exception processes would mean that it was an exception and not the rule that you had somebody who habitually didn't sign in or habitually didn't sign up but rather they (would accept) error rate process.

And that I would be talking directly with my state about it because that's where it's going to be critical for you to have that information and to have that information clean and clear.

Kelly Mitchell: OK.

Ralph Lollar: OK.

Kelly Mitchell: Thank you.

Ralph Lollar: Sure.

Operator: Your next question comes from Mary Anderson with ABLE Inc. Your line is open.

Mary Anderson: Thank you. I think my questions have been answered also and I appreciate the comment that was made earlier by the – one of your staff that it would be very nice to see the origination of the rule. So if it's a CMS rule, if it's a state rule. Because we do find that the ball keeps bouncing back and forth between the state saying its CMS and CMS we have no access to you to verify.

So, I really just want to strongly emphasize that that is transparent and clear to us so that we do get answers. And I think, you know, I originally asked the question about congregate care, like what is the definition. And I think that's also where the nuance conversation came up, am I correct?

Ralph Lollar: Yes. Understood and your concerns are understood and acknowledged. One of the things I would tell you is again use the EVV mailbox. We do respond to that. You will get a written response from CMS if you have specific questions that you need answered.

The other thing I want to do in clarification for the previous caller was to ensure that if it's in-home visit and in-home visit is defined currently as visit that either occurs entirely in the home and/or starts in the home or ends in the home. So there are may be some community activity included in there. I don't want you thinking that was completely left out. We did cover that at the beginning of the meeting.

But definitely you can get straight answers from – you can get answers from CMS and I'm not implying that you're not getting straight answers from the state. I was just very poorly worded and I apologize for that. You can get answers from CMS if you write to the EVV mailbox.

Kelly Mitchell: Thank you. Thank you.

Melissa Harris: And this is Melissa. And you can also take a look at the (Inaudible) a guidance that we issued over the summer, the informational bulletin and the FAQs. You know, that's really the bulk of the formal guidance CMS has written and you can see where we have attempted to provide some language at the federal level to ensure all stakeholders including states have a level playing fields about federal expectations. And then we are – we're also pretty

explicit in other places, where the state will be making decisions for example on the type of system to select, the type of technology that system will require, the types of training that that both providers and individuals and their families will need to – to take understand the mechanics of their implementation effort.

And so that kind of a 30,000 foot level lays out, you know, who is in charge of making what decision. But we understand about – that does not provide clarity to the universe of scenarios that you'll be encountering.

So that mailbox really is – the EVV mailbox is a direct link to CMS. And we've been appreciative of our ability to then have direct communications with a wider array of stakeholders than we typically have.

And so we can – we can verify something for you. If you're hearing something, you know, and want to make sure it's on our radar screen, or if you're wondering about, you know, the origin of a particular decision we're happy to use that forum. And then, you know, we're happy to keep the lines of communication open.

Ralph Lollar: I would also say just as a resource,look at the informational bulletin that was published in May of 2018 that references the states that currently have EVV services standing up already. You may have resources in those states with regard to agencies that you're aligned with that can also give you information and assist you as you're trying to understand the impact.

Operator: Your next question comes from the line of (Ruthanne Sikora) from (Parents). Your line is open.

(Ruthanne Sikora): Thank you. And (what I want to say), I really appreciate you having this conversation with us considering the piece of legislation came out of finance and commerce. And I'm not sure how much they really do know about how this impacts families, caregivers, the individuals with the disabilities, all the way around. I have couple of questions and I will try to ask them before that they're answered.

I really would like to know what this, it was brought up earlier, the six data points that they're looking for this information that come in to answer the data that they're looking for. In regards to the six data points.

And then I was also trying to research, trying to find the six data points on myself. And I found this website called policyhouse.gov legislative and it goes on. And it was talking about who that they're really targeting when they're talking about the workers. And it specifically says that a home care agency employee provided the agreed upon point of care. So that – when we were talking about that kind of gray area when we were asking about the family member providing direct care for their family member within their home, so they really never come to the home and leave the home, it's always from the home. So they're not coming to the home and then leave it. They're always there.

They specifically says the target was that a home care agency employee that has a point and it also goes on to say that they called their agency and report this information. Well, a family member does not have an agency that hires us and then report to that agency.

Now we do have time sheets that are filled out. And there was also something else that maybe is not information that this committee was aware of. But we are visited on a fairly frequent basis by case managers that fill out report,that transparency is there to give them information about what is going on in the individual's life, in the family's life. And that's on a regular basis. And that's mandated by CMS.

So, you know, when we have that gray area, and I would like to ask when they're talking about this, if there's – if this is correct and they're talking about agency employees, then some clarification needs to take place because the legislation does not specify that, but the background does specify that.

And if there needs to be a waiver that's built in to this legislation then maybe we need to go back to this committee and ask them to address that specific issue, because it does say family caregivers, but the background says, agency employee.

So, the six data points is very important in what they're looking for. And yes …

Melissa Harris: Yes. OK. Could you give us that website address one more time?

(Ruthanne Sikora): It's pretty long but it's hptc@policyhouse …

Female: No, I think we're – you're cutting out. So I think I would ask you to send that link to the mailbox …

Ralph Lollar: To the mailbox.

(Inaudible)

Ralph Lollar: Yes, thank you, that would be very, very helpful.

Melissa Harris: Yes, we'll take a look at that. You know, meanwhile the six data points that we're talking about are those that are referenced in the Cures legislation (that's) needing to be captured for each visit in which personal care is delivered in the home. And so those are the name of the individual receiving a service, the name of individual providing the service, the type of service. So is it – is it personal care or home health, the location of service delivery, the start, and stop time of the service, and the dates of service.

And you can find that, you know, laid out directly in the Cures Act legislation.

Ralph Lollar: If you look at Section 12006, you'll find the information there.

(Ruthanne Sikora): OK. Thanks.

Ralph Lollar: OK. Thank you …

(Ruthanne Sikora): (Inaudible).

Ralph Lollar: Yes.

Melissa Harris: OK, thanks. You're breaking up again. So – but, thank you, follow-up that web address to the mailbox, so we'll take a look at it. Thanks.

Operator: Your next question comes from T.K. Small with Concept of Independence. Your line is open.

T.K. Small: Yes. I have a two part question. One, as it relates to the interpretation of HIPAA compliance. If HIPAA is a federal law, why is CMS directing people to look at state resources on interpretations of HIPAA compliance? And then I'm really also concerned about accessibility of the EVV systems, as a really disabled quadriplegic due to spinal muscular atrophy, the technology I use to access my phone and internet and e-mail services is very specific to me.

But also many PAs, many personal assistants in the (consumer) directed program have people with disabilities like mental health issues and writing disabilities, of the six people that work for me. I would say that four of them are going to have great trouble navigating a complicated EVV system.

Can you speak to those two issues?

Melissa Harris: Yes, this is Melissa. And so I would – I would say that we acknowledge those concerns and understand where they're coming from. Ralph had given an answer a couple questions ago when similar concerns were being raised about individuals who had limited English proficiency and how would they be able to access the technology. And so any kind of – there's any number of variables on that theme, how individuals, you know, with other kinds of needs get taken into account as the state is rolling out their system.

And this – you know, about the only thing we can do is to reiterate the – how critical that stakeholder engagement is between you as a person who is receiving Medicaid services and the state as they are making implementation decisions.

We can certainly reiterate to save the expectation that the systems are rolled out in such a way and the training is conveyed in such a way to accommodate the needs of individuals, be it the ones who were working the technology from

the service provider angle and from the beneficiary angle. But that's only going to be mad more more clear by you and your viewpoint …

Ralph Lollar: Correct.

Melissa Harris: … directly to the state. So we would – we would encourage, you know, to the extent that, you know, that you have not had a conversation with your provider who will be the people who were introducing this technology to you and your state to do so. And we can – we can, you know, if you need some help in facilitating that we will – we can certainly do that.

On the HIPAA requirements, I mean that – and we – there is a provision in the Cures Act that says the requirements of HIPAA need to be protected. There are federal requirements that lay out HIPAA specifications and then there are also some state specifications. In some cases, states are authorized to release identifying – identifying information based on the perimeters of different laws. And CMS does not – is not the purveyor of all of those different phases of privacy laws.

And so it's kind of joint responsibility between CMS and the state to make sure that provisions of HIPAA are being met. You know, because we, you know, the transmission of the information collected from EVV will be happening between a state government and the federal government, you know, kind of structurally that kind of data transmission is permissible under HIPAA.

But there are requirements that that, you know, can get very technical very quickly that we are not expert in here. And so is as much of the state responsibility as a federal responsibility to make sure that everybody understands the proper use of the data that's collected through the EVV system, and the need to treat us, you know, with the – through the lens of privacy that HIPAA brings to the table.

But it is not necessarily a – an issue that, you know, that solely rest, you know, with us or with the state. So, you know, it's a – the work in progress to make sure we and the state are all on the right side of HIPAA going forward.

Ralph Lollar: Your state HIPAA Compliance officer answers to the Office of Civil Rights with regard to the enforcement of HIPAA. So it's not that there isn't a federal arm extended, but the more intimate and the more immediate response you can get is from your state of – state HIPAA compliance officer, which is part of the expectation of enforcement of HIPAA.

T.K. Small: Is it fair to say that CMS will be continuing to watch the situation and if consumers raise concerns that state HIPAA compliance officers are not being responsive, that CMS would then step in and possibly to run some additional guidance to state HIPAA compliance officers?

Ralph Lollar: We will follow regarding concerns that are expressed to us, HIPAA Compliance does fall under the purview of the Office of Civil Rights. So, I wouldn't necessarily commit that CMS would be the federal partner that is doing follow-up. But I will tell you that we certainly would not turn a deaf ear to issues that were being brought to us.

(Inaudible)

T.K. Small: (Inaudible) technologies equipment (inaudible) as not being secured.

Ralph Lollar: Thank you very much. We really do appreciate that.

Operator: Your next question …

Female: No more questions?

Operator: Your next question comes from the line of (Joe Beaver) from Private Investor. Your line is open.

(Joe Beaver), your line is open.

(Joe Beaver): Hi. My concern is regarding privacy. I used an agency for 12 years that used telephony, which I assumed is what you're looking at for EVV system. The last two years I've been on CDASS and we just fill out paper work which is really pretty simple. Whenever we're using the telephony first of all it's time

consuming for the aides that's coming in to clock in with that, with all these identification numbers and so on. It was set up using my cell phone. So that's how they verify location is by my phone number.

After he performs his services, then he goes to clock out. And he clocks out without me being able to see how he's really responding to the questions that are being asked. And I know that he just punching yes on everything. So, that's really inaccurate and not valuable at all. I don't even know who gets the information.

But there was really too much details. They were asking such private matters as bowel movement. Not only have a bowel movement, what size was the bowel movement. Who cares then and that goes to my doctor, that's just ridiculous kind of private information as being shared?

Well, whenever I switch over to CDASS, the state does a complete examination on me as to what my needs are. And they set the allocation. I have consistently been under the allocation because the aides that I hired are very efficient. They don't just sit and wait to do one task and then do the other, they multi-task if I'm sitting on the toilet or maybe they're cleaning house or fixing breakfast. So, I really don't understand why in the first place that we have to support information as long as I'm under the budget which the states has already said that you're allotted this much allocation.

So under the CDASS program, two of us signed the timesheet. So, I'm verifying the time that they spent. And they don't ask anything about the size of my bowel movement, they ask personal care, homemaker and health maintenance. And we divide those between their time, between those three sections.

And I am the employer as described in my CDASS application. I should really have some control over what's input under the EVV, I do not. So that's really my comment and my question is why is it necessary? I think one of the questions asked previously is who invented this idea on the first place? It really makes me think the only ones who are benefiting from this, are the manufactures of the EVV system and that's my comment.

Melissa Harris: Yes. Thanks for that. And your point about, you know, your services being consistently under the allotment of care or allotment of funds that the state have given for the provision of your services is well-taken, you know, in that with respect to what I've mentioned earlier, this is Melissa, about the program integrity basis of the EVV.

And so I understand that that's certainly before the advent of EVV. There was still a program integrity paradigm that overlaid all of Medicaid services and there were checks and balances to make sure that the state has some certainty with regards to their budgeting and, you know, services and supports that were authorized for individuals were based on assessed needs. And so, you're absolutely correct. This is, you know, the advent of another way to check to make sure that services that are being billed were actually provided.

As to the content of the type of questions that your personal care worker would to need to answer, that's going to be specific to the actual system that your state selects. And so the only pieces of information that are required to be collected are the six data points about type of service, like personal care, the date of the service, your identity, your worker's identity, the location of the service, things like that.

And so from our perspective at the federal level, that's the universe of information that needs to be captured. It will depend on the actual model and systems selected by the state, as to whether there was any additional information besides those six data points. But we understand the need to make it, you know, as concise as possible to convey validity of the service without requiring a lot of narrative description, other types of services that happened and et cetera.

So, your point is well taken. And you may want to follow-up with your provider and with your state syou get your specific question answered on that particular model.

So we need to do a time check It's 3:00 Eastern Time. And so that brings us to the end of our call. We know that we've got still some questions in the queue and we apologize for not being able to get to those.

We remind you that the mailbox is still available as a resource and – so please if you've got a question that has not been addressed, please submit it to our mailbox and we will do our best to get you a response as quickly as possible. Again that mailbox is evv@cms.hhs.gov.

And a reminder that if you already submitted feedback into the mailbox in advance of today's call and you do want a formal, individual response, please resubmit it and we will go from there. Again, I appreciate your patience and to give us a few days to work through all of these incoming e-mails.

We do really appreciate your participation today. And this will not be the end of our conversations. We will take this feedback into account as we determine what the next steps are. And look at the announcement for today's call for the logistical information for how to access the audio playback and the transcripts for today's meeting. And I think we'll go ahead and wrap it up and does anybody here have any final stuff?

Female: Thank you.

Melissa Harris: OK, thanks everyone. Enjoy the rest of your day.

Operator: Thank you for participating in today's Electronic Visit Clarification, EVV Stakeholder Open Door Forum Conference Call. This call will be available for replay beginning at November 7th at 5:00 p.m. until November 9th at midnight.

The conference ID number for the replay is 33979177. The number to dial for the replay is 855-859-2056. Again, this replay will be available beginning at 5:00 p.m. November 7th until midnight November 9th and the conference ID is 33979177 and the number to dial for the replay is 855-859-2056.

This concludes today's conference call. You may now disconnect.

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