

Frequently Asked Questions

Q: What does section 12006 of the 21st Century Cures Act require?

A: Section 12006 of the 21st Century Cures Act (the Cures Act), P.L. 114-255, added Section 1903(l) of the Social Security Act (SSA). **Section 1903(l)** provides that states must require the use of an electronic visit verification (EVV) system for personal care services (PCS) and home health care services (HHCS) that require an in-home visit by a provider.

Q: Does section 1903(l) apply to all Medicaid PCS?

A: The section 1903(l) requirement applies to personal care services (PCS) requiring an in-home visit that are provided under the Medicaid state plan or under a waiver program or demonstration project under the following Social Security Act provisions and their implementing regulations:

- 1) SSA Section 1905(a) (24) state plan personal care benefit
- 2) SSA Section 1915(c) home and community based services waivers
- 3) SSA Section 1915(i) home and community based services state plan option
- 4) SSA Section 1915(j) self-directed personal attendant care services
- 5) SSA Section 1915(k) Community First Choice state plan option
- 6) SSA Section 1115 demonstration projects

For purposes of the electronic visit verification (EVV) requirement under SSA section 1903(l), the definitions of “personal care services” and “self-directed personal assistance services” at 42 CFR §§ 440.167 and 441.450 apply, as do any state-specific definitions of the term or similar terms (e.g., personal attendant services, personal assistance services, attendant care services, etc.) in CMS-approved state plan amendments, waivers, and demonstration projects under section 1915(c), (i), (j), or (k), and section 1115. States should also refer to descriptions of the service in CMS guidance, such as the State Medicaid Manual (CMS Manual Pub. #45) section 4480. The definition of “personal care services” is not uniform across all the authorities under which it can be covered as a Medicaid benefit, but in general, it consists of services supporting Activities of Daily Living (ADL), such as movement, bathing, dressing, toileting, and personal hygiene. Personal care services can also offer support for Instrumental Activities of Daily Living (IADL), such as meal preparation, money management, shopping, and telephone use.

Personal care services that are provided to inpatients or residents of a hospital, nursing facility, intermediate care facility for individuals with intellectual disabilities, or an institution for mental diseases, and personal care services that do not require an in-home visit, **are not** subject to the EVV requirement.

CMS is aware that PCS are provided in a variety of settings, including in congregate residential programs such as group homes, assisted living facilities, etc. Stakeholders have questioned whether the EVV requirements apply to PCS provided in those settings offering 24 hour service availability. CMS interprets the reference in the statute to an “in-home visit” to exclude PCS provided in congregate residential settings where 24 hour service is available. This interpretation recognizes inherent differences in service delivery model where an employee of a congregate

setting furnishes services to multiple individuals throughout a shift, and services provided to an individual during an in home “visit” from someone coming to a home to provide PCS as specified in the EVV statute. Consistent with this difference in service delivery model, typical reimbursement for services provided in these congregate settings utilizes a per diem methodology, rather than discrete per “visit” or per service payment structures. Therefore, CMS finds that services provided in a congregate residential setting are distinct from an “in home visit” subject to EVV requirements under the statute.

Q: Does section 1903(l) apply to all HHCS?

A: Section 1903(l) applies to home health services requiring an in-home visit that are described in section 1905(a)(7) of the SSA and provided under the state plan or under a waiver of the state plan (such as a Section 1915(c) waiver or a waiver under a Section 1115 demonstration).

Q: Does the EVV requirement apply to the Program of All-Inclusive Care for the Elderly (PACE) program?

A: CMS does not interpret the EVV requirement to apply to PACE program services. In CMS’s view, PACE is a separate Medicaid benefit listed at section 1905(a)(26) of the Social Security Act, and that provision is not cited in section 12006(a)(5)(C) of the Cures Act.

Q: Does the EVV requirement apply to the Money Follows the Person (MFP) Demonstration?

A: CMS does not interpret the EVV requirement to apply to the MFP Demonstration. In CMS’s view, MFP is a separate Medicaid benefit listed at section 1905(a)(26) of the Social Security Act, and that provision is not cited in section 12006(a)(5)(C) of the Cures Act.

Q: States often choose alternate titles for personal care services or bundle them within other service definitions (e.g., respite, in-home living supports). Is the Cures Act definition limited to just those services explicitly titled “personal care services” in a state’s state plan or waiver program?

A: All services requiring an in-home visit that are included in claims under the home health category or personal care services category on the CMS-64 form are subject to the EVV requirement. In addition, services furnished under waivers or demonstration projects that meet the statutory or regulatory definition of a “home health service” or “personal care service” must meet the EVV requirement, even if they are bundled into a different service or furnished through a managed care provider. In other words, if the service includes personal care services or home health services, even if it has a different name or also includes other services, it is subject to EVV.

Q: The Medicaid home health benefit is defined through regulation to include (a) nursing services, (b) home health aide services, (c) medical supplies, equipment, and appliances. At the state's option, the benefit may also include physical therapy, occupational therapy, and speech pathology and audiology services. Is EVV required for all of the services included in a state's home health benefit?

A: SSA Section 1903(l)(1) specifies that the EVV requirement applies to “personal care services or home health care services requiring an in-home visit by a provider that are provided under a State plan under this title (or under a waiver of the plan)...”. Similarly, section 1903(l)(5)(B) defines home health services for purposes of the EVV requirement to mean “services described in section 1905(a)(7) provided under a state plan under this title (or under a waiver of the plan).” Therefore, any home health services that the state has opted to cover under the state plan or under a waiver of the plan, and that require an in-home visit, would be subject to the EVV requirement. For example, if a medical supply is delivered through the mail, or is picked up at the pharmacy, EVV does not apply. However, if a medical supply requires an in-home visit for set-up, then EVV applies. This applies to both managed care and fee-for-service delivery systems.

Q: What type of EVV system must be used?

A: Section 12006(c)(2) provides that section 1903(l) cannot be construed to require the use of a particular or uniform EVV system. However, section 1903(l)(5)(A) provides that the system must be able to electronically verify, with respect to visits conducted as part of personal care services or home health care services, the following:

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

Q: Does an EVV system require the Medicaid beneficiary to have an Internet connection, a cell phone, or a land line?

A: No. CMS notes that there are a number of options available within an EVV system. CMS believes there are EVV system options that meet the six verification criteria specified in the legislation without relying upon a Medicaid beneficiary to supply any technology, including those in which the provider has a phone or electronic tracker available to staff and/or the service recipient. The state should explore all options available and determine what best fits the needs of the state.

Q: How can EVV be implemented in ways that minimize privacy concerns, particularly around the need to capture location information through the EVV system?

A: The Cures Act does not require states to capture each location as the individual is moving throughout the community. Services either starting or stopping in the individual's home are subject to EVV requirements, and capturing the location in which the service is started and stopped is sufficient for meeting the minimum requirements specified in the Cures Act. CMS notes that states may choose to require more information as a factor to control for fraud, waste, and abuse. State Medicaid Agencies have a good deal of discretion in selecting the EVV system(s) that will most effectively meet their needs. CMS also notes that there is no requirement to use global positioning services (GPS), but it is one approach for implementation of the EVV requirements. A common alternative to GPS is Interactive Voice Response, which requires the caregiver to check-in and out using a landline or cellular device located at the individual's home.

Q: How can states implement EVV systems in self-directed personal care programs in ways that adhere to program flexibilities?

A: CMS recognizes the hallmarks of self-directed programs such as beneficiary selection of service provider and flexibility in determining optimal service provision timeframes. CMS encourages states to select EVV systems that facilitate accommodation of self-directed models by ensuring flexibilities such as fluid scheduling modifications, choice of worker, engagement in community activities, and proper interaction with Financial Management Services (FMS) entities. As with all programs, including self-directed programs, EVV systems are also encouraged to have processes for troubleshooting and communication of roles and responsibilities.

