

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Medicaid (ODM)

Regulation/Package Title: Electronic Visit Verification (EVV)

Rule Number(s): 5160-1-40 Rescind and New

Date: May 3, 2019 _____

Rule Type:

☒ New

☐ Amended

☐ 5-Year Review

☒ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

The new and rescinded rules provide definitions of terminology unique to the Electronic Visit Verification (EVV) implementation, specify services subject to EVV requirements, establish operational requirements for providers of those services and outline the regulatory foundation for using an alternate data collection component from what is provided by the Department. The rules also outline provider training requirements as determined by the Department and reasons for provider termination for non-compliance.

In addition, the new rule updates the provisions in the rescinded rule and takes the next step in achieving compliance with the 21st Century Cures Act by adding select services provided through the PASSPORT waiver administered by the Ohio Department of Aging (ODA), the Level One and Individual Options waivers administered through the Ohio Department of Developmental Disabilities (DODD) and through both traditional managed care and MyCare Ohio. In addition, the new rule incorporates an EVV data collection application software option which was added for the ease of visit information collection, giving further flexibility to the provider or direct care worker. Additionally, the 90 day exception to EVV requirements has been eliminated. References to Sandata as the Department's contractor were removed from the rule, reflecting stakeholder concern. The new rule also defines EVV data collection application, removes the definition of expected duration of service, removes unnecessary language, corrects terminology, rearranges paragraphs for better clarity and readability and updates paragraph numbering as appropriate.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

Section 5164.02 of the Ohio Revised Code.

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

If yes, please briefly explain the source and substance of the federal requirement.

Both the rescinded and new rule implement federal requirements. Congress enacted the 21st Century Cures Act which requires Medicaid programs to implement EVV for home and community based services. The EVV system implemented must capture the type of service provided, the time the service is provided, the location of service delivery, and the person providing the service. Failure to implement a compliant EVV system will result in a reduction in the federal funding for Medicaid services.

The new rule responds to stakeholder feedback since initial implementation and takes further steps to achieve program goals.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

Both the rescinded rule and the new rule are consistent with and do not exceed federal requirements.

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

Home and community-based services are integral to the provision of long term services and supports.

The rescinded rule established an EVV program for Ohio Medicaid that took the initial steps towards compliance with the 21st Century Cures Act, and provided transparency in service delivery and payment, ensuring that individuals receive the medically necessary services they need and that the department reimburses providers appropriately for the services provided.

The new rule modifies the program in response to stakeholder feedback since the initial implementation and expands the EVV program as Ohio takes the next steps toward full compliance with federal requirements set forth in the 21st Century Cures Act.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

ODM will measure the success of OAC 5160-1-40 through improved payment accuracy and a reduction in fraud, waste and abuse.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

The following entities were invited, by email, to participate in the EVV Stakeholder Advisory Group.

Almost Family
Ohio Olmstead Task Force
Leading Age Ohio
Home Care Network
Ohio Council for Home Care and Hospice
Ohio Valley Home Health, Inc.
Ohio Department of Aging
Ohio Department of Developmental Disabilities
Ohio Provider Resource Association
Viaquest Inc.
Ohio Council on Aging
CareSource
CareStar
Buckeye Health Plan

Aetna Better Health of Ohio
Molina Healthcare
United Healthcare
Paramount Advantage
Ohio Attorney General – Medicaid Fraud Control Unit
Ohio Long Term Care Ombudsman
Robin Kyman, non-agency Medicaid provider
HomeCare by Blackstone
PCG
Ohio Health Care Association
Disability Rights Ohio
ARC Ohio
Ohio Association of County Boards
Statewide Association of Centers for Independent Living

In addition more than 150 individuals representing individuals using home and community based services, families of individuals using home and community based services and providers of home and community based services have joined the EVV Stakeholder Advisory Group.

Initial EVV Stakeholder Advisory Group Meetings were held on the following dates:

October 14, 2016	March 1, 2017	July 19, 2017
October 25, 2016	April 4, 2017	August 22, 2017
November 8, 2016	June 20, 2017	

Additional stakeholder advisory group meetings where stakeholders provided input for consideration in the EVV program were held on the following dates:

October 18, 2017	November 15, 2017	January 30, 2018	February 22, 2018
March 21, 2018	April 18, 2018	June 25, 2018	August 21, 2018
September 19, 2018	October 17, 2018	December 10, 2018	February 11, 2019
March 20, 2019	April 25, 2019		

The additional stakeholder meetings were held in person and by phone at the Ohio Department of Medicaid. Program changes were discussed at the above meetings, and a rule draft was shared with the stakeholder advisory group. Deadlines were given for returning rule comments to specified ODM staff.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

The Department began meeting regularly with stakeholders in October 2016 to inform the implementation of the EVV system in Ohio Medicaid. The changes leading to the rescission of the original rule and the changes made in the new rule reflect feedback received from providers since the original implementation.

The Department received comments about the EVV program generally including the collection of GPS coordinates and the impact on person centered care. The Department responded to these comments individually, explaining the requirements of the 21st Century Cures Act, how GPS coordinates are used in the EVV program and the changes the Department has made since the inception of the program to address these provider concerns.

The Department also received comments asking for clarification of dates in the rule. All effective dates were removed from the body of the rule to improve clarity. The provisions of the rule in its entirety will be effective on the date the rule is effective.

The Department received comments asking that references to a specific EVV contractor be removed from the rule. Those references were removed.

The Department received comments asking for clarification of the list of services subject to EVV requirements. The new rule expanded the list of services that are subject to EVV requirements as the next step toward full compliance with the 21st Century Cures Act. The expanded list of services was revised in response to these comments for additional clarity.

The Department also received comments asking that the exception for participant directed services be removed. Because those services are not included in the upcoming implementation, the Department did not make this change at this time. The rule will be revised to eliminate this exclusion when those services become subject to EVV.

The Department also received comments asking that we add provisions to the rule regarding the individual's rights and responsibilities with respect to EVV. This change was not made. This rule sets forth provider requirements and responsibilities of individuals are not appropriate for inclusion in a provider rule.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

Medicaid provider claims data and a review of similar projects in other state Medicaid programs were used to inform and develop the parameters surrounding the Ohio Medicaid EVV project. Scientific data is not applicable to the amendments.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

Alternative regulations were not considered by the department. The 21st Century Cures Act tasked the Department with developing and establishing standards for this program.

Both the rescinded rule and the new rule reflect the structure of the EVV program implemented in the Ohio Medicaid program. The structure of the EVV program was determined prior to the procurement of an EVV vendor after considering information obtained through a Request for Information and researching methods used in other state Medicaid programs.

11. Did the Agency specifically consider a performance-based regulation? Please explain.

Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

Prior to issuing an RFP and contracting with a vendor for the Ohio Medicaid EVV system, the department considered alternate approaches to EVV, including those where each provider would have to procure and utilize an EVV system meeting Department requirements. Those approaches were not selected because there was significant additional potential cost to providers while creating additional complexity to achieving agency objectives.

Instead ODM implemented a hybrid approach in the rescinded rule. A single system to collect and store visit data is integral to achieving the objectives regarding transparency in service utilization and improving payment accuracy. However, ODM recognizes the investment some agency providers may have made in EVV systems prior to the ODM initiative and in EVV systems that are integrated with business processes within agencies. As a result, agency providers may choose to use alternate data collection components that meet technical requirements established by the department so long as they successfully integrate with the data aggregation component included in the EVV system established by the department's vendor, Sandata.

The new rule continues the hybrid approach used in the initial implementation.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

ODM is the only entity authorized to enact the regulations contained in the rescinded and new rule. The rescinded rule and the new rule were reviewed by Ohio Medicaid policy development staff, Office of Legal Services and the Office of Legislation to ensure there was no duplication. The new rule was also reviewed by ODA and DODD.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

The Department is using email and the Department website to communicate rule updates to providers and other stakeholders. ODM has a strong partnership with stakeholder organizations to ensure providers are aware of the changes included in the amendment.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community;

The business community impacted by the rescinded rule included State Plan Medicaid providers of home health nursing and aide services, private duty nursing, and RN

assessments. The impacted community also included Ohio Home Care Waiver nursing services, Ohio Home Care Waiver personal care services, and Ohio Home Care Waiver attendant services.

The new rule continues to apply to the providers that were previously impacted by the rescinded rule. Additional Medicaid providers impacted by the new rule include providers of Homemaker Personal Care (HPC) in the Level One and Individual Options Waivers administered by the DODD, providers of nursing services in the Individual Options Waiver administered by DODD, providers of nursing, personal care and PASSPORT Home Care Attendant Services in the PASSPORT waiver administered by the ODA, and providers of nursing, aide and home care attendant services in Medicaid managed care and MyCare Ohio.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

Providers impacted by both the rescinded rule and the new rule may have incurred administrative expenses associated with reporting information using EVV. The information reported includes demographic information about the individuals served and, for agency providers, for the direct care workers they employ. Impacted providers will use EVV to record the start and end of the visit, the individual receiving the service, and the service provided. In addition, for all impacted providers other than those providing services through waivers operated by the DODD, the provider must capture verification of the recorded information from the individual receiving services at the time the service is provided. Finally, providers are required to use the EVV system to clear data integrity errors (exceptions) in order to ensure that the EVV system accurately reflects the services provided through Medicaid programs operated by ODM, DODD and the Ohio Department of Aging (ODA). Impacted providers are also required to complete mandatory training which the department offers in both webinar, online and classroom settings in locations around the state. Providers are also required to notify Sandata when devices are no longer being used, triggering the Sandata device recovery process and to request replacement devices in the event of device failure. Providers must also report to ODM known or suspected tampering of devices or falsification of EVV data. If use of an alternate data collection component is requested by a provider, the provider must satisfy all the technical and business requirements of ODM. If an alternate data collection component is not approved by ODM, a provider may request an administrative reconsideration.

A provider who fails to comply with EVV requirements may be subject to termination of its provider agreement.

c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.

Administrative costs incurred by impacted providers pursuant to both the rescinded rule and the new rule will vary widely by provider. Demographic information related to individuals receiving services varies based on the number of Medicaid individuals served, business practices regarding client intake and discharge, the average duration of service for individuals served by the provider, and existing business practices regarding maintenance of demographic information regarding the individuals served. Demographic information related to direct care workers employed by the provider are only recorded by agency providers and varies widely based on the number of individuals employed, current business practices regarding hiring and termination of employees, and employee turnover rates. The capture of visit data and the effort to clear data integrity errors will vary based on the number of visits performed, the accuracy and compliance rates of providers and their staff when using EVV and current business practices used to document the care provided in home and community based settings. Mandatory training is free of charge and will only be a cost of employee time. Reporting known or suspected tampering of devices or falsification of EVV data or requesting an administrative reconsideration will vary based on whether these situations apply to a provider and the circumstances.

Because the costs will vary significantly based on provider, business choices, processes and volume, and because the department does not have access to information related to the costs incurred by impacted providers, we are unable to provide a reasonable estimate of costs per provider.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

Home and community-based services are an increasingly important piece in the long term services and supports continuum and present unique challenges in terms of oversight and accountability. Both the rescinded and new rules implement EVV using technology to create transparency in a new and innovative way while allowing individuals who use HCBS to maintain their independence. In addition, ODM must implement EVV to maintain the current level of federal funding for the Medicaid program.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

No. The underlying federal requirement does not provide any exemptions or alternative means of compliance for small businesses. Reimbursement policies are applied uniformly and no exceptions are made based on the provider's size.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

Not applicable to this rule.

18. What resources are available to assist small businesses with compliance of the regulation?

Pursuant to both the rescinded and new rules, the Department is providing an EVV system to all providers at no cost. Training regarding the use of EVV in Ohio Medicaid is being provided at no charge in locations around the state, through moderated webinars and through self-paced on-line training. In addition, the vendor will be providing support for EVV system users 24/7 for the duration of the contract.

TO BE RESCINDED

5160-1-40 **Electronic visit verification (EVV).**

(A) For purposes of this rule, the following definitions shall apply:

- (1) "Agency provider" is a medicare certified home health agency described in rule 5160-12-03 of the Administrative Code or an otherwise accredited home health agency as described in rule 5160-12-03.1 of the Administrative Code.
- (2) "Aggregator component" is the portion of the EVV system that stores the data collected from each visit for purposes of analysis and claims payment.
- (3) "Data collection component" is the portion of the EVV system that collects data related to the visit and includes the EVV mobile data collection device provided by the department. Once collected, the data is then sent to the aggregator component.
- (4) "Alternate data collection component" is an alternate to the data collection component provided by the department and is provided by an agency provider satisfying all requirements as defined in this rule.
- (5) "Direct care worker" refers to the person providing the service to the individual. The direct care worker may be an employee of an agency or a non-agency provider.
- (6) "Electronic visit verification" (EVV) is the use of technology, including a mobile device utilizing global positioning system (GPS) technology, telephony or manual visit entry, to verify the data elements related to the delivery of a medicaid-covered service.
- (7) "EVV mobile data collection device" is a mobile device that is used by the direct care worker to record visit data, including GPS coordinates at the start and end of the visit. For providers using the data collection component provided by the department, the EVV mobile data collection device is provided to an individual receiving services subject to EVV requirements.
- (8) "Exceptions" are data integrity alerts identified by the data collection component, alternate data collection component, or aggregator component.

- (9) "EVV system" refers to the combination of the data collection component or the alternate data collection component and the aggregator component used by a provider to comply with EVV requirements established by the department.
 - (10) "Expected duration of service" is the number of consecutive calendar days beginning on the first day service is provided and ending on the last day service is expected to be provided. The expected duration of service may change over time as the needs and health status of the individual change.
 - (11) "Home care attendant services" has the same meaning as in rule 5160-46-04.1 of the Administrative Code.
 - (12) "Home health aide services" has the same meaning as in rule 5160-12-01 of the Administrative Code.
 - (13) "Home health nursing" has the same meaning as in rule 5160-12-01 of the Administrative Code.
 - (14) "Medicaid ID" is the twelve digit unique medicaid ID assigned by the department.
 - (15) "Personal care aid services" has the same meaning as in rule 5160-46-04 of the Administrative Code.
 - (16) "Personal Identification Number" (PIN) is the unique identifier assigned to each individual in an EVV system. In the Sandata system provided by the state the PIN is referred to as "client ID."
 - (17) "Private duty nursing" has the same meaning as in rule 5160-12-02 of the Administrative Code.
 - (18) "Reason codes" are standard codes used to explain a manual visit entry or edit or an acknowledgment of an exception.
 - (19) "RN assessment" has the same meaning as in rule 5160-12-08 of the Administrative Code.
 - (20) "Waiver nursing services" has the same meaning as in rule 5160-46-04 of the Administrative Code.
- (B) Providers of the following services reimbursed by the department through fee-for-service are required to utilize EVV unless otherwise provided in paragraph (C) of this rule.

- (1) Home health nursing;
 - (2) Home health aide;
 - (3) Private duty nursing;
 - (4) RN assessment;
 - (5) Waiver nursing services provided pursuant to the Ohio home care waiver;
 - (6) Personal care aide services provided pursuant to the Ohio home care waiver;
 - (7) Home care attendant services provided pursuant to the Ohio home care waiver.
- (C) EVV requirements do not apply in the following circumstances:
- (1) Services provided in a group visit as defined in rule 5160-12-04 of the Administrative Code.
 - (2) Services provided in a group setting as defined in rule 5160-46-06 of the Administrative Code.
 - (3) The expected duration of service is ninety days or less.
 - (4) Services reimbursed by a managed care organization.
- (D) The department will provide an EVV system to all providers of services specified in paragraph (B) of this rule. The system will include a data collection component and an aggregator component.
- (1) The data collection component provided by the department must be used by all providers except for providers using a qualifying alternate data collection component approved pursuant to paragraph (E) of this rule. The data collection component provided by the department shall consist of an EVV mobile data collection device provided by the department to the individual receiving a service specified in paragraph (B) of this rule. The provider shall do the following:
 - (a) Utilize the EVV mobile data collection device provided by the department to capture the GPS coordinates at the start and end of the visit as the primary method for collecting visit data. In the event the EVV mobile data collection device is not available at the time of the visit, telephony should be used. If neither the device nor telephony are available, manual visit entry must be used as the last alternative for recording the visit data.

Where telephony is used, the telephone number from which the call is placed will be used in lieu of GPS coordinates.

(b) Collect, for each visit, the following data:

- (i) Information to identify the individual receiving the service;
- (ii) Information to identify the direct care worker providing the service, and an associated provider, as applicable;
- (iii) The time the visit starts;
- (iv) The location at the start of the visit;
- (v) The service provided;
- (vi) The time the visit ends;
- (vii) The location at the end of the visit;
- (viii) A verification, via voice recording, of the visit start and end time from the individual receiving the service. In the event a voice recording verification is unavailable, the verification may occur through the use of a digital signature;
- (ix) A verification, via voice recording, of the service provided from the individual receiving the service. In the event a voice recording verification is unavailable, the verification may occur through the use of a digital signature;

(c) Where manual visit entry is used to capture service delivery information described in this section, the verification must be collected through a signature of the individual receiving the service. The provider must maintain all documentation required by Chapter 5160-12 or 5160-46 of the Administrative Code, as appropriate, to support the manual visit entry. The documentation must be made available to the department or the department's designee upon request, as required by rule 5160-1-17.2 of the Administrative Code.

(2) The aggregator component must be used by all providers subject to EVV requirements.

(a) Any exceptions noted in the aggregator component must be resolved using appropriate reason codes before a claim for a visit will be paid.

- (b) A provider using a qualifying alternate data collection component pursuant to paragraph (E) of this rule must submit data to the aggregator component in a format and at a frequency specified by the department on the department's website, www.medicaid.ohio.gov/Initiatives/ElectronicVisitVerification.aspx.

(E) Alternate data collection component

- (1) An agency provider may choose to use a qualifying alternate data collection component that is approved by the department or its designee. In order to be considered a qualifying alternate data collection component, the provider must:

- (a) Establish a primary method for collecting visit data as follows:

- (i) For the period beginning on January 8, 2017, and ending on December 31, 2018, the primary method for collecting visit data may be either telephony or an EVV mobile data collection device that captures the GPS coordinates at the start and end of the visit. If an EVV mobile data collection device is used as the primary method for collecting visit data, the provider must have a minimum of two alternative methods for recording visit data, one of which must be manual visit entry. If telephony is used as the primary method for collecting visit data, the provider must have manual visit entry as an alternative method for recording visit data.

- (ii) Beginning January 1, 2019, utilize an EVV mobile data collection device to capture the GPS coordinates at the start and end of the visit as a primary method for collecting visit data. Additionally, providers must have a minimum of two alternative methods for recording visit data, one of which must be manual visit entry.

- (b) Collect, for each visit, the data elements contained in paragraphs (D)(1)(b) and (D)(1)(c) of this rule.

- (c) Satisfy all technical specifications found on the department's website, www.medicaid.ohio.gov/Initiatives/ElectronicVisitVerification.aspx

- (d) Satisfy all business requirements found on the department's website, www.medicaid.ohio.gov/Initiatives/ElectronicVisitVerification.aspx.

- (e) Identify all exceptions using standard codes found on the department's website, www.medicaid.ohio.gov/Initiatives/ElectronicVisitVerification.aspx.

- (f) Use the reason codes found on the department's website, www.medicaid.ohio.gov/Initiatives/ElectronicVisitVerification.aspx.
 - (g) Successfully complete the approval process found on the department's website, www.medicaid.ohio.gov/Initiatives/ElectronicVisitVerification.aspx.
- (2) If a provider is unable to obtain approval of a qualifying alternate data collection component, the provider must use the EVV system provided by the department until certification is successfully obtained.
 - (3) If a provider disagrees with a decision not to approve a qualifying alternate data collection component, the provider may request an administrative reconsideration pursuant to rule 5160-70-02 of the Administrative Code.
 - (4) The department may require re-approval of any qualifying alternate data collection component in circumstances including, but not limited to, the following:
 - (a) A change in data requirements that must be transmitted to the aggregator component.
 - (b) Failure to maintain compliance with the department's requirements.
 - (c) During a required re-approval process, the department may require the provider to use the EVV system provided by the department.
 - (5) Any costs related to the development, approval and testing of a qualifying alternate data collection component shall not be the responsibility of the state.
- (F) Required training.
- (1) Providers enrolled prior to the implementation of EVV in Ohio shall complete all training required by the department prior to gaining access to the EVV system.
 - (2) Providers enrolling in the medicaid program after January 1, 2018 must complete training prior to receiving a medicaid provider number. Training verification must be submitted as part of the provider application process through the medicaid information technology portal.
 - (3) Providers who stop using an approved alternate data collection component and begin using the EVV system provided by the department must complete all training required by the department prior to gaining access the EVV system.

- (4) Regardless of date of enrollment, providers must complete any additional training required by the department.
- (G) Providers of the services specified in paragraph (B) of this rule shall do all of the following or be subject to the termination of their medicaid provider agreement:
- (1) Comply with all provisions of this rule.
 - (2) Maintain, in the aggregator component, a current list of individuals subject to EVV requirements to whom they are providing services. The required data elements pertaining to whom they are providing services. The required data elements pertaining to the individuals that must be maintained include:
 - (a) Medicaid ID.
 - (b) Last name.
 - (c) First name.
 - (d) Language preference.
 - (e) One known address at which the individual may routinely receive services. Additional addresses may be maintained if the individual routinely receives services at multiple locations.
 - (f) Known phone number for telephony (if any).
 - (g) Association to appropriate payer. "ODM" is the only acceptable value.
 - (3) For agency providers, maintain a current list of current direct care workers subject to EVV requirements who are providing services to individuals enrolled in medicaid. The required data elements pertaining to the direct care workers that must be maintained include:
 - (a) Last name.
 - (b) First name.
 - (c) Social security number.
 - (d) PIN.
 - (e) Email address.

- (4) For providers using the EVV system provided by the department, request devices for all individuals enrolled in medicaid to whom they are providing services subject to EVV requirements no later than two business days after the first service is provided.
- (5) For providers using the EVV data collection component provided by the department, notify the department or its designee when services will no longer be provided to an individual with an EVV mobile data collection device no later than 48 hours after the last service is provided.
- (6) Utilize EVV for all services subject to the provisions of this rule.
- (7) Report known or suspected tampering of devices to the department within two business days of discovery.
- (8) Report any known or suspected falsification of EVV data to the department within two business days of discovery.
- (9) Complete all required training.

Effective:

Five Year Review (FYR) Dates:

Certification

Date

Promulgated Under: 119.03

Statutory Authority:

Rule Amplifies:

5160-1-40

Electronic visit verification (EVV).

(A) For purposes of this rule, the following definitions shall apply:

(1) "Agency provider" means any of the following:

(a) For the purposes of the Ohio Home Care Waiver, state plan home health services, and private duty nursing, an agency provider is a medicare home health agency described in rule 5160-12-03 of the Administrative Code or an otherwise accredited home health agency as described in rule 5160-12-03.1 of the Administrative Code.

(b) For purposes of the individual options (IO) waiver or the level one waiver administered by the Ohio department of developmental disabilities (DODD), an agency provider has the same meaning as in rule 5123:2-2-01 of the Administrative Code.

(c) For purposes of the PASSPORT waiver, an agency provider has the same meaning as in rule 173-39-02 of the Administrative Code.

(d) For purposes of services provided through a managed care organization, an agency provider has the same meaning as paragraphs (A)(1)(a) and (A)(1)(c) of this rule.

(2) "Aggregator component" is the portion of the EVV system that stores the data collected from each visit for purposes of analysis and claims payment.

(3) "Data collection component" is the portion of the EVV system that collects data related to the visit and includes the EVV mobile data collection device or the EVV data collection application provided by the department. Once collected, the data is then sent to the aggregator component.

(4) "Alternate data collection component" is an alternate to the data collection component provided by the department and is provided by an agency provider satisfying all requirements as defined in this rule.

(5) "Direct care worker" refers to the person providing the service to the individual. The direct care worker may be an employee of an agency or a non-agency provider.

(6) "Electronic visit verification" (EVV) is the use of technology, including a mobile device or application utilizing global positioning system (GPS) technology.

telephony or manual visit entry, to verify the data elements related to the delivery of a medicaid-covered service.

- (7) "EVV mobile data collection device" is a mobile device that is used by the direct care worker to record visit data, including GPS coordinates at the start and end of the visit. For providers using the data collection component provided by the department, the EVV mobile data collection device is provided to an individual receiving services subject to EVV requirements.
- (8) "EVV data collection application" is the software provided by the department's contracted entity that can be installed on a mobile device owned by the provider or direct care worker to collect visit information.
- (9) "Exceptions" are data integrity alerts identified by the data collection component, alternate data collection component, or aggregator component.
- (10) "EVV system" refers to the combination of the data collection component or the alternate data collection component and the aggregator component used by a provider to comply with EVV requirements established by the department.
- (11) "Home care attendant services" has the same meaning as in rule 5160-44-27 of the Administrative Code.
- (12) "Home health aide services" has the same meaning as in rule 5160-12-01 of the Administrative Code.
- (13) "Home health nursing" has the same meaning as in rule 5160-12-01 of the Administrative Code.
- (14) "Homemaker personal care" has the same meaning as in rule 5123-9-30 of the Administrative Code.
- (15) "IO waiver" refers to the waiver described in rule 5160-40-01 of the Administrative Code.
- (16) "IO waiver nursing" is a nursing service provided in rule 5123:2-9-39 of the Administrative Code.
- (17) "Level one waiver" refers to the waiver described in rule 5160-42-01 of the Administrative Code.
- (18) "Medicaid ID" is the twelve digit unique medicaid ID assigned by the department.

- (19) "MyCare waiver" refers to the waiver described in rule 5160-58-02.2 of the Administrative Code.
 - (20) PASSPORT has the same meaning as in rule 5160-31-02 of the Administrative Code or the state-funded component of the PASSPORT program created under section 173.522 of the Revised Code.
 - (21) "PASSPORT home care attendant" has the same meaning as in rule 173-39-02.4 of the Administrative Code.
 - (22) "PASSPORT waiver nursing" has the same meaning as in rule 173-39-02.22 of the Administrative Code.
 - (23) "Personal care aide services" has the same meaning as in rules 173-39-02.11 and 5160-46-04 of the Administrative Code.
 - (24) "Personal identification number" (PIN) is the unique identifier assigned to each individual in an EVV system operated by the department's contracted entity. The PIN is referred to as "client ID."
 - (25) "Private duty nursing" has the same meaning as in rule 5160-12-02 of the Administrative Code.
 - (26) "Reason codes" are standard codes used to explain a manual visit entry or edit or an acknowledgment of an exception.
 - (27) "RN assessment" has the same meaning as in rule 5160-12-08 of the Administrative Code.
 - (28) "Waiver nursing services" has the same meaning as in rule 5160-44-22 of the Administrative Code.
- (B) Providers of the following services are required to utilize EVV unless otherwise provided in paragraph (C) of this rule.
- (1) Home health nursing;
 - (2) Home health aide;
 - (3) Private duty nursing;
 - (4) RN assessment;
 - (5) Waiver nursing services provided pursuant to the Ohio home care waiver, the PASSPORT program, the IO waiver, or the MyCare waiver;

- (6) Personal care aide services provided pursuant to the Ohio home care waiver, the PASSPORT program, or the MyCare waiver;
 - (7) Home care attendant services provided pursuant to the Ohio home care waiver or the MyCare Waiver;
 - (8) PASSPORT home care attendant services; and
 - (9) Homemaker personal care provided pursuant to the level one and IO waivers.
 - (C) EVV requirements do not apply to participant directed services.
 - (D) The department will provide an EVV system to all providers of services specified in paragraph (B) of this rule. The system will include a data collection component and an aggregator component.
 - (1) A data collection component provided by the department must be used by all providers except for providers using a qualifying alternate data collection component approved pursuant to paragraph (E) of this rule. The data collection component provided by the department shall consist of the following:
 - (a) An EVV mobile data collection device provided by the department to the individual receiving a service specified in paragraph (B) of this rule; or
 - (b) An EVV data collection application provided by the department for use with the provider or direct care worker's personal device.
 - (i) Any costs incurred for equipment or data services shall not be the responsibility of the department or the individual receiving services.
 - (ii) The GPS functionality of the device must be turned on for the purposes of the data collection application when the application is used to collect visit data.
 - (iii) Data services connected to the provider or direct care worker's personal device shall be used to transmit visit data from the application in near real time. Internet services purchased by individuals receiving Medicaid services subject to EVV requirements shall not be used to transmit data.
 - (iv) The device used with the application must comply with all device requirements found at www.medicaid.ohio.gov/Initiatives/ElectronicVisitVerification.aspx.

- (v) If the application is consistently unavailable or GPS coordinates are consistently not collected, the department may require the provider to use the EVV mobile data collection device provided by the department.

(2) The provider shall do the following:

- (a) utilize the EVV mobile data collection device or application provided by the department to capture the GPS coordinates at the start and end of the visit as the primary method for collecting visit data. In the event the EVV mobile data collection device or application is not available at the time of the visit, telephony should be used. If neither the device, application, nor telephony are available, manual visit entry must be used as the last alternative for recording the visit data. Where telephony is used, the telephone number from which the call is placed will be used in lieu of GPS coordinates.

(b) Collect, for each visit, the following data:

- (i) Information to identify the individual receiving the service;
- (ii) Information to identify the direct care worker providing the service, and an associated provider, as applicable;
- (iii) The time the visit starts;
- (iv) The location at the start of the visit;
- (v) The service provided;
- (vi) The time the visit ends;
- (vii) The location at the end of the visit;
- (viii) Except for visits for services defined in paragraphs (A)(14) and (A)(16) of this rule, a verification, via voice recording, of the visit start and end time from the individual receiving the service. In the event a voice recording verification is unavailable, the verification may occur through the use of a digital signature;
- (ix) Except for visits for services defined in paragraphs (A)(14) and (A)(16) of this rule a verification, via voice recording, of the service provided from the individual receiving the service. In the event

a voice recording verification is unavailable, the verification may occur through the use of a digital signature.

(c) Except for services provided pursuant to paragraphs (A)(14) and (A)(16) of this rule where manual visit entry is used to capture service delivery information described in this section, the verification must be collected through a signature of the individual receiving the service. The provider must maintain all documentation required by Chapter 5160-12 or 5160-46 of the Administrative Code, as appropriate, to support the manual visit entry. The documentation must be made available to the department or the department's designee upon request, as required by rule 5160-1-17.2 of the Administrative Code.

(3) The aggregator component must be used by all providers subject to EVV requirements.

(a) Any exceptions noted in the aggregator component must be resolved using appropriate reason codes before a claim for a visit will be paid. The department may require that claims for services match visit data prior to adjudication for payment.

(b) A provider using a qualifying alternate data collection component pursuant to paragraph (E) of this rule must submit data to the aggregator component in a format and at a frequency specified by the department on the department's website, www.medicaid.ohio.gov/Initiatives/ElectronicVisitVerification.aspx.

(E) Alternate data collection component

(1) An agency provider may choose to use a qualifying alternate data collection component that is approved by the department or its designee. In order to be considered a qualifying alternate data collection component, the provider must:

(a) Establish a primary method for collecting visit data that utilizes a data collection component to capture GPS coordinates at the start and end of the visit as a primary method for collecting visit data. Additionally, providers must have a minimum of two alternative methods for recording visit data, one of which must be manual visit entry.

(b) Collect, for each visit, the data elements contained in paragraphs (D)(2)(b) and (D)(2)(c) of this rule.

(c) Satisfy all technical specifications found on the department's website, www.medicaid.ohio.gov/Initiatives/ElectronicVisitVerification.aspx

- (d) Satisfy all business requirements found on the department's website, www.medicaid.ohio.gov/Initiatives/ElectronicVisitVerification.aspx.
 - (e) Identify all exceptions using standard codes found on the department's website, www.medicaid.ohio.gov/Initiatives/ElectronicVisitVerification.aspx.
 - (f) Use the reason codes found on the department's website, www.medicaid.ohio.gov/Initiatives/ElectronicVisitVerification.aspx.
 - (g) Successfully complete the approval process found on the department's website, www.medicaid.ohio.gov/Initiatives/ElectronicVisitVerification.aspx.
 - (h) Successfully complete alternate system aggregator training found on the department's website, <https://medicaid.ohio.gov/INITIATIVES/Electronic-Visit-Verification#1894220-alternate-system>.
 - (i) Except for services provided pursuant to paragraphs (A)(14) and (A)(16) of this rule, provide the ability to collect a voice verification and an electronic signature verification at the end of the visit.
- (2) If a provider is unable to obtain approval of a qualifying alternate data collection component, the provider must use the EVV system provided by the department until certification is successfully obtained.
- (3) If a provider disagrees with a decision not to approve a qualifying alternate data collection component, the provider may request an administrative reconsideration pursuant to rule 5160-70-02 of the Administrative Code.
- (4) The department may require re-approval of any qualifying alternate data collection component in circumstances including, but not limited to, the following:
 - (a) A change in data requirements that must be transmitted to the aggregator component.
 - (b) Failure to maintain compliance with the department's requirements.
 - (c) During a required re-approval process, the department may require the provider to use the EVV system provided by the department.
- (5) Any costs related to the development, approval and testing of a qualifying alternate data collection component shall not be the responsibility of the state.

(F) Required training.

- (1) Providers enrolled prior to the implementation of EVV in Ohio who are not using an alternate data collection system shall complete all training required by the department prior to gaining access to the EVV system.
 - (2) Providers enrolling in the medicaid program after January 1, 2018 must complete training prior to receiving a medicaid provider number. Training verification must be submitted as part of the provider application process through the medicaid information technology portal.
 - (3) All providers not using an alternate data collection system who used the Sandata data collection component prior to May 6, 2019, must complete bridge training found on the department's website, <https://medicaid.ohio.gov/INITIATIVES/Electronic-Visit-Verification/Training>.
 - (4) Providers who stop using an approved alternate data collection component and begin using the EVV system provided by the department must complete all training required by the department prior to gaining access to the EVV system.
 - (5) Regardless of date of enrollment, providers must complete any additional training required by the department.
- (G) Providers of the services specified in paragraph (B) of this rule shall do all of the following or be subject to the termination of their medicaid provider agreement:
- (1) Comply with all provisions of this rule.
 - (2) Maintain, in the aggregator component, a current list of individuals subject to EVV requirements to whom they are providing services. The required data elements pertaining to the individuals that must be maintained include:
 - (a) Medicaid ID.
 - (b) Last name.
 - (c) First name.
 - (d) Language preference.
 - (e) One known address at which the individual may routinely receive services. Additional addresses may be maintained if the individual routinely receives services at multiple locations.

- (f) Known phone number for telephony (if any).
 - (g) Association to appropriate payer using values found on the department's website, <https://medicaid.ohio.gov/INITIATIVES/Electronic-Visit-Verification/>.
- (3) For agency providers, maintain a list of direct care workers subject to EVV requirements who are providing services to individuals enrolled in medicaid. The required data elements pertaining to the direct care workers that must be maintained include:
 - (a) Last name.
 - (b) First name.
 - (c) Social security number.
 - (d) PIN.
 - (e) Email address.
- (4) For providers using the EVV system provided by the department, request devices for all individuals enrolled in medicaid to whom they are providing services subject to EVV requirements no later than two business days after the first service is provided.
- (5) For providers using the EVV data collection component provided by the department, notify the department or its designee when services will no longer be provided to an individual with an EVV mobile data collection device no later than 48 hours after the last service is provided.
- (6) Utilize EVV for all services subject to the provisions of this rule.
- (7) Report known or suspected tampering of devices to the department within two business days of discovery.
- (8) Report any known or suspected falsification of EVV data to the department within two business days of discovery.
- (9) Complete all required training.

Effective:

Five Year Review (FYR) Dates:

Certification

Date

Promulgated Under: 119.03

Statutory Authority:

Rule Amplifies: