

HHSC Rule Proposal

Electronic Visit Verification

September 8, 2023



Summary: HHSC has [proposed rules](#) on electronic visit verification (EVV). The rules ensure compliance with the federal requirement that EVV be used to document the provision of Medicaid home health care services. The rules also codify current policies and procedures related to EVV, including training requirements, visit maintenance requirements, compliance reviews, and the process for HHSC to recognize a health care provider's proprietary EVV system.

Key Takeaways:

- [Section 12006\(a\) of the 21st Century Cures Act](#) mandates that states implement EVV for all Medicaid personal care services (PCS) and home health care services (HHCS) that require an in-home visit by a provider.
 - The Cures Act was signed into law in 2016, and these EVV provisions are one of the last steps in HHSC implementing the Act.
- The new EVV provisions will expand the population of providers required to use EVV, to include CDS (consumer directed services) and Home Health Care Services (HHCS), and require action by CDS employers, FMSAs, HHSC employers and MCOs such as training and system updates.
- Some advocates and provider groups have significant concerns about the new EVV rules (such as CDS employers), balking at the additional regulations.

Comments must be emailed to EVV@hhs.texas.gov before midnight, October 9. When emailing comments, include "Comments on Proposed Rule 21R152" in the subject line.

Section-by-Section Summary

§354.4005, Personal Care Services that Require the Use of EVV - This section requires program providers to ensure that service providers use EVV to document the provision of certain specified personal care services. It also requires a CDS employer to ensure that a service provider uses EVV to document the provision of certain specified personal care services through the CDS option.

§354.4006, Home Health Care Services that Require the Use of EVV - This section requires a program provider to ensure that a service provider uses EVV to document the provision of certain specified home health care services by the program provider on or

after January 1, 2024. The section also requires a CDS employer to ensure that a service provider uses EVV to document the provision of certain specified home health care services using the CDS option on or after January 1, 2024.

§354.4007, EVV System - This section provides that a program provider or a financial management services agency (FMSA) must use either an EVV vendor system or EVV proprietary system to document the provision of a service and requires a CDS employer to use the EVV system selected by their FMSA. The proposed new rule requires that, except as provided in subsection (d), a program provider, an FMSA, and a CDS employer ensure that a service provider uses an EVV system to electronically document the provision of a service described in proposed new §354.4005 or §354.4006. The proposed new rule describes the action a program provider, FMSA or a CDS employer must take if a service provider fails to use an EVV system to document the provision of a service described in proposed new §354.4005 or §354.4006 or if a service provider cannot use an EVV system because the EVV system is unavailable. The proposed new rule provides that HHSC may take certain actions if a program provider or an FMSA does not comply with this section. The proposed new rule also provides that HHSC or managed care organization (MCO) may take certain actions if a CDS employer does not comply with this section.

§354.4009, EVV Visit Transaction and EVV Claim - This section requires a program provider and an FMSA to ensure that an EVV visit transaction contains certain specified data elements required by the EVV system and that the data elements are accurate. The proposed new rule also includes a similar requirement for a CDS employer who elects to complete visit maintenance on the HHSC Employer's Selection for Electronic Visit Verification Responsibilities form. The proposed new rule requires a program provider and an FMSA to make certain assurances before submitting an EVV claim, including that the EVV visit transaction is transmitted to and accepted by the EVV Portal, and to submit the EVV claim in accordance with HHSC or MCO billing requirements and the EVV Policy Handbook. Further, the proposed new rule provides that HHSC or an MCO denies an EVV claim or recoups a payment made to a program provider or an FMSA if the EVV claim does not meet requirements described in the EVV Policy Handbook.

§354.4011, Visit Maintenance - This section requires a program provider and an FMSA to complete visit maintenance in accordance with the EVV Policy Handbook. The proposed rule also includes a similar requirement for a CDS employer who elects to complete visit

maintenance on the HHSC Employer's Selection for Electronic Visit Verification Responsibilities form. In addition, the proposed new rule allows the program provider, FMSA, and CDS employer to complete visit maintenance after the visit maintenance time frame has expired only if the program provider, FMSA, or CDS employer submits a Visit Maintenance Unlock Request in accordance with the EVV Policy Handbook and HHSC or an MCO approves the Visit Maintenance Unlock Request.

Proposed new §354.4013, HHSC and MCO Compliance Reviews and Enforcement Actions - This section describes the types of compliance reviews conducted by HHSC and an MCO of a program provider, FMSA, and CDS employer and the circumstances under which certain action may be taken based on a review, including recoupment of payment, imposition of a vendor hold, or termination of a member's participation in the CDS option.

§354.4015, EVV Training Requirements - This section describes the requirements for a program provider, an FMSA, and a proprietary system operator (PSO) regarding EVV System Training, EVV Policy Training, and EVV Portal Training; the requirements for a CDS employer regarding EVV System Training and EVV Policy Training; and the requirements for a program provider and CDS employer on training a service provider on the clock in and clock out portion of the EVV System Training. In addition, the proposed new rule describes the documentation requirements to demonstrate compliance with the training requirements and the actions that may be taken by HHSC, an MCO, or an FMSA if a program provider, FMSA, PSO, or CDS employer does not comply with the training requirements.

§354.4017, Process to Request Approval of a Proposed EVV Proprietary System and Additional Requirements for a PSO - This section describes the process by which a program provider or FMSA seeks HHSC's approval of a proposed proprietary system and the basis on which HHSC approves a proposed proprietary system. In addition, the proposed new rule describes the requirements of a PSO, allows HHSC to conduct an audit of a proprietary system, and describes the actions HHSC may take if a PSO is not in compliance with the requirements in the proposed rule.

§354.4019, Access to EVV System and EVV Documentation - This section requires program providers and FMSAs to allow HHSC and MCOs to access their EVV system. It also allows HHSC and the MCO to review EVV system documentation or obtain a copy of that documentation at no charge.



§354.4021, Additional Requirements - This section requires a program provider, FMSA, CDS employer, service provider, member, and MCO to comply with applicable state and federal laws, rules, regulations, and the EVV Policy Handbook.

§354.4023, Sanctions - This section provides that HHSC or an MCO may propose to recoup funds, impose a vendor hold, or propose to terminate the contract of a program provider or FMSA as described in proposed §354.4007, §354.4009, and §354.4013.

§354.4025, Administrative Hearing - This section provides that a program provider or FMSA may request an administrative hearing in accordance with 26 TAC §357.484, Request for a Hearing, to appeal a proposed contract termination or recoupment or imposition of a vendor hold by HHSC and may appeal a proposed contract termination or recoupment or imposition of a vendor hold by an MCO in accordance with the MCO's policy.