



October 20, 2017

TO: Karol Swartzlander, Adult Programs, CDSS
 FR: UDW/AFSCME Local 3930 and SEIU Local 2015
 RE: Joint comments in response to DRAFT Request for Information (RFI) on Electronic Visit Verification (EVV)

The federal 21st Century CURES Act requires states to use EVV for Medicaid funded personal care services program like IHSS. If a state chooses to not implement an EVV system, it will lose a small percentage of federal matching funds for the program. As California contemplates implementation of EVV, we urge you consider the following:

1 – Is the federal mandate for EVV a violation of the federal Americans with Disabilities Act (ADA) and, more specifically, does it conflict with the *Olmstead* decision of the US Supreme Court, which maintains the right of persons with disabilities to receive services in the most integrated, least restrictive setting possible?

EVV would impose stringent requirements on IHSS providers and consumers that don't currently exist.

Current timesheet verification requirements	New EVV requirements
individual providing the service (bi-monthly)	individual providing the service (real time)
Individual receiving the service (bi-monthly)	individual receiving the service (real time)
date of service (bi-monthly)	date of service (real time)
aggregate hours of service received per day (bi-monthly)	type of service performed (real time)
	location of service delivery (real time)
	time when service begins and ends (real time)

These new requirements are inherently burdensome and almost certainly would make receiving services in the home and community more difficult and restrictive. As any consumer or provider can attest, the type and duration of services rendered change day by day, according to the needs of the client, and can be unpredictable. Any obligation to

verify services in real time or even daily is onerous and will make an already difficult job even more difficult. As it is, consumers face huge challenges recruiting and retaining quality homecare workers. EVV will only exacerbate the shortage of workers and make it more difficult for consumers to remain safely in their homes.

We recommend CDSS request a formal opinion from the state Attorney General on the legal standing of the EVV mandate before it makes any attempt to implement this new system. It is almost certain that consumers and other stakeholders will challenge the legality of EVV; it would behoove the state to determine in advance if it will be forced to defend its actions in court. Finally, does the state want to implement a system that is antithetical to independent living in the community; a founding principle of IHSS?

2 – Is the cost of implementing EVV in California greater than the fiscal benefit of retaining the existing federal financial participation?

Federal law stipulates that states who do not require EVV beginning January 2019 will experience a slight reduction in their federal medical assistance percentage (FMAP), beginning in 2019 and increasing over time. Is it possible the cost of implementing EVV will be greater than the loss of funding?

Some fundamental questions to consider:

- What would the prescribed reduction in FMAP amount to each year?
- What is the cost of the design, development and installation of EVV (at 10% General Fund)?
- What is the annual cost of maintenance of EVV (at 25% General Fund)?
- What is the annual cost of administrative activities, education and training relative to EVV (at 50% General Fund)?
- What are the estimated legal and administrative costs of defending the state's implementation of EVV in court (at 100% General Fund)?

There is no other state that comes close to California when it comes to the caseload and workforce numbers of IHSS. It is clear from the draft RFI that it will be a tremendous undertaking to create an EVV system that can successfully interact with a large and complex IT system such as CMIPS. We recommend that the Legislative Analyst's Office do a full analysis of the costing of EVV on an on-going basis versus taking the reduced FMAP for non-compliance.

3 – With the ongoing uncertainty on the federal level relating to Medicaid funding, is it wise to embark on a project of this magnitude that is premised on a federal funding formula that may change in the future? If Congress is successful in fundamentally transforming the Medicaid program into a block grant or per capita program, is there any guarantee that federal matching funds for EVV will remain at the levels outlined in the 21st Century CURES Act? Would this impact the standing of the federal government to even require states to use EVV in the first place?

Given the magnitude of the outstanding questions outlined above, and the inevitable risks to both the IHSS provider and consumer populations, UDW and SEIU Local 2015 are opposed to the implementation of EVV in California.