



COMMISSIONER
Jon Weizenbaum

April 10, 2013

To: Community Based Alternatives Home and Community Support Service Agencies
Community Living Assistance and Support Services Providers
Medically Dependent Children Program Home and Community Support Services Agencies
Primary Home Care Providers¹

Subject: Information Letter No. 13-19 — Contract Re-Enrollment and Required Use of the Electronic Visit Verification (EVV) System in Department of Aging and Disability Services (DADS) EVV Counties

The purpose of this letter is to advise providers of a required contract re-enrollment process, to begin May 1, 2013, and to provide clarification regarding DADS expectations for providers' use of the EVV system.

Contract Re-Enrollment

As provided for by 40 Texas Administrative Code (TAC) Chapter 49, DADS will begin a re-enrollment of provider contracts. Contract re-enrollment will result in a uniform community services contract that reflects current requirements and new requirements for provider compliance with EVV. Specifically, contract re-enrollment will:

- establish a contractual obligation for providers to maintain visits verified in accordance with program requirements at a percentage of at least 90 percent per quarter;
- contain a liquidated damages provision establishing DADS authority to assess a liquidated damage between \$10.00 and \$500.00 per day for failure to comply with DADS EVV system use requirements for the contract in question;
- allow for the confirmation and, if necessary, updating of ownership disclosure and other provider information on file with DADS; and
- include new contract provisions related to security of personal information, reporting of information security breaches and exclusionary periods following expiration of certain contracts.

Provider agencies will receive re-enrollment contracts for each existing contract subject to the requirement to use EVV. Additionally, providers will be required to:

- (1) sign an affidavit declaring that the ownership and control interest information contained in its most recent Home and Community Support Services Agency (HCSSA) license application is current, correct and complete OR submit updated information; and

¹ Primary Home Care providers include Community Assistance Services providers and Family Care providers.

- (2) submit a signed Form 3254-C Contractor Certifications regarding the provider's eligibility to contract with DADS.

Providers that are not sole proprietorships will also be required to submit Form 2031 Governing Authority Resolution – Business Organization.

The contract and any certifications and required updates must be signed by the provider agency's authorized signature authority and returned timely to DADS. Provider agencies will be required to submit required re-enrollment documents within 30 days from the date of the cover letter accompanying each contract. Provider agencies failing to re-enroll will lose the ability to retain a contract. The decision to re-enroll rests with each provider agency; however, failure to re-enroll by the deadline will be considered as indicating the provider agency's intent to voluntarily terminate its contract with DADS.

The re-enrollment contract will have the same contract number and end date as the contract it replaces. Both DADS and provider agencies (including owners, officers, managers, board members, employees, and other controlling parties) will remain responsible for their respective obligations under the current contract. As such, the issuance of a re-enrollment contract will not impact the ability of DADS (or any other governmental authority, as applicable) to continue or pursue any action, known or unknown, pre-dating the re-enrollment effective date or to perform contract monitoring reviews of time periods which pre-date the re-enrollment effective date.

EVV Provider Compliance

Effective January 1, 2011, [TAC, Title 40, Part 1, Chapter 68](#) grants DADS the authority to require the use of an approved EVV system to document services delivered in the programs covered by this Information Letter (IL). Providers using the EVV system **must** comply with **all** system requirements and ensure:

- all data elements required by DADS are uploaded or entered into the EVV system completely and accurately and in a timely manner;
- each time services governed by 40 TAC Chapter 68 are delivered to an individual, the provider's attendant uses the EVV system in a manner prescribed by DADS to call-in (clock-in) when service delivery begins and call-out (clock-out) when service delivery is completed;
- the system is used to verify the provision of services governed under 40 TAC Chapter 68;
- only authorized persons may access a provider's EVV account;
- service delivery documentation is immediately available for review by DADS when requested; and
- equipment provided by DADS, or by a third party, to a provider, if applicable, is returned in good condition.

System Use Requirements

Each time services are delivered to an individual at home, DADS requires providers to ensure the attendant providing the services uses the EVV system to call-in and call-out. DADS recognizes a variety of reasons may result in the need for providers to make adjustments to the electronic record of these visits. The visit maintenance portion of the EVV system has been designed to allow providers to make adjustments to electronic service delivery documentation within the EVV system.

Each time a change is made within the EVV system, a reason code must be entered to provide DADS with information regarding the reason a change was made to the electronic record. The rationale for changes contained in the EVV system reason code list can be classified into two broad categories: preferred reason codes and non-preferred reason codes.

A preferred reason code documents a situation where services were provided and documented as required by DADS. Use of these codes will not count against a provider's compliance percentage for purposes of the EVV compliance plan described in this IL.

DADS will track the use of preferred reason codes. If DADS identifies misuse of preferred codes, DADS may require the provider to use a DADS-approved alternative service delivery verification method and the provider's compliance score may be negatively impacted.

A non-preferred reason code documents a situation in which a provider did not provide or document services as required by the department. Use of non-preferred codes will lower the provider's compliance percentage for purposes of the EVV compliance plan described in this IL.

The list of preferred and non-preferred reason codes may be found at this link:
<http://www.dads.state.tx.us/evv/reasoncodes.html>.

Implementation of Provider Compliance Strategies

Based on an initial evaluation of EVV statistics, DADS has identified concerns with current provider use of the EVV system (e.g., low rates of automatically verified visits, failure to include sufficient documentation when system changes are made, and frequent use of non-preferred reason codes). These concerns present significant barriers to the achievement of DADS EVV system goals. In response, DADS is implementing multiple strategies for increasing appropriate provider use of the EVV system.

System Enforced Reason Code Use

The EVV system requires a reason code to be selected each time the EVV system's visit maintenance feature is used to make any changes to any visit in the EVV system. This system modification was implemented to ensure DADS receives sufficient data to determine whether a provider meets DADS requirements regarding EVV system use.

Monitoring of New Metrics

DADS now has the ability to monitor a more detailed set of metrics which will allow DADS to accurately measure the performance of providers with regard to how frequently attendants' visits

are confirmed in relation to the expectations of the EVV system (i.e., the EVV system is used to call-in and call-out when services are delivered in the home and changes to the electronic record are only made as a result of preferred reason codes). Reports using these metrics will also be made available to all providers required to use the EVV system. Key metrics in this report include:

- **Auto-Verified Visits** – Visits the EVV system has confirmed with no exceptions.
- **Verified Visits with Preferred Reason Codes** – Visits that could not be auto-verified due to an exception in which the provider's staff are delivering and documenting services in accordance with DADS expectations.
- **Total Verified Visits** – The number of verified visits for the designated reporting period; the sum of all actual visits fully processed within the EVV system (i.e., total of auto-verified visits and verified visits with preferred reason codes and verified visits with non-preferred reason codes).
- **Verified Visits with Non-Preferred Reason Codes** – Visits that cannot be auto-verified due to an exception containing one or more reason code(s) documenting a system change necessitated by a situation in which the provider's staff is not delivering or documenting services in accordance with DADS expectations.
- **Percentage of Visits Verified in Accordance with Program Expectations** – The percentage of total visits that fall into the Auto-Verified Visits and Visits with Preferred Reason Codes categories (i.e., the percentage that results from dividing the Total Verified Visits by the sum of Auto-Verified Visits and Verified Visits with Preferred Reason Codes).

DADS will monitor the above metrics for each provider contract in the DADS EVV system.

Quarterly Reviews and Assessment of Liquidated Damages

Beginning the seventh full month after the effective date of the contract or the date on which the provider is required to start using the EVV system, whichever is later, DADS will conduct quarterly compliance reviews to determine if services have been provided and documented as described in 40 TAC Chapter 68 in accordance with DADS EVV requirements. The EVV requirements include those elements identified in 40 TAC §68.102. These reviews will be based on the provider's performance for the period reviewed. DADS will continue to conduct EVV system use compliance reviews on a quarterly basis for the remainder of the provider's contract.

If a provider receives a quarterly compliance score of less than 90 percent, the provider will be in non-compliance with EVV requirements and will be subject to assessment of liquidated damages. DADS may assess a liquidated damage against the provider based on the degree of non-compliance in an amount ranging from \$10.00 to \$500.00 for each calendar day DADS determines the provider is not in compliance with EVV requirements.

DADS will notify the provider by letter when the provider receives an EVV compliance score of less than 90 percent. The provider may request an informal review if the provider can demonstrate that an assessment of liquidated damages resulted from a quarterly compliance score based on an EVV system failure. The informal review request must:

- be sent in the form of a letter;
- describe the specific EVV system failure(s) that prevented the provider from complying with the required performance standard;

- include all documentation supporting the provider's position; and
- be received by DADS within 10 calendar days after the provider's receipt of DADS written quarterly compliance review findings.

A request for an informal review not meeting the above requirements will not be granted. The use of the informal review process does not limit the provider's ability to request a hearing as discussed below.

Right to State Office of Administrative Hearings Appeal

Providers may also formally appeal the liquidated damage, by sending a formal request to the Health and Human Services Commission (HHSC) Appeals Division.

In accordance with [1 TAC §357.484](#), the request must be in writing, in the form of a petition or letter, and must state the basis of the appeal of the action. In addition, a legible copy of the liquidated damage notice must accompany the request. The request and notice must be received at the following address within 15 calendar days of the provider's receipt of the notice.

Texas Health and Human Services Commission
Attn: Director
Appeals Division
P.O. Box 149030 (MC W-613)
Austin, TX 78714-9030
FAX: (512)-231-5779

Return of Equipment

Equipment provided by DADS or by a third party related to EVV requirements must be returned in good condition when it is no longer needed. The provider must not place any marks or any other identifying information on the equipment, and may not alter information on the equipment including logos and serial numbers. If the equipment is lost, stolen, marked, altered or damaged by the provider, the provider may be required to pay the replacement cost for each piece of equipment that is lost, stolen, marked, altered or damaged. Replacement costs for lost, stolen, marked, altered or damaged equipment may be assessed periodically. If the provider recovers previously lost or stolen equipment for which the provider has paid the replacement cost in the prior twelve months, the provider may return the equipment and be reimbursed for the replacement cost, provided the equipment is returned in good condition as specified above.

Claims Requirements

Except as may be specifically authorized by DADS in writing, providers required to use a DADS-approved EVV system must ensure claims for services are supported by service delivery records that have been verified by the provider and fully documented in a DADS-approved EVV system before being submitted for payment.

Training regarding DADS expectations of provider EVV system use and appropriate use of Reason Codes is available at <http://www.dads.state.tx.us/evv/training.cfm>

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If you have questions, or need technical assistance with the EVV system or the data interface process, please contact Sandata Client Relations line at (855) 781-2079. Questions concerning this IL may be submitted to CPC@dads.state.tx.us.

For more information about EVV, please visit the DADS EVV website at www.dads.state.tx.us/EVV.

Sincerely,

[signature on file]

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Community Services Contracts

Wes Yeager
Director
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WC:cg