Interested Party Testimony
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Thank you for the opportunity to testify today on issues related to revenue impact as a result of Electronic Visit Verification (EVV) denials.

My name is Kristy Pyles. I am the Founder and CEO of In Your Corner Consulting, LLC. I work with providers and vendors across the country helping them implement and gain compliance with EVV rules and regulations in their states. In addition, I've led CMS Outcomes Based Certification (OBC) with five different states, including Ohio. I was the EVV Program Manager who implemented EVV for Ohio in 2018 and I am the person who oversaw and participated in the CMS OBC pilot, which resulted in full certification of the Ohio EVV Program.

Through conversations with the Ohio Counsel for Home Care and Hospice, it appears the reason there's a push for EVV claims denials is due to a fear of CMS taking money back. I'm here today to tell you why I don't believe that is a valid fear.

21st Century Cures Act

EVV is mandated under the 21st Century Cures Act (Cures Act). The Cures Act mandates:

1. State Medicaid Agencies require the use of EVV by personal care and home health providers or risk a reduction in in Federal Medical Assistance Percentage (FMAP) payments.
2. The Cures Act also mandates states ensure their EVV system is "minimally burdensome".
3. In the case of a state requiring the use of EVV, the state shall be paid 90% for implementation and 75% for maintenance and operation of the EVV system.
4. That the Secretary of Health and Human Services collect and disseminated best practices. Guidance from CMS lives in the CMS EVV FAQs.
5. No limits on the provision of care is clearly written. "Nothing in the amendment made by this section may be construed to limit, with respect to personal care services or home health care services provided under a State plan under title XIX of the Social Security Act (or under a waiver of the plan) (42 U.S.C. 1396 et seq.), provider selection, constrain beneficiaries' selection of a caregiver, or impede the manner in which care is delivered."
    a. Yet providers, due to the lack of response from Ohio's EVV vendor, the EVV vendor not working according to the technical specifications, and the loss of revenue, providers are discharging EVV clients. This is in conflict with this provision.

Nothing in the Cures Act references claims denials but instead guarantees payment for requiring the use of EVV, while also requiring the system to be minimally burdensome and without impact to care. I do not believe Ohio is in compliance with these last two mandates.

CMS EVV FAQs

The CMS FAQs do not require claims denials as part of the EVV Program. When asked if CMS required states to demonstrate the use of EVV systems relative to provider claims and tracking of services in the claims engine, as a condition for reimbursement of expenditures for PCS and HHCS services, CMS said yes. However, CMS said "States can demonstrate this in a variety of ways, through direct interface with the MMIS, or other conceptually equivalent methods or processes, including through the use of decision support systems and automated or ad hoc data analytics." Again, nothing says the state must deny claims.

In addition, I have communicated with CMS directly due to issues in several states. Each time, CMS has said the states have the discretion to implement their programs as they see fit, so long as they're compliant with the Cures Act. The most recent email thread with CMS about another state yielded the same statement.

CMS EVV Certification

The State of Ohio received certification of their EVV Program from CMS on April 19, 2019. No claims were denying at this time. This is in spite of having a claims denial date set for February 13, 2019, that did not happen.

On February 05, 2024, a meeting took place with CMS to determine if Ohio needed to go through the OBC process again. Where CMS did ask about claims denials, no timeline was provided according to the notes, and CMS found ODM to still be fully compliant with the Cures Act. However, CMS noted the mobile devices the state is issuing seems to be a "waste of money".

CMS Declares Ohio is Cures Compliant

On January 04, 2021, CMS declared the State of Ohio was in compliance with the Cures Act for personal care services. Then on February 15, 2023, CMS again said Ohio was compliant for the home health implementation. Neither of these compliance notices has a condition requiring claims denials.

Conversations with CMS

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EVV Request for Proposal

There has been some mention of the Request for Proposal (RFP) that was approved by CMS as being the reason FMAP may be taken back. Based on what I read in the CMS approved RFP, the state mentioned claims denials, but then also said "The claim to visit matching occurs within the Contractor's solution and is communicated to the payor. The disposition of the claim edits appended by payors on claims (e.g., deny, reduce reimbursement, or suspend the claim) is determined in the System Integrator and/or payor's payment system and is outside the scope of this project". Based on this, CMS also approved other means of adjudication outside of denials.

In addition to the concern around the RFP language approved by CMS, there is also a statement from Ohio saying "the Contractor's solution must integrate with all current and new alternate systems to receive required data determined by ODM that will feed into the Contractor's aggregator component to make claims adjudication process seamless for all providers." If we are concerned about claims language, this particular section should be of greater concern. Ohio's EVV vendor is not operating according to their technical specifications and is causing revenue impact. ODM has known about this issue since 2022.

In the RFP, there were service level agreements (SLAs) that require the states vendor to function according to certain criteria. Based on the lack of response to tickets, one could also assume those SLAs should be of grave concern should CMS find out as well.

EVV Advanced Planning Document

The Advanced Planning Documents (APD) completed in order to gain approval of funding, which guides the FMAP, may also be refenced as the promise of denials as a condition of payment. In the most recent IAPD, there is no mention of claims denials, but there is mention of GPS, which was all but pulled from the program unless a recipient approves the use.

In the operations version of the APD, a phased rollout of claims denials to be completed in 2026 was called out. However, in one of the original APD's, a promise of claims denials was made, but not kept. CMS heavily relies on states to determine how their EVV program is handled, as previously stated.

EVV Landscape

It may be important to note that there are several other states who have not opted to deny claims due to EVV at this time. California, who has been operational with personal care since 2022, has no timeline for denials. When I talked to the California operations team last month, they were more concerned with providers using the system successfully and commented that the only thing CMS was monitoring was manual edit and entry of visits. California home health implementation was considered compliant with the Cures Act as of 2024.

Conclusion

In conclusion, I hope this brief overview clearly demonstrates that Ohio is not at risk of having money taken back if they do not deny EVV claims. Where it's the preference of CMS for states to deny claims,

there’s no regulation mandating it. Ohio has work to do on their own systems before they can consider themselves ready to discuss compliance enforcement.

Thank you for your time and consideration. I am available for any questions you may have.

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