



Electronic Visit Verification and Self-Direction: A consumer perspective

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This report was based on the hard work and dedication of the Consumer Advocates Workgroup of the Consumer Directed Personal Assistance Association of New York State (CDPAANYS). The workgroup is comprised of consumers from throughout New York. The members met six times over three months to review the topics discussed in this paper and develop their recommendations. We would like to recognize the hard work and dedication of the workgroup members, who include Angela Harmer, Edward Sperling, John Stucki, Athena Savides, Carolyn Wember, and Michelle Fridley. Special thanks goes to the workgroup's Chair, Kendra Scalia, who facilitated the meetings, turned the workgroup's recommendations into an actionable document, and heavily edited this document.

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Executive Summary

The 21st Century Cures Act, passed by Congress in December of 2016, requires that all personal care services (PCS) and home health care services (HHCS) paid for by Medicaid implement Electronic Visit Verification (EVV) by January 1, 2019 in order to maintain Federal Medical Assistance Payments (FMAP) without penalty. The EVV requirements extend to all Medicaid PCS and HHCS paid for by Medicaid, including those implemented through the state plan, or any waiver service. Importantly, self-directed programs such as New York's Consumer Directed Personal Assistance program (CDPA) are included in this mandate.

In an ability to assist the New York State Department of Health (DOH) as it develops its own rules around EVV implementation, and Fiscal Intermediaries (FIs) in their efforts to implement the requirements, CDPAANYS' Consumer Advocates Workgroup convened to determine a set of Best Practices. The Committee developed a number of recommendations around accessibility, consumer control of their program, privacy, choice, and training opportunities.

The committee determined that consumers should ideally be provided with a choice of systems whenever possible, with a clear preference being shown towards web-based timesheet systems and telephony. Pros and cons were included for each of these EVV services. Consumers expressed strong reservations with EVV systems based on mobile apps. Services based on global positioning system (GPS) monitoring or biometrics were met with staunch resistance.

As should be obvious, the importance of accessibility of the system in meeting the needs of all disability groups was of paramount importance; however, the committee also stressed the need to be able to utilize any program, regardless of whether you reside in an urban or rural community in the state, easily. Also deemed critical to the success of any system was an ability to maintain the aspects of CDPA that make the program unique, primarily the consumer's level of control in scheduling and supervising their own staff and, importantly, verifying the hours worked.

Background on Electronic Visit Verification and the Cures Act

Passed by Congress and signed by President Obama in December of 2016, the 21st Century Cures Act (Cures Act) requires all Medicaid provided, community-based personal care services (PCS) and home health care services (HHCS) to implement electronic visit verification (EVV) for all such services. All services provided by a state Medicaid program through its state plan, or a waiver (including, but not limited to, 1915(c), 1915(i), 1915(j), 1915(k), and Section 1115 of the Social Security Act) must comply with this requirement when services are provided in the home. A failure to act on this requirement would subject the state to reductions in Federal Medical Assistance Payments (FMAP) of up to 1% of PCS and HHCS expenditures.

To comply with the EVV requirement of the Cures Act, EVV systems must verify:

1. The type of service provided – personal care vs. home health
2. Date of service provided
3. Location of the service delivery
4. The individual providing the service
5. The individual receiving the service
6. Time details – service start and end times

An additional requirement of any EVV system is that it must be “minimally burdensome” to providers and consumers. Further, it must not restrict in any way the manner in which services or care are delivered.

In considering the manner in which FIs could implement the EVV requirement of the Cures Act, the Consumer Advocates Workgroup considered **five different types of EVV systems**:

1. Web-based EVV systems
2. Telephony based EVV systems (also known as Telephony Visit Verification, or TVV)
3. Mobile App based EVV systems
4. Global Positioning System (GPS) based EVV systems
5. Biometric based EVV systems (or security measures on other EVV systems)

In implementing the program, CDPAANYS and its Consumer Advocates Workgroup is aware that New York State has chosen to implement the Provider Choice Model of EVV. This model allows each Fiscal Intermediary (FI) to implement its own EVV system, as long as such system complies with requirements of the Federal Centers for Medicare and Medicaid Services (CMS) and the New York State Department of Health (DOH). This model provides FIs with the highest degree of flexibility in meeting the needs of their consumers receiving Consumer Directed Personal

Assistance services (CDPA), as outside of setting the general guidelines that a system must meet, DOH will maintain very little control over systems implemented by individual FIs.

History of Consumer Directed Personal Assistance

New York has historically been a leader in consumer directed services. The model began in the mid-1970s when some New York City residents were working as private contractor personal attendants (PAs) for disabled consumers. When the city's Human Resources Administration (HRA) expressed concern over independent providers receiving state funds with little oversight, a handful of individuals worked diligently to develop a service model where they, the disabled individuals, would still control the delivery of their services. Out of this, Concepts of Independence for the Disabled, Inc. was established "to enable functionally handicapped persons to live independently, by assisting them to achieve and maintain control over their own lives". This permitted Concepts of Independence to receive federal and state funding to carry out activities that allowed the consumer to hire, train, schedule, supervise and terminate their own PAs.

By 1992, the New York State Department of Health established pilot programs in self-direction, using Concepts of Independence and Syracuse-based Enable (now AccessCNY) to administer the program for consumers. The Legislature enacted the program statewide in 1995, and it was renamed the Consumer Directed Personal Assistance Program. This was the creation of the Consumer Directed Personal Assistance Program existing today, where the consumer has control over who provides their care and how it is provided.

Consumer needs are assessed every six months by their managed care organization (MCO) or managed long-term care (MLTC) plan, who authorize the services and hours a consumer may utilize. The consumer then contracts with a FI to pay wages and benefits for the workers, called personal assistants (PAs). The consumer must manage their service plan, which includes allotting their authorized weekly hours of care in a manner that best meets their needs. Like the original 1977 consumer-direction model, the CDPA consumer is solely responsible for recruiting, hiring, training, supervising (including scheduling), and (if necessary) terminating their employees.

Intent of Consumer Directed Personal Assistance

The intent behind the consumer directed model of home care rests upon choice and dignity. Indeed, the model grew out of the Independent Living movement and was based on the core independent living principal of Dignity of Risk. The Dignity of Risk model assumes that all

individuals have the inherent human right to fail, and that one does not forfeit their right to take risks and potentially fail at something merely because they have a disability.

Consumer direction, at its core, does more than simply provide home care services. CDPA offers disabled individuals a pathway to full participation in their own life because the program:

- provides consumers with decision-making authority to take direct responsibility in managing all aspects of service delivery;
- offers maximum flexibility and choice;
- makes home health care more efficient for the consumer, which translates into health stability, fewer hospitalizations, and avoidance of nursing home care;
- enables consumers to direct their PA(s) in a way that best meets their individualized goals, needs, and abilities;
- permits consumers the opportunity to express their preferences in a meaningful way, including when those choices may be considered a 'mistake' by outsiders;
- frees consumers from constraints that would otherwise be imposed upon them by traditional agency care or institutionalized care environments; and
- empowers consumers.

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Any EVV system used in conjunction with CDPA must not erode the intent of the program. EVV vendors and technology companies must design systems that not only comply with the Cures Act, but which are user friendly, accessible, and consumer empowering.

FIs, in determining which EVV system they will utilize, must realize that consumers will approach the program's requirements from vastly different levels of experience and education. It is further noted that consumers will approach problem-solving in their own way. As such, FIs should respect consumer choice between EVV systems to the extent possible and practicable. FIs should also listen intently to consumer feedback regarding the operation of each system, going so far as to establish or utilize consumer committees to provide stakeholder feedback on the implementation of a system before it is chosen.

Ultimately, as CDPA is a service designed to provide consumers with the ability to live independent lives in the community and is based on a need for flexibility, EVV systems must be designed with a level of flexibility that will permit consumers to continue to use services in multiple different settings, including home, work, and the community.

To meet the intent of CDPA, **fiscal intermediaries should avoid using any EVV system that bypass the consumer**, even if the system would be technologically superior or administratively easier. A critical component of this is that the consumer should always be actively involved in the timesheet data collection and distribution processes. This remains true in the eventuality that the system's design makes this involvement technically symbolic. The consumer's involvement in this process is vital to his or her role in the supervision process and significantly enhances their authority in the PA management process.

Lastly, one of the many benefits of CDPA services is that it is a Medicaid program, which means that there are no extra costs to the consumer. Any EVV system must take into consideration the potential financial burden placed on the consumer and/or the PA to maintain secondary services, such as a mobile phone plan or Internet connection. Cellular service, even pre-paid plans, and capacity for Internet access should not be assumed.

The success of EVV implementation will be largely determined by the willingness of EVV vendors, technology companies, and FIs to work with the end users of an EVV system, the consumers and their PAs. These companies will need to ensure that they have a strong understanding about the true nature of the program, and they must be committed to developing EVV systems that will maximize consumer flexibility and choice.

Committee Recommendations regarding different EVV systems*

Web-based EVV

CDPAANYS' Consumer Advocates Workgroup universally expressed that the preferred interface for an EVV system is a web-based time sheet. Consumers sought a system that has a unique sign-in system for both the consumer and each PA. The consumer would not be obligated to enter information about a particular shift at the time of service, but could do so at any time before the week ended. Location would be tracked via two methods:

* Committee Recommendations reflect the thoughts of CDPAANYS' Consumer Advocates Workgroup and not meant to reflect the thoughts of all consumers. Each FI should convene a workgroup of its own consumers in determining which type of systems work best for your consumer network.

- a. Primary method: Checkbox preset options, such as “consumer’s home” and write-in “other”, with feature to add frequently visited locations for ease of future input.
- b. Secondary option: Write-in address or integration of a “Maps” feature that allows locations to be pinned by the consumer and/or PA, and the address to be automatically entered.

Accessibility considerations for a web-based EVV system

When developing a web-based system, the Consumer Advocates Workgroup noted that it would be critical to take several steps to ensure that the system was accessible for all consumers. Critically, the service must be compatible with screen readers, hands-free and voice command software, on-screen keyboards, and useable by text-to-voice software. In meeting these requirements, no EVV should rely on compatibility with just one software solution in this field, instead testing against, at a minimum, all major software solutions.

Another critical accessibility feature is that any security features, such as CAPTCHA or other integrated options, must have alternative accessible components. The workgroup recognizes that security is a primary concern of any EVV system. From compliance with HIPAA to the protection of critical data, including personally identifiable information from consumers and PAs, and the integrity of the Medicaid and payroll information itself, security software is a component of EVV that cannot be overlooked. With the importance of security features in mind, the success or failure of a system will ultimately lie in consumers ability to utilize it, putting accessibility of this crucial component high on the list of imperatives for an EVV system.

For those with vision impairments, the ability to enlarge text on a screen has been an enormous aid. However, in many software systems, screen layout is skewed and fields become broken when screens are enlarged. Any web-based EVV should ensure that when screen enlargement occurs, the layout of the text and the operation of the system is not compromised.

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There are other accessibility issues that allow for greater ease while typing or using transcription software. These modifications also provide a level of convenience we have all grown accustomed to in the age of technology and in many instances have become standard. Primarily in this category is the ability to save information for easy insertion on future timesheets. This includes locations, from common locations such as “home” or “work”, to the address of a laundromat or grocery store that one may visit during a shift. It also includes the ability to save shift details, as PAs often work the same schedule week to week, even though the ability for flexibility does exist.

Further, like any system based on technology, it is important to meet consumers where they are. Consumers, similar to the population at large, access the web in a variety of different ways. This is due to accessibility needs, personal comfort, and financial ability. Because of this, any web-based EVV system must include responsive website design such that the system can be

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easily accessed on various platforms, including but not limited to personal computers (regardless of operating systems), smart phones, tablets, and other devices that access the web. They must also account for operation across different browsers, again, meeting consumers and PAs where they are.

Privacy considerations for a web-based EVV system

As the workgroup addressed all potential EVV systems, privacy was one of the top concerns. While the Consumer Advocates Workgroup recognized potential privacy concerns, such as vulnerability to hacking or personal information theft, inherent with any web-based system, it was generally recognized that standard procedures to safeguard information as per the Health Insurance Portability and Accountability Act (HIPAA) such as encryption would create as many safeguards as possible. Given this, the workgroup overwhelmingly felt the potential positives associated with a web-based system outweighed the generic privacy concern.

However, that was not the only privacy concern raised by the workgroup, and it was noted that the desirability of a web-based system that did not adequately address all of these concerns would be hindered. The Consumer

Advocates Workgroup identified two primary privacy issues with a web-based EVV system, both centered on the screen that PAs would see and actions they would be able to take.

It was widely thought by the workgroup that primary control of entering data should be the responsibility of the consumer. This provides the consumer with the knowledge that PAs will not have access to information about them unrelated to their shift. It further enshrines the consumer’s role as the employer and supervisor, preventing the PA from listing hours that were not worked or listing locations on behalf of the consumer.

When a PA does see a screen to approve and verify the hours that he or she worked, it is imperative from a privacy perspective, as well as a HIPAA compliance perspective, that the PA not be able to see any unnecessary information. This includes personal information about the consumer, such as social security number (including the last four digits), Medicaid identification number, total care plan hours, other PAs assigned to the consumer’s case, and more. It also includes work completed by other PAs, particularly since locations could be included in this, providing information about the consumer to the PA that the consumer does not wish the PA to have. For instance, if a consumer has a familial relationship with one PA and attends certain family events with that PA, the consumer may or may not wish other, non-related PAs to know about those activities. Ultimately, as is the case with all of us, it is the consumer’s decision as to what information he or she will reveal and to whom.

Figure 1. Web-based EVV System Pros and Cons

Pros	Cons
<ul style="list-style-type: none"> • Enhances independence for consumers who are unable to complete paper timesheets without assistance • Can be designed to be accessible for nearly every person • Quality systems with accessibility features are minimally burdensome • Consumer maintains role as supervisor 	<ul style="list-style-type: none"> • Access to computer and Internet not an option for every consumer • Monthly cost to consumer for Internet access is required • Loss of power to home or community may limit access when required • Maintenance of computer or electronic devices can be costly and leave consumer/PA without access to timesheet for duration of repair or new purchase

Done properly, with proper accessibility, security, and privacy features, a web-based system is preferable from the perspective of CDPAANYS' Consumer Advocates Workgroup. This does not mean to imply that there are not potential pitfalls to such a system, and such a system will not work for everyone. Cost, unavailability of reliable broadband Internet service, access to a computer or other connected device, and blackouts or other unexpected problems create potential issues with such a system. However, the workgroup felt the pros significantly outweighed the cons in this instance.

Telephony EVV System

In instances where web-based EVV was not possible, either because a FI or a large percentage of consumers could not effectively utilize it due to cost, unreliable access to the Internet, or other reasons, the Consumer Advocates Workgroup indicated that their secondary choice would be a telephony system. Consumers clearly had the most knowledge with telephony-based systems, with some consumers having experience with such a system in the past.

Programmatic Considerations for Telephony-Based EVV System

A primary concern of telephony-based systems is the ease with which consumer's supervisory role could be eliminated. Many telephony systems require consumers to report a schedule in advance. This schedule is then matched to PA call-ins. The workgroup noted that in these instances, the schedule must be flexible, with the ability for the consumer to modify it easily and on little or no notice.

Telephony-based systems must also realize that CDPA exists to allow consumers to live independent lives in their community. This means that consumers will not always be at home when a PA begins or ends their shift. PAs may arrive at the consumer's home while they are away to do housekeeping or meal preparation. Alternatively, a PA may begin his or her shift out of the house, at the consumer's place of work or a location in the community, such as a church, community center, or grocery store. They may be with or without the consumer to complete delegated tasks. Further still, the program allows consumers to take vacations and leave their area for a period of time up to one month.

Many consumers use their cellular phones for various communications throughout the day, which may include work meetings, documentation creation, or operation of a power wheelchair. Ceasing all cellular phone activity, even briefly, may prove burdensome.

Any telephony-based EVV system must be able to accommodate easily all of these situations without placing unrealistic demands on the consumer or the PA, or forcing the PA to check in at one location and then travel to the secondary location, wasting time from the consumer's

limited hours on his or her plan of care. This means that not only must a telephony system be able to provide for multiple confirmed numbers in the system, it must allow for exceptions for unconfirmed numbers, as allowed by CMS.

Telephony systems must maintain the consumer's role in verifying hours worked. While this may reduce the number of efficiencies that the FI is able to obtain, having the consumer verify the hours worked further secures the consumer's role as employer of the PA and can serve as an important protection against potential fraud or abuse by the PA. Consumer verification is also a mechanism to correct records in instances where the PA fails to call-in at the beginning of a shift, or fails to call out at the end of shift, creating discrepancies in the timesheet for the remainder of the period.

Lastly, the workgroup raised concerns about the consumer's ability to monitor exact time remaining on their weekly authorization due to a lack of oversight or review of a telephony-based system by the consumer. For example, should a PA clock in for a shift thought to be 3 hours, yet the clock out time indicates just 2 hours and 48 minutes worked, the consumer may be unaware that an additional 12 minutes of work can be used at a later point during the week. With multiple shifts per day, these lost minutes are significant over time. The opposite may also pose an issue, whereby a PA has ended work tasks yet took personal time to use the restroom, gather their belongings, or otherwise delay clock out by ten minutes. These instances may cause the appearance that the consumer has an overage of authorized hours. Review and modification of hours and minutes worked by each PA is essential to build into a telephony-based EVV system.

Telephony-based systems must also realize that CDPA exists to allow consumers to live independent lives in their community. This means that consumers will not always be at home when a PA begins or ends their shift.

Consumer verification processes may consist of paper timesheets maintained by the consumer and submitted to the FI for matching against the telephony system, or copies of the telephonic printout of hours transmitted to the consumer for review and signatures. It should be noted that consumer verification processes based on retroactive review by the consumer have the potential to create significantly more work, and expense, for the FI. If, upon review by the consumer, it was determined that the PA was either over- or under-reimbursed, the FI would have to either recoup payments in the next payroll or add payment to services that had already been billed for, potentially an unreimbursable expense. For this reason, the workgroup recommends that any consumer review take place simultaneously with the payroll processing

timeline. One way to accomplish this is for telephony-based system designers to choose to build in an automated review system for consumers to verify over the phone hours for each PA and shift.

Accessibility considerations for a telephony-based EVV system

A critical accessibility issue for any telephony system is that the system must be able to be used from landlines and cellular phones. Disabilities of both consumers and PAs often prevent them from utilizing either a cellular phone or a landline, with various features such as dialing methodology, TTY access, software accessibility, and more being critical factors in the determination. Specifically, workgroup members noted that in many instances, pushing key buttons, such as those on push button phones or older “flip phone” model cellular phones, is difficult for those with mobility issues. Similarly, cellular screens may be difficult for those with visual impairments.

Additionally, the cost of maintaining both a cellular service and a landline is prohibitive for many consumers, meaning they will choose one or the other, based on costs, needs, and a range of other factors. Some consumers, like the population overall, have just chosen to forego

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a traditional landline as duplicative and unnecessary. Others, either because of unreliable or unavailable cellular service, cost, or other means, only maintain a landline. Any telephony system must be able to accommodate any or all of these scenarios easily.

Privacy considerations for a telephony-based EVV system

The Consumer Advocates Workgroup stressed that telephony-based EVV systems must not require them to allow PAs to utilize their cellular phones to check in. At its core, this amounts to a de facto charge for the provision of Medicaid services, as few consumers have unlimited plans on their cellular network, and hence are incurring charges based upon minutes used from either a monthly or pre-paid plan. This charge is in violation of Medicaid rules that prohibit consumers from paying for service delivery.

Further, the Consumer Advocates Workgroup noted that cellular phones increasingly contain a large amount of personal information that the consumer may not be comfortable sharing. It

was noted that once a consumer’s phone is unlocked and handed to the PA, the PA has the ability to view anything on the phone. This could include recent phone calls, e-mails, text messages, financial data, health information and more of both a personal and work nature. The ease with which this information could be accessed by PAs was of paramount concern to members of the workgroup. In some instances, such as with overnight start and ends times, the consumer is regularly unavailable. This could necessitate consumers handing over their private passwords for PAs to clock in or out without the consumer’s active approval to hand over their phone, leaving open the potential for another person to access private information at any moment the consumer does not have physical control over their cellular device.

Figure 2. Telephony-Based EVV System Pros and Cons

<u>Pros</u>	<u>Cons</u>
<ul style="list-style-type: none"> • Multiple points of sign-in at various locations if multiple contact telephone numbers are approved per consumer 	<ul style="list-style-type: none"> • PA access to consumer’s cellular phone may inadvertently provide access to personal information • Consumer cellular phones may use adaptive software that is not usable by PA • Requires consumer authentication / verification by consumer at time of call, creating potential disruptions to the consumer and logistical problems • Users often experience multiple errors with lengthy process to follow-up on exceptions • Current TVV systems do not provide oversight of exact minute login for consumer to maintain control over remaining care plan minutes • Lessens consumer control as point of sign-in/out; Quality of employer-employee relationship challenged • Lessens consumer supervision of clock-in/out when consumer is not present • Sign-in/out process could become a priority over providing immediate care for emergency shifts • Many current systems require a pre-set schedule for workers, which is not congruent with CDPA • Monthly cost to consumers to maintain cellular phone plan with adequate minutes to complete sign-in/out process or landline in home • Consumers will be required to provide mobile phone passwords to PAs • Consumers could be required to cease all phone activity, including potential work meetings, in order to hand over phone to employee to sign in/out

Mobile App Based EVV Systems

EVV systems run through a mobile app raised a number of significant concerns to members of the workgroup. Addressing these obstacles, based on current technology, expense, software options available on the market, and accessibility concerns, seemed unlikely enough that consumers were unable to see a path to where they would recommend such a program. Although they did hold that if a system did address their concerns, it would not be inherently anathema.

Programmatic considerations for a mobile app based EVV system

At this time, mobile applications the workgroup was aware of exist on the provider's (or in the case of CDPA, the PA's) device. The process completely removes consumers, even more than other EVV systems (such as telephony systems where the PA calls in and out). If the information resides on the PA's device, the consumer's control over their own personal information is eliminated. The PA would have access to, and could potentially screenshot or reveal to others, private and personal information about the consumer, including his or her location at any given time over the course of whatever period is stored on the device.

Accessibility considerations for a mobile app based EVV system

The committee identified several potential issues with a mobile app based EVV system from an accessibility standpoint. To reiterate, while technology has been liberating for many in the disability community, it does pose challenges for some. Both consumers and PAs alike may have varying types of disability. As previously mentioned, people with vision disabilities have difficulty reading cellular screens, and any app must verify that it works with all screen readers and other software aimed at allowing individuals to overcome this obstacle. Voice prompts would make an app unavailable for those with hearing disabilities unless captioning is included.

Additionally, such technology is a basic accessibility question for many consumers or PAs unrelated to their disability and related more to the inaccessibility of mobile networks, wi-fi, or even hardware necessary to require such devices. Even in communities considered technologically savvy with widespread access to mobile networks and wi-fi or other broadband services, many consumers and PAs do not have access to mobile phones and/or are not comfortable using such devices. Furthermore, wages are insufficient to require PAs to purchase cellular phones, more or less smart phone capable phones that can power an app, and forcing consumers to purchase such a phone would again amount to a de facto charge for Medicaid provided services. Therefore, a FI would have to ensure that anyone required to use such a mobile app had access to a cellular phone or tablet, even if that meant providing them free of charge to consumers.

Privacy considerations for a mobile app based EVV system

In the event that the privacy concerns addressed above are eliminated by placing the program on a device controlled by the consumer, there are still privacy concerns to be considered. Similar to concerns with a telephony-based system requiring the consumer to allow the PA to utilize his or her cellular phone, consumers have strong concerns about a mobile app that requires them to provide their smartphone or tablet to a PA. This provides almost unlimited access to the consumer's device by the PA. Given that cellular phones and tablets are less phones than personal computers with a phone app, consumers had significant and justifiable concerns automatically providing PAs with an opportunity to view this level of their personal information.

Consumers on the workgroup were also worried about the integrity of their information should any phone or tablet be lost or stolen. While many devices now come equipped with strong encryption and password protection via "face recognition" or a fingerprint reader, these are often high-end flagship devices not available to the bulk of this community. Therefore, information stored on a consumer or PAs device is potentially at high risk in the event that the said device is lost or stolen. Any software would have to be encrypted and protected with passwords and other mechanisms that might make individual use more complicated; but, would safeguard all data in the event the phone is lost or stolen.

The workgroup also identified concerns regarding mobile app use of global positioning system (GPS) to capture location and, thus, potentially tracking the whereabouts of consumers and PAs at all times during a shift or even off shift while the device remains active.

The final large concern voiced by members of the Consumer Advocates Workgroup is that, while web-based EVV systems have inherent security risks due to the potential to be hacked or otherwise compromised, those risks are dramatically larger in most mobile applications. Because of the need for apps to work across so many different platforms, from both an operating system and hardware perspective, often times protections cannot be built in to the same extent as on the web. While encryption is possible, it does increase limitations. Further, apps themselves are more vulnerable than a server running a web-based platform. Therefore, significant steps would have to be taken by a vendor to ensure that security threats were minimized to at least the same level that they are on a web-based platform, recognizing that almost no electronic platform provides universal protections in this regard. As we will learn below, biometric measures were unacceptable to the members of the committee in accomplishing this goal.

Global positioning system based EVV and biometric based EVV systems

The Consumer Advocates Workgroup felt strongly that no systems relying on Global Positioning Systems (GPS) or biometrics should be utilized.

The workgroup noted that mandatory use of GPS to receive government services amounts to a large invasion of privacy by the Government, since this information will ultimately be delivered to the DOH and CMS. It was noted that the Cures Act does not require GPS, and CMS did not require GPS in their May 16, 2018 Information Bulletin. The security of information became an even larger concern with the use of GPS, as consumers cited the ability of those who would exploit the system to know where they are and exploit that data to put their or their PAs physical safety at risk.

Similarly, the workgroup was stridently opposed to any system that relies upon biometric features, including fingerprint authorization, voice authentication, facial recognition, or other mechanisms. The advocates once again pointed out that the Cures Act does not require the use of such features, and their use was deemed intrusive and an invasion of privacy as an EVV method. Notably, biometric features of other EVV systems for security purposes, where the biometric information is stored only on the hardware and not accessible to any other parties, did not elicit the same concerns, although it did raise a number of prospective accessibility concerns.

The Consumer Advocates Workgroup felt strongly that no systems relying on Global Positioning Systems (GPS) or biometrics should be utilized.

With both systems, consumers worried about PAs quitting over PA concern for their personal privacy, noting that extraordinarily low pay rates driven from a decade of declining reimbursement has put them in a position where they cannot impose any requirements that might further alienate PAs.

It should be noted that voluntary adoption by consumers of these technologies was noted to be significantly different than a mandatory adoption required by a FI.

Other Issues Presented by the Implementation of EVV

EVV Related Programmatic Considerations

Consumer control over supervision

As has been repeatedly mentioned throughout this report, the manner in which any EVV system will interact with the consumer's obligations and roles in CDPA is of paramount concern. To that end, the consumers on the Consumer Advocates Workgroup overwhelmingly endorsed the continued use of paper timesheets by FIs for backup data collection.

The consumers noted that many advantages that paper timesheets will continue to have, include:

- maintaining the consumers' role in signing off on hours worked by PAs;
- serving as a resource when PAs forget to check-in or out from a shift; and
- allowing for continued recording of information in the event of a blackout, natural disaster, or other event that results in the unavailability of the EVV system.

Privacy is critical, and privacy policies should be created

It was also noted that FIs should provide consumers with explicit guarantees that information gathered through the use of EVV will not be shared except as required by law. The FI should communicate, in easy to understand terms, exactly how the information gathered will be used and to whom it will be sent. For instance, if the FI's system will tie EVV systems into billing software, that should be conveyed to the consumer. Similarly, the consumer should be made aware of the fact that information will be sent to the Department of Health to be aggregated with data from others around the state to be sent to CMS.

Under no circumstances should any information provided through the use of EVV, either personally identifiable information or aggregated information, be used by the FI or the EVV vendor for any reason. This includes using location data for marketing the service to prospective CDPA consumers or potential PAs.

Accessibility must remain a chief priority

Technology is ever changing, and EVV platforms built on technology must adapt their software to accommodate to that change while ensuring that they remain accessible to those with all disabilities across any platform on which they might be used. This is particularly true as computers morph into tablets and cellular phones, and webpages morph into apps, all of which are supported across a range of different hardware, operating systems, browsers, and "launchers". In many instances, keeping up with changes in technology will be the easy part for

EVV vendors. Making sure that those changes continue to be accessible across all devices, both new and old, will be the true challenge.

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Considerations in Choosing and Implementing an EVV System

Consumer involvement is critical

FIs should convene focus groups made up of consumers to test and offer their thoughts on EVV systems being considered by the FI. The consumers participating in such a workgroup should ideally be representative of all of those consumers being served by the FI, including age, race, gender, geographic location, disability, and other factors. Such an effort will ensure that the most critical stakeholders are brought into the new system and will allow the FI to realize any potential accessibility, technology related, or other problems associated with a given group and the potential systems being considered.

Consumer choice is valued

To the extent possible or practical, allowing consumers to choose between multiple EVV options was strongly desired by members of the Consumer Advocates Workgroup. While the group realized that economics and efficiency might prevent most FIs from implementing more than one system, they realized there were multiple situations where there may be an opportunity for choice, and the workgroup strongly encouraged FIs to make that choice available when possible.

Instances where the consumers saw the potential for true choice among EVV systems was in large FIs serving a broad area of the state, who might need to implement different systems to deal with reality in different geographic regions. The committee noted that although the systems may be implemented to deal with obstacles presented in different regions, that should not prevent all of the FI's consumers from choosing amongst the options provided.

Another instance in which the FI might commonly be able to offer a choice was when a chosen EVV system could utilize features that could be turned on or off, either individually or system

wide. In these instances, consumers felt strongly that the FI should alert the consumer about the features that can be enabled or disabled and provide them the option as to whether or not they would like to utilize them.

Consumers and PAs must be trained on the new systems

The Consumer Advocates Workgroup noted that, as per the Cures Act itself, the FI must adequately train consumers and PAs on any new EVV system. Trainings should be readily accessible for consumers and PAs, particularly in areas of the state where consumers and/or PAs might live in remote locations. Further, it was noted by consumers that their PAs would be working during these trainings, and the hours could not be counted against their allocation for the week; however, the FI is obligated to pay their staff for these hours. To this end, the workgroup did recommend that the DOH and plans provide one time payments to FIs to train workers, noting this is not a cost that was built into the system previously. This would allow the state to comply with their obligation to ensure training is provided as well. However, consumers noted that ineffective or inadequate training would inevitably lead to a system that was problematic and improperly operated by themselves and PAs, leading to reporting and billing problems for the FI.

Conclusion

The Cures Act requires FIs to implement EVV. As a FI, regardless of whether you have been operating an EVV system for years, or are just implementing one for the first time, this is a time where assessment of different EVV options will be taking place. When making the assessment, it is critical to take into account how your consumers, and their PAs, will interact with it.

In the end, an EVV system can only be as effective as your consumers and their PAs willingness, ability, and capacity to utilize it. Therefore, FIs should seek input from established groups of consumers before a system is chosen and implemented. When choosing a system, recognize that accessibility is a critical component, and that consumers and their PAs, like the rest of us, value highly both flexibility and privacy.

Most importantly, it is important to remember that CDPA is based on the notion that the consumer, not an agency, recruits, hires, trains, supervises (including scheduling), and terminates their own staff. Any EVV solution must provide for a strong role for the consumer and the continued ability to perform these supervisory tasks.

If this is accomplished, EVV can serve as not only a compliance with Federal mandates, but an effective means to efficiently track time and attendance and submit billing, streamlining operations and increasing responsiveness; a value to all.