NASUAD
National Association of States
United for Aging and Disabilities

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Ralph Lollar, Director
Division of Long Term Services and Supports
Disabled and Elderly Health Programs Group
Center for Medicaid and CHIP Services
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Baltimore, MD 21244

**RE: Electronic Visit Verification Compliance Survey; CMS-10680, OMB 0938-TBD**



Dear Director Lollar:

On behalf of the National Association of States United for Aging and Disabilities (NASUAD), I am submitting comments on the proposed survey to determine State compliance with the 21st Century CURES Act's Electronic Visit Verification (EVV) requirements that become effective on January 1, 2020. NASUAD represents the 56 officially designated State and territorial agencies on aging and disabilities. Each of our members oversees the implementation of the Older Americans Act (OAA), and many also serve as the operating agency in their State for Medicaid waivers and managed long-term services and supports programs that serve older adults and individuals with disabilities. Together with our members, we work to design, improve, and sustain State systems delivering home and community-based services (HCBS) and supports for people who are older or have a disability and for their caregivers.

NASUAD reviewed the PRA package and has the following comments:

**Technical Issues with Language**

There are two surveys included in this PRA package. One survey seeks information on EVV in Home Health Care Services (HHCS) and the other seeks information on EVV in Personal Care Services (PCS). Though it might be minor, there are technical inaccuracies in the surveys, including:

1. Response options in slides 11, 16, 21, 26, 31, and 36 on the PCS survey discuss "waivers for HHCS" which do not seem compatible with the PCS-focus of this survey.
2. A response option "my State has a waiver under this authority that delivers HHCS" is provided for State plan services delivered under 1905(a), 1915(i), 1915(k) authorities, which is not an accurate way of describing such services.

**Duplication of Effort**

CMS requests information that it should already have access to, including whether a State has submitted an Advance Planning Document (APD), whether CMS has approved the APD, and whether CMS has certified the EVV system. Given that the collection,

review, and response to APDs are functions of CMS, we believe that the burden on respondents should be reduced by collecting this information internally instead of requesting this information via survey.

**Concerns Regarding Inability to Submit Nuanced Information**

When requesting information about authorities under section 1915(c), the survey only offers three options:

- The State has implemented EVV;
- The State has a waiver which is required to have EVV but has not yet implemented; or
- The State does not have a waiver that is required to include EVV.

This may not be fully reflective of State experiences, as a number of States may have multiple 1915(c) waiver and these waivers might come into compliance with the CURES Act at different times. An example of when such a situation may occur is a State that has two waivers, one which includes self-direction and one that solely uses agency-directed services. Given the challenges reported by many States with implementing EVV in self-direction, it is extremely likely that this scenario would result in one waiver becoming compliant before the other. Similarly, many States utilize varying operating agencies for different waivers (i.e. the ID/DD agency manages one waiver and the Aging Agency is responsible for managing a different one). Managing the waiver frequently includes functions that would influence EVV implementation, such as policy oversight, rate setting, and provider management. Different agency administration will likely result in differentiated timelines for implementation.

Additionally, CMS requests a blanket response to "Has your State Implemented EVV?" but it is challenging to understand the appropriate answer when there are incremental roll outs of different models; pilot programs; multiple waivers with different methods of becoming compliant; and a number of other factors which could result in different levels of "compliance" within the same State. NASUAD believes that CMS and States must collaborate to determine the best way that "compliance" can be defined and assessed under the CURES mandate. This process should ensure that there are no unintended consequences arising from States that responded to this survey being deemed out of compliance at a later due to lack of clarity in the questions. It should also ensure that States know what information to provide CMS that demonstrates compliance. Lastly, there should be clear policy to clarify that States could be in compliance with the CURES Act mandates even if a reasonable amount of claims do not have EVV attached to them due to exceptions and error rate policies. Allowable exceptions and error rate thresholds should be determined at the state level based on realistic expectations for providers and participants. NASUAD intends to work with its membership over the next few months to better define and provide examples of what such policies could entail.

We appreciate the opportunity to submit this comment letter and would be happy to discuss our feedback in more detail. Please feel free to contact Damon Terzaghi of my staff at dterzaghi@nasuad.org with any questions about these comments.

Sincerely,

Martha A. Roherty

Martha A. Roherty
Executive Director
NASUAD