

**Ohio Department of Medicaid Public Hearing  
Proposed Rule 5160-1-40  
Electronic Visit Verification (EVV)  
Testimony by Joe Russell, Executive Director  
November 17, 2017**



Hello, my name is Joe Russell and I am the Executive Director at the Ohio Council for Home Care & Hospice (OCHCH). I want to thank the Ohio Department of Medicaid and Director Sears for the time you have spent to create an Electronic Visit Verification (EVV) program in Ohio. I also want to thank you for allow me to provide testimony today on proposed Rule 5160-1-40, Ohio's EVV rule.

Founded in 1965, OCHCH is a member-driven statewide trade association that represents the interests of home health care and hospice agencies in Ohio. We strive to support our members' ability to provide quality community services in home care, hospice and palliative care industry through advocacy, education, information and research.

As an association that supports our members' ability to improve quality, we support initiatives like EVV that can reduce fraud. This is why we supported the federal *21<sup>st</sup> Century CURES Act* that among other things created the EVV program for states. Unfortunately, as written our members cannot support this rule. The rule does not take into consideration the numerous agencies that have taken the initiative and invested in an EVV program long before a mandate existed.

In some ways these agencies are being punished as the rule will be so difficult to comply using their existing EVV systems that they will have to redesign their internal structures and spend more money just to support this mandate. While we had hope that this was going to be a good policy for Ohio's Medicaid program, the lack of flexibility will make EVV an expensive burden that will be difficult for agencies to comply with, which could eventually lead to a lack of access to these needed services.

We have heard from our more than 650 member agencies, and they're asking to fix this rule so that there's flexibility and a piece of mind that this system will work. Or as one of our members said "...avoid this being just another Medicaid induced headache." I want to share with you what our members are saying about this rule.

*1. EVV Rule Does Not Comply with Federal Law*

- a. SEC. 12006 of the 21 Century CURES Act outlines requirements for EVV, and requires a system by January 2019.
- b. The act requires a state's EVV system to be (1) "be minimally burdensome" and (2) "take into account existing best practices of the EVV systems already being used in the state."
- c. Ohio's proposed EVV system places a massive burden on providers to comply and ignores current best practices including the use of telephony, which a

majority of Ohio's providers using EVV use. As such, Ohio EVV proposal violates federal law.

2. Alternative EVV System Requirements Are Not Clear & Too Complicated
  - a. ODM allowed the EVV contractor, Sandata, to write specifications for alternative Systems, which seems like a major conflict of interest when you consider that the specification impact their competitors . These specifications were released on April 25, 2017 with no input on how they would impact providers.
  - b. ODM also allowed Sandata to write policy for alternative EVV systems that have a major impact on providers in an inappropriate way. For example, they require alternative systems to mirror the Sandata system such as requiring social security number, among others.
  - c. The burden to comply is completely on the provider despite being excessively difficult to do so. In fact to date, we're not aware of any alternative EVV systems that have been approved. That should sound alarm bell given the number of agencies already using EVV.
3. ODM Can Require Recertification of Alternative Systems At Any Time
  - a. Section E(4) of the rule allows ODM to require a company to recertify their certified system if ODM changes their data requirements or if a company fails to maintain department requirements. Given the department is also allowed to change the requirements at any time, compliance will be all but impossible.
  - b. It's not clear the process ODM will use to certify alternative EVV systems, so it's difficult for providers to prepare existing systems for the certification process.
  - c. Worst of all, the rule allows ODM to terminate a Medicaid provider agreement for not maintaining data elements that ODM can change at any time. This is inappropriate and unacceptable.
4. EVV System Does Not Meet ODM RFP Specifications
  - a. Several document released by ODM, including the RFP, requires the system to be used by managed care plans, yet the plans are now carved out of the rule. No explanation has been given why this changed has occurred, or how exactly how EVV will work with MCPs. Like MyCare Ohio, there is major concern that claims will unnecessarily be denied.
  - b. The RFP requires the system to notify providers when frontline staff are late or missed an appointment; a standard feature of most EVV systems. Yet, the EVV system proposed by the state does not have this capability so there's no way to ensure quality or timely services. Agencies will have to purchase this feature from Sandata.
  - c. The RFP also states that the contractor has the burden to install the system, yet the rule places a huge burden on providers to ensure the system is working for patients, including having to identify their patients who need devices and upload their patients' data into the system.
5. *The Drafted Rule Exceeds ODM's Rule Making Authority*
  - a. The proposed rule violates three of the six JCARR "prongs" including:

- i. The draft rule exceeds ODM's statutory authority given to it by the feds in the 21 Century CURES Act by requiring GPS, in addition to the other requirements has highlighted earlier;
- ii. ODM ignored most of the Business Impact Analysis comments that we submitted alongside LeadingAge Ohio stating this would be a large unfunded mandate, including the need for each agency to hire one or more people specifically to manage the EVV system due to its design.
- iii. No fiscal analysis was done to determine the cost of the system for providers to use the Sandata system or an alternative system.

6. *System Design Will Reduce Quality And Access*

- a. Most EVV systems allow for real time data. For example, if an aide does not show up for a shift a provider will know immediately and send someone to replace them. ODM's system cannot do that so people will go without care. We are afraid that without this capability someone will get hurt, or worse.
- b. The focus seems to be on money, not quality. Nothing about the EVV system will improve quality of care. In fact, quality is likely to be diminished because the primary focus will be on managing the EVV devices not the patient. The total focus is on preventing fraud and saving money. Shouldn't we give individual agencies the ability to improve quality and use an EVV system that helps them achieve that goal?
- c. This will place such a huge burden on agencies and could force them to make tough decisions including shifting scarce resources to other non-Medicaid populations that are "easier" to serve. This is not something an agency would want to do or take lightly, but when faced with a choice between serving Medicare patients and Medicaid patients the choice is easy. Well, it's not really even a choice.

These are just a few of the many issues that our members are concerned about, and this list doesn't include concerns over the function of the Sandata system, which we know will have bugs that need to be worked out. As stated before, we support EVV and want to see this work. We just want a system that works for providers.

For these reasons, we cannot support the rule as proposed. I respectfully ask that you make the changes needed to provide flexibility to providers to come into compliance without making this a huge burden or a huge expense. We look forward to the opportunity to sit down with ODM to discuss how we can fix the EVV rule to provide additional flexibility ahead of the JCARR hearing next month.

Thank you again for allowing me to testify today. Thank you again to ODM and Director Sears for taking the time to address our concerns and making EVV a good thing for providers and for the people of this great state. Thank you.