TO: Medical Care Advisory Committee

DATE: November 8, 2013

FROM: Tania Colon
Health and Human Services Commission

Agenda Item No.: 13

SUBJECT: Electronic Visit Verification System. New: §354.1177, Electronic Visit Verification (EVV) System under Title 1, Part 15, Chapter 354, Subchapter A, Division 11

BACKGROUND: Federal Requirement ☒ Legislative Requirement ☐ Other:

HHSC proposes new section §354.1177, Electronic Visit Verification (EVV) System, under Title 1, Part 15, Chapter 354, Subchapter A, Division 11.

The rule is established to comply with Government Code §531.024172, adopted in 2011, which requires HHSC, if it is cost-effective and feasible, to implement an EVV system to electronically verify and document through a telephone or computer-based system basic information relating to the delivery of Medicaid acute nursing services. See Act of June 27, 2011, 82d Leg., 1st C.S., ch. 7, §1.01, 2011 Tex. Gen. Laws 5390, 5391--92 (S.B. 7). In addition, the 2012-13 and 2014-15 appropriations acts require HHSC to reduce the amount of general revenue funds expended for Medicaid by implementing a plan that may include an initiative to conduct “statewide monitoring of community care and home health through electronic visit verification in Medicaid fee-for-service and managed care.” General Appropriations Act, 83d Leg., R.S., ch. 1411, art. II, rider 51(b)(8), at II-100 (Health & Human Servs. Section, Health & Human Servs. Comm'n); General Appropriations Act, 82d Leg., R.S., ch. 1355, art. II, rider 61(b)(8), at II-94 (Health & Human Servs. Section, Health & Human Servs. Comm'n).

Based on EVV savings achieved in the Department of Aging and Disability Services (DADS) EVV pilot program, HHSC estimates an approximate 2% savings in Private Duty Nursing (PDN) and approximately 3% savings in Personal Care Services (PCS). Additional savings may be achieved as the estimated savings for PDN and PCS do not include home health nursing services, which will also be included in HHSC’s EVV program.

The rule establishes requirements applicable to contractors providing EVV services for Medicaid-enrolled providers and guidelines for Medicaid providers that are required to use an EVV system for services as defined by HHSC. Additionally, the rule defines which Medicaid services require EVV and identifies the data elements that must be included, which will verify the service occurred.

ISSUES AND ALTERNATIVES:

The health plans and TMHP will be responsible for paying EVV transaction costs and will not be allowed to pass those costs on to Medicaid providers. The MCOs' capitation rates will be reduced to account for anticipated EVV savings. It is assumed that HHSC will negotiate EVV transaction costs with selected EVV vendors to ensure consistency for statewide implementation.
Although Medicaid providers will not be required to pay for EVV transaction costs, implementation of EVV may increase administrative costs for some providers. Providers will be responsible for ensuring service attendants comply with EVV activities (documenting when services begin and end), which will include training for service attendants and staff. Staff will have to work with EVV vendors to provide recipient service delivery schedules in order to document EVV.

DADS currently requires EVV for attendant services in six waivers or programs in seven regions of the State; the HHSC statewide implementation will include the current DADS EVV initiative, expand to the remaining regions in the State, and add nursing services. Coordination with DADS and DADS-enrolled providers already utilizing EVV will be required to transfer EVV contracting responsibilities to HHSC.

Additional Medicaid programs and services may be added to EVV requirements in the future. If and when other programs or services are added, operational impacts will need to be considered.

There are no alternatives to the proposed rule. As stated above in the Background section, Government Code §531.024172, adopted in 2011, requires HHSC, if it is cost-effective and feasible, to implement an EVV system to electronically verify and document through a telephone or computer-based system, basic information relating to the delivery of Medicaid acute nursing services. In addition, the 2014-15 Appropriations Act requires HHSC to achieve a cost savings to reduce the amount of general revenue funds expended for Medicaid by implementing a plan that may include an initiative to conduct “statewide monitoring of community care and home health through electronic visit verification in Medicaid fee-for-service and managed care.” EVV is anticipated to achieve cost savings by reducing the incidence of timekeeping and recordkeeping errors, and reducing fraud, waste, and abuse.

STAKEHOLDER INVOLVEMENT:

HHSC has worked with representatives from the managed care health plans, Texas Association of Health Plans, and Texas Association for Home Care & Hospice since February 2013 to consider operational impacts of implementing EVV; the workgroup developed the minimum standard requirements that EVV vendors will be required to comply with in order to participate in EVV. Additional public comments are anticipated from Texas Medicaid providers and other stakeholders impacted by implementation of EVV.

FISCAL IMPACT:

☐ None ☑ Yes (if yes, please complete table below)

HHSC is required to implement EVV for attendant and nursing services if determined to be cost-effective and feasible. Cost savings have been assumed for EVV in Medicaid acute care services and managed care for fiscal year 2014-2018, but do not reflect the exact services or programs initially assumed for inclusion in EVV. This estimate also includes administrative costs but does not include the impact of EVV in the STAR+PLUS program or DADS programs, which will result in additional savings. Additionally, the cost savings estimate assumes a June 1, 2014, implementation date.
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**RULE DEVELOPMENT SCHEDULE:**

- November 8, 2013  Present to the Medical Care Advisory Committee
- November 22, 2013  Present to HHSC Council
- February 2014  Publish proposed rules in *Texas Register*
- May 2014  Publish adopted rules in *Texas Register*
- May 2014  Effective date

**REQUESTED ACTION:**

- The MCAC recommends approval of the proposed rules for publication.
- Information Only
PROPOSED PREAMBLE

The Texas Health and Human Services Commission (HHSC) proposes new §354.1177, concerning implementation of Electronic Visit Verification (EVV).

Background and Justification

Government Code §531.024172, adopted in 2011, requires HHSC, if it is cost-effective and feasible, to implement an EVV system to electronically verify and document through a telephone or computer-based system basic information relating to the delivery of Medicaid acute nursing services. See Act of June 27, 2011, 82d Leg., 1st C.S., ch. 7, §1.01, 2011 Tex. Gen. Laws 5390, 5391--92 (S.B. 7). In addition, the 2012-13 and 2014-15 appropriation acts require HHSC to reduce the amount of general revenue funds expended for Medicaid by implementing a plan that may include an initiative to conduct “statewide monitoring of community care and home health through electronic visit verification in Medicaid fee-for-service and managed care.” General Appropriations Act, 83d Leg., R.S., ch. 1411, art. II, rider 51(b)(8), at II-100 (Health & Human Servs. Section, Health & Human Servs. Comm'n); General Appropriations Act, 82d Leg., R.S., ch. 1355, art. II, rider 61(b)(8), at II-94 (Health & Human Servs. Section, Health & Human Servs. Comm'n).

Based on EVV savings achieved in the Department of Aging and Disability Services (DADS) EVV pilot program, HHSC estimates an approximate 2% savings in Private Duty Nursing (PDN) and approximately 3% savings in Personal Care Services (PCS). Additional savings may be achieved as the estimated savings for PDN and PCS do not include home health nursing services, which will also be included in HHSC’s EVV program.

The proposed new rule establishes requirements applicable to contractors providing EVV services for Medicaid-enrolled providers and guidelines for Medicaid providers that are required to use an EVV system for services as defined by HHSC. Additionally, the rule defines which Medicaid services require EVV and identifies the data elements that must be included, which will verify the service occurred.

Section-by-Section Summary

Proposed §354.1177(a) defines key terms used in section 354.1177.

Proposed §354.1177(b) sets out EVV system requirements.
Proposed §354.1177(c) states that HHSC will certify EVV service providers based on demonstrated ability to meet HHSC-approved minimum standard requirements.

Proposed §354.1177(d) requires use of an EVV system to document the provision of attendant and nursing services.

Proposed §354.1177(e) lists requirements applicable to providers required to utilize EVV.

Proposed §354.1177(f) states that HHSC will not reimburse a claim for services subject to the EVV requirements unless the data from the EVV system corresponds with the services for which reimbursement is claimed and is consistent with an approved HHSC prior authorization or DADS Plan of Care. This section also states that claims may be subject to retrospective review and recoupment.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the proposed rule is in effect, there will be a fiscal impact of general revenue savings to state government in the amount of ($22,229,393) for state fiscal year (SFY) 2014 through SFY 2018 - ($1,065,097) for SFY 2014, ($4,696,887) for SFY 2015, ($5,077,454) for SFY 2016, ($5,478,573) for SFY 2017, and ($5,911,381) for SFY 2018. This estimate also includes administrative costs, but does not include the impact of EVV in the STAR+PLUS program or DADS programs. EVV will also be implemented for attendant and nursing services in STAR+PLUS and some DADS programs, resulting in additional savings.

Small and Micro-business Impact Analysis

HHSC has determined that there may be an impact on small businesses or micro-businesses as Texas Medicaid-enrolled providers may incur additional costs in staff time needed to comply with requirements of EVV. Although Medicaid providers will not be required to pay for EVV transaction costs, implementation of EVV may increase administrative costs for some providers. Providers will be responsible for ensuring service attendants comply with EVV activities (documenting when services begin and end), which will include training for service attendants and staff. Staff will have to work with EVV vendors to provide recipient service delivery schedules in order to document EVV. HHSC does not have sufficient data to provide an estimated fiscal impact.

Cost to Persons and Effect on Local Economies

HHSC is unable to determine the economic cost to persons who are required to comply with the amendment as the number of providers subject to the rule is unknown. Medicaid providers providing attendant and nursing services in STAR+PLUS, FFS, and approximately six DADS waiver programs will be required to comply with EVV. Additional programs and/or services may be included in EVV at a later date. However, there is no anticipated negative impact on local employment or local economies as the anticipated cost savings from EVV may result overall in less administrative burden for providers.
Public Benefit

Chris Traylor, Chief Deputy Commissioner, has determined that for each year of the first five years the proposed rule is in effect, the public will benefit from the adoption of the rule, which HHSC believes will achieve cost savings by reducing the incidence of timekeeping and record keeping errors, and reducing fraud, waste, and abuse. By reducing administrative errors, and fraud, waste, and abuse, both the State and Medicaid providers may experience fewer provider appeals, and audit reviews, resulting in less administrative burden.

Regulatory Analysis

HHSC has determined that this proposal is not a “major environmental rule” as defined by §2001.0225 of the Texas Government Code. A “major environmental rule” is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner’s right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

Public Comment

Written comments on the proposal may be submitted to Deborah Keyser, Senior Program Specialist, Medicaid/CHIP Division, Health and Human Services Commission at 4900 N. Lamar Blvd., Austin, Texas 78751; by fax to (512)-730-7476; or by e-mail to deborah.keyser@hhsc.state.tx.us within 30 days of publication of this proposal in the Texas Register.

Public Hearing

A public hearing is scheduled for February XX, 2014 from (Start Time) to (End Time) (central time) in the (Location and Address). Persons requiring further information, special assistance, or accommodations should contact Leigh A. Van Kirk at 512-462-6284.

Statutory Authority

The new rule is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021, which authorizes HHSC to administer the federal medical assistance (Medicaid) program in Texas.
This rule is proposed to effectuate Government Code §531.024172, which requires HHSC, if it is cost-effective and feasible, to implement an EVV system to electronically verify and document basic information relating to the delivery of Medicaid acute nursing services.

The proposed new rule affects Texas Human Resources Code Chapter 32 and Texas Government Code Chapter 531. No other statutes, articles, or codes are affected by this proposal.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency’s legal authority to adopt.
Definitions. For purposes of this section, the following terms have the following meanings:

(1) DADS – Department of Aging and Disability Services.

(2) Electronic visit verification (EVV) system--A telephone or computer-based system that allows confirmation that services were provided to an eligible recipient according to an approved HHSC prior authorization or DADS Plan of Care.

(3) HHSC--The Health and Human Services Commission or its designee.

(b) EVV system requirements. An EVV system must:

(1) allow for verification and documentation of the delivery of services in the home or in the community and data associated with those services and must require the confirmation of, among other things:

(A) the service recipient's identity;

(B) the health care service provider's identity;

(C) the date and time the health care service provider begins and ends each service delivery visit;

(D) location at which the service is provided; and

(E) any additional requirements as established by HHSC;

(2) supports the services requested in the approved HHSC prior authorization or DADS Plan of Care and claims filed for reimbursement;

(3) is certified by HHSC in accordance with subsection (c) of this section; and

(4) satisfies the policy guidelines specified by HHSC.

(c) Certification. HHSC will certify an entity providing EVV services to health care service providers to provide EVV services based on demonstrated ability to comply with minimum standard requirements approved by HHSC.
(d) Services requiring EVV system use. A certified EVV system must be used for attendant and nursing services.

(e) Provider requirements. A provider that provides the services listed in subsection (d) of this section must:

1. use an EVV system to document the provision of health care services;
2. comply with all documentation requirements as defined by HHSC;
3. comply with applicable federal and state laws regarding confidentiality of information about a person who is receiving services described in this chapter;
4. ensure that HHSC may review documentation generated by an EVV system or obtain a copy of that documentation at no charge to HHSC; and
5. at any time, allow HHSC direct access to the EVV system.

(f) Use of EVV data for claims reimbursement.

1. HHSC will not pay a claim for reimbursement unless the data from the EVV system corresponds with the health care services for which reimbursement is claimed and is consistent with an approved HHSC prior authorization or DADS Plan of Care.
2. Paid claims may be subject to retrospective review and recoupment, if appropriate.