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Title of Rule: Revision to the Medical Assistance Benefits Rule Concerning Electronic Visit Verification, Section 8.001
Rule Number: MSB 19-01-03-A
Division / Contact / Phone: Health Programs Office, Office of Community Living, Health Information Office / John Lentz / 303-866-3872 / Lana Eggers / 303-866-2050 / Whitney McOwen / 303-866-4441

SECRETARY OF STATE

RULES ACTION SUMMARY AND FILING INSTRUCTIONS

SUMMARY OF ACTION ON RULE(S)

1. Department / Agency Name:	Health Care Policy and Financing / Medical Services Board
2. Title of Rule:	MSB 19-01-03-A, Revision to the Medical Assistance Benefits Rule Concerning Electronic Visit Verification, Section 8.001
3. This action is an adoption of:	new rules

4. Rule sections affected in this action (if existing rule, also give Code of Regulations number and page numbers affected):

   Sections(s) 8.001, Colorado Department of Health Care Policy and Financing, Staff Manual Volume 8, Medical Assistance (10 CCR 2505-10).

5. Does this action involve any temporary or emergency rule(s)?	No
If yes, state effective date:	N/A
Is rule to be made permanent? (If yes, please attach notice of hearing).	<Select One>

PUBLICATION INSTRUCTIONS*

Insert The newly proposed text beginning at 8.001 through the end of 8.001. This rule is effective August 3, 2020.

*to be completed by MSB Board Coordinator

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STATEMENT OF BASIS AND PURPOSE

1. Summary of the basis and purpose for the rule or rule change. (State what the rule says or does and explain why the rule or rule change is necessary).

   In accordance with Section 12006(a) of the 21st Century Cures Act, P.L. No. 114-255, the Department is implementing this rule to require the use of Electronic Visit Verification (EVV) for Personal Care Services and Home Health Care Services provided in the home or community and Home and Community Based Services that include an element of Personal Care Services. The Department is implementing EVV for the federally mandated services, as well as all other non-mandated services that are similar in nature and service delivery, including Durable Medical Equipment requiring in-home setup, select HCBS services, and outpatient therapies requiring an in-home visit.

2. An emergency rule-making is imperatively necessary

   ☐ to comply with state or federal law or federal regulation and/or
   ☐ for the preservation of public health, safety and welfare.

   Explain:

3. Federal authority for the Rule, if any:

   21st Century Cures Act, P.L. No. 114-255, Section 12006(a)

4. State Authority for the Rule:

   25.5-1-301 through 25.5-1-303, C.R.S. (2017);

Initial Review	**[date]**	Final Adoption	**[date]**
Proposed Effective Date	**[date]**	Emergency Adoption	**[date]**

DOCUMENT #

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REGULATORY ANALYSIS

1. Describe the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

   Colorado Medicaid clients receiving services subject to EVV requirements will benefit from increased provider accountability and tracking of visits. The Department is implementing and maintaining a State EVV Solution that providers delivering services subject to EVV requirements may use at no cost. A provider may alternatively select and utilize an EVV system of their choosing.

2. To the extent practicable, describe the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

   The proposed rule will implement federally mandated EVV requirements for applicable Colorado Medicaid enrolled providers. For providers that choose not to use the state-provided EVV system, there will be a cost associated with purchasing and implementing their own EVV system. For members receiving services subject to EVV requirements, there will be increased provider accountability for the delivery of Medicaid services.

3. Discuss the probable costs to the Department and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

   There are costs to the Department associated with purchasing and implementing an EVV software system, but these costs are eligible for an enhanced funding match from CMS and is included in the Department's appropriated budget. Department staff costs to monitor EVV system use and ensure compliance with federal requirements The costs incurred are required in order to comply with federal law.

4. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

   The Department is mandated through federal law to require EVV for most of the services included in this rulemaking. The cost of inaction for those mandated

services would be noncompliance with federal regulation, resulting in incremental decreases to the federal match for those services.

The benefits of requiring EVV for other services that are similar in nature and service delivery to the Cures-mandated services for clients are that EVV enhances care coordination and promotes quality service delivery. For providers, requiring EVV for all services similar to the mandated services streamlines operational requirements, especially for those providers that provide services both within and outside the scope of the Cures Act mandate. The cost of inaction would be uncertainty among providers and members regarding EVV requirements and when they apply and potential noncompliance with the federal mandate.

5. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

   There are no less costly or intrusive methods for achieving the purpose of the proposed rule, as it is being implemented in accordance with federal law.

6. Describe any alternative methods for achieving the purpose for the proposed rule that were seriously considered by the Department and the reasons why they were rejected in favor of the proposed rule.

   No alternative methods for achieving the purpose of the proposed rule were seriously considered by the Department because the rule's requirements are set by federal law, the 21st Century Cures Act, P.L. No. 114-255, Section 12006(a).

8.001 ELECTRONIC VISIT VERIFICATION (EVV)

8.001.1 Definitions

8.001.1.A. Alternate Location means any location entered into the EVV Record that was not automatically collected as a part of the EVV record.

8.001.1.B. Colorado Medicaid ID means the Colorado Medicaid identification number assigned to each Medicaid member by the Department.

8.001.1.C. Department means the Colorado Department of Health Care Policy & Financing.

8.001.1.D. Direct Care Worker means the person providing a service to a client. The Direct Care Worker may be an employee of a Provider.

8.001.1.E. Direct Care Worker ID means the last five digits of the Direct Care Worker's social security number.

8.001.1.F. Edited EVV Entry means an EVV record that has had any element modified via Visit Modification as defined in Section 8.001.3.C.1.b.

8.001.1.G. Electronic Visit Verification (EVV) means the use of technology, including mobile device technology, telephony, or Manual Visit Entry, to verify the required data elements related to the delivery of a service mandated to be provided using EVV by the "21st Century Cures Act," P.L. No. 114-255, or this rule.

8.001.1.H. Electronic Visit Verification Record (EVV Record) means a record of a visit recorded by an EVV System containing all data points in Section 8.001.3.A.1.b. of this rule.

8.001.1.I. Electronic Visit Verification System (EVV System) means the State EVV Solution or a Provider Choice System used by a Provider to comply with the EVV requirements in this rule.

8.001.1.J. Exception means a data integrity alert identified by the State EVV Solution or Provider Choice System.

8.001.1.K. Geo-fencing means the practice of utilizing a virtual perimeter in a geographic area.

8.001.1.L. Live-in Caregiver means a caregiver who permanently or for an extended period of time resides in the same residence as the Medicaid member receiving services. Live-in Caregiver status is determined by meeting requirements established by the U.S. Department of Labor, Internal Revenue Service, or Department-approved extenuating circumstances. Documentation of Live-in Caregiver status must be collected and maintained by Provider or Financial Management Services Vendor.

8.001.1.M. Manual Visit Entry means an EVV recorded after the time of service delivery, including all data elements as defined in Section 8.001.3.A.1.b.

8.001.1.N. Mobile Visit Verification Application (MVV Application) means a mobile device application that is used by the Direct Care Worker to record visit data at the start and end of the visit.

8.001.1.O. Provider means an actively enrolled Medicaid provider in good standing as defined in Section 8.076.

8.001.1.P. Provider Choice System means an alternative to the State EVV Solution made available by the Department. A Provider Choice System is provided by a Provider and satisfies all requirements as defined in this rule, is compatible with the State EVV Solution, and is consistent with Federal and State law.

8.001.1.Q. Provider EVV Portal means the web-based administrative tool used by Providers using the State EVV Solution to manage EVV activity and add Manual Visit Entry data elements and to monitor all activity recorded in the EVV System for Provider Choice Systems.

8.001.1.R. Reason Codes means standard codes established by the Department used to explain a Manual Visit Entry, Visit Modification, or acknowledge an Exception for missing required visit information.

8.001.1.S. State EVV Solution means the portion of the EVV System that manages data related to the visit and includes the MVV Application, TVV System, and the Provider EVV Portal made available by the Department.

8.001.1.T. Telephonic Visit Verification System (TVV System) means a toll-free telephone number system used by Direct Care Workers to record visit data at the start and end of a visit.

8.001.1.U. Threshold means the Departmentally-defined acceptable limit, determined as a percent, of EVV data recorded after the time of service delivery through Visit Modification or Manual Visit Entry.

8.001.1.V. Visit Modification means the edit of required visit data elements, as defined in Section 8.001.3.A.1.b, after the time of service delivery.

8.001.2 Provider Applicability

8.001.2.A. Providers of the following services reimbursed by the Department as fee-for-service must utilize EVV:

1. Behavioral Services when provided in the home or community, as defined in Sections 8.212, and 8.500.94.B.2, when provided in the home or community;

2. Consumer Directed Attendant Support Services as defined in Sections 8.510 and 8.500.90.I;

3. Durable Medical Equipment when provided in the home or community as defined in Sections 8.595 and 8.590;

4. Home Health Services as defined in Section 8.520.1.K;

5. Homemaker Services as defined in Sections 8.490.1 and 8.500.94.B.8;

6. Hospice Services when provided in the home as defined in Section 8.550.1;

7. Independent Living Skills Training as defined in Section 8.516.10.A.1;

8. In-Home Support Services as defined in Sections 8.506.4.C and 8.552.1.M;

9. Life Skills Training as defined in Section 8.553.1.H;

10. Pediatric Behavioral Therapies provided under Early, Periodic Screening, Diagnosis and Treatment (EPSDT) Services, when provided in the home or community as defined in Section 8.280;

11. Pediatric Personal Care when provided in the home or community, as defined in Section 8.535.1;

12. Personal Care Services provided as defined in Sections 8.489.10.11 and 8.500.94.B.13;

    a. Personal Care Services provided in a Provider-owned residential type setting and paid via per diem are excluded from the EVV requirements outlined in this rule.

13. Physical Therapy and Occupational Therapy when provided in the home or community as defined in Section 8.200.3.A.6;

14. Private Duty Nursing as defined in Section 8.540.1;

15. Respite when provided in the home or community, as defined in Sections 8.492.10.11 and 8.508.100.J;

16. Speech Therapy when provided in the home or community, as defined in Section 8.200.3.D.2; and

17. Youth Day Services when provided in the home or community as defined in Section 8.503.40.A.13.

8.001.3 Provider Responsibilities

8.001.3.A. The Department will make available the State EVV Solution to all Providers of services specified in Section 8.001.2.A. of this rule. The State EVV Solution will include an MVV Application, TVV System, and Provider EVV Portal.

1. The State EVV Solution made available by the Department must be used by all Providers except for Providers using a Provider Choice System pursuant to Section 8.001.3.B. of this rule. Providers using the State EVV Solution must do the following:

    a. Utilize the MVV Application or the TVV System made available by the Department as the primary method for collecting visit data.

        i. If the visit did not take place at the location captured by MVV or TVV, the Provider must indicate the actual visit location as an Alternate Location.

        ii. If the MVV Application and TVV System are unavailable during an EVV visit, the Direct Care Worker and the Direct Care Worker's associated Provider, as applicable, are responsible for entering any uncaptured data elements for that visit via Manual Visit Entry. Manual Visit Entry must be used as the last alternative for recording the visit data.

    b. Collect, for each visit, the following data:

        i. The Colorado Medicaid ID of the client receiving the service;

        ii. Information to identify the Direct Care Worker providing the service;

iii. The time the visit begins and ends;

iv. The EVV-required service performed;

v. The date the visit occurs; and

vi. The location of the visit.

8.001.3.B. The Department will allow all Providers of services specified in Section 8.001.2.A. of this rule to utilize a Provider Choice System.

1. Providers using a Provider Choice System must utilize an EVV Provider Choice System that satisfies all technical specifications as identified by the Department to:

a. Collect and submit to the Department, for each visit, the data elements contained in Section 8.001.3.A.1.b. of this rule;

i. When a Provider enters visit data via Manual Visit Entry, the Provider Choice System must indicate that the data was entered manually.

ii. When a Provider modifies existing visit data, the Provider must indicate the reason code for modification and enter reason code notes, if pertinent or required.

b. Utilize a Direct Care Worker ID for all individuals providing services to clients, as identified in Section 8.001.1.E. of this rule;

c. Identify all Exceptions using standard codes identified by the Department;

d. Utilize the Reason Codes identified by the Department;

e. Resolve any Exceptions noted in the State EVV Solution; and

f. Submit data to the State EVV Solution in a format and at a frequency identified by the Department.

2. A Provider Choice System must maintain compliance with the requirements identified in this rule, including incorporating into the system any changes in data requirements that must be transmitted to the State EVV Solution. It is the responsibility of providers using a Provider Choice System to ensure successful interaction between their Provider Choice System and the State EVV Solution.

3. Any costs related to the development of a Provider Choice System will not be the responsibility of the Department.

4. The Department will not provide training or support on the interaction of individual Provider Choice Systems with the State EVV Solution.

5. If a Provider is unable to obtain a compatible Provider Choice System, the Provider must use the State EVV Solution made available by the Department.

8.001.3.C. Visit Entry and Visit Modifications

1. All visit data points as defined in Section 8.001.3.A.1.b. must be completed at time of service delivery.

    a. If a visit is entered administratively, and not by a caregiver at the time of service, the visit is considered a Manual Visit Entry.

    b. If any data elements are edited after the time of service delivery, the edits are considered to be a Visit Modification resulting in an Edited EVV Entry.

2. Manual Visit Entries and Edited EVV Entries are subject to Department audit based on published Department Thresholds, in accordance with Section 8.076.

3. Providers must maintain ~~outside of the EVV System~~ all documentation required to substantiate the data elements required by Section 8.001.3.A.1.b of this rule to support Manual Visit Entries, Visit Modifications, and Exceptions. If this documentation cannot be maintained in the EVV System utilized by the Provider, the documentation must be maintained outside of the EVV System. The documentation must be made available to the Department or the Department's designee upon request, as required by Section 8.130.2.

4. Providers must resolve any Exceptions associated with Manual Visit Entries and Visit Modifications.

5. Exemptions

    a. Live-in Caregivers who have completed Department required documentation are not mandated to collect EVV data, unless otherwise required by their Provider as defined by 8.001.1.O. of this rule.

        i. Falsification or misrepresentation of information on Live-in Caregiver documentation may result in Department revocation of an individual's Live-in Caregiver exemption. If Live-in Caregiver exemption is revoked, the caregiver and provider must complete EVV pursuant to this rule.

6. EVV Record Restrictions

    a. The Department will not allow or accept biometric data, pictures, video, or voice recordings to identify clients or substantiate Medicaid visit data.

        i. Visit data that includes biometric data, pictures, video, or voice recordings is not required and must not be submitted.

    b. The Department will not allow or accept visit data that includes continual GPS tracking during a visit. The Department will only accept location information at the beginning and/or end of a Medicaid visit.

        i. Visit data that includes continual GPS tracking is not required and must not be submitted.

    c. The Department will not utilize geo-fencing to restrict location of Medicaid service delivery.

        ~~i.~~ i. Visit data that restricts location of service delivery using geo-fencing is not required and must not be submitted~~.~~

8.001.3.D. Providers of the services specified in Section 8.001.2.A. of this rule must adhere to the following:

1. Comply with all provisions of this rule.

2. Use the State EVV Solution or a Provider Choice System to collect and maintain EVV data as required in Sections 8.001.3.A.1.b. and 8.001.3.B.1.a.

3. Consistent with Section 8.130, maintain a record of clients subject to EVV requirements to whom they are providing services and the required data elements pertaining to these clients. The required data elements include:

   a. Colorado Medicaid ID;

   b. Last name;

   c. First name;

   ~~Language preference;~~

   d. One known address at which the client may routinely receive services; ~~. Additional addresses must be maintained if the client routinely receives services at multiple locations;~~ and

   e. Telephone number.

4. Maintain a current list of Direct Care Workers who are providing services subject to EVV requirements to clients enrolled in Colorado Medicaid and the required data elements pertaining to the Direct Care Workers. The required data elements include:

   a. Last name;

   b. First name; and

   c. Direct Care Worker ID.~~; and~~

   ~~Email address.~~

5. Maintain all documentation certifying the status of Live-in Caregivers providing services otherwise subject to EVV requirements set forth in this rule. Evidence of valid Live-in Caregiver status must be available upon Department request.

6. Utilize EVV for all services subject to the provisions of this rule.

7. Report any known or suspected falsification of EVV data to the Department within two business days of discovery.

8. Complete all required EVV training.

8.001.3.E. Compliance

1. Providers are required to comply with the requirements of this rule beginning on August 3, 2020.

    a. Providers that fail to comply with this rule after August 3, 2020 may be subject to Compliance Monitoring and a Request for Written Response in accordance with Section 8.076.

    b. Providers that fail to comply with this rule after October 1, 2020 may be subject to Compliance Monitoring, Request for Written Response, or Overpayment Recovery.

    c. Providers that fail to comply with this rule after January 1, 2021 may be subject to Compliance Monitoring, Request for Written Response, Overpayment Recovery, Denial of Claims, Suspension, Termination, or Nonrenewal of their Colorado Medicaid Provider Agreement in accordance with Section 8.076.

2. If the Department determines that there is a credible allegation of fraud, the Provider may be subject to a Suspension of Payments in accordance with Section 8.076.4.