NASUAD
National Association of States
United for Aging and Disabilities

1201 15th Street NW
Suite 350
Washington, DC 20005
Phone 202-898-2578
Fax 202-898-2583
www.nasuad.org

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The Honorable Paul Ryan
Speaker of the House
U.S. House of Representatives
United States Capitol
Washington, D.C. 20510

The Honorable Nancy Pelosi
Democratic Leader
U.S. House of Representatives
United States Capitol
Washington, D.C. 20510

Dear Speaker Ryan and Democratic Leader Pelosi:

On behalf of the National Association of States United for Aging and Disabilities (NASUAD), I am writing to support a delay of the 21st Century CURES Act's requirements that states implement Electronic Visit Verification (EVV) for personal care services. 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 and supports for people who are older or have a disability and for their caregivers.

As you know, the CURES act includes requirements that states have EVV in place for personal care services (PCS) by January 1, 2019 and for home health care services by January 1, 2023. PCS delivered without EVV will be subject to a 0.25% reduction in the federal share of Medicaid expenditures (FMAP) in 2019, and this reduction increases each year until it reaches 1% in 2023. Our members are extremely concerned about their ability to implement EVV in a timely fashion, given that the deadline is less than seven months away and they only recently received guidance from the Centers for Medicare & Medicaid Services (CMS) regarding issues such as the full scope of services subject to the mandate, the nature of information that must be collected, and the criteria for receiving a good faith exemption from the FMAP reductions during 2019.

According to the CURES act statute, the EVV mandate applies to PCS delivered through the following authorities: 1905(a)(24), 1915(i), 1915(j), and 1915(k) of the Social Security Act, as well as any waiver of the state plan (including 1915(c) waivers and 1115 demonstration projects). However, this definition is not necessarily straightforward given that PCS may be defined in a number of different ways within the Medicaid program. CMS provided initial verbal guidance to a number of states indicating that PCS, for the purposes of the mandate, are services that support an individual accomplish activities of daily living (ADLs) and/or instrumental activities of daily living (IADLs). Under this definition, certain providers such as assisted living, group homes, and other licensed facilities that provide 24-hour care would have been implicated by the requirements.

However, in the final guidance released by CMS, the agency clarified that these types of licensed facilities would not be included. This type of ambiguity and shifting federal requirements led many states to delay their contracting process until they had received final guidance from CMS.

Unfortunately, the timing of guidance makes it impossible for most states to finalize the development of their information technology (IT) systems. Because states could not finalize their policies around providers and services included in the requirement, it prevented them from developing advance planning documents, which are required to receive enhanced federal funding for information technology development and installation, as well as from drafting requests for proposals to secure an EVV contractor. Given the lengthy timeframe required for open and fair procurement processes, coupled with the subsequent IT development and installation processes, it is extremely unlikely that any state will be able to establish an EVV system by the January deadline unless they already had one in place. Furthermore, even states with existing systems may not be able to meet all of the CURES Act requirements given that there are new reporting requirements included in the statute.

Although the Cures Act includes a potential reprieve from the matching fund reduction for states that made "good faith effort" and encountered "unavoidable delays" in implementing an EVV system, it is unclear what a state must do to secure such an exemption. Furthermore, CMS has clarified that the exception is limited and would only apply for one year. A number of states will need to make modifications to their implementation plans in response to the final CMS guidance, which will then require that they secure funding from the legislature, acquire CMS approval for enhanced funding, develop and administer an open and fair procurement, and install the system. Many state legislatures have already adjourned or will do so in the coming weeks, which would require state agencies to submit these requests in the 2019 session. We therefore do not believe that the compliance deadlines are reasonable or achievable for states, even with a 12-month delay in the FMAP penalties.

Because of this, NASUAD strongly encourages Congress to enact legislation that delays the FMAP penalties for states that do not have an EVV system in place by January 1, 2019. We applaud the collaborative efforts that have resulted in bipartisan legislation introduced in both the House and the Senate to delay this mandate for one year, and we strongly encourage Congress to pass these bills in a timely manner. This delay will provide states with additional time to implement the EVV systems in a thoughtful and effective manner that achieves the dual goals of improving quality of care while reducing fraud, waste and abuse in the personal care system. Please feel free to contact Damon Terzaghi at dterzaghi@nasuad.org with any questions you may have.

Sincerely,

Martha A. Roherty

Martha A. Roherty
Executive Director
NASUAD

Cc:
Members of the U.S. House of Representatives
Members of the U.S. Senate