

TO: All members of the 1915 C waiver Task force:

I am sharing with you correspondence with our service advisor in the BGADD regarding a barrier to service created by the agency that leaves parents, representatives and participants in the position of being forced out of waivers or violating HIPAA. This policy notice was delivered via email on 7/23/2021, and is effective as of 7/26/21 (today) and describes both extreme penalties (non-payment of caregiving staff or removal from the waivers by denial of the only available option for plan of care services) and requires completion of a three page form for each shift during the last pay period (for my son this is 17 shifts, at 3 pages each, that is 52 pages of documentation) which must be completed in Microsoft forms, which is not HIPAA Compliant (see the warning at the bottom of page 3 of the example form) in an approximately 24 hour period. This process replaces a single three page document that was not required to be processed through Microsoft Forms and did not compromise my son's PHI.

This is part of pattern of threatening participants and caregivers that causes unbearable stress and represents an unreasonable burden on caregivers, parents, representatives and participants.

Further, the form is required as part of correction for an application error in location time out, for an agency failure to keep required service addresses updated in plans of care, and for participants who are not included in the 20th Century Cures Act.

Additionally, shifts scheduled in the app may change DURING the shift, for instance, today's shift will have to be changed due to the cancellation of a therapist (at her necessary request) but this shift is already in progress. Matters beyond the control of the participant should not cancel waiver services.

I know today's agenda addresses barriers to care. Please add this information to that discussion.

I would love to have a chance to discuss this and other concerns with the committee, but in the next 24 hours I need to directly address this particular threat and I am asking that your presenters today be given an opportunity to relieve us of this threat and bureaucratic burden. Violation of HIPAA can be punished with imprisonment. No one should have to face the choice of imprisonment to comply with waiver requirements.

 Probus

----- Forwarded message -----

From  Probus 

Date: Fri, Jul 23, 2021 at 8:25 PM

Subject: emergency plan of care meeting due to new agency requirements

To: 

We need to address the EVV issues as it relates to addresses for plan of care inclusion before Monday it seems.

I am also significantly concerned about the threats inherent in this letter (attached) that we received today. I have spent hours and money we did not have, made my son wait when he was communicating appropriately that he wanted my attention, to comply with all of the rules of this program and begged for help with or relief from the EVV process.

I have been instructed to A. Meet my son's needs first and B. Avoid overtime.

I have diligently and patiently applied every update, noted issues, duplicated timekeeping work and patiently waited for improvement to this process that could be so simple, but isn't.

I am sure you all know that traditional services are not an option for him in HCBII. Were he allowed to receive services in another waiver, many activities might be acceptable with another individual through PDS, but our own personal experiences with family members and friends who depended on agency staff are not encouraging. (theft, abuse, neglect and medical errors just in my immediate relations, and so very common- these things are on the news, you know)

While he is not taking any medications that are likely to be stolen, he is very appropriately concerned for his physical privacy, especially in states of undress and with toileting. I am extremely concerned for his psychological safety and morale in the care of others, especially those who might prefer to sit with a dying person, or who may not have adequate education to understand the complexities of Autism, or who may feel that they 'know' people with disabilities and have their own way of doing things.

We will need to update the plan of care to include every possible location where he may see a doctor, therapist, or pick up a prescription for the rest of this plan of care year. Plan of care hours currently do not allow for the full time for transport to and from any appointment and in almost all cases we have had to end billing during the appointment to address the risk of penalty for overtime.

A contingency will have to be made for that.

We will need to find a way to account for the fact that our device does not have cell services, just wifi. We cannot use public wifi for PHI. Not all facilities allow the use of wifi or other devices. Our device has only gone into offline mode once in recent memory. That points to some other problem with location errors that is beyond my control.

We will need a contingency for appointments that are rescheduled or moved at the last minute, and for those that run over time.

Further, it would seem that significant plan of care adjustments need to be made to cover the new employee responsibilities for timekeeping as required by the agency and not the

participant, rep or HHS. These duties must be included in paid time according to the FLSA. (<https://www.dol.gov/agencies/whd/fact-sheets/21-flsa-recordkeeping>)

Currently any single interaction with the Tellus App by any name, requires between 6-7 minutes at least, given no issues, whether creating a shift (these are not visits) or verifying a shift. I have a location error on every single attempt to use the system. There are other ongoing issues that have not been addressed since the adoption of this technology that are not covered in the form provided. I have been diligent in reporting these both in the app and in conversation with our case manager. Surely, using known errors with the app to threaten and punish waiver participants is not the intent of DMS or HHS?

The correction process required to begin on Monday the 26th, With less than one business day notice, is not HIPAA compliant.

I cannot estimate the amount of time required to complete this form one time, but apparently on Monday night I will have to complete it at least 17 times, after I receive it. In order to complete a form on a computer between Monday night and Tuesday morning, it will have to be done during the eight hours that I would normally sleep, which is actually already further limited by his difficulties getting to sleep and my own difficulties sleeping past 6:30 or 7 am. Nothing says when the form will be presented on Monday, but we have a very full schedule both Mondays and Tuesdays that include therapies, tutoring, homeschool work and recently rearranged that schedule to clear Wednesdays for the EVV correction process that what just changed a few weeks ago. Our therapy team has limited flexibility, and many people are waitlisted for therapies that really, truly have helped him become the wonderful person he is, and to overcome many difficulties. Repeatedly asking to move days is not a good thing.

Further, Microsoft forms are Not HIPAA compliant and the use of these forms would be a violation of our agreement and since A Single Week covers between 17 and 21 shifts that could be 42 instances where multiple pieces of PHI were exposed through a non-secure means that specifically states:

"

Your Content

2. Your Content. Many of our Services allow you to store or share Your Content or receive material from others. We don't claim ownership of Your Content. Your Content remains Your Content and you are responsible for it.

- a. When you share Your Content with other people, you understand that they may be able to, on a worldwide basis, use, save, record, reproduce, broadcast, transmit, share and display Your Content for the purpose that you made Your Content available on the Services without compensating you. If you do not want others to have that ability, do not use the Services to share Your Content. You represent and warrant that for the duration of these Terms, you have (and will have) all the rights necessary for Your Content that is uploaded, stored, or shared on or through the Services and that the collection, use, and retention of Your Content will not violate any law or rights of others. Microsoft cannot be held responsible for Your Content or the material others upload, store or share using the Services.

- b. To the extent necessary to provide the Services to you and others, to protect you and the Services, and to improve Microsoft products and services, you grant to Microsoft a worldwide and royalty-free intellectual property license to use Your Content, for example, to make copies of, retain, transmit, reformat, display, and distribute via communication tools Your Content on the Services. If you publish Your Content in areas of the Service where it is available broadly online without restrictions, Your Content may appear in demonstrations or materials that promote the Service. Some of the Services are supported by advertising. Controls for how Microsoft personalizes advertising are available at <https://choice.live.com> (<https://go.microsoft.com/fwlink/?LinkId=286759>). We do not use what you say in email, chat, video calls or voice mail, or your documents, photos or other personal files, to target advertising to you. Our advertising policies are covered in detail in the Privacy Statement."-
 - from : <https://www.microsoft.com/en-us/servicesagreement/default.aspx>

I cannot agree to allow my son's plan of care details including toileting habits to potentially be used by Microsoft for advertising. The very fact that he is enrolled in a waiver at all is protected information. Publishing PHI to Microsoft by requiring the use of this form by off network users on personal devices who are not part of the secured BGADD Microsoft Works system is a HIPAA violation and should not be a requirement to access waiver services.

The same is actually also true of linking his name and tracking his address through google. TELLUS was never supposed to be using GPS and in the town hall meetings signal triangulation was the means discussed for location verification. Sharing the information with Google is not at all protecting his privacy. Using google services to maintain location monitoring was never part of the agreement or intent of the 20th Century Cures Act.

These are the rules for HIPAA

<https://www.hhs.gov/hipaa/for-professionals/compliance-enforcement/state-attorneys-general/index.html>

Given these known issues and the fact that EVV is not required by the 20th Century Cures Act for live in caregivers and the fact that we remain in a pandemic and that no vaccine is 100% and that he requires close personal contact for plan of care services and that no agency is providing care for children, vaccines of caregivers, or short shifts as care is so gravely limited in this waiver, I am asking for an alternative process that allows continuity for my son and also does not violate his right to privacy or care.

Current plan of care services involving personal care that must be performed within 6 feet of my son are not likely to be accepted by him on an ongoing basis by a stranger from an agency, should one be formed to address the needs of those under 18 in this waiver.

I had previously asked for a process to create a request for an exemption from EVV. This would be an ideal time for that, as all plan of care services for my son are occurring in his home, or in route to or from or in the offices of or in the community with a trusted medical professional and community access time is not permitted in the HBC2 program. With the exception of picking up


a prescription from a pharmacy (a transaction that is also location and time stamped) there is no time that any billed service would be performed in an unknown location that could not be easily verified. Alternatively, allowing overtime for the full transportation to and from these locations is an alternative (one that robs us of the option to stop for food on the way home, but an option).

The 20th Century Cures Act does not require the use of EVV for non-visits. It is possible to exempt live in caregivers from the process and eliminate the hours of extra work required to comply with these requirements.

Please let us work together to find a solution that does not harm our family any further or create greater expense.

Please reply with an acceptable time to meet after 11:30 Monday, before these new requirements create bigger problems for all of us.

Remember, my son might not be the only child in the world, but he is the one we are here to support when we work together, and in all things respect for his life, needs, health, wellbeing and choices must be first in our minds. I will not have another child. He is worth our very very best and most respectful care and support.

 Probus



Address

Contact

Web

July 23, 2021

Participants/Representatives,

Starting Monday, July 26, 2021, BGADD will be implementing new software to report weekly EVV Billable Visit Hours. Additionally, the software will show Procedure and Time Errors according to Medicaid approved Plan of Care (POC) and Prior Authorizations (PA).

You will continue to receive an email on Mondays requiring you to Accept or Decline hours reported along with system generated suggestions for corrections to procedure codes and time errors only. All responses are due weekly on Tuesdays by 4pm. Failure to respond will result in delayed payments. If you accept the suggested modifications, no other action is needed once you receive the Submission Screen. If you decline the changes, an online EVV Correction Form will be required for each visit that requires a correction. (Please see attached for more details.) All online responses are date and time recorded. Responses after 4pm on Tuesdays are considered late and can result in delayed payments. Late submissions will not be processed until the following pay period. If no time is received through Mobile Caregiver+ then no email will be generated.

If your employee receives a GPS Warning; an online EVV Correction Form must be completed immediately. Employees must be clocking in and out at locations previously added per the POC. GPS errors at locations not approved on POC are subject to non-payment, in addition consistent errors may result in a **Corrective Action Plan**.

It is required that a visit is scheduled prior to clocking in/out for a visit. Missing visits will only be added when our agency is notified by Caregiver+ of a known outage/issue. Per the Caregiver+ Expectations we are unable to add in visits after the initial set up visit that are not scheduled and clocked in/out. We are only able to modify simple corrections. It is your employee's responsibility to schedule their visit and clock in.

Please find the attached examples of the following:

- System Errors Email Example – You must Accept or Decline
- Online EVV Correction Form Example
- Online Advance Address Addition Request Example
- Payroll Schedule
- Caregiver+ Expectations

Thank you,
BGADD Staff

Subject: ACTION REQUIRED - Deadline Tuesday by 4:00pm

Dear Recipient/Representative

Example

EVV Claims must follow the Medicaid approved Plan of Care (POC) and Prior Authorization (PA); please review the time below and take the appropriate action of changes if necessary.

Recipient: A0099 (BGADD Identification Number)

Pay Period: 6/28/2021/ - 7/4/2021

EVV Claims Summary

Caregiver Name	Procedure Code	Total Hours
Minnie Mouse	97535 HI	19.00
Minnie Mouse	T1019 HI	12.75
Minnie Mouse	T1005 HI	40.00

Below are the errors listed with suggested adjustments.

Procedure Errors

Begin Service	End Service	Charged Procedure	Corrected Procedure
6/29/2021 5:15:50 PM	6/29/2021 9:00:28 PM	T1019 HI U1	T1019 HI
7/1/2021 5:58:26 PM	7/1/2021 9:00:39 PM	T1019 HI U1	T1019 HI

Time Errors

No Charged time problems found

Yes I Agree ACCEPT

NO, I DON'T AGREE DECLINE

If you do not agree, please click Decline and fill out the online EVV correction form.

- Decline button records in database & redirects you to the Online EVV Correction Form

If no action is taken before Tuesday at 4:00 pm, Payroll WILL NOT be processed which will result in a delay in payment.

Reminders

- Action Taken after Tuesday at 4:00 pm will process in the following payroll.
- Consistent errors may result in a Corrective Action Plan.
- All billing claims are subject to Medicaid processing, which could result in payment issues.
- Unscheduled visit cannot be processed for payment.
 - o To ensure all time is processed correctly caregivers must schedule visits prior to clocking in.

Helpful Links

- Additional Address needed for Caregiver Mobile+ <https://forms.office.com/r/neWbqK6TVd>

Thank you,
BGADD Staff



Example

BGADD - Scheduled Visit Correction

- Submit one form per Scheduled Visit, that needs a correction.
- **Deadline: Tuesdays @ 4:00 pm.**

Reminders:

- Recipient/Representative is responsible for the accurate accounting and reporting
- Consistent errors may result in a Corrective Action Plan.
- All billing claims are subject to Medicaid processing.
 - Processing issues may result in delayed or non Payments.

* Required

1. Recipient's BGADD Identification Code *

Example: A0099 (reference weekly email to locate number)

A0099

2. Caregiver Name *

Minnie Mouse

3. Date of Service *

7/23/2021



4. Service Provided *

Service must be listed on Recipient's approved Plan of Care.

Example

- 97535 HI - Community Living Supports (MPW)
- 97535 HI U3 - Community Living Support Overtime (MPW)
- T1019 HI - Personal Care (MPW, SCL)
- T1019 HI - Personal Care Overtime (MPW, SCL)
- S5125 HI - Attendant Care (MPW)
- S5130 HI - Homemaker Service (MPW)
- S5135 HI - Adult Companion Care (MPW)
- S5135 HI U3 - Adult Companion Care Overtime (MPW)
- T1005 HI - Respite (HCB, MPW, SCL)
- T1005 HI U3 - Respite Overtime (HCB, MPW, SCL)

5. List all Tasks completed during this visit. *

Example: Bathing, Dressing, Grooming, Meal Setup, Transportation, Shopping, etc

Bathing, Dressing, Grooming

6. What is correct Service Start Time? *

Responses below will only be accepted in Time Format.
Example: 9:00 am

9:00 am

7. What is the correct Service End Time? *

Responses below will only be accepted in Time Format.
Example: 8:45 pm

4:30 pm

Example

8. What is the Total Service hours for this Visit?

Example: 8

7.5

9. Correction Reason *

- Time Increase (To be used if Time needs added)
- Time Decrease (To be used if Time needs decreased)
- No Show/Refused Service
- GPS Error

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The owner of this form has not provided a privacy statement as to how they will use your response data. Do not provide personal or sensitive information.

| [Terms of use \(https://go.microsoft.com/fwlink/?linkid=866263\)](https://go.microsoft.com/fwlink/?linkid=866263)

Example

☑ Thanks!

Thank you for your Visit Correction Submission!

Please remember the following:

- Submit one form per Scheduled Visit.
- Deadline: Tuesdays @ 4:00 pm.
- Recipient/Representative is responsible for the accurate accounting and reporting.
- Consistent errors may result in a Corrective Action Plan.
- All billing claims are subject to Medicaid processing.
 - Processing issues may result in delayed or non Payments.

Thank you!

BGADD Staff

Print or get PDF of answers

Submit another response

Example

Mobile Caregivers and Services Request

- * Services will not meet Plan of Care requirements.
- * Request must be submitted one week prior to start of services.

* Required

1. Recipient ID *

Example: A0099 (reference weekly employ to locate number)

A0099

2. What specific tasks will be provided in accordance to the Plan of Care at this address? *

Example: Bathing, Dressing, Grooming, Meal Setup, Transportation, Shopping, etc.

Transportation, Shopping

3. Address Start Date *

7/30/2021



4. Street Address *

699 Perimeter Drive

Example

5. 2nd Line of Address (Apt or Building)

Enter your answer

6. City *

Lexington

7. State *

KY

8. Zip Code *

40517

9. Phone Number *

859-269-8021

10. Can this address be found on Google Maps? *

If address is not found on Google Maps the address will not be able to be added.

You can suggest to Google Maps for the address to be added or adjusted. Please follow Googles instructions on how to make Google Map adjustments.

https://support.google.com/maps/answer/10010575?hl=EN&ref_topic=3257381

https://support.google.com/maps/answer/10010575?hl=EN&ref_topic=3257381

Yes

Mobile Caregiver+ Service Address Request

Example

✓ Thanks!

Thank you!

Your Mobile Caregiver+ Service Address Request has been submitted to BGAD

Print or get PDF of answers

Submit another response

Payroll Schedule

QTR	Time Log Start Date (Sunday)	Time Log End Date (Saturday)	EVV Email Sent (Monday)	Approve/Correction form due by 4PM (Tuesday)	Pay Date
3rd Qtr	6/27/2021	7/3/2021	7/5/2021	7/6/2021	7/28/2021
	7/4/2021	7/10/2021	7/12/2021	7/13/2021	7/28/2021
	7/11/2021	7/17/2021	7/19/2021	7/20/2021	8/11/2021
	7/18/2021	7/24/2021	7/26/2021	7/27/2021	8/11/2021
	7/25/2021	7/31/2021	8/3/2021	8/3/2021	8/25/2021
	8/1/2021	8/7/2021	8/9/2021	8/10/2021	8/25/2021
	8/8/2021	8/14/2021	8/16/2021	8/17/2021	9/8/2021
	8/15/2021	8/21/2021	8/23/2021	8/24/2021	9/8/2021
	8/22/2021	8/28/2021	8/30/2021	8/31/2021	9/22/2021
	8/29/2021	9/4/2021	9/6/2021	9/7/2021	9/22/2021
	9/5/2021	9/11/2021	9/13/2021	9/14/2021	10/6/2021
	9/12/2021	9/18/2021	9/20/2021	9/21/2021	10/6/2021
	9/19/2021	9/25/2021	9/27/2021	9/28/2021	10/20/2021
9/26/2021	10/2/2021	10/4/2021	10/5/2021	10/20/2021	
4th Qtr	10/3/2021	10/9/2021	10/11/2021	10/12/2021	11/3/2021
	10/10/2021	10/16/2021	10/18/2021	10/19/2021	11/3/2021
	10/17/2021	10/23/2021	10/25/2021	10/26/2021	11/17/2021
	10/24/2021	10/30/2021	11/1/2021	11/2/2021	11/17/2021
	10/31/2021	11/6/2021	11/8/2021	11/9/2021	12/1/2021
	11/7/2021	11/13/2021	11/15/2021	11/16/2021	12/1/2021
	11/14/2021	11/20/2021	11/22/2021	11/23/2021	12/15/2021
	11/21/2021	11/27/2021	11/29/2021	11/30/2021	12/15/2021
	11/28/2021	12/4/2021	12/6/2021	12/7/2021	12/29/2021
	12/5/2021	12/11/2021	12/13/2021	12/14/2021	12/29/2021
	12/12/2021	12/18/2021	12/20/2021	12/21/2021	1/12/2022
12/19/2021	12/25/2021	12/27/2021	12/28/2021	1/12/2022	

Mobile Caregiver+ Expectations

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This shall serve as your official notice regarding Mobile Caregiver+ usage and expectations. Every BGADD Waiver employee has completed the Mobile Caregiver+ EVV training and should be using the EVV app daily to schedule and clock in/out for their scheduled work shifts/visits. For the past several months, your Service Advisors have also provided support as needed to help answer questions while employees have become more familiar using the EVV app.

Please ensure you read the following thoroughly and ask your Service Advisor if you have questions as continued errors may result in Corrective Action Plans being issued as well as payroll processing delays.

- While errors are inevitable, errors are expected to be kept to a minimum. Those who chronically fail to do this, or turn in weekly EVV corrections, with multiple entries, will be subject to receiving a Corrective Action Plan (CAP). Failure to comply with the CAP can result in involuntary transfer to Traditional Waivers. The PDS option gives you freedom not available with Traditional Waiver Providers; however, this freedom comes with responsibility. If you and/or your employees cannot meet this responsibility, the PDS option is not in the best interest of the Participant's health, safety, & welfare.
- It is the employee's and representative's responsibility to monitor the hours worked per week as allocated on the participant's plan of care. *Employees can check their worked hours by referring to the "scheduled visits" section in Mobile Caregiver+.*
- Employees MUST enter a work schedule into Mobile Caregiver+ for every shift being worked. Failure to enter a schedule into Mobile Caregiver+ prior to the shift/visit starting will result in that visit not being added to the employees work schedule. Your Service Advisor will not be able to enter these "missed" visits any longer.
- Employees are expected to clock in/out on time for each scheduled visit. Set reminders, timers, or alarms to clock in and out for your scheduled shifts. Each time an employee clocks in/out late, this impacts the total hours worked for that day, which then affects the total hours accumulated for the week, causing potential overtime. *Refer to the rounding minute guide your Service Advisor previously provided you.*

Employees MUST select the accurate location for where the shift will start and end. If you clock in/out at a different location, Mobile Caregiver+ gives the employee a warning message. Please be aware of your location and adjust your schedule accordingly. Correction forms are mandated for every GPS location difference.