



COMMISSIONER
Jon Weizenbaum

To: Community Based Alternatives Providers
Community Living Assistance and Support Services Providers
Medically Dependent Children Program Providers
Primary Home Care Providers
Family Care Providers
Community Attendant Services Providers

Subject: Information Letter No. 14-35
Electronic Visit Verification Liquidated Damages

The purpose of this information letter (IL) is to state the specific methodology the Texas Department of Aging and Disability Services (DADS) will use to calculate liquidated damages under the Electronic Visit Verification (EVV) Compliance Plan.

Form 3254-R, the Community Services Re-enrollment Contract (Provider Agreement), Section III, Electronic Visit Verification (EVV), Paragraph F, which addresses liquidated damages, reads as follows:

That if the Contractor receives a quarterly compliance score of less than 90 percent the Contractor shall be in non-compliance with EVV requirements and subject to an assessment of liquidated damages. The Department may assess a liquidated damage against the Contractor based on the degree of non-compliance in an amount ranging from \$10.00 to \$500.00 for each calendar day the Department determines the Contractor is not in compliance with EVV requirements.

DADS has determined that for a calendar day for which liquidated damages shall be calculated under the EVV Compliance Plan, the liquidated damages will be calculated by multiplying the number of non-preferred visits by \$3.00 subject to a daily minimum assessment of \$10.00 and a daily maximum of \$500.00. A non-preferred visit is an attendant visit not documented using EVV technology in full compliance with program requirements.

To restate the overall approach, a provider who achieves a quarterly compliance score of 90 percent or higher for a contract will not be subject to liquidated damages for that quarter for that contract. The quarterly liquidated damages assessment on a provider whose quarterly compliance score was below 90 percent will be the sum of the daily liquidated damages calculated for each day within the quarter that less than 90 percent of visits were documented in accordance with program requirements, meaning that more than 10 percent of visits were non-preferred.

With liquidated damages being assessed at a rate of \$3.00 per non-preferred visit, the \$10.00 minimum will apply for a day below the 90 percent requirement with 1-3 non-preferred visits, and the \$500.00 maximum will apply for days with more than 166 non-preferred visits. The attached hypothetical example illustrates how and when liquidated damages will be calculated.

Provider agencies with contracts found to be non-compliant will be notified via certified mail and will be provided with instructions for payment of any assessed liquidated damages. The same correspondence will also inform providers of the opportunity to request an informal review or a formal appeal of the finding of non-compliance and the assessed liquidated damages.

DADS will not begin assessing liquidated damages before August 16, 2014.

Example of a Quarterly Liquidated Damages Calculation for a Contract

Contract number 999999999 has a quarterly EVV Compliance Plan Score of 85 percent; therefore, liquidated damages will apply. For each of 10 calendar days in the quarter, less than 90 percent of the visits were documented in full compliance with program requirements, meaning more than 10 percent of the visits on each of those days were non-preferred visits. Liquidated damages totaling \$1,565.00 result from performance on those 10 days as shown below.

#	Date Below Program Requirements ¹	Daily Compliance Score	Non-Preferred (NP) Visits Per Day	Calculated Damages Before Daily Minimum or Maximum Applied	Final Liquidated Damages Per Day
1	April 2	75%	3	3 NP visits x \$3 = \$9	\$ 10
2	April 5	89%	2	2 NP visits x \$3 = \$6	10
3	April 16	1%	168	168 NP visits x \$3 = \$504	500
4	May 5	25%	94	94 NP visits x \$3 = \$282	282
5	May 7	33%	72	72 NP visits x \$3 = \$216	216
6	May 19	79%	30	30 NP visits x \$3 = \$90	90
7	May 20	62%	56	56 NP visits x \$3 = \$168	168
8	June 10	57%	83	83 NP visits x \$3 = \$249	249
9	June 21	88%	1	1 NP visit x \$3 = \$3	10
10	June 29	80%	10	10 NP visits x \$3 = \$30	30
TOTALS:			519		\$1,565

¹ EVV Compliance Plan Reports identify this as “Days Below Program Expectation Threshold”.

Information Letter No 14-35

July 2, 2014

Page 3

For three days the \$10.00 minimum was triggered, and for one day the \$500.00 maximum was triggered. For the other six days the liquidated damages equal \$3.00 times the number of non-preferred visits with the daily minimum and maximum having no effect.

For additional details, please review the Provider Agreement and EVV Compliance Plan documents available here: <http://www.dads.state.tx.us/evv/complianceplan/index.html#resource>

For training on EVV and the EVV Compliance Plan, please review the resources available here: <http://www.dads.state.tx.us/evv/training.cfm>

For questions, please contact the EVV mailbox at CPC@dads.state.tx.us

Sincerely,

[signature on file]

William Campbell
Director
Community Services Contracts

WC:ab

[signature on file]

Wes Yeager
Director
Strategic Operations & Grants