



COMMONWEALTH of VIRGINIA
Office of the Governor

John Littel
Secretary of Health and Human Resources

October 30, 2023

Todd McMillion
Director
Department of Health and Human Services
Centers for Medicare and Medicaid Services
233 North Michigan Ave., Suite 600
Chicago, Illinois 60601

Dear Mr. McMillion:

Attached for your review and approval is amendment 23 018, entitled "Emergency Room Charges" to the Plan for Medical Assistance for the Commonwealth. I request that your office approve this change as quickly as possible.

Sincerely,

A handwritten signature in blue ink that reads "John E. Littel".

John E. Littel

Attachment

cc: Cheryl J. Roberts, Director, Department of Medical Assistance Services
CMS, Region III

Transmittal Summary

SPA 23-0018

I. IDENTIFICATION INFORMATION

Title of Amendment: Emergency Room Charges

II. SYNOPSIS

Basis and Authority: The Code of Virginia (1950) as amended, § 32.1-325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. The Code of Virginia (1950) as amended, § 32.1-324, authorizes the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the Plan for Medical Assistance according to the Board's requirements.

Purpose: DMAS is incorporating changes to the state plan related to the processing and payment of claims submitted for specific ER services. The applicable procedural terminology (CPT) codes used to describe patients' visits to the hospital ERs are 99282, 99283, or 99284.

Substance and Analysis: The section of the state plan that is affected by this amendment is entitled "Methods and Standards for Establishing Payment Rate—Other Types of Care".

Item 313.AAAAA of the 2020 Appropriations Act required DMAS to allow the pending, reviewing, and the reducing of fees for avoidable ER claims for codes 99282, 99283 and 99284, both physician and facility. The Department utilized the avoidable ER diagnosis code list currently used for Managed Care Organization (MCO) clinical efficiency rate adjustments. If the ER claim was identified as a preventable ER diagnosis, the Department directed the MCO to default to the payment amount for code 99281, commensurate with the acuity of the visit. This also applied to fee-for-service.

However, pursuant to a federal court order, dated April 27, 2023, (*Va. Hosp. & Healthcare Assoc. et al. v. Roberts et al.*, No. 3:20-cv-00587-HEH), DMAS must remove the state plan language that fulfilled the 2020 General Assembly mandate and can no longer enforce the fee adjustments for avoidable ER room claims for select codes, for both physicians and facilities.

Impact: The expected increase in annual aggregate expenditures is \$62,024 in state general funds, \$8,251 in special funds, and \$141,666 in federal funds in federal fiscal year 2024, and \$62,024 in state general funds, \$8,251 in special funds, and \$141,666 in federal funds in federal fiscal year 2025.

Tribal Notice: Please see attached.

Prior Public Notice: See Attached.

Public Comments and Agency Analysis: Please see attached.

Williams, Jimeequa (DMAS)

To:TribalOffice@MonacanNation.com;Ann Richardson;Gerald Stewart;Pam Thompson (pamelathompson4@yahoo.com);Rappahannock Tribe (rappahannocktrib@aol.com);Reggie Stewart;Gray, Robert;Adrian Compton;Stephen Adkins (chiefstephenadkins@gmail.com);bradbybrown@gmail.com (bradbybrown@gmail.com);tabitha.garrett@ihs.gov (tabitha.garrett@ihs.gov);kara.kearns@ihs.gov (kara.kearns@ihs.gov);Mia.Eubank@ihs.gov;Dave Hennaman <davehennaman@gmail.com>;Nansemond Administrator <administrator@nansemond.gov>;info@afwellness.com;info@fishingpointhc.com;contact@Nansemond.gov; brandon.custalow@mattaponination.com;admin@umitribe.org

Wed 10/11/2023 4:52 PM

Tribal Notice Letter signed (10.11.23).pdf

193 KB



Good afternoon.

Dear Tribal Leaders and Indian Health Programs:

Attached is a Tribal Notice letter from Virginia Medicaid's Director, Cheryl J. Roberts, indicating that the Dept. of Medical Assistance Services (DMAS) plans to submit a State Plan Amendment (SPA) to the federal Centers for Medicare and Medicaid Services regarding Emergency Room Charges.

If you would like a copy of the SPA documents or proposed text changes, or if you have any questions, please let us know.

Thank you.

-J. Williams

Jimeequa Williams

Policy, Regulation, and Member Engagement Division

Regulatory Coordinator

Department of Medical Assistance Services

Hours: 7:30 a.m. - 5:00 p.m. (Monday-Thursday); 7:30 a.m. - 11:30 a.m. (Friday)

jimeequa.williams@dmas.virginia.gov

(804) 225-3508



COMMONWEALTH of VIRGINIA

Department of Medical Assistance Services

CHERYL J. ROBERTS
DIRECTOR

SUITE 1300
600 EAST BROAD STREET
RICHMOND, VA 23219
804/786-7933
800/343-0634 (TDD)
www.dmas.virginia.gov

October 11, 2023

SUBJECT: Notice of Opportunity for Tribal Comment – State Plan Amendment related to Emergency Room Charges

Dear Tribal Leader and Indian Health Programs:

This letter is to notify you that the Department of Medical Assistance Services (DMAS) is planning to amend the Virginia State Plan for Medical Assistance with the Centers for Medicare and Medicaid Services (CMS). Specifically, DMAS is providing you notice about a State Plan Amendment (SPA) that the Agency will file with CMS in order to remove language which allowed for fee adjustments for avoidable emergency room (ER) claims for select codes.

Item 313.AAAAA of the 2020 Appropriations Act required DMAS to allow the pending, reviewing, and the reducing of fees for avoidable ER claims for codes 99282, 99283 and 99284, both physician and facility. The Department utilized the avoidable ER diagnosis code list currently used for Managed Care Organization (MCO) clinical efficiency rate adjustments. If the ER claim was identified as a preventable ER diagnosis, the Department directed the MCO to default to the payment amount for code 99281, commensurate with the acuity of the visit. (This also applied to fee-for-service.)

However, pursuant to a federal court order, dated April 27, 2023, (*Va. Hosp. & Healthcare Assoc. et al. v. Roberts et al.*, No. 3:20-cv-00587-HEH), DMAS must remove the state plan language that fulfilled the 2020 General Assembly mandate and can no longer enforce the fee adjustments for avoidable ER claims for select codes, for both physicians and facilities.

The tribal comment period for this SPA is open through November 12, 2023. You may submit your comments directly to Jimiequa Williams, DMAS Policy, Regulation, and Member Engagement Division, by phone (804) 225-3508, or via email: Jimiequa.Williams@dmas.virginia.gov. Finally, if you prefer regular mail, you may send your comments or questions to:

Virginia Department of Medical Assistance Services
Attn: Jimiequa Williams
600 East Broad Street
Richmond, VA 23219

Please forward this information to any interested party.

Sincerely,

A handwritten signature in black ink, appearing to read "Cheryl J. Roberts".

Cheryl J. Roberts, JD
Director

**LEGAL NOTICE
COMMONWEALTH OF VIRGINIA
DEPARTMENT OF MEDICAL ASSISTANCE SERVICES
NOTICE OF INTENT TO AMEND**

(Pursuant to §1902(a)(13) of the *Act (U.S.C. 1396a(a)(13))*)

THE VIRGINIA STATE PLAN FOR MEDICAL ASSISTANCE

This Notice was posted on 10/11/2023

The Virginia Department of Medical Assistance Services (DMAS) hereby affords the public notice of its intention to amend the Virginia State Plan for Medical Assistance to provide for changes to the *Methods and Standards for Establishing Payment Rates — Other Types of Care (12 VAC 30-80)*.

This notice is intended to satisfy the requirements of 42 C.F.R. § 447.205 and of § 1902(a)(13) of the *Social Security Act*, 42 U.S.C. § 1396a(a)(13). A copy of this notice is available for public review from Jimiequa Williams, DMAS, 600 Broad Street, Suite 1300, Richmond, VA 23219, or via e-mail at: Jimiequa.Williams@dmas.virginia.gov.

DMAS is specifically soliciting input from stakeholders, providers and beneficiaries, on the potential impact of the proposed changes discussed in this notice. Comments or inquiries may be submitted, in writing, within 30 days of this notice publication to Jimiequa Williams and such comments are available for review at the same address. Comments may also be submitted, in writing, on the Town Hall public comment forum attached to this notice.

This notice is available for public review on the Regulatory Town Hall (<https://townhall.virginia.gov>) on the General Notices page, found at: <https://townhall.virginia.gov/L/generalnotice.cfm>

Methods & Standards for Establishing Payment Rates-Other Types of Care (12 VAC 30-80)

Item 313.AAAAA of the 2020 Appropriations Act required DMAS to allow the pending, reviewing, and the reducing of fees for avoidable emergency room (ER) claims for codes 99282, 99283 and 99284, both physician and facility. The Department utilized the avoidable ER diagnosis code list currently used for Managed Care Organization (MCO) clinical efficiency rate adjustments. If the ER claim was identified as a preventable ER diagnosis, the Department directed the MCO to default to the payment amount for code 99281, commensurate with the acuity of the visit. (This also applied to fee-for-service.)

However, pursuant to a federal court order, dated April 27, 2023, (*Va. Hosp. & Healthcare Assoc. et al. v. Roberts et al.*, No. 3:20-cv-00587-HEH), DMAS must repeal/remove the state plan language that fulfilled the 2020 General Assembly mandate, and can no longer enforce the fee adjustments for avoidable ER claims for codes 99282, 99283 and 99284, for both physicians and facilities.

The expected increase in annual aggregate expenditures is \$62,024 in state general funds, \$8,251 in special funds, and \$141,666 in federal funds in federal fiscal year 2024, and \$62,024 in state general funds, \$8,251 in special funds, and \$141,666 in federal funds in federal fiscal year 2025.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATE OTHER TYPES OF CARE

3. The statewide base rate shall be equal to the total costs described below divided by the wage-adjusted sum of the EAPG weights for each facility. The wage-adjusted sum of the EAPG weights shall equal the sum of the EAPG weights times the labor percentage times the hospital's Medicare wage index plus the sum of the EAPG weights times the non-labor percentage. The base rate shall be determined for outpatient hospital services at least every three years so that total expenditures will equal the following:

a) When using base years prior to January 1, 2014, for all services, excluding all laboratory services and emergency services described in subdivision 3 c of this subsection, a percentage of costs defined in subsection A as reported in the available cost reports for the base period for each type of hospital as defined in Attachment 4.19-A, Methods and Standards for Establishing Payment Rates-Hospital Services, DRG-Payment Methodology.

(i) Type One Hospitals: Effective January 1, 2014, hospital outpatient operating reimbursement shall be calculated at 90.2 percent of cost and capital reimbursement shall be at 86 percent of cost inflated to the rate year.

(ii) Type Two Hospitals: Effective January 1, 2014, hospital outpatient operating and capital reimbursement shall be calculated at 76 percent of cost inflated to the rate year.

(iii) When using base years after January 1, 2014, the percentages described in subdivision 3 of this subsection shall be adjusted according to subdivision 3 c to 69.8% for Type Two hospitals.

(iv) For critical access hospitals, the operating rate shall be increased by using an adjustment factor or percent of cost reimbursement equal to 100% of cost, effective July 1, 2019.

b) Laboratory services (excluding laboratory services referred to the hospital but not associated with a hospital visit) calculated at the fee schedule in effect for the rate year. Laboratory services are reimbursed based on CPT codes listed in the fee schedules that are published on the DMAS website at the following web address: <https://www.dmas.virginia.gov/for-providers/general-information/procedure-fee-files-cpt-codes/>

c) Services rendered in emergency departments determined to be non-emergencies as prescribed in Attachment 4.19-B, section 2 D shall be calculated for base years after January 1, 2014 as the cost percentages in subdivision 3(a) of this subsection, adjusted to reflect services paid at the non-emergency reduced rate in the last base year prior to January 1, 2014.

~~d) Effective July 1, 2020, reimbursement for claims with procedure codes 99281-99284 and a principal diagnosis code on the Preventable Emergency Room Diagnosis List shall be based on an all inclusive EAPG payment weight for claims with CPT 99281 and a principal diagnosis code on the Preventable Emergency Room Listing. All other procedures on the outpatient hospital claim shall be packaged in the all inclusive payment for 99281-99284. DMAS shall calculate the all inclusive payment weight for claims with 99281 using data from the most recent rebasing. The EAPG weight is published on the DMAS website at the following web address: <https://www.dmas.virginia.gov/for-providers/general-information/rate-setting/outpatient-eapg/>~~

4. Inflation adjustment to base year costs. Each July, the Virginia moving average values as compiled and published by Global Insight (or its successor), under contract with DMAS, shall be used to update the base year costs to the midpoint of the rate year. The most current table available prior to the effective date of the new rates shall be used to inflate base year amounts to the upcoming rate year. Corrections made by Global Insight (or its successor), in the moving averages that were used to update rates for previous state fiscal years shall be automatically incorporated into the moving averages that are being used to update rates for the upcoming state fiscal year. Inflation shall be applied to the costs identified in subdivision 3(a) of this subsection.

**TRANSMITTAL AND NOTICE OF APPROVAL OF
STATE PLAN MATERIAL
FOR: CENTERS FOR MEDICARE & MEDICAID SERVICES**

1. TRANSMITTAL NUMBER ____ _	2. STATE ____
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3. PROGRAM IDENTIFICATION: TITLE OF THE SOCIAL SECURITY ACT XIX XXI
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TO: CENTER DIRECTOR
CENTERS FOR MEDICAID & CHIP SERVICES
DEPARTMENT OF HEALTH AND HUMAN SERVICES

4. PROPOSED EFFECTIVE DATE

5. FEDERAL STATUTE/REGULATION CITATION
--

6. FEDERAL BUDGET IMPACT (Amounts in WHOLE dollars)
a. FFY _____ \$ _____
b. FFY _____ \$ _____

7. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT
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8. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable)

9. SUBJECT OF AMENDMENT

10. GOVERNOR'S REVIEW (Check One)	
<input type="checkbox"/> GOVERNOR'S OFFICE REPORTED NO COMMENT <input type="checkbox"/> COMMENTS OF GOVERNOR'S OFFICE ENCLOSED <input type="checkbox"/> NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL	<input type="checkbox"/> OTHER, AS SPECIFIED: Secretary of Health and Human Resources

11. SIGNATURE OF STATE AGENCY OFFICIAL 
12. TYPED NAME
13. TITLE
14. DATE SUBMITTED

15. RETURN TO

FOR CMS USE ONLY	
16. DATE RECEIVED	17. DATE APPROVED

PLAN APPROVED - ONE COPY ATTACHED	
18. EFFECTIVE DATE OF APPROVED MATERIAL	19. SIGNATURE OF APPROVING OFFICIAL
20. TYPED NAME OF APPROVING OFFICIAL	21. TITLE OF APPROVING OFFICIAL

22. REMARKS

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATE OTHER TYPES OF CARE

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TN No. 23-0018
Supersedes TN
No. 20-0012

Approval Date _____

Effective Date 11-01-23