COMMONWEALTH of VIRGINIA
Office of the Governor

Janet Vestal Kelly
Secretary of Health and Human Resources

July 28, 2025

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 25-016, entitled "Patient Pay Deductions" to the Plan for Medical Assistance for the Commonwealth. I request that your office approve this change as quickly as possible.

Sincerely,

Janet V. Kelly

Janet V. Kelly

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

Transmittal Summary

SPA 25-016

I. IDENTIFICATION INFORMATION

Title of Amendment: Patient Pay Deductions

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: "Patient pay" is the term used to describe the amount that must be paid by a Medicaid member who is receiving long-term services and supports (LTSS) in a nursing facility, intermediate care facility (ICF) or in the community. Federal regulations require "patient pay" and establish the amounts that must be paid according to the member's financial circumstances. However, there are allowable deductions that can reduce the patient pay amount.

Currently, Virginia's state plan allows deductions from patient pay for the cost of any medically necessary service that is "not covered by Medicaid" and is provided by a health care professional. DMAS had interpreted that to mean that patient pay deductions were not permitted for expenses incurred for services covered by Medicaid. If Medicaid-covered services were received from a provider that does not participate with Medicaid, DMAS would not permit patient pay deductions for those expenses. However, CMS has indicated that, "We have consistently interpreted the phrase "not covered under the state plan" (42 CFR §435.733(c)(4)(ii)) as meaning not *paid for* by the state Medicaid program."

This SPA aims to more clearly prohibit patient pay deductions for services "reimbursed under the state plan but provided by a non-participating provider." DMAS is seeking to make this clarification for several reasons: First, DMAS cannot provide care coordination for members who are served by non-enrolled providers. Second, DMAS does not have the ability to provide oversight with regard to the quality of care provided by non-enrolled providers. Third, allowing such deductions would result in Virginia Medicaid paying for the provision of the service through the MCO capitation rate and deducting the cost of the service directly from the member's patient pay, resulting in duplicate payment for coverage of the service.

Some stakeholders have concerns about being able to find providers (particularly adult dental providers) who are willing to provide services to nursing home residents. Those stakeholders wish to continue to allow non-enrolled dental providers to serve nursing facility residents, and to allow patient pay deductions for the cost of those services. DMAS will work with facilities, the dental administrator (DentaQuest), and MCOs to help ensure that members who reside in nursing facilities have access to dental care. DMAS has included in this SPA an

emergency exception process to allow for the use of non-enrolled providers in an emergency situation.

This SPA also includes text to clarify that patient pay deductions are not allowed for:

- services that must be provided by facilities (such as medical supplies);
- services that are not medical in nature (such as personal care items and air conditioners); and
- acupuncture and massage therapy services.

Substance and Analysis: The section of the State Plan that is affected by this amendment is "Reasonable Limits on Amounts for Necessary or Remedial Care not Covered Under Medicaid."

Impact: None

Tribal Notice: Please see attached.

Prior Public Notice: N/A

Public Comments and Agency Analysis: N/A

Outlook

Tribal Notification

From Williams, Jimeequa (DMAS) <Jimeequa.Williams@dmas.virginia.gov>

Date Wed 7/9/2025 5:18 PM

To TribalOffice@MonacanNation.com <tribaloffice@monacannation.com>; Ann Richardson <chiefannerich@aol.com>; Pam Thompson <pamelathompson4@yahoo.com>; Rappahannock Tribe <rappahannocktrib@aol.com>; Reginald Stewart <regstew007@gmail.com>; richard.matens@pamunkey.org <richard.matens@pamunkey.org>; chief@monacannation.gov <chief@monacannation.gov>; 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>; Nansemond Administrator <administrator@nansemond.gov>; info@afwellness.com <info@afwellness.com>; info@fishingpointhc.com <info@fishingpointhc.com>; Nansemond Indian Nation <contact@nansemond.gov>; brandon.custalow@mattaponination.com <brandon.custalow@mattaponination.com>; admin@umitribe.org <admin@umitribe.org>; Lorraine.Reels-Pearson@ihs.gov <lorraine.reels-pearson@ihs.gov>; Holmes, Remedios (IHS/NAS/RIC) <remedios.holmes@ihs.gov>; Lindsey.Taylor@ihs.gov <lindsey.taylor@ihs.gov>

1 attachment (64 KB)

Tribal_Notice_Letter (SIGNED) 7.9.25.docx;

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 Patient Pay Deductions.

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

Regulatory Coordinator
Policy Division
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
www.dmas.virginia.gov

COMMONWEALTH of VIRGINIA

CHERYL J. ROBERTS
DIRECTOR

Department of Medical Assistance Services

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

July 9, 2025

SUBJECT: Notice of Opportunity for Tribal Comment – State Plan Amendment related to Patient Pay Deductions

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 abouta State Plan Amendment (SPA) that the Agency will file with CMS to clarify the requirements related to patient pay deductions.

"Patient pay" is the term used to describe the amount that must be paid by a Medicaid member who is receiving long-term services and supports (LTSS) in a nursing facility, intermediate care facility (ICF) or in the community. Federal regulations require "patient pay" and establish the amounts that must be paid according to the member's financial circumstances. However, there are allowable deductions that can reduce the patient pay amount.

Currently, Virginia's state plan allows deductions from patient pay for the cost of any medically necessary service that is "not covered by Medicaid" and is provided by a health care professional. DMAS had interpreted that to mean that patient pay deductions were not permitted for expenses incurred for services covered by Medicaid. If Medicaid-covered services were received from a provider that does not participate with Medicaid, DMAS would not permit patient pay deductions for those expenses. However, CMS has indicated that, "We have consistently interpreted the phrase "not covered under the state plan" (42 CFR §435.733(c)(4)(ii)) as meaning not *paid for* by the state Medicaid program."

This SPA aims to more clearly prohibit patient pay deductions for services "reimbursed under the state plan but provided by a non-participating provider." DMAS is seeking to make this clarification for several reasons: First, DMAS cannot provide care coordination for members who are served by non-enrolled providers. Second, DMAS does not have the ability to provide oversight regarding the quality of care provided by non-enrolled providers. Third, allowing such deductions would result in Virginia Medicaid paying for the provision of the service through the MCO capitation rate and deducting the cost of the service directly from the member's patient pay, resulting in duplicate payment for coverage of the service.

Some stakeholders have concerns about being able to find providers (particularly adult dental providers) who are willing to provide services to nursing home residents. Those stakeholders wish to continue to allow non-enrolled dental providers to serve nursing facility residents, and to allow patient pay deductions for the cost of those services. DMAS will work with facilities, the dental administrator (DentaQuest), and MCOs to help ensure that members who reside in nursing facilities have access to dental care. DMAS has included in this SPA an emergency exception process to allow for the use of non-enrolled providers in an emergency.

This SPA also includes text to clarify that patient pay deductions are not allowed for:

- services that must be provided by facilities (such as medical supplies);
- services that are not medical in nature (such as personal care items and air conditioners); and
- acupuncture and massage therapy services.

We realize that the changes in this SPA may impact Medicaid members and providers including tribal members and providers. Therefore, we encourage you to let us know if you have any comments or questions. The tribal comment period for this SPA is open through August 10, 2025. You may submit your comments directly to Jimeequa Williams, DMAS Policy Division, by phone (804) 225-3508, or via email: Jimeequa.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: Jimeequa Williams
600 East Broad Street
Richmond, VA 23219

Please forward this information to any interested party.

Sincerely,

Cheryl J. Roberts, JD
Director

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

REASONABLE LIMITS ON AMOUNTS FOR NECESSARY MEDICAL OR REMEDIAL CARE NOT COVERED UNDER MEDICAID

~~12 VAC 30-40-235~~ Reasonable Limits on Amounts for Necessary Medical or Remedial Care Not Covered Under Medicaid.

A. The ~~Medicaid Agency~~ Department of Medical Assistance Services (DMAS) meets the requirements of 42 C.F.R. §435.725 and §435.832 and §1924 of the Social Security Act, in that ~~the agency~~ DMAS will deduct amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party, including medically necessary or remedial care recognized under State law but not covered under the State's Medicaid plan. ~~subject to reasonable limits as follows:~~

B. DMAS will not deduct amounts for any of the following types of incurred medical expenses:

- Services covered by the state plan, but provided by a non-Medicaid participating provider, unless there is an emergency exception requested and approved in writing in advance from DMAS.
- Medical supplies and equipment that are part of the routine facility care and are included in the Medicaid per diem.
- Ancillary services, such as physical therapy, speech therapy and occupational therapy provided by the facility or under arrangements made by the facility.
- TED stockings (billed separately as durable medical supplies).
- Acupuncture treatment
- Massage therapy
- Personal care and comfort items
- Services that are NOT medical/remedial care services, even if ordered by a physician, for example, air conditioners or humidifiers, refrigerators, whole house generators and other non-medical equipment, assisted living facility (ALF) room & board and services, expenses for service animals and cosmetic procedures.
- Services offered as enhanced benefits by the member's Medicaid managed care plan.
- Medical and remedial care expenses that were incurred as the result of imposition of a transfer of assets penalty period.
- A duplication of expenses previously authorized as a deduction.

C. ~~All medical or remedial goods and services not subject to payment by a third party and not covered by Medicaid but recognized under State law, must be prescribed by a physician, dentist, podiatrist or other practitioner with prescribing authority pursuant to Virginia law.~~ The maximum amount that may be deducted from the patient's income for nursing facility residents shall be the maximum amount reimbursed by the higher of either Medicare or Medicaid for the same non-covered items or services. If neither Medicaid nor Medicare has an allowed amount for the service rendered, then DMAS will ~~protect~~ deduct from individual's income:

~~A.~~ 1. For services, the amount of the provider's usual and customary charge; or
~~B.~~ 2. For supplies and durable medical equipment, the actual invoice cost plus the lesser of either:

~~1.~~ ~~T~~the labor charges; or
~~2.~~ ~~A~~a 30% markup from the invoice.

DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR MEDICARE & MEDICAID SERVICES

FORM APPROVED
OMB No. 0938-0193

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL

FOR: CENTERS FOR MEDICARE & MEDICAID SERVICES

1. TRANSMITTAL NUMBER: 25-0016

2. STATE: VA

3. PROGRAM IDENTIFICATION: TITLE OF THE SOCIAL SECURITY ACT: (●) XIX ( ) XXI

TO: CENTER DIRECTOR
CENTERS FOR MEDICAID & CHIP SERVICES
DEPARTMENT OF HEALTH AND HUMAN SERVICES

4. PROPOSED EFFECTIVE DATE
7/1/2025

5. FEDERAL STATUTE/REGULATION CITATION
42 CFR 435.700 et seq.

6. FEDERAL BUDGET IMPACT (Amounts in WHOLE dollars)
a. FFY 2025 $ 0
b. FFY 2026 $ 0

7. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT
Attachment 2.6A, Supplement 3, page 1

8. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT *(If Applicable)*
Same as box #7.

9. SUBJECT OF AMENDMENT

Patient Pay Deductions

10. GOVERNOR'S REVIEW *(Check One)*

( ) GOVERNOR'S OFFICE REPORTED NO COMMENT
( ) COMMENTS OF GOVERNOR'S OFFICE ENCLOSED
( ) NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL
(●) OTHER, AS SPECIFIED:
Secretary of Health and Human Resources

11. SIGNATURE OF STATE AGENCY OFFICIAL

12. TYPED NAME
Cheryl Roberts

13. TITLE
Director

14. DATE SUBMITTED
July 3, 2025

15. RETURN TO
Department of Medical Assistance Services
600 East Broad Street, #1300
Richmond VA 23219

Attn:

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

REASONABLE LIMITS ON AMOUNTS FOR NECESSARY MEDICAL OR REMEDIAL CARE NOT COVERED UNDER MEDICAID

Reasonable Limits on Amounts for Necessary Medical or Remedial Care Not Covered Under Medicaid.

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- Services offered as enhanced benefits by the member's Medicaid managed care plan.
- Medical and remedial care expenses that were incurred as the result of imposition of a transfer of assets penalty period.
- A duplication of expenses previously authorized as a deduction.

C. The maximum amount that may be deducted from the patient's income for nursing facility residents shall be the maximum amount reimbursed by the higher of either Medicare or Medicaid for the same non-covered items or services. If neither Medicaid nor Medicare has an allowed amount for the service rendered, then DMAS will deduct from individual's income:

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