



COMMONWEALTH of VIRGINIA

Department of Medical Assistance Services

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On March 12, 2020, through Executive Order 51, Governor Ralph Northam declared a state of emergency due to the outbreak of the coronavirus (COVID-19). In his order, Governor Northam directed state agencies to work towards mitigating the impact COVID-19 on individuals in Virginia; to that end, he authorized executive branch agency directors to waive any state requirement or regulation deemed necessary to combat the effects of COVID-19 on the Commonwealth's citizens.

Pursuant to the authority granted to the agency head by Executive Order 51 (2020), I hereby waive the Medicaid and FAMIS program requirements set out below. This waiver shall take effect as of March 12, 2020 and shall remain in full force and in effect until June 10, 2020, or unless sooner amended, or rescinded by further executive order.

The Medicaid program is a federal and state partnership, jointly funded and regulated under state and federal law. The federal government sets broad parameters under federal law through which states may operate the Medicaid program. The state regulations cited in this letter are related to flexibilities sought under federal law through the Department of Medical Assistance Services' (DMAS) 1915C Waiver under Appendix K, and the federal 1135 disaster relief waiver.

The federal 1915(c) Home and Community Based Services waiver provides federal Medicaid funding for home and community-based services to individuals who otherwise would meet the eligibility requirements for Medicaid-funded institutional care. The "appendix k" of the 1915c waiver is a special set of flexibilities available under federal law during an emergency to waive requirements the federal government has for states generally under the 1915c waiver. Under section 1135 of the Social Security Act, The President may temporarily waive or modify certain federal Medicare, Medicaid, and Children's Health Insurance Program (CHIP) requirements to ensure that sufficient health care items and services are available to meet the needs of individuals. DMAS has also requested flexibilities under federal law related 1135 authority.

DMAS is waiving provisions of the state regulations cited in this letter in order to fully leverage requested flexibilities available under federal law during an emergency. While full regulatory citations are provided for ease of reference, note that regulatory waivers are specific to the provision described herein.

1. **DMAS HOME CARE AND HOSPICE AIDES REGULATIONS**

DMAS has requested an 1135 Waiver from the Centers for Medicare and Medicaid Services (CMS) to allow some flexibility in the delivery of home health and hospice services. Until the expiration of the Executive Order, and upon approval of the 1135 waiver by the federal government, DMAS is suspending the specific related state requirement that home care aides and hospice aides have bi-weekly supervisory review by a registered nurse. While full regulatory citations are provided below, this is the only provision that DMAS is waiving of this set of requirements. This flexibility during the emergency will ensure that sufficient providers that must often deliver services in the home are available to serve beneficiaries for the duration of the COVID-19 crisis.

- **12 VAC 30-50-160(C)** - Home Health Services
<https://law.lis.virginia.gov/admincode/title12/agency30/chapter50/section160/>
- **12 VAC 30-50-270(C)(5)(h)** - Hospice Services (In Accordance with § 1905 (O) of the Act)
<https://law.lis.virginia.gov/admincode/title12/agency30/chapter50/section270/>

2. **DMAS LEVEL OF CARE REGULATIONS**

CMS authorized DMAS to waive requirements in the Agency's federal 1915C waivers that specify the member eligibility requirements for the Commonwealth Coordinated Care Plus (CCC Plus) and Community Living (DD) programs. This temporary suspension of federal requirements is allowable under Appendix K, the disaster related appendix of options to federal 1915C waivers. The related state regulation defines frequency by which members must be assessed to determine ongoing eligibility for their waiver benefits. Waiver assessments or Level of Care reviews must be completed face to face. The face to face requirement has been waived, and the allowable time between level of care reviews extended. This waiver will ensure that beneficiaries and providers are not unnecessarily exposed to the COVID-19 virus, and that there is no interruption in care in the meantime.

- **12 VAC 30-120-990(E)** – Quality Management Review; Utilization Review; Level of Care (LOC) Reviews
<https://law.lis.virginia.gov/admincode/title12/agency30/chapter120/section990/>
- **12 VAC 30-120-1760** – Quality management review; utilization reviews; level of care (LOC) reviews
<https://law.lis.virginia.gov/admincode/title12/agency30/chapter120/section1760/>

- **12 VAC30-60-361(E)-(G)** - Criteria for supports and services in intermediate care facilities for individuals with intellectual disabilities

<https://law.lis.virginia.gov/admincode/title12/agency30/chapter60/section361/>

3. **DMAS NURSING FACILITY DATA REPORTING (OASIS/MDS) REGULATIONS**

Pursuant to Section 1135 of the Social Security Act, DMAS has submitted an 1135 waiver to allow flexibility in the oversight of nursing facility service delivery. The related state regulation defines the service provider requirements and timelines for submitting updated assessment information on currently admitted facility residents to ensure they continue to meet level of care criteria. While the full text of all implicated regulations is listed below, the specific flexibility permitted to DMAS is related to the timing for the submission of ongoing and updated assessment information. This waiver will reduce burden on providers and ensure beneficiaries receive continuity of care during the emergency.

- **12 VAC 30-60-315** - Periodic Evaluations for Individuals Receiving Medicaid-Funded Long-Term Services and Supports

<https://law.lis.virginia.gov/admincode/title12/agency30/chapter60/section315/>

4. **DMAS NURSING FACILITY SCREENING AND PASARR REGULATIONS**

DMAS has requested to waive federal requirements that specify how the Commonwealth meets the nursing facility preadmission screening and resident review (PASARR) criteria as defined in 1905(a) of the social security act (Act) via an 1135 waiver. Accordingly, DMAS will also temporarily suspend related state regulations that define the uniform assessment instrument and the preadmission screening and resident review requirements that must be met prior to admission to a nursing facility. This waiver will allow facilities to more quickly admit patients in need of long-term care and reduce hospital bed capacity. This provision is also a provision in Executive Order 58. This requirement will be waived pursuant to the CMS' approval of DMAS' 1135 waiver.

- **Executive Order 58** – Access to Medicaid-covered Health Care Services in Response to Novel Coronavirus (COVID-19)
[https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-58-Access-to-Medicaid-covered-Health-Care-Services-in-Response-to-Novel-Coronavirus-\(COVID-19\).pdf](https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-58-Access-to-Medicaid-covered-Health-Care-Services-in-Response-to-Novel-Coronavirus-(COVID-19).pdf)
- **12 VAC 30-60-302(A)-(B)** - Access to Medicaid-Funded Long-Term Services and Supports

<https://law.lis.virginia.gov/admincode/title12/agency30/chapter60/section302/>

- **12 VAC 30-130-150(A)-(B), (E)** - Persons Subject to Nursing Home Preadmission Screening and Identification of Conditions of Mental Illness and Mental Retardation (Level I)

<https://law.lis.virginia.gov/admincode/title12/agency30/chapter130/section150/>

5. **DMAS REMOTE CERTIFICATIONS and ASSESSMENTS for HOME HEALTH REGULATIONS**

CMS' approved 1135 wavier authorizes DMAS to waive specified federal service delivery requirements for home health services. The related state regulation defines the service provider supervisory requirements and timelines for the registered nurse supervision of home health aide staff who deliver home health and hospice services.

DMAS is allowing for remote/telehealth certification and assessments under this waiver. This flexibility is critical to minimize face-to-face contact during the emergency.

- **12 VAC 30-60-70(D)(1-5)** - Utilization Control: Home Health Services

<https://law.lis.virginia.gov/admincode/title12/agency30/chapter60/section70/>

6. **DMAS DURABLE MEDICAL EQUIPMENT REGULATIONS FOR REPLACEMENT EQUIPMENT**

Under federal 1135 authority, DMAS has requested to suspend certain provider supervisory and oversight requirements for replacement durable medical equipment (DME) as defined in 1905(a) of the social security act (Act). The related state regulations define the service utilization management requirements of replacement durable medical equipment. DMAS is waiving specific timelines and physician documentation requirements related to replacement Durable Medical Equipment. This provision is also a provision in Executive Order 58. DMAS is instituting this flexibility to ease burden on providers related to administrative requirements and ensure there is no interruption or delay for beneficiaries that need lifesaving and medically necessary DME.

- **Executive Order 58** – Access to Medicaid-covered Health Care Services in Response to Novel Coronavirus (COVID-19)
[https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-58-Access-to-Medicaid-covered-Health-Care-Services-in-Response-to-Novel-Coronavirus-\(COVID-19\).pdf](https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-58-Access-to-Medicaid-covered-Health-Care-Services-in-Response-to-Novel-Coronavirus-(COVID-19).pdf)
- **12 VAC 30-50-165(B)(2-11)** - Durable Medical Equipment Suitable for Use in the Home
<https://law.lis.virginia.gov/admincode/title12/agency30/chapter50/section165/>

- **12 VAC 30-60-75(D)** - Durable Medical Equipment (DME) and Supplies

<https://law.lis.virginia.gov/admincode/title12/agency30/chapter60/section75/>

7. **DMAS PERSONAL CARE AIDE CRIMINAL BACKGROUND CHECK REGULATIONS**

Under the federal Appendix K disaster waiver, DMAS requested flexibilities under federal law to temporarily waive federal law to waive certain timelines for background checks of staff who deliver personal and attendant care services in the waivers. During the state of emergency declared by Executive Order 51, personal care, respite, and companion providers in the agency or consumer-directed program, who are providing services to individuals over the age of 18, may work for up to 60 days, as opposed to the current 30-day limit in Virginia Code § 32.1-162.9:1, while criminal background registries are checked. Consumer-directed Employers of Record (EORs) must ensure that the attendant is adequately supervised while the criminal background registry check is processed. Agency providers must adhere to current reference check requirements and ensure that adequate training has occurred prior to the aide providing the services in the home.

Agency providers must conduct weekly supervisory visits through telehealth methods when the aide works prior to receiving criminal background registry results. This waiver does not apply to services provided to individuals under the age of 18, with the exception of parents of minor children in the consumer-directed program. This flexibility is also enumerated in Executive Order 58. While all implicated regulations are noted here in their entirety, **please note that only the specific flexibility above is waived relating to the 30 day time period for this specific group of providers for patients over 18.** This flexibility will allow for more time for background checks to be completed to maintain continuity of care for beneficiaries, given delays in systems and processes due to COVID-19.

- **Executive Order 51** - Declaration of a State of Emergency Due to Novel Coronavirus (COVID-19)
[https://www.governor.virginia.gov/media/governorvirginiagov/governor-of-virginia/pdf/eo/EO-51-Declaration-of-a-State-of-Emergency-Due-to-Novel-Coronavirus-\(COVID-19\).pdf](https://www.governor.virginia.gov/media/governorvirginiagov/governor-of-virginia/pdf/eo/EO-51-Declaration-of-a-State-of-Emergency-Due-to-Novel-Coronavirus-(COVID-19).pdf)
- **Executive Order 58** – Access to Medicaid-covered Health Care Services in Response to Novel Coronavirus (COVID-19)
[https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-58-Access-to-Medicaid-covered-Health-Care-Services-in-Response-to-Novel-Coronavirus-\(COVID-19\).pdf](https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-58-Access-to-Medicaid-covered-Health-Care-Services-in-Response-to-Novel-Coronavirus-(COVID-19).pdf)

- **12 VAC 30-120-766(D)(7)(f)(1)** - Personal care and respite care services [Criminal background check for CD employee for Personal Care and Respite Services under the former DD Waiver (now FIS Waiver)]
<https://law.lis.virginia.gov/admincode/title12/agency30/chapter120/section766/>
- **12 VAC 30-120-770(B)(6)** - Consumer-Directed Model of Service Delivery (Criminal background check for CD services fiscal contractor under the FIS Waiver)
<https://law.lis.virginia.gov/admincode/title12/agency30/chapter120/section770/>
- **12 VAC 30-120-776(D)(2)(d)** - Companion services (Criminal background check for Companion Services providers under FIS Waiver)
<https://law.lis.virginia.gov/admincode/title12/agency30/chapter120/section776/>
- **12 VAC 30-120-930(A)(19)(b)(1)-(2)** – General requirements for home and community-based participating providers [Criminal background check for providers under the former EDCD waiver (now CCC Plus Waiver)]
<http://register.dls.virginia.gov/details.aspx?id=6973>
- **12 VAC 30-120-935(H)(3)(b)(2)**– Participation standards for specific covered services [Criminal background check for consumer-directed personal care and respite providers under CCC Plus Waiver]
<http://register.dls.virginia.gov/details.aspx?id=6973>
- **12 VAC 30-120-1040(C)(17)** – General Requirements for Participating Providers [Criminal background check for providers under the former ID Waiver (now Community Living Waiver)]
<https://law.lis.virginia.gov/admincode/title12/agency30/chapter120/section1040/>
- **12 VAC 30-120-1730(A)(5)** – General requirements for participating providers [Criminal background check for providers under the former Tech Waiver (now included in the CCC Plus Waiver)]
<https://law.lis.virginia.gov/admincode/title12/agency30/chapter120/section1730/>

8. **DMAS - PAY RESPONSIBLE PARTIES for HOME CARE REGULATIONS**

Pursuant to approval of the federal Appendix K disaster relief waiver, DMAS will temporarily waive related state regulations that restrict certain responsible parties to be paid for the delivery of personal and attendant care services in the waivers. This provision will allow parents of minor children to receive compensation as the personal care attendants for their minor children during this emergency. This provision also applies to the spouse of an adult beneficiary during this emergency. While all implicated regulations are noted in their entirety, the specific flexibility waived by DMAS is noted in this paragraph. This flexibility is necessary to allow for provider shortages related to in-home services due to COVID-19.

- **12 VAC 30-120-766(D)(7)(d)** - Personal Care and Respite Care Services.
<https://law.lis.virginia.gov/admincode/title12/agency30/chapter120/section766/>
- **12 VAC 30-120-776(D)(3)** - Companion Services
<https://law.lis.virginia.gov/admincode/title12/agency30/chapter120/section776/>
- **12 VAC 30-120-935(C) and (G)(1)(c)** – Participation standards for specific covered services
<https://law.lis.virginia.gov/admincode/title12/agency30/chapter120/section935/>
- **12 VAC 30-120-1060(E)(4) and (I)(10) and M(11)**– Participation standards for provision of services; providers' requirements
<https://law.lis.virginia.gov/admincode/title12/agency30/chapter120/section1060/>

9. **DMAS CLIENT APPEALS REGULATIONS**

DMAS is authorized under an approved federal 1135 waiver to suspend certain federal regulations that relate to timely filing of client appeals, internal appeal decision timeframes for Managed Care Organizations, and requirements for dismissing an appeal when the paperwork for authorization of a representative has not been submitted. To fully utilize this flexibility, DMAS is waiving related state regulations that are specific to this paragraph. This flexibility relates only to related state regulations for client appeals; provider appeals are not contemplated in federal law. These flexibilities will give beneficiaries more time during an emergency to file an appeal, and will help expedite an appeal from a Managed Care Organization to DMAS when needed. This flexibility is critical during the emergency due to difficulties gathering and submitting documentation due to widespread closures and quarantine during the Covid-19 emergency.

- **12 VAC30-110-160** - Time Limit for Filing.
<https://law.lis.virginia.gov/admincode/title12/agency30/chapter110/section160/>
- **12 VAC 30-110-210(A)(1) and (A)(3)** - Prehearing Action
<https://law.lis.virginia.gov/admincode/title12/agency30/chapter110/section210/>

10. **DMAS SERVICE AUTHORIZATION REGULATIONS**

Pursuant to an 1135 waiver, DMAS is waiving service authorizations (prior authorization) for certain services. Specifically the Agency is temporarily suspending authorization requirements for home health, durable medical equipment and inpatient services.

- **12 VAC 30-50-160(B) and (D)**– Home Health Services
<https://law.lis.virginia.gov/admincode/title12/agency30/chapter50/section160/>
- **12 VAC 30-50-165(B)(1)(a)**– Durable Medical Equipment Suitable for Use in the Home.
<https://law.lis.virginia.gov/admincode/title12/agency30/chapter50/section165/>
- **12 VAC 30-60-20(A)(1-3)**- Utilization control: general acute care hospitals; enrolled providers
<https://law.lis.virginia.gov/admincode/title12/agency30/chapter60/section20/>

11. **DMAS PROVIDER SCREENING AND ENROLLMENT REGULATIONS.**

Pursuant to approval by CMS of DMAS' Section 1135 waiver, of the Social Security Act, DMAS will allow flexibility in the provider screening and enrollment process. This is a temporary suspension of federal screening rules, which require state Medicaid programs to exclude or terminate providers that have been excluded from participation in federal programs such as Medicare or Medicaid. The related state regulation specifically requires that DMAS prohibit federally excluded health care entities from providing services to Medicaid members. While the implicated regulations are noted here in their entirety, please note that only the specific flexibility above is waived. Temporarily waiving this limitation will help maintain the sufficiency of available provider networks to ensure vital access to health care services and avoid interruptions in care during the COVID-19 crisis.

- **12 VAC 30-10-520(F)** - Required Provider Agreement
<https://law.lis.virginia.gov/admincode/title12/agency30/chapter10/section520/>

- **12 VAC 30-120-730(G)**- General Requirements for Home and Community-Based Participating Providers
<https://law.lis.virginia.gov/admincode/title12/agency30/chapter120/section730/>
- **12 VAC 30-120-1730(B)(2)(c)** - General Requirements for Participating Providers
<https://law.lis.virginia.gov/admincode/title12/agency30/chapter120/section1730/>

12. DMAS PAYMENT OF MEDICATION ADMINISTRATION ENCOUNTERS FOR OPIOID TREATMENT PROGRAMS

DMAS will waive enforcement of rules defined in the Addiction and Recovery Treatment Services (ARTS) benefit, which limit the reimbursement for Opioid Treatment Programs (OTPs) to only those encounters when the member is presenting in-person, daily, to get their medication dose.

The OTPs have received approval from the State Opioid Response Authority to administer medication as take home dosages, up to a 28-day supply, to minimize exposure of COVID-19 to staff and patients. Thus, DMAS is allowing for the reimbursement of the medication encounter for the total number of days' supplied of the take-home medication. This flexibility is critical to minimize face-to-face contact during the emergency.

- **12 VAC 30-130-5050** - Covered services: clinic services - opioid treatment program services
<https://law.lis.virginia.gov/admincode/title12/agency30/chapter130/section5050/>



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