

COVID-19 Public Health Emergency Flexibilities, Updated January 18, 2023

The Virginia Medicaid agency implemented a variety of policies in 2020 in response to the needs of members and providers as they confronted the COVID-19 pandemic. These flexibilities are tied to the federal public health emergency (PHE) and are not affected by the end of the continuous coverage requirements.

The remaining flexibilities are included in the table below, along with information about when those flexibilities will end. **This information is based on current CMS guidance, and may change if new CMS guidance is released.** DMAS will announce any changes on the COVID page of its website.

<b>Flexibility</b>	<b>End Date</b>
Suspend all co-payments for Medicaid and FAMIS members.	No end date. This flexibility was made permanent.
Telehealth policies – as described in Medicaid Memoranda issued on March 19, 2020, May 15, 2020, and September 30, 2020 – including waiver of penalties for HIPAA non-compliance and other privacy requirements.	The flexibilities included in the Telehealth Supplements to the Medicaid Manuals will remain in place. Any other flexibilities will end at midnight on the last day of the PHE.
Electronic signatures will be accepted for visits that are conducted through telehealth.	The flexibilities included in the Telehealth Supplements to the Medicaid Manuals will remain in place. Any other flexibilities will end at midnight on the last day of the PHE.
<b>Waivers</b>	
Members who receive less than one service per month will not be discharged from a HCBS waiver.	This flexibility will remain active until six months after the end of the PHE.
Allow legally responsible individuals (parents of children under age 18 and spouses) to provide personal care/personal assistance services for reimbursement.	This flexibility will remain active until six months after the end of the PHE.
Personal care, respite, and companion aides hired by an agency shall be permitted to provide services prior to receiving the standard 40-hour training.	This flexibility will remain active until six months after the end of the PHE.
Residential providers are permitted to not comply with the HCBS settings requirement at 42 CFR 441.301(c)(4)(vi)(D) that individuals are able to have visitors of their choosing at any time.	This flexibility will end at midnight on the last day of the PHE.

Allow an extension for reassessments and reevaluations for up to one year past the due date.	This flexibility will end at midnight on the last day of the PHE.
Add an electronic method of signing off on required documents such as the person-centered service plan.	This flexibility will end at midnight on the last day of the PHE. Electronic signatures are continued through other policy.
Allow beneficiaries to receive monthly monitoring when services are furnished on a less than monthly basis.	This flexibility will remain active until six months after the end of the PHE.
The State is responding to the COVID-19 pandemic personnel crisis by authorizing case management entities to provide direct services. Therefore, the case management entity qualifies under 42 CFR 441.301(c)(1)(vi) as the only willing and qualified entity: Current safeguards authorized in the approved waiver will apply to these entities.	This flexibility was in place prior to the PHE and will remain in place unless/until changes are announced at a future date.
Reduce quality sampling requirements for waiver services due to limited provider capacity to provide files for desk audit.	This flexibility will end at midnight on the last day of the PHE.
Allow Therapeutic Consultation activities that do not require direct intervention by the behaviorist to be conducted through telephonic/video-conferencing methods.	No end date. This flexibility was made permanent.
The timeframes for the submission of the CMS 372 and the evidentiary package(s) will be extended as needed pursuant to the emergency. In addition, the state may suspend the collection of data for performance measures other than those identified for the Health and Welfare assurance and notes that as a result the data will be unavailable for this time frame in ensuing reports due to the circumstances of the pandemic.	This flexibility will end at midnight on the last day of the PHE.
<b>Addiction &amp; Recovery Treatment Services (ARTS)</b>	
Opioid treatment programs may administer medication as take home dosages, up to a 28-day supply.	No end date. This flexibility was made permanent.
Allowing a member's home to serve as the originating site for prescription of buprenorphine.	No end date. This flexibility was made permanent.

<b>Behavioral Health Services</b>	
<p>Outpatient Psychiatric Services, Therapeutic Day Treatment (TDT), Intensive In-Home Services (IIH), Mental Health Skill Building (MHSS) and Psychosocial Rehabilitation (PSR). Face-to-face service requirements will continue to be waived, but documentation shall justify the rationale for the service through a different model of care until otherwise notified. The goals, objectives, and strategies of the plan of care or ISP shall be updated to reflect any change or changes in the individual's progress and treatment needs, including changes impacting the individual related to COVID-19, as well as any newly identified problem. Documentation of this review shall be added to the individual's medical record as evidenced by the dated signatures of the appropriate professional for the service being provided and the individual.</p>	<p>The flexibilities included in the Telehealth Supplements to the Medicaid Manuals will remain in place. Any other flexibilities will end at midnight on the last day of the PHE.</p>
<p>For youth participating in both TDT and IIH, TDT should not be used in person in the home as this would be a duplication of services. TDT may be provided through telehealth to youth receiving IIH (in person or via telehealth) as long as services are coordinated to avoid duplication and ensure efficacy of the treatment provided.</p>	<p>The flexibilities included in the Telehealth Supplements to the Medicaid Manuals will remain in place. Any other flexibilities will end at midnight on the last day of the PHE.</p>
<p>During the PHE, TDT, IIH, MHSS and PSR providers may bill for one unit on days when a billable service is provided, even if time spent in billable activities does not reach the time requirements to bill a service unit. This allowance only applies to the first service unit and does not apply to additional time spent in billable activities after the time requirements for the first service unit is reached. Providers shall bill for a maximum of one unit per day if any of the following apply:</p> <p>The provider is only providing services through telephonic communications. If only providing services through telephonic communications, the provider shall bill a maximum of one unit per member per day, regardless of the amount of time of the phone call(s).</p> <p>The provider is delivering services through telephonic communications, telehealth or face-to-face and does not reach a full unit of time spent in billable activities.</p> <p>The provider is delivering services through any combination of telephonic communications, telehealth and in-person services and does not reach a full unit of time spent in billable activities.</p>	<p>This flexibility will end at midnight on the last day of the PHE.</p>

<p>Applied Behavior Analysis – Face-to-face service requirements for family adaptive behavior treatment (97156, 97157) will continue to be waived, but documentation shall justify the rationale for the service through a different model of care until otherwise notified. The goals, objectives, and strategies of the ISP shall be updated to reflect any change or changes in the individual’s progress and treatment needs, including changes impacting the individual related to COVID-19, as well as any newly identified problem. Documentation of this review shall be added to the individual’s medical record as evidenced by the dated signatures of the LMHP, LMHP-R, LMHP-RP, LMHP-S, LBA, or LABA. In-person assessment requirements continue to be waived and may be conducted through telemedicine but documentation shall justify the rationale for the service through a different model of care until otherwise notified. The definition of telemedicine can be found in the telehealth supplement to the Mental Health Services Manual.</p>	<p>The flexibilities included in the Telehealth Supplements to the Medicaid Manuals will remain in place. Any other flexibilities will end at midnight on the last day of the PHE.</p>
<p>Applied Behavior Analysis One service unit equals 15 minutes for this level of care. ABA service providers do not have a one unit max limit per day for audio-only communications for CPT codes 97156 and 97157.</p>	<p>This flexibility will end at midnight on the last day of the PHE.</p>
<p>Independent Assessment Certification and Coordination Team (IACCT) Assessments IACCT Assessments may occur via telehealth or telephone communication.</p>	<p>The flexibilities included in the Telehealth Supplements to the Medicaid Manuals will remain in place. Any other flexibilities will end at midnight on the last day of the PHE.</p>
<p>Psychiatric Inpatient, Psychiatric Residential Treatment Facility (PRTF) and Therapeutic Group Home (TGH) Levels of Care The requirement for service authorization remains in place. Therapy, assessments, case management, team meetings, and treatment planning may occur via telehealth. The plan of care should be updated to include any change in service delivery as well as any change in goals, objectives, and strategies, including impacts on the individual due to COVID-19.</p>	<p>The flexibilities included in the Telehealth Supplements to the Medicaid Manuals will remain in place. Any other flexibilities will end at midnight on the last day of the PHE.</p>
<p><b>Pharmacy</b></p>	
<p>Drugs dispensed for 90 days will be subject to a 75% refill “too-soon” edit. Patients will only be able to get a subsequent 90 day supply of drugs after 75% of the prescription has been used</p>	<p>Drugs on the DMAS 90-day list will continue to be filled for 90 days. The “refill too</p>

(approximately day 68).	soon” edit is no longer in effect.
The agency makes exceptions to their published Preferred Drug List if drug shortages occur.	No end date. This will occur whenever there is a drug shortage.
Suspend all drug co-payments for Medicaid and FAMIS members	No end date. This flexibility was made permanent.
<b>Program Integrity</b>	
DMAS will not pursue cases against or terminate Medicaid members who had eligibility errors.	This flexibility will end at midnight on the last day of the PHE.
<b>Appeals</b>	
For all appeals filed during the state of emergency, Medicaid members will automatically keep their coverage.	This flexibility will no longer apply for appeals filed after the last day of the PHE.
There will be no financial recovery for continued coverage for appeals filed during the period the emergency.	This flexibility will no longer apply for appeals filed after the last day of the PHE.
Delay scheduling of fair hearings and issuing fair hearing decisions due to an emergency beyond the state’s control.	This flexibility will no longer apply for appeals filed after the last day of the PHE.
The state may offer to continue benefits to individuals who are requesting a fair hearing if the request comes later than the date of the action under 42 CFR 431.230.	This flexibility will no longer apply for appeals filed after the last day of the PHE.
Allows applicants and beneficiaries to have more than 90 days to request a fair hearing for eligibility or fee-for-service appeals.	This flexibility will no longer apply for appeals filed after the last day of the PHE.
Modification of the timeframe under 42 C.F.R. 438.408(f)(2) for enrollees to exercise their appeal rights to allow more than 120 days to request a fair hearing when the initial 120th day deadline for an enrollee occurred during the period of this section 1135 waiver.	This flexibility will no longer apply for appeals filed after the last day of the PHE.