



**COMMONWEALTH of VIRGINIA**  
*Office of the Governor*

John Littel  
Secretary of Health and Human Resources

August 15, 2023

James G. Scott, Director  
Division of Program Operations  
Medicaid & CHIP Operations Group  
Centers for Medicare and Medicaid Services  
601 E. 12th St., Room 355  
Kansas City, MO 64106

Dear Mr. Scott:

Attached for your review and approval is amendment 23-015, entitled "Third Party Liability" 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

## Transmittal Summary

SPA 23-015

### I. IDENTIFICATION INFORMATION

Title of Amendment: Third Party Liability

### 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.

In addition, a federal State Medicaid Director letter ((#23-002) requires Virginia to add language that bars liable third-party payers from refusing payment for an item or service solely on the basis that such item or service did not receive prior authorization under the third-party payer's rules.

The changes relating to lien amounts from the Medicaid program and asserted against personal injury claims proceeds arose from a Petition for Rulemaking that was filed with DMAS on November 3, 2022.

Purpose: The purpose of this state plan amendment is twofold:

- Add language that is needed to respond to a CMS State Medicaid Director letter (#23-002) requiring Medicaid agencies to submit amend their state plan to provide assurances that the state has rules in place that bar liable third-party payers from refusing payment for an item or service solely on the basis that such item or service did not receive prior authorization under the third-party payer's rules.
- Provide clarity relating to lien amounts arising from the Medicaid program and asserted against personal injury claims proceeds.

Substance and Analysis: The section of the State Plan that is affected by this amendment is "Third Party Liability – Payment of Claims"

Impact: None.

Tribal Notice: Please see attached.

Prior Public Notice: N/A

Public Comments and Agency Analysis: N/A

## Tribal Notice – Third Party Liability

Lee, Meredith (DMAS)

Tue 8/1/2023 6:15 AM

To: TribalOffice@MonacanNation.com <TribalOffice@MonacanNation.com>; Ann Richardson <chiefannerich@aol.com>; Gerald Stewart <jerry.stewart@cit-ed.org>; pamelathompson4@yahoo.com (pamelathompson4@yahoo.com) <pamelathompson4@yahoo.com>; rappahannocktrib@aol.com (rappahannocktrib@aol.com) <rappahannocktrib@aol.com>; Reggie Stewart <regstew007@gmail.com>; Gray, Robert <robert.gray@pamunkey.org>; tribaladmin <tribaladmin@monacannation.com>; chiefstephenadkins@gmail.com (chiefstephenadkins@gmail.com) <chiefstephenadkins@gmail.com>; Frank Adams <Board.R1D@DGIF.VIRGINIA.GOV>; bradbybrown@gmail.com (bradbybrown@gmail.com) <bradbybrown@gmail.com>; tabitha.garrett@ihs.gov (tabitha.garrett@ihs.gov) <tabitha.garrett@ihs.gov>; kara.kearns@ihs.gov (kara.kearns@ihs.gov) <kara.kearns@ihs.gov>; Mia Eubank (mia.eubank@ihs.gov) <mia.eubank@ihs.gov>; davehennaman@gmail.com <davehennaman@gmail.com>; chief <chief@nansemond.org>; administrator@nansemond.gov <administrator@nansemond.gov>

 1 attachments (218 KB)

07-31-23 Tribal Notice Letter, signed.pdf;

Dear Tribal Leaders and Indian Health Programs:

Attached is a Tribal Notice letter from Virginia Medicaid Director, Cheryl Roberts, indicating that the Department of Medical Assistance Services (DMAS) plans to submit a State Plan Amendment (SPA) to the federal Centers for Medicare and Medicaid Services related to third party liability. Specifically, DMAS will:

- Add language that is needed to respond to a CMS [State Medicaid Director letter \(#23-002\)](#) requiring Medicaid agencies to amend their state plan to provide assurance that the state has rules in place that bar liable third-party payers from refusing payment for an item or service solely on the basis that such item or service did not receive prior authorization under the third-party payer's rules.
- Provide clarity relating to lien amounts arising from the Medicaid program and asserted against personal injury claims proceeds. These changes arose from a Petition for Rulemaking that was filed with DMAS on November 3, 2022.

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! -- Meredith Lee

Meredith Lee  
 Division of Policy, Regulation, and Member Engagement  
 Policy, Regulations, and Manuals Supervisor  
 Department of Medical Assistance Services  
 Hours: 6:00 am - 4:30 pm (Monday-Thursday); out of the office on Fridays  
[meredith.lee@dmass.virginia.gov](mailto:meredith.lee@dmass.virginia.gov)

(804) 371-0552





# COMMONWEALTH of VIRGINIA

## Department of Medical Assistance Services

CHERYL J. ROBERTS  
DIRECTOR

July 31, 2023

SUITE 1300  
600 EAST BROAD STREET  
RICHMOND, VA 23219

804/786-7933  
800/343-0634 (TDD)  
[www.dmas.virginia.gov](http://www.dmas.virginia.gov)

SUBJECT: Notice of Opportunity for Tribal Comment – State Plan Amendment related to Third Party Liability.

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 related to third party liability. Specifically, DMAS will:

- Add language that is needed to respond to a CMS [State Medicaid Director letter \(#23-002\)](#) requiring Medicaid agencies to amend their state plan to provide assurance that the state has rules in place that bar liable third-party payers from refusing payment for an item or service solely on the basis that such item or service did not receive prior authorization under the third-party payer's rules.
- Provide clarity relating to lien amounts arising from the Medicaid program and asserted against personal injury claims proceeds. These changes arose from a Petition for Rulemaking that was filed with DMAS on November 3, 2022.

The tribal comment period for this SPA is open through August 31, 2023. You may submit your comments directly to Meredith Lee, DMAS Policy, Regulation, and Member Engagement Division, by phone (804) 371-0552, or via email: [Meredith.Lee@dmas.virginia.gov](mailto:Meredith.Lee@dmas.virginia.gov). Finally, if you prefer regular mail you may send your comments or questions to:

Virginia Department of Medical Assistance Services  
Attn: Meredith Lee  
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

**STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT**

State of VIRGINIA

**REQUIREMENTS FOR THIRD PARTY LIABILITY  
PAYMENT OF CLAIMS**

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§5. Prior Authorizations.

- a. Consider the Department's payment of a claim for a medical item or service to be the equivalent of the medical assistance recipient having obtained prior authorization for the item or service from the third party.
- b. Not deny a claim that is submitted by the Department solely on the basis of the medical assistance recipient's failure to obtain prior authorization for the medical item or service.
- c. Respond to an inquiry by the Department regarding a claim for payment of a medical item or service that was submitted to the third party not later than three years after the date of the provision of such medical item or service; third party must respond within 60 days of receiving the inquiry.

§6. Liens on Claims for Personal Injury.

- A. To obtain information about a Medicaid member's enrollment status or an itemization of lien against a personal injury claim, the member or their authorized representative shall furnish DMAS or its designated representative with any information that DMAS or its designated representative shall request. DMAS or its designated representative shall determine the form of communication by which it will receive information. The following information is required to be furnished to DMAS or its designated representative:
  1. A letter of representation signed by the Medicaid member or their authorized representative and dated within the last twelve months (if the request is made by a representative).
  2. A HIPAA-compliant release form signed by the Member and dated within the last twelve months that authorizes both DMAS and the Office of the Attorney General (OAG) to disclose medical information to the member or their authorized representative and to any other third parties or contractors that are or will be involved with the lien.
  3. The full legal name of the Medicaid member.
  4. The full social security number of the Medicaid member.
  5. A copy of the front and back of the Medicaid member's health insurance card(s).
  6. A description of the member's injuries sustained as a result of the accident.
  7. An itemized statement of the Medicaid member's medical damages including providers

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TN No. 23-0015

Approval Date \_\_\_\_\_

Effective Date 7-1-23

Supersedes

TN No. 22-0014

**STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT**

State of VIRGINIA

**REQUIREMENTS FOR THIRD PARTY LIABILITY  
PAYMENT OF CLAIMS**

and dates of service, along with copies of medical bills.

8. The date and location of the accident, the identities of all parties involved in the accident, and a copy of the police report (if available).
  9. The full name, mailing address, telephone number, and email address of the authorized representative named in the HIPAA release to whom DMAS should direct communications about the Medicaid lien.
  10. If any of the required information changes after the date the information is submitted to DMAS, the member or their authorized representative shall notify DMAS of the change as soon as the new information is made available to the member or their authorized representative.
- B. To make a request for a reduction of any portion of a Medicaid lien, the member or their authorized representative shall furnish DMAS or its designated representative with any information that DMAS or its designated representative shall request. DMAS or its designated representative shall determine the form of communication by which it will receive information. The following information is required to be furnished to DMAS or its designated representative:
1. The member's prognosis and anticipated future treatment expenses.
  2. If the member is permanently disabled as a result of the accident, the disability rating.
  3. The member's current income, financial resources, and employment status.
  4. The amount of all other liens or claims against the members personal injury claim.
  5. Whether any liability insurance policies are available, and if so, the amount paid by each, and the policyholder's name for each.
  6. If any settlements have occurred related to the accident, including the amount of the settlement, the terms, and a copy of the signed settlement agreement.
  7. If any lawsuits have been filed related to the accident, the jurisdiction and case number, a copy of the Complaint and any other filings.
  8. The amount of all medical reimbursement payments coverage related to the accident, such as Medical Payments Insurance, also known as "medpay."
  9. An itemized statement of all attorney's fees and costs and any voluntary reductions.
  10. A written explanation of why the request is being made, along with details about the compromise or waiver that is being requested and any other facts or documentation that are being relied upon to support the request.

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11. If any of the required information changes after the date the information is submitted to DMAS, the member or their authorized representative shall notify DMAS of the change as soon as the new information is made available to the member or their authorized representative.
- C. To make a request to remove charges contained in DMAS's itemization of lien that are believed to be unrelated to the personal injury claim of the member, the member or their authorized representative shall furnish DMAS or its designated representative with any information that DMAS or its designated representative shall request. DMAS or its designated representative shall determine the form of communication by which it will receive information. The following information is required to be furnished to DMAS or its designated representative:
1. A written statement detailing the specific charge(s) that the member or its authorized representative believes is unrelated to the personal injury claim.
  2. Any and all documentation from the member or its authorized representative to any third party detailing claimed medical damages, itemized medical bills, or other related information, including, but not limited to, demand package(s), list of medical specials, correspondence concerning medical damages, etc.
  3. Any and all documentation showing where the member or its authorized representative informed any third party that certain charges were unrelated.



**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
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5. FEDERAL STATUTE/REGULATION CITATION
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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)
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9. SUBJECT OF AMENDMENT
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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
---------------

<b>FOR CMS USE ONLY</b>	
16. DATE RECEIVED	17. DATE APPROVED

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

22. REMARKS
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