



COMMONWEALTH of VIRGINIA
Office of the Governor

Janet Vestal Kelly
Secretary of Health and Human Resources

November 1, 2024

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 24-023, entitled "Provider Appeals Updates" 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 "Janet V. Kelly".

Janet V. Kelly

Attachment

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

Transmittal Summary

SPA 24-023

I. IDENTIFICATION INFORMATION

Title of Amendment: Provider Appeals Updates

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. Moreover, under Virginia law (Virginia Code Section 32.1-325.1), Medicaid providers are afforded the right to two levels of appeal with DMAS: an informal appeal and a formal appeal.

Purpose: The state plan is being amended to update and align plan language with current practice, as follows:

- Reflect a settlement proposal and review process that involves extending deadlines;
- Update the filing definition to account for use of online and other electronic means;
- Define what is considered the “last known address” of the provider;
- Clarify presumptions regarding receiving items transmitted to the last known address;
- Delineate the basis for administrative dismissals; and
- Outline the procedures for when a provider alleges that there are deficiencies with the informal appeal case summary.

Substance and Analysis: The section of the State Plan that is affected by this amendment is “Informal and Formal Provider Appeals”.

Impact: None.

Tribal Notice: Please see attached.

Prior Public Notice: N/A

Public Comments and Agency Analysis: N/A

Williams, Jimiequa (DMAS)

To: TribalOffice@MonacanNation.com; Ann Richardson; Pam Thompson (pamelathompson4@yahoo.com); Rappahannock Tribe (rappahannocktrib@aol.com); Reginald Stewart (regstew007@gmail.com); 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); ReBecca.Robinson@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; lorraine.reels-pearson@ihs.gov; Holmes, Remedios (IHS/NAS/RIC) <remedios.holmes@ihs.gov>; lindsey.taylor@ihs.gov; Lyon, Joni (IHS/NAS/AO) <joni.lyon@ihs.gov>; Howard, Joanne

Tue 10/15/2024 2:06 PM

Tribal Notice letter (10.15.24) - signed.pdf

176 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 Provider Appeals Updates.

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

Jimiequa 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

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 15, 2024

SUBJECT: Notice of Opportunity for Tribal Comment – Provider Appeals Updates

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 update provider appeals language to align with the Department's current practices. Specifically, this SPA will:

- Reflect a settlement proposal and review process that involves extending deadlines;
- Update the filing definition to account for use of online and other electronic means;
- Define what is considered the "last known address" of the provider;
- Clarify presumptions regarding receiving items transmitted to the last known address;
- Delineate the basis for administrative dismissals; and
- Outline the procedures for when a provider alleges that there are deficiencies with the informal appeal case summary.

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 November 15, 2024. You may submit your comments directly to Jimiequa Williams, DMAS Policy 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

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

INFORMAL AND FORMAL PROVIDER APPEALS

PROVIDER APPEALS

Definitions.

The following words and terms, when used in this part, shall have the following meanings:

"Administrative dismissal" means a dismissal that requires only the issuance of a decision with appeal rights but that does not require the submission of a case summary or any further proceedings.

"Day" means a calendar day unless otherwise stated.

"DMAS" means the Virginia Department of Medical Assistance Services or its agents or contractors.

"Hearing officer" means an individual selected by the Executive Secretary of the Supreme Court of Virginia to conduct the formal appeal in an impartial manner pursuant to §§2.2-4020 and 32.1-325.1 of the *Code of Virginia* and this part.

"Informal appeals agent" means a DMAS employee who conducts the informal appeal in an impartial manner pursuant to §§2.2-4019 and 32.1-325.1 of the *Code of Virginia* and this part.

"Last known address" means the provider's physical or electronic correspondence address on record in the DMAS Medicaid Management Information System as of the date DMAS transmits an item to the provider or the address of the provider's counsel of record. Nothing herein shall prevent DMAS and the provider from agreeing in writing during the course of an audit or an appeal to use an alternative location for the transmittal of an item or items related to the audit or the appeal.

"Provider" means an individual or entity that has a contract with DMAS to provide covered services and that is not operated by the Commonwealth of Virginia.

"Transmit" means send by means of United States mail, courier or other hand delivery, facsimile, electronic mail, or electronic submission.

Provider appeals: general provisions.

A. This part governs all DMAS informal and formal provider appeals and shall supersede any other provider appeals regulations.

B. A provider may appeal any DMAS action that is subject to appeal under the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the *Code of Virginia*), including DMAS' interpretation and application of payment methodologies. A provider may not appeal the actual payment methodologies.

C. DMAS shall transmit all items to the last known address of the provider. It is presumed that DMAS transmits items on the date noted on the item. It is presumed that providers receive items transmitted by United States mail to their last known address within

TN No. 24-0023

Approval Date 01/10/17

Effective Date 10/01/24

Supersedes

TN No. 16-0015

HCFA ID:

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

INFORMAL AND FORMAL PROVIDER APPEALS

three days after DMAS transmits the item by United States mail. It is presumed that providers receive items transmitted by facsimile, email or other electronic submission on the date transmitted. It is presumed that providers receive items transmitted by courier or other hand delivery on the date of delivery to the provider's last known address. These presumptions in this section shall apply unless the provider, through evidence beyond a mere denial of receipt, introduces evidence sufficient to rebut the presumption. If a provider requests a copy of an item, the transmittal date for the item remains the date originally noted on the item, and not the date that the copy of the requested item is transmitted. A provider's failure to accept delivery of an item transmitted by DMAS, or a provider's failure to open an item upon receipt, shall not result in an extension of any of the timelines established by this part.

D. Whenever DMAS or a provider is required to file a document, the document shall be considered filed when it is date stamped by the DMAS Appeals Division. When DMAS or a provider is using the online appeals portal administered by the DMAS Appeals Division, the date stamp will be automatically applied when the item completes transmission to the Appeals Division. When email or facsimile is used, the date stamp will be reflected on the date and time of the transmission. If other means are used, such as postal mail or hand delivery, the date stamp will be applied physically by the DMAS Appeals Division upon receipt.

E. Whenever the last day specified for the filing of any document or the performance of any other act falls on a day on which DMAS is officially closed for the full or partial day, the time period shall be extended to the next day on which DMAS is officially open.

F. Conferences and hearings shall be conducted at the DMAS main office in Richmond, Virginia, or at such other place as agreed to upon in writing by DMAS, the provider, and the informal appeals agent for informal appeals. For formal appeals, this agreement shall be between DMAS, the provider, and the hearing officer.

G. Whenever DMAS or a provider is required to attend a conference or hearing, failure by one of the parties to attend the conference or hearing shall result in dismissal of the appeal in favor of the other party.

H. DMAS shall reimburse a provider for reasonable and necessary attorney fees and costs associated with an informal or formal administrative appeal if the provider substantially prevails on the merits of the appeal and the DMAS position is not substantially justified, unless special circumstances would make an award unjust. In order to substantially prevail on the merits of the appeal, the provider must be successful on more than 50% of the dollar amount involved in the issues identified in the provider's notice of appeal.

I. Any document that is filed with the DMAS Appeals Division after 5 p.m. Eastern Time shall be date-stamped on the next day DMAS is officially open. Any document that is filed with the DMAS Appeals Division after 5:00 p.m. Eastern Time on the due date shall be untimely.

TN No. 24-0023

Approval Date 01/10/17

Effective Date 10/01/24

Supersedes

TN No. 16-0015

HCFA ID:

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

INFORMAL AND FORMAL PROVIDER APPEALS

PART II. INFORMAL APPEALS

Informal appeals.

A. Notice of informal appeal

1. Providers appealing the termination or denial of their Medicaid agreement pursuant to § 32.1-325 E of the *Code of Virginia* shall file a written notice of informal appeal with the DMAS Appeals Division within 15 days of the provider's receipt of the notice of termination or denial.
2. Providers appealing adjustments to a cost report shall file a written notice of informal appeal with the DMAS Appeals Division within 90 days of the provider's receipt of the notice of program reimbursement. The written notice of informal appeal shall identify the issues, adjustments, or items that the provider is appealing.
3. Providers appealing ~~a~~ all other DMAS decisions shall file a written notice of informal appeal with the DMAS Appeals Division within 30 days of the provider's receipt of the decision. The written notice of informal appeal shall identify each adjustment, patient, service date, or other disputed matter that the provider is appealing.

B. Administrative dismissals.

1. Failure to timely file a written notice of informal appeal with the information required by subdivision A 2 or A 3 of this section shall result in an administrative dismissal of the appeal.
2. A representative, billing company, or other third-party entity filing a written notice of appeal on behalf of a provider shall submit to DMAS, at the time of filing or upon request, a written authorization to act on the provider's behalf, signed by the provider. The authorization shall reference the specific adverse action being appealed including, if applicable, each patient's name and date of service. Failure to submit a written authorization as specified in this subdivision shall result in an administrative dismissal. This requirement shall not apply to an appeal filed by a Virginia licensed attorney.
3. If a provider has not exhausted any applicable DMAS or contractor reconsideration or review process or contractor's internal appeals process that the provider is required to exhaust before filing a DMAS informal appeal, the provider's written notice of informal appeal shall be administratively dismissed.
4. If DMAS has not issued a decision with appeal rights, the provider's attempt to file a written notice of informal appeal, prior to the issuance of a decision by DMAS

TN No. 24-0023

Approval Date 01/10/17

Effective Date 10/01/24

Supersedes

TN No. 16-0015

HCFA ID:

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

INFORMAL AND FORMAL PROVIDER APPEALS

that has appeal rights, shall be administratively dismissed.

C. Written case summary

1. DMAS shall file a written case summary with the DMAS Appeals Division within 30 days of the filing of the provider's notice of informal appeal and shall transmit a complete copy of the case summary to the provider on the same day.
2. For each adjustment, patient, and service date or other disputed matter identified by the provider in its notice of informal appeal, the case summary shall explain the factual basis upon which DMAS relied in taking its action or making its decision and identify any authority or documentation upon which DMAS relied in taking its action or making its decision.
3. Failure to file a written case summary with the DMAS Appeals Division within 30 days of the filing of the written notice of informal appeal shall result in dismissal in favor of the provider.
4. The provider shall have 12 days following the due date of the case summary to file with the DMAS Appeals Division and transmit to the author of the case summary a written notice of all alleged deficiencies that the provider knows, or reasonably should know, exist. Failure of the provider to timely file a written notice of deficiency with the DMAS Appeals Division shall be deemed a waiver of all deficiencies, alleged or otherwise, with the case summary.
5. Upon timely receipt of the provider's notice of deficiency, DMAS shall have 12 days to address the alleged deficiency. If DMAS does not address the alleged deficiency or does not address the alleged deficiency to the provider's satisfaction, the alleged deficiency shall become an issue to be addressed by the informal appeals agent as part of the informal appeal decision.
6. The informal appeals agent shall make a determination as to each deficiency that is alleged by the provider as set forth in this subsection. In making that determination, the informal appeals agent shall determine whether the alleged deficiency is such that it could not reasonably be determined from the case summary the factual basis and authority for the DMAS action, relating to the alleged deficiency, so as to require a dismissal in favor of the provider on the issue to which the alleged deficiency pertains.

D. Conference

1. The informal appeals agent shall conduct the conference within 90 days from the filing of the notice of informal appeal. If DMAS and the provider and the informal appeals agent agree, the conference may be conducted by way of written

TN No. 24-0023

Approval Date 01/10/17

Effective Date 10/01/24

Supersedes

TN No. 16-0015

HCFA ID:

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

INFORMAL AND FORMAL PROVIDER APPEALS

submissions. If the conference is conducted by way of written submissions, the informal appeals agent shall specify the time within which the provider may file written submissions, not to exceed 90 days from the filing of the notice of informal appeal. Only written submissions filed within the time specified by the informal appeals agent shall be considered.

2. The conference may be recorded for the convenience of the informal appeals agent. Since the conference is not an adversarial or evidentiary proceeding, recordings shall not be made part of the administrative record and shall not be made available to anyone other than the informal appeals agent.

3. Upon completion of the conference, the informal appeals agent shall specify the time within which the provider may file additional documentation or information, if any, not to exceed 30 days. Only documentation or information filed within the time specified by the informal appeals agent shall be considered.

E. Informal appeals decision.

The informal appeal decision shall be issued within 180 days of receipt of the notice of informal appeal unless the provider and DMAS have mutually agreed in writing to stay the timeframe for issuing the informal decision, as described in the Settlement Agreements section below.

F. Remand. Whenever an informal appeal is required pursuant to a remand by court order, final agency decision, agreement of the parties or otherwise, all time periods set forth in this Informal Appeals section shall begin to run effective with the date of the remand, unless otherwise specified within the remand.

Settlement agreements.

A. Providers who have filed an administrative appeal under Informal Appeals or Formal Appeals may submit a proposal to DMAS to settle the appeal.

B. A proposal for a settlement shall be submitted in writing by the provider or the provider's counsel to the DMAS Appeals Division Director. The proposal shall include the justification for the settlement and the terms proposed to settle the case. The Appeals Division Director shall refer the proposal to a DMAS appeal representative authorized by the Office of the Attorney General under § [2.2-509](#) of the Code of Virginia to represent DMAS in administrative proceedings.

C. Stay of decision deadlines.

1. Receipt of a settlement proposal from a provider in accordance with subsection B of this section shall not require the DMAS appeal representative to engage in settlement negotiations or agree to stay the deadline for the informal appeal decision or for the formal appeal recommended decision of the hearing officer (collectively, the decision deadline). The DMAS appeal representative and the provider may jointly agree in writing to stay the decision deadline for a period of up to 60 days to

TN No. 24-0023 Approval Date 01/10/17 Effective Date 10/01/24

Supersedes

TN No. 16-0015

HCFA ID:

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

INFORMAL AND FORMAL PROVIDER APPEALS

facilitate settlement discussions. The date of the written agreement of the parties to stay the decision deadline shall be the start date for calculating the length of the stay. Written notice of the agreement to stay the decision deadline and the length of stay shall be provided to the Appeals Division Director on the start date. During the stay, the time period to issue the informal appeal decision or the formal appeal recommended decision shall not run; however, all other interim deadlines remain applicable.

2. If the parties mutually agree in writing to a proposed resolution within the agreed upon stay period described in subdivision C 1 of this section, then the stay shall be extended for such additional time as may be necessary for review and approval of the settlement in accordance with § [2.2-514](#) of the Code of Virginia.

3. A stay may be removed by a party to the appeal for any reason, including the following:

- a. The parties do not agree to a full settlement within the agreed upon stay period described in subdivision C 1 of this section;
- b. One party advises the other and the Appeals Division Director in writing that it no longer agrees for the stay to continue; or
- c. The parties reach a proposed settlement, but the proposed settlement is not approved in accordance with § [2.2-514](#) of the Code of Virginia.

If the stay is removed, the stay shall be communicated in writing between the parties and written notice provided to the Appeals Division Director. The time period to issue the informal appeal decision or the formal appeal recommended decision shall resume on the day the notice is provided to the Appeals Division Director.

PART III. FORMAL APPEALS

Formal appeals.

A. A provider appealing a DMAS informal appeal decision shall file a written notice of formal appeal with the DMAS Appeals Division within 30 days of the provider's receipt of the informal appeal decision. The notice of formal appeal shall identify each adjustment, patient, service date, or other disputed matter that the provider is appealing. Failure to file a written notice of formal appeal in the detail specified within 30 days of receipt of the informal appeal decision shall result in dismissal of the appeal. Pursuant to § [2.2-4019](#) A of the Code of Virginia, DMAS shall ascertain the fact basis for decisions through informal proceedings unless the parties consent in writing to waive such a conference or proceeding to go directly to a formal hearing, and therefore only issues that were addressed pursuant to § [2.2-4019](#) of the Code of Virginia shall be addressed in the formal appeal, unless DMAS and the provider consent to waive the informal fact-finding process under § [2.2-4019](#) A of the Code of

TN No. 24-0023

Approval Date 01/10/17

Effective Date 10/01/24

Supersedes

TN No. 16-0015

HCFA ID:

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

INFORMAL AND FORMAL PROVIDER APPEALS

Virginia.

B. Documentary evidence, objections to documentary evidence, opening briefs and reply briefs.

1. Documentary evidence, objections to documentary evidence, opening briefs, and reply briefs shall be filed with the DMAS Appeals Division on the date specified in this subsection. The hearing officer shall only consider those documents or pleadings that are filed within the required timeline. Simultaneous with the filing, the filing party shall transmit a copy to the other party and the hearing officer.

a. All documentary evidence upon which DMAS or the provider relies shall be filed within 21 days of the filing of the notice of formal appeal.

b. any objections to the admissibility of documentary evidence shall be filed within seven days of the filing of the documentary evidence. The hearing officer shall rule on any such objections within seven days of the filing of the objections.

c. The opening brief shall be filed by DMAS and the provider within 30 days of the completion of the hearing.

d. Any reply brief from DMAS or the provider shall be filed within 10 days of the filing of the opening brief to which the reply brief responds.

2. If there has been an extension to the time for conducting the hearing pursuant to subsection C of this section, the hearing officer is authorized to alter the due dates for filing opening and reply briefs to permit the hearing officer to be in compliance with the due date for the submission of the recommended decision as required by § [32.1-325.1](#) B of the Code of Virginia and subsection E of this section.

C. The hearing officer shall conduct the hearing within 45 days from the filing of the notice of formal appeal, unless the hearing officer, DMAS and the provider all mutually agree to extend the time for conducting the hearing. Notwithstanding the foregoing, the due date for the hearing officer to submit the recommended decision to the DMAS director, as required by § [32.1-325.1](#) B of the Code of Virginia and subsection E of this section, shall not be extended or otherwise changed.

D. Hearings shall be transcribed by a court reporter retained by DMAS.

E. The hearing officer shall submit a recommended decision to the DMAS director with a copy to the provider within 120 days of receipt of the formal appeal request, unless the provider and DMAS have mutually agreed in writing to stay the timeframe for issuing the recommended decision pursuant to criteria described in the Settlement Agreements section above. If the hearing officer does not submit a recommended decision within 120 days of the filing of the notice of formal appeal or the period specified under Settlement Agreements,

TN No. 24-0023

Approval Date 01/10/17

Effective Date 10/01/24

Supersedes

TN No. 16-0015

HCFA ID:

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

INFORMAL AND FORMAL PROVIDER APPEALS

then DMAS shall give written notice to the hearing officer and the Executive Secretary of the Supreme Court that a recommended decision is due.

F. Upon receipt of the hearing officer's recommended decision, the DMAS director shall notify DMAS and the provider in writing that any written exceptions to the hearing officer's recommended decision shall be filed with the DMAS Appeals Division within 14 days of receipt of the DMAS director's letter. Only exceptions filed within 14 days of receipt of the DMAS director's letter shall be considered.

G. The DMAS director shall issue the final agency decision within 60 days of receipt of the hearing officer's recommended decision in accordance with § [32.1-325.1](#) B of the Code of Virginia.

H. Reconsideration of Final Agency Decision.

1. Reconsiderations of a DMAS final appeal decision issued on a formal appeal conducted pursuant to § [2.2-4020](#) of the Code of Virginia shall be conducted in accordance with § 2.2-4023.1 of the *Code of Virginia*.

2. The DMAS Director's review shall be made upon the case record of the formal appeal. Testimony or documentary submissions that were not part of the formal appeal case record prior to issuance of the final agency decision shall not be considered.

TN No. 24-0023

Approval Date 01/10/17

Effective Date 10/01/24

Supersedes

TN No. 16-0015

HCFA ID:

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

1. TRANSMITTAL NUMBER ____ _	2. STATE ____
---------------------------------	------------------

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

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
--

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
INFORMAL AND FORMAL PROVIDER APPEALS

PROVIDER APPEALS

~~12 VAC 30-20-500.~~ Definitions.

The following words and terms, when used in this part, shall have the following meanings:

"Administrative dismissal" means a dismissal that requires only the issuance of a decision with appeal rights but that does not require the submission of a case summary or any further proceedings.

"Day" means a calendar day unless otherwise stated.

"DMAS" means the Virginia Department of Medical Assistance Services or its agents or contractors.

"Hearing officer" means an individual selected by the Executive Secretary of the Supreme Court of Virginia to conduct the formal appeal in an impartial manner pursuant to §§2.2-4020 and 32.1-325.1 of the *Code of Virginia* and this part.

"Informal appeals agent" means a DMAS employee who conducts the informal appeal in an impartial manner pursuant to §§2.2-4019 and 32.1-325.1 of the *Code of Virginia* and this part.

"Last known address" means the provider's physical or electronic correspondence address on record in the DMAS Medicaid Management Information System as of the date DMAS transmits an item to the provider or the address of the provider's counsel of record. Nothing herein shall prevent DMAS and the provider from agreeing in writing during the course of an audit or an appeal to use an alternative location for the transmittal of an item or items related to the audit or the appeal.

"Provider" means an individual or entity that has a contract with DMAS to provide covered services and that is not operated by the Commonwealth of Virginia.

"Transmit" means send by means of ~~U.S. Postal Service~~ United States mail, courier or other hand delivery, facsimile, electronic mail, or electronic submission.

~~12 VAC 30-20-510.~~ Reserved.

~~12 VAC 30-20-520.~~ Provider appeals: general provisions.

A. This part governs all DMAS informal and formal provider appeals and shall supersede any other provider appeals regulations.

B. A provider may appeal any DMAS action that is subject to appeal under the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the *Code of Virginia*), including DMAS' interpretation and application of payment methodologies. A provider may not appeal the actual payment methodologies.

C. DMAS shall transmit all items to the last known address of the provider. It is

TN No. ~~16-01524-0023~~ Approval Date 01/10/17 Effective Date ~~12/01/16~~ 01/24

Supersedes

TN No. ~~New Page~~ 16-0015

HCFA ID:

Formatted: Strikethrough

Formatted: Font: 11 pt, No underline, Not Expanded by / Condensed by

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

INFORMAL AND FORMAL PROVIDER APPEALS

presumed that DMAS transmits items on the date noted on the item. It is presumed that providers receive items ~~transmitted sent~~ by ~~U.S.~~ United States mail; to their last known address; within ~~3~~ three days after DMAS ~~transmits sends~~ the item by ~~U.S.~~ United States mail. It is presumed that providers receive items ~~transmitted sent~~ by ~~facsimile~~, email or ~~facsimile~~ other electronic submission, ~~to their last known email address or facsimile number~~, on the date ~~transmitted-sent~~. It is presumed that providers receive items transmitted by courier or other hand delivery on the date of delivery to the provider's last known address. These presumptions in this section shall apply unless the provider, through evidence beyond a mere denial of receipt, introduces evidence sufficient to rebut the presumption. If a provider requests a copy of an item, the transmittal date for the item remains the date originally noted on the item, and not the date that the copy of the requested item is transmitted. A provider's failure to accept delivery of an item transmitted by DMAS, or a provider's failure to open an item upon receipt, shall not result in an extension of any of the timelines established by this part.

D. Whenever DMAS or a provider is required to file a document, the document shall be considered filed when it is date stamped by the DMAS Appeals Division ~~in Richmond, Virginia~~. When DMAS or a provider is using the online appeals portal administered by the DMAS Appeals Division, the date stamp will be automatically applied when the item completes transmission to the Appeals Division. When email or facsimile is used, the date stamp will be reflected on the date and time of the transmission. If other means are used, such as postal mail or hand delivery, the date stamp will be applied physically by the DMAS Appeals Division upon receipt.

E. Whenever the last day specified for the filing of any document or the performance of any other act falls on a day on which DMAS is officially closed for the full or partial day, the time period shall be extended to the next day on which DMAS is officially open.

F. Conferences and hearings shall be conducted at ~~the DMAS~~ DMAS main office in Richmond, Virginia, or at such other place as agreed ~~to upon in writing by the parties DMAS, the provider, and the informal appeals agent for informal appeals.~~ For formal appeals, this agreement shall be between DMAS, the provider, and the hearing officer.

G. Whenever DMAS or a provider is required to attend a conference or hearing, failure by one of the parties to attend the conference or hearing shall result in dismissal of the appeal in favor of the other party.

H. DMAS shall reimburse a provider for reasonable and necessary attorneys' fees and costs associated with an informal or formal administrative appeal if the provider substantially prevails on the merits of the appeal and ~~the DMAS~~ DMAS position is not substantially justified, unless special circumstances would make an award unjust. In order to substantially prevail on the merits of the appeal, the provider must be successful on more than 50% of the dollar amount involved in the issues identified in the provider's notice of appeal.

I. Any document that is filed with the DMAS Appeals Division after 5 p.m. Eastern Time shall be date-stamped on the next day DMAS is officially open. ~~Documents Any~~

TN No. 16-01524-0023 Approval Date 01/10/17 Effective Date 12-01/1610/01/24

Supersedes

TN No. New Page 16-0015

HCFA ID:

Formatted: Strikethrough

Formatted: Font: 11 pt, No underline, Not Expanded by / Condensed by

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

INFORMAL AND FORMAL PROVIDER APPEALS

~~document~~ that ~~are~~ is filed with the DMAS Appeals Division ~~or the hearing officer~~ after 5:00 ~~pm p.m.~~ eastern Eastern time Time on the due date shall be untimely.

~~12VAC 30-20-530. Reserved.~~

PART II. INFORMAL APPEALS

~~12 VAC 30-20-540. Informal appeals.~~

A. Notice of informal appeal

1. Providers appealing the termination or denial of their Medicaid agreement pursuant to § 32.1-325 E of the Code of Virginia shall file a written notice of informal appeal with the DMAS Appeals Division within 15 days of the provider's receipt of the notice of termination or denial.

2. Providers appealing adjustments to a cost report shall file a written notice of informal appeal with the DMAS Appeals Division within 90 days of the provider's receipt of the notice of program reimbursement. The written notice of informal appeal shall identify the issues, adjustments, or items that the provider is appealing.

3. Providers appealing a all other DMAS decision decisions shall file a written notice of informal appeal with the DMAS Appeals Division within 30 days of the provider's receipt of the decision. Providers appealing the termination or denial of their Medicaid agreement pursuant to § 32.1-325 D of the Code of Virginia shall file a written notice of informal appeal with the DMAS Appeals Division within 15 days of the provider's receipt of the notice of termination or denial. Providers appealing adjustments to a cost report shall file a written notice of informal appeal with the DMAS Appeals Division within 90 days of the provider's receipt of the notice of program reimbursement. The written notice of informal appeal shall identify the issues being appealed each adjustment, patient, service date, or other disputed matter that the provider is appealing.

B. Administrative dismissals.

1. Failure to timely file a written notice of informal appeal that identifies the issues being appealed within 30 days of receipt of the decision with the information required by subdivision A 2 or A 3 of this section shall result in an administrative dismissal of the appeal. Failure to file a written notice of informal appeal that identifies the issues being appealed for termination or denial of a Medicaid agreement pursuant to § 32.1-325 D of the Code of Virginia within 15 days of receipt of the notice of termination or denial shall result in an administrative dismissal of the appeal. Failure to file a written notice of informal appeal that identifies the issues being appealed within 90 days of receipt of the notice of program reimbursement

Formatted: Strikethrough

Formatted: Font: 11 pt, No underline, Not Expanded
by / Condensed by

TN No. 16-01524-0023 Approval Date 01/10/17 Effective Date 12/01/16 01/24

Supersedes

TN No. New Page 16-0015

HCFA ID:

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

INFORMAL AND FORMAL PROVIDER APPEALS

~~shall result in an administrative dismissal of the appeal.~~

2. A representative, billing company, or other third-party entity filing a written notice of appeal on behalf of a provider shall submit to DMAS, at the time of filing or upon request, a written authorization to act on the provider's behalf, signed by the provider. The authorization shall reference the specific adverse action being appealed including, if applicable, each patient's name and date of service. Failure to submit a written authorization as specified in this subdivision shall result in an administrative dismissal. This requirement shall not apply to an appeal filed by a Virginia licensed attorney.

3. If a provider has not exhausted any applicable DMAS or contractor reconsideration or review process or contractor's internal appeals process that the provider is required to exhaust before filing a DMAS informal appeal, the provider's written notice of informal appeal shall be administratively dismissed.

4. If DMAS has not issued a decision with appeal rights, the provider's attempt to file a written notice of informal appeal, prior to the issuance of a decision by DMAS that has appeal rights, shall be administratively dismissed.

C. Written case summary

1. DMAS shall file a written case summary with the DMAS Appeals Division within 30 days of the filing of the provider's notice of informal appeal and DMAS shall transmit a complete copy of the case summary to the provider on the same day that the case summary is filed with the DMAS Appeals Division.

2. For each adjustment, patient, and service date or other disputed matter identified by the provider in its notice of informal appeal, the case summary shall explain the factual basis upon which DMAS relied in taking its action or making its decision and identify any authority or documentation upon which DMAS relied in taking its action or making its decision. The case summary shall address each disputed adjustment, patient, service date, or other appealable issue identified by the provider in its notice of informal appeal and shall state DMAS' position for each disputed adjustment, patient, service date, or other appealable issue identified by the provider in its notice of informal appeal.

~~The case summary shall contain the factual basis for each disputed adjustment, patient, service date, or other appealable issue identified by the provider in its notice of informal appeal and any other information, authority, or documentation DMAS relied upon in taking its action or making its decision on the appealable issues identified by the provider in its notice of informal appeal.~~

Formatted: Strikethrough

Formatted: Font: 11 pt, No underline, Not Expanded by / Condensed by

TN No. 16-01524-0023 Approval Date 01/10/17 Effective Date 12-01-16/01/24

Supersedes

TN No. New Page 16-0015

HCFA ID:

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

INFORMAL AND FORMAL PROVIDER APPEALS

~~3. Failure to file a written case summary with the DMAS Appeals Division in the detail specified within 30 days of the filing of the provider's written notice of informal appeal shall result in dismissal in favor of the provider, on those appealable issues not addressed in the detail specified. If the provider alleges any non-substantive deficiencies with the case summary, defined as being other than the factual basis for each disputed adjustment, patient, service date or other appealable issue identified by the provider in its notice of informal appeal, the provider shall adhere to the following procedure:~~

~~4. The provider shall have 12 days following the due date of the case summary to file with the DMAS Appeals Division and transmit to the author of the case summary a written notice of any all alleged non-substantive deficiencies that the provider knows, or reasonably should know, exist. Failure of the provider to timely file a written notice of deficiency with the DMAS Appeals Division shall be deemed a waiver of all deficiencies, alleged or otherwise, with the case summary.~~

~~5. Upon timely receipt of the provider's notice of deficiency, DMAS shall have 12 days after the DMAS Appeals Division's receipt of the provider's written notice to address the or cure any alleged deficiencies deficiency. Failure of the provider to timely file a written notice with the DMAS Appeals Division pursuant to this procedure shall be deemed a waiver of any alleged non-substantive deficiencies with the case summary. Any remaining dispute regarding the sufficiency of the case summary not resolved through the procedure herein shall be addressed by the informal appeals agent as part of the informal appeal decision. If DMAS does not address the alleged deficiency or does not address the alleged deficiency to the provider's satisfaction, the alleged deficiency shall become an issue to be addressed by the informal appeals agent as part of the informal appeal decision.~~

~~6. The informal appeals agent shall make a determination as to each deficiency that is alleged by the provider as set forth in this subsection. In making that determination, the informal appeals agent shall determine whether the alleged deficiency is such that it could not reasonably be determined from the case summary the factual basis and authority for the DMAS action, relating to the alleged deficiency, so as to require a dismissal in favor of the provider on the issue to which the alleged deficiency pertains.~~

D. Conference

~~1. The informal appeals agent shall conduct the conference within 90 days from the filing of the notice of informal appeal. If DMAS and the provider and the informal appeals agent agree, the conference may be conducted by way of written submissions. If the conference is conducted by way of written submissions, the informal appeals agent shall specify the time within which the provider may file written submissions, not to exceed 90 days from the filing of the notice of informal appeal. Only written submissions filed within the time specified by the informal~~

Formatted: Strikethrough

Formatted: Font: 11 pt, No underline, Not Expanded by / Condensed by

TN No. 16-01524-0023 Approval Date 01/10/17 Effective Date 12-01/1610/01/24

Supersedes

TN No. New Page 16-0015

HCFA ID:

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

INFORMAL AND FORMAL PROVIDER APPEALS

appeals agent shall be considered.

~~D. 2.~~ The conference may be recorded for the convenience of the informal appeals agent. Since the conference is not an adversarial or evidentiary proceeding, recordings shall not be made part of the administrative record and shall not be made available to anyone other than the informal appeals agent.

~~E. 3.~~ Upon completion of the conference, the informal appeals agent shall specify the time within which the provider may file additional documentation or information, if any, not to exceed 30 days. Only documentation or information filed within the time specified by the informal appeals agent shall be considered.

E. Informal appeals decision.

~~F.~~ The informal appeal decision shall be issued within 180 days of receipt of the notice of informal appeal unless the provider and DMAS have mutually agreed in writing to stay the timeframe for issuing the informal decision, as described in the Settlement Agreements section below.

F. Remand. ~~G.~~ Whenever an informal appeal is required pursuant to a remand by court order, final agency decision, agreement of the parties or otherwise, all time periods set forth in this Informal Appeals section ~~12 VAC 30 20 540~~ shall begin to run effective with the date of the remand, unless otherwise specified within the remand.

Formatted: Strikethrough

~~12VAC 30 20 550. Settlement agreements. Reserved.~~

Formatted: Strikethrough

A. Providers who have filed an administrative appeal under Informal Appeals or Formal Appeals may submit a proposal to DMAS to settle the appeal.

B. A proposal for a settlement shall be submitted in writing by the provider or the provider's counsel to the DMAS Appeals Division Director. The proposal shall include the justification for the settlement and the terms proposed to settle the case. The Appeals Division Director shall refer the proposal to a DMAS appeal representative authorized by the Office of the Attorney General under § 2.2-509 of the Code of Virginia to represent DMAS in administrative proceedings.

C. Stay of decision deadlines.

1. Receipt of a settlement proposal from a provider in accordance with subsection B of this section shall not require the DMAS appeal representative to engage in settlement negotiations or agree to stay the deadline for the informal appeal decision or for the formal appeal recommended decision of the hearing officer (collectively, the decision deadline). The DMAS appeal representative and the provider may jointly agree in writing to stay the decision deadline for a period of up to 60 days to facilitate settlement discussions. The date of the written agreement of the parties to stay the decision deadline shall be the start date for calculating the length of the stay.

Formatted: Strikethrough

Formatted: Font: 11 pt, No underline, Not Expanded by / Condensed by

TN No. 16-01524-0023 Approval Date 01/10/17 Effective Date 12/01/16 01/24

Supersedes

TN No. New Page 16-0015

HCFA ID:

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

INFORMAL AND FORMAL PROVIDER APPEALS

Written notice of the agreement to stay the decision deadline and the length of stay shall be provided to the Appeals Division Director on the start date. During the stay, the time period to issue the informal appeal decision or the formal appeal recommended decision shall not run; however, all other interim deadlines remain applicable.

2. If the parties mutually agree in writing to a proposed resolution within the agreed upon stay period described in subdivision C 1 of this section, then the stay shall be extended for such additional time as may be necessary for review and approval of the settlement in accordance with § 2.2-514 of the Code of Virginia.

3. A stay may be removed by a party to the appeal for any reason, including the following:

a. The parties do not agree to a full settlement within the agreed upon stay period described in subdivision C 1 of this section;

b. One party advises the other and the Appeals Division Director in writing that it no longer agrees for the stay to continue; or

c. The parties reach a proposed settlement, but the proposed settlement is not approved in accordance with § 2.2-514 of the Code of Virginia.

If the stay is removed, the stay shall be communicated in writing between the parties and written notice provided to the Appeals Division Director. The time period to issue the informal appeal decision or the formal appeal recommended decision shall resume on the day the notice is provided to the Appeals Division Director.

PART III. FORMAL APPEALS

~~12 VAC 30-20-560.~~ Formal appeals.

Formatted: Strikethrough

A. ~~Any~~ A provider appealing a DMAS informal appeal decision shall file a written notice of formal appeal with the DMAS Appeals Division within 30 days of the provider's receipt of the informal appeal decision. The notice of formal appeal shall identify ~~the issues being appealed~~ each adjustment, patient, service date, or other disputed matter that the provider is appealing. Failure to file a written notice of formal appeal ~~that identifies the issues being appealed~~ in the detail specified within 30 days of receipt of the informal appeal decision shall result in dismissal of the appeal. Pursuant to § 2.2-4019 A of the Code of Virginia, DMAS shall ascertain the fact basis for decisions through informal proceedings unless the parties consent in writing to waive such a conference or proceeding to go directly to a formal hearing, and therefore only issues that were addressed pursuant to § 2.2-4019 of the Code of Virginia shall be addressed in the formal appeal, unless DMAS and the provider consent to waive the informal fact-finding process under § 2.2-4019 A of the Code of Virginia.

Formatted: Strikethrough

Formatted: Font: 11 pt, No underline, Not Expanded by / Condensed by

B. Documentary evidence, objections to documentary evidence, opening briefs and

TN No. 16-01524-0023 Approval Date 01/10/17 Effective Date 12-01-16/10/01/24

Supersedes

TN No. New Page 16-0015

HCFA ID:

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

INFORMAL AND FORMAL PROVIDER APPEALS

reply briefs.

1. Documentary evidence, objections to documentary evidence, opening briefs, and reply briefs shall be filed with the DMAS Appeals Division on the date specified in this subsection. The hearing officer shall only consider those documents or pleadings that are filed within the required timeline. Simultaneous with the filing, the filing party shall transmit a copy to the other party and the hearing officer.

~~B. a. DMAS and the provider shall transmit to the other party and file with the hearing officer~~ All all documentary evidence upon ~~on~~ which DMAS or the provider relies shall be filed within 21 days of the filing of the notice of formal appeal. ~~Only documents filed within 21 days of the filing of the notice of formal appeal shall be considered.~~

~~b. DMAS and the provider shall transmit to the other party and file with the hearing officer~~ Any any objections to the admissibility of documentary evidence shall be filed within seven days of the filing of the documentary evidence. ~~Only objections filed within seven days of the filing of the documentary evidence shall be considered.~~ The hearing officer shall rule on any such objections within seven days of the filing of the objections.

c. The opening brief shall be filed by DMAS and the provider within 30 days of the completion of the hearing.

d. Any reply brief from DMAS or the provider shall be filed within 10 days of the filing of the opening brief to which the reply brief responds.

2. If there has been an extension to the time for conducting the hearing pursuant to subsection C of this section, the hearing officer is authorized to alter the due dates for filing opening and reply briefs to permit the hearing officer to be in compliance with the due date for the submission of the recommended decision as required by § 32.1-325.1 B of the Code of Virginia and subsection E of this section.

C. The hearing officer shall conduct the hearing within 45 days from the filing of the notice of formal appeal, unless the hearing officer, DMAS and the provider all mutually agree to extend the time for conducting the hearing. Notwithstanding the foregoing, the due date for the hearing officer to submit the recommended decision to the DMAS director, as required by § 32.1-325.1 B of the Code of Virginia and subsection E of this section, shall not be extended or otherwise changed.

D. Hearings shall be transcribed by a court reporter retained by DMAS.

~~E. Upon completion of the hearing, DMAS and the provider shall have 30 days to transmit to the other party and file with the hearing officer an opening brief. Only opening briefs filed within 30 days after the hearing shall be considered. DMAS and the provider shall have 10 days to transmit to the other party and file with the hearing officer a reply brief after the~~

TN No. 16-01524-0023 Approval Date 01/10/17 Effective Date 12/01/16 10/01/24

Supersedes

TN No. New Page 16-0015

HCFA ID:

Formatted: Strikethrough

Formatted: Font: 11 pt, No underline, Not Expanded by / Condensed by

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

INFORMAL AND FORMAL PROVIDER APPEALS

~~opening brief has been filed. Only reply briefs filed within 10 days after the opening brief has been filed shall be considered. Notwithstanding the foregoing, if there has been an extension to the time for conducting the hearing pursuant to 12 VAC 30-20-560 C, the hearing officer is authorized to alter the time periods for briefs set forth herein so that the hearing officer complies with the due date set forth in 12 VAC 30-20-560 F.~~

F. ~~E.~~ The hearing officer shall submit a recommended decision to the DMAS director with a copy to the provider within 120 days of receipt of the formal appeal request, unless the provider and DMAS have mutually agreed in writing to stay the timeframe for issuing the recommended decision pursuant to criteria described in the Settlement Agreements section above. If the hearing officer does not submit a recommended decision within 120 days of the filing of the notice of formal appeal or the period specified under Settlement Agreements, then DMAS shall give written notice to the hearing officer and the Executive Secretary of the Supreme Court that a recommended decision is due.

Formatted: Strikethrough

~~G.F.~~ Upon receipt of the hearing officer's recommended decision, the DMAS director shall notify DMAS and the provider in writing that any written exceptions to the hearing officer's recommended decision shall be filed with the DMAS Appeals Division ~~director~~ within 14 days of receipt of the DMAS director's letter. Only exceptions filed within 14 days of receipt of the DMAS director's letter shall be considered.

~~G.~~ The DMAS director shall issue the final agency decision within 60 days of receipt of the hearing officer's recommended decision in accordance with § 32.1-325.1 B of the Code of Virginia.

~~12 VAC 30-20-561 through 12 VAC 30-20-599. Reserved.~~

H. Reconsideration of Final Agency Decision. ~~(12VAC 30-20-570)~~

Formatted: Strikethrough

1. Reconsiderations of a DMAS ~~Final final appeal Agency Decisions~~ decision issued on a formal appeal conducted pursuant to § 2.2-4020 of the Code of Virginia shall be conducted in accordance with § 2.2-4023.1 of the Code of Virginia.

2. The DMAS Director's review shall be made upon the case record of the formal appeal. Testimony or documentary submissions that were not part of the formal appeal case record prior to issuance of the final agency decision shall not be considered.

Formatted: Strikethrough

Formatted: Font: 11 pt, No underline, Not Expanded by / Condensed by

TN No. 16-01524-0023 Approval Date 01/10/17 Effective Date 12/01/16~~10/01/24~~

Supersedes

TN No. New Page 16-0015

HCFA ID: