Table of Contents

State Name: Virginia

State Plan Amendment (SPA) #: 12-10

This file contains the following documents in the order listed:

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
150 S. Independence Mall West
Suite 216, The Public Ledger Building
Philadelphia, Pennsylvania 19106-3499

CENTERS FOR MEDICARE & MEDICAID SERVICES

Region III/Division of Medicaid and Children's Health Operations

SWIFT# 092720124014

DEC 12 2012

Cynthia B. Jones, Director
Department of Medical Assistance Services
600 East Broad Street, Suite 1300
Richmond, VA 23219

Dear Ms. Jones:

We have reviewed State Plan Amendment (SPA) 12-10, in which you propose to clarify existing appeals processes and codify emerging processes generated by the increasing volume of provider appeals. This change specifically addresses the timelines and specifications for filing required documentation, including the sufficiency of the contents of Case Summaries, and clarifies Virginia's authority to administratively invalidate untimely filed appeals.

This SPA is acceptable. Therefore, we are approving SPA 12-10 with an effective date of July 1, 2012. Enclosed are the approved SPA pages and signed CMS-179 form.

If you have further questions about this SPA, please contact Margaret Kosherzenko at (215) 861-4288.

Sincerely,

/S/

Francis McCullough
Associate Regional Administrator

Enclosures

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

FORM APPROVED
OMB No. 0938-0193

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL

FOR: CENTERS FOR MEDICARE & MEDICAID SERVICES

1. TRANSMITTAL NUMBER: 12 — 10

2. STATE: Virginia

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

TO: REGIONAL ADMINISTRATOR
CENTERS FOR MEDICARE & MEDICAID SERVICES
DEPARTMENT OF HEALTH AND HUMAN SERVICES

4. PROPOSED EFFECTIVE DATE: July 1, 2012

5. TYPE OF PLAN MATERIAL *(Check One)*

☐ NEW STATE PLAN ☐ AMENDMENT TO BE CONSIDERED AS NEW PLAN ☑ AMENDMENT

COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT *(Separate transmittal for each amendment)*

6. FEDERAL STATUTE/REGULATION CITATION: 42 CFR 431, ~~432 and 433~~

7. FEDERAL BUDGET IMPACT
a. FFY 2012 $ 0
b. FFY 2013 $ 0

8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT: ~~Attachment~~ ~~Supplement~~ 7.5, Pages 1, 2, 3, 3.1, 4, 5 and 6 of 6

9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT *(If Applicable)*: Same pages except 3.1 which is A New page.

10. SUBJECT OF AMENDMENT: Appeals Updates

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

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

2012

12. SIGNATURE OF STATE AGENCY OFFICIAL: /S/

13. TYPED NAME: Cynthia B. Jones

14. TITLE: Director

15. DATE SUBMITTED: 9/26/12

16. RETURN TO

Dept. of Medical Assistance Services
600 East Broad Street, #1300
Richmond VA 23219

Attn: Regulatory Coordinator

FOR REGIONAL OFFICE USE ONLY

17. DATE RECEIVED: September 26, 2012

18. DATE APPROVED: DEC 12 2012

PLAN APPROVED - ONE COPY ATTACHED

19. EFFECTIVE DATE OF APPROVED MATERIAL: July 1 2012

20. SIGNATURE OF REGIONAL OFFICIAL: /S/

21. TYPED NAME: FRANCIS McCullough

22. TITLE: Associate Regional Administrator

23. REMARKS

Item #9 Pen and INK CHANGE AUTHORIZED TO REFLECT PAGE 3.1 as A New page. - MK

FORM CMS-179 (07/92)

Instructions on Back

Save

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, 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 32.1-325.1of 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.

"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, courier or other hand delivery, facsimile, electronic mail or electronic submission.

12VAC 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 supercede 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 sent by U.S. mail, to their last known address, within 3 days after DMAS sends the item by U.S. mail. It is presumed that providers receive items sent by email or facsimile, to their last known email address or facsimile number, on the date sent.

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.

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 DMAS' main office in Richmond, Virginia, or at such other place as agreed to by the parties.

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 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. Documents that are filed with the DMAS Appeals Division or the hearing officer after 5:00 pm eastern time on the due date shall be untimely.

12VAC 30-20-530. Reserved.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

INFORMAL AND FORMAL PROVIDER APPEALS

PART II. INFORMAL APPEALS

12 VAC 30-20-540. Informal appeals.

A. Providers appealing a DMAS decision 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 notice of informal appeal shall identify the issues being appealed. Failure to file a written notice of informal appeal that identifies the issues being appealed within 30 days of receipt of the decision 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 shall result in an administrative dismissal of the appeal.

B. 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. 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. 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.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

INFORMAL AND FORMAL PROVIDER APPEALS

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. 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 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: 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 alleged non-substantive deficiencies that the provider knows or reasonably should know exist. DMAS shall have 12 days after the DMAS Appeals Division's receipt of the provider's written notice to address or cure any alleged deficiencies. 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.

C. 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 appeals agent shall be considered.

D. 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. 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.

F. The informal appeal decision shall be issued within 180 days of receipt of the notice of informal appeal.

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 12 VAC 30-20-540 shall begin to run effective with the date of the remand, unless otherwise specified within the remand.

12VAC 30-20-550. Reserved.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

INFORMAL AND FORMAL PROVIDER APPEALS

PART III. FORMAL APPEALS

12 VAC 30-20-560. Formal appeals.

A. Any 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. Failure to file a written notice of formal appeal that identifies the issues being appealed within 30 days of receipt of the informal appeal decision shall result in dismissal of the appeal.

B. DMAS and the provider shall transmit to the other party and file with the hearing officer all documentary evidence on which DMAS or the provider relies 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. DMAS and the provider shall transmit to the other party and file with the hearing officer any objections to the admissibility of documentary evidence 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 objections within seven days of the filing of the objections.

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 shall not be extended or otherwise changed.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

INFORMAL AND FORMAL PROVIDER APPEALS

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 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. 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. If the hearing officer does not submit a recommended decision within 120 days, then DMAS shall give written notice to the hearing officer and the Executive Secretary of the Supreme Court that a recommended decision is due.

G. 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 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. The DMAS director shall issue the final agency decision within 60 days of receipt of the hearing officer's recommended decision.

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