




COMMONWEALTH of VIRGINIA
Office of the Attorney General

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MEMORANDUM

TO: **BRIAN MCCORMICK**
Director of Policy and Research Division
Department of Medical Assistance Services

FROM: **ABRAR AZAMUDDIN** 
Assistant Attorney General

DATE: **April 10, 2015**

SUBJECT: **Proposed Regulations Regarding Provider Appeals**

I have reviewed the proposed regulations that will update and change the process for provider appeals. Based on my review, DMAS has the authority to promulgate these regulations, subject to compliance with the provisions of Article 2 of the Administrative Process Act and has not exceeded that authority.

Virginia Code §§ 32.1-324 and 32.1-325 grant to the Board of Medical Assistance Services the authority to administer and amend the plan for Medical Assistance and authorizes the Director of DMAS to administer and amend the plan for Medical Assistance according to the Board's requirements. The Code of Virginia § 32.1-325.1 provides for a provider appeal process. The authority for these proposed regulations derives from Virginia Code §§ 32.1-325 and 32.1-325.1.

If you have any questions or need additional information, please feel free to contact me at 786-6004.

cc: Kim F. Piner
Senior Assistant Attorney General



Logged in: aa

Proposed Text

Action: Appeal Regulation Updates

Stage: Proposed

4/9/15 8:19 AM [latest] ▼

12VAC30-20-500

Part XII

Provider Appeals

12VAC30-20-500. 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 32.1-325.1 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 to send by means of the United States mail, courier or other hand delivery, facsimile, electronic mail, or electronic submission.

12VAC30-20-520

12VAC30-20-520. Provider appeals: general provisions.

A. This part governs all DMAS informal and formal provider appeals and ~~shall supersede~~ supersedes 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 ~~mail~~ transmit all items to the last known address of the provider. It is presumed that DMAS ~~mails~~ transmits items on the date noted on the item. It is

presumed that providers receive items mailed transmitted by United States mail to their last known address within three days after DMAS mails transmits the item by United States mail. It is presumed that providers receive items transmitted by electronic mail or facsimile, to their last known electronic mail address or facsimile number, on the date transmitted. It is presumed that the items are received upon the date and time of delivery to the provider's last known address by a courier. 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.

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~~ 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 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 on the due date shall be untimely.

12VAC30-20-540

12VAC30-20-540. 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. Notice of informal appeal.~~

1. 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.

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 ~~being appealed~~, adjustments or items that the provider is appealing.

3. Providers appealing 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 within 30 days of receipt of the decision or within 90 days of receipt of the notice of program reimbursement shall result in dismissal of the appeal. Failure to file a written notice of informal appeal 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 dismissal of the appeal, with the information required by subdivision (A)(2) or (A)(3) of this section shall result in an administrative dismissal.

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 or actions 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.

B. 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. DMAS and shall mail 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. The case summary shall address each adjustment, patient, service date, or other disputed matter and shall state DMAS' position for each adjustment, patient, service date, or other disputed matter. The case summary shall contain the factual basis for each adjustment, patient, service date, or other disputed matter and any other information, authority, or documentation DMAS relied upon in taking its action or making its decision. 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 in the detail specified within 30 days of the filing of the provider's notice of informal appeal within 30 days of the filing of the written notice of informal appeal shall result in dismissal in favor of the provider on those issues not addressed in the detail specified.

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 in the case summary 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 providers notice of deficiency, DMAS shall have 12 days to address the alleged deficiency or deficiencies. If DMAS does not address the alleged deficiency or does not address the alleged deficiency to the provider's satisfaction, the alleged deficiency or deficiencies 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 above. 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 or issues to which the alleged deficiency pertains.

C. 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 appeals agent shall be considered.

~~2. The conference may be recorded at the discretion of the informal appeals agent and solely for the convenience of the informal appeals agent. Since Because 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. no other recordings or transcriptions shall be permitted. Any recordings made for the convenience of the informal appeals agent shall not be released to either DMAS or the provider.~~

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.

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

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 section shall begin to run effective with the date that the document containing the remand is date-stamped by the DMAS Appeals Division in Richmond, Virginia.

12VAC30-20-560

12VAC30-20-560. Formal appeals.

A. Any provider Providers 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 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 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.

B. Documentary evidence.

1. Objections to documentary evidence, opening briefs and reply briefs, shall be filed with the DMAS Appeals Division on the date specified below. The hearing officer shall only consider those documents or pleadings that are filed within the required timeline. DMAS and the provider shall also transmit any required document to the other party and to the hearing officer on the date of filing;

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. ~~DMAS and the provider shall exchange 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 file 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, as required by the Code of Virginia § 32.1-325.1(B) 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 exchange 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 exchange 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.~~

~~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~~ the filing of the formal appeal ~~request~~notice. If the hearing officer does not submit a recommended decision within 120 days of the filing of the notice of formal appeal, 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. 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 ~~30~~ 14 days of receipt of the DMAS director's letter. Only exceptions filed within ~~30~~ 14 days of receipt of the DMAS director's letter shall be considered. ~~The DMAS director shall issue the final agency case decision within 60 days of receipt of the hearing officer's recommended decision.~~

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.