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Final Regulation Agency Background Document

Agency name	Department of Medical Assistance Services
Virginia Administrative Code (VAC) citation(s)	12 VAC 30-20-500 et seq
Regulation title(s)	General Provider Administrative Appeals
Action title	Appeal Regulation Updates
Date this document prepared	4/4/2016

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The sections of the State Plan for Medical Assistance that are affected by this action are 12 VAC 30-20-500, 520, 540, and 560 (General Provider Administrative Appeals). The regulatory changes herein specifically address the DMAS timelines and specifications for filing required documentation, including the process for addressing the sufficiency of the contents of case summaries. The method and timing of the filing and exchange of documentation is updated to include electronic transmission and the Department's authority to take administrative action to dismiss untimely, unauthorized or insufficient appeal requests is clarified.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

DMAS = Department of Medical Assistance Services

Statement of final agency action

Please provide a statement of the final action taken by the agency including:1) the date the action was taken;2) the name of the agency taking the action; and 3) the title of the regulation.

I hereby approve the foregoing Regulatory Review Summary with the attached regulation pages entitled Appeals Regulations Updates, and adopt the action stated therein. I certify that this final regulatory action has completed all the requirements of the Code of Virginia § 2.2-4012, of the Administrative Process Act.

April 4, 2016

/signature/

Date

Cynthia B. Jones, Director

Dept. of Medical Assistance Services

Legal basis

Please identify the (1) the agency (includes any type of promulgating entity) and (2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency's overall regulatory 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 and 325, authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance according to the Board's requirements. The Code of Virginia (1950) as amended, § 32.1-325.1 provides for a provider appeal process. The Medicaid authority as established by § 1902 (a) of the Social Security Act [42 U.S.C. 1396a] provides governing authority for payments for services.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The purpose of this regulatory action is to comply with the legislative mandate and address recent case law and administrative decisions. The case law and administrative decisions have created the need to clarify existing appeals processes and codify emerging processes made urgent by court and administrative case decisions. The increasing volume of appeals generated by provider audits and other utilization review mandates have also created a need for this regulatory action. Additionally, recent case decisions such as VA Department of Medical Assistance Services v. Patient Transportation System, 58 Va.App.328, 709 S. E. 2d 188 (2011), and its predecessor appeal in circuit court have necessitated clarifying the means by which documentation can be transmitted and the manner in which alleged deficiencies in case summaries can be addressed.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both.

The section of the State Plan for Medical Assistance that is affected by this action is General Provider Administrative Appeals (Attachment 7.5) (12 VAC 30-20-500 *et seq.*).

CURRENT POLICY

These appeal regulations were originally promulgated in 2000 and have been substantively revised only once since that time in 2009. From the onset of these regulations, the number of appeal actions has more than tripled to the current day. In 2000 and 2009, there was no need to provide for administrative dismissals, such as those that exist for client/recipient appeals, provide for mutually agreed upon time extensions, establish a timely process for providers to challenge alleged deficiencies in case summaries and provide consistent and effective timelines for appeal actions resulting from a remand by court order. The current process also permits exchange of documentation solely by U.S. mail, with no provision for electronic transmittal.

ISSUES

The increased volume of provider appeals over the past decade has taxed the resources of the Department's appeals process in a manner that is not sustainable without updating, clarifying and providing greater consistency. Specifically, a consistent timeline and method for filing documentation within normal business hours and one that allows for transmission methods other than solely U.S. mail is essential to functioning, including electronic transmission. Recent case decisions such as VA Department of Medical Assistance Services v. Patient Transportation System, 58 Va.App.328, 709 S. E. 2d 188 (2011), and its predecessor appeal in circuit court have necessitated clarifying the means by which documentation can be transmitted and the manner in which alleged deficiencies in case summaries can be addressed. Clarification as to the content of case summaries and the provider's identification of those issues the provider wishes the case summary to address are critical for the agency to comply with the law and provide a thorough

case summary. Increases in the number of case remands necessitate a uniform method of processing remanded cases by all hearing officers. The growth in the number of appeals over the last decade necessitates that DMAS streamline the process for administratively dismissing untimely, unauthorized and insufficient appeal requests while maintaining due process through the right to appeal such action. The elements of recommended decisions in formal hearings are also streamlined and clarified. Lastly, the volume of formal appeals necessitates that the parties to the appeal be permitted some consistent and defined level of flexibility to extend and adjust appeal timelines for their specific circumstances, where the timeline is not dictated by state or federal statute.

RECOMMENDATIONS

The proposed regulations specifically address the issues identified above, including clarity and consistency regarding DMAS' timelines for appeals and remands, specifications for time and method of filing required documentation, the process for challenging the sufficiency of case summaries and clarification of the Department's process for administrative dismissals.

This action is critical to keeping abreast of the caseload increases due to enrollment growth and the increase in number, type and complexity of provider audits and initiatives aimed at fraud, waste and abuse. Improved consistency in methodology ensures fair and equal processing of appeals and maintenance of due process.

Issues

Please identify the issues associated with the proposed regulatory action, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.

Appeal regulatory timetables were established a decade ago and at that time, the volume of appeals was less than one-third of the present day. Over time, the volume of appeals has significantly increased, requiring regulatory clarification and updating. These recommended changes reflect the realities that the hearing officers and all affected parties face in attempting to process appeals and meet timelines that, over time, have become outdated. A consistent timeline and method for filing documentation within normal business hours and one that allows for methods other than solely U.S. mail, including electronic transmission, is essential to functioning efficiently. Recent case decisions such as VA Department of Medical Assistance Services v. Patient Transportation System, 58 Va.App.328, 709 S. E. 2d 188 (2011), and its predecessor appeal in circuit court have necessitated clarifying the means by which documentation can be transmitted and the manner in which alleged deficiencies in case summaries can be addressed. Clarification as to the content of case summaries and the provider's identification of those issues the provider wishes the case summary to address are critical for the agency to comply with the law and provide a sufficient case summary that addresses all of the provider's issues. Increases in

the number of case remands necessitate a uniform method of processing such cases consistently by all hearing officers.

The growth in the number and complexity of appeals over the decade necessitates that DMAS streamline the process for administratively dismissing untimely, unauthorized and insufficient appeal requests while maintaining due process. The elements of recommended decisions in formal hearings are also streamlined and clarified. Lastly, the volume of formal appeals necessitates that the parties to the appeal be permitted some consistent and defined level of flexibility to extend and adjust appeal timelines for their specific circumstances, by mutual consent, where the timeline is not dictated by state or federal statute.

The primary advantage of the proposed action is to guarantee that provider appeals are afforded due process through clear and consistent processes that are not compromised as volume increases. The public is served through the agency’s ability to address concerns of the courts in their recent decisions and assure that efficiency of available limited resources is maximized without compromising due process. Updating the existing regulations to reflect the practices of an increasingly digital and electronic business model improves efficiency and quality of service to providers and the public. DMAS sees no disadvantages to the proposed modifications herein.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no requirements more restrictive than federal requirements. There are no requirements that exceed applicable federal requirements. The proposed regulations set forth processes to remain in compliance with statutory timelines and due process requirements for appeals.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No localities will be uniquely affected by these regulations as they apply statewide.

Family Impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage

economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children; nor encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents. It does not strengthen or erode the marital commitment, but may decrease disposable family income depending upon which provider the recipient chooses for the item or service prescribed.

Changes made since the proposed stage

*Please list all changes that made to the text of the proposed regulation and the rationale for the changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. *Please put an asterisk next to any substantive changes.*

Section number	Requirement at proposed stage	What has changed at final stage	Rationale for change
12 VAC 30-20-520C	This section, addressing transmission of items by the parties, did not provide for transmittal through the newly created provider electronic mailbox portal.	Electronic transmittals have now been included in the section.	Language was clarified in response to public comment.
12 VAC 30-20-520I	Items filed after 5 pm on the due date will be deemed filed on the next day that DMAS is officially open.	Comment was received regarding all other items delivered after DMAS official hours. Language was clarified to state that all items filed after DMAS official business hours are deemed filed on the next day that DMAS is officially open.	Correction of inadvertent omission of items other than items on deadline is in response to public comment.
12 VAC 30-20-560B	Specifies timeline for filing and transmittal of copies.	Language specifies that the filing party transmits a copy to the other party and the Hearing Officer at the time of filing.	Grammatical correction. No substantive change.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate. Please distinguish between comments received on Town Hall versus those made in a public hearing or submitted directly to the agency or board.

Commenter	Comment	Agency response
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<p>Julia Eberle</p>	<p>1. What date will DMAS use as the date of delivery for electronic notices?</p> <p>2. DMAS considers documents delivered after 5:00 pm on the due date to be untimely. How are documents delivered after 5:00 pm on other days treated?</p> <p>3. If a courier delivers properly addressed documents to someone at DMAS other than the Appeals Division and the delivery is date-stamped as received, does DMAS consider that to be filed on the date it was stamped?</p> <p>4. If a party doesn't attend an appeal hearing the case is dismissed, but what if a party is late - will DMAS dismiss that case? What if the party is delayed or has an emergency and calls DMAS - will DMAS dismiss that case?</p>	<p>1. The DMAS electronic mailbox portal for delivery of notices to providers was not in existence when the Proposed Regulations were filed. Consistent with all other notices transmitted by DMAS the date that DMAS transmits an item electronically shall be the presumptive date of delivery.</p> <p>2. Any document received after 5:00 pm will be date-stamped the next day that DMAS is open.</p> <p>3. The law governing the DMAS appeals process imposes strict sanctions for failure to meet timelines, including automatic default. Certainty in determining the start date for those timelines compels the establishment of a definitive date upon which documents are considered filed. The parties control how and when documents are transmitted. Documents are filed when they are date-stamped by the Appeals Division.</p> <p>4. It is not possible to predict or provide for all of the scenarios that might impact a particular conference, hearing, or one of the parties. Therefore there has been no change made to the regulation with regard to dismissal, which the regulation applies equally to both parties.</p>
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All changes made in this regulatory action

Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections. Explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
<p>12 VAC 30-20-500</p>		<p>Current requirements do not define how documentation is to be transmitted.</p>	<p>Added the phrase "and terms" and deleted a comma from the first line of text.</p> <p>Add the definition of "transmit". This definition provides that documentation can be sent by means of the U.S. Postal Service, courier or other hand delivery, facsimile, electronic mail or other electronic submission.</p>

		<p>Current requirements do not define the term "administrative dismissal."</p>	<p>Term clarification: "transmit" inserted and "mail" deleted to conform to amended language and definitions throughout regulations.</p> <p>Added text to define "Last Known Address."</p> <p>Add the definition of "administrative dismissal" which 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.</p>
<p>12 VAC 30-20-520</p>		<p>Sets parameters for daily activity but does not currently define normal business hours or the practice to be followed when the agency is open only a partial day.</p> <p>Subsection F provides for a change of venue upon agreement of the parties.</p> <p>Current requirements do not indicate the specific time that the day of delivery ends.</p>	<p>In Subsection C insert the term "transmit" in place of the term "mail" and adjust references accordingly to conform to amended language and definitions throughout the regulations. Also added text clarifying receipt of e-mail and fax, presumption of receipt and transmittal dates.</p> <p>Subsection E clarifies that its provision (extending appeal deadlines when DMAS is closed) also applies to days that DMAS is 'partially closed.' There are times when DMAS is unexpectedly closed mid-day by reason of weather, holiday leave or other reasons. Providers and DMAS' outside contractors are often unaware of early closing and should not be penalized if they cannot deliver documents that are on deadline. This amendment clarifies that the extension due to DMAS' closure also pertains to partial day closures.</p> <p>Subsection F – added language clarifying which parties would have to give written agreement to change venue in informal and formal hearings.</p> <p>Subsection I clarifies that day of delivery ends at normal agency business hours of 5:00 pm.</p>
<p>12 VAC 30-20-540</p>		<p>Sets forth the requirements for processing an informal appeal.</p>	<p>Subsection A is amended to clarify the requirements for notices of informal appeal.</p>

<p>12 VAC 30-20- 540</p>		<p>Specifies that recordings are solely for use by the informal appeal agent.</p> <p>Current requirements do not address the issue of time periods when appeals are remanded back to the Appeals Division.</p>	<p>Subsection B adds text addressing authorizations for billing companies, exhaustion of administrative remedies and when appeals shall be administratively dismissed.</p> <p>Subsection C clarifies case summary obligations and timelines.</p> <p>In Subsection D, added text to clarify that "solely" means that recordings other than those for the use of the Informal Appeals Agent are prohibited and the Informal Appeal Agent's recording shall not be released to the parties.</p> <p>Added Subsection F to clarify that 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 shall begin to run effective with the date that the document containing the remand is date-stamped by the DMAS Appeals Division.</p>
<p>12 VAC 30-20- 560</p>		<p>Sets forth the requirements for processing a formal appeal.</p> <p>Current requirement deadline is 30 days for the parties' submission of "exceptions" to the Hearing Officer's recommended decision.</p>	<p>Subsection A adds text to clarify prerequisites and requirements for notices of formal appeal. The phrase "Any provider" is changed to "A provider".</p> <p>Subsection B adds text to clarify the timelines for formal appeals.</p> <p>Subsection C codifies current practice of commencement and extension of 45-day timeline by mutual consent of the hearing officer and all parties.</p> <p>The timelines in Subsection E were moved to Subsection B, and Subsection E is deleted.</p> <p>Subsection E (formerly subsection F) is added to clarify the requirements for recommended decisions.</p> <p>Subsection F (formerly subsection G) amends the deadline for the parties' submission of "exceptions" to the Hearing Officer's Recommended Decision from the current 30 days to 14 days. This shortens the timeline for the filing of exceptions, to give the Agency needed additional time to review and address exceptions and to discuss the Final Agency Decision draft with the Agency Counsel. The last sentence of former</p>

			Subsection G (now subsection F) was moved to form a new Subsection G (for clarity).
12 VAC 30-20-520C		This section addresses transmission of items by the parties.	Language was clarified in response to public comment. Electronic transmission of items through the recently created electronic provider mailbox portal did not exist when these regulations were last promulgated. Electronic transmissions have now been included in this section.
12 VAC 30-20-520I		Items filed after 5 pm on the due date will be deemed filed on the next day that DMAS is officially open.	Comment was received regarding all other items delivered after DMAS official business hours. In response to public comment, correction was made to the inadvertent omission of items other than items on deadline.
12 VAC 30-20-560B		Language specifies that filing takes place at DMAS Appeals Division with copies simultaneously sent to the other party and hearing officer.	A grammatical correction was made. There is no substantive change.