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Fast-Track Regulation
Agency Background Document

Agency name	Department of Medical Assistance Services
Virginia Administrative Code (VAC) Chapter citation(s)	12 VAC 30-20-520
VAC Chapter title(s)	Provider Appeals: general provisions
Action title	Provider Appeals Update
Date this document prepared	February 1, 2023

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code.*

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

This regulatory action clarifies when documents are considered filed and adds the Appeals Information Management System (AIMS) to the Virginia Administrative Code in accordance with the Department of Medical Assistance Services' (DMAS') current provider appeals practices.

Documents submitted during the provider appeals process are considered filed when they are either physically date stamped by the DMAS' Appeals Division or date stamped through electronic means when the item completes transmission to the Appeals Division, including via the AIMS.

AIMS is a secure web-based portal that provides a convenient way for providers and their authorized representatives to submit provider appeals, track the status of appeals, upload documents, review appeal documents, and withdraw appeals. AIMS helps ensure provider appeals

are processed pursuant to regulations governing Medicaid appeals, particularly the application of dismissal penalties if certain steps are not completed within specified timeframes. Providers without easy access to the AIMS portal can continue to use electronic mail and facsimile to electronically submit documents. They can also use regular U.S. mail or a delivery service.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

AIMS=Appeals Information Management System
DMAS=Department of Medical Assistance Services

Statement of Final Agency Action

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.

As of February 1, 2023, DMAS hereby approves the foregoing Regulatory Review Summary entitled "Provider Appeals" and adopts the action stated therein. DMAS certifies that this regulatory action has completed all the requirements of the Code of Virginia § 2.2-4012 of the Administrative Process Act.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM procedures, "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

Consistent with Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process.

The Code of Virginia § 32.1-325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance and to promulgate regulations. The Code of Virginia § 32.1-324, grants the Director of the Department of Medical Assistance Services the authority of the Board when it is not in session.

The changes in this regulatory action are expected to be non-controversial because they do not represent changes in practice, and do not involve any costs to Medicaid providers or to the Commonwealth. Instead, they clarify when documents are considered filed and they add the AIMS portal to the Virginia Administrative Code. The AIMS portal neither restricts access to provider appeals nor negatively impacts providers. Providers without easy access to the AIMS portal can continue to use other methods to submit appeals and associated documents.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

The Code of Virginia § 32.1-325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance and to promulgate regulations. The Code of Virginia § 32.1-324, grants the Director of the Department of Medical Assistance Services the authority of the Board when it is not in session.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

These changes are essential to protect the health, safety, and welfare of citizens because they clarify when documents are considered filed during the provider appeals process, including when documents are filed via the AIMS portal. This makes it easier for providers to understand the appeals process, which in turn, may increase the likelihood that they continue to serve Medicaid members.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

A provider appeal is a request for a neutral party to review the action taken by DMAS or one of its contractors that impacts either a provider's reimbursement for services rendered to a Medicaid recipient or a provider's enrollment as a Medicaid participating provider. It is a two-step process that begins with an informal appeal. If the provider disagrees with the decision issued, the second step is to file a formal appeal.

Documents submitted during the provider appeals process are considered filed when they are either physically date stamped by DMAS' Appeals Division or date stamped through electronic means when the item completes transmission to the Appeals Division, including via the AIMS portal.

In 2021, DMAS launched the AIMS portal as a way for providers and their authorized representatives to submit informal and formal provider appeals, track the status of appeals, upload documents, review appeal documents, and withdraw appeals. AIMS helps ensure provider appeals are processed pursuant to regulations governing Medicaid appeals, particularly the application of dismissal penalties for DMAS and providers if certain steps are not completed within specified timeframes. Providers without easy access to the AIMS portal can continue to use electronic mail

and facsimile to electronically submit documents. They can also use regular U.S. mail or a delivery service.

Issues

Identify the issues associated with the regulatory change, 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, include a specific statement to that effect.

The primary advantages of this regulation are that it clarifies that documents submitted during the provider appeals process are considered filed when they are either physically date stamped by the Appeals Division or date stamped through electronic means when the item completes transmission to the Appeals Division, including via the AIMS portal. AIMS provides a convenient way for providers to file an appeal, submit documents that can be electronically timestamped, and monitor the status of appeals online throughout the process. AIMS also helps ensure provider appeals are processed pursuant to regulations governing Medicaid appeals. This regulation does not create any disadvantages to the public, the agency, or the Commonwealth.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.

There are no requirements in this regulation that are more restrictive than applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

No state agencies, localities, or other entities are particularly affected by this change.

Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.

Impact on State Agencies

For your agency: projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources	There are no DMAS costs associated with these changes.
For other state agencies: projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	There are no costs to other state agencies.
For all agencies: Benefits the regulatory change is designed to produce.	This regulatory action will clarify that documents submitted during the provider appeals process are considered filed when they are either physically date stamped by the Appeals Division or date stamped through electronic means when the item completes transmission to the Appeals Division, including via the AIMS portal.

Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

Projected costs, savings, fees or revenues resulting from the regulatory change.	None.
Benefits the regulatory change is designed to produce.	This regulatory action will clarify that documents submitted during the provider appeals process are considered filed when they are either physically date stamped by the Appeals Division or date stamped through electronic means when the item completes transmission to the Appeals Division, including via the AIMS portal.

Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	Providers
Agency's best estimate of the number of such entities that will be affected. Include an estimate	All DMAS enrolled providers have the right to appeal adverse actions. DMAS currently has

of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million.	approximately 80,000 unique enrolled providers, most of which are small businesses.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	There are no costs associated with these changes.
Benefits the regulatory change is designed to produce.	This regulatory action will clarify that documents submitted during the provider appeals process are considered filed when they are either physically date stamped by the Appeals Division or date stamped through electronic means when the item completes transmission to the Appeals Division, including via the AIMS portal.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

No alternatives can achieve the purpose of clarifying that documents submitted during the provider appeals process are considered filed when they are either physically date stamped by the Appeals Division or date stamped through electronic means when the item completes transmission to the Appeals Division, including via the AIMS portal.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B of the Code of Virginia, describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

The change to clarify when documents are considered filed is beneficial to providers, because during the provider appeals process, dismissal penalties may be applied to DMAS and/or providers if certain steps are not completed within specified timeframes.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

Consistent with § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

DMAS is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: https://townhall.virginia.gov. Comments may also be submitted by mail, email or fax to Meredith Lee, DMAS, 600 E. Broad Street, Richmond, VA 23219, 804-371-0552, or Meredith.Lee@dmas.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
12VAC30-20-520		No mention that date stamps can be applied electronically.	Text changes are made to indicate that a date stamp can be reflected through electronic means when using electronic mail, facsimile, or DMAS' online appeals portal.