The Medicaid Agency meets the requirements of 42 C.F.R. § 435.725 and § 435.832, and § 1924 of the Social Security Act, in that the agency will deduct amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party, including medically necessary or remedial care recognized under State law but not covered under the State's Medicaid plan, subject to reasonable limits as follows:

All medical or remedial goods and services not subject to payment by a third party and not covered by Medicaid but recognized under State law, must be prescribed by a physician, dentist, podiatrist or other practitioner with prescribing authority pursuant to Virginia law. The maximum amount that may be deducted from the [~~patient-pay amount portion~~ patient's income] for nursing facility residents shall be the maximum amount [~~allowable by~~ reimbursed by the higher of] either Medicare or Medicaid, [~~whichever is higher,~~] for the same non-covered items or services.

[If neither Medicaid nor Medicare has an allowed amount for the service rendered, then DMAS will protect from the individual's income:

A. For services, the amount of the provider's usual and customary charge; or

B. For supplies and durable medical equipment, the actual invoice cost plus the lesser of either:

1. The labor charges; or

2. A 30% markup from the invoice]

CERTIFIED: I hereby certify that these regulations are full, true, and correctly dated.

_____ _____

Date

Patrick W. Finnerty, Director
Dept. of Medical Assistance Services

12VAC30-130-620. Limitations.

A. A DMAS-122 adjustment request shall always be used as the last source of payment. If a recipient has other sources of possible payment (i.e., Medicare, major medical insurance, prescription insurance, dental insurance, etc.), payment must be sought first from those other sources.

B. The maximum amount for non-covered medically necessary items or services that can be allowed as adjustments to the patient-pay amount for nursing facility residents shall be the [~~maximum~~] amount [~~allowable by either Medicare or Medicaid, whichever is higher, for the same non-covered items or services~~ specified in 12 VAC 30-40-235].

C ~~B~~. Only the cost of medically necessary, resident-specific, customized, noncovered items or services may be deducted from patient pay. This shall include, but not necessarily be limited to, electric, motorized, or customized wheelchairs and other equipment not regularly supplied to residents by the facility as part of the cost of care. Supplies, equipment, or services used in the direct care and treatment of residents are covered services and must be provided by the facility. Covered items and services include, but are not necessarily limited to, standard wheelchairs, recliners, geriatric chairs, special mattresses, humidifiers, cots, and routine podiatry care (e.g., trimming nails for onychauxis, cleaning and soaking the feet, and other services performed in the absence of localized illness, injury, or symptoms involving the foot). Expenses incurred by the facility for covered items and services are considered "allowable expenses" and are covered by

Medicaid as part of reimbursement to the facility for the resident's care; these costs cannot be deducted from patient pay.

D. ~~C.~~ Extenuating circumstances shall be considered for the provision of podiatry care when corrective trimming is performed to prevent further complications in a patient who has a systemic condition that has resulted in severe circulation deficits or areas of desensitization in the legs or feet. Trimming of nails for a systemic condition is limited to once every 60 days and must be medically necessary. In such cases, the facility is not responsible for routine podiatry care.

E. ~~D.~~ DMAS-122 adjustments shall be allowed for the cost of medically or remedially necessary services provided prior to Medicaid eligibility or prior to admission. Any decision made by DMAS or DSS to deny a service may be appealed to DMAS. Appeals must be made in writing by the resident or his legally appointed representative, as provided for in DMAS Client Appeals Regulations (12VAC30-110-10 et seq.).

F. ~~E.~~ The facility shall monitor the proper care of the resident's medical supplies and equipment. Requests for adjustment made because an item is lost or broken by facility staff must include documentation on the resident's interdisciplinary plan of care regarding proper care and treatment of the item. When loss or breakage is incurred as a result of facility staff following improper practices, the facility must replace the item.

G. ~~F.~~ All requests for DMAS-122 adjustments submitted by providers to either DMAS or DSS shall include:

1. The recipient's correct Medicaid identification number;

2. The current physician's orders for the noncovered service (not required for replacement of hearing aid batteries or eyeglass frames or for repair to hearing aids or eyeglasses);

3. Medical justification for the service being requested (see subsection H ~~G~~ of this section);

4. The service description;

5. Actual cost information;

6. Documentation that the recipient continues to need the equipment for which a repair, replacement, or battery is requested;

7. A statement of proof of denial or noncoverage by other insurance; and

8. A copy of the most current, fully completed Minimum Data Set (MDS) and quarterly review.

H. ~~G.~~ Medical justification documentation as specified in subdivision G ~~F~~ 3 of this section shall include the following:

1. Physician prescription;

2. Identification of the diagnosis related to the reason for the request;

3. Identification of the resident's functional limitation;

4. Identification of the quantity needed, frequency of use, estimated length of use; and

5. Identification of how the item or service will be used in the resident's environment.

~~H.~~ I. Adjustments of a recipient's patient pay amount may only be authorized by DMAS or DSS.

CERTIFIED: I hereby certify that these regulations are full, true, and correctly dated.

_____ _____

Date

Patrick W. Finnerty, Director
Dept. of Medical Assistance Services