



COMMONWEALTH of VIRGINIA

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MEMORANDUM

TO: **MEREDITH LEE**
Policy, Regulations, and Manuals Supervisor
Virginia Department of Medical Assistance Services

FROM: **USHA KODURU** *UK*
Assistant Attorney General

DATE: **June 12, 2023**

SUBJECT: **12VAC30-50-520 Provider Appeals (6180/9918)**

I am in receipt of the attached action to clarify 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. You asked the Office of the Attorney General to review and determine if DMAS has the legal authority to amend this regulation and if it comports with state and federal law.

Based on my review, it is my view that the Director, acting on behalf of the Board of Medical Assistance Services pursuant to Virginia Code §§ 32.1-324 and 325, has the authority to amend this regulation subject to compliance with the provisions of Article 2 of the Administrative Process Act and has not exceeded that authority.

Pursuant to Va. Code § 2.2-4012.1, if an objection to the use of the fast-track process is received within the 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, DMAS shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process set out in this article with the initial publication of the Fast-Track regulations serving as the Notice of Intended Regulatory Action

If you have any questions or need additional information about this action, please contact me at 786-4074.

cc: Kim F. Piner, Esquire

Attachment

12VAC30-20-520 Provider appeals: general provisions

A. This part governs all DMAS informal and formal provider appeals and 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 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 transmitted by United States mail to their last known address within three days after DMAS transmits the item by United States mail. It is presumed that providers receive items transmitted by facsimile, electronic mail, or other electronic submission on the date transmitted. It is presumed that providers receive items transmitted by courier or other hand delivery the date of delivery to the provider's last known address. 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. When DMAS or a provider is using the online appeals portal administered by the DMAS Appeals Division, the date stamp will be automatically applied when the item completes transmission to the Appeals Division. When email or facsimile is used, the date stamp will be reflected on the date and time of the transmission. If other means are used, such as mail or hand delivery, the date stamp will be applied physically by the DMAS Appeals Division upon receipt.

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 upon in writing by 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 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 shall be date stamped on the next day DMAS is officially open. Any document that is filed with the DMAS Appeals Division after 5 p.m. Eastern Time on the due date shall be untimely.