



COMMONWEALTH of VIRGINIA

Office of the Governor

Daniel Carey, MD
Secretary of Health and Human Resources

September 15, 2021

Todd McMillion
Director
Department of Health and Human Services
Centers for Medicare and Medicaid Services
233 North Michigan Ave., Suite 600
Chicago, Illinois 60601

Dear Mr. McMillion:

Attached for your review and approval is amendment 21-028, entitled "Sick Leave, Overtime, Private Duty Nursing Rate Increase" to the Plan for Medical Assistance for the Commonwealth. I request that your office approve this change as quickly as possible.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel Carey".

Daniel Carey, MD, MHCM

Attachment

cc: Karen Kimsey, Director, Department of Medical Assistance Services
CMS, Region III

Transmittal Summary

SPA 21-028

I. IDENTIFICATION INFORMATION

Title of Amendment: Sick Leave, Overtime, Private Duty Nursing Rate Increase

II. SYNOPSIS

Basis and 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, authorizes the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the Plan for Medical Assistance according to the Board's requirements.

The 2021 Appropriations Act (Special Session 1) contains additional authority related to the changes in this SPA:

Item 313.YYYY states that DMAS “shall increase rates for skilled and private duty nursing services to 80 percent of the benchmark rate developed by the department and consistent with the appropriation available for this purpose.”

Item 313.ZZZZ states that DMAS “shall amend the State Plan for Medical Assistance under Title XIX of the Social Security Act, and any necessary waivers, to authorize time and a half up to eight hours and effective July 1, 2021, up to 16 hours for a single attendant who works more than 40 hours per week for attendants providing Medicaid-reimbursed consumer-directed (CD) personal assistance, respite and companion services.”

Item 313.BBBBBB states that DMAS “shall seek federal authority through waiver and State Plan amendments under Title XIX of the Social Security Act to provide sick leave to providers of consumer-directed personal, respite or companion care.”

Purpose: This SPA contains amendments implementing three mandates from the Virginia General Assembly. It also removes the words “and respite” – this change was approved in a previous SPA (21-003) but the change was inadvertently not made on the final page.

Substance and Analysis: The section of the State Plan that is affected by this amendment is “Methods and Standards for Establishing Payment Rate – Other Types of Care.”

Impact: The impact of the changes related to Item 313.YYYY (increase in rates for nursing services) is \$1,230,321 in annual aggregate expenditures in state general funds and \$1,892,322 in federal funds in federal fiscal year 2021.

The impact of the changes related to Item 313.ZZZZ (overtime) is \$5,213,801 in annual aggregate expenditures in state general funds and \$6,009,750 in federal funds in federal fiscal year 2021.

The impact of the changes related to Item 313.BBBBBB (sick leave) is \$678,441 in state general funds and \$690,791 in federal funds in federal fiscal year 2021.

Tribal Notice: Please see Attachments A-1 and A-2.

Prior Public Notice: Please see Attachment B.

Public Comments and Agency Analysis: N/A



Mcclellan, Emily <emily.mcclellan@dmas.virginia.gov>

Tribal Notice: Skilled/Private Duty Nursing Changes; Consumer-Directed Changes

1 message

Mcclellan, Emily <emily.mcclellan@dmas.virginia.gov> Mon, Aug 16, 2021 at 2:32 PM
To: TribalOffice@monacannation.com, "chiefannerich@aol.com" <chiefannerich@aol.com>, Gerald Stewart <wasandson@cox.net>, Pam Thompson <Pamelathompson4@yahoo.com>, rappahannocktrib@aol.com, regstew007@gmail.com, robert.gray@pamunkey.org, Rufus Elliott <tribaladmin@monacannation.com>, Samuel Bass <samflyingeagle48@yahoo.com>, Stephen Adkins <chiefstephenadkins@gmail.com>, Frank <WFrankAdams@verizon.net>, "bradbybrown@gmail.com" <bradbybrown@gmail.com>, heather.hendrix@ihs.gov, "Garrett, Tabitha (IHS/NAS/RIC)" <tabitha.garrett@ihs.gov>, Kara.Kearns@ihs.gov

Dear Tribal Leaders and Indian Health Programs:

Attached is a Tribal Notice letter from Virginia Medicaid Director Karen Kimsey indicating that the Dept. of Medical Assistance Services (DMAS) plans to submit a State Plan Amendment (SPA) to the federal Centers for Medicare and Medicaid Services. This SPA will increase rates for skilled and private duty nursing, and will allow for overtime and sick leave for providers of consumer-directed care in certain circumstances.

If you would like a copy of the SPA documents or proposed text changes, or if you have any questions, please let us know.

Thank you! -- Emily McClellan

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Emily McClellan
Policy, Regulation, and Member Engagement Division Director
Virginia Department of Medical Assistance Services
600 East Broad Street
Richmond, VA 23219
(804) 371-4300
www.dmas.virginia.gov





Tribal Notice letter (signed).pdf
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COMMONWEALTH of VIRGINIA

Department of Medical Assistance Services

KAREN KIMSEY
DIRECTOR

SUITE 1300
600 EAST BROAD STREET
RICHMOND, VA 23219
804/786-7933
800/343-0634 (TDD)
www.dmas.virginia.gov

August 16, 2021

SUBJECT: Notice of Opportunity for Tribal Comment – State Plan Amendment related to Private Duty and Skilled Nursing Rates, Overtime, and Sick Leave

Dear Tribal Leader and Indian Health Programs:

This letter is to notify you that the Department of Medical Assistance Services (DMAS) is planning to amend the Virginia State Plan for Medical Assistance with the Centers for Medicare and Medicaid Services (CMS). Specifically, DMAS is providing you notice about a State Plan Amendment (SPA) that the Agency will file with CMS related to skilled and private duty nursing rates, overtime, and sick leave as follows:

- Item 313.YYYY states that DMAS “shall increase rates for skilled and private duty nursing services to 80 percent of the benchmark rate developed by the department and consistent with the appropriation available for this purpose.”
- Item 313.ZZZZ states that DMAS “shall amend the State Plan for Medical Assistance under Title XIX of the Social Security Act, and any necessary waivers, to authorize time and a half up to eight hours and effective July 1, 2021, up to 16 hours for a single attendant who works more than 40 hours per week for attendants providing Medicaid-reimbursed consumer-directed (CD) personal assistance, respite and companion services.”
- Item 313.BBBBBB states that DMAS “shall seek federal authority through waiver and State Plan amendments under Title XIX of the Social Security Act to provide sick leave to providers of consumer-directed personal, respite or companion care.”

The tribal comment period for this SPA is open through September 15, 2021. You may submit your comments directly to Emily McClellan, DMAS Policy Division, by phone (804) 371-4300, or via email: Emily.McClellan@dmas.virginia.gov Finally, if you prefer regular mail you may send your comments or questions to: Virginia Department of Medical Assistance Services, Attn: Emily McClellan, 600 East Broad Street, Richmond, VA 23219.

Please forward this information to any interested party.

Sincerely,

A handwritten signature in black ink that reads "Karen Kimsey".

Karen Kimsey



General Notice

Public Notice - Intent to Amend State Plan - Sick Leave, Overtime, Private Duty Nursing Rate

Date Posted: 8/7/2021

Expiration Date: 12/31/2021

Submitted to Registrar for publication: YES

No comment forum defined for this notice.

**LEGAL NOTICE
COMMONWEALTH OF VIRGINIA
DEPARTMENT OF MEDICAL ASSISTANCE SERVICES
NOTICE OF INTENT TO AMEND**

(Pursuant to §1902(a)(13) of the *Act (U.S.C. 1396a(a)(13))*)

THE VIRGINIA STATE PLAN FOR MEDICAL ASSISTANCE

This Notice was posted on August 7, 2021

The Virginia Department of Medical Assistance Services (DMAS) hereby affords the public notice of its intention to amend the Virginia State Plan for Medical Assistance to provide for changes to the *Methods and Standards for Establishing Payment Rates — Other Types of Care (12 VAC 30-80)*.

This notice is intended to satisfy the requirements of 42 C.F.R. § 447.205 and of § 1902(a)(13) of the *Social Security Act*, 42 U.S.C. § 1396a(a)(13). A copy of this notice is available for public review from Emily McClellan, DMAS, 600 Broad Street, Suite 1300, Richmond, VA 23219, or via e-mail at: emily.mcclellan@dmas.virginia.gov

This notice is available for public review on the Regulatory Town Hall (www.townhall.com), on the General Notices page, found at: <https://townhall.virginia.gov/L/generalnotice.cfm>

In accordance with the 2021 Appropriations Act, Items 313.YYYY, ZZZZ, and BBBB, DMAS will be making the following changes:

Methods & Standards for Establishing Payment Rates-Other Types of Care (12 VAC 30-80)

1. In accordance with the 2021 Special Session, Item 313.YYYY, the state plan is being revised to increase rates for skilled and private duty nursing services to 80 percent of the benchmark rate developed by DMAS.

The expected increase in annual aggregate expenditures is \$1,230,321 in state general funds and \$1,892,322 in federal funds in federal fiscal year 2021.

2. In accordance with the 2021 Special Session, Item 313.ZZZZ, DMAS will allow qualifying overtime to be paid at 150% of the rate (time and a half) for consumer-directed personal care services provided under the Early and Periodic Diagnostic and Treatment (EPSDT) program.

The total cost for overtime across all coverage categories (including EPSDT) is \$5,213,801 in state general funds and \$6,009,750 in federal funds in federal fiscal year 2021.

3. In accordance with the 2021 Special Session, Item 313.BBBBBB, DMAS will implement a paid sick leave benefit for qualifying consumer-directed personal care services provided under the Early and Periodic Diagnostic and Treatment (EPSDT) program.

The total cost for qualifying sick across all coverage categories (including EPSDT) is \$678,441 in state general funds and \$690,791 in federal funds in federal fiscal year 2021.

Contact Information

Name / Title:	Emily McClellan / <i>Regulatory Manager</i>
Address:	Division of Policy and Research 600 E. Broad St., Suite 1300 Richmond, 23219
Email Address:	Emily.McClellan@dmas.virginia.gov
Telephone:	(804)371-4300 FAX: (804)786-1680 TDD: (800)343-0634

This general notice was created by Emily McClellan on 08/07/2021 at 2:55pm

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

**METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATE-
OTHER TYPES OF CARE**

16.1 Reimbursement for personal care services for individuals enrolled in the Medicaid Buy-In program described in Attachment 2.6A, Supplement 8a, p 1-3 or for personal care and respite services covered under EPSDT. All governmental and private providers are reimbursed according to the same published fee schedule, located on the Agency's website at the following address: <https://www.dmas.virginia.gov/#/searchcptcodes> <https://www.dmas.virginia.gov/for-providers/general-information/procedure-fee-files-cpt-codes/> The Agency's rates, based upon one-hour increments, were set as of May 1, 2021, and shall be effective for services on and after that date. Qualifying overtime for consumer-directed personal care provided under EPSDT will be paid 150% of the fee schedule, and qualifying sick leave for consumer –directed personal care provided under EPSDT will be at 100% of the fee schedule.

16.2. Private duty nursing services covered under EPSDT as defined per Supplement 1 to Attachment 3.1A&B, page 6.4.8, with provider qualifications on page 6.4.8, are reimbursed based on a 15-minute unit of service in accordance with the State Agency fee schedule. The fee schedule is the same for both governmental and private providers and was set as of ~~July 1, 2016~~ August 8, 2021 and shall be effective for services provided on and after that date. The state agency fee schedule is published on the DMAS website at <https://www.dmas.virginia.gov/#/searchcptcodes> <https://www.dmas.virginia.gov/for-providers/general-information/procedure-fee-files-cpt-codes/>

16.3 Medical Supplies, Equipment and Appliances (assistive technology) covered under EPSDT, as defined per Supplement 1 to Attachment 3.1 A&B, page 6.4.9, with provider qualifications on page 6.4.10. The service shall be reimbursed based upon the total cost of all AT incurred by the provider.

16.4 Reserved.

16.5 Hospice services, as defined per Attachment 3.1 A&B, Supplement 1, pages 33-37. Hospice services payments are effective October 1 annually and are equivalent to the annual Medicaid hospice rates published by CMS. As of July 1, 2019, room and board will be reimbursed at a rate equal to 100 percent of the skilled nursing facility rate for Medicaid members receiving hospice services who reside in a nursing facility. Hospice services shall be paid according to the location of the service delivery and not the location of the Agency's home office. Payments to a hospice for inpatient care are limited according to the number of days of inpatient care furnished to Medicaid members. During the twelve (12) month period beginning October 1 of each year and ending September 30 of the next year, the aggregate number of inpatient days (both general inpatient days and inpatient respite care days) for any given hospice provider may not exceed twenty percent (20%) of the total number of days of hospice care provided to all Medicaid members during the same period.

Services that are included in the hospice reimbursement are: (a) Routine Home Care where most hospice care is provided - Days 1- 60; (b) Routine Home Care where most hospice care is provided-Days 61 and over; (c) Continuous Home Care; (d) Hospice Inpatient Respite Care; (e) Hospice General Inpatient Care; (f) Service Intensity Add-On (SIA) will be made for a visit by a social worker or a registered nurse (RN), when provided during routine home care provided in the last 7 days of a Medicaid member's life. The SIA payment is in addition to the routine home care rate. The SIA Medicaid reimbursement will be equal to the Continuous Home Care hourly payment rate (as calculated annually by CMS), multiplied by the amount of direct patient care hours provided by an RN or social worker for up to four (4) hours total that occurred on the day of service, and adjusted by the appropriate hospice wage index published by CMS.

16.3.1 Effective July 1, 2019, the telehealth originating site facility fee shall be set at 100 percent of the Medicare rate and shall reflect changes annually based on any changes in the Medicare rate.

TN No. 21-028

Approval Date _____

Effective Date 8-8-21

Supersedes

TN No. 21-003

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

**METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATE-
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16.3.1 Effective July 1, 2019, the telehealth originating site facility fee shall be set at 100 percent of the Medicare rate and shall reflect changes annually based on any changes in the Medicare rate.

TN No. 21-028

Approval Date _____

Effective Date 8-8-21

Supersedes

TN No. 21-003