COVID-19 Public Health Emergency Flexibilities, Updated January 14, 2022

The following flexibilities are active. Most of these items are based on the federal public health emergency (PHE) and will remain in place until the end of the federal PHE. Several new items have been added, and will only be in effect during the temporary Virginia PHE that was declared on January 10, 2022.

Flexibility	Status
Suspend all drug co-payments for Medicaid and FAMIS members.	Active
Telehealth policies – as described in prior Medicaid Memoranda issued on March 19, 2020, May 15, 2020, and September 30, 2020 – including waiver of penalties for HIPAA non-compliance and other privacy requirements.	Active
Allow facilities to be fully reimbursed for services rendered to an unlicensed facility (during PHE). *This rule applies to facility based providers only.*	Active
Electronic signatures will be accepted for visits that are conducted through telehealth.	Active
Waivers	
Members who receive less than one service per month will not be discharged from a HCBS waiver.	Active
Any member with a significant change requesting an increase in support due to changes in medical condition and/or changes in natural supports must have an in-person visit.	Active
Allow legally responsible individuals (parents of children under age 18 and spouses) to provide personal care/personal assistance services for reimbursement.	Active
Personal care, respite, and companion aides hired by an agency shall be permitted to provide services prior to receiving the standard 40-hour training.	Active
Allow Community Engagement (CE)/Community Coaching (CC) to be provided through telephonic/video-conferencing for individuals who have the technological resources and ability to participate with remote CE/CC staff via virtual platforms.	Ended 8/1/21*
Allow In-home Support services to be delivered via an electronic method or telehealth of service delivery.	Ended 8/1/21*
Allow Group Day Services to be provided through video conferencing for individuals who have the technological resources and ability to participate with remote Group Day staff via virtual platforms.	Ended 8/1/21*
Residential providers are permitted to not comply with the HCBS settings requirement at 42 CFR 441.301(c)(4)(vi)(D) that individuals are able to have visitors of their choosing at any time.	Active
Allow an extension for reassessments and reevaluations for up to one year past the due date.	Active
Add an electronic method of signing off on required documents such as the person centered service plan.	Active
Allow beneficiaries to receive monthly monitoring when services are furnished on a less than monthly basis.	Active
The State is responding to the COVID-19 pandemic personnel crisis by authorizing case management entities to provide direct services. Therefore, the case management entity qualifies under 42 CFR 441.301(c)(1)(vi) as the only willing and	Active

qualified entity: Current safeguards authorized in the approved waiver will apply to these entities.	
Reduce quality sampling requirements for waiver services due to limited provider capacity to provide files for desk audit.	Active
Allow Therapeutic Consultation activities that do not require direct intervention by the behaviorist to be conducted through telephonic/video-conferencing methods.	Active
The timeframes for the submission of the CMS 372s and the evidentiary package(s) will be extended as needed pursuant to the emergency. In addition, the state may suspend the collection of data for performance measures other than those identified for the Health and Welfare assurance and notes that as a result the data will be unavailable for this time frame in ensuing reports due to the circumstances of the pandemic.	Active
Addiction & Recovery Treatment Services (ARTS)	
Opioid treatment programs may administer medication as take home dosages, up to a 28-day supply.	Active
Allowing a member's home to serve as the originating site for prescription of buprenorphine.	Active
Behavioral Health Services	
Therapeutic Day Treatment (TDT), Intensive In-Home Services (IIH), Mental Health Skill Building (MHSS)~~, Intensive Community Treatment (ICT)~~ and Psychosocial Rehabilitation (PSR). • The service authorization request for new services will be used to track which members are continuing to receive these services, assess the appropriateness of the services being delivered via different modes of treatment, and to determine if this is an appropriate service to meet the member's needs.	Active Grey items effective 7/1/2021
Outpatient Psychiatric Services, Therapeutic Day Treatment (TDT), Intensive In-Home Services (IIH), Mental Health Skill Building (MHSS)~~, Intensive Community Treatment (ICT)~~ and Psychosocial Rehabilitation (PSR). • Face-to-face service requirements will continue to be waived, but documentation shall justify the rationale for the service through a different model of care until otherwise notified. The goals, objectives, and strategies of the plan of care or ISP shall be updated to reflect any change or changes in the individual's progress and treatment needs, including changes impacting the individual related to COVID-19, as well as any newly identified problem. Documentation of this review shall be added to the individual's medical record as evidenced by the dated signatures of the ~~LMHP, LMHP-R, LMHPRP, LMHP-S, QMHP-A, QMHP-C, or QMHP-E~~ appropriate professional for the service being provided and the individual.	Active Grey items effective 7/1/2021
For youth participating in both TDT and IIH, TDT should not be used in person in the home as this would be a duplication of services. TDT may be provided through telehealth to youth receiving IIH (in person or via telehealth) as long as services are coordinated to avoid duplication and ensure efficacy of the treatment provided.	Active
During the PHE, TDT, IIH, MHSS~~, ICT~~ and PSR providers may bill for one unit on days when a billable service is provided, even if time spent in billable activities does not reach the time requirements to bill a service unit. This allowance only applies to the first service unit and does not apply to	Active Grey items effective 7/1/2021

additional time spent in billable activities after the time requirements for the first service unit is reached. Providers shall bill for a maximum of one unit per day if any of the following apply: • The provider is only providing services through telephonic communications. If only providing services through telephonic communications, the provider shall bill a maximum of one unit per member per day, regardless of the amount of time of the phone call(s). • The provider is delivering services through telephonic communications, telehealth or face-to-face and does not reach a full unit of time spent in billable activities. • The provider is delivering services through any combination of telephonic communications, telehealth and in-person services and does not reach a full unit of time spent in billable activities.	
~~Behavioral Therapy (H2033)~~ Applied Behavior Analysis – • Face-to-face service requirements for family adaptive behavior treatment (97156, 97157) will continue to be waived, but documentation shall justify the rationale for the service through a different model of care until otherwise notified. The goals, objectives, and strategies of the ISP shall be updated to reflect any change or changes in the individual's progress and treatment needs, including changes impacting the individual to COVID-19, as well as any newly identified problem. Documentation of this review shall be added to the individual's medical record as evidenced by the dated signatures of the LMHP, LMHP-R, LMHP-RP, LMHP-S, LBA or LABA. • In-person assessment requirements continue to be waived and may be conducted through telemedicine but documentation shall justify the rationale for the service through a different model of care until otherwise notified. The definition of telemedicine can be found in the telehealth supplement to the Mental Health Services Manual.	Active Grey items effective 12/1/2021
~~Behavioral Therapy (H2033)~~ – Applied Behavior Analysis • One service unit equals 15 minutes for this level of care. ~~Effective June 11, 2020, Behavioral Therapy providers~~ ABA service providers do not have a one unit max limit per day for audio-only communications for CPT codes 97156 and 97157.	Active Grey items effective 12/1/2021
~~Crisis Stabilization/Crisis Intervention Services~~ • ~~The appropriateness of a crisis response using telehealth (including telephonic) shall be evaluated by the clinician and a determination shall be made by the clinician responding to the crisis.~~ • ~~Any therapeutic interventions to include, but not limited to, therapy, assessments, care coordination, team meetings, and treatment planning can occur via telehealth.~~ • ~~Face-to-face service requirements will continue to be waived, but documentation shall justify the rationale for the service through a different model of care until otherwise notified. The goals, objectives, and strategies of the ISP, if one is required, shall be updated to reflect any change or changes in the individual's progress and treatment needs, including changes impacting the individual related to COVID-19 as well as any newly identified problem and~~	Ended 12/1/2021

~~documented according to the requirements in the CMHRS Provider manual.~~	
Independent Assessment Certification and Coordination Team (IACCT) • Assessments IACCT Assessments may occur via telehealth or telephone communication.	Active
Psychiatric Inpatient, ~~Facility Based Crisis Stabilization,~~ Psychiatric Residential Treatment Facility (PRTF) and Therapeutic Group Home (TGH) Levels of Care • The requirement for service authorization remains in place. • Therapy, assessments, case management, team meetings, and treatment planning may occur via telehealth. The plan of care should be updated to include any change in service delivery as well as any change in goals, objectives, and strategies, including impacts on the individual due to COVID-19.	Active Grey items effective 12/1/2021
Assertive Community Treatment (H0040) In-person and face-to-face service requirements will be waived but documentation shall justify the rationale for the service through a different model of care until otherwise notified. The goals, objectives, and strategies of the plan of care or ISP shall be updated to reflect any change or changes in the individual's progress and treatment needs, including changes impacting the individual related to COVID-19, as well as any newly identified problem. Documentation of this review shall be added to the individual's medical record as evidenced by the dated signatures of the appropriate professional for the service being provided and the individual.	Authorized by EO 84 – effective 1/10/2022
Mobile Crisis Response (H2011) In-person and face-to-face service requirements will be waived but documentation shall justify the rationale for the service through a different model of care until otherwise notified. The goals, objectives, and strategies of the plan of care or ISP shall be updated to reflect any change or changes in the individual's progress and treatment needs, including changes impacting the individual related to COVID-19, as well as any newly identified problem. Documentation of this review shall be added to the individual's medical record as evidenced by the dated signatures of the appropriate professional for the service being provided and the individual. The participation requirements of both team members are not being waived. Each team member needs to be actively engaged in a covered service component simultaneously in order to bill for a team rate. It is acceptable for one team member to be in-person and the other team member to be on the phone via audio only service provision including during the telemedicine assisted assessment.	Authorized by EO 84 – effective 1/10/2022
Community Stabilization (S9482) In-person and face-to-face service requirements will be waived but documentation shall justify the rationale for the service through a different model of care until otherwise notified. The goals, objectives, and strategies of the plan of care or ISP shall be updated to reflect any change or changes in the individual's progress and treatment needs, including changes impacting the individual related to COVID-19, as well as any newly identified problem. Documentation of this review shall be added to the individual's medical record as evidenced by the dated signatures of the appropriate professional for the service being provided and the individual.	Authorized by EO 84 – effective 1/10/2022

The participation requirements of both team members are not being waived. Each team member needs to be actively engaged in a covered service component simultaneously in order to bill for a team rate. It is acceptable for one team member to be in-person and the other team member to be on the phone via audio only service provision including during the telemedicine assisted assessment.	
Individuals Under a Temporary Detention Order	
Prior to releasing a patient under a temporary detention order for transport to a state-operated psychiatric hospital, providers participating in the State Medicaid Plan must comply with the applicable Criteria for Medical Assessment Prior to Admission to a Psychiatric Hospital, Inpatient Psychiatric or Crisis Stabilization Unit found at: http://www.dbhds.virginia.gov/assets/doc/about/masg/adults-medical-and-screening-guidelines-11-5-2018.pdf and http://www.dbhds.virginia.gov/assets/doc/about/masg/peds-medical-assessment-and-screening-guidelines-11-5-2018.pdf. Such providers shall screen patients under emergency custody or temporary detention for COVID-19 in accordance with guidance issued by the Centers for Disease Control and Prevention and the Virginia Department of Health. In addition, with consent of the patient subject to emergency custody or temporary detention, such providers should administer a COVID-19 active infection test prior to the transfer of the patient to a state-operated psychiatric hospital. If no other payment source is available, the Department of Behavioral Health and Developmental Services will reimburse the provider for the cost of the test.	Authorized by EO 84 – effective 1/10/2022
Nursing Facilities	
Waive the requirements at 42 CFR 483.35(d) (with the exception of 42 CFR 483.35(d)(1)(i)), which require that a SNF and NF may not employ anyone for longer than four months unless they met the training and certification requirements under § 483.35(d).	Active
DMAS has suspended pre-admission screening conducted under § 32.1-330 of the Code of Virginia. All new nursing home admissions will be treated as exempted hospital discharges. Community based Long-Term Services and Supports (LTSS) screening teams shall be exempt from face-to-face screenings and may screen for nursing home admission from a community setting or waiver services using telehealth or telephonic screening.	Authorized by EO 84 – effective 1/10/2022
Temporary nurse aides practicing in long term care facilities under the federal Public Health Emergency 1135 Waiver may be deemed eligible by the Board of Nursing to take the National Nurse Aide Assessment Program examination upon submission of a completed application, the employer's written verification of competency and employment as a temporary nurse aide, and provided no other grounds exist under Virginia law to deny the application.	Authorized by EO 84 – effective 1/10/2022
Durable Medical Equipment	
DMAS waives the requirements of § 32.1-325(A)(14) of the Code of Virginia concerning certificates of medical necessity. Any supporting verifiable documentation requirements are waived with respect to replacement of DME. DMAS shall also suspend enforcement of additional replacement requirements for DME, prosthetics, orthotics, and supplies that are lost,	Authorized by EO 84 – effective 1/10/2022

destroyed, irreparably damaged, or otherwise rendered unusable, such that the face-to-face requirement, a new physician's order, and new medical necessity documentation are not required for replacement equipment.	
Personal Care, Respite, and Companion Services	
Personal care, respite, and companion providers in the agency- or consumer-directed program, who are providing services to individuals over the age of 18, may work for up to 60 days, as opposed to the current 30-day limit in § 32.1-162.9:1 of the Code, while criminal background registries are checked. Consumer-directed Employers of Record must ensure that the attendant is adequately supervised while the criminal background registry check is processed. Agency providers must adhere to current reference check requirements and ensure that adequate training has occurred prior to the aide providing the services in the home. Agency providers shall conduct weekly supervisory visits through telehealth methods when the aide works prior to receiving criminal background registry results. This section does not apply to services provided to individuals under the age of 18, with the exception of parents of minor children in the consumer-directed program.	Authorized by EO 84 – effective 1/10/2022
Pharmacy	
Drugs dispensed for 90 days will be subject to a 75% refill "too-soon" edit. Patients will only be able to get a subsequent 90 day supply of drugs after 75% of the prescription has been used (approximately day 68).	Active
The agency makes exceptions to their published Preferred Drug List if drug shortages occur.	Active
Suspend all drug co-payments for Medicaid and FAMIS members	Active
Provider Enrollment	
DMAS will not suspend providers who have not completed re-validation.	Authorized by EO 84 – effective 1/10/2022
Program Integrity	
DMAS will not pursue cases against or terminate Medicaid members who had eligibility errors.	Authorized by EO 84 – effective 1/10/2022
Appeals	
For all appeals filed during the state of emergency, Medicaid members will automatically keep their coverage.	Active
There will be no financial recovery for continued coverage for appeals filed during the period the emergency.	Active
Delay scheduling of fair hearings and issuing fair hearing decisions due to an emergency beyond the state's control.	Active
The state may offer to continue benefits to individuals who are requesting a fair hearing if the request comes later than the date of the action under 42 CFR 431.230.	Active
Allows applicants and beneficiaries to have more than 90 days to request a fair hearing for eligibility or fee-for-service appeals.	Active
Modification of the timeframe under 42 C.F.R. §438.408(f)(2) for enrollees to exercise their appeal rights to allow more than 120 days to request a fair hearing when the initial 120th day deadline for an enrollee occurred during the period of this section 1135 waiver.	Active

Verbal authorization for representation during the appeal.	Ended on 1/14/2022
Member Eligibility and Enrollment	
Continuity of coverage will remain in place for Medicaid members through the end of the federal Public Health Emergency (PHE) and Maintenance of Effort (MOE). No closures or reduction of coverage will be taken on Medicaid enrollments through the end of the federally declared emergency unless a death is reported, an enrollee moves from Virginia permanently, or an enrollee requests closure of coverage. Individuals who become incarcerated must have their coverage reduced to cover inpatient services only. Federal continuity of coverage requirements do not apply to lawfully residing non-citizen pregnant women or children under age 19. Additionally, the continuity of coverage requirements do not apply for coverage in the Family Access to Medical Insurance Security (FAMIS) or FAMIS MOMS programs Individuals who no longer meet eligibility requirements in the FAMIS or FAMIS MOMS programs will be re-determined and enrolled in other coverage or, if no longer eligible, referred to the Federal Marketplace for coverage options. LTSS providers, please note that eligibility workers are unable to process increases in patient pay at this time due to the PHE and MOE.	

* Executive Order 84 allows for telehealth services provided by healthcare practitioners for diagnosis and treatment services. The Executive Order does not extend to these waiver services.