



A BROAD ARRAY OF VIRGINIA PROVIDERS RECEIVE ADDITIONAL REGULATORY FLEXIBILITIES DURING COVID-19 PUBLIC HEALTH EMERGENCY (PHE)

October 23, 2020

VIRGINIA'S DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (DMAS) HAS ISSUED AN INTERIM GUIDANCE ANNOUNCING MANY NEW REGULATORY CHANGES MEANT TO ASSIST PROVIDERS DURING THE COVID-19 PHE

The October 22 guidance groups changes by applicable service and product type. These flexibilities will remain in effect for the duration of the federal PHE, which is currently set to expire January 20, 2021. DMAS encourages providers to monitor the central COVID-19 response page for additional announcements and frequently asked questions and directs inquiries to a centralized point of access at COVID-19@dmass.virginia.gov.

Nursing Facilities and Medicaid Long Term Services and Supports Screenings for Community-Based Services

Virginia is extending the additional \$20 per diem payment for nursing homes and specialized care facilities for the period of the Governor's Declaration of a State of Emergency in Executive Order 51. Additionally, Virginia is extending eight categories of flexibilities until January 20, 2021, including certain suspensions of Pre-Admission Screening and Resident Review, minimum data set authorizations, waivers of screening, admission, consent, employee training and certification requirements. Direction is also provided to health plans that are dealing with difficulties in enrolling individuals for nursing facility care or changing nursing facility levels of care.

Home Health and Hospice

Virginia is extending certain onsite visit requirements and suspending delineated supervision rules until January 20, 2021. Additionally, home health agencies are now permitted to perform various certifications, initial assessments, and patient determinations remotely or through record review if the record review fully and accurately describes the member's needs.

Durable Medical Equipment

Virginia is lifting certain face-to-face evaluation requirements, permitting the use of telehealth visits for therapy and other evaluations under certain circumstances. DMAS is also waiving the face-to-face requirement for durable medical equipment (DME) for the list of codes published by Medicare and will allow temporary coverage for short-term oxygen use for acute conditions.

Certificate of Medical Necessity (CMN)

Virginia will allow a temporary extension of current CMNs until the end of the PHE and will allow a temporary suspension of the requirement for a CMN for new orders effective starting April 13, 2020. However, in implementing these flexibilities, DME providers must adhere to the contact, documentation and validation procedures discussed in the guidance. Also, as a policy change to its published memo on March 19, 2020, DMAS is instructing DME providers to only deliver one (1) month of supplies to address concerns of supply chain disruption.

Pharmacy

DMAS is suspending all drug co-payments for Medicaid and FAMIS members during the PHE and is covering 90-day supplies for all drugs, excluding those in Schedule II. Further, certain pharmacy signature requirements are being waived as well.

Telehealth

Virginia is extending all current telehealth policies and flexibilities through the end of the PHE and is working with state and federal authorities to develop and transition into a long-term telehealth policy that will be implemented after the PHE ends. Additionally, an extensive list of appeals flexibilities is also being extended.

Eligibility and Enrollment

DMAS has announced that continuity of coverage must remain until January 31, 2021, for Medicaid members (subject to limitations placed on certain member groups), and that no closures or adverse action will be taken on Medicaid enrollments through the end of the PHE unless a death is reported, an enrollee moves from Virginia permanently, or an enrollee requests closure of coverage.

CONCLUSION

Providers should review the October 22 [guidance](#) carefully and access the additional information and resources linked in the guidance to fully understand how to implement the flexibilities in a compliant manner.

If you have any questions about these regulatory changes or have any other concerns arising from the pandemic, please contact a member of the firm's [COVID-19 Task Force](#).

The information contained in this advisory is for general educational purposes only. It is presented with the understanding that neither the author nor Hancock, Daniel & Johnson, P.C., is offering any legal or other professional services. Since the law in many areas is complex and can change rapidly, this information may not apply to a given factual situation and can become outdated. Individuals desiring legal advice should consult legal counsel for up-to-date and fact-specific advice. Under no circumstances will the author or Hancock, Daniel & Johnson, P.C. be liable for any direct, indirect, or consequential damages resulting from the use of this material.