



COMMONWEALTH of VIRGINIA

Office of the Governor

Daniel Carey, MD
Secretary of Health and Human Resources

May 13, 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 21-003, entitled "Personal Care Rate Increase and Consumer-Directed Overtime" 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 cursive script that reads "Daniel Carey".

Daniel Carey, MD., MHCM

Attachment

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

Transmittal Summary

SPA 21-003

I. IDENTIFICATION INFORMATION

Title of Amendment: Personal Care Rate Increase and Consumer-Directed Overtime

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.

Purpose: This state plan amendment makes two changes. The first is that it updates the date of the personal care fee schedule on May 1, 2021. (A corresponding rate increase of 6.4% will be provided for personal care services and for companion and respite services provided under home and community-based waivers, however, the increase is not included in a state plan amendment but via waiver documentation.)

The second change eliminates the prohibition on overtime for consumer-directed services provided under the Early and Periodic Diagnostic and Treatment (EPSDT) program. (The CCC+ Waiver program and the Home and Community Based Waiver programs also include consumer-directed services, but these services are described in waiver documentation that is filed with the federal government, and is not included in the State Plan.)

This SPA also fixes an error by removing the words “and respite” as DMAS pays for respite care under EPSDT on a case-by-case basis, and only in cases in which the respite services is determined to be medically necessary.

Substance and Analysis: The sections of the State Plan that are affected by this amendment are “Amount, Duration, and Scope of Medical and Remedial Care and Services Provided to the Categorically Needy and Medically Needy” and “Methods and Standards for Establishing Payment Rates – Other Types of Care.”

Impact: It was not possible to determine a cost for the rate increase for just the personal care services provided through EPSDT. The total expected increase in annual aggregate expenditures from increases in these rates paid for EPSDT and for home and community-based waiver services are \$18,195,716 in general funds, \$66,487 in special funds, and \$18,824,918 in federal funds in federal fiscal year 2021.

Similarly, it was not possible to determine a cost to to remove the prohibition on overtime for just those consumer-directed services provided through EPSDT. The total cost to remove the prohibition on overtime in the CCC+ Waiver, the home and community based

waivers, and EPSDT is \$5,213,801 in state general funds and \$6,009,750 in federal funds in federal fiscal year 2021.

Tribal Notice: See Attachments A-1 and A-2.

Prior Public Notice: See Attachments B1 and B3.

Public Comments and Agency Analysis: See Attachment B2. Comments were not related to this SPA. Instead, they asked for additional rate increases -- for private duty nursing and personal care agencies.



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

Tribal Notice re: 2 state plan amendments

McClellan, Emily <emily.mcclellan@dmas.virginia.gov> Wed, Apr 14, 2021 at 11:17 AM
To: Dean Branham <TribalOffice@monacannation.com>, "G. Anne Richardson" <chiefannerich@aol.com>, Gerald Stewart <wasandson@cox.net>, Pam Thompson <Pamelathompson4@yahoo.com>, Rappahannock Tribe <rappahannocktrib@aol.com>, Reginald Stewart <regstew007@gmail.com>, Robert Gray <robert.gray@pamunkey.org>, Rufus Elliott <tribaladmin@monacannation.com>, Samuel Bass <samflyingeagle48@yahoo.com>, Stephen Adkins <chiefstephenadkins@gmail.com>, "W. Frank Adams" <WFrankAdams@verizon.net>, "bradbybrown@gmail.com" <bradbybrown@gmail.com>, heather.hendrix@ihs.gov, "Garrett, Tabitha (IHS/NAS/RIC)" <tabitha.garrett@ihs.gov>
Cc: Jessica Arrington <jessica.arrington@dmas.virginia.gov>

Dear Tribal Leaders and Indian Health Programs:

Attached are Tribal Notice letters from Virginia Medicaid Director Karen Kimsey indicating that the Dept. of Medical Assistance Services (DMAS) plans to submit two State Plan Amendments (SPAs) to the federal Centers for Medicare and Medicaid Services.

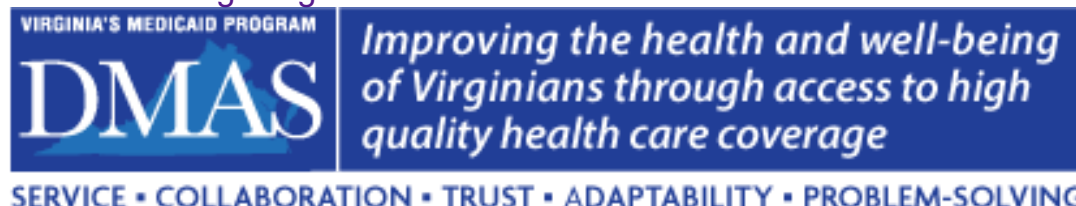
The first SPA will delete old text related to a program that ended on December 31, 2017. (This program was called "CCC" - it is different from the CCC Plus program, which is still in existence.) The second SPA will remove the prohibition on overtime pay for consumer-directed services and will increase the Medicaid rate for personal care services.

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
Regulatory Supervisor
Policy Planning and Innovation Division
Virginia Department of Medical Assistance Services
600 East Broad Street
Richmond, VA 23219
(804) 371-4300
www.dmas.virginia.gov



2 attachments



21-012 Tribal Notice letter Signed 4-14-21.pdf
205K



21-012 Tribal Notice letter Signed 4-14-21.pdf
205K



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

April 14, 2021

SUBJECT: Notice of Opportunity for Tribal Comment – State Plan Amendment related to Removing the Prohibition on Overtime in Consumer-Directed Services Under the Early and Periodic Diagnostic and Treatment (EPSDT) Program

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 in order to 1) increase the rate for personal care services under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program, and to remove the prohibition on overtime in consumer-directed services provided under the EPSDT program.

The tribal comment period for this SPA is open through May 14, 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 Medicaid Disaster SPA, Tribal Comment
Attn: Emily McClellan
600 East Broad Street
Richmond, VA 23219

Please forward this information to any interested party.

Sincerely,

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

Karen Kimsey

ATTACHMENT B-1 (PPN for Rate Increase)

Virginia.gov Agencies | Governor



Agency Department of Medical Assistance Services

Board Board of Medical Assistance Services

[Edit Notice](#)

General Notice

Public Notice - Intent to Amend State Plan - Increase in Rates for Personal Care, Companion, and Respite Services

Date Posted: 3/22/2021

Expiration Date: 7/31/2021

Submitted to Registrar for publication: YES

[30 Day Comment Forum](#) is underway. Began on 3/22/2021 and will end on 4/21/2021

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 March 22, 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.

DMAS is specifically soliciting input from stakeholders, providers and beneficiaries, on the potential impact of the proposed changes discussed in this notice. Comments or inquiries may be submitted, in writing, within 30 days of this notice publication to Ms. McClellan and such comments are available for review at the same address. Comments may also be submitted, in writing, on the Town Hall public comment forum attached to this notice.

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 Amendment Item 313 #17c (link [here](#)) DMAS is increasing the rates for agency-directed and consumer-directed personal care services under the Early Periodic Screening, and Diagnosis and Treatment (EPSDT) benefit by 6.4 percent, effective May 1, 2021. (A corresponding rate increase of 6.4% will be provided for these services and for companion and respite services provided under home and community-based waivers, however, the increase is not included in a state plan amendment but via waiver documentation.)

The total expected increase in annual aggregate expenditures from increases in these rates paid for EPSDT and for home and community-based waiver services are \$18,195,716 in general funds, \$66,487 in special funds, and \$18,824,918 in federal funds in federal fiscal year 2021.

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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:	<u>Emily.McClellan@dmas.virginia.gov</u>
Telephone:	(804)371-4300 FAX: (804)786-1680 TDD: (800)343-0634



VIRGINIA
REGULATORY TOWN HALL



Agency

Department of Medical Assistance Services

Board

Board of Medical Assistance Services

2 comments

All comments for this forum

[Back to List of Comments](#)

Commenter: Anonymous

3/22/21 6:14 pm

Increase in Companion and Aide hourly rates-What about the Private Duty Nurses

The nurses that are taking the same risks and spend much more time with the EPSDT and CCC Plus Waiver members did not get Hazard Pay last month. And did not get a raise the last time the aides did. Why is that? Are the nurses not valuable? The nursees take of the MOST sick and most critically ill Medicaid Members and that does not deserve a raise like the aides get? Are you going to train the aides to take care of a child on a ventilator?

There are not enough nursing home beds in the state to take all of the nursing members that are in the Waivers. But it is hard to stay when the nurses are not even given raises or treated as well as the aides are in Va. No hazard pay. No raises. Will equal NO nurses.

CommentID: 97411

Commenter: Personal Care Agency

3/23/21 10:14 am

HOURLY INCREASE

Agencies should be paid more than Consumer directed...We are required to pay out large amounts of money for comp insurance, Dept of Health Licensure, Registered Nurses, Brick and Mortar Building, mileage. The Consumer Directed Aides are paid more than we can pay our aides. All Agencies are having trouble getting staff because of this and 90 % of the Consumer Directed patients can't even get their Aide to show up and do the visit. We are held accountable and they are not..but they get paid a higher rate.

CommentID: 97412

ATTACHMENT B-3: PPN for Overtime

Virginia.gov Agencies | Governor



Agency

Department of Medical Assistance Services

Board

Board of Medical Assistance Services

General Notice**Public Notice - Intent to Amend State Plan - Remove Prohibition on Consumer-Directed Overtime**

Date Posted: 4/13/2021

Expiration Date: 7/1/2021

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 April 13, 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 2020 Special Session, Item 313.ZZZZ, DMAS will be removing the prohibition on overtime in consumer-directed services provided under the Early and Periodic Diagnostic and Treatment (EPSDT) program.

The total cost to remove the prohibition on overtime in the CCC+ Waiver, the home and community based waivers, and EPSDT is \$5,213,801 in state general funds and \$6,009,750 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

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: ~~as defined per Attachment 3.1A&B, Supplement 1, page 6.4.3, with provider qualifications on pages 6.4.4-6.4.7~~ 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 PAS 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> The Agency's rates, based upon one-hour increments, were set as of ~~July 1, 2020~~ May 1, 2021, and shall be effective for services on and after that date.

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 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>

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 ~~There shall be no reimbursement for overtime hours for consumer directed services provided under EPSDT.~~
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.

**TRANSMITTAL AND NOTICE OF APPROVAL OF
STATE PLAN MATERIAL
FOR: CENTERS FOR MEDICARE & MEDICAID SERVICES**

1. TRANSMITTAL NUMBER

2 1 0 0 3

2. STATE

Virginia

3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)

TO: REGIONAL ADMINISTRATOR
CENTERS FOR MEDICARE & MEDICAID SERVICES
DEPARTMENT OF HEALTH AND HUMAN SERVICES

4. PROPOSED EFFECTIVE DATE

5/1/2021

5. TYPE OF PLAN MATERIAL (Check One)

- NEW STATE PLAN AMENDMENT TO BE CONSIDERED AS NEW PLAN AMENDMENT

COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (Separate transmittal for each amendment)

6. FEDERAL STATUTE/REGULATION CITATION

42 CFR Part 447

7. FEDERAL BUDGET IMPACT

a. FFY 2021 \$ 24,834,668
b. FFY 2022 \$ 85,752,983

8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT

Attachment 4.19-B, page 6.2.1

9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable)

Same as box #8.

10. SUBJECT OF AMENDMENT

Personal Care Rate Increase and Consumer-Directed Overtime

11. GOVERNOR'S REVIEW (Check One)

- GOVERNOR'S OFFICE REPORTED NO COMMENT
 COMMENTS OF GOVERNOR'S OFFICE ENCLOSED
 NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL

OTHER, AS SPECIFIED

Secretary of Health and Human Resources

12. SIGNATURE OF STATE AGENCY OFFICIAL



16. RETURN TO

Dept. of Medical Assistance Services
600 East Broad Street, #1300
Richmond VA 23219

Attn: Regulatory Coordinator

13. TYPED NAME

Karen Kimsey

14. TITLE

Director

15. DATE SUBMITTED

4/13/21

FOR REGIONAL OFFICE USE ONLY

17. DATE RECEIVED

18. DATE APPROVED

PLAN APPROVED - ONE COPY ATTACHED

19. EFFECTIVE DATE OF APPROVED MATERIAL

20. SIGNATURE OF REGIONAL OFFICIAL

21. TYPED NAME

22. TITLE

23. REMARKS

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> 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.

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 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>

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. 21-003

Approval Date _____

Effective Date 05-01-21

Supersedes

TN No. 20-014