



COMMONWEALTH of VIRGINIA

Office of the Governor

John E. Littel
Secretary of Health and Human Resources

June 27, 2022

James G. Scott, Director
Division of Program Operations
Medicaid & CHIP Operations Group
Centers for Medicare and Medicaid Services
601 E. 12th St., Room 355
Kansas City, MO 64106

Dear Mr. Scott:

Attached for your review and approval is amendment 22-0014, entitled "Third Party Liability Update" 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 that reads "John E. Littel".

John E. Littel

Attachment

cc: Cheryl J. Roberts, Acting Director, Department of Medical Assistance Services

Transmittal Summary

SPA 22-0014

I. IDENTIFICATION INFORMATION

Title of Amendment: Third Party Liability Update

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.

In addition, a CMS Informational Bulletin requires Virginia to make these changes.

Purpose: These changes are needed in order to respond to a CMS Informational Bulletin requiring states to “ensure that their Medicaid state plans comply with third party liability (TPL) requirements reflected in current law.” Virginia’s TPL text required updates to reflect current law.

Substance and Analysis: The sections of the State Plan for Medical Assistance that are affected by this action are “Third Party Liability – Payment of Claims” and the preprint pages at the beginning of the state plan.

Impact: None.

Tribal Notice: Please see attached.

Prior Public Notice: N/A

Public Comments and Agency Analysis: N/A

Tribal Notice - Updates to Third Party Liability Rules in Medicaid

McClellan, Emily <emily.mcclellan@dmas.virginia.gov> Fri, May 13, 2022 at 9:52 AM
To: TribalOffice@monacannation.com, "chiefannerich@aol.com" <chiefannerich@aol.com>, jerry.stewart@cit-ed.org, 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>, "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 about a State Plan Amendment that updates the rules related to third party liability in Medicaid.

Please let us know if you have any questions.

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 5-13-22 (signed).pdf**
253K



COMMONWEALTH of VIRGINIA

Department of Medical Assistance Services

KAREN KIMSEY
DIRECTOR

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600 EAST BROAD STREET
RICHMOND, VA 23219
804/786-7933
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www.dmas.virginia.gov

May 13, 2022

SUBJECT: Notice of Opportunity for Tribal Comment – State Plan Amendment related to Third Party Liability Updates.

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 be in compliance with federal rules related to “third party liability,” which is insurance coverage that individuals may hold in addition to Medicaid. Virginia is making changes to ensure that it pays claims for preventive pediatric care and seeks reimbursement from additional insurance coverage afterwards, rather than the other way around.

The tribal comment period for this SPA is open through June 12, 2022. You may submit your comments directly to Emily McClellan, DMAS Policy, Regulation, and Member Engagement 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

Revision: HCFA-PM-94-1
February, 1994

(MB)

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

Citation

42 CFR 433.139
(b)(3)(ii) (A)

X (c) Providers are required to bill liable third parties when services covered under the plan are furnished to an individual on whose behalf child support enforcement is being carried out by the State IV-D agency.

(d) ATTACHMENT 4.22-B specifies the following:

42 CFR 433.139
(b)(3)(ii)(C)

(1) The method used in determining a provider's compliance with the third party billing requirements at § 433.139(b) (3) (ii) (C).

42 CFR 433.139
(f)(2)

(2) The threshold amount or other guideline used in determining whether to seek recovery or reimbursement from a liable third party, or the process by which the agency determines that seeking recovery of reimbursement would not be cost effective.

42 CFR 433.139
(f)(3)

(3) The dollar amount or time period the State uses to accumulate billings from a particular liable third party in making the decision to seek recovery of reimbursement.

1902(a)(25) of
the Act

(4) The Medicaid agency assures that the state has in effect the laws that require third parties to comply with the provisions, including those which require third parties to provide the state with coverage, eligibility, and claims data, under section 1902(a)(25) of the social security act, and specifies the compliance with 1902(a)(25)(E) and 1902(a)(25)(F).

42 CFR 447.20

(e) The Medicaid agency ensures that the provider furnishing a service for which a third party is liable follows the restrictions specified in 42 CFR 447.20.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

REQUIREMENTS FOR THIRD PARTY LIABILITY
PAYMENT OF CLAIMS

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- §1. Probable liability is established at the time claim is filed.
- a. When the Title XIX agency has established the probable existence of third party liability at the time the claim is filed, the agency rejects the claim and returns it to the provider for a determination of the amount of liability. The establishment of third party liability takes place when the agency receives confirmation from the provider or a third party resource indicating the extent of third party liability. When the amount of liability is determined, the agency pays the claim to the extent that maximum payment allowed under the agency's payment schedule exceeds the amount of the third party payment.
 - b. Exhausting all available third party resources is the responsibility of the providers. The Medicaid ~~Management Information Enterprise~~ System (~~MMIS~~) (~~MES~~) does not allow payments to be made by Virginia Medicaid unless the invoice indicates that the third party has either paid or denied the claim.
 - c. There are certain circumstances in which cost avoidance may not be utilized:
 1. Medical support enforcement. In the case of any service covered under Medicaid provided to an individual on whose behalf child support enforcement is being carried out by the IV-D agency, Medicaid makes payment for such service in accordance with the usual payments schedule. These payments are made without regard to any third party liability, if such third party liability is derived, through insurance or otherwise, from the parent whose obligation to pay support is being enforced by the IV-D agency. Medicaid shall make these payments providing that they have not been made by such third party within ~~30~~ 100 days after such service is furnished.

Providers shall not be required to bill the third party in this situation. When the provider does bill Medicaid, ~~he~~ it must certify either:

 - (a) that ~~he~~ it has not billed the third party documented on the claim due to medical support enforcement, or
 - (b) that ~~he~~ it has billed the third party documented on the claim but that he has not received payment or denial for the service from the third party within ~~30~~ 100 days ~~after the service was furnished~~ after the provider of such services has initially submitted a claim. In this case, ~~30~~ up to 100 days must elapse ~~from the date of service to the date of provider certification~~ after the provider of such services has initially submitted a claim.
 2. ~~Prenatal Care. When the claim is for prenatal, labor and delivery, or-~~

TN No. 22-0014

Approval Date _____

Effective Date 4-1-22

Supersedes

TN No. 90-09

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

REQUIREMENTS FOR THIRD PARTY LIABILITY
PAYMENT OF CLAIMS

~~postpartum care that is covered under the State Plan, the Commonwealth makes payment for such services in accordance with the usual payment schedule without regard to the liability of a third party for payment for such services.~~

3. Preventive Pediatric Care. When the claim is for preventive pediatric care, including Early and Periodic Screening, Diagnosis and Treatment (EPSDT) services that are covered under the State Plan, the Commonwealth makes payment for such services in accordance with the usual payment schedule without regard to the liability of a third party for payment for such services.
4. In order to accomplish this pay and chase activity, in accordance with 42 CFR 433.139, (once the claims have been processed for payment), a report is generated advising the third party unit so that recovery of funds can be made.

§2. Virginia complies with the following requirements.

- SSA section 1902 (a)(25)(E): the requirement for states to apply cost avoidance procedures to claims for prenatal services, including labor, delivery, and postpartum care services.
- SSA section 1902 (a)(25)(E): the requirement for states to make payments without regard to potential third party liability for pediatric preventive services, unless the state has made a determination related to cost-effectiveness and access to care that warrants cost avoidance for up to 90 days.
- SSA section 1902 (a)(25)(F): State flexibility to make payments without regard to potential third party liability for up to 100 days for claims related to child support enforcement beneficiaries.

§2-3. Probable liability is not established or benefits are not available at the time claim is filed.

- a. If the probable existence of third party liability cannot be established or third party benefits are not available to pay the recipient's medical expenses at the time the claim is filed, the agency pays the full amount allowed under the agency's payment schedule.

§3-4. Recovery of reimbursement.

- a. When the Title XIX agency learns of the existence of a liable third party after a claim is paid, or benefits become available from a third party after a claim is paid, the Title XIX agency seeks recovery of reimbursement within 60 days after the end of the month it learns of the existence of the liable third party or benefits become available.
- b. Reimbursement is sought by the Title XIX agency unless the agency determines that recovery will not be cost effective. The agency uses the threshold amount of \$50 as a guideline in its attempts to recover from liable third parties in casualty cases. This \$50 guideline is used in consideration with other factors (i.e., expense and difficulty of recovery) in deciding whether

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**REQUIREMENTS FOR THIRD PARTY LIABILITY
PAYMENT OF CLAIMS**

to pursue recoveries in the range of smaller dollar expenditures (less than \$50). The threshold amount in the determination for the recovery of funds by the health insurance unit is \$40. However, the threshold amount may be waived when the agency deems it to be economically and administratively feasible to collect less than the stated amounts. The threshold amounts are based on effectiveness with normal effort for the recovery of funds. Should it be determined that a recovery effort would be cost effective, then attempts are made for recovery of amounts below the threshold levels.

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(d) ATTACHMENT 4.22-B specifies the following:

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(1) The method used in determining a provider's compliance with the third party billing requirements at § 433.139(b) (3) (ii) (C).

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(2) The threshold amount or other guideline used in determining whether to seek recovery or reimbursement from a liable third party, or the process by which the agency determines that seeking recovery of reimbursement would not be cost effective.

42 CFR 433.139
(f)(3)

(3) The dollar amount or time period the State uses to accumulate billings from a particular liable third party in making the decision to seek recovery of reimbursement.

1902(a)(25) of
the Act

(4) The Medicaid agency assures that the state has in effect the laws that require third parties to comply with the provisions, including those which require third parties to provide the state with coverage, eligibility, and claims data, under section 1902(a)(25) of the social security act, and specifies the compliance with 1902(a)(25)(E) and 1902(a)(25)(F).

42 CFR 447.20

(e) The Medicaid agency ensures that the provider furnishing a service for which a third party is liable follows the restrictions specified in 42 CFR 447.20.

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State of VIRGINIA

**REQUIREMENTS FOR THIRD PARTY LIABILITY
PAYMENT OF CLAIMS**

- §1. Probable liability is established at the time claim is filed.
- a. When the Title XIX agency has established the probable existence of third party liability at the time the claim is filed, the agency rejects the claim and returns it to the provider for a determination of the amount of liability. The establishment of third party liability takes place when the agency receives confirmation from the provider or a third party resource indicating the extent of third party liability. When the amount of liability is determined, the agency pays the claim to the extent that maximum payment allowed under the agency's payment schedule exceeds the amount of the third party payment.
 - b. Exhausting all available third party resources is the responsibility of the providers. The Medicaid Enterprise System (MES) does not allow payments to be made by Virginia Medicaid unless the invoice indicates that the third party has either paid or denied the claim.
 - c. There are certain circumstances in which cost avoidance may not be utilized:
 1. Medical support enforcement. In the case of any service covered under Medicaid provided to an individual on whose behalf child support enforcement is being carried out by the IV-D agency, Medicaid makes payment for such service in accordance with the usual payments schedule. These payments are made without regard to any third party liability, if such third party liability is derived, through insurance or otherwise, from the parent whose obligation to pay support is being enforced by the IV-D agency. Medicaid shall make these payments providing that they have not been made by such third party within 100 days after such service is furnished.

Providers shall not be required to bill the third party in this situation. When the provider does bill Medicaid, it must certify either:

 - (a) that it has not billed the third party documented on the claim due to medical support enforcement, or
 - (b) that it has billed the third party documented on the claim but that he has not received payment or denial for the service from the third party within 100 days after the provider of such services has initially submitted a claim. In this case, up to 100 days must elapse after the provider of such services has initially submitted a claim.
 2. Preventive Pediatric Care. When the claim is for preventive pediatric care, including Early and Periodic Screening, Diagnosis and Treatment (EPSDT) services that are covered under the State Plan, the Commonwealth makes payment for such services in accordance with the usual payment schedule without regard to the liability of a third party for payment for such services.

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3. In order to accomplish this pay and chase activity, in accordance with 42 CFR 433.139, (once the claims have been processed for payment), a report is generated advising the third party unit so that recovery of funds can be made.
- §2. Virginia complies with the following requirements.
- SSA section 1902 (a)(25)(E): the requirement for states to apply cost avoidance procedures to claims for prenatal services, including labor, delivery, and postpartum care services.
 - SSA section 1902 (a)(25)(E): the requirement for states to make payments without regard to potential third party liability for pediatric preventive services, unless the state has made a determination related to cost-effectiveness and access to care that warrants cost avoidance for up to 90 days.
 - SSA section 1902 (a)(25)(F): State flexibility to make payments without regard to potential third party liability for up to 100 days for claims related to child support enforcement beneficiaries.
- §3. Probable liability is not established or benefits are not available at the time claim is filed.
- a. If the probable existence of third party liability cannot be established or third party benefits are not available to pay the recipient's medical expenses at the time the claim is filed, the agency pays the full amount allowed under the agency's payment schedule.
- §4. Recovery of reimbursement.
- a. When the Title XIX agency learns of the existence of a liable third party after a claim is paid, or benefits become available from a third party after a claim is paid, the Title XIX agency seeks recovery of reimbursement within 60 days after the end of the month it learns of the existence of the liable third party or benefits become available.
- b. Reimbursement is sought by the Title XIX agency unless the agency determines that recovery will not be cost effective. The agency uses the threshold amount of \$50 as a guideline in its attempts to recover from liable third parties in casualty cases. This \$50 guideline is used in consideration with other factors (i.e., expense and difficulty of recovery) in deciding whether to pursue recoveries in the range of smaller dollar expenditures (less than \$50). The threshold amount in the determination for the recovery of funds by the health insurance unit is \$40. However, the threshold amount may be waived when the agency deems it to be economically and administratively feasible to collect less than the stated amounts. The threshold amounts are based on effectiveness with normal effort for the recovery of funds. Should it be determined that a recovery effort would be cost effective, then attempts are made for recovery of amounts below the threshold levels.

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