

## **Table of Contents**

**State Name:** Virginia

**State Plan Amendment (SPA) #:** 17-026

This file contains the following documents in the order listed:

- 1) Approval Letter
- 2) Approved CMS-179
- 3) Approved SPA Pages

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
150 S. Independence Mall West  
Suite 216, The Public Ledger Building  
Philadelphia, Pennsylvania 19106-3499



**Region III/Division of Medicaid and Children's Health Operations**

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SWIFT #010520184045

January 11, 2018

Cynthia B. Jones, Director  
Department of Medical Assistance Services  
600 East Broad Street, Suite 1300  
Richmond, VA 23219

Dear Ms. Jones:

The Centers for Medicare & Medicaid Services (CMS) has reviewed Virginia's State Plan Amendment (SPA) 17-026, Requirements for Long Term Care Facilities. The purpose of this SPA is to incorporate updated Code of Federal Regulations into the Virginia State Plan.

This SPA is acceptable. Therefore, we are approving SPA 17-026 with an effective date of October 19, 2017. Enclosed are the approved SPA pages and signed CMS-179 form.

If you have further questions about this SPA, please contact Margaret Kosherzenko of my staff at 215-861-4288.

Sincerely,

/S/

Francis McCullough  
Associate Regional Administrator

Enclosures

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

1. TRANSMITTAL NUMBER

1 7 - 0 2 6

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

October 19, 2017

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 483

7. FEDERAL BUDGET IMPACT

a. FFY 2017 \$ -0-  
b. FFY 2018 \$ -0-

8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT

Pre-Print Pages, 24, 35, 45, 76, 79f1, 79f2, 79f3, 79f4, 79x

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 PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable)

Same Pages

10. SUBJECT OF AMENDMENT

Requirements for LTC Facilities

11. GOVERNOR'S REVIEW (Check One)

- GOVERNOR'S OFFICE REPORTED NO COMMENT<sup>2017</sup>
- 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 /

/S/

13. TYPED NAME

Cynthia B. Jones

14. TITLE

Director

15. DATE SUBMITTED

10/31/17

16. RETURN TO

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

Attn: Regulatory Coordinator

**FOR REGIONAL OFFICE USE ONLY**

17. DATE RECEIVED

November 20, 2017

18. DATE APPROVED

January 11, 2018

**PLAN APPROVED - ONE COPY ATTACHED**

19. EFFECTIVE DATE OF APPROVED MATERIAL

October 19, 2017

20. SIGNATURE OF REGIONAL OFFICIAL

/S/

21. TYPED NAME

Francis McCullough

22. TITLE

Associate Regional Administrator

23. REMARKS

**STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT**

State of VIRGINIA

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Citation

3.1 Amount, Duration, and Scope of Services (Continued)

42 CFR 431.53

(c) (1) Assurance of Transportation

Provision is made for assuring necessary transportation of recipients to and from providers. Methods used to assure such transportation are described in ATTACHMENT 3.1-D.

42 CFR 483.10

(c) (2) Payment for Nursing Facility Services

The State includes in nursing facility services at least the items and services specified in 42 CFR 483.10(f)(11).

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Citation

42 CFR Part 431  
Subpart P  
55 FR 22166  
(May 31, 1990)  
1903(u)(1)(D) of  
the Act, P.L.  
99-509 (§9407)

4.4 Medicaid Quality Control

- (a) A system of quality control is implemented in accordance with 42 CFR Part 431, Subpart P.
- (b) The State operates a claims processing assessment system that meets the requirements of 42 CFR 431.808, 42 CFR 431.818, CFR 431.830, 42 CFR 431.832, 42 CFR 431.834, and 42 CFR 431.836.

Yes.

Not applicable. The State has an approved Medicaid Management Information System (MMIS)

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Citation4.13 Required Provider Agreement

With respect to agreements between the Medicaid agency and each provider furnishing services under the plan:

- 42 CFR 431.107 (a) For all providers, the requirements of 42 CFR 431.107 and 42 CFR Part 442, Subparts A and B (if applicable) are met.
- 42 CFR Part 483  
1919 of the Act (b) For providers of NF services, the requirements of 42 CFR Part 483, Subpart B, and §1919 of the Act are also met. (\*plus additional requirements described below)
- 42 CFR Part 483,  
Subpart I (c) For providers of ICF/IID services, the requirements of participation in 42 CFR Part 483, Subpart I are also met.
- 1920 of the Act (d) For each provider that is eligible under the plan to furnish ambulatory prenatal care to pregnant women during a presumptive eligibility period, all the requirements of §1920(b)(2) and (c) are met.
- Not applicable. Ambulatory prenatal care is not provided to pregnant women during a presumptive eligibility period.

\*NOTE: As a condition of participation in the Virginia Medical Assistance Program all nursing facilities must agree that when an individual is discharged to a hospital, the nursing facility from which the individual is discharged shall ensure that the individual shall be given an opportunity to be readmitted to the facility at the time of the next available vacancy.

The only acceptable reasons for failure to readmit a specific individual who has been discharged to a hospital shall be the individual is certified for a level of care not provided by the facility, the individual is judged by a physician to be a danger to himself or others, or the individual, who at the time of readmission has an outstanding payment to the nursing facility for which he is responsible in accordance with Medicaid regulations.

TN No. 17-026  
Supersedes  
TN No. 93-04

Approval Date January 11, 2018

Effective Date 10/19/17

HCFA ID: 7982E

Revision: HCFA-PM-93-1  
January, 1993

(BPD)

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Citation

42 CFR 431.152;  
AT-79-18  
61 FR 32348;  
Secs.  
1902(a)(28)(D)(i)  
and 1919(e)(7) of  
the Act; P.L.  
100-203 (Sec.  
4211(c)).

4.28 Appeals Process

- (a) The Medicaid agency has established appeals procedures for NFs and ICF/IIDs as specified in 42 CFR 431.153 and 431.154.
- (b) The State provides an appeals system that meets the requirements of 42 CFR 431 Subpart E, 42 CFR 483.15, and 42 CFR 483 Subpart E, and 12VAC30-110-10 through 12VAC30-110-370 for residents who wish to appeal a notice of intent to transfer or discharge from a NF and for individuals adversely affected by the preadmission screening or resident review requirements of 42 CFR 483 Subpart C.

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TN No. 17-026  
Supersedes  
TN No. 93-15

Approval Date January 11, 2018

Effective Date 10/19/17

**STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT**

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<u>Citation</u>	
	§4.35 <u>Enforcement of Compliance for Nursing Facilities (NFs)</u> . The Commonwealth shall comply with the Medicaid Program requirements of 42 CFR 488, Subpart E.
42 CFR §488.402(f)	(a) Notification of Enforcement Remedies. When taking an enforcement action against a non-State operated NF, the State provides notification in accordance with 42 CFR 488.402(f). <ul style="list-style-type: none"> <li>(i)The notice (except for civil money penalties and State monitoring) specifies the: <ul style="list-style-type: none"> <li>(1) nature of noncompliance,</li> <li>(2) which remedy is imposed,</li> <li>(3) effective date of the remedy, and</li> <li>(4) right to appeal the determination leading to the remedy.</li> </ul> </li> <li>(ii)The notice for civil money penalties is in writing and contains the information specified in 42 CFR 488.434 and 42 CFR 488.440.</li> <li>(iii)Except for civil money penalties and State monitoring, notice is given at least two calendar days before the effective date of the enforcement remedy for immediate jeopardy situations and at least 15 calendar days before the effective date of the enforcement remedy when immediate jeopardy does not exist. The two and 15-day notice periods begin when the facility receives the notice, but, in no event will the effective date of the enforcement action be later than 20 calendar days after the notice is sent.</li> <li>(iv)Notification of termination is given to the facility and to the public at least two calendar days before the remedy's effective date if the noncompliance constitutes immediate jeopardy and at least 15 calendar days before the remedy's effective date if the noncompliance does not constitute immediate jeopardy. The State must terminate the provider agreement of a NF in accordance with procedures in parts 431 and 442.</li> </ul>
42 CFR §488.434	
42 CFR §488.402(f)(3), (4), (5)	
42 CFR §488.456(c) & (d)	
42 CFR §488.404(b)(1)	(b) Factors to be Considered in Selecting Remedies <ul style="list-style-type: none"> <li>(i)In determining the seriousness of deficiencies, the</li> </ul>

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State considers the factors specified in 42 CFR 488.404(b)(1) & (2).

\_\_\_\_\_The State considers additional factors. Attachment 4.35-A describes the State's other factors.

## (c) Application of Remedies

42 CFR §488.410

(i) If there is immediate jeopardy to resident health or safety, the State terminates the NF's provider agreement within 23 calendar days from the date of the last survey or immediately imposes temporary management to remove the threat within 23 days.

42 CFR §488.417(b)(1)  
§1919(h)(2)(C) of the Act

(ii) The State imposes the denial of payment (or its approved alternative) with respect to any newly admitted individual that has not come into substantial compliance within three months after the last day of the survey.

42 CFR §488.414  
§1919(h)(2)(D)

(iii) The State imposes the denial of payment for new admissions remedy as specified in §488.417 (or its approved alternative) and a State monitor as specified at §488.422, when a facility has been found to have provided substandard quality of care on the last three consecutive standard surveys.

42 CFR §488.408(b)  
§1919(h)(2)(A) of the Act

(iv) The State follows the criteria specified at 42 CFR §488.408(c)(2), §488.408(d)(2), and §488.408(e)(2), when it imposes remedies in place of or in addition to termination.

42 CFR §488.412(a)

(v) When immediate jeopardy does not exist, the State terminates a NF's provider agreement no later than six months from the finding of noncompliance, if the conditions of 42 CFR 488.412(a) are not met.

## (d) Available Remedies

42 CFR §488.406(b)  
§1919(h)(2)(A) of the Act

(i) The State has established the remedies defined in 42 CFR 488.406(b).

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Attachment 4.35-B through 4.35-K describe the criteria for applying the above remedies, plan of correction, NF appeals, and repeated substandard quality of care.

42 CFR §488.303(b)  
§1919(h)(2)(F) of the Act

(e) State Incentive Programs

Public Recognition

Incentive Payments

42 CFR §488.452

(f) In the event that the Commonwealth and CMS disagree on findings of noncompliance or application of remedies in a non-State operated NF or a dually participating facility when there is no immediate jeopardy, such disagreement shall be resolved in accordance with the provisions of 42 CFR §488.452.

42 CFR 488.402(c)

(g) The Commonwealth shall have the authority to apply one or more remedies for each deficiency constituting noncompliance or for all deficiencies constituting noncompliance.

42 CFR 488.454(d)

(h) As set forth by 42 CFR §488.454, remedies shall terminate on the date that CMS or the Commonwealth can verify as the date that substantial compliance was achieved and the facility has demonstrated that it could maintain

Revision: HCFA-PM-95-4  
JUNE 1995

(BERC)

OMB No.

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substantial compliance once the facility supplies documentation acceptable to CMS or the Commonwealth that it was in substantial compliance and was capable of remaining in compliance.

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TN No. 17-026

Approval Date January 11, 2018

Effective Date 10/19/17

Supersedes

TN No. 96-07

HCFA ID:

Revision: HCFA-PM-92-2 (HSQB)  
March, 1992

OMB No.

**STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT**

State of VIRGINIA

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Citation

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|--------------------------------|-------------------------------------|--|
|                                | §4.41.                              | <u>Resident Assessment for Nursing Facilities</u>  |
| §1919(b)(3) and<br>§1919(e)(5) | (a)                                 | The State specifies the instrument to be used by nursing facilities for conducting a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity as required in §1919(b)(3)(A) of the Act.   |
| §1919(e)(5)(A)                 | (b)                                 | The State is using:  |
|                                | <input checked="" type="checkbox"/> | The resident assessment instrument designated by CMS as described in Appendix R "Resident Assessment Instrument for Long-Term Care Facilities" of the CMS State Operations Manual; or  |
| §1919(e)(5)(B)                 | <input type="checkbox"/>            | A resident assessment instrument that the Secretary has approved as being consistent with the minimum data set of core elements, common definitions, and utilizations guidelines as specified by the Secretary (see sec 4470 of the State Medicaid Manual for the Secretary's approval criteria) [§1919(e)(5)(B)]. |

TN No. 17-026  
Supersedes  
TN No. 95-16

Approval Date January 11, 2018

Effective Date 10/19/17