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State Name: Virginia

State Plan Amendment (SPA) #: 22-0014

This file contains the following documents in the order listed:

- 1) Approval Letter
- 2) CMS-179 Form/Summary Form (with 179-like data)
- 3) Approved SPA Pages

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
601 E. 12th St., Room 355
Kansas City, Missouri 64106



Medicaid and CHIP Operations Group

July 26, 2022

Cheryl J. Roberts, Acting Director
Department of Medical Assistance Services
600 East Broad Street, Suite 1300
Richmond, VA 23219

Re: Virginia State Plan Amendment 22-0014

Dear Ms. Roberts:

The Centers for Medicare & Medicaid Services (CMS) has reviewed your Medicaid State Plan Amendment (SPA) submitted under transmittal number (TN) 22-0014. This amendment proposes to update the State Plan to be in compliance with federal rules related to third party liability.

We conducted our review of your submittal according to statutory requirements in Title XIX of the Social Security Act 1902(a)(25)(e) and 1902 (a)(25)(f). This letter is to inform you that Virginia Medicaid SPA 22-0014 was approved on July 25, 2022, with an effective date of April 1, 2022.

If you have any questions, please contact Margaret Kosherzenko at 215-861-4288 or via email at Margaret.Kosherzenko@cms.hhs.gov.

Sincerely,

A large black rectangular redaction box covers the signature of James G. Scott.

James G. Scott, Director
Division of Program Operations

cc: Emily McClellan

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

1. TRANSMITTAL NUMBER

2 2 — 0 0 1 4

2. STATE

V A

3. PROGRAM IDENTIFICATION: TITLE OF THE SOCIAL SECURITY ACT

XIX XXI

TO: CENTER DIRECTOR
CENTERS FOR MEDICAID & CHIP SERVICES
DEPARTMENT OF HEALTH AND HUMAN SERVICES

4. PROPOSED EFFECTIVE DATE

4/1/2022

5. FEDERAL STATUTE/REGULATION CITATION

Social Security Act 1902(a)(25)(e) and 1902(a)(25)(f)

6. FEDERAL BUDGET IMPACT (Amounts in WHOLE dollars)

a. FFY 2022 \$ 0
b. FFY 2023 \$ 0

7. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT
Amended pages: 4.22-B pages 1, 2, 3 and Preprint page 69a

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 PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable)

Same as box #7.

9. SUBJECT OF AMENDMENT

Third Party Liability Update

10. 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

11. SIGNATURE OF STATE AGENCY OFFICIAL

[Redacted Signature]

12. TYPED NAME
Karen Kimsey

13. TITLE
Director

14. DATE SUBMITTED
5/13/2022

15. RETURN TO

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

Attn:

FOR CMS USE ONLY

16. DATE RECEIVED
06/27/2022

17. DATE APPROVED 07/25/2022

PLAN APPROVED - ONE COPY ATTACHED

18. EFFECTIVE DATE OF APPROVED MATERIAL
04/01/2022

19. SIGN [Redacted Signature]

20. TYPED NAME OF APPROVING OFFICIAL
James G. Scott

21. TITLE OF APPROVING OFFICIAL
Director, Division of Program Operations

22. REMARKS

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 1902fa)(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 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, unless the state has made a determination related to cost effectiveness and access to care that warrants cost avoidance for up to 90 days.

TN No. 22-0014

Approval Date 07/25/2022

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**

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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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