

# Virginia Provider Appeal Information

## General Information



A provider appeal is a request for a neutral party to review the action taken by the Department of Medical Assistance Services (DMAS) or one of its contractors that impacts either your reimbursement for services you have rendered to a Medicaid recipient or your enrollment as a Medicaid participating provider. It is a two-step process that begins with an informal appeal. If you disagree with the decision issued, the second step is to file a formal appeal.

### If I have not yet provided services and have been denied approval of those services, can I appeal?

No, providers can only appeal adverse actions that DMAS or one of its contractors has taken for services that have been rendered or are currently being rendered.

### Who do I contact if I do not want to file an appeal, but have questions regarding the action taken?

Contact the appropriate DMAS Division or contractor with questions regarding the action taken.

### Can I get an extension of the deadline for filing an appeal?

No, by regulation, an extension of the deadline for filing an appeal will not be granted.

### What should I include with my appeal request?

Include whatever you believe is important for the decision maker to know when considering the facts and authority of your appeal.

### Which side has to prove it was right in an appeal?

You do, this is called the burden of proof. For your appeal to succeed, you must present evidence showing the decision that DMAS or its contractor made was wrong.

## The Informal Appeal

### What is an informal appeal?

The informal appeal is the first step in the appeals process. It provides an opportunity for you and the DMAS Appeals Division representative to discuss the facts and authority on the issue(s) you have appealed. No formal record is made of the proceeding.



### How do I file an informal appeal?

An informal appeal request must be in writing. It should include the issue(s) you are appealing, and be addressed to the DMAS Appeals Division. The DMAS Appeals Division has a Provider Appeal Request Form on the website at [www.dmas.virginia.gov](http://www.dmas.virginia.gov). By regulation, the appeal is not filed until it is date stamped by the DMAS Appeals Division.

Send or hand deliver the Provider Appeal Request Form and any related documents to:

Department of Medical Assistance Services  
Appeals Division  
600 East Broad Street  
Richmond, Virginia 23219  
Or fax: (804) 452-5454.

### If the appeal involves an identified overpayment from an audit of billed services, can DMAS collect on the overpayment during the informal appeal?

No, a hold is placed on collections after an appeal is filed.

### Can I have someone represent me for my informal appeal request?



Yes, but if your representative is not an attorney, your appeal request must include a letter authorizing your representative to act on your behalf. The authorization you send must be on your letterhead and include your signature along with the:

- Medicaid member name
- Medicaid number
- Date(s) of service

Your authorization is only good for the accompanying appeal request. You cannot submit a general authorization that covers future appeal requests. An authorization sample form can be obtained from the DMAS Appeals Division by calling 804-371-8488 or on the website at [www.dmas.virginia.gov](http://www.dmas.virginia.gov).

### What is the deadline for filing an informal appeal?

- For most appealable issues, the deadline is 30 days from the date you receive notice of the adverse action taken by DMAS or one of its contractors.
- For appeals involving readjustments to a cost settlement report, the deadline is 90 days from receipt of the Notice of Program Reimbursement.
- For appeals of a denial or termination of enrollment under Va. Code 32.1-325 (D), the deadline is 15 days from receipt of the notice of the adverse action taken by DMAS.



### Who conducts the informal appeal?

Informal Appeals Agents (IAA), employees of the DMAS Appeals Division, conduct provider appeals and preside over Informal Fact-Finding Conferences (IFFC).

### What is a case summary and do I need to respond?

The case summary is an explanation of the adverse action taken by DMAS or one of its contractors. The case summary is not the IAA's decision on your appeal. You may respond if you wish, but be mindful of strict procedures and deadlines for challenging all or part of the Case Summary content.

### **Can I submit additional information to the IAA while my appeal is pending?**

Yes, additional information must be received within 90 days from the date your appeal request is received by the DMAS Appeals Division. Anything received after the deadline cannot be considered by the IAA.

### **Can I request a face-to-face meeting on my appeal?**

Yes, an IFFC request must be submitted in writing. The deadline for participating in an IFFC is 90 days from the date your appeal request was received by the DMAS Appeals Division. If you do not request an IFFC, your case will be decided on the written submissions.

### **What happens at the IFFC?**

The IAA will ask the DMAS representative or its contractor to describe the action that was taken. You will have an opportunity to present facts, tell why you disagree with the action that was taken, and ask the DMAS representative(s) or its contractor questions. You may also submit additional information or bring witnesses to the conference to help explain why you disagree with the action.

### **What happens if I cannot attend the scheduled IFFC?**



You must contact the IAA as soon as possible and ask to have the IFFC rescheduled. The IAA will attempt to reschedule the IFFC, depending on the availability of the IAA and the DMAS representative or its contractor. If the IFFC is rescheduled, a letter will be mailed to you with the new conference date. However, strict timelines apply to the processing of the appeal and the IAA may not be able to reschedule for the time period or date that you wish.

### **What happens if I do not contact the IAA to reschedule and fail to attend the IFFC?**

If you do not contact the IAA to reschedule and fail to attend the IFFC, the IAA will dismiss the appeal in favor of DMAS.

### **What happens if I want to withdraw my appeal request?**

To withdraw your appeal, submit a written request. After you send a written withdrawal request, the IAA will close the appeal and notify the DMAS representative.

### **Does my appeal end if DMAS or its contractor approves the issue I appealed?**

No, the appeal does not automatically end if DMAS approves your request. If you are satisfied with DMAS' action and wish to end your appeal, you can submit your written withdrawal request. If you do not withdraw your appeal, the IAA will determine if the action DMAS took resolved the full scope of your appeal. If so, the IAA will issue a decision that resolves the appeal and will close the appeal case.

### **Can I speak with the IAA before or after the IFFC?**

Yes, you can speak with the IAA before or after the IFFC.

### **When will I get a decision about my informal appeal?**

The IAA must make a decision within 180 days from the date your informal appeal request was received by the DMAS Appeals Division.



### **What if I do not agree with the IAA's decision?**

If you do not agree with the IAA's decision, you may file a formal appeal. The informal appeal decision includes information about this process.

## The Formal Appeal

### What is a formal appeal?

A formal appeal is the second step of the DMAS appeals process, available to providers who disagree with the informal appeal decision.

### How can I file a formal appeal?

By regulation, an appeal is not filed until it is date stamped by the DMAS Appeals Division. You can mail, fax or hand deliver the Provider Appeal Request Form and any related documents to:

Department of Medical Assistance Services  
Appeals Division  
600 East Broad Street  
Richmond, Virginia 23219  
Or fax: (804) 452-5454.

### What is the timeframe to file a formal appeal?



You have 30 days from receipt of the informal appeal decision to file a formal appeal. By regulation, you are presumed to receive the decision within three days of it being mailed by DMAS Appeals Division.

### If the appeal involves an identified overpayment from an audit of billed services, can DMAS collect on the overpayment during the formal appeal?

No, a hold is placed on collections after the formal appeal has been filed.

### Who presides over the formal hearing?

A Hearing Officer presides over the formal hearing. Hearing Officers are assigned by the Executive Secretary of the Virginia Supreme Court on a rotating basis. The Hearing Officers are licensed attorneys, typically with an active law practice in the community.

### Who represents DMAS or its contractors during the formal appeal process?

DMAS or its contractors are represented by a Formal Appeal Representative, who is an attorney employed by DMAS, and has received authorization from the Office of the Attorney General to represent DMAS in administrative hearings.

### Do I need to be represented by an attorney?

In general, you do not need to be represented by an attorney. The exception is if the provider is a corporation. Because a corporation is its own entity, it must be represented by an attorney if it wants to present legal arguments. If an attorney does not represent the corporation, the Hearing Officer may allow you and other agents of the corporation to provide factual testimony.

### Does DMAS or its contractor submit a new case summary during a formal appeal?

No, during the formal appeal, the DMAS Formal Appeal Representative will submit the documentary evidence that he/she intends to rely on during the appeal. The informal appeal case summary is typically included in the DMAS documentary evidence. By regulation, the parties are required to file their documentary evidence within 21 days of the filing of the notice of formal appeal. Documents not submitted within that time period will likely be excluded from consideration by the Hearing Officer.

## What occurs at the formal hearing?



Formal hearings are held in a hearing room at DMAS. Typically, the Hearing Officer will have opening remarks and swear in the witnesses followed by both parties starting with an opening statement. You have the burden of proof, so you or your attorney will present your witness testimony first. The witness will begin by answering questions from you or your attorney, known as “direct examination”, then will answer questions from the DMAS Formal Appeal Representative, known as “cross examination”. After all of your witnesses testify, the same process will occur for the DMAS witnesses. If warranted, you may follow with more witness testimony to rebut the testimony presented by DMAS. At the conclusion of the hearing, the parties have the opportunity to give a closing argument.

## What happens after the formal hearing?

The regulations provide a time period for the parties to submit an opening brief to the Hearing Officer followed by a reply brief. After reviewing the briefs, testimony, and evidence presented, the Hearing Officer submits a Recommended Decision to the DMAS Director.

## What is the Recommended Decision?

The Recommended Decision is the Hearing Officer’s recommendation to the DMAS Director. Under Virginia Law, the DMAS Director is required to accept the Recommended Decision unless the recommendation contains an error of law or policy.

## Is there a deadline for the Hearing Officer to submit the Recommended Decision?

The Recommended Decision must be submitted within 120 days of the filing of the formal appeal request.

## What are “exceptions?”

After receipt of the Recommended Decision, both parties have the opportunity to submit written argument to the DMAS Director to explain why they believe the Recommended Decision should be accepted or rejected. For DMAS, the DMAS Formal Appeal Representative files the exceptions with the DMAS Appeals Division. As the provider, you or your attorney should file exceptions with the DMAS Appeals Division against those portions of the Recommended Decision you believe are incorrect.

## How are the parties notified of the final decision in the appeal?

A Final Agency Decision is issued by the DMAS Director. It will specifically describe which parts of the Recommended Decision have been accepted and rejected, as well as include the Director’s analysis on the issues in the appeal. A copy of the decision is sent to the provider and the DMAS Formal Appeal Representative.

## Are there deadlines for issuing the Final Agency Decision?

The Final Agency Decision must be issued within 60 days of the Hearing Officer’s Recommended Decision.

## Can deadlines be extended?

Some deadlines are firm and cannot be extended, including the submission of documentary evidence, exceptions, and Final Agency Decision. Other deadlines may be extended at the discretion of the Hearing Officer; the extension should not interfere with the Hearing Officer’s deadline to submit the Recommended Decision.

### Can the decision be appealed further?

Yes, if you are not satisfied with the Final Agency Decision, you can appeal to Circuit Court. Information for appealing to Circuit Court is included in the Final Agency Decision. DMAS cannot appeal the Final Agency Decision.

## The Circuit Court Appeal

### How do I appeal to Circuit Court?



Under the Rules of Supreme Court of Virginia, an appeal to court is a two-step process. The first step is for you to file a Notice of Appeal with the DMAS Director within 30 days of receipt of the Final Agency Decision. The second step is for you to file a petition for appeal with the court within 30 days of the date that you filed your notice of appeal with the DMAS Director. Both steps must be completed in order to perfect the appeal.

### Who represents DMAS in Circuit Court?

The Office of the Attorney General will assign an Assistant Attorney General to represent DMAS in court matters.

### Will DMAS have to file evidence and present testimony in Circuit Court?

No, DMAS will not have to file evidence and present testimony in court. The court appeal is limited to legal issues; no new evidence is taken.

### Can DMAS collect on the overpayment for an appeal in Circuit Court?

Yes, after the Final Agency Decision is issued, the administrative appeal process is complete. DMAS may collect on the overpayment amount upheld during the administrative appeal process.

### Who do I contact for assistance?

For questions specific to the informal or the formal appeal process, contact the DMAS Appeals Division by calling 804-371-8488.

