



VA/DC HFMA Virginia Legislative Update

September 22, 2023

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Overview of Topics

Virginia General Assembly

New Laws Effective July 1, 2023

Elections

Recent Virginia Issues

Medicaid

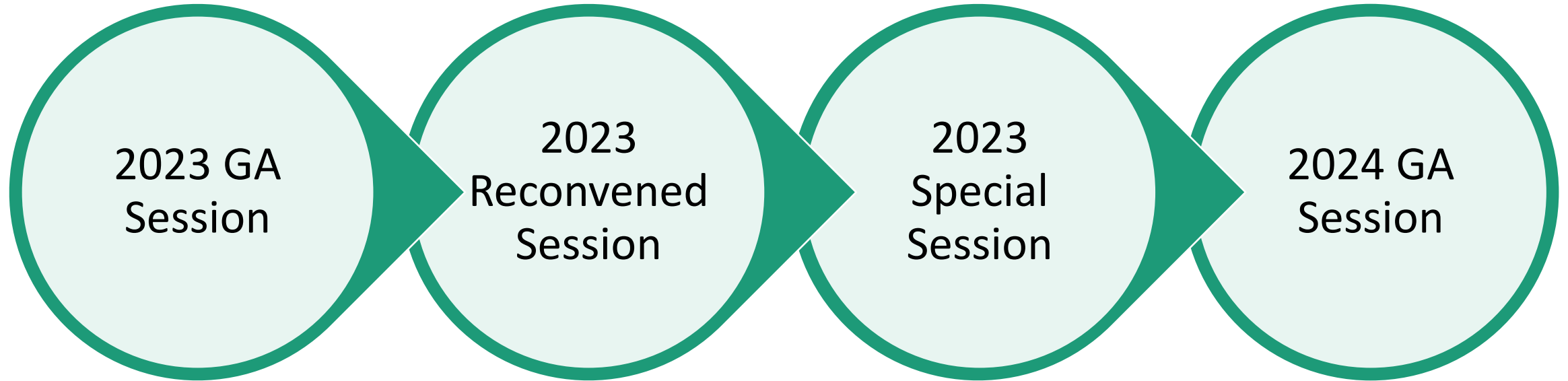
Federal Issues

Transparency and No Surprises Act

Q&A



Virginia General Assembly



- Convened Jan 11, 2023
- Adjourned Sine Die Feb 25, 2023

- Reconvened April 12, 2023

- Governor called Sept 6, 2023

- Will convene Jan 10, 2024

2023 General Assembly Session



- 2,863 pieces of legislation introduced
 - 1,687 passed the House and Senate
 - 4 vetoes and 78 bills amended by the Governor
- Positive outcomes for VHHA legislative priority items.
- Positive outcomes in defeating problematic legislative initiatives.
- The 2023 General Assembly adjourned Sine Die on Saturday, February 25, without adopting comprehensive updates to the 2023-2024 biennium budget. Instead, the legislature passed a “skinny budget”.

General Assembly Reconvened Session

- Reconvened on Wednesday, April 12, 2023
- No major changes to VHHA priorities by the Governor in the Reconvene Session.
- Governor's Budget Recommendations: 4 minor, mainly technical amendments to HB 1400 (Budget Bill)
- Governor's Vetoes – 3
- Governor signed legislation - 738
- Governor's Legislative Recommendations – 78



Review of 2023 Legislative Priorities - Outcomes

✓ Behavioral Health

- **Passed legislation to address TDO process/ placement issues**
 - TDO alternative for intoxicated patients
 - Permitting release from TDO prior to a commitment hearing
 - Require alternative transportation, where deemed not a threat to self or others

✓ Workforce

- Passed legislation to remove stigmatizing questions from licensure applications
- Passed legislation to expand penalties for threats against healthcare providers to all healthcare settings

✓ Insurance and Coverage Issues

- Passed legislation to create a BOI workgroup on resolving prompt payment complaints

✓ Protect Certificate of Public Need

- Defeated all harmful COPN Legislation

✓ Hospital/Provider Regulatory Items

- Defeated harmful Price Transparency Legislation
- Defeated harmful Clergy and General Visitation Requirements
- Defeated harmful COVID-19 Vaccine and Treatment Legislation
- Obtained favorable amendments to legislation requiring minimum security in EDs
- Obtained favorable amendments to legislation requiring minimum visit requirements for Private Guardians

✓ Health Professions

- Passed legislation to allow EMS personnel to administer drugs and devices in hospitals and other medical care facilities
- Passed legislation streamlining licensure of foreign nursing graduates
- Defeated legislation that does not comport with VHHA Policy on Health Professions Licensure and Practice Authority

✓ Medical Malpractice/Litigation

- Defeated legislation to increase cap on Neurological Birth Injury Fund recoveries

Skinny Budget

- The Governor, House, and Senate budgets include major investments in VHHA Workforce and Behavioral Health priorities.
- Legislature passed “skinny budget” on Saturday, February 25, 2023.
- The Governor made four limited technical amendments to HB 1400 (the budget bill), mainly targeted at a few core services. The amendments were voted on during the Reconvene Session - April 12th.
 - Through the first eight months of the fiscal year, tax collections are surpassing expectations, confirming at least \$3.6 billion in unanticipated resources.

Health Care Related Governor's Amendments

- HB 2222 (Surgical Assistants) – **Support**
 - Extends the timeframe by 6 months (Dec. 31, 2023) for surgical technologists who completed a training program any time prior to October 1, 2022, to register with the Board for their certification to be granted via the grandfathering allowed under the code.
 - Allows registered apprenticeship to count as a training program.
 - Allows the Board to approve a hospital-based “on-the-job” training program as a pathway.
 - Allows Board approved training/school-based programs to count as a pathway
- HB 2294 and SB 903 (Limits the amount of (THC) allowed in hemp-derived products, etc.) - **Monitor**
 - Allows hemp products to be sold at retail as long as they contain- 0.3% THC and no more than 2mg of THC per package UNLESS the product has a 25:1 ratio of CBD to THC.
 - Establishes a retail facility registration and fee for retailers who want to sell hemp. The retailer registers with VDACS and pays an annual \$1,000 registration fee.
 - Removed requirement that products be tested at a US DEA lab - now only ISO certified.
 - Removed bittering agent for topical hemp products.

New Laws Effective July 1, 2023

Emergency Department Security Requirements SB827 (Favola)



Hospital Regulation:
ED Security Requirements

- ✓ Requires every hospital with an emergency department to establish a security plan for the emergency department. The security plan must be developed using standards established by the International Association for Healthcare Security and Safety (IAHSS) or other industry standards and be based on the results of a security risk assessment of each emergency department location of the hospital.
- ✓ The security plan must include the presence of at least one off-duty law-enforcement officer or trained security personnel present in the emergency department at all times, as indicated to be necessary and appropriate by the security risk assessment.
- ✓ The bill provides for a waiver to be granted by the Commissioner of Health from the requirement that at least one off-duty law-enforcement officer or trained security personnel be present at all times in the emergency department if the hospital demonstrates that a different level of security is necessary and appropriate for any of its emergency departments.



Hospital Regulation:
ED Security Requirements

- ✓ The bill requires that the security plan outline training requirements for security personnel in the potential use of and response to weapons, defensive tactics, de-escalation techniques, appropriate physical restraint and seclusion techniques, crisis intervention, and trauma-informed approaches.
- ✓ Training must also include instruction on safely addressing situations involving patients, family members, or other persons who risk harming themselves or others due to mental illness, substance abuse, or experiencing a mental health crisis. Such training requirements may be satisfied by completing the Department of Criminal Justice Services' minimum training standards for auxiliary police officers.
- ✓ Effective Date: July 1, 2023; however, implementation by the Department of Health will not occur prior to publication of final regulations.
- ✓ Draft emergency regulations approved by the Board of Health on June 15, 2023. Available online at:
<https://townhall.virginia.gov/I/ViewNotice.cfm?GNid=2568>

Hospital Regulation *ED Security Requirements*



- ✓ Ensure that every emergency department has a security plan developed using required standards, including a security risk assessment for each department location and specifying training requirements.
- ✓ Where at least one off-duty law-enforcement officer or trained security personnel is not present in the emergency department at all times, document the security risk assessment results indicating that trained security personnel is not necessary and appropriate.
- ✓ Where the security risk assessment does not support such a finding, seek a waiver from the Commissioner of Health.
- ✓ Evaluate the need for any necessary changes to applicable policies and procedures and modify protocols for emergency department security accordingly.

Medical Debt Collection from Spouses HB2343 (Williams Graves)

Medical Debt
Collection:
Spousal Debt

- ✓ Provides that liability shall not be imposed upon one spouse for medical care furnished to a patient spouse when such patient spouse predeceases the nonpatient spouse.
- ✓ Repeals Va. Code § 8.01-220.2, which stipulates that spouses are jointly and severally liable for all emergency medical care furnished to the other spouse by a physician licensed to practice medicine in the Commonwealth or by a hospital located in the Commonwealth.



- ✓ Notify billing departments and financial assistance staff that a nonpatient spouse is no longer held jointly and severally liable under Virginia law for debt owed from emergency medical care delivered to a now-deceased patient spouse.
- ✓ Modify debt collection policies and procedures accordingly.

Authorizing Treatment for Apparent Intoxication SB1302 (Deeds)/HB1792 (Ransone)

- ✓ Clarifies that when a mental or physical condition appears to be a result of intoxication, a licensed physician who has attempted but is unable to obtain the informed consent of an adult patient for treatment of such apparent intoxication may seek an order from the magistrate or court authorizing temporary detention of the patient in a hospital emergency department or other appropriate facility for testing, observation, or treatment.



- ✓ Notify emergency department staff that if mental or physical conditions result from intoxication, they may seek an order for emergency custody or temporary detention for testing, observation, or treatment in a hospital emergency department or another appropriate facility.
- ✓ Evaluate the need for any necessary changes to applicable policies and procedures and modify protocols accordingly.

Alternative Transportation SB872 (Newman)

- ✓ Requires magistrates to authorize alternative transportation if a patient under emergency custody or temporary detention is deemed not a danger to self or others.



- ✓ Notify emergency department and behavioral health department staff of the likelihood of increased use of alternative transportation.
- ✓ Evaluate the need for any necessary changes to applicable policies and procedures and modify protocols accordingly.

Release Prior to Involuntary Commitment Hearing HB1976 (Bell)/SB1299 (Deeds)



- ✓ Permits the director of a facility where a person is awaiting transport to the facility of temporary detention to release the person prior to the involuntary commitment hearing if an employee or a designee of the local community services board, in consultation with the person's treating physician, (i) conducts an evaluation of the person, (ii) determines that the person no longer meets the commitment criteria, (iii) authorizes the release of the person, and (iv) provides a discharge plan.

- ✓ Notify emergency department and behavioral health department staff that they are permitted to release patients awaiting transportation to a temporary detention facility prior to the involuntary commitment hearing under certain circumstances where the patient no longer meets commitment criteria.
- ✓ Evaluate the need for any necessary changes to applicable policies and procedures and modify protocols accordingly.

Health Professions ~ Pharmacist Testing and Treatment

HB2274 (Kilgore)/SB948 (Suetterlein)

- ✓ Allows pharmacists to initiate treatment with, dispense, or administer controlled substances or devices for the initiation of treatment of group A Streptococcus bacteria infection, influenza virus infection, COVID-19 virus infection, and urinary tract infection to persons 18 years of age or older with whom the pharmacist has a bona fide pharmacist-patient relationship in accordance with regulations set forth by the Board of Pharmacy.
- ✓ The bill directs the Board of Pharmacy to adopt a statewide protocol for initiating treatment and dispensing and administering drugs and devices by pharmacists in accordance with the bill's provisions by November 1, 2023.



- ✓ Notify pharmacy directors and primary care operations of these changes to practice authority by pharmacists.
- ✓ Evaluate the need for any necessary changes to applicable policies and procedures and modify protocols accordingly.

Private Guardianship Visitation Requirements HB 2028 (Roem)

- ✓ Establishes minimum visitation requirements for private guardians:
 - ✓ 3 times per year and at least once every 120 days
 - ✓ 2 of the visits be conducted by the guardian
 - ✓ At least one such visit be in-person
- ✓ Allows the second visit by the guardian to be conducted by the guardian via virtual conference or video call.
- ✓ Allows the remaining visit to be conducted:
 - by the guardian;
 - by a person other than the guardian, including
 - a family member monitored by the guardian or
 - a skilled professional retained by the guardian who is experienced in the care of individuals, including older adults or adults with disabilities; or
 - via virtual conference or video call with the guardian or such other person monitored by the guardian or skilled professional
- ✓ Requires a person who visits the incapacitated person in lieu of the guardian to provide a written report to the guardian regarding any such visit/



- ✓ Ensure that any private guardian employed or contracted by the hospital knows these changes and can meet the new visitation requirement 3 times a year (at least once every 120 days).

Continuity of Care Following Termination from Provider Network HB2354 (Orrock)

- ✓ Requires a carrier that uses a provider network to establish procedures for notifying an enrollee of (i) the termination from the carrier's provider panel of a provider who was furnishing or has furnished health care services to the enrollee in the six months prior to the notice and (ii) the right of an enrollee upon request to continue to receive health care services following the provider's termination.
- ✓ Requires the carrier to provide such notices, except when a provider is terminated for cause.
- ✓ Clarifies that a provider is permitted to render health care services to any of the carrier's enrollees:
 - For a period of at least 90 days from the date of a provider's termination, except when a provider is terminated for cause.
 - Through the postpartum period where medically confirmed to be pregnant at the time of termination.
 - Up to 180 days where determined by a medical professional to have a life-threatening condition at the time of a provider's termination.
 - Until discharge where admitted to and receiving treatment in any inpatient facility at the time of a provider's termination.



- ✓ Work with contracted health carriers to ensure that the carrier appropriately notifies impacted patients upon termination from provider panels.
- ✓ Update any applicable policies and procedures pertaining to continuity of care following termination from participation in provider panels, as appropriate.

Health Information Exchange

- ✓ Renames the Emergency Department Care Coordination (EDCC) Program as the Smartchart Network Program.
- ✓ Expands participation by all health care providers, insurance carriers, and other organizations with a treatment, payment, or operations relationship with a patient to facilitate real-time communication and collaboration.
- ✓ Adds a requirement to all health care providers, health care entities, and insurance carriers to access images, lab results, and information necessary to evaluate and monitor the care and treatment of a patient
- ✓ Establishes a work group to study and establish a plan to develop and implement a system to share information regarding a patient's prescription history and medication reconciliation.
- ✓ Delayed effective date of January 1, 2024.



- ✓ Notify and educate appropriate providers in your emergency department and other applicable facilities on the capabilities and intended uses and outcomes of the EDCC/Smartchart system.
- ✓ Notify information technology departments of upcoming requirements for sharing of information regarding images, lab results, and prescription history and medication reconciliation.

2023 Special Session – September 6, 2023

- After months of failed budget negotiations, the House and Senate returned to Richmond to vote on additional amendments to the SFY 23/24 biennium budget.
- Procedural rules for the Special Session did not allow members to offer Committee or Floor amendments.
- HB 6001 passed the House 86/4/0 and SB 6001 passed the Senate 39/0/1.
- The Governor signed the Budget on Thursday September 14th

Key Health Care Provisions – Behavioral Health

- Increase in the mental health intensive outpatient (IOP)/partial hospitalization program (PHP) rates to the current substance use disorder PHP/IOP rates, bringing parity to hospital-delivered outpatient services.
- **\$1.5 million for the behavioral health loan repayment program.**
- \$155.6 million in new spending for mental health services, including:
 - \$10.0 million to contract for psychiatric emergency programs in hospitals**
 - \$58.0 million to create crisis-receiving centers and crisis stabilization units**
 - \$34.0 million for permanent supportive housing & housing for individuals with serious mental illness
 - \$18.0 million for a targeted pay raise of an average of 5% for all CSB staff
 - \$11.7 million for school and community-based children’s mental health services
 - \$10.0 million for 15 additional mobile crisis teams
 - \$4.4 million to increase funding for the first three steps of STEP-VA**
 - \$4.0 million for the Virginia Mental Health Access Program

Key Health Care Provisions

Workforce

- \$3 million for the Nurse Preceptor Program.
- \$5 million for the “Earn While You Learn” program.
- Funding amounts are less than what was included in the House and Senate budgets earlier this year. This is due to the shortened amount of time that remains in FY 24.

Reinsurance

- The budget includes language instructing the Bureau of Insurance to target a 15 percent premium reduction for plan year 2024.

Key Health Care Provisions – Language Amendments

- **Emergency Department Utilization Penalty:**
 - As a result of the successful lawsuit led by VHHA, the existing penalty was removed.
 - New language authorizing DMAS to implement a modified emergency room utilization program, consistent with the requirements necessary for approval by the Centers for Medicare and Medicaid Services, with an effective date of January 1, 2024.
 - There is no detail regarding what this program is or to whom it would apply.



Key Health Care Provisions – Language Amendments

Supplemental Payment Program(s):

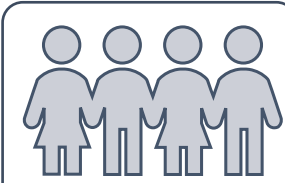
- Authorizing language for the hospital-affiliated physician practice consortium supplemental payment program, effective July 1, 2024.
- Authorizing language for an IME supplemental payment arrangement for Sentara Norfolk General Hospital.
 - This language relating to the EVMS and ODU merger was not previously included in House or Senate budgets released earlier this year.
 - We are seeking clarification to understand the impact, if any, this will have on the expansion supplemental payment program.

2024 General Assembly Session

- The new General Assembly building is scheduled to open before the 2024 session.
- Session begins January 10, 2024.



What's
New?



At least **46** New Members
of the House and Senate



New General Assembly
Building



New Caucus Leadership



New Committee Chairs

Impact of Elections on VHHA Legislative Priorities

What We Know

- Senator Chap Petersen (COPN Opponent) was defeated
- Senator George Barker (COPN Proponent) was defeated
- Senator Louise Lucas (VHHA Champion) will be the next Chair of Senate Finance
- The Governor will introduce his biennial budget prioritizing Behavioral Health and Workforce in December
- HWI Chair will either be Bobby Orrock or Mark Sickles

What We DO NOT Know

- At least 46 new members with varied backgrounds, biases, experiences, and politics.
- Who's in charge? Who will control the House of Delegates and Senate?
- Budget Conferees and Negotiations
- Chief Senate COPN Opponent & Proponent
- New Chair of Senate Education & Health and Commerce & Labor committees
- Transparency and Anti-Hospital Narratives

Top Healthcare Issues in the 2024 General Assembly Session



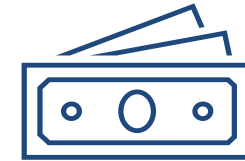
2024-2025
Biennium
Budget



Hospital Price
Transparency



Certificate of
Public Need



Hospital
Financial
Sustainability



Behavioral
Health



Health Care
Workforce



340B Reporting

Virginia Elections

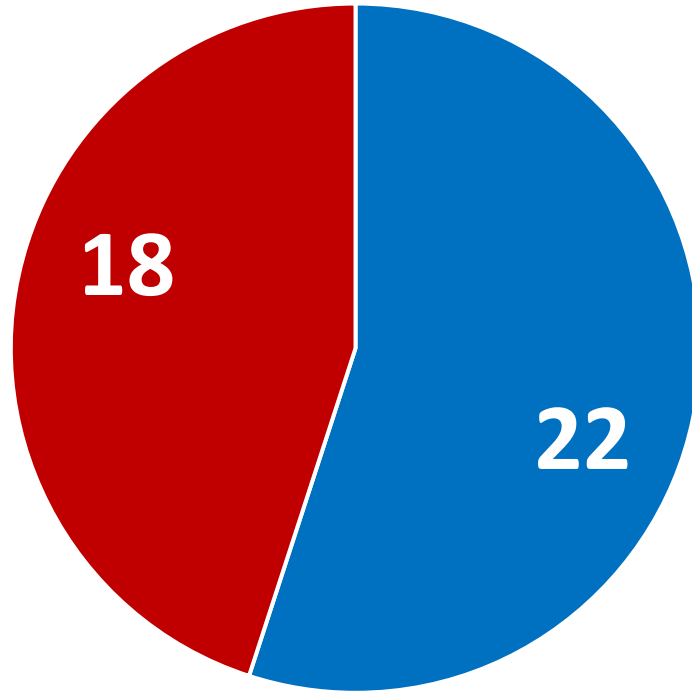
Elections



- ❖ **All 140 seats in the General Assembly are up for re-election**
- ❖ **29 Incumbents voluntarily retired for 496 combined years of service**
- ❖ **Early voting for General Election Begins **Today**– September 22, 2023**
- ❖ **General Election – November 7, 2023**
- ❖ **The VHHA Advocacy team has met with approximately 50 General Assembly candidates (not including incumbents)**

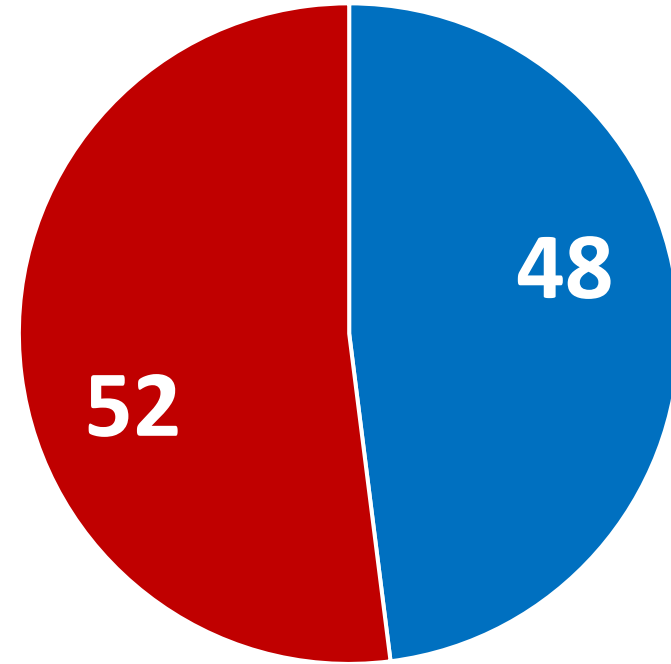
2023 Composition of the General Assembly

Senate



■ Democrat ■ Republican

House of Delegates



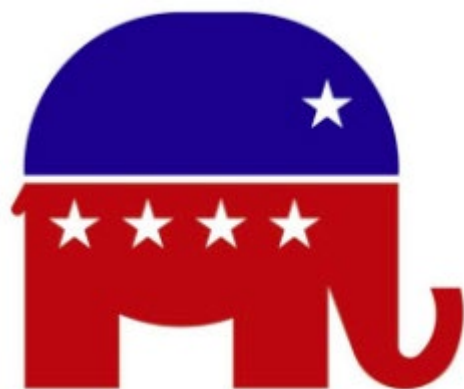
■ Democrat ■ Republican

Top Issues Among Primary Voters

Reproductive Healthcare
Gun Safety
Climate and Environment
Education
Worker's Rights



Economy/Jobs
Pro-Life
Gun Rights
Parental Rights
Public Safety



Most Competitive Senate Races

SD 27 Durant (R) vs Griffin (D)

SD 17 Brewer (R) vs Jenkins (D)

SD 24 Mason* (D) vs Diggs (R)

SD 31 Segura (R) vs Perry (D)

On the Bubble – Watching Closely

SD 4 Suetterlein* (R) vs White Boyd (D) **Lean Rep**

SD 30 Roem (D) vs Woolf (R) – **Lean Dem**

SD 16 Dunnavant* (R) vs VanValekenburg (D) **Lean Dem**

* Incumbent



Most Competitive House Races

HD 22 Lovejoy (R) vs Nembhard (D)

HD 89 Ennis (R) vs Jenkins (D)

HD 57 Owen (R) vs Gibson (D)

HD 21 Stirrup (R) vs Thomas (D)

HD 82 Taylor* (R) vs Adams (D)

HD 97 Greenhalgh* (R) vs Feggans (D)

HD 65 Peters (R) vs Cole (D)

On the Bubble - Watching Closely

HD 75 Coyner* (R) vs Miller Pitts (D) **Lean Rep**

HD 58 Willett* (D) vs Shaia (R) **Lean Dem**

HD 71 Batten* (R) vs Jessica Anderson (D) **Lean Rep**

* Incumbent



What's at Stake?

Democrats need **3** net pickups
to gain control House.

Republicans need **3** net pickups
to gain control the Senate.

Based on the new maps, Gov. Youngkin won **52**
House districts and **20** Senate districts in 2021.

Early voting begins today September 22.

Election Day is November 7.



Medicaid

- Medicaid Redeterminations
- Medicaid Outpatient Payments
- Rebasing
- Medicaid Inflation Increase
- ED Downcoding
- Medicaid MCO RFP

Mitigating Coverage Loss: Medicaid Redeterminations

Kaiser as of September 15

6.6 Million

At least 6,591,000 people in 48 states and DC have been **disenrolled from Medicaid** since April 1, 2023.

As of September 15, 2023

The Medicaid Redetermination Process

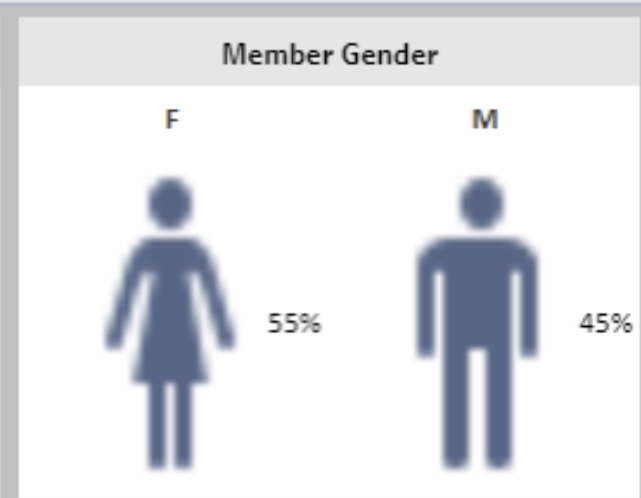
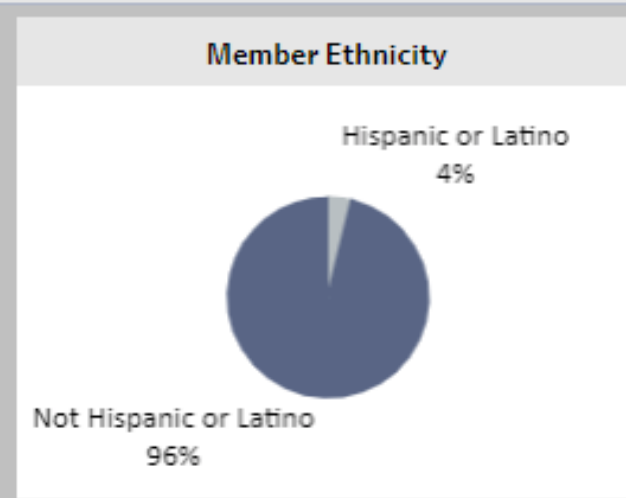
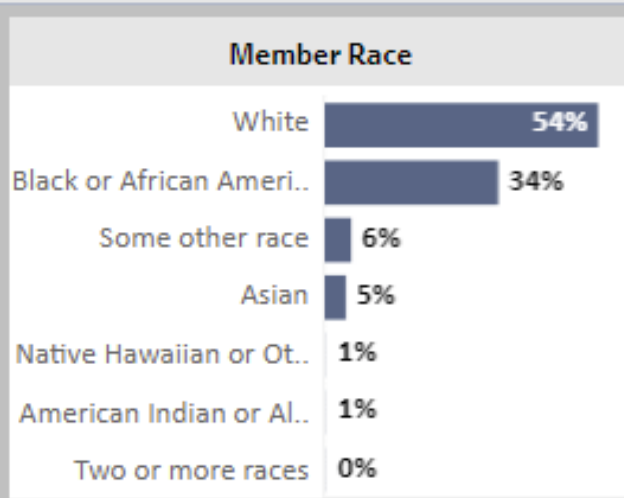
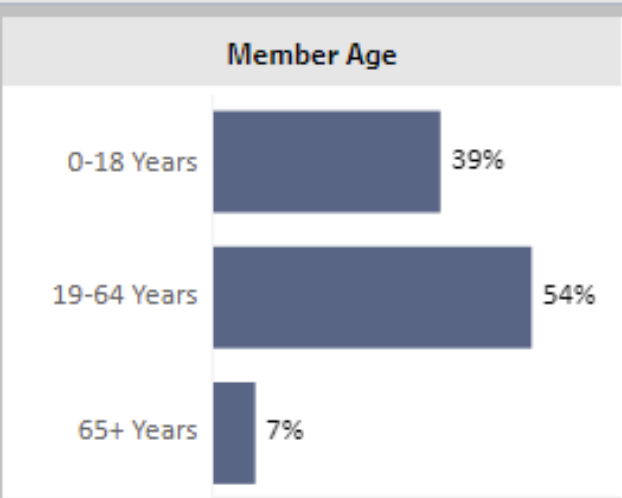
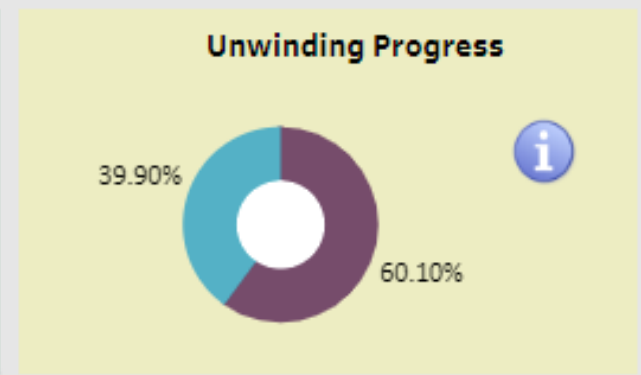
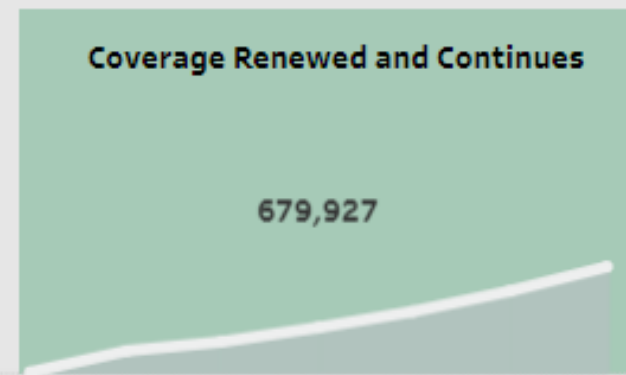
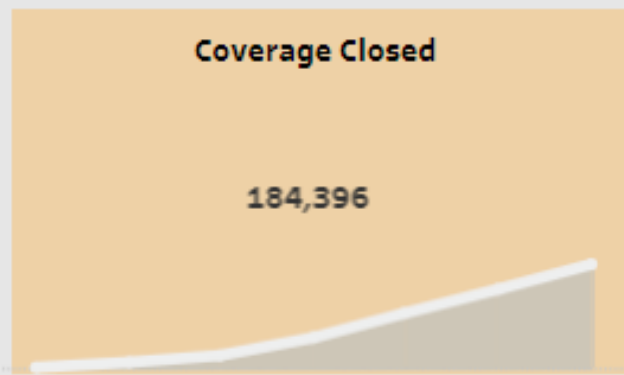
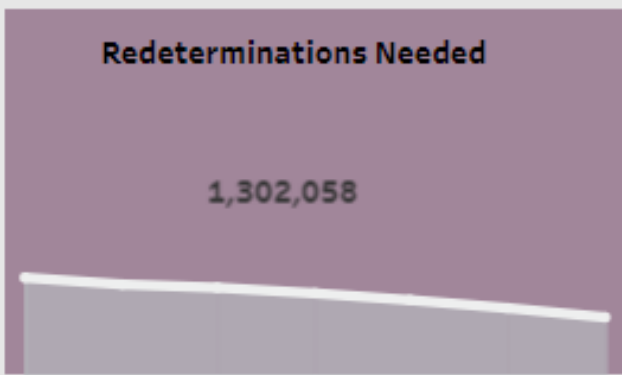
- Between March 2020 and March 2023, VA experienced an increase of over 630,000 enrollees (41% increase in enrollment growth).
- As of April 1, 2023, states returned to normal enrollment processes, including redeterminations and processing reductions/closures of coverage.
- Starting in March 2023, DMAS has 12 months to redetermine eligibility for all 2.2 million Virginians enrolled in Medicaid.
- Virginia initiated its first month of redeterminations in March 2023; reductions/closures of coverage did not begin until April 30, 2023, unless the member died, became incarcerated, or moved out of state permanently.

Estimated number of Virginians that will lose coverage

- According to estimates from DMAS, approximately 14% of those currently enrolled in Medicaid could lose coverage, which is comparable to national projections of 17.4%.
 - Using the most recently available Medicaid enrollment data, roughly 304,500 people in Virginia would be disenrolled from Medicaid coverage in the 12-month period of Medicaid unwinding.
- Up to 4% of members may lose and regain coverage within 1-6 months of closure.
- DMAS has a [dashboard](#) available to track the number of redeterminations completed, closed members, and redeterminations needed. It is updated monthly.

Federal Government Recommendations

- HHS Secretary sent a [letter](#) to US Governors on June 12, 2023.
 - Included additional outreach strategies
 - Recommend that instead of immediately dropping people who haven't responded by a deadline, federal officials are encouraging state Medicaid agencies to delay procedural terminations for one month while conducting additional targeted outreach to Medicaid recipients.
- CMS sent a [letter](#) to State Medicaid Directors on August 30, 2023
 - Ensure renewal process is compliant with all federal requirements – *ex parte* renewal process
 - Children are being improperly dropped from Medicaid where they can be eligible
 - Members in multi-member households are being inappropriately disenrolled
 - If improperly denied eligibility, must do an appropriate redetermination and reinstate



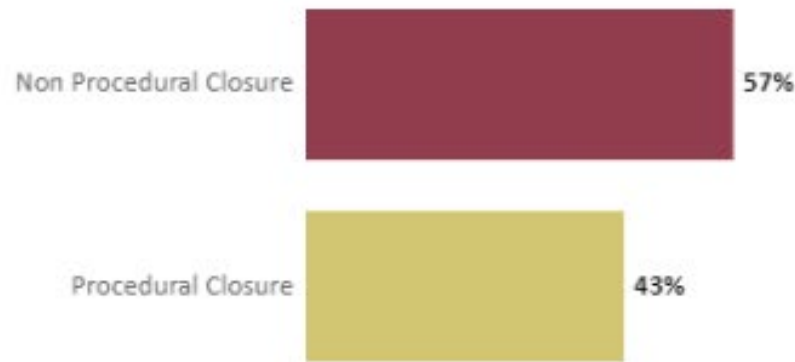
Overall Members Data Table

Report month	Coverage Closed Members	Closed Members %	Coverage Renewed and Continued Members	Redetermined Completed %	Redetermination Needed	Redetermination Needed %
Sep 2023	184,396	8.51%	679,927	31.39%	1,302,058	60.10%

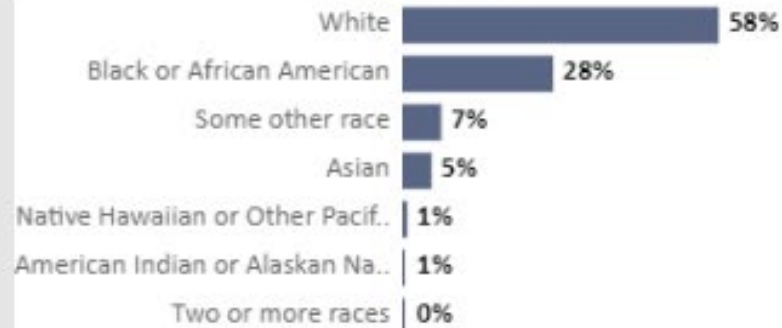
Data thru 9/1



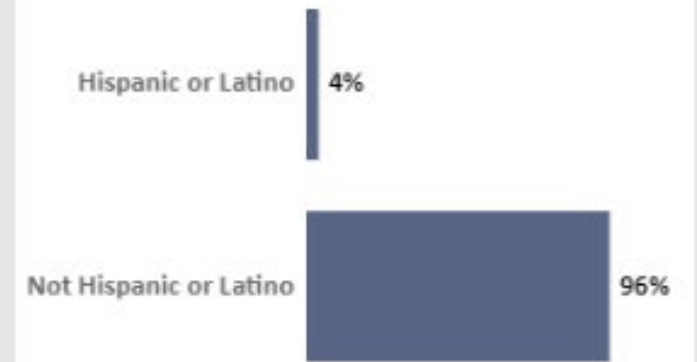
Closure Type



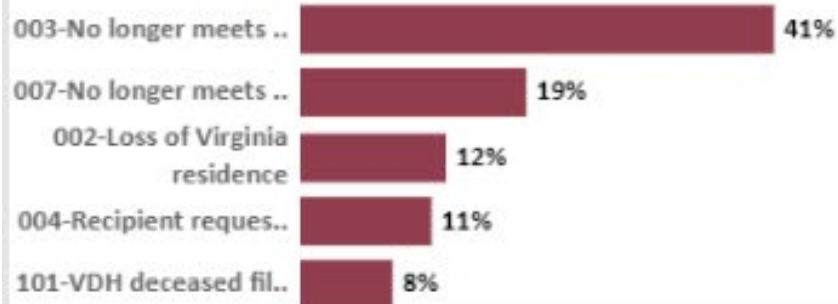
Member Race



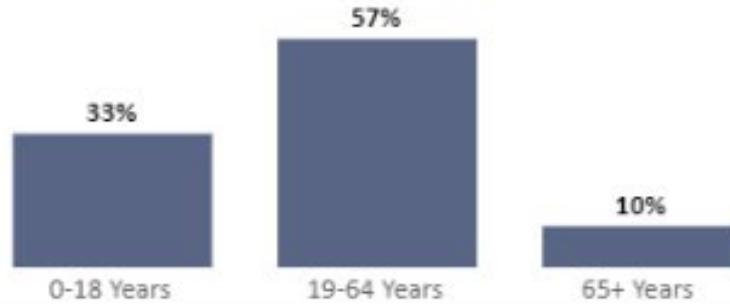
Member Ethnicity



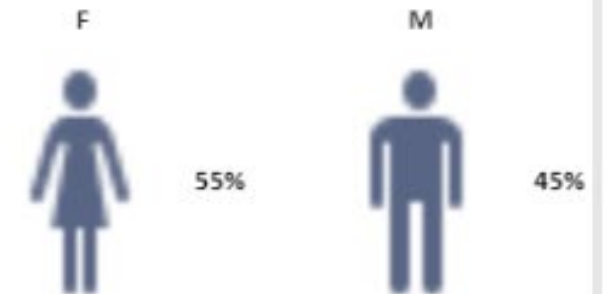
Top 5 Non Procedural Reasons



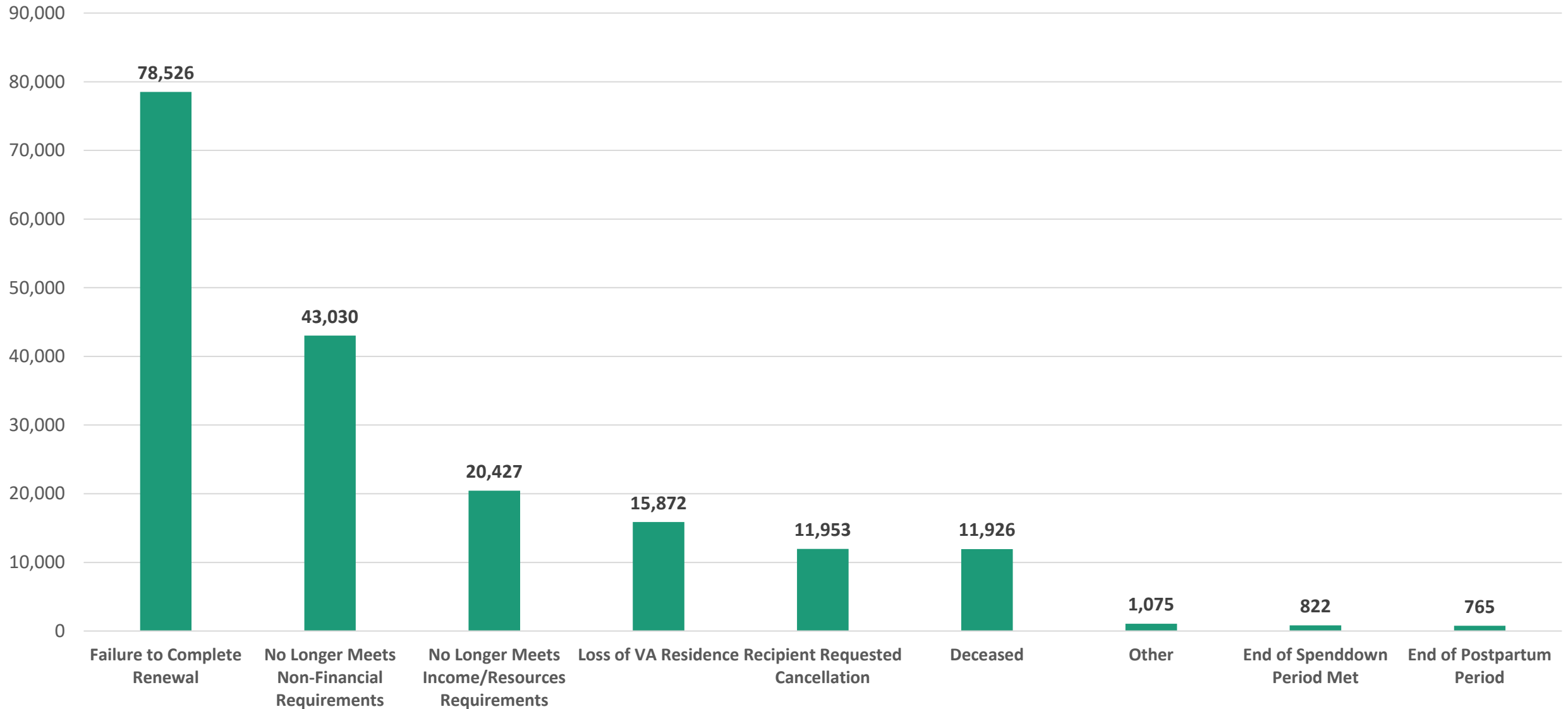
Member Age



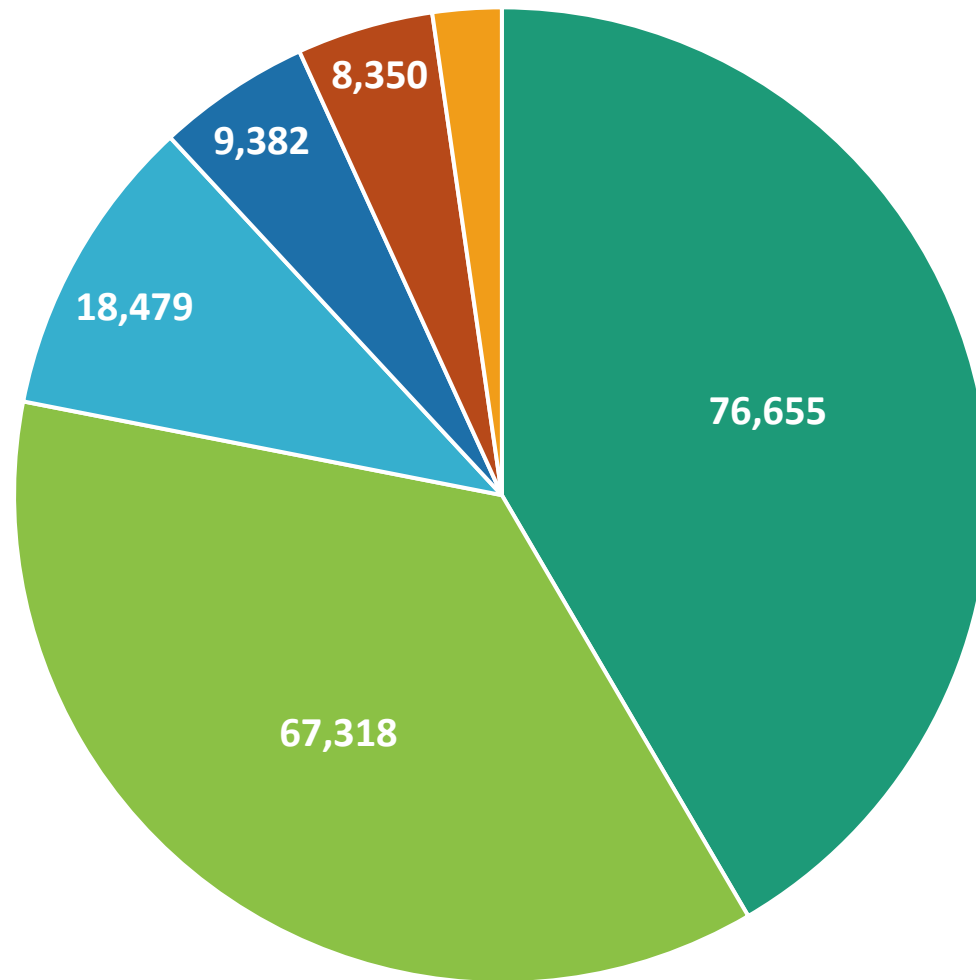
Member Gender



Top Closure Reasons



Closures by Eligibility Grouping



■ Non-ABD Adults ■ Children ■ Limited Coverage ■ Aged Adults ■ Blind/Disabled Adults ■ Enrolled Due to Pregnancy

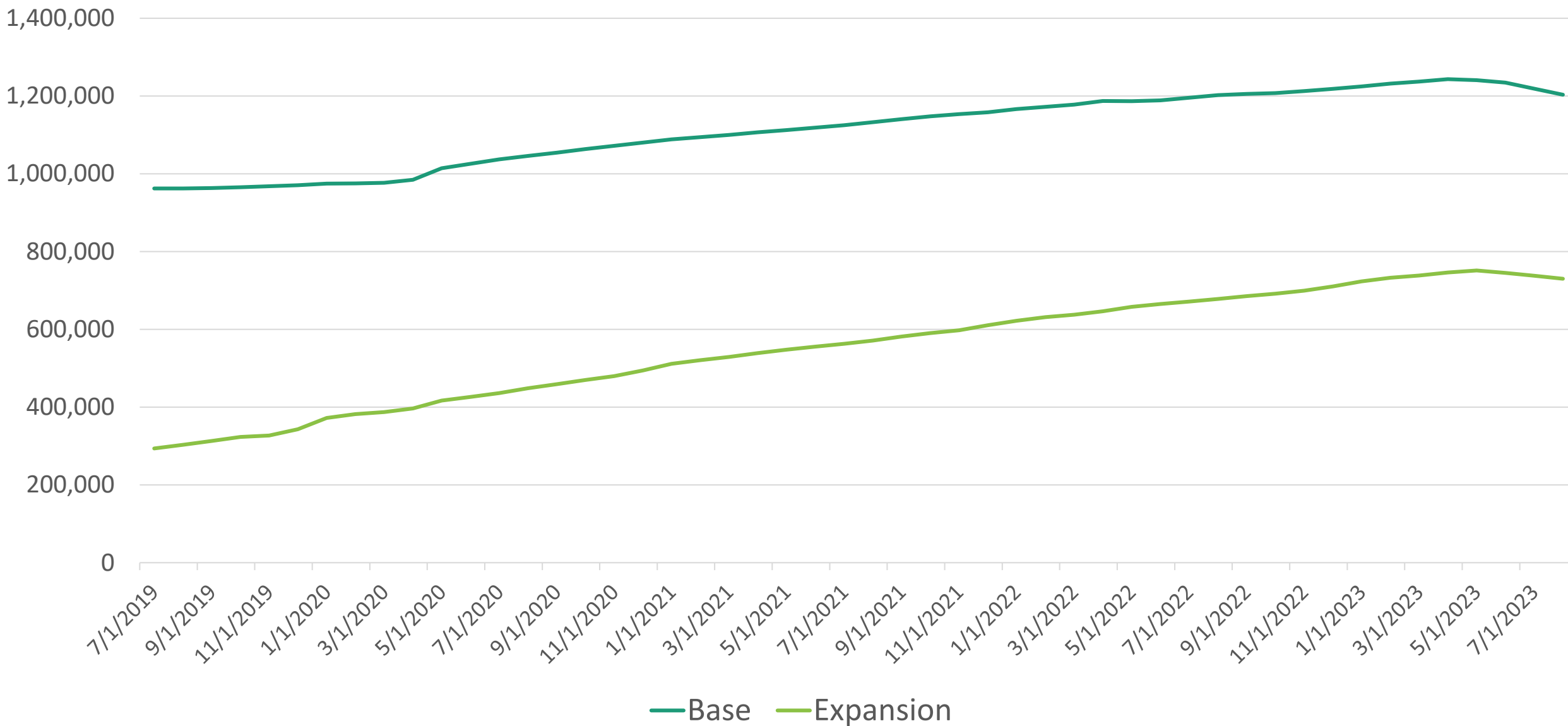
In The News

Va. reinstates almost 45,000 people to Medicaid programs to fix eligibility glitch

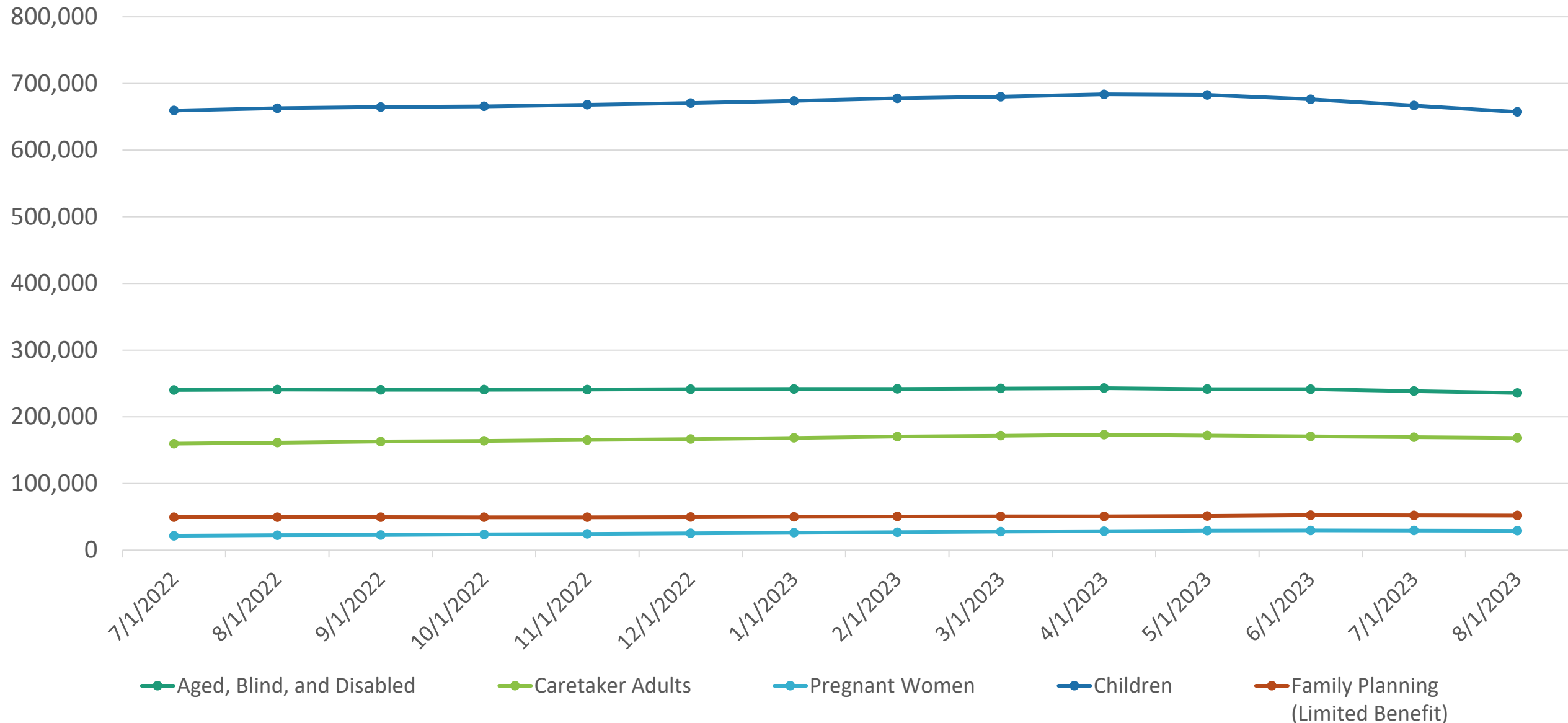
Failed to review on an individual basis but on a household level



Virginia Medicaid Enrollment

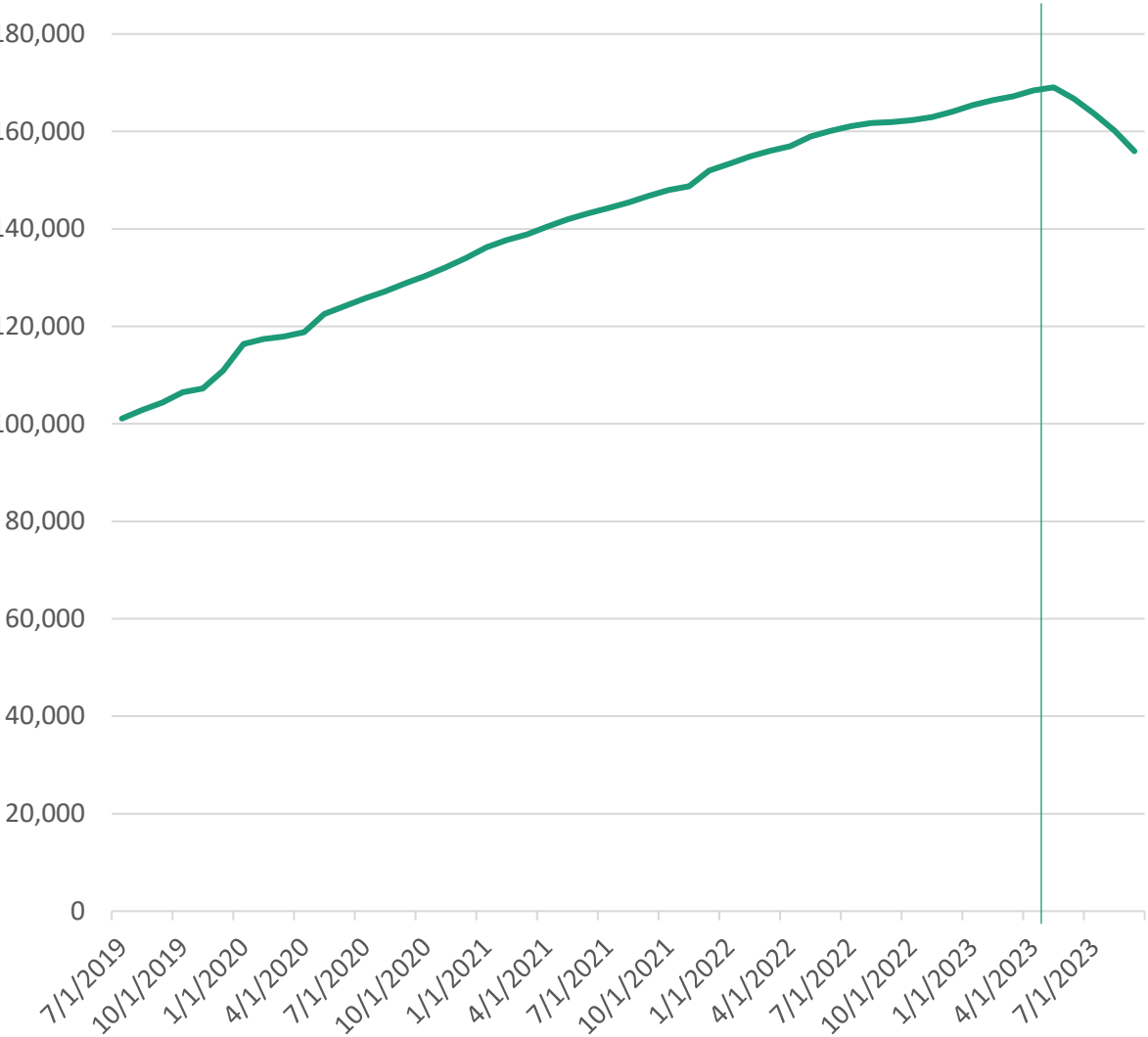


Medicaid Base – Monthly Enrollment Report

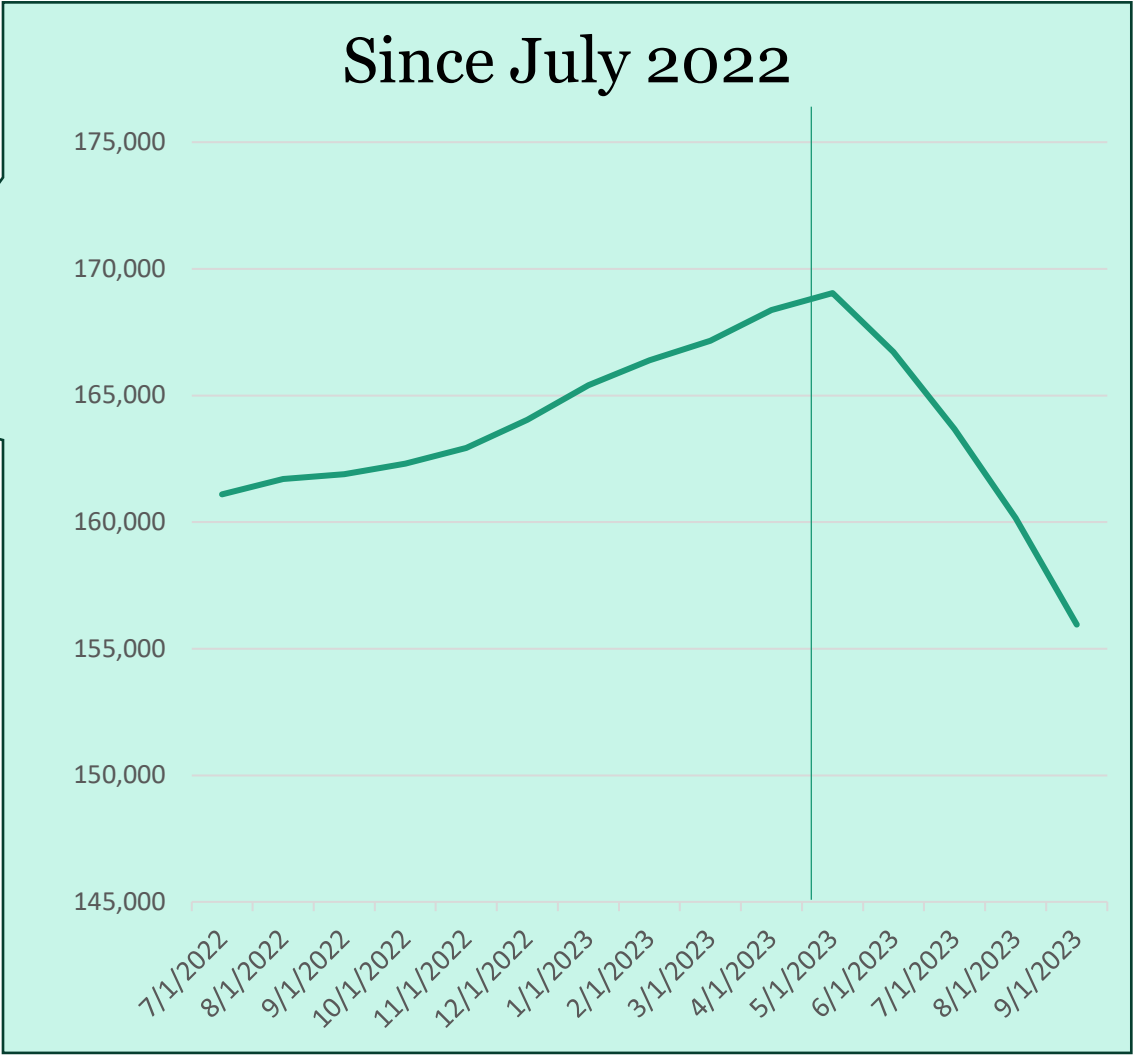


Medicaid Expansion Population – Caretaker Adults

Since 2019

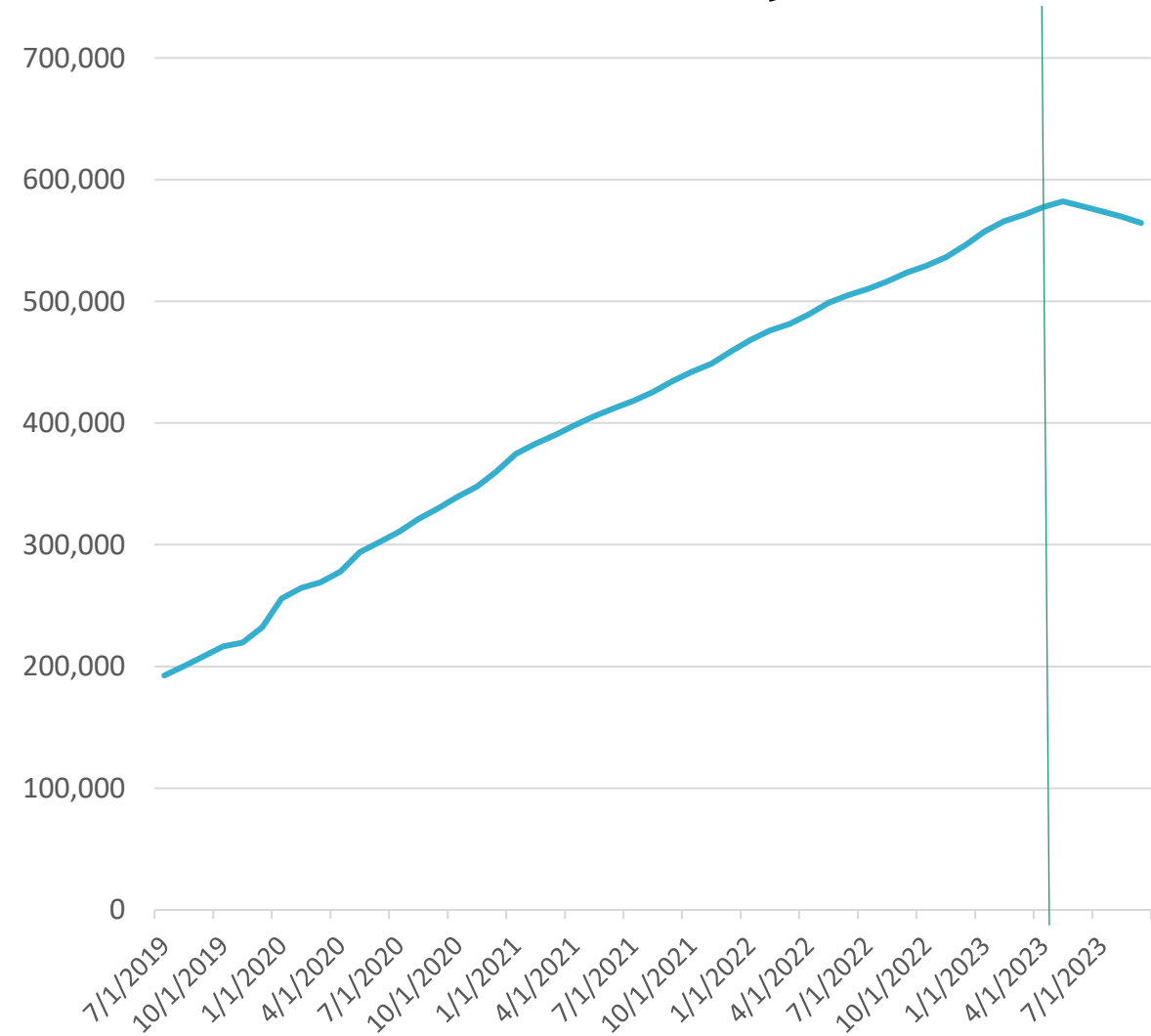


Since July 2022

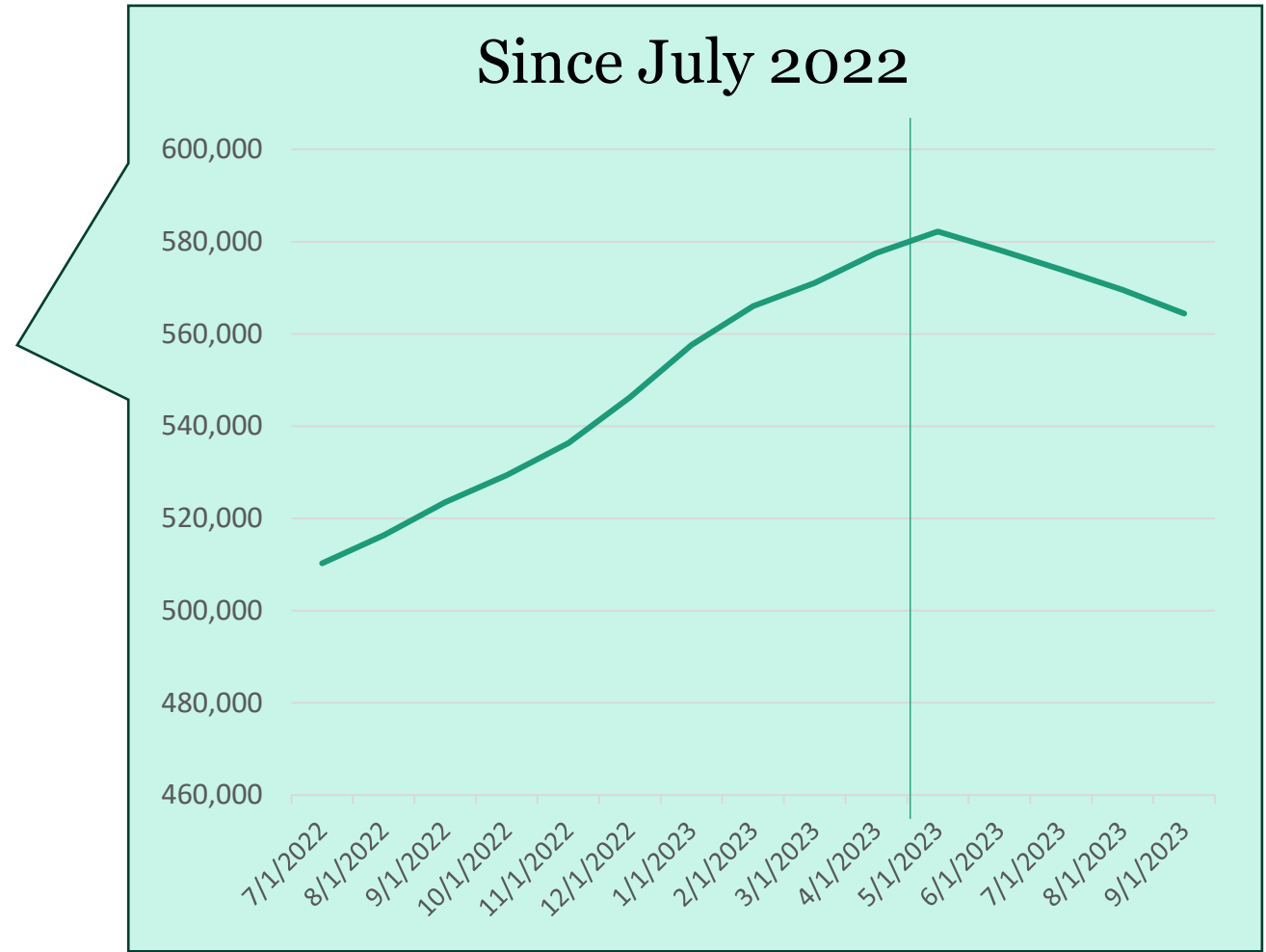


Medicaid Expansion Population – Childless Adults

Since 2019

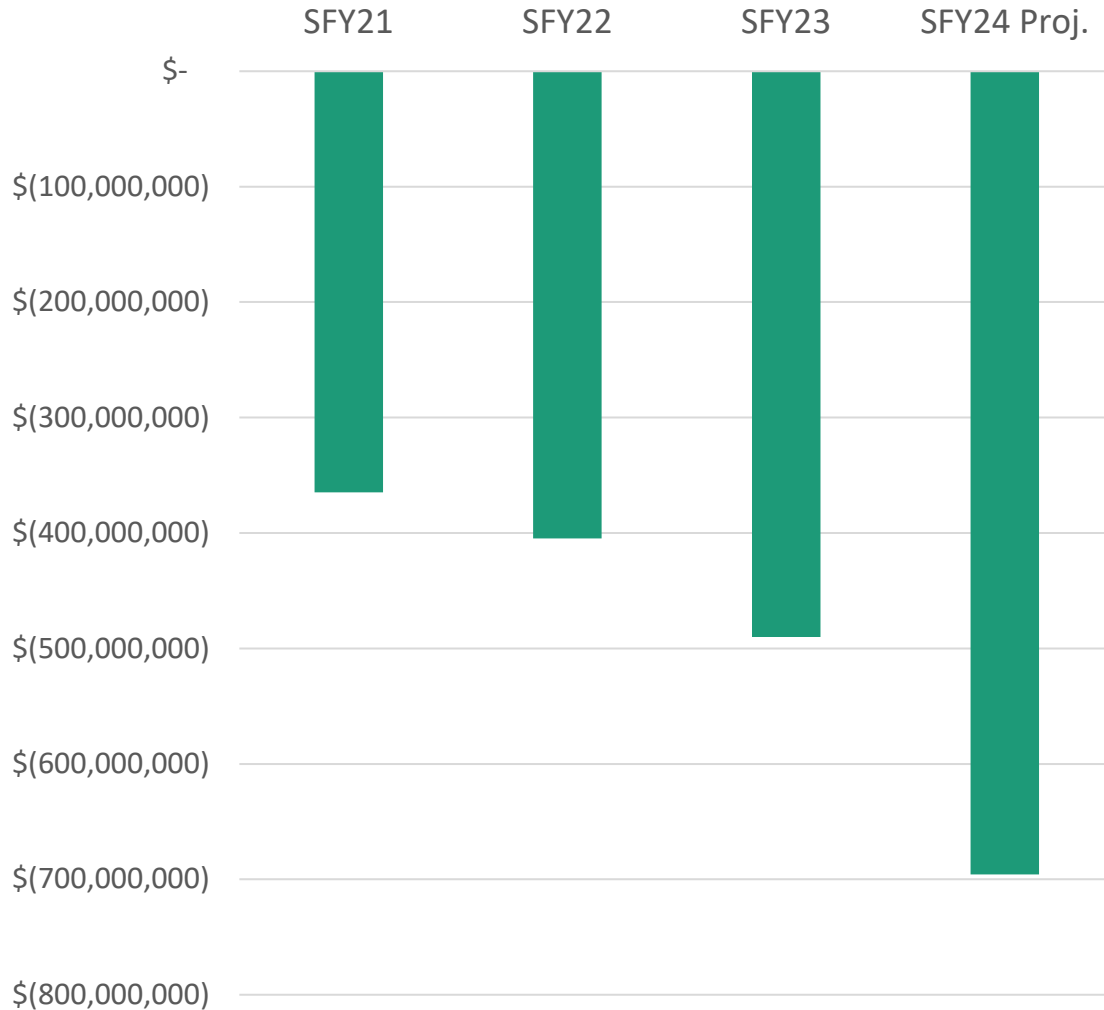


Since July 2022



Coverage Assessment Results

SFY21-24



SFY24 Detail

SFY24 Medical Expenditure Forecast (Non-Federal Share)	\$663,741,104
SFY24 Administrative Cost Estimate (Non-Federal Share)	\$18,329,533
SFY24 Full Cost of Expansion (Non-Federal Share)	\$682,070,637
Budget Multiplier (2%)	\$13,641,413
SFY24 Full Cost of Expansion with Multiplier	\$695,712,050
SFY24 Q1 Coverage Assessment	\$162,697,564
SFY24 Q2 Coverage Assessment	\$177,671,495
SFY24 Q3 Coverage Assessment (Projected)	\$177,671,495
SFY24 Q4 Coverage Assessment (Projected)	\$177,671,495

Medicaid/DMAS – Medicaid Outpatient EAPG Payments

- The MCOs brought to the attention of DMAS on January 25th that they thought the Medicaid outpatient EAPGs were being overpaid by over 30 percent.
- The explanation is that when MSLC did the rebasing calculations they did not add all the EAPG weights together, so the weights were low and therefore the base rates instituted were too high to get to 76 percent of cost.
- They had switched from 3M EAPG version 3.13 to 3.16 where the grouper rates were reduced by 14.9%. (about 20 percent fewer EAPGs in the new version) – Original
- With the new calculations the total EAPG weights went up by 4.6% - 22.6% increase
- Effective March 1st DMAS lowered the base rates 18.4% for private, and 16.2% for CAH and state hospitals
- DMAS emailed all facilities regarding FFS retractions on May 4th:

Pursuant to the notifications issued on February 28 and the Medicaid Bulletin issued on March 1, the Department of Medical Assistance Services will be reconciling fee-for-service payments to hospitals for outpatient claims using the corrected EAPG rates published on March 1.

If you have any questions regarding the financial transaction, please refer to your electronic remittance advice that will be issued on May 12.

Medicaid/DMAS – Medicaid Outpatient EAPG Payments

- VHHA is collaborating with the Attorney General's Office to validate the accuracy of the current calculations
- Received four data batches and submitted additional requests for data and emails.
- We've been informed that all MCOs except Molina have initiated contact with a portion, if not all, of their members.

Rebasing

- DMAS has contracted with Guidehouse to complete a rebasing for rates effective July 1, 2024.
- Will rebase inpatient and outpatient acute care, rehab, and psych payment rates
- Have scheduled meetings at least monthly and every other week for stakeholders to come together to review and comment on the analyses. DMAS is claiming this will be a very transparent process this year.
- Have begun the crosswalk of the cost report departments across each facility and they are due back to Guidehouse by September 15th.
- Will be moving from version 38 to 40 for APR-DRG
- Will be moving from version 3.16 to 3.18 for EAPG

Medicaid Inflation Update

- Per DMAS the projected update for inflation for SFY 2024 is **11.65%**.
- This increase was added to both inpatient and outpatient rates for all hospital provider types effective July 1, 2023



- July 1, 2020, Downcoding Provision went into effect
- July 30, 2020, VHHA, *et al.* submitted a **complaint** to the United States District Court for the Eastern District of Virginia (the “District Court”)
August 7, 2020, **VHHA, et al. submitted** to the District Court, a **motion for a preliminary injunction** enjoining DMAS from enforcing or implementing the ED Utilization and Readmissions penalties
- On October 7, 2020, the District Court, **dismissed VHHA’s request for a preliminary injunction** because VHHA, et al. had other remedies available and did not have a private right of action
- On October 28, 2020, **VHHA et al. filed an appeal** to the United States Court of Appeals for the Fourth Circuit (the “Fourth Circuit”)
- On March 1, 2022, the Fourth Circuit **overruled** the District Court **decision to dismiss VHHA et al.’s case** against DMAS and **remanded** the case back to the District Court
- September 6, 2022, **VHHA et al. filed its opening brief on remand** by restating its constitutional takings and preemption claims on the merits with the District Court
- On February 7, 2020, the parties presented **oral arguments** before the District Court
- On April 27, 2023, the District Court issued a favorable opinion on **CMS approval of Downcoding Provision VACATED and CMS and DMAS implementation and enforcement of Downcoding Provision ENJOINED**
- **CMS and DMAS had until June 26, 2023, to notice an appeal – Did not appeal**
- **Effective April 27th there should be no further downcoding of ED claims**

Medicaid MCO Procurement

- DMAS released the much-anticipated RFP on August 31
- Up to five plans will be selected
- One plan to be selected for foster care population
- Key program changes aligned around five goals:
 1. Improve behavioral health and population health outcomes
 2. Provide member-centric holistic care
 3. Enhance availability and accessibility of care
 4. Enable LTSS beneficiaries to live in their setting of choice and improve their wellbeing
 5. Leverage new technologies, payment models, and better accountability
- Timeline:
 - Letters of intent are due by September 20
 - Proposals are due on October 27
 - New contracts will begin July 1, 2024
 - Contracts will have a six-year initial term, with two two-year renewal options
- Full RFP is available [here](#)

Federal Budget

- There are 12 appropriations bills needed to be approved to allow discretionary spending.
- Congress has until midnight September 30 to enact the funding legislation, or parts of the government will shut down.
- Can pass a continuing resolution (CR) to allow more time to complete the work on the bills.



Federal - Congressional Topics

- Several House Subcommittees have had several hearings over the last several months. Top topics for discussion.
 - **Energy & Commerce**
 - Site Neutral Payments
 - 340B Drug Pricing Program
 - Price Transparency
 - Medicaid DSH
 - Physician Owned Hospitals
 - **Ways and Means**
 - Tax Exempt Hospitals
 - Community Benefit Standards
 - **Education and Workforce**
 - Reducing Health Care Costs for Working Americans and Their Families

Transparency/No Surprises Act: New CMS Guidelines

- On April 26th CMS released a Hospital Price Transparency Enforcement Update
 - Old Cycle - from warning notices to closing cases was 195 to 200 days
 - CMS will require hospitals out of compliance to submit a corrective action plan (CAP) within 45 days from when CMS issues the request.
 - Hospitals will be required to be in full compliance within 90 days from when CMS issues the request.
 - CMS will now automatically impose a civil monetary penalty (CMP) on a hospital that fails to submit a CAP at the end of the 45-day CAP submission deadline.
 - CMS is ramping up reviews from 30-40 per month to over 200 per month

Transparency Fines

The full list is available:
<https://www.cms.gov/priorities/key-initiatives/hospital-price-transparency/enforcement-actions>

Date Action Taken	Hospital Name	CMP Amount	Effective Date
2022-06-07	Northside Hospital Atlanta	\$883,180.00	2021-09-02
2022-06-07	Northside Hospital Cherokee	\$214,320.00	2021-09-09
2023-04-19	Frisbie Memorial Hospital	\$102,660.00	2022-10-24
2023-04-19	Kell West Regional Hospital <i>Under Review *</i>	\$117,260.00	2022-07-08
2023-07-20	Falls Community Hospital & Clinic	\$70,560.00	2023-01-06
2023-07-20	Fulton County Hospital <i>Under Review *</i>	\$63,900.00	2022-12-22
2023-07-24	Community First Medical Center <i>Under Review *</i>	\$847,740.00	2022-06-22
2023-08-22	Hospital General Castaner	\$101,400.00	2022-09-19
2023-08-22	Samaritan Hospital - Albany Memorial Campus	\$56,940.00	2023-06-06
2023-08-22	Doctors' Center Hospital Bayamón	\$102,200.00	2023-06-14
2023-08-23	Betsy Johnson Hospital	\$99,540.00	2023-06-06
2023-08-23	UF Health North	\$979,000.00	2023-02-27
2023-09-05	Holy Cross Hospital	\$325,710.00	2023-06-21
2023-09-05	Saint Elizabeths Hospital	\$677,440.00	2023-01-17

Proposed Rule Highlights

- Require the hospital to affirm the accuracy and completeness of their standard charge information displayed in the MRF –Directly in the file.
- Hospital Location and Hospital Licensure Number
- File version (which is template version)and date of update
- Adds “expected allowed amount” – this is the average dollar amount the hospital expects to receive from a third-party payer. Used when there is an algorithm or percentage. Equals expected reimbursement for an average patient.
- Type of contracting methodology (for example base rate, percent, algorithm)
- Required to add drug unit and type of measurement as separate data elements
- **Comments were due to CMS by September 11th.**

Patient Rights Advocate – 5th Semi-Annual Report

- [Report](#) was issued on July 20, 2023
- Report showed a 36% compliance rate among 2,000 hospitals
- Up from the February report of 24.5% compliance
- They recommend ending the price estimator tool and require a tool with real, binding prices
- Promoting a standard format as mandatory
- Require executive attestation
- Expand price transparency to all providers including ASC and ACOs
- In Virginia, 13 hospitals were deemed compliant, 34 noncompliant – 28% compliance.

Other PRA Advocacy



Virginia Beach



Maryland

Cynthia Fisher is showing up at every congressional hearing.
On July 17, Arnold Ventures sent a [letter](#) to Congressional leaders promoting transparency

No Surprises Act

- On August 3, The US District Court of Texas issued an order to vacate the \$350 admin fee based on the outcome of the Texas Medical Association v US Dept of HHS.
- Set the administrative fee back to \$50 effective August 3, 2023.
- Fees paid prior to this are not to be refunded, but any outstanding invoices are to be canceled and reissued at the \$50. We are still awaiting new proposed rules to come out.
- On August 24 as a result of the Texas Medical Association decision HHS temporarily suspended all Federal IDR process operations until additional instructions can be provided
- On September 5, the Departments directed the certified IDR entities to proceed with eligibility determinations submitted on or before August 3, 2023. All other aspects remain suspended.



Questions?