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Final Regulation
Agency Background Document

Agency name	DEPT OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation	12 VAC 30 -90
Regulation title	Methods and Standards for Establishing Payment Rates-Long Term Care Services: Transition to New Capital Payment Method
Action title	Ownership Criteria for Fair Rental Value
Document preparation date	; NEED GOV APPROVAL BY

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style, and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

The purpose of the exemption proposed in this regulatory action is to enable small or non-chain nursing home providers (one or two health care facilities) to more easily sell their facilities and leave the nursing home business by allowing the purchaser of these facilities to benefit from the full Fair Rental Value methodology. Presently, the Nursing Home Payment System does not specify a particular period of ownership and non-chain affiliation as criteria for qualifying for the exemption from the transition methodology.

The proposed revision to the regulation at 12 VAC 30-90-29 would require an eight year period of ownership and operation by a non-chain or small-chain provider prior to the sale of that nursing facility in order for that facility, after the sale, to qualify for the exemption from the transition methodology of capital cost reimbursement and instead go immediately to the full Fair Rental Value methodology (FRV) of capital cost reimbursement.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

I hereby approve the foregoing Regulatory Review Summary with the attached amended State Plan pages Methods and Standards for Establishing Payment Rates-Long Term Care Services: Transition to New Capital Payment Method Ownership Criteria for Fair Rental Value (12 VAC 30-90-29) and adopt the action stated therein. I certify that this final regulatory action has completed all the requirements of the Code of Virginia § 2.2-4012, of the Administrative Process Act.

__________________ ____________________________________

Date

Patrick W. Finnerty, Director

Dept. of Medical Assistance Services

Legal basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The *Code of Virginia* (1950) as amended, §32.1-325, grants to the Board of Medical Assistance Services (BMAS) the authority to administer and amend the Plan for Medical Assistance. The Code also provides, in the Administrative Process Act (APA) §§ 2.2-4007 and 2.2-4013, for this agency's promulgation of proposed regulations subject to the Governor's review.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

This proposed regulatory action is not expected to have any affect on the health, safety, or welfare of either the citizens of the Commonwealth or of Medicaid recipients. This amendment proposes to clarify the necessary criteria to include a specified period of ownership and non-chain affiliation of a nursing facility in order for that facility to qualify for immediate conversion to the full Fair Rental Value methodology of capital cost reimbursement after the facility's sale. This revision will help prevent the use of questionable transactions by chain or chain-affiliated facilities to attempt to convert to the full Fair Rental Value methodology. Qualifying quickly for conversion to the full FRV is potentially lucrative to nursing home owners and could encourage the churning sales of facilities.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

The section of the State Plan for Medical Assistance affected by this suggested change is Methods and Standards for Establishing Payment Rates-Long Term Care Services (Attachment 4.19-D, Supplement 1 (12 VAC 30-90-29)).

The existing regulations, effective July 1, 2001, provide for a gradual 10-year transition to the Fair Rental Value (FRV) methodology of determining capital cost reimbursement from the reimbursement of actual depreciation and interest costs incurred. As a general rule, the FRV methodology will increase reimbursement for older facilities that have reduced interest and depreciation expenses. These regulations also provide for an exemption from the transition period that allows certain facilities to convert to the full FRV immediately after the sale of a facility. The facilities that qualify for the exemption are those that are owned and operated by an individual or individuals, and/or by a chain consisting of no more than two health care facilities. This provision applies to small providers who are selling their facilities, and, in particular, was originally provided to help small providers get out of the nursing home business as their personal circumstances changed. The difference between the capital cost per day under full FRV as compared to the current transition methodology can range from no change up to $10.00 per Medicaid day. For a typical 120-bed facility with 30,000 Medicaid days, this could amount to as much as $300,000 additional reimbursement for one year. The ability to immediately convert to the full FRV methodology could increase the marketability of an older facility, because the purchaser can expect to realize an immediate increase in capital reimbursement under the full FRV methodology.

To qualify for the existing exemption, any sale must be bona fide.

Recent inquiries have been received regarding whether the immediate conversion to the full FRV methodology exemption could apply to sales by chain providers structured primarily to take advantage of the exemption. For example, if the ultimate sale is essentially between two chain providers, but structured to include an intermediate sale to a non-chain entity that would own and operate the facility briefly, and then resell the facility to the other chain provider, requesting, in the process, immediate conversion to the FRV methodology upon the second sale, the exemption would not apply. As stated previously, where the sale is not a "bona fide" sale, the exemption would not be available, and therefore, the transaction described above would not qualify for the exemption.

Nevertheless, DMAS believes that the suggested revision, a holding period as a non-chain or small-chain provider, may be necessary to limit potential abuses of the exemption. This holding period requirement, however, would not obviate the requirement that any sale transaction be a bona fide sale. DMAS is proposing to require a minimum holding period, as a non-chain affiliated facility, of eight years by an individual or individuals or small-chain (no more than two facilities) owners and sellers of a nursing facility in order for the sale to result in the reimbursement of capital costs, after the sale, under the full Fair Rental Value methodology. As previously stated, the purpose of this change is to clarify that this exemption is available only to those few small (*i.e.* no more than a two health care facility chain) providers who have a need to sell in order to get out of the nursing home business. Further, this change will provide DMAS an objective standard by which it can more readily identify short-term, questionable ownership transactions (churning sales) that are intended to inappropriately claim the exemption.

Issues

Please identify the issues associated with the proposed regulatory action, including:
1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;
2) the primary advantages and disadvantages to the agency or the Commonwealth; and
3) other pertinent matters of interest to the regulated community, government officials, and the public.

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

There would be no advantage or disadvantage to the general public. This regulatory revision would preclude transactions seeking to take advantage of a special exemption included in the Nursing Home Payment System intended to aid small owners and operators of nursing facilities to sell their facilities when these individuals wish to leave the nursing home business.

This revision to the regulations is expected to benefit DMAS and the Commonwealth by preventing unintended Medicaid expenditures to nursing facilities. The revised regulation is expected to preclude chain providers (other than small-chain providers) from converting, via questionable sale transactions, to a higher reimbursement rate for nursing facility capital costs.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar's office, please put an asterisk next to any substantive changes.

There are no changes in these final, adopted regulations over those which were proposed for comment period.

Public comment

Please summarize all comment received during the public comment period following the publication of the proposed stage, and provide the agency response. If no public comment was received, please so indicate.

DMAS' proposed regulations were published in the May 17, 2003, *Virginia Register* for their public comment period from May 17th through July 15, 2003. No comments were received.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
12 VAC 30-90-29 D	N/A	There is no holding period defined	Would define an 8-year period of ownership as a non-chain affiliated facility to qualify for the exemption.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children; or encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents. It does not strengthen or erode the marital commitment, but may decrease disposable family income depending upon which provider the recipient chooses for the item or service prescribed.