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Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	DEPT. OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation	12 VAC 30-70-291
Regulation title	Methods and Standards for Establishing Payment Rates— Inpatient Hospital Services
Action title	Modification of Indirect Medical Education Payments
Document preparation date	

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

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).

Preamble

The APA (Section 2.2-4011) states that an “emergency situation” is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date.

- 1) Please explain why this is an “emergency situation” as described above.
- 2) Summarize the key provisions of the new regulation or substantive changes to an existing regulation.

The Administrative Process Act (Section 2.2-4011) states that an “emergency situation” is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a

regulation to take effect no later than 280 days from its effective date. This suggested emergency regulation meets the standard at COV 2.2-4011(i) as discussed below.

This regulatory action qualifies as an emergency, pursuant to the authority of the *Code of Virginia*, 1950 as amended, § 2.2-4011, because it is responding to a mandate in the 2005 Virginia Appropriations Act (Chapter 951, Item 326 ZZZ), which calls for an IME payment enhancement to private (Type Two) hospitals with Medicaid NICU days in excess of 4,500 (as reported to DMAS by March 1, 2005).

The Governor is hereby requested to approve this agency's adoption of the emergency regulations entitled Modification of Indirect Medical Education Payments (12 VAC 30-70-291) and also authorize the initiation of the promulgation process provided for in § 2.2-4007.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The purpose of this regulatory action is to implement a new supplemental payment for hospitals that do not otherwise receive an enhanced IME payment based upon the 2004 Appropriations Act that mandated additional payments for hospitals with higher NICU utilization rates (2004 Appropriations Act, Item 326 HHH). The total amount of funds to be dispersed among eligible hospitals has been set at \$0.5 million annually. This mandate must be implemented beginning in State Fiscal Year 2006.

Legal basis

Other than the emergency authority described above, please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and 2) promulgating entity, i.e., 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 the authority to administer and amend the Plan for Medical Assistance. The *Code of Virginia* (1950) as amended, § 32.1-324, authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance according to the Board's requirements. The Medicaid authority as established by § 1902 (a) of the *Social Security Act* [42 U.S.C. 1396a] provides governing authority for payments for services.

Substance

Please detail any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons why the regulation is essential to protect the health, safety, or welfare of Virginians. Delineate any potential issues that may need to be addressed as a permanent final regulation is developed.

The section of the State Plan for Medical Assistance that is affected by this change is the Methods and Standards for Establishing Payment Rates-Inpatient Hospital Services (12 VAC 30-70-291).

The 2005 Appropriations Act language calls for an IME payment enhancement to private (Type Two) hospitals with Medicaid NICU days in excess of 4,500 (as reported to DMAS by March 1, 2005) that would not receive enhanced payment under the criterion in Item 326 HHH of the Appropriations Act. Based on data available as of March 1, 2005, there is only one private hospital for which the Medicaid NICU days meet this standard. The regulatory change provides additional language to codify the IME enhancement as directed by the Appropriations Act. The total amount of funds to be dispersed among eligible hospitals has been set at \$0.5 million annually. This mandate is to be effective in State Fiscal Year 2006. The General Assembly mandate narrowly specifies the standard which a hospital must meet in order to receive this payment and the Agency has no discretion concerning the amount to be disbursed.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
12VAC30-70-291	12VAC30-70-291(E)	Sets forth formula for calculating the IME payments	Adds new paragraph describing the adjustment in IME methodology for hospitals with greater than 4,500 Medicaid NICU days to provide additional mandated funding.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.

The General Assembly mandate is very specific concerning what parameters a hospital must meet in order to be eligible to receive the supplemental payment. There were no alternatives for the Agency to consider -- only one hospital qualifies for this supplemental payment. The Agency has some discretion, however, regarding how the money will be disbursed (*i.e.* one or more payments), and when such payment or payments will be made during each fiscal year.

Family impact

Please assess the impact of the emergency 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 and is not expected to affect disposable family income.