



COMMONWEALTH of VIRGINIA
Office of the Attorney General

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MEMORANDUM

TO: EMILY MCCLELLAN
Regulatory Supervisor
Virginia Department of Medical Assistance Services

FROM: USHA KODURU *uk*
Assistant Attorney General

DATE: November 6, 2017

SUBJECT: 12 VAC 30-90-21 Fast-Track Regulation for Reimbursement for Individuals
in a Disaster Struck Nursing Facility (4913/8064)

I am in receipt of the attached regulation to clarify provisions relating to the reimbursement of disaster-struck nursing facilities. You asked the Office of the Attorney General to review and determine if DMAS has the legal authority to promulgate this regulation and if the regulation comports with state and federal law.

Based on my review, it is my view that the Director, acting on behalf of the Board of Medical Assistance Services pursuant to Virginia Code §§ 32.1-324 and 325, has the authority to promulgate this regulation subject to compliance with the provisions of Article 2 of the Administrative Process Act and has not exceeded that authority. This regulation will amend the State Plan; therefore, approval by the Centers for Medicare and Medicaid Services also will be required.

Pursuant to Va. Code § 2.2-4012.1, if an objection to the use of the fast-track process is received within the public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, DMAS shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process set out in this article with the initial publication of the Fast-Track regulation serving as the Notice of Intended Regulatory Action.

If you have any questions or need additional information about this regulation, please contact me at 786-4074.

cc: Kim F. Piner, Esquire

Attachment

Proposed Text

Action:

Reimbursement Changes Affecting Long Term Care

Stage: Fast-Track

11/6/17 12:21 PM [latest]

12VAC30-90-21. Reimbursement for Individuals in a Disaster Struck Nursing Facility.

Reimbursement to a Disaster Struck Nursing Facility for individuals who must be temporarily evacuated to another facility (Resident Accepting Nursing Facility) may continue for up to 30 days after the disaster event. Reimbursement will be the same as if the individual was residing in the Disaster Struck Facility. No other reimbursement will be made to either the Disaster Struck Nursing Facility or the Resident Accepting Facility. The Disaster Struck Nursing Facility must meet the following conditions.

A. The Disaster Struck Nursing Facility must have a contract with the Resident Accepting Nursing Facility. The contract must (i) include terms of reimbursement and mechanisms to resolve any contract disputes, (ii) protocols for sharing care and treatment information between the two facilities and (iii) requirements that both facilities meet all conditions of Medicaid participation determined by the Virginia Department of Health. The Virginia Long-Term Mutual Aid Plan, which includes a Memorandum of Understanding, is an acceptable contract.

B. The Disaster Struck Facility must notify DMAS of the disaster event, maintain records of evacuated individuals with names, dates and destinations of evacuated residents and update DMAS on the status of the repairs.

C. The Disaster Struck Facility must determine within 15 days of the event whether individuals will be able to return to the facility within 30 days of the disaster event. If the Disaster Struck Facility determines that it is not able to reopen within 30 days, it must discharge the individuals and work with them to choose admission to other facilities or alternative placements. Nothing shall preclude an individual from asking to be discharged and admitted to another facility or alternative placement. Reimbursement to the Disaster Struck Facility shall cease when an individual is discharged.