Virginia Regulatory Town Hall

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Exempt Action Final Regulation
Agency Background Document

Agency name	DEPT OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation	12 VAC 30-80-40
Regulation title	Fee-for-service providers: pharmacy.
Action title	2010 Pharmacy Reimbursement Change
Final agency action date	July, 1, 2010
Document preparation date	April 23, 2010

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 36 (06) and 58 (99).

Summary

Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

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. The section of the State Plan for Medical Assistance that is affected by this action is Attachment 3.1-A&B (12 VAC 30-80-40). Item 297.SSS of the 2010 Virginia Appropriations Act directs DMAS as follows:

> "The Department of Medical Assistance services shall amend the State Plan for Medical Assistance Services to decrease the maximum reimbursement for pharmaceutical products to the Average Wholesale Price minus 13.1 percent. Such amendment shall become effective July 1, 2010. If there is an extension through June 30, 2011 of increased Federal Medical Assistance Percentage under

> the American Recovery and Reinvestment Act (P.L. 111-5), the reduction of this paragraph shall not become effective."

In this final exempt regulatory action the Department of Medical Assistance Services is modifying 12 VAC 30-80-40(8), which provides the estimated acquisition cost payment methodology for Medicaid fee-for-service pharmacy services. This modification is required to comply with Item 297.SSS of the 2010 Virginia Appropriations Act, which requires DMAS to amend the State Plan for Medical Assistance to decrease the maximum reimbursement for pharmaceutical products from the current pricing methodology of the estimated acquisition cost equaling the Average Wholesale Price (AWP) minus 10.25%, to a methodology in which the estimated acquisition cost is equal to the AWP minus 13.1%. This budget reduction in pharmacy reimbursement is dependent upon the unavailability of enhanced federal match dollars provided for in the American Recovery and Reinvestment Act (ARRA - P.L. 111-5). The increased federal Medicaid payments to the states under ARRA run out in December of 2010. Congress is currently considering extending the enhanced federal Medicaid payments to the states through June 30, 2011. If Congress extends the increased federal match percentage, Virginia will not implement this budget reduction measure. If, however, Congress does not extend the ARRA enhanced percentage, DMAS must implement this reduction in pharmacy reimbursement effective July 1, 2010.

Current Policy

DMAS currently uses Average Wholesale Price (AWP) as a pricing methodology for determining the estimated acquisition cost of pharmaceuticals. This estimated acquisition cost of pharmaceuticals is a significant factor in DMAS' pharmacy methodology for paying pharmacy providers. It is found in 12 VAC 30-80-40 (Fee-for-service providers: pharmacy). Currently, one of DMAS' primary drug reimbursement methodologies uses the formula of AWP minus 10.25% to calculate Medicaid reimbursement for drugs. This current use of AWP – 10.25% is based upon a report by the federal Office of the Inspector General that focused on appropriate Medicaid cost-based marketplace drug pricing. The percentage subtracted from the AWP represents reduction in the amount paid to a pharmacy provider. The higher the percentage subtracted from the AWP (referred to as the AWP "discount"), the lower the payment to the pharmacy provider.

Mandated Reduction

DMAS is modifying the current regulation for the estimated acquisition cost of pharmaceuticals from AWP - 10.25% to AWP – 13.1%. DMAS is eliminating the following language from 12 VAC 30-80-40(8), because with this change it no longer applies to DMAS' methodology:

> "Determination of EAC was the result of a report by the Office of the Inspector General that focused on appropriate Medicaid marketplace pricing of pharmaceuticals based on the documented costs to the pharmacy."

The lower priced pharmacy rate of AWP minus 13.1 % is based on the mean rate of all state Medicaid programs according to a recent analysis by DMAS' contractor, the University of Massachusetts Medical School (UMASS). UMASS determined that the current AWP minus 10.25% rate used by DMAS is the 48th lowest "discount" rate of all Medicaid programs that use

AWP as a pricing methodology. This means that DMAS' AWP reduction of 10.25% is one of the highest pharmacy payments of all the state Medicaid programs that use AWP. UMASS also determined that utilization of a new mean rate of AWP - 13.1% would have no impact on access to pharmaceutical services by Virginia fee-for-service Medicaid recipients.

The 13.1 % reduction is anticipated to result in cost savings to DMAS while maintaining the current level of access to pharmaceuticals for recipients who receive their pharmacy services through the DMAS fee-for-service pharmacy benefit. This change in the AWP pricing methodology has been projected to save $819,000 in state funds for fiscal year 2011 and $927,000 in state funds in fiscal year 2012.

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 Agency Background document with the attached amended State Plan pages Fee-for-service providers: Pharmacy – 2010 Pharmacy Reimbursement Change (12 VAC 30-80-40) 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

Cynthia B. Jones, Acting Director

Dept. of Medical Assistance Services

Family impact

Assess the impact of this 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.