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Fast-Track Regulation
Agency Background Document

Agency name	Department of Medical Assistance Services
Virginia Administrative Code (VAC) citation(s)	12 VAC 30-80-30
Regulation title(s)	Methods and Standards for Establishing Payment Rates—Other Tpes of Providers: Fee-for-Service Providers; Medicare Equivalent of Average Commercial Rate (ACR)
Action title	Type One Physician Supplemental Payments
Date this document prepared	April 27, 2015

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual.*

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

This regulatory action revises the maximum reimbursement rate to 201% of the Medicare rate for Type One physicians, based on updated information on the average commercial rate furnished by the providers which are affected by this change (state academic health systems). This newly updated maximum rate will be used to calculate the amount of supplemental payments made to Type One physicians who provide services to Medicaid members.

A Type One physician is a member of a practice group organized by or under the control of a state academic health system or an academic health system that operates under a state authority and includes a hospital, which has entered into contractual agreements for the assignment of payments in accordance with federal regulations (42 CFR 447.10). These payments are calculated as the difference between the maximum payment allowed and regular payments. The Centers for Medicare and Medicaid (CMS) has determined that the maximum allowed is the average commercial rate (ACR). The ACR for Type One physicians is determined based upon information supplied by state academic health systems.

The ACR has increased from 143% of the Medicare rate in 2002, to 181% in 2012, to 197% in 2013, to 201% of the Medicare rate in 2014. CMS approved the change to the 201% rate on January 27, 2015.

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 entitled Type One Supplemental Payments with the attached amended regulations (12 VAC 30-80-30 and 12 VAC 30-80-300) and adopt the action stated therein. I certify that this fast track regulatory action has completed all the requirements of the Code of Virginia § 2.2-4012.1, of the Administrative Process Act.

_____
Date

_____
Cynthia B. Jones, Director
Dept. of Medical Assistance Services

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

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.

In addition, the 2015 *Acts of Assembly*, Chapter 665, Item 301.B (4) states that "…the department shall have the authority to amend the State Plan for Medical Assistance to increase physician supplemental payments for physician practice plans affiliated with Type One hospitals up to the average commercial rates as demonstrated by University of Virginia Health System and Virginia Commonwealth University Health System …"

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The purpose of this action is to revise the maximum reimbursement to 201% of the Medicare rate for Type One physicians, based on updated information on the average commercial rate furnished by state academic health systems.

Rationale for using fast-track process

Please explain the rationale for using the fast-track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

This proposed regulatory change is being promulgated through the fast track process because it is expected to be non-controversial. DMAS consulted with the affected providers, who are satisfied with supplemental payment calculation and methodology. Therefore, no opposition is expected as a result of this fast track regulatory action.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of changes" section below.

The sections of the State Plan for Medical Assistance that are affected by this action are Methods and Standards for Establishing Payment Rates - Other Types of Care (12VAC30-80-30, Fee-for-Service Providers and 12VAC30-80-300, Medicare Equivalent of Average Commercial Rate).

Supplemental payments to Type One physicians are calculated as the difference between the maximum payment allowed (the ACR) and the payment otherwise made for physician services. The ACR has increased over time, and the old regulatory language did not reflect these increases.

Therefore, the new regulatory language states that effective April 8, 2014, the supplemental payment amount for Type One physicians shall be the difference between the Medicaid payments otherwise made for physician services and 201% of Medicare rates.

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 there are no disadvantages to the public or the Commonwealth, please indicate.

There are no disadvantages to the public in this action. The advantage of these supplemental payments to these affected institutions is that such payments help fund Medicaid and indigent care costs at the state academic health centers. The advantage to the Commonwealth is that these supplemental payments may facilitate these affected institutions remaining in business across the state.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no requirements more restrictive than federal contained in these recommendations.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There will be no localities that are more affected than others as these requirements will apply statewide.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

This regulatory action is not expected to affect small businesses. The affected physician practices are not small businesses; this action affects only those practices organized by or under the control of a state academic health system. This regulatory action does not impose compliance or reporting requirements on small businesses, nor deadlines for reporting, nor does it establish performance standards to replace design or operational standards for small businesses.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

Projected cost to the state to implement and enforce the proposed regulation, including: **a) fund source / fund detail; and** **b) a delineation of one-time versus on-going expenditures**	The state share for the supplemental payments is funded by state general funds appropriated to DMAS. These changes are estimated to generate an increase of $1.7 million in total state expenditures but they will offset reductions in DSH expenditures. There will be a partial impact in FY14 because the change is being implemented mid-year. .
Projected cost of the new regulations or changes to existing regulations on localities.	N/A
Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.	Physician practices organized by or under the control of state academic health systems.
Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million.	2 physician practice plans (one for UVA and one for VCU) will be affected. No small businesses will be affected.
All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including:	There are no additional costs associated with reporting, recordkeeping, administration, or compliance. There are no additional costs related to the

a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.	development of real estate.
Beneficial impact the regulation is designed to produce.	The regulation seeks to maintain the size and scope of the existing network of providers who are willing to serve individuals who are covered by Medicaid.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

There are no other alternatives that meet the essential purposes of the action.

Public participation notice

If an objection to the use of the fast-track process is received within the 30-day 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, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

Family Impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) 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; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children; nor 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.

Detail of changes

*Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please list separately: (1) all differences between the **pre**-emergency regulation and this proposed regulation; and 2) only changes made since the publication of the emergency regulation.*

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
12 VAC 30-80-30 (A)(16)		Supplemental payments for Type One physicians are the difference between Medicaid payments and 181% of Medicare rates.	Supplemental payments for Type One physicians are the difference between Medicaid payments and 201% of Medicare rates. The change reflects changes in the average commercial rate.
12 VAC 30-80-300		The Medicare equivalent of the ACR demonstration shall be updated every three years.	To clarify the ACR calculation method, the following language has been added at the end of the existing sentence shown to the left: "Only the professional component of radiology services and clinical laboratory services is included in the ACR calculation. Claims with a technical component were excluded from the demonstration."