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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 30-90-44
Regulation title(s)	Nursing Facility Price-Based Reimbursement Methodology
Action title	Institutional Provider Reimbursement Changes
Date this document prepared	April 20, 2016

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

These regulatory changes will eliminate inflation for nursing facilities and implement the "hold harmless provision" for nursing facilities that meet the bed capacity and occupancy requirements, reimbursing with the price-based operating rate rather than the transition operating rate for those facilities.

The elimination of inflation for nursing facilities is designed to prevent additional Medicaid expenditures for these inflation costs. The "hold harmless provision" allows nursing facilities with decreased bed capacity but increased demand to be reimbursed at a price-based rate rather than the lower transition operating rate. This carve-out for facilities that meet the requirements

for bed capacity and occupancy was designed with substantial input from a nursing facility stakeholder group.

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 Institutional Provider Reimbursement Changes with the attached amended regulation (12 VAC 30-90-44, Nursing Facility Price-Based Reimbursement Methodology) 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.

April 20, 2016
Date

/ signature /
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 and to "make, adopt, promulgate, and enforce" regulations to implement the state plan. 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 elimination of inflation for nursing facilities is required by the 2015 Acts of Assembly, Chapter 665, Item 301.III, which states that DMAS "shall amend the State Plan for Medical Assistance to eliminate nursing facility inflation for fiscal year 2016. This shall apply to nursing facility operating rates."

The implementation of the "hold harmless provision" is required by the 2015 Acts of Assembly, Chapter 665, Item 301.KKK(6), which states that DMAS "shall amend the State Plan for Medical Assistance to reimburse the price-based operating rate rather than the transition operating rate to any nursing facility whose licensed bed capacity decreased by at least 30 beds

after 2011 and whose occupancy increased from less than 70 percent in 2011 to more than 80 percent in 2013."

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 prevent additional Medicaid expenditures for nursing facility inflation costs beginning on July 1, 2015, and to implement the "hold harmless provision," which allows nursing facilities with decreased bed capacity but increased demand to be reimbursed at a price-based rate rather than the lower transition operating rate.

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 regulatory action was mandated by the budget, the changes have been reviewed and approved by the Center for Medicare and Medicaid Services, and the changes have been in effect since July 1, 2015. DMAS has not received any comments, concerns, or other indicators of controversy from providers, members, or the public since the changes went into effect.

As a result, this regulatory action is being promulgated via a fast track because it is not expected to be controversial.

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.

These changes eliminate inflation for nursing facilities for the period between July 1, 2015, and June 30, 2016. (This change is based on Item 301.IIIII of the 2015 Appropriation Act.)

The changes also allow nursing facilities with decreased bed capacity but increased demand to be reimbursed at a price-based rate rather than the lower transition operating rate. (This change is based on Item 301.KKK of the 2015 Appropriation Act.)

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.

The primary advantage of these changes is that they reduce additional Medicaid expenditures for nursing facility inflation and that they implement a stakeholder group's recommendation related to reimbursement for nursing facilities with a decrease in the number of beds and an increase in occupancy. There are no disadvantages to the public or the Commonwealth as a result of these changes.

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 as it does not impose compliance or reporting requirements, nor deadlines for reporting, nor does it establish performance standards to replace design or operational standards.

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.

<p>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</p>	<p>Any costs to the state are incidental costs associated with general operational responsibilities.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>These changes do not create costs for localities.</p>
<p>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</p>	<p>Nursing facilities will be impacted by these changes, which will not have inflation-adjusted reimbursement in state fiscal year 2016. In addition, some nursing facilities will be reimbursed at a price-based rate rather than the transition operating rate.</p>
<p>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.</p>	<p>There are approximately 265 nursing homes, more than 220 of which are part of a chain or a hospital.</p>
<p>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: 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.</p>	<p>There are no costs for affected nursing facilities related to reporting, recordkeeping, administrative costs, or the development of real estate. The inflation reduction was estimated to cost nursing facilities \$19.6 million (\$9.8 million GF) in FY16. A special provision for one nursing home was estimated to increase reimbursement by \$320,000 (\$160,000) GF in FY16 for that facility.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>The changes will prevent additional Medicaid expenditures from inflation and will implement a reimbursement plan that was developed and recommended by a stakeholder group.</p>

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 alternatives that would meet the requirements of the legislative mandates.

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
12VAC30-90-44		Annual inflation adjustments shall be based on the last available cost report.	There is no inflation adjustment for nursing facility operating rates effective July 1, 2015 and through June 30, 2016.
12VAC30-90-44		There is no reimbursement provision for nursing facilities with decreased licensed bed capacity after 2011 and increased occupancy (from less than 70% to more than 80%) between 2011 and 2013.	Facilities that meet the bed capacity and occupancy requirements will be reimbursed at the price-based operating rate rather than the transition operating rate.