Virginia Regulatory Town Hall

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Final Regulation
Agency Background Document

Agency name	Department of Medical Assistance Services
Virginia Administrative Code (VAC) citation	12VAC30, Chapters 70, 80, and 90
Regulation title	Methods and Standards for Establishing Payment Rates – Inpatient Hospital Services, Other Types of Care, and Long Term Care
Action title	Modifications to Supplemental Payment Methods for Medicaid Public Providers
Document preparation date	

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).

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

DMAS has used supplemental payments to public hospitals, nursing homes and clinics financed by IGTs to generate additional federal funds without spending additional state general funds. Since CMS has indicated to all states that it will no longer pay federal matching funds on these types of transactions, DMAS needed to make changes to the supplemental payment regulations. Where possible, DMAS proposes to make supplemental payments to certain public providers financed in a manner acceptable to CMS or to draw down federal funds for unreimbursed Medicaid costs. In other cases, DMAS proposes to repeal the supplemental payments altogether.

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 Methods and Standards for Establishing Payment Rates: Inpatient Hospital Care (12 VAC 30-70), Methods And Standards for Establishing Payment Rates: Other Types of Care (12 VAC 30-80) and Methods and Standards for Establishing Payment Rates: Long-Term Care (12 VAC 30-90) 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 and is full, true, and correctly dated.

_____ _____

Date

Patrick W. Finnerty, Director
Dept. of Medical Assistance Services

Legal basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the 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.

Item 326 O of the 2005 Appropriations Act provides that DMAS shall modify state regulations and the State Plan for Medical Assistance Services as they relate to supplemental payments to non-state public nursing homes, hospitals and clinics and state hospitals and clinics as necessary to comply with changes negotiated with the Centers for Medicare and Medicaid Services. The State Budget also provides for the authority to enact emergency regulations.

The Department of Medical Assistance Services (DMAS) was directed by the federal Medicaid authority, the Centers for Medicaid and Medicare Services (CMS), to modify or eliminate the use of intergovernmental transfers (IGTs) to finance supplemental payments by the end of SFY2005. In return, CMS agreed to provide federal matching funds for existing supplemental payments financed by IGTs through the end of SFY2005. To comply with its agreement with CMS, DMAS has decided to repeal certain supplemental payments and to modify others.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

The purpose of this action is to comply with recent CMS restrictions on the financing of supplemental payments for services provided by non-state public hospitals, nursing homes and clinics, and state hospitals and clinics. In past years, DMAS has successfully generated additional federal reimbursement by making supplemental payments financed by intergovernmental transfers (IGTs). Beginning in January 2004, CMS began to defer federal matching funds for these payments. As a result of negotiations with CMS, CMS agreed to provide federal matching funds for all existing supplemental payments financed by IGTs through the end of FY2005, if DMAS agreed to sunset the use of IGTs to finance these supplemental payments after that date. To comply with this arrangement, DMAS implemented an emergency regulation effective July 1, 2005 to modify supplemental payments for inpatient services provided by non-state public hospitals and nursing homes and outpatient services provided by non-state public clinics, and to repeal all other supplemental payments. This final regulation would make the emergency regulation permanent.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

The sections of the State Plan for Medical Assistance that are affected by this action are Methods and Standards for Establishing Payment Rates: Inpatient Hospital Care (12 VAC 30-70), Methods And Standards for Establishing Payment Rates: Other Types of Care (12 VAC 30-80) and Methods and Standards for Establishing Payment Rates: Long-Term Care (12 VAC 30-90).

The changes to these regulations are necessary in order for DMAS to comply with its agreement with CMS to sunset supplemental payments financed by IGTs, effective July 1, 2005. Where possible, DMAS proposes to make supplemental payments to certain public providers financed in a manner acceptable to CMS or to draw down federal funds for unreimbursed Medicaid costs. In other cases, DMAS proposes to repeal the supplemental payments altogether.

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 the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

DMAS used supplemental payments financed by IGTs to generate additional federal funds (approximately $10 million in FY05) without spending additional state general funds. For the most part, the public providers/local governments did not keep the supplemental payments except for a small participation incentive for their cooperation. Since CMS has indicated to all states that it will no longer pay federal matching funds on these transaction, DMAS needed to make changes to the supplemental payment regulations. The loss of revenue to the Commonwealth and to a smaller extent to local governments is unavoidable. DMAS was able to revise either the payment or the financing for some of the supplemental payments such that the Commonwealth will continue to generate approximately $2 million annually in net revenue.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar's office, please put an asterisk next to any substantive changes.

No changes were made in this regulation following the publication of the proposed regulation.

Public comment

Please summarize all comment received during the public comment period following the publication of the proposed stage, and provide the agency response. If no public comment was received, please so indicate.

DMAS' proposed regulations were published in the December 26, 2005, *Virginia Register* for their public comment period from December 26, 2005 through February 24, 2006. No comments were received.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Below are the changes to existing permanent regulations. **There are no differences with the proposed regulation.**

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
12 VAC30-70-425	N/A	Supplemental payments to non-state public hospitals for inpatient services	Effective July 1, 2005, DMAS shall draw down federal funds for unreimbursed Medicaid costs as certified by the providers through cost reports.
12 VAC30-70-426	N/A	Supplemental payments to state hospitals for inpatient services	Repeal effective July 1, 2005.
12 VAC 30-80-20.D.6	N/A	Supplemental payments to non-state public hospitals for outpatient services	Repeal effective July 1, 2005.
12 VAC 30-80-20.D.7	N/A	Supplemental payments to state hospitals for outpatient services.	Repeal effective July 1, 2005.
12 VAC 30-80-30.A.16	N/A	Supplemental payments to state clinics for outpatient services	Repeal effective July 1, 2005.
12 VAC 30-80-30.A.18	N/A	Supplemental payments to non-state public clinics for outpatient services	Effective July 1, 2005, supplemental payments will be made to clinics operated by Community Services Boards (CSBs). The state share of the payments will be funded by appropriations.
12 VAC 30-90-19	N/A	Supplemental payments to non-state public nursing homes	Effective July 1, 2005, DMAS shall draw down federal funds for unreimbursed Medicaid costs as certified by the providers through cost reports.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

This regulation has no impact on recipients or their families. These changes do not strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 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; strengthen or erode the marital commitment; or increase or decrease disposable family income.