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 30-70 and 12 VAC 30-80
Regulation title	Methods and Standards for Establishing Payment Rates—Inpatient Hospital Services; Methods and Standards for Establishing Payment Rates—Other Types of Care
Action title	Provider Preventable Conditions
Final agency action date	
Document preparation date	

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, Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

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 Chapters of the State Plan for Medical Assistance that are affected by this action are Methods and Standards for Establishing Payment Rates—Inpatient Hospital Services (12 VAC 30-70) and Methods and Standards for Establishing Payment Rates—Other Types of Care (12 VAC 30-80).

The Deficit Reduction Act of 2005 prohibited the U.S. Secretary of Health and Human Services (HHS), from expending Medicare funds for the provision of medical assistance for health care-acquired conditions. Health care acquired conditions are illnesses a patient acquires in a medical facility, which could have been prevented if the facility had followed prescribed standards of care. This same standard applies to provider preventable conditions, caused by such medical lapses as leaving foreign objects inside a patient during a surgery. The Centers for Medicare and

Medicaid Service (CMS), the federal agency that administers the Medicare and Medicaid programs, then implemented regulations prohibiting payments for provider preventable conditions pursuant to the DRA. This prohibition applied only to Medicare, but DMAS implemented similar policies in part effective January 1, 2010.

In 2010 the Patient Protection and Affordable Care Act ("PPCA") extended this prohibition to Medicaid. PPCA section 2702 (*Payment Adjustment for Health Care-Acquired Conditions*), directed the Secretary of HHS, to "prohibit payments to States under section 1903 of the Social Security Act for any amounts expended for providing medical assistance for health care-acquired conditions specified in the regulations." Pursuant to this mandate the Secretary of HHS promulgated a final federal rule to implement this new Medicaid requirement as a Final Rule in the Code of Federal Regulations. In the preamble of this Final Rule (FR 76:108, p 32816 *et seq*.) CMS stated:

> This final rule will implement section 2702 of the Patient Protection and Affordable Care Act which directs the Secretary of Health and Human Services to issue Medicaid regulations effective as of July 1, 2011 prohibiting Federal payments to States under section 1903 of the Social Security Act for any amounts expended for providing medical assistance for health care acquired conditions specified in the regulation.

CMS promulgated the new Medicaid requirements in 42 CFR § 447.26, which states, "A State plan must provide that no medical assistance will be paid for ''provider-preventable conditions'' as defined in this section…" This regulatory action directly implements this requirement.

These regulatory changes mirror this latest federal rule requiring state Medicaid programs to adopt certain Medicare non-payment provisions. These measures are intended to better align Medicare and Medicaid payment policies and are part of CMS' efforts to improve the quality of care that patients receive and reduce overall health care costs. DMAS is implementing only the federally mandated policies.

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 and 325, 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.

This action qualifies as exempt from public comment under the authority of § 2.2-4006(A)(4)(c)) of the *Code of Virginia* as it was mandated by § 2702 of the Patient Protection and Affordable Care Act.

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 regulations concerning Provider Preventable Conditions (12 VAC 30-70-201, 12 VAC 30-70-221, and 12 VAC 30-80-10) 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, 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.