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## Fast Track Proposed Regulation Agency Background Document

<b>Agency name</b>	DEPT OF MEDICAL ASSISTANCE SERVICES
<b>Virginia Administrative Code (VAC) citation</b>	12 VAC 30-70-221, 281, 291, 428; 12 VAC 30-80-20, 30, 300; and 12 VAC 30-90-18
<b>Regulation title</b>	Methods and Standards for Establishing Payment Rates—Inpatient Hospital Services; Methods and Standards for Establishing Payment Rates—Other Types of Care; Methods and Standards for Establishing Rates—Long Term Care
<b>Action title</b>	Supplemental Payments for Institutional/Non-Institutional Providers
<b>Date this document prepared</b>	

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (no more than 2 short 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.*

This regulation shall modify or establish supplemental payments for 1) physicians affiliated with Type One hospitals and state-funded medical schools, 2) hospitals and nursing homes affiliated with Type One hospitals and Type One hospitals. This regulation shall also modify indirect medical education (IME) and graduate medical education (GME) reimbursement for Type One hospitals.

### 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 with the attached amended regulations (12VAC 30-70-221, 281, 291, 428; 12VAC 30-80-20, 30, 300; 12VAC 30-90-18) for Supplemental Payments for Institutional/Non-Institutional Providers 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

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 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.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail 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 increase reimbursement to 1) physicians affiliated with Type One hospitals and state-funded medical schools, 2) hospital and nursing home partners with Type One hospitals, and (3) Type One hospitals by modifying or establishing supplemental payments. This action will also change reimbursement for GME to cover costs for Type One hospitals; change the formula for IME by changing the adjustment factor applied to the operating rate to 1.0, and case mix adjusting the formula for reimbursement for HMO discharges for Type One hospitals. This action has no direct effect on the health, safety or welfare of either Medicaid individuals or the Commonwealth's citizens at large.

### 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?*

*Please note: 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 (i) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

This proposed regulatory change is being promulgated through the fast track process because it is expected to be non-controversial. Department of Medical Assistance Services (DMAS) consulted with the Virginia Hospital and Healthcare Association (VHHA) and the affected providers. VHHA indicated that it would not object to increasing reimbursement to Type One hospitals. The affected providers 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 where appropriate. (Provide more detail about these changes in the "Detail of changes" section.) Please be sure to define any acronyms.*

#### **Supplemental Payments for Physicians**

The section of the Virginia Administrative Code (VAC) affected by this action is Methods and Standards for Establishing Payment Rates-Other Types of Care (12VAC 30-80-30). The new section implemented by this action is Methods and Standards for Establishing Payments Rates-Other Types of Care (12VAC 30-80-300).

The current VAC includes physician supplemental payments for physician practice plans affiliated with Type One hospitals (state academic health systems). These payments are calculated as the difference between the maximum payment allowable and regular payments. The Centers for Medicare and Medicaid Services (CMS) has determined that the maximum allowable is the average commercial rate (ACR). When first established in 2002, DMAS documented that the average commercial rate was 143% of Medicare based on information furnished by the state academic health systems. Based on authority under Item 307.B.4 of the *2012 Appropriations Act*, the purpose of this action is to revise the maximum to 181% of Medicare based on updated information on the average commercial rate furnished by the state academic health systems.

DMAS estimates that this action will increase physician supplemental payments for practice plans affiliated with Type One hospitals by \$6.3 million (Total Funds) annually and will replace funding that is no longer available from Disproportionate Share Hospitals (DSH).

This action also establishes supplemental payments for physician practice plans affiliated with Eastern Virginia Medical School (EVMS). DMAS intends to make supplemental payments equal to the average commercial rate minus regular physician payments. DMAS has calculated an ACR of 135% of Medicare payment, subject to CMS approval.

DMAS anticipates that this will increase payments to physicians affiliated with EVMS by \$2.2 million total funds. The state share will be funded by EVMS.

The regulation also codifies the methodology for calculating the ACR rate as a percentage of Medicare used in calculating supplemental payments for physicians.

### **Supplemental Payments for Hospitals and Nursing Facility Partners with Type One Hospitals**

The new section implemented by this action is Methods and Standards for Establishing Payment Rates-Inpatient Hospital Services (12VAC 30-70-428). The section of the VAC affected by this action is Methods and Standards for Establishing Payment Rates-Other Types of Care (12VAC 30-80-20) and the other new section implemented by this action is Methods and Standards for Establishing Payment Rates for Long-Term Care (12VAC 30-90-18).

Federal regulations establish upper payment limits (UPL) for inpatient and outpatient hospital services and for nursing facility services. There are separate UPLs for state, other government and private hospitals. UPLs are calculated on an aggregate basis. Under the current reimbursement policy, regular payments for private hospitals and nursing homes are below the UPL. This amendment would create supplemental payments for qualifying private hospitals and nursing homes, who are partners with a Type One hospital. Type One hospitals are the state teaching hospitals. Supplemental payments would be calculated as the difference between charges and regular payments. Supplemental payments to DSH however, cannot exceed a separate limit that applies to them. Total payments to all hospitals or nursing facilities cannot exceed the private UPL for each service.

Medicaid inpatient and outpatient payments are currently about 75% of cost. Nursing home reimbursement is about 95% of costs. The intent of the action is to provide increased payments for hospitals and nursing homes affiliated with the state teaching hospitals. Currently, only Culpeper Hospital qualifies as a hospital affiliated with a Type One hospital.

DMAS estimates \$3.7 million in payments to providers affiliated with Type One hospitals. Funding of the state share will come from funds at the state teaching hospitals transferred to DMAS and not from general fund appropriations to DMAS.

### **Supplemental Payments for Outpatient Hospital Services at Type One Hospitals**

The section of the VAC affected by this action is Methods and Standards for Establishing Payment Rates-Other Types of Care (12VAC 30-80-20).

Federal regulations establish UPLs for outpatient hospital services. There are separate UPLs for state, other government and private hospitals. UPLs are calculated on an aggregate basis. Under the current VAC, outpatient regular payments for Type One hospitals are below the UPL. This amendment would create supplemental payments for Type One hospitals. Type One hospitals are the state teaching hospitals. Outpatient reimbursement for Type One hospitals is approximately 92% of cost. The intent of this action is to provide increased payments for outpatient hospital services for state teaching hospitals.

This action is estimated to generate an increase in annual reimbursement of \$1.6 million in total funds (\$800,000 federal funds) and will replace funding that is no longer available from DSH.

### **IME and GME Reimbursement Changes for Type One Hospitals**

The sections of the VAC affected by this action are Methods and Standards for Establishing Payment Rates-Inpatient Hospitals Services (12VAC30-70-221, 12VAC30-70-281, and 12VAC30-70-291).

Based on authority under Item 307.B.4 of the 2012 Appropriations Act, the hospital inpatient reimbursement for Type I hospitals is being amended to change reimbursement for GME to cover GME costs for Type One hospitals, to case mix adjust the formula for IME reimbursement for HMO discharges for Type One hospitals and to increase the adjustment factor for Type One hospitals to 1.0 for use in calculating the IME reimbursement for HMO discharges. The intent of these changes is to fully reimburse Type One hospitals for the GME and IME costs associated with managed care services.

This action is estimated to increase annual GME and IME reimbursement by \$84.4 million in total funds (\$42.2 million federal funds) and will replace funding that is no longer available from DSH.

## **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.*

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The actions identified in the regulation package do not impact the public. These actions increase reimbursement to teaching hospitals and publicly-funded medical schools to support access to care for the medically needy.

**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 that exceed applicable federal requirements.

**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 are no localities particularly affected by the proposed regulation.

**Regulatory flexibility analysis**

*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 was undertaken to increase reimbursement for hospitals and nursing homes affiliated with Type One hospitals, Type One hospitals and physicians affiliated with state funded medical schools. This action also implements changes to reimbursement for IME and GME payments for Type One hospitals mandated in the 2012 Appropriation Act.

**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><b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a</b></p>	<p>Total estimated expenditures of \$98.8 million total funds, \$49.4 million general funds. No additional general funds are needed, however, because the</p>
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<b>delineation of one-time versus on-going expenditures</b>	new payments either replace funding that is no longer available for DSH or the state share will be funded by another government entity.
<b>Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.</b>	None.
<b>Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.</b>	Type One Hospitals and hospitals, nursing facilities, and physicians affiliated with Type One Hospitals or state-funded medical schools.
<b>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.</b> Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	3 hospitals.  Approximately 1,662 physicians.
<b>All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. 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.</b>	This action provides increased reimbursement to affected providers. Any administrative cost to providers would be offset by the increase in reimbursement.
<b>Beneficial impact the regulation is designed to produce.</b>	These actions maintain or increase reimbursement to teaching hospitals and publicly-funded medical schools and, therefore, increase access to care for the medically needy.

**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.*

This regulatory action was undertaken to increase reimbursement to Type One hospitals and publicly-funded medical schools and increase access to care for the medically needy. The only other alternative is not to increase reimbursement to these providers.

**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; 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; nor increase or decrease disposable family income.

**Detail of changes**

*Please list all changes that are being proposed and the consequences of the proposed changes. 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.*

For changes to existing regulation(s), use this chart:

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change, intent, rationale, and likely impact of proposed requirements</b>
12VAC 30-80-30		Defines supplemental payments for physicians under fee-for-service arrangements.	Increase supplemental payments to physicians affiliated with Type One hospitals.
12VAC 30-80-30		Defines supplemental payments for physicians under fee-for-service arrangements.	Establish supplemental payments to physicians affiliated with publicly-funded medical schools.
12VAC 30-70-221		Defines inpatient hospital reimbursement under Diagnosis-Related Group (DRG) methodology.	Modify reimbursement for GME for Type One hospitals to reimburse 100 percent of allowable costs.
12VAC 30-70-281		Defines reimbursement for direct medical education and GME.	Modify reimbursement for GME for Type One hospitals to reimburse 100 percent of allowable costs.
12VAC 30-70-291		Defines reimbursement for IME.	Modify reimbursement formula for IME for Type One hospitals to change the operating rate to reflect an adjustment factor to 1.0 and case-mix adjust the formula for IME for HMO discharges.
12VAC 30-80-20		Defines services reimbursed on a cost basis.	Establish supplemental payments for outpatient services furnished by Type One hospitals.



12VAC 30-80-20		Defines services reimbursed on a cost basis.	Establish supplemental payments for outpatient services for qualifying hospitals who are affiliated with a Type One hospital.
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If a new regulation is being promulgated, use this chart:

<b>Section number</b>	<b>Proposed requirements</b>	<b>Other regulations and law that apply</b>	<b>Intent and likely impact of proposed requirements</b>
12VAC 30-70-428	Establish supplemental payments for inpatient services for qualifying private hospitals who are affiliated with a Type One hospital.		Increase reimbursement for private hospitals affiliated with Type One hospitals.
12VAC 30-80-300	Establish the methodology for determining the Medicare Equivalent of the Average Commercial Rate		Identifies the specific formula and methodology for calculation of the Medicare Equivalent of the Average Commercial Rate.
12VAC 30-90-18	Establish supplemental payments for qualifying nursing homes, who are affiliated with a Type One hospital.		Increase reimbursement for private nursing facilities affiliated with Type One hospitals.