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## Proposed Regulation Agency Background Document

<b>Agency Name:</b>	Dept. of Medical Assistance Services
<b>VAC Chapter Number:</b>	12 VAC 30 Chapter 80
<b>Regulation Title:</b>	Methods and Standards for Establishing Payment Rates-Other Types of Care: Hospital Outpatient Reimbursement and Rehab Agencies Reimbursement
<b>Action Title:</b>	Limit Outpatient Hospital Payment to 80% of Allowable Cost; Establish Prospective Reimbursement for Rehab Agencies
<b>Document preparation date</b>	8/13/2003; NEED GOV APPROVAL BY OCTOBER 24 <sup>TH</sup>

This information is required for executive review ([www.townhall.state.va.us/dpbpages/apaintro.htm#execreview](http://www.townhall.state.va.us/dpbpages/apaintro.htm#execreview)) and the Virginia Registrar of Regulations ([legis.state.va.us/codecomm/register/regindex.htm](http://legis.state.va.us/codecomm/register/regindex.htm)), pursuant to the Virginia Administrative Process Act ([www.townhall.state.va.us/dpbpages/dpb\\_apa.htm](http://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](http://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](http://legis.state.va.us/codecomm/register/download/styl8_95.rtf)).

### Brief summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. Do **not** state each provision or amendment or restate the purpose and intent of the regulation.*

This regulatory action proposes to amend the reimbursement of hospitals for outpatient services providing that, effective July 1, 2003, allowable costs shall be limited to 80 percent of costs. State teaching hospitals are excluded from this action. It also proposes to establish a prospective reimbursement methodology for rehabilitation agencies other than those operated by Community Service Boards (CSBs). Rehabilitation agencies operated by CSBs will continue to be reimbursed retrospectively.

## 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.*

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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 the Department of Medical Assistance Services (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 regulatory action is a response to a change in the 2003 Virginia Appropriations Act (Item 325 KKK and Item 325 NNN).

## 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.*

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This regulatory action is not expected to have any impact on the health, safety or welfare of citizens. Medicaid, as well as commercial health insurance companies, set maximum reimbursement amounts for services rendered by their provider networks. In the case of Medicaid, the reimbursement is usually the same as or less than the Medicare rate. Therefore, the purpose of this regulatory action is to conform this method of reimbursement to the general Medicaid reimbursement policies.

## 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.)*

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The section of the Virginia Administrative Code that is affected by this action is 12 VAC 30-80-20 -- Methods and Standards for Establishing Payment Rates -- Other Types of Care -- Hospital Outpatient Services. In addition, a new section is added, 12 VAC 30-80-200, establishing prospective reimbursement for all rehabilitation agencies except those operated by Community Service Boards.

Outpatient Hospital Allowable Cost Limit

Regulations at 12 VAC 30-80-20 identify services that are reimbursed on the basis of allowable costs and describe any special provisions related to specific services or provider categories. Outpatient hospital services are currently listed in this section, and are subject only to the limits related to Medicare principles of reimbursement. These limits provide that outpatient operating costs are reimbursed at 94.2% of cost, and capital costs at 90% of cost. The proposed amendment would provide for reimbursement of all outpatient costs at 80% of allowable cost.

Prospective Reimbursement for Rehab Agencies

Regulations at 12 VAC 30-80-20 also currently list rehabilitation agency services which are reimbursed their actual allowable costs, subject only to the limits related to Medicare principles of reimbursement. The proposed amendment would provide that rehab agencies operated by Community Services Boards (CSBs) would continue to be paid based on allowable costs, and this amendment also includes a new subsection (12 VAC 30-80-200) describing a prospective reimbursement methodology applicable to other rehabilitation agencies. Each provider’s prospective rate would be the lesser of its own historical cost per visit, or 112% of the median cost per visit of all providers.

**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 advantage to DMAS is that there will be a cost savings associated with this change of approximately \$8.5 million (\$4.25 million GF; \$4.25 million NGF) annually. For the change to a prospective payment system for outpatient rehabilitation agencies, a savings to the Medicaid program of \$3.0 million (\$1.5 million GF; \$1.5 million NGF) is expected. The primary disadvantage to affected hospitals and rehabilitation agencies is a concomitant reduction in reimbursement for these services.

**Financial impact**

*Please identify the anticipated financial impact of the proposed regulation and at a minimum provide the following information:*

<p><b>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</b></p>	<p>There is no cost to the state to implement this regulation</p>
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<b>expenditures</b>	
<b>Projected cost of the regulation on localities</b>	There is no cost to localities to implement this regulation
<b>Description of the individuals, businesses or other entities likely to be affected by the regulation</b>	All Type II hospitals providing outpatient services to Medicaid recipients.  All non-CSB operated outpatient rehabilitation agencies providing services to Medicaid Recipients.
<b>Agency's best estimate of the number of such entities that will be affected</b>	Type II Hospitals providing outpatient services = 96.  Non-CSB operated outpatient rehabilitation agencies = 64.
<b>Projected cost of the regulation for affected individuals, businesses, or other entities</b>	In total, the affected hospitals will see an annual reduction in reimbursement relative to the old system of approximately \$8.5 million.  In total, the affected outpatient rehabilitation agencies will see an annual reduction in reimbursement relative to the old system of approximately \$3 million.

**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.*

No alternatives were considered to this proposed change. The requirements of the Appropriations Act were relatively simple and straightforward, and multiple options for implementation do not exist.

**Public comment**

*Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.*

DMAS' emergency regulations were published in the June 30, 2003, *Virginia Register* (19:21, 3076, 6/30/2003) along with the Notice of Intended Regulatory Action (NOIRA). No comments were received on either the emergency regulations or on the NOIRA notice.

**Impact on family**

*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.

This regulation affects the reimbursement rates paid to hospitals and rehab agencies serving Medicaid recipients. This change alone would not be expected to affect recipients or their families in any appreciable way.

**Detail of changes**

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

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

There are no changes between the emergency regulation and the proposed regulation.

Current section number	Current requirement	Proposed change and rationale
12VAC30-80-20	Prior to current emergency regulation, this VAC section prescribed reimbursement on a reasonable cost basis for inpatient and outpatient hospitals.	The proposed regulation limits Type Two hospitals to 80% of their allowable costs, while continuing Type One hospital reimbursement levels at 94.2% of operating costs and 90% of capital costs.
12VAC30-80-200	This is a new regulation section. Prior to the current emergency regulations addressing reimbursement for rehabilitation agencies, such agencies were reimbursed on an allowable cost basis.	Proposed regulations add a new section to reimbursement regulations to implement the new prospective reimbursement scheme for all rehabilitation agencies except for those operated by Community Service Boards.