



Final Regulation Agency Background Document

Agency name	DEPT OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation	112 VAC 30-70-221
Regulation title	Methods and Standards for Establishing Payment Rates -- Inpatient Hospital Services
Action title	Clarification to Medicaid Utilization Calculation to Match Cost Report Practice
Document preparation date	

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

Item 326 PPP of the 2005 Appropriation Act directed DMAS to clarify the definition of Medicaid Utilization to better articulate the actual practice of calculating Medicaid utilization from the facility cost reports. Medicaid Utilization is primarily used to determine whether or not a facility is eligible for Disproportionate Share Hospital (DSH) payment. The calculation is generally Medicaid inpatient days divided by total inpatient days at any given facility. However, there has been a lack of clarity in the regulations regarding what constitutes a “Medicaid inpatient day” for this calculation. Cost report instructions, however, have been clear and consistent in this definition. This regulatory change will better articulate the definition in regulation.

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 regulations Methods and Standards for Establishing Payment Rates -- Inpatient Hospital Services: Clarification to Medicaid Utilization Calculation to Match Cost Report Practice (12 VAC 30-70-221) 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

Patrick W. Finnerty, 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 law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., 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 PPP of the 2005 Appropriation Act directed DMAS to implement this regulatory change.

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 it 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.

This regulatory action will better articulate the definition in of “Medicaid inpatient day” in the Medicaid hospital reimbursement regulations. This change will help protect the health, safety and welfare of the citizens of the Commonwealth by cutting down on the possibility of

reimbursement errors in Medicaid hospital reimbursement system. Fewer errors means greater savings for the Commonwealth, helping to ensure the fiscal integrity of the Medicaid program and maintaining vital medical services for the most vulnerable Virginia citizens.

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 section of the State Plan for Medical Assistance that is affected by this change is Attachment 4.19-A to Methods and Standards for Establishing Payment Rates-Inpatient Hospital Services (12VAC30-70-221).

DMAS is amending 12VAC30-70-221 to provide clarification regarding what is includable in the definition of Medicaid utilization. Specifically, DMAS is stating that the definition includes all paid Medicaid days and non-paid/denied Medicaid days (to include medically unnecessary days, inappropriate level of care service days, and days that exceed any maximum day limits). DMAS is stating that the definition of Medicaid days does not include any general assistance, Family Access to Medical Insurance Security (FAMIS), State and Local Hospitalization (SLH), charity care, low-income, indigent care, uncompensated care, bad debt, or Medicare dually eligible days. DMAS is also stating that it does not include days for newborns not enrolled in Medicaid during the fiscal year even though the mother was Medicaid eligible during the birth.

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 this proposed change is the clarification of important aspects of the Medicaid hospital reimbursement system. With this change, Medicaid providers applying for reimbursement for medical services provided to Medicaid enrollees will find it easier to calculate the appropriate reimbursement to which they are entitled. There are no disadvantages to the Commonwealth or the public concerning this action.

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.

There were two non-substantive changes made in the final regulation since the proposed was published. Both are located in 12 VAC 30-70-221(C)(3)(b), in the definition of “Medicaid utilization percentage.” DMAS added the bracketed, highlighted language to the first sentence of the amended text to further clarify this definition, as follows:

This definition includes all paid Medicaid days [(from DMAS MR reports for FFS days and MCO or hospital reports for HMO days)] and non-paid/denied Medicaid days to include medically unnecessary days, inappropriate level of care service days, and days that exceed any maximum day limits [(with appropriate documentation)].

Public comment

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

DMAS' proposed regulations were published in the June 11, 2007, *Virginia Register* (VAR 23:20) for their public comment period from June 11, 2007 through August 10, 2007. 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.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
12 VAC 30-70-221 (C)	n/a	“In subsequent rebasing, the Commonwealth shall notify affected providers of the base year to be used in this calculation.”	This language is in the original VAC and in the Emergency Regulation. It is almost identical to the next sentence. Due to this duplication, it is being stricken in the Proposed Regulation.
12 VAC 30-70-221 (C)	n/a	Defines Medicaid Utilization	Clarifies the definition of Medicaid Utilization to match the actual practice of the calculation based on cost report guidance. There was no language change between the Emergency Regulation and 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.

The purpose of this change was simply to add clarifying language to one definition involved in the calculation of Medicaid hospital reimbursement rates. The language added was chosen as the most straightforward and efficient language directed to the affected provider group.

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; 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.