



Exempt Action Final Regulation Agency Background Document

Agency name	DEPT. OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation	12 VAC 30-80
Regulation title	Methods and Standards for Establishing Payment Rates—Other Types of Care: Reimbursement for Durable Medical Equipment and Supplies
Action title	Incontinence Supplies by Contract
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 section of the regulations that is affected by this action is Chapter 80, Methods and Standards for Establishing Payment Rates—Other Types of Care (12 VAC 30-80-30), Fee for Service Reimbursement for Durable Medical Equipment.

Durable Medical Equipment (DME) and supplies are a mandatory Medicaid benefit provided for in 42 C.F.R. § 440.70. Section 1902(a)(43) of the *Social Security Act* specifically requires that state Medicaid plans provide or arrange for such services. DMAS covers for Medicaid and FAMIS fee-for-service eligible individuals high quality, appropriate, and cost-effective DME services including incontinence supplies. The Commonwealth's goal is to standardize and improve the quality, coordination, and management of incontinence and related supplies, while controlling expenditures.

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.

The *2011 Acts of Assembly*, Chapter 890 Item 297 VVV provided: “The Department of Medical Assistance Services (DMAS) shall have the authority to modify reimbursement for Durable Medical Equipment incontinence supplies based on competitive bidding subject to approval by the Centers for Medicare and Medicaid Services. The department shall have the authority to promulgate regulations to become effective within 280 days or less from the enactment of this act.” The Department is promulgating regulations which conform to the CMS’ directive.

As such, this action is exempt, under the authority of the *Code of Virginia* §§ 2.2-4006(A)(4)(a) and (A)(4)(c), from public comment since it conforms to the referenced change in state law and federal directive, respectively, and no agency discretion is permitted.

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 entitled ‘Incontinence Supplies by Contract’ (12 VAC 30-80-30) 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

Substance

Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the “Detail of changes” section.)

In Virginia, the federally mandated Medicaid DME benefit is provided through a fee-for-service (FFS) program and managed care organizations (MCO). As of December 2010, the 331,500 Medicaid and FAMIS clients who participate in the fee-for-service program are individuals who live in areas of the Commonwealth that currently do not have a managed care organization available or who are excluded from managed care organization participation (e.g., persons in nursing facilities, community based care waiver programs, and foster care). Approximately 64 percent (more than 587,820 recipients) of Medicaid and FAMIS clients receive DME benefits through one of five managed care organizations.

All medically necessary durable medical equipment and supplies listed under the *Virginia Administrative Code* (12 VAC 30-50-165) may be covered only if they are necessary to carry out a treatment prescribed by a practitioner (physician, M.D. or D.O.). Unusual amounts, types, and duration of usage must be authorized by DMAS in accordance with published regulations and procedures. Providers of DME supplies should not exceed the allowable limits established for the delivery of supplies. However, if an individual needs more than the allowable, a service authorization for the overage must be secured. When determined to be cost-effective by DMAS, payment may be made for rental of the equipment in lieu of purchase.

DMAS fee-for-service (FFS) annually reimburses DME providers over \$50 million. In 2009, DMAS reimbursed 30 percent of DME supplies using Medicare rates and 63 percent of supplies using a state agency fee schedule. The reimbursement for the remainder of un-priced supplies was based on costs or charges. Preliminary comparisons to other Medicaid states and other payers provided support for revision of the reimbursement methodology, as well as the basis for developing cost savings initiatives. The regulatory action required for the implementation of this revised reimbursement methodology is pending the administration's approval.

The agency's published Request for Proposals sought competitive bids for the provision of incontinence supplies statewide in compliance with Item 297 VVV. This action will only affect Medicaid and FAMIS individuals in fee-for-service (FFS), Primary Care Case Management (PCCM), and the following 1915(c) home and community-based waiver programs:

- Day Support
- Elderly or Disabled with Consumer Direction (EDCD)
- HIV/AIDS
- Individual and Family Developmental Disabilities Supports (IFDDS)
- Intellectual Disabilities/Mental Retardation (ID/MR)
- Technology Assisted (Tech)

Individuals who are enrolled in managed care organizations (MCOs) will not be affected by this anticipated contract because the state does not directly reimburse prescribing practitioners for incontinence supplies provided to these individuals. The cost of these managed care participants' supplies is included in the capitation rate paid to the MCO for their care.

The Department also does not directly reimburse prescribing practitioners for incontinence supplies provided to individuals in nursing facilities and intermediate care facilities for persons with mental retardation (ICFs/MR), as the cost for their supplies are included in the daily care rate paid to the nursing facilities and ICFs/MR. As such, these individuals also will not be affected by this anticipated contract.

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.