Virginia Regulatory Town Hall

Emergency Regulation
Agency Background Document

Agency Name:	Dept. of Medical Assistance Services; 12 VAC 30
VAC Chapter Number:	12 VAC 30-70, 12 VAC 30-80, 12 VAC 30-90
Regulation Title:	Upper Payment Limit for Government-Owned Nursing Homes, Hospitals and Clinics for Inpatient and Outpatient Services
Action Title:	2002 Upper Payment Limits
Date:	7/12/2002; GOV ACTION NEEDED BY JULY 30, 2002

Section 9-6.14:4.1(C)(5) of the Administrative Process Act allows for the adoption of emergency regulations. Please refer to the APA, Executive Order Twenty-Four (98), and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the emergency regulation submission package.

Emergency Preamble

Please provide a statement that the emergency regulation is necessary and provide detail of the nature of the emergency. Section 9-6.14:4.1(C)(5) of the Administrative Process Act states that an "emergency situation" means: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date. The statement should also identify that the regulation is not otherwise exempt under the provisions of § 9-6.14:4.1(C)(4).

Please include a brief summary of the emergency action. There is no need to state each provision or amendment.

Item 325 CC of the 2002 Acts of Assembly (Chapter 899) authorized the Department of Medical Assistance Services (DMAS) to amend the State Plan for Medical Assistance to increase local government owned providers' reimbursement consistent with the maximum amount allowed under federal laws and regulations. Item 325 RR gives the Department similar authority to increase state government owned providers' reimbursement. Item DD gives the Department more specific authority in relation to reimbursement to non-state government owned hospitals which the Department also has under Item 325 CC. Each item shall become effective consistent with approval by the Centers for Medicare and Medicaid of the related State Plan amendments.

The Department also is granted the authority in Chapter 899 to enact emergency regulations for each of these issues. The regulation is not exempt under section 2.2-4006(A)(4).

Basis

Please identify the state and/or federal source of legal authority to promulgate the emergency regulation. The discussion of this emergency statutory authority should: 1) describe its scope; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. Full citations of legal authority and web site addresses, if available for locating the text of the cited authority, should be provided.

Please provide a statement that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the emergency regulation and that it comports with applicable state and/or federal law.

The Code of Virginia (1950) as amended, § 32.1-325, grants to the Board of Medical Assistance Services the authority to administer 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 the to the Board's requirements.

Items 325 CC, 325 DD and 325 RR of the 2002 Acts of Assembly (Chapter 899) authorized the Department of Medical Assistance Services (DMAS) to increase reimbursement for government-owned public nursing homes, hospitals and clinics consistent with the maximum amount allowed under federal laws and regulations and to enact emergency regulations. Federal regulations (42 CFR § 447.272 and 42 CFR § 447.321) allow aggregate payments for government-owned or operated hospitals, nursing homes, intermediate care facilities for the mentally retarded (ICFs-MR) or clinics up to 100 percent of a reasonable estimate of the amount that would be paid by Medicare. For periods prior to May 16, 2002, federal regulations allow aggregate payments for non-State owned or operated hospitals up to 150 percent of a reasonable estimate of the amount that would be paid by Medicare.

Substance

Please detail any changes, other than strictly editorial changes, that would be implemented. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Please provide a cross-walk which includes citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of Virginians. The statement should also delineate any potential issues that may need to be addressed as a permanent final regulation is developed.

The sections of the State Plan for Medical Assistance affected by these amendments are Methods and Standards for Establishing Payment Rates-Inpatient Hospital Services (Attachment 4.19-A (12 VAC 30-70-425 and 12 VAC 30-70-426)), Methods and Standards for Establishing Payment

Rates-Other Types of Care (Attachment 4.19-B (12 VAC 30-80-20 and 12 VAC 30-80-30) and Methods and Standards for Establishing Payment Rates-Long-Term Care Services (Attachment 4.19-D (12 VAC 30-90-18 and 90-19)).

Under existing regulation, the Department pays most government-owned nursing homes, hospitals and clinics according to a reimbursement methodology comparable to that applied to other nursing homes, hospitals, and clinics, which does not include any supplemental payments. This regulation provides for a supplemental payment to non-state government-owned hospitals, ICFs-MR and clinics and state government-owned nursing homes, ICFs-MR, hospitals, and clinics for inpatient and outpatient services. Existing regulation, adopted to be effective July 1, 2001, already provides for a supplemental payment to non-state government-owned nursing homes.

Under existing regulation, the total reimbursement to non-state government-owned ICFs-MR, hospitals and clinics and state government-owned nursing homes, ICFs-MR, hospitals and clinics is less than the maximum allowable amount under current federal law and regulations. This regulation would provide for DMAS to establish separate reimbursement pools for non-state government-owned ICFs-MR, hospitals and clinics and for state government-owned nursing homes, ICFs-MR, hospitals, and clinics for inpatient and outpatient services equal to the difference between current aggregate reimbursement and the maximum amount allowed under federal regulations. Additional reimbursement would be distributed in the form of supplemental payments to participating government-owned nursing homes, ICFs-MR, hospitals and clinics.

The suggested emergency regulation would provide supplemental reimbursement for services provided by non-state government-owned ICFs-MR, hospitals, and clinics up to the Medicaid upper payment limit as defined under 42 CFR § 447.272 (inpatient services) and 42 CFR § 447.321 (outpatient services). The maximum reimbursement for non-state government-owned or operated clinics is a reasonable estimate of the amount that would be paid by Medicare. For periods prior to May 16, 2002, 42 CFR § 447.272(c)(1) and § 447.321 (c)(1) made an exception for non-state government-owned or operated hospitals. The maximum reimbursement for these hospitals was 150 percent of a reasonable estimate of the amount that would be paid by Medicare. This covers services performed in ICFs-MR, hospitals, or clinics owned or operated by hospital authorities (VCU Health System Authority, Lake Taylor Hospital, Southside Regional Medical Center, and Chesapeake General Hospital), some local health departments (Fairfax, Arlington, and Richmond), community services boards, and school-based clinics.

The suggested emergency regulation also would provide supplemental reimbursement for services provided by state government-owned nursing homes, ICFs-MR, hospitals, and clinics up to the Medicaid upper payment limit as defined under 42 CFR § 447.272 (inpatient services) and 42 CFR § 447.321 (outpatient services). The maximum reimbursement for state government-owned or operated nursing homes, hospitals and clinics for inpatient and outpatient services is 100 percent of a reasonable estimate of the amount that would be paid by Medicare. This covers services provided by UVA Medical Center, the Virginia Department of Health and the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services.

Supplemental reimbursements to individual providers may also be subject to limits related to charges.

Because approximately 50% of Medicaid payments are federally funded, by maximizing payments to government-owned nursing homes, hospitals, and clinics, the Commonwealth will maximize the federal funding available to Virginia through these increased Medicaid payments. No disadvantages to the public have been identified in connection with this regulation. The agency projects no negative issues involved in implementing this regulatory change.

Providers affected by this action are non-state government-owned ICFs-MR, hospitals and clinics and state government-owned nursing homes, ICFs-MR, hospitals, and clinics. Localities affected are those having government-owned nursing homes, ICFs-MR, hospitals, or clinics. Other providers and localities are not affected and recipients are not affected. Supplemental payments will be based upon transfer agreements with the affected public entities and the subsequent transfer of funds. This will minimize general funds needed.

Government-owned nursing homes, ICFs-MR, hospitals, and clinics fulfill an important and unique role within the Virginia health care system as safety net providers. Many safety-net providers incur costs for which they are not currently reimbursed above and beyond the costs incurred by private providers.

Alternatives

Please describe the specific alternatives that were considered and the rationale used by the agency to select the least burdensome or intrusive method to meet the essential purpose of the action.

The General Assembly has mandated these changes to the State Plan. If this state regulation is not adopted, however, the Commonwealth will not be able to maximize the federal funding available to Virginia.

Family Impact Statement

Please provide a preliminary analysis of the potential impact of the emergency action on the institution of the family and family stability including to what extent the 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.

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.