



Proposed Regulation Agency Background Document

Agency name	DEPT OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation	12VAC30, Chapters 70, 80, and 90
Regulation title	Methods and Standards for Establishing Payment Rates – Inpatient Hospital Services, Other Types of Care, and Long Term Care
Action title	Modifications to Supplemental Payment Methods for Medicaid Public Providers
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 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

DMAS has used supplemental payments to public hospitals, nursing homes and clinics financed by IGTs to generate additional federal funds without spending additional state general funds. Since CMS has indicated to all states that it will no longer pay federal matching funds on these types of transactions, DMAS needed to make changes to the supplemental payment regulations. Where possible, DMAS proposes to make supplemental payments to certain public providers financed in a manner acceptable to CMS or to draw down federal funds for unreimbursed Medicaid costs. In other cases, DMAS proposes to repeal the supplemental payments altogether.

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 number(s), 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.

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 O of the 2005 Appropriations Act provides that DMAS shall modify state regulations and the State Plan for Medical Assistance Services as they relate to supplemental payments to non-state public nursing homes, hospitals and clinics and state hospitals and clinics as necessary to comply with changes negotiated with the Centers for Medicare and Medicaid Services. The State Budget also provides for the authority to enact emergency regulations.

The Department of Medical Assistance Services (DMAS) was directed by the federal Medicaid authority, the Centers for Medicaid and Medicare Services (CMS), to modify or eliminate the use of intergovernmental transfers (IGTs) to finance supplemental payments by the end of SFY2005. In return, CMS agreed to provide federal matching funds for existing supplemental payments financed by IGTs through the end of SFY2005. To comply with its agreement with CMS, DMAS has decided to repeal certain supplemental payments and to modify others.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

The purpose of this action is to comply with recent CMS restrictions on the financing of supplemental payments for services provided by non-state public hospitals, nursing homes and clinics, and state hospitals and clinics. In past years, DMAS has successfully generated additional federal reimbursement by making supplemental payments financed by intergovernmental transfers (IGTs). Beginning in January 2004, CMS began to defer federal matching funds for these payments. As a result of negotiations with CMS, CMS agreed to provide federal matching funds for all existing supplemental payments financed by IGTs through the end of FY2005, if DMAS agreed to sunset the use of IGTs to finance these supplemental payments after that date. To comply with this arrangement, DMAS implemented an emergency regulation effective July 1, 2005 to modify supplemental payments for inpatient services provided by non-state public hospitals and nursing homes and outpatient services provided by non-state public clinics, and to repeal all other supplemental payments. This proposed regulation would make the emergency regulation permanent.

Substance

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

The sections of the State Plan for Medical Assistance that are affected by this action are Methods and Standards for Establishing Payment Rates: Inpatient Hospital Care (12 VAC 30-70), Methods And Standards for Establishing Payment Rates: Other Types of Care (12 VAC 30-80), and Methods and Standards for Establishing Payment Rates: Long-Term Care (12 VAC 30-90).

The changes to these regulations are necessary in order for DMAS to comply with its agreement with CMS to sunset supplemental payments financed by IGTs, effective July 1, 2005. Where possible, DMAS proposes to make supplemental payments to certain public providers financed in a manner acceptable to CMS or to draw down federal funds for unreimbursed Medicaid costs. In other cases, DMAS proposes to repeal the supplemental payments altogether.

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 the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

DMAS used supplemental payments financed by IGTs to generate additional federal funds (approximately \$10 million in FY05) without spending additional state general funds. For the most part, the public providers/local governments did not keep the supplemental payments except for a small participation incentive for their cooperation. Since CMS has indicated to all states that it will no longer pay federal matching funds on these transaction, DMAS needed to make changes to the supplemental payment regulations. The loss of revenue to the Commonwealth and to a smaller extent to local governments is unavoidable. DMAS was able to revise either the payment or the financing for some of the supplemental payments such that the Commonwealth will continue to generate approximately \$2 million annually in net revenue.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

<p>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 expenditures</p>	<p>Annual net revenue for the Commonwealth will be reduced from \$10 million to \$2 million. Given the CMS position on IGTs, this reduction was unavoidable.</p>
<p>Projected cost of the regulation on localities</p>	<p>Public providers/local governments did not keep the supplemental payments except for a participation incentive (\$500,000 in FY05). CSBs will continue to receive supplemental payments, but other appropriations were reduced. CSBs will still</p>

	net approximately \$80,000 annually. All other providers will lose the participation incentive
Description of the individuals, businesses or other entities likely to be affected by the regulation	Publicly owned hospitals, nursing homes and clinics
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. 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.	6 non-state government-owned nursing homes 2 non-state government-owned hospitals 2 state hospitals VDH clinics 40 CSBs None of these are small businesses.
All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.	None

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.

DMAS negotiated with CMS to sunset supplemental payments financed by intergovernmental transfers. The alternatives would require the expenditure of additional state general funds. In some instances, DMAS was able to develop alternatives acceptable to CMS that would not require additional state general funds.

Public comment

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

No public comments were received on this action.

Family impact

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.

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.

For changes to existing regulations, use this chart:

Below are the changes to existing permanent regulations. There are no differences with the emergency regulation

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
12 VAC30-70-425	N/A	Supplemental payments to non-state public hospitals for inpatient services	Effective July 1, 2005, DMAS shall draw down federal funds for unreimbursed Medicaid costs as certified by the providers through cost reports.
12 VAC30-70-426	N/A	Supplemental payments to state hospitals for inpatient services	Repeal effective July 1, 2005.
12 VAC 30-80-20.D.6	N/A	Supplemental payments to non-state public hospitals for outpatient services	Repeal effective July 1, 2005.
12 VAC 30-80-20.D.7	N/A	Supplemental payments to state hospitals for outpatient services.	Repeal effective July 1, 2005.
12 VAC 30-80-30.A.16	N/A	Supplemental payments to state clinics for outpatient services	Repeal effective July 1, 2005.
12 VAC 30-80-30.A.18	N/A	Supplemental payments to non-state public clinics for outpatient services	Effective July 1, 2005, supplemental payments will be made to clinics operated by Community Services Boards (CSBs). The state share of the payments will be funded by appropriations.
12 VAC 30-90-19	N/A	Supplemental payments to non-state public nursing homes	Effective July 1, 2005, DMAS shall draw down federal funds for unreimbursed Medicaid costs as certified by the providers through cost reports.