REGULATORY REVIEW CHECKLIST

To accompany Regulatory Review Package

Agency Department of Medical Assistance Services

Regulation title Methods and Standards for Establishing Payment Rates-Inpatient Hospital Care

Purpose of the regulation To promulgate the full DRG payment methodology.

Summary of items attached:

☒ **Item 1:** A copy of the proposed new regulation or revision to existing regulation.

☒ **Item 2:** A copy of the proposed regulation submission package required by the Virginia Administrative Process Act (Virginia Code Section 9-6.14:7.l.G [redesignated Section 9-6.14:7. l.H after January 1, 1995]). These requirements are:

- ☒ (i) the basis of the regulation, defined as the statutory authority for promulgating the regulations, including the identification of the section number and a brief statement relating the content of the statutory authority to the specific regulation proposed.
- ☒ (ii) the purpose of the regulation, defined as the rationale or justification for the new provisions of the regulation, from the standpoint of the public's health, safety and welfare.
- ☒ (iii) the substance of the regulation, defined as the identification and explanation of the key provisions of the regulation that make changes to the current status of the law.
- ☒ (iv) the issues of the regulation, defined as the primary advantages and disadvantages for the public, and as applicable for the agency or the state, of implementing the new regulatory provisions.
- ☒ (v) the estimated impact, defined as the projected number of persons affected, the projected costs, expressed as a dollar figure or range, for the implementation and compliance thereof, and the identity of any localities particularly affected by that regulation.

☒ **Item 3:** A statement from the Attorney General that the agency possesses, and has not exceeded, its statutory authority to promulgate the proposed regulation.

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☒ **Item 4:** A statement disclosing whether the contemplated regulation is mandated by state law or federal law or regulation, and, if mandated in whole or in part, a succinct statement of the source (including legal citation) and scope of the mandate, together **with an attached copy of all cited legal provisions.**

☒ **Item 5:** For any proposed regulation that exceeds the specific minimum requirements of a legally binding state or federal mandate, a specific rather than conclusory statement setting forth the reasoning by which the agency has concluded that the proposed regulation is essential to protect the health, safety or welfare of citizens or for the efficient and economical performance of an important governmental function.

☒ **Item 6:** For any proposed regulation that exceeds the specific minimum requirements of a legally binding state or federal mandate, a specific rather than conclusory statement describing the process by which the agency has considered less burdensome and less intrusive alternatives for achieving the essential purpose, the alternatives considered, and the reasoning by which the agency has rejected such alternatives.

☒ **Item 7:** A schedule setting forth when, no later than three (3) years after the proposed regulation is effective, the agency will initiate a review and reevaluation of the regulation to determine if it should be continued, amended, or terminated. Include a description of the specific and measurable goals the proposed regulation is intended to achieve, if practical.

☒ **Item 8:** A detailed fiscal impact analysis prepared in coordination with DPB that includes: (a) the projected cost to the state to implement and enforce the proposed regulation and (b) the source of funds to meet this projected cost.

/s/ Dennis G. Smith	Nov. 10, 1999	11/12/99 VPS
Signature of Agency head	Date	Date forwarded to DPB & Secretary

REGULATORY REVIEW SUMMARY

Amendment to the State Plan for Medical Assistance

I. IDENTIFICATION INFORMATION

Title of Proposed Regulation: Methods and Standards for Establishing Payment Rates-Inpatient Hospital Services: Diagnosis Related Groups (DRG)

Director's Approval: November 10, 1999

Public Comment Period:

Proposed Effective Date: July 1, 2000

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II. SYNOPSIS

Basis and Authority: The Code of Virginia (1950) as amended, §32.1-325, grants to the Board of Medical Assistance Services (BMAS) the authority to administer and amend the Plan for Medical Assistance. The Code of Virginia (1950) as amended, §32.1-324, grants to the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the Plan for Medical Assistance in lieu of Board action pursuant to the Board's requirements. The Code also provides, in the Administrative Process Act (APA) §§9-6.14:7.1 and 9-6.14:9.1, for this agency's promulgation of proposed regulations subject to the Governor's review.

Subsequent to an emergency adoption action, the agency is initiating the public notice and comment process as contained in Article 2 of the APA. The emergency regulation became effective on July 1, 1998, and was extended by 1999 General Assembly action to July 1, 1999.

Title 42 of the Code of Federal Regulations Part 447 regulates the reimbursement of all Medicaid-covered services.

Purpose: The purpose of this proposal is to amend the existing inpatient hospital payment methodology regulations to remove transition period rules and to fully implement the new Diagnosis Related Groups methodology which began to be phased in on July 1, 1996. This regulation is not expected to affect the public's health, safety, or welfare.

Substance and Analysis: The sections of the State Plan affected by this action are Methods and Standards for Establishing Payment Rates-Inpatient Hospital Services Attachment 4.19-A (12 VAC 30-70-200 et seq).

HISTORY

On July 1, 1996, the Department of Medical Assistance Services (DMAS) implemented a new prospective payment methodology for hospital services based largely on Diagnosis Related Groups (DRGs). From that date through June 30, 1998, was a transition period, with Medicaid payment transitioning by thirds each year from per diem payment to DRG payment. This allowed hospitals time to adjust to the new methodology. Emergency regulations were adopted prior to July 1, 1996, to govern rate setting during the transition period, and were adopted as final regulations through the Administrative Process Act (APA) during state fiscal year 1997.

The regulations that authorized the new methodology stated that rates must be "rebased" every two years, with the first rebasing scheduled for an effective date of July 1, 1998. Also on July 1, 1998, the DRG methodology was to be fully implemented, and the transition period to be brought to an end. However, the regulations adopted to govern the transition period did not provide the methodology for rebasing, and as a result DMAS sought and obtained legislative authorization (in the 1998 Appropriations Act) to adopt emergency regulations effective July 1, 1998, that would include the rebasing methodology. Emergency regulations were adopted effective July 1, 1998, and the 1999 General Assembly authorized the continuation for one more year of these emergency regulations. These emergency regulations will expire June 30, 2000.

PRESENT

The purpose of the present regulatory proposal is to adopt as a final regulation the methodology that has been in place since July 1, 1998, by the authority of emergency

regulations. This regulatory package is presented as an amendment to the existing permanent regulation, which is the regulation for the transition period.

The regulatory package appears to have many changes (many crossed-out and underlined words). However, this is because this final regulation must be done as an amendment to the previous permanent regulation, which was effective during 1997 and 1998, not as an amendment to the emergency regulation that is currently in effect. The actual language of the proposed regulation is in reality nearly identical to the emergency regulation that is currently in effect, and contains no substantive changes from the emergency regulation.

The reimbursement system prior to the emergency regulation was a one-third per diem methodology and two-thirds DRG methodology system for inpatient hospital services. The transitioning from the prospective methodology over to the DRG methodology by one-third each year was prescribed by the Joint Task Force formed by DMAS and the Virginia Hospital and Healthcare Association. The Task Force and enrolled provider hospitals expected a three-thirds DRG system to be effective July 1, 1998 which was implemented by the emergency regulation.

Additional features of this DRG payment system include disproportionate share adjustment payments, medical education costs, capital costs, the handling of psychiatric and rehabilitation inpatient hospital cases, and state teaching hospital costs. These elements are being addressed as follows. Additional payments to hospitals with a "disproportionate share" of Medicaid patients will continue under these regulations but will be targeted to a smaller group of hospitals that have a very high proportion of Medicaid and low income patients. Medical education and capital costs continue to be paid as they have been in the past -- that is, based on reasonable cost incurred. Psychiatric and rehabilitation inpatient hospital cases will continue to be paid on a per diem basis into the foreseeable future and the current payment methodologies remain unchanged in this package. State teaching hospitals will continue to be treated as a separate peer group in this methodology. In addition, DMAS proposes to define the significant terms that have been used in this suggested permanent regulation.

At the same time that DMAS has been undergoing considerable regulatory activity in this area of DRGs, the agency's computer system has been undergoing modification as well. At the present time, the fiscal agent has not completed the necessary changes and the claims processing system for DRGs is expected to be ready for startup on January 1, 2000.

This regulation is essential to protect the health and welfare of the Commonwealth's citizens because it prescribes the methodology by which DMAS reimburses for the critical, mandatory service of inpatient hospital services. HCFA requires that this methodology be spelled out in the State Plan for Medical Assistance, thereby making it subject to the Commonwealth's promulgation requirements of the Administrative Process Act.

This regulation's impact on families will be transparent in that DMAS will continue to cover inpatient hospital services.

Issues: The agency projects no negative issues involved in implementing this proposed change as DMAS has worked closely with the regulated industry to design this regulation. The primary advantage to the public of this regulation is the completion of the agency's conversion to the full DRG payment methodology. The complete conversion, supported by the computer claims processing system, will restore automated claims processing by reducing the need for manual intervention, thereby saving those costs.

Fiscal/Budget Impact: All hospitals that provide services to Medicaid recipients, except for some long-term and government operated hospitals, are affected by this regulation. For FY '99, DMAS spent $489,088,000 for inpatient hospital services.

There are no localities that are uniquely affected by these regulations as they apply statewide.

Funding Source/Cost to Localities/Affected Entities: The Department of Medical Assistance Services is established under the authority of Title XIX of the federal *Social Security Act*, Public Law 89-97, as amended; and Title 32.1, Chapter 10, of the *Code of Virginia*. The Virginia Medicaid Program is funded with both federal and state funds. The current federal funding participation (FFP) for medical assistance expenditures is 51.60%, which became effective October 1, 1998. It is estimated that this rate will increase to 51.77% on October 1, 1999.

This program is not expected to have any impact on local departments of social services as it does not affect eligible groups nor the eligibility determination process.

Forms: Modifications to the current cost report forms will be required for this regulation.

Evaluation: DMAS will monitor the implementation of this regulatory change in conjunction with the VHHA and address issues as part of its ongoing Plan management activities.

III. STATEMENT OF AGENCY ACTION

I hereby approve the foregoing Regulatory Review Summary and the attached amended pages to the State Plan for Medical Assistance (OR Virginia Children's Medical Security Insurance Plan) for publication for public comment period in conformance to the public notice and comment requirements of the Administrative Process Act, Code of Virginia §9-6.14:7.1., Article 2.

November 10, 1999
Date

/s/ Dennis G. Smith
Dennis G. Smith, Director
Dept. of Medical Assistance Services