Virginia Regulatory Town Hall

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Proposed Regulation
Agency Background Document

Agency name	DEPT. OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation	12 VAC 30-20-180 Definition of a claim by service
Regulation title	Administration of Medical Assistance Services: Definition of a claim by service
Action title	Electronic Claims Submission Requirement
Date this document prepared	

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual.*

Brief summary

In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.

This action proposes to require that the 46,957 fee-for-service Medicaid providers electronically submit their claims for services rendered to Medicaid and FAMIS individuals. Prior to DMAS' emergency regulations, electronic claims submission was voluntary. This action also provides for providers' payments to be provided by electronic funds transfers (EFT). This action also allows for exceptions to these electronic filing/payment requirements when certain specified standards are met. This action does not affect the 8 Medicaid managed care organizations (MCOs) because they do not file individual claims for services but already file electronic encounter data.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

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 the Department of Medical Assistance Services (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 section of the Virginia Administrative Code that is affected by this action is 12 VAC 30-20-180. (Definition of a claim by service). Item 300 H of the 2011 Virginia Appropriations Act directs DMAS as follows:

> *The Department of Medical Assistance Services shall mandate the electronic submission of claims for covered services rendered by participating providers in the fee-for-service program under the State Plans for Title XIX and XXI of the Social Security Act, and any waivers thereof, as well as the use of electronic funds transfer for the payment of such claims to providers. The department shall implement this requirement in a phased approach beginning with providers enrolling on or after October 1, 2011, with expansion to all existing providers by July 1, 2012. The department shall develop a process by which the individual circumstance of a provider may allow for exclusion from the electronic claims mandate without impact on participation, at the sole discretion of the department. The department shall have authority to promulgate emergency regulations to implement this amendment within 280 days from the enactment of this act.*

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, the environmental benefits, and the problems the proposal is intended to solve.

This action is not essential to protect the health, safety, or welfare of citizens. It is, however, mandated by law as cited above. It also promotes improved administrative efficiencies for DMAS which will reduce some of its operating costs. These regulations are clearly written and easily understandable by the regulated community.

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.)

The State Plan for Medical Assistance section that is amended by this action is Definition of a Claim by Service (12 VAC 30-20-180). Currently, the State Plan for Medical Assistance has no requirements that providers must submit their claims electronically. It is permitted that providers can file claims electronically but not required. The current Plan also does not provide for providers' payments to be made via Electronic Fund Transfers.

Approximately 84% of all Medicaid claims are currently filed electronically with DMAS. A survey of participating Medicaid providers who submit claims on paper was performed to better understand why claims are filed on paper when electronic filing is available, and to understand any barriers that may exist to filing electronically. The survey found that the main barriers to electronic filing were cost and inadequate technology.

However, a majority of providers indicated that they transact business electronically with commercial carriers and would welcome the change if these barriers could be addressed for Medicaid. In response, DMAS has implemented a Web-based Direct Data Entry mechanism during the 2nd Quarter of FY 2011 that has allowed for electronic claim submission at no cost to the provider and at a lower cost for the Commonwealth to process these claims. The 2011 Appropriations Act language mandating the participation of providers via electronic funds transfer and electronic claims submissions is part of an overall strategy to simplify the claims submission process, increase processing efficiency, lower costs for both the Commonwealth and the Virginia Medicaid provider community, and support collaboration and consistency in business practices with other commercial carriers and Medicare.

It costs DMAS $0.475 to process a hard copy paper claim but only $0.192 to process an electronically submitted claim. If a claim is not completed properly and must be returned to the provider for correction, these costs double. During FY 2011, DMAS spent $3.7 M to process electronic claims; $1.3 to process paper claims, and; $155,000 to process Direct Data Entry claims.

To comply with the mandate DMAS is amending 12 VAC 30-20-180 (Definition of a claim by service) to add the following language:

All health care providers that enroll with Medicaid on or after October 1, 2011, shall submit electronically all claims for covered services they render in the fee-for-service program under the State Plans for Title XIX and XXI of the Social Security Act, and any waivers thereof. The Department of Medical Assistance Services shall use of electronic funds transfer for the payment of such claims to providers. All other providers shall comply with this electronic submission requirement by July 1, 2012. Any provider who cannot comply may request an exception from DMAS for good cause.

Good cause may include, but is not limited to, (i) the unavailability of the infrastructure necessary to support electronic claims submission in the providers' geographic region; (ii) there is no mechanism for electronic submission for the particular claim type, such as in the case of a Temporary Detention Order (TD); (iii) the provider is unable to transact business through a banking institution capable of EFT, or; (iv) for financial hardship.

Provisions are also proposed to permit providers to request exemption from this requirement when they can demonstrate good cause. DMAS has granted exemptions to fewer than 15 providers who have requested exemption from the Electronic Funds Transfer. The reasons for these exemptions have been due to the lack of infrastructure to accommodate electronic claims submission and receipt of payments.

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 indicate.

The primary advantage to the public and the Commonwealth is expected to be the reduction of administrative costs for the processing of providers' claims for Medicaid and FAMIS. There are no disadvantages of this action to the agency as well as to individual private citizens.

For health care businesses that already electronically file Medicare and other health insurance claims, this action will make it easier for them to file Medicaid claims. For businesses that are not capable of electronically filing (due to lack of infrastructure to support electronic claims submission, for example), provision is made for good cause exceptions to this requirement.

Requirements more restrictive than federal

Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no federal requirements that dictate how providers are required to submit their claims for payment or how Medicaid agencies are required to issue reimbursements to providers.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

Since these requirements will apply uniformly statewide, no localities will bear any unique material impact.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of

Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so via the Regulatory Town Hall website (**http://www.townhall.virginia.gov**), or by mail, email or fax to Bonnie Winn, Manager, Div. of Program Operations, DMAS, 600 E. Broad Street, Suite 1300, Richmond, VA 23219 (804/786-2621; fax 804/786-6971; Bonnie.Winn@dmas.virginia.gov **.** Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last date of the public comment period.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirements creates the anticipated economic impact.

For longer than 20 years, The Computer Company and then First Health Services (FHS) was the fiscal agency for Title XIX services in the Commonwealth. In 2008, FHS notified DMAS that is was leaving the business of performing claims processing. As a result, DMAS was required to publish a new contract for another company to take over this function. The Xerox Corporation now performs DMAS' Medicaid and FAMIS claims processing. When the take-over bid request was designed, the Direct Data Entry mechanism provided for in this regulatory action was included.

The Health Insurance Portability and Accountability Act of 1996 mandated the portability of health insurance. The Electronic Data Interchange has been developed in response and it enhances a provider's ability to electronically file insurance claims with few to no changes across all insurance carriers—including Medicaid claims.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures.	$0.
Projected cost of the *new regulations or changes to existing regulations* on localities.	None.
Description of the individuals, businesses or other entities likely to be affected by the *new regulations or changes to existing regulations*.	All Medicaid fee-for-service providers (46,957) will be affected by this action with the exception of those who are granted a good cause exception (currently less than 15 individual providers). This includes hospitals, nursing homes, physicians, dentists, home health agencies, clinics, laboratories, etc. Pharmacies are not affected by this action because they have been using a point-of-sale electronic claims submission process for more than 5 years.
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,	46,957 --- all fee-for-service providers with the exception of the small number that have requested an exception to this policy.

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.	DMAS does not collect or maintain any data on which of its providers would meet the definition of a small business.
All projected costs of the *new regulations or changes to existing regulations* for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.	There are no recordkeeping or other administrative cost requirements for providers associated with this proposed regulation. This action does not affect real estate development.
Beneficial impact the regulation is designed to produce.	Providers are already electronically filing their other health insurance and Medicare claims. This action by Medicaid completes this nationwide effort and facilitates all claims submissions. This requirement is also permitting DMAS to reduce its administrative costs of processing paper claims and issuing paper payment checks to providers.

Since the implementation of this new requirement, no providers have requested an exemption from the electronic claims filing and only 15 from the electronic funds transfer payment mechanism.

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. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

Since the beginning of the program in 1969, Virginia Medicaid has accepted hard copy paper claims from its providers and up until recently, has issued paper checks for reimbursement. Apart from the mandate mentioned above, if DMAS continued this course of action, the Agency would lose the efficiencies inherent in electronic claims submission and payment, as well as fall behind the curve of current health care industry technological standards.

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.

There are no reporting requirements for small businesses associated with this change. There are no performance standards that would affect small businesses. All Medicaid enrolled providers are being required, with the exception of those which demonstrate reason for a good cause exception, to submit their claims for payment electronically and receive their reimbursement amounts via an Electronic Funds Transfer mechanism.

Public comment

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

DMAS published its Notice of Intended Regulatory Action in the *Virginia Register of Regulations* (VR 29:2) on September 24, 2012, for its comment period from September 24, 2012, through October 24, 2012. DMAS received no comments.

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.

This action will not have any impact on the institution of the family and family stability. It will not strengthen or erode the authority and rights of parents in the education, nurturing, or supervision of their children. It will not encourage or discourage economic self-sufficiency, self-pride, nor the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents. It will not strengthen or erode the marital commitment or increase nor decrease disposable family income.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all differences between the **pre**-emergency regulation and this proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

Prior to the existing emergency regulation, DMAS did not have any mandatory electronic claims filing and payment requirements. With the exception of paragraph labeling, this proposed action is the same as the current emergency regulation.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
12VAC 30-20-180		As federally required, this VAC section sets out by covered service what constitutes a claim for reimbursement: (i) a bill or entire form for one episode of service, or; (ii) a single line item on a form with multiple other lines.	Additional text is appended to the bottom of the VAC section to detail the electronic filing requirement as well as acceptable examples of good cause reasons for continuing to submit paper claims and for continuing to receive payments in hard copy.