COMMONWEALTH of VIRGINIA

Office of the Attorney General

202 North 9th Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120

Mark R. Herring
Attorney General

TO: **EMILY MCCLELLAN**
Regulatory Supervisor
Virginia Department of ~~Medical~~ Assistance Services

FROM: **DAVIS CREEF** DWC
Assistant Attorney General

DATE: **March 30, 2020**

SUBJECT: **Fast-Track Regulation: Fair Rental Value for New and Renovated Nursing Homes (5368/8731)**

I have reviewed the attached regulation regarding the calculation of fair rental value for new and renovated nursing homes. You have asked the Office of the Attorney General to review and determine if the Department of Medical Assistance Services ("DMAS") has the legal authority to amend the regulations and if the regulations comport with state and federal law.

Based on my review, it is my view that the Director of DMAS, acting on behalf of the Board of Medical Assistance Services under Virginia Code §§ 32.1-324 and 325, has the authority to amend this regulation, subject to compliance with the provisions of Article 2 of the Administrative Process Act and has not exceeded that authority.

Under Virginia Code § 2.2-4012.1, if an objection to the use of the fast-track process is received within the public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, DMAS shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process set out in this article with the initial publication of the Fast-Track regulation serving as the Notice of Intended Regulatory Action.

It is my understanding that the proposed change will amend the State Plan and DMAS has already obtained the necessary approval from the Centers for Medicare and Medicaid Services.

If you have any questions, please contact me at 786-6522.

cc: Kim F. Piner, Esq.

Attachment

Project 6137 - Fast-Track

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Fair Rental Value for New and Renovated Nursing Facilities

12VAC30-90-28. Mid-year Fair Rental Value (FRV) rate determination.

A. New facilities and facilities undergoing a major renovation may apply for a mid-year FRV rate determination or change if putting into service a major renovation or new beds. Providers are allowed only one mid-year FRV rate change during a state fiscal year (SFY).

1. New Facilities. A new nursing facility is defined as a facility that is required to obtain a certificate of occupancy prior to the admittance of a resident. New nursing facilities should file their mid-year FRV report when the facility's certificate of occupancy has been issued. The nursing facility shall submit complete pro forma documentation at least 60 days prior to the certificate of occupancy effective date, and the new FRV rate shall be effective at the beginning of the month following the end of the 60 days subject to confirmation that the new beds are operational.

a. For any facility whose FRV report has less than 12 months of experience, the department shall develop an occupancy schedule as defined in the Nursing Facility Capital Payment Methodology (12VAC30-90-36) that represents the average statewide occupancy by month of operation for use in calculating the per diem rate in lieu of a minimum occupancy requirement or actual occupancy. After the initial FRV report filing, actual occupancy data shall be used.

b. New facilities shall use the occupancy schedule developed by DMAS to estimate patient days for their first FRV report until actual patient days are available. The occupancy percentage used to calculate estimated patient days shall be based on

the number of months remaining within the calendar year from the month of receipt of the certificate of occupancy. For example, if the certificate of occupancy is received in February, then the number of months remaining in the calendar year would be 11 and the occupancy percentage to use would be 85.84% (see Table 1 in 12VAC30-90-36). The estimated patient days would be equal to the occupancy percentage times the annualized bed days available for the report period.

c. DMAS shall have 15 days from the date of the provider's submission to determine if the filing is complete for purposes of setting a rate for a new facility. The facility shall have 15 days from the date the filing is deemed incomplete to submit the required information. The deadline for setting the rate shall be extended for 30 days after the filing is deemed complete.

2. Major renovations. Facilities undergoing major renovations shall file a mid-year FRV report when there is an increase in capital expenditures of at least $3,000 per total number of beds. The nursing facility shall submit complete pro forma documentation at least 60 days prior to the effective occupancy date and the new rate shall be effective at the beginning of the month following the end of the 60 days subject to confirmation that the renovated beds are operational. No mid-year rate changes shall be made for an effective date after April 30 of the SFY.

a. Any new beds or major renovations placed in service between the reporting year and the rate year shall be treated as a mid-year rate adjustment. No new FRV rate change will be made after April 30. Rate updates that fall between May 1 and June 30 shall be effective as stated below.

b. DMAS shall have 15 days from the date of the provider's submission to determine if the filing is complete for purposes of setting a rate for a renovated

facility. The facility shall have 15 days from the date the filing is deemed incomplete to submit the required information.

c. Providers may propose a phased major renovation subject to approval by DMAS. The phased major renovation may include reductions to available beds. Any modifications to the proposed renovation are also subject to approval by DMAS. Phased major renovations include construction or major renovations that span more than one FRV report period. Only one annual FRV report and one mid-year FRV report can be filed in a SFY to change the plant rate. A mid-year FRV report can be filed only if capital cost per bed increases by a minimum of $3000 per bed. Major renovation cost may only be included on Schedule R-1 as it is placed into service. Cost cannot be duplicated throughout the project on Schedule R-1. Major renovations for independent and assisted living are not allowed on the Schedule R-1.

B. The following are applicable to new facilities and facilities undergoing major renovation:

1. DMAS shall annualize real estate taxes, property taxes, and property insurance costs that do not represent a full year's cost.

a. Actual paid tax bills shall be provided to support real estate taxes and personal property taxes. When the taxing authority has not invoiced a new facility, building value per the most recent contractor invoice multiplied by the locality's mill rate shall be used to estimate real estate and tax liability for the period. Only the nursing facility's building value can be included in the calculation.

b. Actual paid insurance premiums shall be provided to support property insurance. For newly constructed nursing facilities, a reasonable estimate from the insurance company can be used to document property insurance cost until the first

insurance policy and the premium are incurred. Only the nursing facility's property insurance can be included on the schedule.

2. Costs shall be based on currently available documentation at the time but are subject to audit. DMAS may use any reasonable method to estimate costs for which there is inadequate documentation. Reasonable method includes using tax rates from the taxing authority in the location of the facility, the most recent contractor's invoice to determine building cost, and estimates from insurance companies related to the nursing facility portion of the building. Any adjustments based on subsequent year documentation or audit for a current rate year shall be applied beginning July 1 of the next rate year.

Article 2

Plant Cost Component

12VAC30-90-30. Plant cost.

A. This article describes a capital payment methodology that will be phased out for most nursing facilities by SFY 2012. The terms and timing of the transition to a different methodology are described in 12VAC30-90-29. The methodology that will eventually replace this one for most facilities is described in Article 3 (12VAC30-90-35 et seq.) of this subpart.

B. Plant cost shall include actual allowable depreciation, interest, rent or lease payments for buildings and equipment as well as property insurance, property taxes and debt financing costs allowable under Medicare principles of reimbursement or as defined herein.

C. Effective July 1, 2001, to calculate the reimbursement rate, plant cost shall be converted to a per diem amount by dividing plant cost by the greater of actual patient days or the number of patient days. Patient days shall be computed as the required occupancy percentage of the daily licensed bed complement during the applicable cost reporting period. The required occupancy percentage means the ratio of nursing facility total patient days to total potential

patient days for all available licensed beds. The required occupancy percentage for dates of service on or before June 30, 2013, shall be 90%, and for dates of service on or after July 1, 2013, the required occupancy percentage shall be 88%. For facilities with less than 12 months of occupancy experience, the required occupancy percentage shall be determined from the occupancy schedule in 12VAC30-90-36. For facilities that also provide specialized care services, see subdivision 9 of 12VAC30-90-264 for special procedures for computing the number of patient days required to meet the occupancy requirement.

D. Costs related to equipment and portions of a building/facility not available for patient care related activities are nonreimbursable plant costs.

12VAC30-90-31. New nursing facilities and bed additions.

A. Providers shall be required to obtain three competitive bids when (i) constructing a new physical plant or renovating a section of the plant when changing the licensed bed capacity, and (ii) purchasing fixed equipment or major movable equipment related to such projects.

All bids must be obtained in an open competitive market manner, and subject to disclosure to DMAS prior to initial rate setting. (Related parties see 12VAC30-90-51.)

B. Reimbursable costs for building and fixed equipment shall be based upon the 75th percentile square foot costs for NFs published annually in the R.S. Means Building Construction Cost Data as adjusted by the appropriate R.S. Means Square Foot Costs "Location Factor" for Virginia for the locality in which the NF is located. Where the specific location is not listed in the R.S. Means Square Foot Costs "Location Factor" for Virginia, the facility's zip code shall be used to determine the appropriate locality factor from the U.S. Postal Services National Five Digit Zip Code for Virginia and the R.S. Means Square Foot Costs "Location Factors." The provider shall have the option of selecting the construction cost limit which is effective on the date the Certificate of Public Need (COPN) is issued or the date the NF is licensed. Total cost

shall be calculated by multiplying the above 75th percentile square foot cost by 385 square feet (the average per bed square footage). Effective July 1, 2007, the construction cost limit for children's ICF/MR facilities having 50 or more beds shall be calculated using up to 750 square feet per bed. Total costs for building additions shall be calculated by multiplying the square footage of the project by the applicable components of the construction cost in the R.S. Means Square Foot Costs, not to exceed the total per bed cost for a new NF. Reasonable limits for renovations shall be determined by the appropriate costs in the R.S. Means Repair and Remodeling Cost Data, not to exceed the total R.S. Means Building Construction Cost Data 75th percentile square foot costs for NFs. The mid-year Fair Rental Value rate determination regulation (12VAC30-90-28) provides cost documentation requirements for new and renovated nursing homes.

C. New NFs and bed additions to existing NFs must have prior approval under the state's Certificate of Public Need Law and Licensure regulations in order to receive Medicaid reimbursement.

D. However in no case shall allowable reimbursed costs exceed 110% of the amounts approved in the original COPN, or 100% of the amounts approved in the original COPN as modified by any "significant change" COPN, where a provider has satisfied the requirements of the State Department of Health with respect to obtaining prior written approval for a "significant change" to a COPN which has previously been issued (see 12VAC5-220-10 et seq.).

12VAC30-90-36. Nursing facility capital payment methodology.

A. Applicability. The capital payment methodology described in this article shall be applicable to freestanding nursing facilities and specialized care facilities but not to hospital-based facilities. Hospital-based facilities shall continue to be reimbursed under the methodology contained in Article 2 (12VAC30-90-30 et seq.) of this subpart. For purposes of this provision, a

hospital-based nursing facility shall be one for which a combined cost report is submitted on behalf of both the hospital and the nursing facility.

B. Definitions. The following words and terms when used in this article shall have the following meaning unless the context clearly indicates otherwise:

"Capital costs" means costs that include the cost elements of depreciation, interest, financing costs, rent and lease costs for property, building and equipment, property insurance and property taxes.

"Date of acquisition" means the date legal title passed to the buyer. If a legal titling date is not determinable for a nursing facility building, date of acquisition shall be considered to be the date a certificate of occupancy was issued by the appropriate licensing or building inspection agency of the locality where the nursing facility is located.

"Facility average age" means for a facility the weighted average of the ages of all capitalized assets of the facility, with the weights equal to the expenditures for those assets. The calculation of average age shall take into account land improvements, building and fixed equipment, and major movable equipment. The basis for the calculation of average age shall be the schedule of assets submitted annually to the department in accordance with the provisions of this section.

"Facility imputed gross square feet" means a number that is determined by multiplying the facility's number of nursing facility beds licensed by the Virginia Department of Health by the imputed number of gross square feet per bed. The imputed number of gross square feet per bed shall be 461 for facilities of 90 or fewer beds, and 438 for facilities of more than 90 beds. The number of licensed nursing facility beds shall be the number on the last day of the provider's most recent fiscal year end for which a cost report has been filed.

"Factor for land and soft costs" means a factor equaling 1.429 that adjusts the construction cost amount to recognize land and capitalized costs associated with construction of a facility that is not part of the R.S. Means construction cost amount.

"Fixed capital replacement value" means an amount equal to the R.S. Means 75th percentile nursing home construction cost per square foot, times the applicable R.S. Means historical cost index factor, times the factor for land and soft costs, times the applicable R.S. Means location factor times facility imputed gross square feet.

"FRV depreciation rate" means a depreciation rate equal to 2.86% per year.

"Hospital-based facility" means one for which a single combined Medicare cost report is filed that includes the costs of both the hospital and the nursing home.

"Major renovation" means an increase in capital of $3,000 per bed.

"Movable capital replacement value" means a value equal to $3,475 per bed in SFY 2001, and shall be increased each July 1 by the same R.S. Means historical cost index factor that is used to calculate the fixed capital replacement value. Each year's updated movable capital replacement value shall be used in the calculation of each provider's rate for the provider year beginning on or after the date the new value becomes effective.

“Occupancy Schedule” means a table created to represent the average statewide occupancy by month of operation for use in calculating the per diem rate in lieu of a minimum occupancy requirement or actual occupancy for facilities with less than 12 months of experience. The occupancy schedule is shown in Table 1.

Table 1. Occupancy Schedule

Initial Operating Period	Occupancy Percentage
3 Months	58.10%

4 Months	65.68%
5 Months	70.01%
6 Months	73.69%
7 Months	76.69%
8 Months	79.23%
9 Months	81.60%
10 Months	83.88%
11 Months	85.84%
12 Months	88.00%

"R.S. Means 75th percentile nursing construction cost per square foot" means the 75th percentile value published in the 59th Annual Edition of the R.S. Means Building Construction Cost Data, 2001. In the 2000 edition of the R.S. Means publication this value is $110, which is reported as a January 2000 value.

"R.S. Means historical cost index factor" means the ratio of the two most recent R.S. Means Historical Cost Indexes published in the 59th Annual Edition of the R.S. Means Building Construction Cost Data, 2001. In the 2000 edition of this R.S. Means publication these two values are 117.6 (for 1999) and 115.1 (for 1998). The ratio of these values, and therefore the factor to be used, would be 1.022. This factor would be used to adjust the January 2000 value for the one year of change from January 2000 to January 2001, the mid-point of the prospective rate year (SFY 2001). The resulting cost value that would be used in SFY 2001 is $112.42. The indexes used in this calculation do not match the time period for which a factor is needed. They relate to 1998 and 1999, while 2000 and 2001 would be ideal. However, R.S. Means does not publish index forecasts, so the most recent available indexes shall be used.

"R.S. Means location factors" means those published in the 22nd Annual Edition of the R.S. Means Square Foot Costs, 2001. The 2000 location factors are shown in the following Table 1. ~~They will be updated annually and distributed to providers based upon the most recent available data.~~ The calculation will use the most recently available location factors, which will also be published on the DMAS website.

TABLE ~~1.~~ 2.
R.S. MEANS COMMERCIAL CONSTRUCTION COST LOCATION FACTORS (2000).

Zip Code	Principal City	Location Factor
220–221	Fairfax	0.90
222	Arlington	0.90
223	Alexandria	0.91
224–225	Fredericksburg	0.85
226	Winchester	0.80
227	Culpeper	0.80
228	Harrisonburg	0.77
229	Charlottesville	0.82
230–232	Richmond	0.85
233–235	Norfolk	0.82
236	Newport News	0.82
237	Portsmouth	0.81
238	Petersburg	0.84
239	Farmville	0.74
240–241	Roanoke	0.77
242	Bristol	0.75
243	Pulaski	0.70
244	Staunton	0.76
245	Lynchburg	0.77
246	Grundy	0.70

"Rental rate" means for a prospective year a rate equal to two percentage points plus the yield on U.S. Treasury Bonds with maturity over 10 years, averaged over the most recent three

calendar years for which data are available, as published by the Federal Reserve (Federal Reserve Statistical Release H.15 Selected Interest Rates (www.Federalreserve.gov/releases/)). The rate will be published and distributed to providers annually. Changes in the rental rate shall be effective for the provider's fiscal year beginning on or after July 1. Rental rates may not fall below 9.0% or exceed 11% and will be updated annually on or about July 1 each year. Effective July 1, 2010, through September 30, 2010, the floor for the nursing facility rental rates may not fall below 8.75%. Effective October 1, 2010, through June 30, 2011, the floor for the nursing facility rental rates may not fall below 9.0%. Effective July 1, 2011, through June 30, 2012, the floor for the nursing facility rental rates may not fall below 8.0%. Effective July 1, 2012, through June 30, 2014, the floor for the nursing facility rental rates may not fall below 8.5%. Effective July 1, 2014, the floor for the nursing facility rental rates may not fall below 8.0%. The rate will be published and distributed to providers annually. Changes in the rental rate shall be effective for the provider's fiscal year beginning on or after July 1. Effective July 1, 2014, the rental rate shall be effective for the state fiscal year.

"Required occupancy percentage" means ~~the ratio of nursing facility total patient days to total potential patient days for all available licensed beds. The required occupancy percentage shall be 90% for dates of service on or before June 30, 2013. The required occupancy percentage for dates of service on or after July 1, 2013, shall be 88%.~~ the ratio of nursing facility total patient days to total potential patient days for all available licensed beds. The required occupancy percentage shall be 90% for dates of service on or before June 30, 2013. The required occupancy percentage for dates of service on or after July 1, 2013, shall be 88%. Facilities whose Fair Rental Value report indicates less than 12 months of experience must use the Occupancy Schedule shown in Table 1 to determine the required occupancy percentage.

"SFY" means State Fiscal Year (July 1 through June 30).

C. Fair rental value (FRV) payment for capital.

1. Effective for dates of service on or after July 1, 2001, DMAS shall pay nursing facility capital related costs under a FRV methodology. The payment made under this methodology shall be the only payment for capital related costs, and no separate payment shall be made for depreciation or interest expense, lease costs, property taxes, insurance, or any other capital related cost, including home office capital costs. This payment is considered to cover costs related to land, buildings and fixed equipment, major movable equipment, and any other capital related item. This shall be the case regardless of whether the property is owned or leased by the operator.

2. FRV rate year. The FRV payment rate shall be a per diem rate determined each year for each facility using the most recent available data from settled cost reports, or from other verified sources as specified herein. The per diem rate shall be determined prospectively and shall apply for the entire fiscal year. Each provider shall receive a new capital per diem rate each year effective at the start of the provider's fiscal year, except that the capital per diem rate shall be revised for the rental rate changes effective July 1, 2010, through June 30, 2012. Data elements that are provider specific shall be revised at that time and shall rely on the settled cost report and schedule of assets of the previous year. Data elements that are not provider specific, including those published by R.S. Means and the rental rate, shall be determined annually on or about July 1, and shall apply to provider fiscal years beginning on or after July 1. That is, each July 1 DMAS shall determine the R.S. Means values and the rental rate, and these shall apply to all provider fiscal years beginning on or after July 1. Effective July 1, 2014, the FRV rate year shall be the same as the state fiscal year.

3. Mid-year FRV rate change. ~~Facilities may apply for a mid-year FRV payment rate change for rate years on or after SFY 2015 if putting into service a major renovation or~~

~~new beds. The nursing facility may submit complete pro forma documentation at least 60 days prior to the effective date and the new rate shall be effective at the beginning of the month following the end of the 60 days. If the initial mid-year FRV rate is not based on final documentation, the nursing facility shall submit final documentation within 60 days of the new rate effective date and DMAS shall review final documentation and modify the rate if necessary effective 90 days after the implementation of the initial new rate. Only one mid-year FRV rate change will be made in any one fiscal year. Mid-year rate changes for an effective date after April 30 of the fiscal year shall be made effective the following July 1.~~ Facilities requiring a mid-year FRV rate change must follow the procedures as specified in 12VAC30-90-28.

4. The capital per diem rate for hospital-based nursing facilities shall be the last settled capital per diem.

12VAC30-90-37. Calculation of FRV per diem rate for capital; calculation of FRV rental amount; change of ownership.

A. Calculation of FRV per diem rate for capital.

1. The facility FRV per diem rate shall be equal to the sum of the facility FRV rental amount and the facility's allowable property tax and insurance cost from the most recent settled cost report, divided by the greater of actual patient days or the required occupancy percentage of the potential patient days for all licensed beds throughout the cost reporting period. For facilities that also provide specialized care services, see subdivision 9 of 12VAC30-90-264 for special procedures for computing the number of patient days required to meet the required occupancy percentage requirement.

2. Effective July 1, 2014, facilities shall be required to submit a calendar year FRV report covering both NF and specialized care beds to be used to set a prospective FRV rate

effective the following July 1 for both the NF and the specialized care facility. The calendar year FRV report shall be submitted by the end of February following the end of the calendar year. FRV reports shall be settled within 90 days of filing the FRV report. For late FRV reports, the prospective rate may be effective 90 days after the date of filing even if after July 1. No capital rate shall be paid between July 1 and the effective date of the prospective FRV rate for a late report.

3. New nursing facilities or major renovations that qualify for mid-year FRV rate adjustments must follow pro forma submission procedures as specified in 12VAC30-90-28.

B. Calculation of FRV rental amount. The facility FRV rental amount shall be equal to the facility prospective year total value times the rental rate. Effective July 1, 2014, fair rental value per diem rates for the prospective state fiscal year shall be calculated for all freestanding nursing facilities based on the prior calendar year information aged to the state fiscal year and using R.S. Means factors and rental rates corresponding to the state fiscal year. There shall be no separate calculation for beds subject to or not subject to transition.

1. The facility prospective year total value shall be equal to the facility prospective year replacement value minus FRV depreciation. FRV depreciation equals the prospective year replacement value multiplied by the product of facility average age and the depreciation rate. FRV depreciation cannot exceed 60% of the prospective year replacement value.

2. The facility prospective year replacement value shall be equal to the fixed capital replacement value plus the movable equipment replacement value.

C. Change of ownership. As provided in connection with schedule of assets reporting, the sale of nursing facility assets after June 30, 2000, shall not result in a change to the schedule of

assets or to the calculation of average age for purposes of reimbursement under the FRV methodology. Therefore, any sale or transfer of assets after this date shall not affect the FRV per diem rate.

12VAC30-90-44. Nursing facility price-based reimbursement methodology.

A. Effective July 1, 2014, DMAS shall convert nursing facility operating rates in 12VAC30-90-41 to a price-based methodology. The department shall calculate prospective operating rates for direct and indirect costs in the following manner:

1. The department shall calculate the cost per day in the base year for direct and indirect operating costs for each nursing facility. The department shall use existing definitions of direct and indirect costs.

2. The initial base year for calculating the cost per day shall be cost reports ending in calendar year 2011. The department shall rebase prices in fiscal year 2018 and every three years thereafter using the most recent, reliable calendar year cost-settled cost reports for freestanding nursing facilities that have been completed as of September 1. No adjustments will be made to the base year data for purposes of rate setting after that date.

3. Each nursing facility's direct cost per day shall be neutralized by dividing the direct cost per day by the raw Medicaid facility case-mix that corresponds to the base year by facility.

4. Costs per day shall be inflated to the midpoint of the fiscal year rate period using the moving average Virginia Nursing Home inflation index for the fourth quarter of each year (the midpoint of the fiscal year). Costs in the 2011 base year shall be inflated from the midpoint of the cost report year to the midpoint of fiscal year 2012 by prorating fiscal year 2012 inflation and annual inflation after that. Annual inflation adjustments shall be

based on the last available report prior to the beginning of the fiscal year and corrected for any revisions to prior year inflation. Effective July 1, 2015, through June 30, 2016, the inflation adjustment for nursing facility operating rates shall be 0.0%.

5. Prices will be established for the peer groups described in this section using a combination of Medicare wage regions and Medicaid rural and bed size modifications based on similar costs.

6. The following definitions shall apply to direct peer groups. The Northern Virginia peer group shall be defined as localities in the Washington DC-MD-VA MSA as published by the Centers for Medicare and Medicaid Services (CMS) for skilled nursing facility rates. The Other MSAs peer group includes localities in any MSA defined by CMS other than the Northern Virginia MSA and non-MSA designations. The Rural peer groups are non-MSA areas of the state divided into Northern Rural and Southern Rural peer groups based on drawing a line between the following points on the Commonwealth of Virginia map with the coordinates: 37.4203914 Latitude, 82.0201219 Longitude and 37.1223664 Latitude, 76.3457773 Longitude. Direct peer groups are:

a. Northern Virginia,

b. Other MSAs,

c. Northern Rural, and

d. Southern Rural.

7. The following definitions shall apply to indirect peer groups. The indirect peer group for Northern Virginia is the same as the direct peer group for Northern Virginia. Rest of State peer groups shall be defined as any localities other than localities in the Northern Virginia peer group for nursing facilities with greater than 60 beds or 60 beds or less. Rest of State - Greater than 60 Beds shall be further subdivided into Other MSAs,

Northern Rural and Southern Rural peer groups using the locality definitions for direct peer groups. Indirect peer groups are:

a. Northern Virginia MSA,

b. Rest of State - Greater than 60 Beds,

c. Other MSAs,

d. Northern Rural, and

e. Southern Rural.

Rest of State - 60 Beds or Less.

8. Any changes to peer group assignment based on changes in bed size or MSA will be implemented for reimbursement purposes the July 1 following the effective date of the change. For rebasings effective on or after July 1, 2020, the department shall move nursing facilities located in the former Danville Metropolitan Statistical Area to the Other MSAs peer group.

9. The direct and indirect price for each peer group shall be based on the following adjustment factors:

a. Direct adjustment factor - 105.000% of the peer group day-weighted median neutralized and inflated cost per day for freestanding nursing facilities. Effective July 1, 2017, the direct adjustment factor shall be 106.8% of the peer group day-weighted median neutralized and inflated cost per day for freestanding nursing facilities.

b. Indirect adjustment factor - 100.735% of the peer group day-weighted median inflated cost per day for freestanding nursing facilities. Effective July 1, 2017, the indirect adjustment factor shall be 101.3% of the peer group day-weighted median inflated cost per day for freestanding nursing facilities.

10. Facilities with costs projected to the rate year below 95% of the price shall have an adjusted price equal to the price minus the difference between the facility's cost and 95% of the unadjusted price. Adjusted prices will be established at each rebasing. New facilities after the base year shall not have an adjusted price until the next rebasing.

11. Special circumstances.

a. Effective July 1, 2017, the department shall increase the direct and indirect operating rates under the nursing facility price based reimbursement methodology by 15% for nursing facilities where at least 80% of the resident population has one or more of the following diagnoses: quadriplegia, traumatic brain injury, multiple sclerosis, paraplegia, or cerebral palsy. In addition, a qualifying facility must have at least 90% Medicaid utilization and a nursing facility case-mix index of 1.15 or higher in fiscal year 2014.

b. Effective July 1, 2017, through June 30, 2020, nursing facilities located in the former Danville Metropolitan Statistical Area shall be paid the operating rates calculated for the Other MSAs peer group.

12. Individual claim payment for direct costs shall be based on each resident's Resource Utilization Group (RUG) during the service period times the facility direct price.

13. Resource Utilization Group (RUG) is a resident classification system that groups nursing facility residents according to resource utilization and assigns weights related to the resource utilization for each classification. The department shall use RUGs to determine facility case-mix for cost neutralization as defined in 12VAC30-90-306 in determining the direct costs used in setting the price and for adjusting the claim payments for residents.

a. The department shall neutralize direct costs per day in the base year using the most current RUG grouper applicable to the base year.

b. The department shall utilize RUG-III, version 34 groups and weights in fiscal years 2015 through 2017 for claim payments.

c. Beginning in fiscal year 2018, the department shall implement RUG-IV, version 48 Medicaid groups and weights for claim payments.

d. RUG-IV, version 48 weights used for claim payments will be normalized to RUG-III, version 34 weights as long as base year costs are neutralized by the RUG-III 34 group. In that the weights are not the same under RUG-IV as under RUG-III, normalization will ensure that total direct operating payments using the RUG-IV 48 weights will be the same as total direct operating payments using the RUG-III 34 grouper.

B. Transition. The department shall transition to the price-based methodology over a period of four years, blending the adjusted price-based rate with the facility-specific case-mix neutral cost-based rate calculated according to 12VAC30-90-41 as if ceilings had been rebased for fiscal year 2015. The cost-based rates are calculated using the 2011 base year data, inflated to 2015 using the inflation methodology in 12VAC30-90-41 and adjusted to state fiscal year 2015. In subsequent years of the transition, the cost-based rates shall be increased by inflation described in this section.

1. Based on a four-year transition, the rate will be based on the following blend:

a. Fiscal year 2015 - 25% of the adjusted price-based rate and 75% of the cost-based rate.

b. Fiscal year 2016 - 50% of the adjusted price-based rate and 50% of the cost-based rate.

c. Fiscal year 2017 - 75% of the adjusted price-based rate and 25% of the cost-based rate.

d. Fiscal year 2018 - 100% of the adjusted price-based (fully implemented).

2. During the first transition year for the period July 1, 2014, through October 31, 2014, DMAS shall case-mix adjust each facility's direct cost component of the rates using the average facility case-mix from the two most recent finalized quarters (September and December 2013) instead of adjusting this component claim by claim.

3. Cost-based rates to be used in the transition for facilities without cost data in the base year but placed in service prior to July 1, 2013, shall be determined based on the most recently settled cost data. If there is no settled cost report at the beginning of a fiscal year, then 100% of the price-based rate shall be used for that fiscal year. Facilities placed in service after June 30, 2013, shall be paid 100% of the price-based rate.

4. Effective July 1, 2015, nursing facilities whose licensed bed capacity decreased by at least 30 beds after 2011 and whose occupancy increased from less than 70% in 2011 to more than 80% in 2013 shall be reimbursed the price-based operating rate rather than the transition operating rate.

C. Prospective capital rates shall be calculated in the following manner:

1. Fair rental value (FRV) per diem rates for the fiscal year shall be calculated for all freestanding nursing facilities based on the prior calendar year information aged to the fiscal year and using RS Means factors and rental rates corresponding to the fiscal year as prescribed in 12VAC30-90-36. There will be no separate calculation for beds subject to or not subject to transition.

2. ~~Nursing facilities that put into service a major renovation or new beds may request a mid-year fair rental value per diem rate change.~~ FRV per diem rates for new nursing

facilities or major renovations that qualify for mid-year rate adjustments shall be calculated as prescribed in 12VAC30-90-28.

~~a. A major renovation shall be defined as an increase in capital of $3,000 per bed. The nursing facility shall submit complete pro forma documentation at least 60 days prior to the effective date, and the new rate shall be effective at the beginning of the month following the end of the 60 days.~~

~~b. The provider shall submit final documentation within 60 days of the new rate effective date, and the department shall review final documentation and modify the rate if necessary effective 90 days after the implementation of the new rate. No mid-year rate changes shall be made for an effective date after April 30 of the fiscal year.~~

~~3.~~ a. These FRV changes shall also apply to specialized care facilities.

~~4.~~ b. The capital per diem rate for hospital-based nursing facilities shall be the last settled capital per diem.