



Final Regulation Agency Background Document

Agency name	DEPT OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation	12 VAC 30 -80
Regulation title	Methods and Standards for Establishing Payment Rates; Other Types of Providers
Action title	School Division Reimbursement
Date this document prepared	October 17, 2007

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

This regulation will change reimbursement for school divisions from state-wide fee- for-service to a cost settlement process. School division providers shall file annual cost reports for these services and the Department shall settle reimbursement to actual costs. Reimbursement to school divisions shall continue to be subject to the provisions of § 32.1- 326.3(A)(1) of the *Code of Virginia* that only the federal share shall be reimbursed for special education health services and that local governments fund the state match for special education health services provided by school divisions. This reimbursement methodology change is being required by the Centers for Medicare and Medicaid Services, the federal funding agency for the Medicaid program.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

I hereby approve the foregoing Regulatory Review Summary with the attached amended State Plan pages regarding Methods and Standards for Establishing Payment Rates –Other Types of Care, (12 VAC 30-80 30 and 12 VAC 30-80-75) School Division Reimbursement and adopt the action stated therein. I certify that this final regulatory action has completed all the requirements of the Code of Virginia § 2.2-4012, of the Administrative Process Act. I hereby certify that these regulations are full, true, and correctly dated.

October 17, 2007

/s/ P W Finnerty

Date

Patrick W. Finnerty, Director

Dept. of Medical Assistance Services

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 numbers, if applicable, and (2) promulgating entity, i.e., 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.

Chapter 3, Item 302 NN of the 2006 *Acts of Assembly* directed the Agency to implement these changes and provided regulatory authority. These reimbursement changes were mandated by the Centers for Medicare and Medicaid Services (CMS) as all states are being required to implement cost-based reimbursement for schools effective with the 2006-2007 school year.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

This regulatory action is intended to implement reimbursement changes authorized by the 2006 *Acts of Assembly*, Chapter 3, Item 302 NN. Reimbursement changes were mandated by the Centers for Medicare and Medicaid Services (CMS). CMS is requiring all states to implement cost-based reimbursement effective with the 2006-2007 school year. If DMAS declines to implement this federal mandate, CMS would not provide the federal funding it currently provides to Virginia for 50% of the costs for covered school health services. Without that funding stream Virginia school divisions would be severely hampered in obtaining sufficient resources to maintain school health services, especially for disabled students. This would have a negative impact on the health and welfare of school age children in the Commonwealth, who qualify for school health services.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

The section of the State Plan for Medical Assistance that is affected by this change is the Fee-For-Service Providers, Local Health Services, Including Services Paid to Local Schools (12VAC 30-80-30-A:7). This action is creating 12VAC 30-80-75 entitled Local Education Agency (LEA) providers.

12VAC 30-80-30- subsection A: 7 will be repealed. Currently this provision permits local school divisions to be paid under a fee-for-service methodology for the school health services that they render.

Effective November 21, 2006, DMAS promulgated an emergency regulation in order to repeal the fee-for-service reimbursement methodology and establish the cost based reimbursement methodology. Payment for each school year will be based on actual cost as determined by completed and certified cost reports (approved by CMS) and a desk audit. Cost is limited to the amount of medical services and special transportation costs allocated to Medicaid, Medicaid Expansion and FAMIS special education recipients.

DMAS will pay each school division an interim rate for services provided. Final reimbursement will be based on each individual school division's cost as determined through annual cost reports. One cost report will be used for all medical services and a separate cost report will be used for special transportation.

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 there are no disadvantages to the public or the Commonwealth, please indicate.*
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This regulatory action poses no disadvantages to the public or Commonwealth. The action will allow DMAS to remain in compliance with CMS promoted methods for reimbursing school divisions for medical services provided to Medicaid and FAMIS eligible students.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar's office, please put an asterisk next to any substantive changes.

Numerous clarifying changes were made between the proposed regulation and the final regulation (noted in brackets in the text) based upon review of the regulation language by the federal Medicaid authority, the Centers for Medicare and Medicaid Services (CMS). Without the changes noted in the regulation text, CMS would not have approved the underlying State Plan Amendment providing for federal financial participation for the Medicaid school health services described in this regulation.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

DMAS' proposed regulations were published in the June 11, 2007, *Virginia Register* (VAR 23: 20) for their public comment period from June 11, 2007 through August 10, 2007. The Agency received no comments.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
12VAC30-80-30-A.:7		Reimbursement is based on a statewide fee schedule. Claims payment is final payment. Fee schedule is not directly related to cost of providing services based on those costs.	Delete reference to school health services.
	12VAC30-80-75		Reimbursement is based on each individual school division's cost as determined through annual cost reports. Reimbursable costs are determined by the percentage of total medical services cost and special education transportation cost being provided to Medicaid, Medicaid Expansion, and FAMIS students. Definitions have been added to this section.

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.

This regulatory action is based on specific mandates expressed in the 2006 Acts of Assembly, therefore, no alternatives were considered. In addition, DMAS had no discretion to depart from the regulatory language as approved by CMS, which is reflected throughout the text of the regulation.

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.

These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children; or 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. It does not strengthen or erode the marital commitment, but may decrease disposable family income depending upon which provider the recipient chooses for the item or service prescribed.