Virginia Regulatory Town Hall

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Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	DEPT. OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation	12VAC30, Chapters 60 and 90
Regulation title	Standards Established and Methods Used to Assure High Quality of Care; Methods and Standards for Establishing Payment Rates—Long Term Care Services
Action title	Specialized Care Services
Document preparation date	GOV ACTION NEEDED BY 6/27/2003

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style, and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Preamble

The APA (Section 2.2-4011) states that an "emergency situation" is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date.
1) Please explain why this is an "emergency situation" as described above.
2) Summarize the key provisions of the new regulation or substantive changes to an existing regulation.

This regulatory action qualifies as an emergency, pursuant to the authority of the *Code of Virginia,* 1950 as amended, § 2.2-4011 because it is responding to a change in the Virginia

Appropriations Act that must be effective within 280 days from the date of enactment of the Appropriations Act (the *2003 Acts of Assembly*, Chapter 1042, Item 325 LLL) and this regulatory action is not otherwise exempt under the provisions of the *Code* § 2.2-4006. Since DMAS intends to continue regulating the two issues contained in this emergency regulation past the effective period permitted by this emergency action, it is also requesting approval of its Notice of Intended Regulatory Action in conformance to § 2.2-4007.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

This regulatory action proposes to: i) eliminate the redundant coverage of rehabilitation services and complex care services from the adult Specialized Care Program; ii) include individuals who have a tracheostomy and meet other criteria in the ventilator services component of the Specialized Care Program; and, iii) clarify the definition of covered ventilator service.

Legal basis

1) Please confirm that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the emergency regulation and that it comports with applicable state and/or federal law.
2) Please indicate that the regulation is not otherwise exempt under the provisions of subdivision A.4 of Section 2.2-4006 of the APA.

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.

Substance

Please detail any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of Virginians. Delineate any potential issues that may need to be addressed as a permanent final regulation is developed.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
60-40		Only generally refers to Adult specialized care criteria Service standard for adults to receive 10 hours of therapy a week.	Technical edit for clarity; addition of qualifying text. Service standard removed because this part of specialized care program is being discontinued with this regulatory action.
60-320		Defines targeted population as adults having one of four different diagnoses Establishes licensing/certi-fication criteria for respira-tory therapists Criteria for patient to meet in order to qualify as part of targeted population.	Re-defines targeted population. Excluded diagnoses are already accounted for in the RUGs patient classification system used to determine reimbursement for nursing facilities. New standards being added to regs to ensure adequate provider standards for reimbursement. Additional patient criteria are needed to support reimbursement claims from providers. Conversely, if patient does not meet these criteria and provider bills for this type of care, agency must have regulatory authority to deny such claims.
90-264		Reimbursement regulations recognize 3 types of Specialized Care Services	The two types of Specialized Care Services that are being discontinued for additional payments are stricken. These types of care are now incorporated into the current RUGs patient classification methodology of the Nursing Home Payment System.

This regulatory action proposes modifications to the State Plan for Medical Assistance Standards Established and Methods Used to Assure High Quality of Care (Attachment 3.1-C (12 VAC 30-60)) and Methods and Standards for Establishing Payment Rates—Long Term Care Services (Attachment 4.19-D (12 VAC 30-90)).

In late 1991, DMAS implemented a new level of nursing facility reimbursement based on patient care intensity and level of service called Specialized Care Services. Specialized Care Services were defined as services needed by nursing facility (NF) residents who had long-term health conditions which demanded close medical supervision, 24-hour licensed nursing care, and specialized services or equipment. NFs that cared for those patients who met these criteria received enhanced reimbursement for higher levels of care.

For purposes of making these additional payments to nursing facilities, NF specialized care residents were organized into four categories: comprehensive rehabilitation; complex care; ventilator dependent; and AIDS. As originally established, the medical eligibility criteria for the Specialized Care program were separated into two sets of criteria: (i) for individuals age 21 and

over; and (ii) for individuals younger than 21, who were classified as pediatric or adolescents. The proposed changes addressed in this emergency regulation apply to the criteria for Specialized Care services for adults (age 21 and over).

Presently, the State Plan provides that institutionalized adults who meet the medical necessity criteria for Specialized Care services receive the appropriate needed care and the nursing facilities rendering this care receive additional reimbursements.

On July 1, 2002, the Resource Utilization Grouping (RUG-III), 34-group Medicaid Grouper was implemented as the regular nursing home payment system, replacing the previous Patient Intensity Rating System (PIRS). The elements that make up the comprehensive rehabilitation and complex care components of DMAS' Specialized Care program are already included in the new RUGs patient classification methodology, rendering DMAS' additional adult specialized care services payments redundant of services rendered and payments covered and made. Therefore, the adult comprehensive rehabilitation and adult complex health care categories of care, with their concomitant additional NF payments, are being removed from Specialized Care.

Including these residents in the non-specialized care case mix system will increase the affected nursing facility's rate. In order to ensure that the costs of medical supplies and respiratory therapies continue to be covered, the adult mechanical ventilation category of care will remain as a Specialized Care program until these costs are accounted for in the RUG system. Residents who are not ventilator dependent but have complex tracheostomies will be covered under the mechanical ventilation category of care.

Except for Pediatric Specialized Care, continuous positive airway pressure (CPAP) and bilevel positive airway pressure (BiPAP) devices will no longer be included in covered ventilator services for specialized care. Since these devices are non-continuous ventilators and are generally used to assist individuals with sleep apnea, the individuals who require them do not have medical conditions justifying inclusion in the Specialized Care program.

DMAS estimates that this suggested reduction in State Fiscal Year 2004 would save approximately $2,024,306 (total funds). During calendar year 2001, 25 Specialized Care nursing facilities billed DMAS for these services that were provided to approximately 442 recipients.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.

The General Assembly has mandated these changes to the State Plan through the Appropriations Act. Due to the legislative mandate, the agency has no discretion in whether to implement these changes.

Family impact

Please assess the impact of the emergency 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.