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, Chapter 70
Regulation title	Methods and Standards for Establishing Payment Rates—Inpatient Hospital Services
Action title	Inpatient Operating, DSH, and IME Payments for Type One Hospitals
Document preparation date	7/11/2003; GOV APPROVAL NEEDED BY AUG 12

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.

The Administrative Process Act (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. This suggested emergency regulation meets the standard at *COV* 2.2-4011(i) as discussed below.

Due to a change in federal regulations (42 CFR § 438.6) regarding actuarial soundness of capitation rates, DMAS will be prohibited from making supplemental payments to Type One hospitals (the state teaching hospitals) for services that these providers render in the DMAS managed care program (MEDALLION II). This prohibition, effective August 13th, will create a significant disincentive for the Type One hospitals to continue participation in the Medallion II program. If the Type One hospitals choose to not participate in the Medicaid managed care program, the viability of the managed care program in the areas of the Commonwealth served by these hospitals will be threatened. As such, access to a proper level of care will be impeded, therefore threatening the public health.

Furthermore, since DMAS intends to continue regulating the issue 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.

The intent of this emergency regulation is to provide changes to the reimbursement methodologies for operating reimbursement, disproportionate share hospital (DSH) payments, and indirect medical education (IME) payments to Type One hospitals. These suggested changes will not result in new revenues to the Type One hospitals but will maintain previous revenue levels that must now be discontinued due to impending federal regulatory changes. These methodology changes will permit the continuation of managed care payments commensurate with fee-for-service (FFS) payments.

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.

This regulatory action is not otherwise exempt under the authority of the COV 2.2-4006(A)(4)(c) because the cited federal regulations will only prohibit payments that DMAS has been making for years to the Type One hospitals. The new federal regulations do not proscribe specific methodologies that states must use in order to continue such payments. In order to meet the federal exemption standard at (a)(4)(c), the new federal regulations would have to set out specific methodologies that states would have to meet.

The Office of the Attorney General has certified that the agency has the statutory authority to promulgate this emergency regulation and that it comports with applicable state and federal law.

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.

The section of the State Plan for Medical Assistance that are affected by this action is Methods and Standards for Establishing Payment Rates—Inpatient Hospital Services (Attachment 4.19-A (12 VAC 30-70-291, 70-301, and 70-331)).

In 1991, DMAS determined it would be appropriate to place the state teaching hospitals in their own peer group (named Type One hospitals) for purposes of Disproportionate Share adjustment payments, known as DSH payments. DSH payments are made to those hospitals that render proportionately higher amounts of care to indigent people than other hospitals. Over the years, Medicaid DSH payments to Type One hospitals have figured significantly in these hospitals' revenues. In addition, Type One hospitals' operating rates, are subject to an adjustment factor of one, while Type Two hospitals adjustment factors have historically been less than one. This has contributed to higher payment rates for Type One hospitals relative to Type Two hospitals.

To determine the capitated rates for its managed care organizations (MCOs), DMAS considers all providers' rates. However, since Type One hospitals are paid significantly higher rates (due to the adjustment factor), it is not prudent to include the Type One hospital rates in the calculations of the MEDALLION II rates. Instead, Type One hospital fee for service data is assigned a "community rate" for capitation rate setting purposes, and this rate is less than those facilities' actual fee-for-service cost experience.

The emergency regulation proposes to take two parallel actions: (i) to reduce FFS operating rates for Type One hospitals to a level commensurate with Type Two Hospitals; and, (ii) to increase payments to the Type One hospitals through other means to compensate them for revenue losses due to the federal regulatory change. Further discussion of these parallel proposals follows.

Because the Medicaid program recognizes that higher costs are incurred at the Type One hospitals, the adjustment factor calculated for Type Two hospitals is not sufficient to address such additional costs. Therefore, DMAS is proposing a methodology change that will calculate an adjustment factor that causes the Type One hospital statewide operating rate per case to equal the statewide operating rate per case as calculated for the Type Two Hospitals. This serves to bring fee-for-service reimbursement at Type One Hospitals in line with reimbursement levels under MEDALLION II.

An unintended consequence of the reduction in operating payments to Type One Hospitals is also a reduction in DSH payments. DSH payments are directly related to the fee-for-service operating payments, so any reduction in operating payments will serve to reduce DSH as well. Consequently, DMAS is proposing to incorporate a "DSH factor" into the calculation of Type One hospital DSH payments that will essentially hold those payments harmless, or equal, in relation to the effect of the reduction in operating payments. Essentially, the DSH factor will equal some number that will result in calculated DSH payments at a level that the current operating payment rate methodology (using an adjustment factor of one for Type One Hospitals) currently produces.

In order to maintain total Medicaid payments to the Type One hospitals at current levels, however, this reduction in operating payments on the fee-for-service side must be offset with additional payments elsewhere. DMAS is proposing to offset the operating payment reductions through enhancement of the indirect medical education (IME) payment levels for the Type One hospitals. The basic goal is to provide IME payments equaling payments calculated under the current IME methodology, plus the amount of the reduction on the fee-for-service operating side due to the use of the new adjustment factor. Because operating payments also affect IME calculations, DMAS has determined that a multiplier applied to the current IME percentage is the most efficient way to accomplish this goal.

The net effect of these three changes will be the maintenance of payment levels that would be achieved had the current methodology, with the additional payments for MEDALLION II claims made outside of the system through the managed care organizations to the Type One hospitals, continued unchanged. Because this is simply a shifting of payments currently in the fee-for-service operating side to the IME program, with DSH held harmless, there is no additional financial impact on the Commonwealth nor is there added pressure to upper payment limits imposed on the program.

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.

DMAS has been unable to identify any viable alternatives to the suggested emergency regulation.

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.