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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	12VAC 30-70
Regulation title	Methods and Standards for Establishing Payment Rates—Inpatient Hospital Services
Action title	Exclusion of Freestanding Psychiatric Facilities from Inpatient Hospital Rate Rebasing
Document preparation date	; NEED GOV APPROVAL BY

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#excreview) 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(ii) as discussed below.

Item 326(NN) (*need to verify when Act is signed*) of 2004 Appropriations Act (the Act) directs DMAS not to rebase per diem rates of freestanding psychiatric facilities licensed as hospitals. The Act directs DMAS to continue reimbursement based on SFY 2004 rates for these providers.

The Governor’s approval is hereby requested for this regulatory action to be adopted as an emergency and in the absence of prior public notice and comment period. Additionally, the Governor’s approval is requested for the stage Notice of Intended Regulatory Action to initiate the permanent rule making process as contained in the COV § 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 purpose of this action is to exclude freestanding psychiatric hospitals from the standard re-basing action that will be conducted for the reimbursement methodology for other types of hospitals.

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.*
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As a consequence of the specific mandates in the 2004 Appropriations Act directing the agency to promulgate emergency regulations, as cited above, these recommended changes are not otherwise exempt under subdivision A.4 of Section 2.2-4006 of the Administrative Process Act.

Furthermore, the Office of the Attorney General has certified that the agency has the statutory authority to promulgate these changes as emergency regulations and that these changes comport with applicable state and federal laws and regulations.

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 why the regulation 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 is affected by this change is the Methods and Standards for Establishing Payment Rates-Inpatient Hospital Services (Attachment 4.19-A (12 VAC 30- 70-391)).

Provisions in 12 VAC 30-70-391 provide for re-basing of hospital rates at least every three years. In compliance with this, DMAS has calculated re-based hospital rates to be effective July 1, 2004. As directed by the Appropriations Act, the proposed amendment would add language providing that freestanding psychiatric hospitals’ rates would not be re-based for SFY2005, but would continue to be based on the previous base year. The regulatory change provides language excluding freestanding psychiatric facilities licensed as hospitals from any rebasing until the next full inpatient hospital rebasing subsequent to SFY 2005.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
12VAC30-70-391		Sets forth the rebasing process for inpatient rates	Excludes freestanding psychiatric facilities licensed as hospitals from rebasing until the next full rebasing subsequent to SFY 2005

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.

These items were defined by the Appropriations Act and therefore no alternatives are possible.

Family impact

Please assess the impact of the emergency regulatory action on the institution of the family and family stability.

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.