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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	12 VAC 30-60 and 12 VAC 30-90
Regulation title	Standards Established and Methods Used to Assure High Quality Care, Methods and Standards for Establishing Payment Rates for Long-Term Care
Action title	Additional NF Reimbursement for Treatment of Stage IV Pressure Ulcers
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.

The Department of Medical Assistance Services (DMAS) was directed by the *2004 Acts of the Assembly, Chapter 4, Item 326 RR* to provide an additional \$10 per day reimbursement to nursing facilities for residents who require a specialized treatment bed due to their having at least one treatable stage IV pressure ulcer.

The Governor is hereby requested to approve this agency's adoption of the emergency regulations entitled Standards Established and Methods Used to Assure High Quality of Care and Methods and Standards for Establishing Payment Rates for Long Term Care: Additional NF Reimbursement for Treatment of Stage IV Pressure Ulcers (12 VAC 30-60-40 and 60-350; 12 VAC 30-90-41) and also authorize the initiation of the promulgation process provided for in 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 provide additional reimbursement (\$10 per day) to nursing facilities (NF) for residents who require specialized treatment beds due to their having at least one treatable stage IV pressure ulcer. NFs following established clinical practice guidelines for pressure ulcer prevention may not be able to prevent the development and worsening of pressure ulcers in high-risk individuals. Risk factors, as identified by the National Institutes of Health, include immobility, incontinence, inadequate dietary intake or impaired nutritional status, and altered levels of consciousness. The cost to NFs of providing specialized treatment beds frequently exceeds what is covered through the current NF reimbursement methodology. The additional \$10 per day reimbursement for specialized treatment beds is intended to help defray the cost to NFs of providing these beds to residents with Stage IV pressure ulcers.

Legal basis

Other than the emergency authority described above, 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 number(s), 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.

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 sections of the State Plan for Medical Assistance that are affected by this action are Standards Established and Methods Used to Assure High Quality of Care (12 VAC 30-60) and Methods and Standards for Establishing Payment Rates—Long Term Care Services (12 VAC 30-90).

Pressure ulcers are caused by unrelieved pressure on skin over bony prominences such as hips, sacrums, and heels in residents with limited mobility. Pressure ulcers are graded by the degree of observable tissue damage from Stage I, being least severe, to Stage IV, being most severe.

NFs have established policies for the prevention and treatment of pressure ulcers. Standard interventions include ongoing assessment of the patient and the ulcer including a nutritional assessment; management of pressure and friction through positioning and the use of support surfaces; care of the ulcer including debridement, cleansing, and dressing; medications to treat infections; operative repair of the ulcer; patient and caregiver education; and, quality improvement programs.

Providing proper support surfaces such as specialized treatment beds for residents with Stage IV pressure ulcers is one component of a comprehensive pressure ulcer treatment plan. In FY 2002, a total of 1,147 residents at 204 NFs had at least one Stage IV pressure ulcer during at least one quarter of the fiscal year. This figure represents approximately 4.2% of the total Medicaid recipients who received nursing facility care in FY 2002. The additional \$10 per day reimbursement is intended to help defray the cost to NFs of providing specialized treatment beds to residents with Stage IV pressure ulcers. These costs are related to direct patient care, and in the nursing facility payment system all direct patient care costs are adjusted for inflation each year. Therefore to be consistent with the provisions of the payment system, this payment will also be adjusted for inflation.

DMAS staff reviewed proposed policy options with representatives of health care provider organizations. The feedback from providers was used in developing the emergency regulations and will also be used in developing the preauthorization process for the additional \$10 per day reimbursement.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
12 VAC30-60-40 (E)	N/A	Utilization Control: Nursing facilities.	Text is added to inform providers about the criteria for receiving the additional \$10 per day reimbursement.

12 VAC30-60-350	N/A	Reserved	Section was added to provide detail to providers on the criteria for receiving the additional \$10 per day reimbursement.
12 VAC 30-90-41 (A)	N/A	Nursing facility reimbursement formula.	New text explains the payment rate for the additional reimbursement for use of specialized treatment beds.

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.

This action is intended to help defray some of the costs to nursing facilities of providing specialized treatment beds to their residents with stage IV pressure ulcers. Currently, no other alternatives can be considered due to the specific legislative mandate contained in *Chapter 4 of the 2004 Acts of the Assembly*.

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.