



Virginia  
Regulatory  
Town Hall

[townhall.state.va.us](http://townhall.state.va.us)

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

<b>Agency name</b>	DEPT. OF MEDICAL ASSISTANCE SERVICES
<b>Virginia Administrative Code</b>	12 VAC 30-70, 12 VAC30-80 and 12 VAC 30-90
<b>Regulation title</b>	Methods and Standards for Establishing Payment Rates – Inpatient Hospital Services, Other Types of Care, and Long Term Care
<b>Action title</b>	Modifications to Supplemental Payment Methods for Medicaid Public Providers.
<b>Document preparation date</b>	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](http://www.townhall.state.va.us/dpbpages/apaintro.htm#excreview)) and the Virginia Registrar of Regulations ([legis.state.va.us/codecomm/register/regindex.htm](http://legis.state.va.us/codecomm/register/regindex.htm)), pursuant to the Virginia Administrative Process Act ([www.townhall.state.va.us/dpbpages/dpb\\_apa.htm](http://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](http://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](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 O of the 2005 Appropriations Act provides that DMAS shall modify state regulations and the State Plan for Medical Assistance Services as they relate to supplemental payments to non-state public nursing homes, hospitals and clinics and state hospitals and clinics as necessary to comply with changes negotiated with the Centers for Medicare and Medicaid Services. The State Budget also provides for the authority to enact emergency regulations.

The Department of Medical Assistance Services (DMAS) was directed by the federal Medicaid authority, the Centers for Medicaid and Medicare Services (CMS), to modify or eliminate the use of intergovernmental transfers (IGTs) to finance supplemental payments by the end of SFY2005. In return, CMS agreed to provide federal matching funds for existing supplemental payments financed by IGTs through the end of SFY2005. To comply with its agreement with CMS, DMAS has decided to repeal certain supplemental payments and to modify others.

The Governor is hereby requested to approve this agency's adoption of the emergency regulations entitled Modifications to Supplemental Payment Methods for Institutional Medicaid Providers (12 VAC 30-70-425 and 426; 12 VAC 30-90-19) and also to 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 comply with recent CMS restrictions on the financing of supplemental payments for services provided by non-state public hospitals and nursing homes and state hospitals. In past years, DMAS has successfully generated additional federal reimbursement by making supplemental payments financed by intergovernmental transfers (IGTs). Beginning in January 2004, CMS began to defer federal matching funds for these payments. As a result of negotiations with CMS, CMS has agreed to provide federal matching funds for all existing supplemental payments financed by IGTs through the end of FY2005, if DMAS agrees to sunset the use of IGTs to finance these supplemental payments after that date. DMAS will lose approximately \$26 million in federal matching funds for payments made or planned to be made in SFY2004 and FY2005 unless it agrees to make these changes. To comply with this arrangement, DMAS proposes to modify supplemental payments for inpatient services provided by non-state public hospitals and nursing homes and outpatient services provided by non-state public clinics, and to repeal all other supplemental payments.

**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 Methods And Standards for Establishing Payment Rates: Inpatient Hospital Care (12 VAC 30-70), Methods And Standards for Establishing Payment Rates: Other Types of Care (12 VAC 30-80), and Methods and Standards for Establishing Payment Rates: Long-Term Care (12 VAC 30-90).

The changes to these regulations are necessary in order for DMAS to comply with its agreement with CMS to sunset supplemental payments financed by IGTs, effective July 1, 2005. Where possible, DMAS proposes to make supplemental payments to certain public providers financed in a manner acceptable to CMS or to draw down federal funds for unreimbursed Medicaid costs. In other cases, DMAS proposes to repeal the supplemental payments altogether, as set forth in the chart below.

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change and rationale</b>
12 VAC30-70-425	N/A	Supplemental payments to non-state public hospitals for inpatient services	Effective July 1, 2005, DMAS shall draw down federal funds for unreimbursed Medicaid costs as certified by the providers through cost reports.
12 VAC30-70-426	N/A	Supplemental payments to state hospitals for inpatient services	Repeal effective July 1, 2005.

12 VAC 30-80- 20.D.6	N/A	Supplemental payments to non-state public hospitals for outpatient services	Repeal effective July 1, 2005.
12 VAC 30-80- 20.D.7	N/A	Supplemental payments to state hospitals for outpatient services.	Repeal effective July 1, 2005.
12 VAC 30-80- 30.A.16	N/A	Supplemental payments to state clinics for outpatient services	Repeal effective July 1, 2005.
12 VAC 30-80- 30.A.18	N/A	Supplemental payments to non-state public clinics for outpatient services	Effective July 1, 2003, supplemental payments will be made to clinics operated by Community Services Boards (CSBs). The state share of the payments will be funded by appropriations.
12 VAC 30-90-19	N/A	Supplemental payments to non-state public nursing homes	Effective July 1, 2005, DMAS shall draw down federal funds for unreimbursed Medicaid costs as certified by the providers through cost reports.

**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 was directed by CMS to sunset its intergovernmental transfers. The alternatives would require the expenditure of additional state general funds.

**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.