Virginia Regulatory Town Hall

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Fast Track Regulation
Agency Background Document

Agency name	DMAS
Virginia Administrative Code	12 VAC 30-70
Regulation title	Methods and Standards for Establishing Payment Rates—Inpatient Hospital Care
Action title	Conform DSH Limit to Federal Legislation
Document preparation date	

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).

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

This regulation conforms the disproportionate share hospital (DSH) supplemental payment limit for Medicaid hospitals to the limit specified in federal legislation. State regulation has limited such payments to 100% of a hospital's actual uncompensated costs associated with services provided to Medicaid and uninsured patients consistent with the limit established in federal legislation in 1993. More recent federal legislation modified the limit for SFY 2004 and 2005 to 175% of the regular limit. In a recent regulatory change, DMAS adopted the higher limit for SFY2005. Rather than change state regulation whenever the federal DSH limit changes, this regulatory action references the DSH limit in federal law.

Statement of agency final action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

I hereby approve the foregoing Agency Background Document with the attached amended State Plan pages: Methods and Standards for Establishing Payment Rates -- Inpatient Hospital

Services, and adopt the action stated therein. I certify that this final regulatory action has completed all the requirements of the Code of Virginia § 2.2-4012, of the Administrative Process Act and is full, true, and correctly dated.

Date

Patrick W. Finnerty, Director

Dept. of Medical Assistance Services

Legal basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

Medicaid is authorized to make additional payments to hospitals with a disproportionate share of uncompensated care. In the 1993 OBRA statute, Congress limited DSH payments to a hospital's uncompensated care costs from serving Medicaid and uninsured patients. State regulations have mirrored this limit. In 2000, Congress passed the Benefits Improvement and Protection Act (BIPA), which permits states to temporarily increase the DSH limit to 175% of uncompensated care costs for state fiscal years 2004 and 2005. DMAS has already increased the DSH limit for state fiscal year 2005. This regulatory change would adopt the federal limit by reference so that it would include the 175% limit for both state fiscal years 2004 and 2005. If changes are made to the federal DSH limit in the future, it would not be necessary to modify state regulations. The regulation would be consistent with changes to the State Plan approved by CMS.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

DMAS wishes to adopt the highest DSH limits as possible. This increases its flexibility in managing DSH payments, particularly payments to UVA and VCU Health Systems to cover its indigent care losses. DMAS receives a fixed DSH allotment for each federal fiscal year. If the allotment is not spent in that year, it can be carried forward and spent in a future year. DSH payments in any one year may consist of portions of allotments from several federal fiscal years. DMAS can spend the allotment for a specific year, however, only to the extent that the payments to each hospital do not exceed the DSH limit for that year for each hospital. DMAS may lose some DSH allotment for FFY 2004 if it does not adopt the DSH limit permitted in federal law.

Rationale for using fast track process

Please explain why the fast track process is being used to promulgate this regulation.

Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from (1) 10 or more persons, (2) any member of the applicable standing committee of either house of the General Assembly or (3) any member of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

This regulatory action will give DMAS maximum flexibility to manage its DSH payments so that it will not lose DSH allotment for FFY 2004. There is no emergency regulatory authority for this change, but it is not expected to be controversial. The regulation simply links DSH payments to the limits in federal legislation.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

Federal law limits what states can pay to hospitals that serve a disproportionately higher Medicaid and uninsured population. This limit is reflected in the Virginia Administrative Code, 12 VAC 30-70-301(D). The regulation deletes a reference to OBRA 1993, which amended section 1923(g) of the Social Security Act, and instead substitutes a reference to Section 1923(g) of the Social Security Act. The regulation deletes any description of the limit, which is unnecessary and may change.

Issues

Please identify the issues associated with the proposed regulatory action, including:
1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;
2) the primary advantages and disadvantages to the agency or the Commonwealth; and
3) other pertinent matters of interest to the regulated community, government officials, and the public.

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

Section 1902(a)(13) of the Social Security Act ("the Act") provides that states, "take into account the situation of hospitals that serve a disproportionate number of low-income patients with special needs." These hospitals, classified as Disproportionate Share Hospitals (DSH), sustain financial losses due to the lower overall payments they receive in serving a large number of Medicaid and uninsured patients. As a result such hospitals require additional state payments in order to maintain their fiscal integrity. Section 1923 of the Act requires states to provide additional Medicaid payments to hospitals that serve larger Medicaid and uninsured

populations. These additional payments are made in the form of lump sum payments, referred to as DSH payments. DSH payments are essential to maintaining access to health care for medically vulnerable populations.

Since 1993, the Act has prohibited states from paying more than 100 percent of the uncompensated costs of disproportionate share hospitals. In 2000, however, the Benefits Improvement and Protection Act (BIPA) permitted states to raise DSH payment levels up to 175 percent of uncompensated care costs for two fiscal years after 2002. In a prior regulation, the 175% DSH limit was adopted for SFY2005. The current regulatory change would incorporate any changes to the DSH limit automatically, including the higher DSH limit for SFY 2004 and SFY 2005. Increasing the DSH limit gives the Commonwealth maximum flexibility in managing its DSH payments and makes it unnecessary to change the DSH limit when the federal government changes it. Without the higher limit, DMAS might lose some of its FFY2004 DSH allotment. This does not limit the amount that DMAS would pay in the short-term, but DMAS would potentially run out of DSH in the future.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	The State might lose up to $30 million in FFY 2004 DSH allotment. This would not affect payments in the short-term (DMAS would use the current allotment), but could limit DSH payments in the future.
Projected cost of the regulation on localities	None
Description of the individuals, businesses or other entities likely to be affected by the regulation	State teaching hospitals
Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million.	Two, neither of which qualifies as a small business.
All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.	None, and no projected costs to any small business.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

The only alternative is to adopt a lower DSH limit than allowed under federal legislation.

Family impact

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

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.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
12 VAC 30-70-301	NA	Subsection D limits DSH payments to the total of uncompensated care costs. For FY2005, the limit is 175% of the current limit.	Subsection D would limit DSH payments to the limit in section 1923(g) of the Social Security Act, including the temporary higher limit (175% of uncompensated care costs) for SFY 2004 and SFY 2005. DMAS would no longer need to change the limit in state regulations when Congress changes the limit in federal legislation. The regulation deletes any description of the limit which is unnecessary and may change.