



Virginia  
Regulatory  
Town Hall

## Proposed Regulation Agency Background Document

<b>Agency Name:</b>	Dept. of Medical Assistance Services (12 VAC 30)
<b>VAC Chapter Number:</b>	50, 60, 70
<b>Regulation Title:</b>	Amount, Duration, and Scope of Services
<b>Action Title:</b>	Restrictions on Coverage of Out-of-State Hospital Services
<b>Date:</b>	03/29/2000

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

### Summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

This regulatory action further clarifies the circumstances in which DMAS will reimburse for inpatient hospital services when they are provided by hospitals outside the Commonwealth. This action establishes the prior authorization requirements as well as additional standards that must be met for DMAS to cover out of state hospital services.

## Basis

*Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.*

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The Code of Virginia (1950) as amended, §32.1-325, grants to the Board of Medical Assistance Services (BMAS) the authority to administer and amend the Plan for Medical Assistance. The Code of Virginia (1950) as amended, §32.1-324, grants to the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the Plan for Medical Assistance in lieu of Board action pursuant to the Board's requirements. The Code also provides, in the Administrative Process Act (APA) §§9-6.14:7.1 and 9-6.14:9.1, for this agency's promulgation of proposed regulations subject to the Governor's review.

The Notice of Intended Regulatory Action for this regulation was filed with the Virginia Register on November 2, 1999 and was published at 16 VR 5:483 (November 22, 1999). The comment period for the Notice of Intended Regulatory Action ended on December 22, 1999.

Title 42 CFR § 431.52 states that Medicaid must be furnished out of state, under the specified conditions, to an eligible individual who is a resident of the State while the individual is in another State to the same extent that Medicaid is furnished to residents in the State.

## Purpose

*Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.*

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The purpose of this proposal is to clarify and expand upon limits to be placed upon coverage of inpatient hospital services by providers who are located outside the borders of the Commonwealth in order to promote the use of Virginia's inpatient hospitals. This action is not expected to affect the public's health, safety or welfare because Virginia hospitals provide all needed medical services.

## Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.*

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The sections of the State Plan affected by this action are the Amount, Duration, and Scope of Services (12 VAC 30-50-100, 50-105, 50-140), Standards Established and Methods Used to Assure High Quality of Care (12 VAC 30-60-21), Methods and Standards for Establishing Payment Rates-Inpatient Hospital Services (12 VAC 30-70-120, 70-420).

DMAS is repealing 12 VAC 30-70-120 because, with the implementation of the Diagnosis Related Groups reimbursement methodology for inpatient hospital services (at 12 VAC 30-70-200 et seq.), this VAC section is no longer valid.

As allowed by 42 CFR § 431.52, DMAS proposes to limit general access to out-of-state general acute care hospitals to only when the service is medically necessary. The out-of-state hospital rendering the service will be required to obtain any needed authorizations.

The reasons for the recipient's need for out-of-state services must be one of the following: (i) a medical or surgical emergency exists; (ii) inpatient hospital services are needed and the recipient's health would be endangered if he were required to travel back to the Commonwealth to obtain medical care; (iii) the Commonwealth determines, on the basis of medical advice, that the needed inpatient hospital services, or necessary supplementary resources, are more readily available in another state; or (iv) it is the general practice for recipients in a particular locality to use inpatient hospital resources in another state. DMAS would recognize exceptional circumstances based on the medical needs of the patient.

Use of out-of-state general acute care hospital services in circumstances other than those listed above will be denied.

## Issues

*Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 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 there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.*

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The advantage to the Commonwealth's taxpayer of this change will be the retention of these tax dollars in the Virginia economy. Inpatient hospitals in the Commonwealth will experience a higher cash flow as they provide care to Virginia Medicaid recipients who, in the past, have sought care in other state's hospitals. Recipients who have a true medical need to obtain specialized medical services will be permitted to do so by the exceptions permitted in this policy. The agency expects that border states' hospitals that have been providing this care (mainly Duke

University Hospital, N.C. Baptist Hospital, and Johns Hopkins Hospital) to object to this new restriction. However, the North Carolina Medicaid program already enforces this same requirement on its own Medicaid recipients.

**Fiscal Impact**

*Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency’s best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.*

DMAS does not expect there to be any implementation or enforcement costs associated with this change as DMAS has been requiring the prior authorization of inpatient services by enrolled, in-state and out-of-state providers for several years. These new prior authorizations will not add to the current workload of this contractor. DMAS estimates that it expended approximately \$5.7M of Virginia Medicaid funds to hospitals in the border states. There are no localities which are uniquely affected by these regulations as they will apply statewide.

**Detail of Changes**

*Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.*

VAC Citation	Substance of the Suggested Change
12VAC30-50-100A	New language specifies that in emergency situations, patients will be admitted to the hospital for care and then the authorization procedures will be performed.
12VAC 30-50-100B	New language sets out limits on coverage of inpatient hospital services in out of state facilities for enrolled providers.
12VAC 30-50-105B	New language sets out limits on coverage of inpatient hospital services in out of state facilities for non-enrolled providers
12VAC30-50-140	New language restricting coverage of out-of-state hospital services applied to physicians who admit patient.
12VAC 30-60-21	New language establishes the utilization control policies to be applied for the coverage of out-of-state hospital services.

12VAC 30-70-120  
12VAC 30-70-420

Repealed language; no longer needed.  
New language restricts the reimbursement of non-enrolled hospitals that are out-of-state.

**Alternatives**

*Please describe the specific 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.*

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**Public Comment**

*Please summarize all public comment received during the NOIRA comment period and provide the agency response.*

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No public comments were received on this issue during the NOIRA comment period.

**Clarity of the Regulation**

*Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.*

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This regulation has been reviewed for clarity and is easily understood by the individuals and entities affected.

**Periodic Review**

*Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.*

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The Department of Medical Assistance Services routinely monitors the implementation of State Plan changes and will include the monitoring of this issue in that ongoing process.

**Family Impact Statement**

*Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1)*

*strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) 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; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

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This regulatory action will not have any negative affects on the institution of the family or family stability. It will not increase or decrease disposable family income or erode the marital commitment. It will not discourage economic self-sufficiency, self-pride, nor the assumption of family responsibilities.