



Exempt Action Final Regulation Agency Background Document

Agency name	DEPT OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation	12 VAC 30-80-40
Regulation title	Fee-for-service providers: pharmacy.
Action title	2010 Pharmacy Reimbursement Change
Final agency action date	October 1, 2010
Document preparation date	September 9, 2010

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 36 (06) and 58 (99).

Summary

Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

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. The section of the State Plan for Medical Assistance that is affected by this action is Attachment 3.1-A&B (12 VAC 30-80-40). Item 297.SSS of the 2010 Virginia Appropriations Act directs DMAS as follows:

“The Department of Medical Assistance services shall amend the State Plan for Medical Assistance Services to decrease the maximum reimbursement for pharmaceutical products to the Average Wholesale Price minus 13.1 percent. Such amendment shall become effective July 1, 2010. If there is an extension through June 30, 2011 of increased Federal Medical Assistance Percentage under

the American Recovery and Reinvestment Act (P.L. 111-5), the reduction of this paragraph shall not become effective.”

In this final exempt regulatory action the Department of Medical Assistance Services is modifying 12 VAC 30-80-40(8), which provides the estimated acquisition cost payment methodology for Medicaid fee-for-service pharmacy services. This modification is required to comply with Item 297.SSS and KKKK of the 2010 Virginia Appropriations Act, which requires DMAS to amend the State Plan for Medical Assistance to reinstate the maximum reimbursement for pharmaceutical products from the current pricing methodology of the estimated acquisition cost equaling the Average Wholesale Price (AWP) minus 13.1%, to a methodology in which the estimated acquisition cost is equal to the AWP minus 10.25%. The changes from 10.25% to 13.1% were dependent upon the unavailability of enhanced federal match dollars provided for in the American Recovery and Reinvestment Act (ARRA - P.L. 111-5). The increased Federal Match percentage, however, has since been provided to the Commonwealth through June 30, 2011. As a result of Congress extending the increased federal match percentage, Virginia will reverse the budget reduction that was implemented July 1, 2010 and revert to the previous methodology effective October 1, 2010. Beginning October 1, 2010, the rate will return to AWP minus 10.25% based on the Governor’s authority under Item 297 KKKK of the Appropriations Act.

Current Policy

DMAS currently uses Average Wholesale Price (AWP) as a pricing methodology for determining the estimated acquisition cost of pharmaceuticals. This estimated acquisition cost of pharmaceuticals is a significant factor in DMAS’ pharmacy methodology for paying pharmacy providers. It is found in 12 VAC 30-80-40 (Fee-for-service providers: pharmacy). Currently, one of DMAS’ primary drug reimbursement methodologies uses the formula of AWP minus 13.1% to calculate Medicaid reimbursement for drugs. This current use of AWP – 13.1% was implemented on July 1, 2010 due to the inability of Congress to extend the enhanced federal match dollars provided for in the American Recovery and Reinvestment Act (ARRA – P.L. 115-5). The percentage subtracted from the AWP represents a reduction in the amount paid to a pharmacy provider. The higher the percentage subtracted from the AWP (referred to as the AWP “discount”), the lower the payment to the pharmacy provider.

Mandated Reduction

DMAS is modifying the current regulation for the estimated acquisition cost of pharmaceuticals from AWP – 13.1% to the previous rate of AWP – 10.25% due to the passage by Congress of the extended enhanced federal match dollars per Item 297.SSS and KKKK of the 2010 Virginia Appropriations Act.

In the discount rate for the estimated acquisition cost of pharmaceuticals beginning 10/1/10 is anticipated to result in a cost increase of \$568,864 in state funds for fiscal year 2011. These funds will be paid out from the enhanced Federal match rate in the ARRA that has been provided to the Commonwealth.

This action meets the exemption provided by the Code of Virginia 2.2-4006 (A) (4) (a) because it conforms these attached regulations to the requirements mandated by the 2010 Appropriations Act and does not materially differ. Additionally, the Agency has no discretion concerning the implementation of this action.

Statement of final agency 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 Fee-for-service providers: Pharmacy – 2010 Pharmacy Reimbursement Change (12 VAC 30-80-40) 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.

Date

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Family impact

Assess the impact of this 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.