Virginia Regulatory Town Hall

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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 (VAC) citation	12 VAC 30-80-20, 36, and 40
Regulation title	Methods and Standards for Establishing Payment Rates; Other Types of Care
Action title	Outpatient Hospital Reimbursement Methodology
Date this document prepared	

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 branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual.*

Preamble

The APA (Code of Virginia § 2.2-4011) states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of subdivision A. 4. of § 2.2-4006.

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.

Section 2.2-4011 of the *Code of Virginia* states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of § 2.2-4006(A)(4). The 2013 Acts of the Assembly, Chapter 806, Item 307.XX gave the agency the authority to implement the Enhanced Ambulatory Patient Group (EAPG) reimbursement methodology for outpatient hospital services.

The Governor is hereby requested to approve this agency's adoption of the emergency regulations entitled (Methods and Standards for Establishing Payment Rate--Other Types of Care (12VAC30-80-20, 36, and 40) and also authorize the initiation of the promulgation process provided for in § 2.2-4011.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

The 2013 Acts of the Assembly, Chapter 806, Item 307.XX gave the agency authority to implement the Enhanced Ambulatory Patient Group (EAPG) reimbursement methodology for outpatient hospital services.

In addition, Section 2.2-4011 of the Code of Virginia states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of subdivision A. 4. of § 2.2-4006.

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 implement a prospective payment methodology for outpatient hospital services. The current cost-based methodology is out-of-date, inefficient and costly. DMAS is proposing to implement the EAPG methodology that is a more efficient and predictable reimbursement methodology for DMAS to pay hospitals that furnish services to Medicaid recipients in an outpatient hospital setting.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

This proposed regulation is not essential to protect the health, safety, or welfare of citizens. However, it is necessary to have an efficient reimbursement methodology for DMAS to pay hospitals that furnish services to Medicaid recipients in an outpatient hospital setting. Since the current methodology is out-of-date and costly, DMAS will adopt a new methodology that is more efficient and provides adequate reimbursement for these services.

Substance

Please detail any changes that will be proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate.

The section of the State Plan for Medical Assistance that is affected by this action is the Methods and Standards for Establishing Payment Rates-Other Types of Care (12 VAC 30-80).

Medicaid currently reimburses Type Two hospitals 76 percent of operating and capital costs for services furnished in an outpatient hospital setting. Type One hospitals are reimbursed separate percentages of costs for operating and capital costs. Cost-based reimbursement is out-of-date, inefficient, and unpredictable. The proposed prospective EAPG reimbursement methodology is predictable, efficient, and promotes quality of care. DMAS converted inpatient hospital services to a similar prospective reimbursement methodology, Diagnosis-Related Groups, in the 1990s. Inpatient hospital services are reimbursed case rates for DRGs on a prospective basis. EAPGs will be used to reimburse outpatient hospital services on a prospective basis as well.

The new EAPG methodology shall define EAPGs as allowed outpatient procedures and ancillary services that reflect similar patient characteristics and resource utilization performed by hospitals in an outpatient setting. Each EAPG group shall be assigned an EAPG relative weight that reflects the relative average cost for each EAPG compared to the relative cost for all other EAPGs. For Type Two hospitals, a statewide base rate for outpatient hospital visits shall be calculated using base year cost data inflated to a rate year. The base year costs shall be adjusted to reflect the agency reimbursement policies for emergency room, laboratory, therapy, and pharmacy services. For Type One hospitals, a separate, budget neutral base rate shall be calculated.

The statewide base rate shall be adjusted to be hospital-specific based on the geographic location of the hospital facility. The hospital-specific base rate shall be determined by adjusting the labor portion of the statewide base rate by the wage index for the hospital's geographic location and adding the non-labor portion of statewide base rate. The hospital-specific base rate for children's hospitals shall reflect a 5-percent differential. The total allowable reimbursement per visit shall be determined by multiplying the hospital-specific base rate times the sum of the EAPG relative weights assigned to an outpatient hospital visit. The base rate shall be rebased at least every three years.

The EAPG methodology shall be transitioned over a four-year period in 25-percent increments. The transition rates will be a blend of cost-based reimbursement and EAPG reimbursement. DMAS shall also calculate a budget neutrality adjustment every six months for up to the first six years of implementation.

The EAPG relative weights implemented shall be the weights determined and published periodically by DMAS. The weights will be updated at least every three years at rebasing. New outpatient procedures and new relative weights shall be added as necessary between the scheduled weight and rate updates.

To maintain reimbursement of drug rebates for outpatient hospital services, each drug administered in the outpatient hospital setting shall be reimbursed separately to be eligible for drug rebate claiming.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, and likely impact of proposed requirements
12 VAC 30-80-20		Describes reimbursement for outpatient hospital services on a cost basis.	End dates cost-based reimbursement for outpatient hospital services but maintains the definition of emergency room triage services for transition purposes.
N/A	12 VAC 30-80-36		Implements the EAPG methodology for outpatient hospital reimbursement in a budget neutral manner.
12 VAC 80-30-40		Describes reimbursement for pharmacy services.	Defines drug reimbursement under the new EAPG methodology so that drug payments will still be eligible for drug rebates.

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. Also describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

This regulatory action is based on increasing the efficiency of payment for outpatient hospital services. DMAS considered maintaining the existing reimbursement methodology and requested feedback from the public and providers through public meetings of the Hospital Payment Policy Advisory Council (HPPAC). Maintaining the existing cost-based methodology is less efficient and costly. DMAS modified several methodology parameters based on feedback from members of the HPPAC and others.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public meeting is to be held to receive comments on this notice.

Please also indicate, pursuant to your Public Participation Guidelines, whether a Regulatory Advisory Panel or a Negotiated Rulemaking Panel has been used in the development of the emergency regulation and whether it will also be used in the development of the permanent regulation.

This emergency regulation was developed in conjunction with the Hospital Payment Policy Advisory Council mandated under 12 VAC 30-70-490. Six meetings were held on December 5, 2011; March 27, 2012; May 23, 2012; June 19, 2012; August 27, 2012; and May 30, 2013. All meetings, agendas, handouts and minutes of the HPPAC were published in the Town Hall.

Providers have also been advised of the development through announcements in a Medicaid Memorandum dated April 6, 2011, in training September 19-21, 2012 and other presentations. Information about the development of the methodology has been posted to the agency web site since the Fall of 2012.

The agency is seeking comments on the regulation that will permanently replace this emergency regulation, including but not limited to 1) ideas to be considered in the development of the permanent replacement regulation, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) the potential impacts of the regulation.

The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) the probable effect of the regulation on affected small businesses, and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (**http://www.townhall.virginia.gov**), or by mail, email, or fax to **Carla Russell, 600 E. Broad Street, Suite 1300, Richmond, VA 23219, phone: 804-225-4586; fax: 804-371-8892; and email: carla.russell@dmas.virginiagov**. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent 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.

These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children; nor 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.