Virginia Regulatory Town Hall

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# Proposed Regulation
# Agency Background Document

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| **Agency name** | DEPT OF MEDICAL ASSISTANCE SERVICES |
| **Virginia Administrative Code (VAC) citation** | 12 VAC 30-80-20, 80-36, and 80-40 |
| **Regulation title** | Methods and Standards for Establishing Payment Rates; Other Types of Care |
| **Action title** | Enhanced Ambulatory Patient Group Outpatient Hospital Reimbursement Methodology |
| **Date this document prepared** | |

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.*

## Brief summary

*In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.*

This action implements a prospective payment methodology for outpatient hospital services. The current cost-based methodology is out-of-date, inefficient and costly. The Enhanced Ambulatory Patient Group (EAPG) methodology assigns outpatient procedures and ancillary services that reflect similar patient characteristics and resource utilization to EAPG codes. DMAS converted inpatient hospital services to a similar prospective reimbursement methodology, Diagnosis-Related Groups, in the 1990s. DMAS proposes to implement the EAPG methodology that is a more efficient and predictable reimbursement methodology to pay hospitals that furnish services to Medicaid recipients in an outpatient hospital setting.

## Acronyms and Definitions

*Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.*

"Enhanced Ambulatory Patient Group (EAPG)" means a defined group of outpatient procedures, encounters, or ancillary services that incorporates International Classification of Disease (ICD) diagnosis codes, Current Procedural Terminology (CPT) codes, and Healthcare Common Procedure Coding System (HCPCS) codes.

"EAPG relative weight" means the expected average costs for each EAPG divided by the relative expected average costs for visits assigned to all EAPGs.

"Base year" means the state fiscal year for which data is used to establish the EAPG base rate. The base year will change when the EAPG payment system is rebased and recalibrated. In subsequent rebasings, the Commonwealth shall notify affected providers of the base year to be used in this calculation.

"Cost" means the reported cost as defined in 12VAC30-80-20.A.

"Medicare wage index" is published annually in the Federal Register by the Centers for Medicare and Medicaid Services. The indices used in this section shall be those in effect in the base year.

"Cost-to-charge ratio" equals the hospital's total costs divided by the hospital's total charges. The cost-to-charge ratio shall be calculated using data from cost reports from hospital fiscal years ending in the state fiscal year used as the base year.

## 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.*

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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 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.

## 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, the environmental benefits, and the problems the proposal is intended to solve.*

The purpose of this action is to produce a permanent regulation from the emergency authority provided in the previous regulatory action. That emergency regulation proposed 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 hospitals that furnish services to Medicaid recipients in an outpatient hospital setting.

This action does not have a direct effect on the health, safety or welfare of Medicaid individuals nor the citizens of the Commonwealth.

## Substance

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

The section of the regulations that is affected by this action is the Methods and Standards for Establishing Payment Rates-Other Types of Care (12 VAC 30-80-20, 36, and 40).

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. To maintain budget neutral expenditures for outpatient hospital services the base rate shall be rebased at least every three years.

The EAPG methodology shall be transitioned over a three-and-a-half-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.

## 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 indicate.*

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This action will increase the efficiency and predictability of reimbursement for outpatient hospital services. It will also reduce the costs of settlement of reimbursement for outpatient hospital services. This regulatory action poses no disadvantages to the public or the Commonwealth.

## Requirements more restrictive than federal

*Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.*

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This action does not contain any requirements that are more restrictive than applicable federal requirements.

## Localities particularly affected

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

This action does not produce any material impact on any particular locality as it will apply statewide.

## Public participation

*Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.*

This proposed regulation was developed in conjunction with the Hospital Payment Policy Advisory Council mandated under 12 VAC 30-70-490. Six meetings were held between December 2011 and May 30, 2013. All meetings, agendas, handouts and minutes of the HPPAC were published on the Town Hall. Providers have also been advised of the development through announcements in Medicaid Memos dated April 6, 2011 and November 8, 2013, in training September 19-21, 2012, December 10-11, 2013 and follow up question and answer sessions January 22-23, 2014, 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 the existing 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.virginia.gov**. 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.

## Economic impact

*Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact. Please keep in mind that we are looking at the impact of the proposed changes to the status quo.*

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| **Description of the individuals, businesses or other entities likely to be affected (positively or negatively) by this regulatory proposal.** Think broadly, e.g., these entities may or may not be regulated by this board | Hospitals and managed care organizations (MCOs) that participate with the Medicaid Program. |
| **Agency's best estimate of the number of (1) entities that will be affected, including (2) small businesses affected.** Small business means a business, including affiliates, that is independently owned and operated, employs fewer than 500 full-time employees, or has gross annual sales of less than $6 million. | Approximately 110 hospitals and 7 MCOs. Some of the hospitals may qualify as small businesses. |
| **Benefits expected as a result of this regulatory proposal.** | Increased efficiency in the payment of outpatient hospital services. Elimination of costs associated with cost settlement of outpatient hospitals services. |
| **Projected cost to the state to implement and enforce this regulatory proposal.** | This action is expected to be budget neutral. The costs of claim system changes are included in the fiscal agent contract. |
| **Projected cost to localities to implement and enforce this regulatory proposal.** | There are no costs to localities. |
| **All projected costs of this regulatory proposal for affected individuals, businesses, or other entities.** Please be specific and include all costs, including projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses, and costs related to real estate development. | In order to be paid for all services, providers will have to code in more detail than they may have been used to. Providers may also wish to purchase the EAPG software to monitor reimbursement. Providers' costs associated with these changes should not be significant. |

## 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. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.*

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.

## Regulatory flexibility analysis

*Pursuant to §2.2-4007.1B of the Code of Virginia, please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

DMAS considered maintaining the existing reimbursement methodology and requested feedback from the public and providers through public meetings of the HPPAC. As stated above, DMAS modeled various scenarios and modified several methodology parameters based on feedback from members of the HPPAC and others.

## Public comment

*Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.*

DMAS published its Notice of Intended Regulatory Action (NOIRA) in the Virginia Register of Regulations dated December 2, 2013, for comment period until January 1, 2014. No comments were received during the publication of the NOIRA.

## Family impact

*Please assess the 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.

## Detail of changes

*Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.*

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

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*These proposed regulations are the same as the previous emergency regulations.*

| Current section number | Proposed new section number, if applicable | Current requirement | Proposed change, intent, rationale, and likely impact of proposed requirements |
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| 12VAC 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. |
| | 12VAC 30-80-36 | | Implements the EAPG methodology for outpatient hospital reimbursement in a budget neutral manner. |
| 12VAC 30-80-40 | | Describes reimbursement for pharmacy services. | Defines drug reimbursement under the new EAPG methodology so that drug payments will still be eligible for drug rebates. |