Adverse impact notification sent to Joint Commission on Administrative Rules, House Committee on Appropriations, and Senate Committee on Finance (COV § 2.2-4007.04.C): Yes ☒ Not Needed ☐

If/when this economic impact analysis (EIA) is published in the *Virginia Register of Regulations*, notification will be sent to each member of the General Assembly (COV § 2.2-4007.04.B).

Virginia Department of Planning and Budget

Economic Impact Analysis

12 VAC 30-70 Methods and Standards for Establishing Payment Rates; In-Patient Hospital Care
Department of Medical Assistance Services
Town Hall Action/Stage: 4396/7273
April 14, 2016

Summary of the Proposed Amendments to Regulation

Pursuant to Item 301.WWW of the 2014 Appropriation Act and Item 301.WWW of the 2015 Appropriation Act, the proposed regulation replaces the Disproportionate Share Hospital (DSH) payment methodologies in the regulation for hospitals providing care to Medicaid recipients.

Result of Analysis

The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact

This regulation governs DSH payment methodologies for hospitals providing care to Medicaid recipients. The federal government requires the state Medicaid programs to make DSH payments to qualifying hospitals that serve a large number of Medicaid and uninsured individuals to offset their uncompensated care costs. In Virginia, there are two Type One, or commonly referred as teaching hospitals (University of Virginia and Virginia Commonwealth University), and 34 Type Two hospitals currently eligible for DSH payments. The total DSH Payments made in in Fiscal Year (FY) 2015 are as follows: $150.5 million to two Type One hospitals, $5.4 million to two State Inpatient Psychiatric Hospitals, $9.2 million to Children's Hospital of the King's Daughters, and $24 million to the remaining 31 Type Two hospitals.

The DSH methodology in effect prior to July 1, 2014, calculated DSH payments based on operating cost reimbursement multiplied by Medicaid utilization in excess of specific utilization thresholds. As the operating costs and Medicaid utilization increased, so did the calculated DSH payments. However, the state DSH payments are subject to an annual allotment established by the federal government. Particularly, in 2010, the Affordable Care Act mandated allotment reductions for DSH payments which were short of the calculated DSH payments based on then existing methodology. The anticipated shortage of federal DSH allotment led to freezing of DSH payments or adjusting the payments on an ad hoc basis to match the available funding. Even though the allotment reductions were delayed later and have yet to be implemented, the planned reductions created the need to amend the DSH payment methodology.

In order to address the issue, Item 301.WWW of the 2014 Appropriation Act and Item 301.WWW of the 2015 Appropriation Act mandated the Department of Medical Assistance Services (DMAS) to replace the then existing DSH methodology effective July 1, 2014. DMAS obtained approval from Centers for Medicare and Medicaid Services (CMS) on June 2, 2015 and started applying the new methodology to payments made in FY 2015.

The new methodology starts with calculating DSH payments for Type Two hospitals by multiplying their eligible DSH days by the DSH per diem to calculate their DSH payment.

Eligible DSH days are any Medicaid inpatient acute, psychiatric and rehabilitation days in excess of 14% Medicaid utilization. Additional eligible DSH days for each hospital are allowed in excess of 28% Medicaid utilization. Additional eligible DSH days provide supplemental DSH reimbursement for hospitals with very high Medicaid utilization. DSH days for out-of-state enrolled hospitals is prorated by the percentage of Medicaid utilization that is for Virginia Medicaid members. In addition, eligible DSH days for out-of-state hospitals with less than 12% Virginia Medicaid utilization are reduced by 50%.

The DSH per diem is calculated by dividing the total DSH allotment for Type Two hospitals by their total DSH days. The DSH per diem is calculated for a base year and adjusted by the percentage change in the allotment available for distribution. The hospital specific DSH payment is then calculated by multiplying the hospital's eligible DSH days with the per diem. The base year is updated every year.

The DSH payment for State Inpatient Psychiatric Hospitals is also calculated using the same methodology, but it is calculated separately by dividing the allotment available for such hospitals by dividing their eligible DSH days. The per diem for Children's Hospital of the King's Daughters is defined as three times the DSH per diem for Type Two hospitals.

Unallocated DSH allotment after Type Two hospital payments are calculated is available for distribution to Type One hospitals. The new methodology defines Type One hospital DSH payments as their uncompensated care costs. Although the 2014 and 2015 Appropriation Acts defined the Type One hospital per diem as 17 times the DSH per diem for Type Two hospitals, CMS did not approve that definition. As a practical matter, however, DSH for Type One hospitals would be limited under either methodology by the annual DSH allotment for the Commonwealth.

DMAS also notes that Medicare uses Medicaid days to calculate Medicare DSH, but Virginia's definition of Medicaid days differed from Medicare and Virginia developed separate reporting requirements for Medicaid days. In that sense, this regulation aligns Virginia's definition of Medicaid days with the Medicare definition and uses the Medicare cost report as the source for Medicaid days.

The proposed changes are budget neutral in the sense that the total DSH payments remain the same, which is the federally allowed total DSH allotment. The main effect is with respect to how the total allotment is distributed among the hospitals. Under the new methodology, some hospitals would receive more and others would receive less. However, a comparison of payments under the old and new methodologies is not available. Thus, the magnitude of hospital specific payment changes is not known at this time.

The new methodology is beneficial in several aspects. First, the DSH payments will be based on more recent utilization data. For example, FY 2014 DSH payments were based on utilization data from 2010. If 2010 utilization did not qualify a hospital for DSH payments, that hospital was disqualified receiving DSH payments in subsequent years even though they may have qualified later. Second, the methodology is formula based which brings more certainty into the distribution process. A hospital is better equipped to determine if and approximately how much DSH payments it can expect for a given year. Third, the new methodology adjusts payments automatically as a result of changes in the available allotment which eliminates the

need for ad hoc adjustments. In short, the new methodology more equitably distributes the available funding and provides for annual revisions to reflect changes in the disproportionate share costs incurred by hospitals.

The proposed new methodology has been in effect since July 1, 2014. Thus, no significant economic impact is expected upon promulgation of the prosed changes other than improving the clarity of the regulation and achieving consistency between the state plan amendments approved by CMS and the language in the Virginia Administrative Code.

Businesses and Entities Affected

The proposed amendments pertain to the two Type One hospitals and 34 Type Two hospitals including Children's Hospital of the King's Daughters and two state inpatient psychiatric hospitals.

Localities Particularly Affected

The proposed changes apply statewide.

Projected Impact on Employment

Under the proposed changes some hospitals may receive more DSH payments while others receive less. A change in funding may have a negative or positive impact on a hospital's ability to hire new employees or maintain its existing employees. However, the magnitudes of the impact on hospital specific DSH payments are not known.

Effects on the Use and Value of Private Property

Similarly, a change in DSH payments received may have a negative or positive impact on a hospital's asset value. However, the magnitude of such impact is not known.

Real Estate Development Costs

No impact on real estate development costs is expected.

Small Businesses:

Definition

Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "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."

Costs and Other Effects

Affected hospitals are not small businesses.

Alternative Method that Minimizes Adverse Impact

The proposed changes do not affect small businesses.

Adverse Impacts:

Businesses:

The proposed amendments would reduce DSH payments for some hospitals. The magnitudes of the reductions are not known.

Localities:

The proposed amendments should not adversely affect localities.

Other Entities:

The proposed amendments should not adversely affect other entities.

Legal Mandates

General: The Department of Planning and Budget has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order Number 17 (2014). Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5)the impact on the use and value of private property.

Adverse impacts: Pursuant to Code § 2.2-4007.04(C): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance within the 45-day period.

If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

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