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Exempt Action Final Regulation
Agency Background Document

Agency name	DEPT OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation(s)	12 VAC 30-70-221; 12 VAC 30-70-281; 12 VAC 30-70-291; 12 VAC 30-70-351; 12 VAC 30-70-381; 12 VAC 30-80-30; 12 VAC 30-80-36; 12 VAC 30-80-180; 12 VAC 30-80-200; 12 VAC 30-90-44; 12 VAC 30-90-264
Regulation title(s)	Methods and Standards for Establishing Payment Rates - Inpatient Hospital Services; Methods and Standards for Establishing Payment Rates - Other Types of Care; Methods and Standards for Establishing Payment Rates for Long-Term Care
Action title	2016 and 2017 Provider Reimbursement Changes
Final agency action date	July 26, 2017
Date this document prepared	July 26, 2017

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) or an agency's basic statute, the agency is not required, however, 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, Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

1. The proposed amendments at 12 VAC 30-70-221 and 12 VAC 30-70-381 change the methodology for costing claims used to rebase weights from a fee-for-service global cost-to-charge methodology to a methodology that uses per-diems and cost-to-charge ratios by

cost center for the fee-for-service and managed care claims, effective July 1, 2016. In a similar fashion, each hospital's total costs by claim using this methodology will be divided by the total charges for the hospital cost-to-charge ratio.

2. The proposed amendments at 12 VAC 30-70-281 and 12 VAC 30-70-291 update current state regulation to indicate:
    a. Effective July 1, 2017, the Department of Medical Assistance Services (DMAS) will increase the formula for IME for freestanding children's hospitals with greater than 50 percent Medicaid utilization in 2009 as a substitute for DSH payments to be identical to the formula used for Type One hospitals.
    b. Effective July 1, 2017, supplemental payments shall be made for medical residency slots for primary care, high need specialties, and underserved areas to the following hospitals for the specified number of primary residencies: Sentara Norfolk General, Carilion Medical Center, Centra Lynchburg Hospital, Riverside Regional Medical Center, and Bon Secours St. Francis Medical Center.

3. The proposed amendments at 12 VAC 30-70-351 reduce state FY 2017 inflation by 50% for inpatient hospital operating expenses (including freestanding psychiatric and long stay hospitals), graduate medical expenses (GME), indirect medical education (IME), and disproportionate share hospital (DSH) payments and outpatient hospital rates. In FY 2018, the inflation adjustment will be eliminated.

4. The changes at 12 VAC 30-80-30 will:
    a. Eliminate existing regulations at 12 VAC 30-80-30(A)(1) related to limitations for emergency physician services;
    b. Amend existing regulations at 12 VAC 30-80-30(A)(17)(b) to include information regarding how supplemental payments are calculated for Children's Hospital of the King's Daughters effective July 1, 2015;
    c. Add a new section with language at 12 VAC 30-80-30(A)(18.1) regarding supplemental payments for services provided by physicians at freestanding children's hospitals serving children in Planning District 8 (Children's National Health System);

5. The proposed amendments at 12 VAC 30-80-36 will add language at (B)(4)(a) regarding the inflation adjustment to hospital costs limiting the adjustment for inflation to 50% of inflation adjustment for state fiscal year 2017 and eliminating inflation in state fiscal year 2018.

6. The proposed amendments at 12 VAC 30-80-180, 12 VAC 30-80-200 will limit the inflation to 50 percent of inflation for home health and outpatient rehabilitation agencies in fiscal year 2018.

7. The proposed amendments at 12 VAC 30-90-44 will update the price for each nursing facility peer group and other changes to peer groups.

8. The proposed amendments at 12 VAC 30-90-264 convert the specialized care rate methodology to a fully prospective state fiscal year rate, effective July 1, 2016. This would be accomplished consistent with the existing cost-based methodology by adding inflation to the per diem costs subject to existing ceilings for direct, indirect and ancillary costs from the most recent settled cost report prior to the state fiscal year for which the rates are being established. DMAS shall use the state fiscal year inflation rate recently adopted for regular nursing facilities. Partial year inflation shall be applied to per diem costs if the provider fiscal year end is different than the state fiscal year. Ceilings shall also be maintained by state fiscal year.

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 Summary with the attached amended regulations (2016 and 2017 Reimbursement Changes (12 VAC 30-70-221; 12 VAC 30-70-281; 12 VAC 30-70-351; 12 VAC 30-70-291; 12 VAC 30-70-351; 12 VAC 30-70-381; 12 VAC 30-80-30; 12 VAC 30-80-36; 12 VAC 30-80-180; 12 VAC 30-90-44; 12 VAC 30-90-264) and adopt the action stated therein. I certify that this final exempt regulatory action has completed all the requirements of the Code of Virginia § 2.2-4006(A), of the Administrative Process Act.

July 26, 2017 /Cynthia B. Jones/

Date Cynthia B. Jones, Director

Dept. of Medical Assistance Services

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 *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 proposed amendments at 12 VAC 30-70-221 and 12 VAC 30-70-381 have been initiated by DMAS to more accurately cost claims to rebase DRG weights and to use in calculating each hospital cost to charge ratio.

The proposed amendments at 12 VAC 30-70-281 are required by the 2016 *Acts of Assembly*, Chapter 780, Item 306.FFFF and 2017 *Acts of Assembly*, Chapter 836, Item 306.FFFF which state that DMAS shall:

"submit a State Plan amendment to make supplemental payments for new graduate medical education residency slots effective July 1, 2017. Supplemental payments shall be made for up to 25 new medical residency slots in fiscal year 2018."

The proposed amendment at 12 VAC 30-70-291 are required by the 2017 *Acts of Assembly*, Chapter 836, Item 306.ZZZZ which state that DMAS shall:

"amend the State Plan for Medical Assistance to increase the formula for indirect medical education (IME) for freestanding children's hospitals with greater than 50 percent Medicaid utilization in 2009 as a substitute for DSH payments."

The proposed amendment at 12 VAC 30-70-351(C) are required by the 2016 *Acts of Assembly,* Chapter 780, Item 306.GGGG and the 2017 *Acts of Assembly,* Chapter 836, Item 306.GGGG which state that DMAS shall:

"amend the State Plan for Medical Assistance to limit inflation to 50 percent of the inflation factor for fiscal year 2017 and eliminate inflation in fiscal year 2018. This shall apply to inpatient hospital operating rates (including long-stay and freestanding psychiatric hospitals), graduate medical education (GME) payments, disproportionate share hospital (DSH) payments and outpatient hospital rates. Similar reductions shall be made to the general fund share for Type One hospitals as reflected in paragraph B. of this Item. Similar reductions shall also be made to the total reimbursement for Virginia freestanding children's hospitals with greater than 50% Medicaid utilization in 2009 in fiscal year 2018 only. The department shall have the authority to implement these reimbursement changes effective July 1, 2016 and prior to the completion of any regulatory process in order to effect such changes."

Eliminated regulations at 12 VAC 30-80-30(A)(1) were required by the 2015 *Acts of Assembly,* Chapter 665, Item 301.OOOO, the 2016 *Acts of Assembly,* Chapter 780, Item 306.YYY, and the 2017 *Acts of Assembly,* Chapter 836, Item 306.YYY which state that DMAS shall:

"amend the State Plan for Medical Assistance Services to eliminate the requirement for pending, reviewing and reducing fees for emergency room claims for 99283 codes."

Amended regulations at 12 VAC 30-80-30(A)(17)(b) were required by the 2016 *Acts of Assembly,* Chapter 780, Item 306.ZZZ and the 2017 *Acts of Assembly,* Chapter 836, Item 306.ZZZ which state that DMAS shall:

"amend the State Plan for Medical Assistance to increase the supplemental physician payments for practice plans affiliated with a freestanding children's hospital with more than 50 percent Medicaid inpatient utilization in fiscal year 2009 to the maximum allowed by the Centers for Medicare and Medicaid Services. The department shall have the authority to implement these reimbursement changes effective July 1, 2015, and prior to completion of any regulatory process undertaken in order to effect such change."

New language/section added at 12 VAC 30-80-30(A)(18.1) was required by the 2016 *Acts of Assembly,* Chapter 708, Item 306.RRR.5 and the 2017 *Acts of Assembly,* Chapter 836, Item 306.RRR.5 which state that DMAS shall:

"amend the State Plan for Medical Assistance to increase the supplemental physician payments for physicians employed at a freestanding children's hospital serving children in Planning District 8 with more than 50 percent Medicaid inpatient utilization in fiscal year 2014 to the maximum allowed by the Centers for Medicare and Medicaid Services within the limit of the appropriation provided for this purpose."

Additional language at 12 VAC 30-80-36(4)(a) was required by the 2016 *Acts of Assembly,* Chapter 780, Item 306.GGGG and the 2017 *Acts of Assembly*, Chapter 836, Item 306.GGG which state that DMAS shall:

"amend the State Plan for Medical Assistance to limit inflation to 50 percent of the inflation factor for fiscal year 2017 and eliminate inflation in fiscal year 2018. This shall apply to inpatient hospital operating rates (including long-stay and freestanding psychiatric hospitals), graduate medical education (GME) payments, disproportionate share hospital (DSH) payments and outpatient hospital rates."

The proposed amendment at 12 VAC 30-80-180 is required by the 2016 *Acts of Assembly*, Chapter 780, Item 306.IIII and the 2017 *Acts of Assembly*, Chapter 836, Item 306.IIII which state that DMAS shall:

"amend the State Plan for Medical Assistance to limit inflation to 50 percent of the inflation factor for outpatient rehabilitation agencies and home health agencies for FY2018."

The proposed amendment at 12 VAC 30-80-200 is required by the 2016 *Acts of Assembly*, Chapter 780, Item 306.IIII and the 2017 *Acts of Assembly*, Chapter 836, Item 306.IIII which state that DMAS shall:

"amend the State Plan for Medical Assistance to limit inflation to 50 percent of the inflation factor for outpatient rehabilitation agencies and home health agencies for FY2018."

The proposed amendments at 12 VAC 30-90-44 are required by the 2016 *Acts of Assembly,* Chapter 780, Item 306.CCC and the 2017 *Acts of Assembly*, Chapter 836, Item 306.CCC which state that DMAS shall:

1. (Item 306.CCC(8)) "amend the State Plan for Medical Assistance to pay nursing facilities located in the former Danville Metropolitan Statistical Area (MSA) the operating rates calculated for the Other MSA peer group."
2. (Item 306.CCC(f)(1)) "Effective on and after July 1, 2017, the Direct Peer Group price percentage shall be increased to 106.8 percent."
3. (Item 306.CCC(f)(2)) "Effective on and after July 1, 2017, the Indirect Peer Group price percentage shall be increased to 101.3 percent."
4. (Item 306.CCC(7)) "amend the State Plan for Medical Assistance to increase the direct and indirect operating rates under the nursing facility price based reimbursement methodology by 15 percent for nursing facilities where at least 80 percent of the resident population have one or more of the following diagnoses: quadriplegia, traumatic brain injury, multiple sclerosis, paraplegia, or cerebral palsy. In addition, a qualifying facility must have at least 90 percent Medicaid utilization and a case mix index of 1.15 or higher in fiscal year 2014."

The proposed amendment at 12 VAC 30-90-264 is required by the 2016 *Acts of Assembly,* Chapter 780, Item 306.NNNN and the 2017 *Acts of Assembly,* Chapter 836, Item 306.NNNN which state that DMAS shall:

"amend the State Plan for Medical Assistance to convert the specialized care rates to a prospective rate consistent with the existing cost-based methodology by adding inflation to the per diem costs subject to existing ceilings for direct, indirect and ancillary costs from the most recent settled cost report prior to the state fiscal year for which the rates are being established."

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.) Please be sure to define any acronyms.

1. The methodology for costing claims used to rebase weights is being changed from a fee-for-service global cost-to-charge methodology to a methodology that uses per-diems and cost-to-charge ratios by cost center for the fee-for-service and managed care claims, effective July 1, 2016. In a similar fashion, each hospital's total costs by claim using this methodology will be divided by the total charges for the hospital cost-to-charge ratio.

2. a. Additional language has been added to clarify that effective July 1, 2017, to increase IME payments will continue to be limited for freestanding children's hospital with greater than 50 percent utilization. Clarification has been added regarding the limit which disproportionate share hospital payments are subject, excluding third party reimbursement for Medicaid eligible patients.

2. b. Effective July 1, 2017, these changes allow DMAS to make supplemental payments to certain hospitals for a specified number of primary care residencies with the stipulation that the hospital maintains residency slots and required documentation annually to verify that required criteria is met. Preference for the residency slots shall be given to those in underserved areas. DMAS shall adopt criteria for primary care, high need specialties, and underserved areas developed by the Virginia Health Workforce Authority.

3. The methodology for hospital reimbursement includes an annual inflation adjustment. For FY2017, the adjustment will be 50% of the adjustment as calculated at 12 VAC 30-70-351(A). In FY2018, the inflation shall be eliminated. The modification to the inflation adjustment applies to inpatient hospitals; including hospital operating rates (including freestanding psychiatric and long stay hospitals), Graduate Medical Education (GME), Indirect Medical Education (IME), and Disproportionate Share Hospital (DSH) payments. An exemption for Children's Hospital of the King's Daughters (CHKD) will be a separate regulatory action.

4. CMS required DMAS to add language that state-developed fee schedule rates shall be the same for both governmental and private practitioners (except as otherwise noted) and the location where rates are published.

Additional updates at 30-80-30(A)(17) and (18) affect the amount of reimbursement paid for a specific emergency room billing codes, physician payments for practices affiliated with freestanding children's hospitals in Northern Virginia, and supplemental payments for qualifying state-owned or operated clinics.

The State expects the changes at 12 VAC 30-80-30(A)(18.1) implementing supplemental payments to physicians at freestanding children's hospitals in Planning District 8 to improve access to pediatric specialty medical services for the beneficiaries in this region as well as reduce travel time for Medicaid beneficiaries.

5. Rates for outpatient hospitals have been updated to limit inflation to 50 percent of the inflation factor for FY 2017. In state FY 2018, the inflation adjustment shall be eliminated.

6. The inflation adjustment for home health agencies and outpatient rehabilitation facilities will be 50% of inflation for fiscal year 2018.

7. July 1, 2014, nursing facility operating rates were converted from a cost-based payment methodology to a price-based methodology. Effective July 1, 2017, each peer group price is based on the following adjustment factors:

- The Direct Peer Group price percentage will be increased from 105 percent to 106.8 percent of the peer group day-weighted median neutralized and inflated cost per day.
- The Indirect Peer Group price percentage will be increased from 100.7 percent to 101.3 percent of the peer group day-weighted median inflated cost per day.

Additionally, effective July 1, 2017, the direct and indirect operating rates under the nursing facility price based reimbursement methodology will be increased by 15 percent for nursing facilities where at least 80 percent of the resident population has one or more of the following diagnoses:

- Quadriplegia
- Traumatic Brain Injury
- Multiple Sclerosis
- Paraplegia
- Cerebral Palsy

A qualifying facility must have at least 90 percent Medicaid utilization and a case mix index of 1.15 or higher in fiscal year 2014.

July 1, 2017 through June 30, 2020 regulations are being amended to reflect that DMAS shall pay nursing facilities located in the former Danville Metropolitan Statistical Area (MSA) the operating rates calculated for the Other MSA peer group. DMAS shall use the peer groups based on the existing regulations. For future re-basings, the facilities will be moved to the Other MSA peer group.

8. Current specialized care rates are based on the provider fiscal year and are not finalized until the end of the provider's rate year. These changes do not modify the underlying reimbursement methodology for specialized care based on individual facility costs but make the rates fully prospective with the state fiscal year. Rates will be based on the most recent settled cost reports inflated to the upcoming state fiscal year.

The specialized care reimbursement changes and hospital costing changes are budget neutral. The inflation reduction is expected to reduce total expenditures in state fiscal year 2017 and 2018.

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.