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## Fast-Track Regulation Agency Background Document

<b>Agency name</b>	Department of Medical Assistance Services
<b>Virginia Administrative Code (VAC) citation(s)</b>	12 VAC 30-70-411
<b>Regulation title(s)</b>	Methods and Standards for Establishing Payment Rates - Inpatient Hospital Services
<b>Action title</b>	EVMS & VA Tech Carilion Supplemental Payments
<b>Date this document prepared</b>	February 12, 2018

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.*

The purpose of this amendment is to add new regulation at 12 VAC 30-70-411 pertaining to supplemental payments made to primary teaching hospitals affiliated with Liaison Committee on Medical Education (LCME) accredited medical schools in Planning Districts 5 and 23 effective July 1, 2017.

**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 Regulatory Review Summary entitled “EVMS & VA Tech Carilion Supplemental Payments” with the attached new regulations (12 VAC 30-70-411) and adopt the action stated therein. I certify that this fast track regulatory action has completed all the requirements of the Code of Virginia § 2.2-4012.1, of the Administrative Process Act.

February 12, 2018

/Jennifer S. Lee, M.D./

Date

Jennifer S. Lee, M.D., 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.

In addition, authority for these changes are provided in the 2017 *Acts of Assembly, Chapter 836, Item 306.RRR.1* which states:

“The Department of Medical Assistance Services shall promulgate regulations to make supplemental Medicaid payments to the primary teaching hospitals affiliated with a Liaison Committee on Medical Education (LCME) accredited medical school located in Planning District 23 that is a political subdivision of the Commonwealth and an LCME accredited medical school located in Planning District 5 that has a partnership with a public university. The amount of the supplemental payment shall be based on the reimbursement methodology established for such payments in Attachments 4.19-A and 4.19-B of the State Plan for Medical Assistance

and/or the department’s contracts with managed care organizations. The department shall have the authority to implement these reimbursement changes consistent with the effective date in the State Plan amendment or the managed care contracts approved by the Centers for Medicare and Medicaid Services (CMS) and prior to completion of any regulatory process in order to effect such changes. No payment shall be made without approval from CMS.”

Approval was received from CMS on December 13, 2017 for an effective date of July 1, 2017 in State Plan Amendment Transmittal number 17-006.

### Purpose

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. **Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens.** Discuss the goals of the proposal and the problems the proposal is intended to solve.*

The purpose of this action is to add new regulation regarding supplemental payments for certain teaching hospitals.

A LCME affiliated teaching hospital, known as Sentara Norfolk General, and a LCME affiliated teaching hospital, known as Carilion Medical Center, will receive quarterly supplemental payments effective July 1, 2017 for inpatient services.

Sentara Norfolk General is located in Planning District 23 and Carilion Medical Center is located in Planning District 5. The regulation is essential to protect the health, safety, and welfare of citizens in that implementation of these supplemental payments will assist in increasing access to care for the citizens of the Commonwealth. These two primary teaching hospitals are affiliated with public medical schools that will transfer the funds to DMAS for the state share for these payments.

### Rationale for using fast-track process

*Please **explain the rationale for using the fast-track process** in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?*

This regulatory action is being promulgated as a fast track action because it is not expected to be controversial as it increases access to medical care without increasing state costs. These changes have already been approved by CMS and comply with the Appropriations Act.

### Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of changes” section below.*

Effective July 1, 2017, supplemental payments to Sentara Norfolk General and Carilion Medical Center will be made quarterly. The supplemental payments shall be calculated based on inpatient services rendered during the quarter equal to the difference between the hospital's Medicaid payments and the hospital's DSH payment limit for the most recent year for which the DSH payment has been calculated divided by four.

The maximum aggregate payments to all qualifying hospitals shall not exceed the available upper payment limit per state fiscal year.

### 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 there are no disadvantages to the public or the Commonwealth, please indicate.*

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The primary advantage of this regulatory action is that it increases access to medical care without increasing state costs. These changes create no disadvantages to the public, the Agency, the Commonwealth, or the regulated community.

### Requirements more restrictive than federal

*Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need 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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There are no requirements more restrictive than federal contained in these recommendations.

### 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.*

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There will be no localities that are more affected than others as these requirements will help to ensure improvement of access to services to all citizens of the Commonwealth.

### 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.*

This regulatory action is not expected to affect small businesses as it does not impose compliance or reporting requirements, nor deadlines for reporting, nor does it establish performance standards to replace design or operational standards.

### 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.*

<p><b>Projected cost to the state to implement and enforce the proposed regulation, including:</b>  <b>a) fund source / fund detail; and</b>  <b>b) a delineation of one-time versus on-going expenditures</b></p>	<p>a.) \$82,000,000 (\$41,000,000 federal funds; \$41,000,000 IGT from EVMS and Virginia Tech).                   b.) Ongoing</p>
<p><b>Projected cost of the new regulations or changes to existing regulations on localities.</b></p>	<p>None</p>
<p><b>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</b></p>	<p>Two; Sentara Norfolk General and Carilion Medical Center.</p>
<p><b>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> Small business means a business entity, including its affiliates, that:                  a) is independently owned and operated and;                  b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>Two</p>
<p><b>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including:</b>  <b>a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and</b>  <b>b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</b></p>	<p>None</p>
<p><b>Beneficial impact the regulation is designed to produce.</b></p>	<p>Implementation of these supplemental payments will assist in increasing access to care for citizens</p>

	of the Commonwealth.
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## 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.*

No other alternative would meet the requirements of the legislative mandate.

## Public participation notice

*If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

No comments were received in the public comment period pertaining to this action.

## 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, and does not increase or decrease disposable family income.

## Detail of changes

*Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. 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.*

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change, intent, rationale, and likely impact of proposed requirements</b>
N/A	12 VAC 30-70-411	None	New section and language added at 12 VAC 30-70-411 titled “Supplemental payments for certain teaching hospitals.”