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TO: EMILY MCCLELLAN
Virginia Department of Social Services

FROM: ABRAR AZAMUDDIN 
Assistant Attorney General

DATE: August 9, 2019

SUBJECT: Exempt Final Regulation – Methods and Standards for Establishing
Payment Rates for Long-Term Care, 12 VAC 30-90-45

I am in receipt of the attached regulation to amend the 12 VAC 30-90-45. You have asked the Office of the Attorney General to review and determine if the Department of Medical Assistance Services (“DMAS”) has the legal authority to amend the regulations and if the regulations comport with state and federal law.

The changes in these regulations are necessary to conform to the appropriation act where no agency discretion is involved. Based on my review, it is my view that the Director of DMAS, acting on behalf of the Board of Medical Assistance Services, under Virginia Code §§ 32.1-324 and 325, has the authority to amend these regulations, subject to compliance with the provisions of Article 2 of the Administrative Process Act (“APA”) and has not exceeded that authority. Also, it is my view that the amendments to these regulations are exempt from the procedures of Article 2 of the APA under Virginia Code §§ 2.2-4006(A)(4)(a).

If you have any questions or need additional information about this regulation, please contact me at 786-6006.

cc: Kim F. Piner, Esq.
Attachment



Final Text

[highlight](#)

Action: 2018 Institutional Provider Reimbursement Updates - Final Exempt

Stage: Final

6/6/19 11:20 AM [latest] ▼

12VAC30-90-45 to 12VAC30-90-49. [Reserved] Supplemental payments for state-owned nursing facilities.

A. Effective July 1, 2018, DMAS shall make supplemental payments to state-owned nursing facilities owned by a Type One hospital. Quarterly supplemental payments for each facility shall be calculated in the following manner:

B. Reimbursement Methodology. The supplemental payment shall equal inpatient nursing facility claim payments times the Upper Payment Limit (UPL) gap percentage.

1. The annual UPL gap percentage is the percentage calculated where the numerator is the difference for each nursing facility between a reasonable estimate of the amount that would be paid under Medicare payment principles for nursing facility services provided to Medicaid patients calculated in accordance with 42 CFR 447.272 and what Medicaid paid for such services and the denominator is Medicaid payments to each nursing facility for nursing facility services provided to Medicaid patients in the same year used in the numerator.

2. The UPL gap percentage will be calculated annually for each nursing facility using data for the most recent year for which comprehensive annual data are available and inflated to the state fiscal year for which payments are to be made.

3. Maximum aggregate payments to all qualifying nursing facilities shall not exceed the available UPL. If nursing facility payments for state nursing facilities would exceed the UPL, the numerator in the calculation of the UPL gap percentage shall be reduced proportionately.

C. Quarterly Payments. After the close of each quarter, beginning with the July 1, 2018 to September 30, 2018 quarter, each qualifying nursing facility shall receive supplemental payments for the nursing facility services paid during the prior quarter. The supplemental payments for each qualifying nursing facility shall be calculated by multiplying Medicaid nursing facility payments paid in that quarter by the annual UPL gap percentage.