



## Virginia Department of Planning and Budget **Economic Impact Analysis**

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### **12 VAC 30-90 Methods and Standards for Establishing Payment Rates for Long-Term Care**

**Department of Medical Assistance Services**

**Town Hall Action/Stage: 5368 / 8731**

May 4, 2020

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### **Summary of the Proposed Amendments to Regulation**

Pursuant to Item 303.VVV of the 2019 Appropriations Act,<sup>1</sup> the Board of Medical Assistance Services (Board) proposes to clarify payment rules for the capital costs of new nursing homes or renovations under the fee-for-service program.

### **Background**

In 2014, the Board converted the nursing home capital reimbursement rules to a fully prospective fair rental value methodology, wherein the fair rental value methodology is used to set capital reimbursement rates for existing facilities.<sup>2</sup> This payment covers costs related to land, buildings and fixed equipment, major movable equipment, and other capital related items. The 2014 action addressed payments for existing facilities, but did not address payments for new or renovated facilities. Since then the Department of Medical Assistance Services (DMAS) reports that it has relied on its common sense interpretation of the rules to address payments to facilities that required mid-year rate adjustments in fifteen cases: six for new construction and nine that involved renovation of existing nursing homes.

The lack of clarity regarding payment rules for new or renovated nursing homes led to the appeal of one of those cases, wherein DMAS' decision to remove the real estate tax expense was reversed. Following the adverse appeal decision, DMAS submitted a state plan amendment

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<sup>1</sup> <https://budget.lis.virginia.gov/item/2019/1/HB1700/Chapter/1/303/>

<sup>2</sup> <https://townhall.virginia.gov/L/ViewStage.cfm?stageid=7075>

to the Centers for Medicare and Medicaid Services, which was approved on November 26, 2019. This regulatory action incorporates those same changes in the Virginia Administrative Code.

### **Estimated Benefits and Costs**

The proposed language specifically addressing payments for new or renovated nursing homes is expected to remove the ambiguity regarding the payment amount due to affected nursing homes. In the appeal noted above, the disputed amount of \$101,788 was resolved unfavorably to DMAS. The proposed clarifications would help reduce the potential for such disputes and ensure that DMAS' common sense interpretation is upheld on appeal. Thus, this change is likely to reduce administrative and litigation costs for both the providers and DMAS, and decrease the potential for improper payments to nursing homes.

### **Businesses and Other Entities Affected**

The proposed amendments affect payments to new or renovated nursing homes providing services under the fee-for-service delivery model. This regulation does not directly apply to managed care organization (MCO) payments to nursing homes, but DMAS reports that these rules are used by MCOs as a benchmark. There are 265 nursing homes enrolled in Medicaid. Thirteen of them enroll only in fee-for service and the rest work with DMAS and MCOs. Going forward, one or two new nursing homes are expected to be built and two or three are expected to be renovated per year.

Because the proposed amendments are clarifications of existing rules as interpreted by DMAS, no adverse impact<sup>3</sup> on nursing homes is anticipated.

### **Small Businesses<sup>4</sup> Affected:**

None of the nursing homes are considered small businesses. The proposed amendments do not adversely affect small businesses.

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<sup>3</sup> Adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined.

<sup>4</sup> 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."

## Localities<sup>5</sup> Affected<sup>6</sup>

The proposed amendments do not affect any particular locality more than others and do not introduce costs for local governments.

## Projected Impact on Employment

The proposed amendments do not affect total employment.

## Effects on the Use and Value of Private Property

The proposed amendments do not appear to affect the use and value of private property or real estate development costs because they are clarifications of existing rules as interpreted by DMAS.

## 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 14 (as amended, July 16, 2018). 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(D): 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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<sup>5</sup> “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

<sup>6</sup> § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.