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## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	Department of Medical Assistance Services
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	12 VAC 30-70-301; 12 VAC 30-80-30; 12 VAC 30-90-264
<b>VAC Chapter title(s)</b>	Payment to Disproportionate Share Hospitals; Fee-for-Service Providers; Specialized Care Services
<b>Action title</b>	2020 Provider Reimbursement Changes
<b>Final agency action date</b>	August 26, 2020
<b>Date this document prepared</b>	August 26, 2020

Although a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the *Code of Virginia*, the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. However, the agency may still be required to comply with the Virginia Register Act, Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

This regulatory action implements three mandates from the 2020 General Assembly. These relate to specialized care operating rates, personal care rates, and a supplemental DSH payment for non-state government public acute care hospitals.

### Mandate and Impetus

*Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). "Mandate" is defined as "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."*

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The 2020 Appropriations Act, Item 313.HHHH requires DMAS to implement a supplemental disproportionate share hospital (DSH) payment for Chesapeake Regional Hospital up to its hospital-specific disproportionate share hospital limit (OBRA '93 DSH limit) as determined pursuant to 42 U.S.C. Section 1396r-4. The payment shall be made annually based upon the hospital's disproportionate share limit for the most recent year for which the disproportionate share limit has been calculated subject to the availability of DSH funds under the federal allotment of such funds to the department.

As a result, this regulatory package includes the following new text in 12 VAC 30-70-301: “Effective July, 1, 2020 a supplemental DSH payment shall be made quarterly for non-state government, public acute care hospitals up to its hospital-specific DSH (OBRA '93 DSH limit) as determined pursuant to 42 USC § 1396r-4(g)(1). The annual payment total shall be based upon the hospital's disproportionate share limit for the most recent year for which the disproportionate share limit has been calculated subject to the availability of DSH funds under the federal allotment of such funds to the department.”

The 2020 Appropriations Act, Item 313.SSSS(1) requires DMAS to increase the rates for agency and consumer directed personal care, respite and companion services in the home and community based services waivers and Early Periodic Screening, and Diagnosis and Treatment (EPSDT) program by five percent.

As a result, this regulatory package includes the following change to 12 VAC 30-80-30, “Personal assistance services (PAS) or personal care services for individuals ...covered under Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) and respite covered under EPSDT... The agency's rates, based upon one-hour increments, were set as of July 1, ~~2019~~, 2020, and shall be effective for services on and after that date.” (Note that companion care is not covered under EPSDT.)

The 2020 Appropriations Act, Item 313.LLLL requires DMAS to establish Specialized Care operating rates for fiscal years 2021 and 2022 by inflating the fiscal year 2020 rates using Virginia nursing home inflation. As a result, this regulatory package includes the following new text in 12 VAC 30-90-264: “Effective July 1, 2020 through June 30, 2022, specialized care operating rates shall be increased annually by inflation based on 12VAC30-90-44.”

### Statement of Final Agency Action

*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.*

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DMAS has submitted Final Exempt changes to 12 VAC 30-70-301, “Payment to Disproportionate Share Hospitals; 12 VAC 30-80-30, “Fee-for-Service Providers”; and 12 VAC 30-90-264, “Specialized Care Services” in order to meet the 2020 General Assembly mandates.