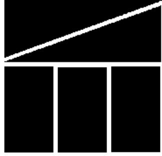

Virginia Department of Planning and Budget
Economic Impact Analysis

12 VAC 30-80 Methods and Standards for Establishing Payment Rate; Other Types of Care
Department of Medical Assistance Services
Town Hall Action/Stage: 5782/9344
September 22, 2021

Summary of the Proposed Amendments to Regulation

The Department of Medical Assistance Services (DMAS) proposes to add a new section to 12 VAC 30-80 *Methods and Standards for Establishing Payment Rate; Other Types of Care* titled *Reimbursement for Indian Health Service Tribal 638 Health Facilities*. The new section would establish reimbursement rates and payment methodologies for Indian Health Service (IHS) facilities in Virginia. The proposed regulatory changes were prompted by the establishment of an IHS facility by the Upper Mattaponi Tribe in King William County earlier in 2021.

Background

The Upper Mattaponi Tribe, along with five other Indian tribes in Virginia, gained federal recognition through the passage of the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2017 on January 12, 2018.[1] Federally recognized tribes have the authority to contract with IHS to establish and administer health facilities, which are also referred to as Tribal 638 Health Facilities.[2] Thus, following federal recognition, the Upper Mattaponi Tribe established a Tribal Health Clinic (THC) in King William county to meet the demand for primary care services in that locality, primarily (but not exclusively) among tribe

[1] See https://www.wtvr.com/2018/01/12/bill-passes-to-give-6-va-native-american-tribes-federal-recognition/.
[2] The number 638 comes from Public Law 93-638, the Indian Self Determination and Education Assistance Act. See https://www.ihs.gov/odsct/title1/.

members who reside there, including those enrolled in Virginia Medicaid.[3] In doing so, they are the first Indian Tribe in Virginia to establish an IHS facility; other federally recognized tribes are likely to establish similar health facilities in the future.

Federal law requires DMAS to recognize and reimburse IHS facilities as Medicaid providers and provides 100 percent federal coverage for Medicaid payments made to these facilities.[4] Because IHS facilities differ in this way from private Medicaid providers, DMAS was required to file a state plan amendment (SPA) to establish appropriate reimbursement methodologies prior to making any payments to the Upper Mattaponi Tribe's THC.[5] As per the SPA and the proposed amendments, any IHS facility in Virginia would be reimbursed for providing services to Medicaid enrollees at the All-Inclusive Rates (AIR or the "OMB rate") set by the federal government. The AIR is published in the *Federal Register* annually, and is primarily used for Medicare and Medicaid reimbursements to IHS facilities throughout the United States.[6]

In addition, the Upper Mattaponi Tribe's THC has been enrolled with the Centers for Medicare and Medicaid Services as a Federally Qualified Health Center (FQHC). FQHCs are safety net providers that provide services typically given in an outpatient clinic.[7] FQHC status allows these facilities to receive payments from DMAS using an alternative payment methodology (APM). Although the proposed new section does not specify any details about the APM, except that payment amounts will be as per the AIR, the SPA states that Virginia Medicaid will use a Prospective Payment System (PPS) for the THC.[8] Details about the Medicaid PPS methodology can be found in the SPA as well as in section 25 of the same

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[3] See https://www.dailypress.com/tidewater-review/va-tr-kw-upper-mattaponi-clinic-0521-20210521-w2qh5sqrr5g2dccgmkb7g75egi-story.html.
[4] Under section 1905(b) of the Social Security Act, the federal government is required to match state expenditures at the Federal Medical Assistance Percentage (FMAP) rate, which is 100 percent for state expenditures on behalf of American Indian/Alaskan Native Medicaid beneficiaries for covered services "received through" an Indian Health Service facility whether operated by the Indian Health Service or by a Tribe or Tribal organization (as defined in section 4 of the Indian Health Care Improvement Act). Note that the standard FMAP for Virginia Medicaid enrollees has been 56.2 percent since FY 2020.
[5] DMAS' SPA submission can be found at https://www.dmas.virginia.gov/media/3305/spa-21-007-tribal-health-clinic-final-03-26-2021.pdf. The approved SPA, effective February 24, 2021, can be found at https://www.medicaid.gov/medicaid/spa/downloads/VA-21-0007.pdf.
[6] See https://www.ihs.gov/businessoffice/reimbursement-rates/.
[7] See https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents/FQHC-Text-Only-Factsheet.pdf for information on FQHCs.
[8] See https://www.nachc.org/wp-content/uploads/2016/02/IB69-PPS-Complete.pdf for more information on payment methodologies for FQHCs, including the evolution of APMs in general and PPS in particular.

regulation, *Reimbursement for federally qualified health centers (FQHCs) and rural health clinics (RHCs),* which would immediately precede the proposed new section.[9]

Lastly, the proposed new section anticipates that other federally recognized tribes in the state are likely to follow the precedent set by the Upper Mattaponi Tribe and establish new IHS facilities. Under the proposed amendments, new IHS facilities established by any of Virginia's federally recognized tribes could be seamlessly enrolled as Medicaid providers in the future. New IHS facilities would be reimbursed at the AIR regardless of whether they enroll as an FQHC. As per the new section, facilities that enroll as FQHCs could potentially be paid under a different APM if they so choose, and DMAS would file an SPA if necessary in order to provide that payment methodology.

Estimated Benefits and Costs

The proposed amendments would directly benefit the Upper Mattaponi Tribe's THC by allowing it to provide services to Medicaid patients and receive payment from DMAS. The proposed amendments would also benefit tribe members and other county residents with Medicaid coverage by reducing the financial and travel costs of accessing primary healthcare. The proposed amendments would also benefit any other IHS facilities that are established in the future by allowing those facilities to become enrolled as Medicaid providers.

The proposed amendments do not expand Medicaid eligibility or increase coverage; thus, there are no new costs to the Medicaid program. Increased access to primary healthcare would likely lead to increased utilization; this may increase costs for payers in the short term, but could save them money in the long term to the extent that the specific services being utilized include preventative care.

The proposed amendments would also yield modest savings for DMAS since Medicaid enrollees who use the THC would now be covered under a higher FMAP. In the absence of an IHS facility, tribe members with Medicaid would have obtained services from private providers, for which DMAS would be reimbursed at the standard FMAP. However, because IHS facilities receive a 100 percent FMAP, DMAS may save money even if healthcare utilization increases

[9] See https://law.lis.virginia.gov/admincode/title12/agency30/chapter80/section25/.

among this pool of enrollees. However, such savings are likely to be modest since a relatively small proportion of Medicaid enrollees would be affected by this change.

Businesses and Other Entities Affected

As mentioned previously, the proposed amendments primarily affect the THC established by the Upper Mattaponi Tribe in King William County and any future IHS facilities established in the state.

Small Businesses[10] Affected

The proposed amendment would not affect any small businesses.

Localities[11] Affected[12]

The proposed amendment does not introduce new costs for local governments. The proposed amendments specifically benefits residents of King William County who are Medicaid recipients, by increasing their access to primary healthcare. Similarly, the proposed amendments would also benefit Medicaid recipients in localities where any new IHS facilities are established in the future.

Projected Impact on Employment

The proposed amendments may be associated with a modest increase in employment at the THC in King William County and future IHS facilities, to the extent that Medicaid recipients comprise a significant share of their patient volume and Medicaid reimbursements constitute a significant source of revenue.

Effects on the Use and Value of Private Property

By creating a conduit for the Upper Mattaponi Tribe's THC and future IHS facilities to receive Medicaid reimbursement revenues, the proposed amendments increase the value of these facilities. Real estate development costs are not affected.

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[10] 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."

[11] "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.

[12] § 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

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.