



Proposed Regulation Agency Background Document

Agency name	DEPT OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation	112 VAC 30-70-221
Regulation title	Methods and Standards for Establishing Payment Rates -- Inpatient Hospital Services
Action title	Clarification to Medicaid Utilization Calculation to Match Cost Report Practice
Document preparation date	

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

Item 326 PPP of the 2005 Appropriation Act directed DMAS to clarify the definition of Medicaid Utilization to better articulate the actual practice of calculating Medicaid utilization from the facility cost reports. Medicaid Utilization is primarily used to determine whether or not a facility is eligible for Disproportionate Share Hospital (DSH) payment. The calculation is generally Medicaid inpatient days divided by total inpatient days at any given facility. However, there has been a lack of clarity in the regulations regarding what constitutes a “Medicaid inpatient day” for this calculation. Cost report instructions, however, have been clear and consistent in this definition. This regulatory change will better articulate the definition in regulation.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly

chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

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. Item 326 PPP of the 2005 Appropriation Act directed DMAS to implement this regulatory change.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

This regulatory action will better articulate the definition in of “Medicaid inpatient day” in the Medicaid hospital reimbursement regulations. This change will help protect the health, safety and welfare of the citizens of the Commonwealth by cutting down on the possibility of reimbursement errors in Medicaid hospital reimbursement system. Fewer errors means greater savings for the Commonwealth, helping to ensure the fiscal integrity of the Medicaid program and maintaining vital medical services for the most vulnerable Virginia citizens.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the “Detail of changes” section.)

The section of the State Plan for Medical Assistance that is affected by this change is Attachment 4.19-A to Methods and Standards for Establishing Payment Rates-Inpatient Hospital Services (12VAC30-70-221).

DMAS is amending 12VAC30-70-221 to provide clarification regarding what is includable in the definition of Medicaid utilization. Specifically, DMAS is stating that the definition includes all paid Medicaid days and non-paid/denied Medicaid days (to include medically unnecessary days, inappropriate level of care service days, and days that exceed any maximum day limits). DMAS is stating that the definition of Medicaid days does not include any general assistance, Family Access to Medical Insurance Security (FAMIS), State and Local Hospitalization (SLH), charity care, low-income, indigent care, uncompensated care, bad debt, or Medicare dually eligible days. DMAS is also stating that it does not include days for newborns not enrolled in Medicaid during the fiscal year even though the mother was Medicaid eligible during the birth.

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 the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

The primary advantage of this proposed change is the clarification of important aspects of the Medicaid hospital reimbursement system. With this change, Medicaid providers applying for reimbursement for medical services provided to Medicaid enrollees will find it easier to calculate the appropriate reimbursement to which they are entitled. There are no disadvantages to the Commonwealth or the public concerning this action.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	No fiscal impact.
Projected cost of the regulation on localities	No fiscal impact.
Description of the individuals, businesses or other entities likely to be affected by the regulation	The regulation itself affects inpatient hospitals participating in the Virginia Medicaid program.
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. Small business means 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.	Approximately 100 inpatient hospitals submit cost reports. It is not believed that any of these meet the definition of "small business".
All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.	No fiscal impact

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.

This regulation is only codifying current practice to provide clarification to providers regarding what is allowable to report on their facility cost reports. The alternative to this regulatory change would be to continue current practice without this clarification in the Administrative Code. This would continue to foster confusion for cost reporting and would continue to cause DMAS to expend unnecessary resources on questions that arise out of this provider confusion.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

No comments were received during the NOIRA public comment period.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

This regulatory action does not have any impact on the institution of the family and family stability including strengthening or eroding the authority and rights of parents in the education, nurturing, and supervision of their children; encouraging or discouraging economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents, strengthening or eroding the marital commitment; nor increasing or decreasing disposable family income.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

There were no substantive changes between the Emergency Regulation and the Proposed Regulation.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
12 VAC 30-70-221 (C)	n/a	“In subsequent rebasing, the Commonwealth shall notify affected providers of the base year to be used in this calculation.”	This language is in the original VAC and in the Emergency Regulation. It is almost identical to the next sentence. Due to this duplication, it is being stricken in the Proposed Regulation.
12 VAC 30-70-221 (C)	n/a	Defines Medicaid Utilization	Clarifies the definition of Medicaid Utilization to match the actual practice of the calculation based on cost report guidance. There was no language change between the Emergency Regulation and the Proposed Regulation.