



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	Dept. of Medical Assistance Services
VAC Chapter Number:	12 VAC 30-90
Regulation Title:	Methods and Standards for Establishing Payment Rates-Long Term Care: Nursing Home Payment System
Action Title:	2 NF Indirect Patient Care Cost Reductions and NF Credit Balance Reporting
Date:	11/09/2002; GOV APPROVAL NEEDED BY JAN 7, 2003

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

This regulatory action concerns two separate issues affecting the Nursing Home Payment System payment methodology: indirect patient care ceiling and inflator, and; credit balance reporting requirements. These two issues will be discussed in this order.

Indirect Patient Care Ceiling and Inflator

This action amends the Title XIX State Plan for Medical Assistance by decreasing the indirect patient care operating ceiling from 106.9% to 103.9% of the median of facility specific indirect cost per day, and by changing the fiscal year on which the calculation of the median is based, from calendar year 1998 to calendar year 2000. This action also amends the Plan to eliminate the increase for inflation for indirect patient care rates and peer group ceilings for indirect costs in State Fiscal Year 2003.

Credit Balance Reporting

Once this regulatory action becomes effective, all nursing facilities (NFs) would be required to submit to DMAS a quarterly report containing their credit balances that may have resulted from claims processing errors or other overpayments. If credit balances are reported, such NFs will be required to submit repayment checks simultaneously with their reports.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

The *Code of Virginia* (1950) as amended, § 32.1-325, grants to the Board of Medical Assistance Services (BMAS) the authority to administer and amend the Plan for Medical Assistance. The *Code of Virginia* (1950) as amended, § 32.1-324, grants to the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the Plan for Medical Assistant in lieu of Board action pursuant to the Board's requirements. The *Code* also provides, in the Administrative Process Act (APA) §§ 2.2-4007, 4012, and 4013, for this agency's promulgation of proposed regulations subject to the Governor's review.

Indirect Patient Care Ceilings and Inflator

These amendments were mandated by the General Assembly in the *2002 Acts of Assembly*, Chapter 899, Item 325 HH (1) and (2).

Credit Balance Reporting

Title 42 of the *Code of Federal Regulations* Part 447, Payment for Services, prescribes State Plan requirements, Federal Financial Participation limitations, and procedures concerning payments made by State Medicaid agencies for Medicaid services. States must provide sufficient detail in their plans about their reimbursement methodologies in order that the Centers for Medicare and Medicaid Services (CMS) may determine if the methodologies conform to existing federal law and regulations and are therefore approvable for Federal Financial Participation.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not

acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

Neither of these recommended changes is required to specifically protect the health, safety, and welfare of either Medicaid recipients or other citizens of the Commonwealth.

Indirect Patient Care Ceiling and Inflator

The purpose of this recommended regulatory action to modify the indirect patient care ceiling and inflator is to reduce reimbursements to NFs.

Credit Balance Reporting

The purpose of this regulatory action is to add a new requirement to the Nursing Home Payment System that each nursing facility submit a quarterly report of Medicaid credit balances. A credit balance would be defined as an improper or excess payment made to a provider as a result of patient billing or claims processing errors. Therefore, for each credit balance the nursing facility would also be required to either submit to the Department of Medical Assistance Services the payment of the credit balance or an adjustment claim to correct any billing or claims processing errors.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

The regulatory action proposes modifications to Methods and Standards for Establishing Payment Rates-Long Term Care at 12 VAC 30, Chapter 90, §§ 41 and 257.

Indirect Patient Care Ceilings and Inflator

Prior to the currently effective emergency regulations, DMAS set the indirect patient care operating ceiling at 106.9% of the median of facility specific indirect cost per day. The calculation of the median is based on cost reports from freestanding nursing homes for provider fiscal years ending in calendar year 1998. In accordance with the State Plan, DMAS revises its ceilings every two years. This regulatory action is necessary to implement revisions to calculating indirect costs as directed by the 2002 General Assembly to mandate a decrease in the indirect patient care operating cost ceiling. The ceiling will decrease from 106.9% to 103.9% of the median of nursing facility specific costs. The General Assembly made the decision to set the indirect patient care operating ceiling at 103.9%, and to base the calculation of the median on cost reports from freestanding nursing homes for provider fiscal years ending in calendar year 2000.

Nursing facilities currently have their prospective operating cost ceilings (direct and indirect) and prospective operating cost rates adjusted for inflation. The allowance for inflation is based on the percentage of change in the moving average of the Skilled Nursing Facility Market Basket of Routine Service Costs, as developed by Data Resources, Incorporated (DRI-WEFA), adjusted for Virginia, determined in the quarter in which the nursing facility's most recent fiscal year ended. The same legislative mandate directed that DMAS amend the State Plan to eliminate the increase for inflation to indirect patient care rates in State Fiscal Year 2003. No changes were mandated nor are recommended for reimbursement for direct patient care.

Credit Balance Reporting

Currently, DMAS does not require NFs to report credit balances. Consequently, those NFs who are overpaid (due to various reasons such as payments from third party payers and claims processing errors) retain these tax dollars until biannual audits can be conducted.

This regulatory action is necessary to implement a reporting requirement for nursing facilities which will make it possible for DMAS to more timely identify, collect, and correct claims for Medicaid overpayments. Such overpayments may exist for paid claims from providers for services rendered to recipients.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 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 there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

Indirect Patient Care Ceilings and Inflation

This modification to the nursing facility reimbursement regulations was directed by the 2002 General Assembly as a budget reduction item for the State Fiscal Year 2003. This will reduce the reimbursement to the Commonwealth's nursing facilities on average by approximately \$1.95 per day. The disadvantage is to the affected provider industry because this change reduces their Medicaid reimbursement. The only advantage to the public for this change is the expenditure reduction (demand for the General Fund dollar) that it represents. The advantage to the Commonwealth is that this expenditure reduction will help with the current budget balancing process underway in the Commonwealth.

Credit Balance Reporting

This revision to the regulations will require the Virginia nursing facility providers to submit a quarterly report of Medicaid patient accounts receivable credit balances. The provider will also have to pay the Department the amount of any such identified credit balances. The disadvantage to the affected nursing home industry is the requirement of additional paperwork and a reduction

to the period of time that they could use Medicaid overpayments to assist their cash flow. There are no disadvantages to the public. The advantage of this change to the public and the Commonwealth is that overpayments will be more quickly returned to state coffers.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

Indirect Patient Care Ceilings and Inflator

There is minimal or no administrative cost to actually implement this revision. It is estimated that this revision to the regulations will result in a reduction in reimbursement to the approximately 270 Virginia nursing facilities in FY 2003 totaling approximately \$12,000,000 (\$5,989,918 GF) (\$6,174,822 NGF).

Credit Balance Reporting

Each of the approximately 270 Virginia Nursing facilities will be required to file with DMAS their quarterly report of credit balances. The actual preparation of each quarterly report by each facility should take approximately 3 to 4 hours, resulting in an approximate administrative cost of \$100 for each facility for each quarterly report.

The Department will incur approximately \$50,000 annually to administer this program. It is estimated that these reports will identify approximately \$2,500,000 annually of overpayments to be refunded to the Department.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

Indirect Patient Care Ceilings and Inflator

This will entail revisions to the nursing home reimbursement regulations at 12VAC30-90-41 Section A.5.c to revise from 106.9% to 103.9% the percentage of the median of base year costs used to establish the indirect cost ceiling for each peer group of nursing facilities.

Additionally, 12VAC30-90-41 Section B.1 revisions provide that the peer group indirect cost ceilings for State Fiscal Year 2003 not being adjusted for inflation. Also 12VAC30-90-41 Section B.2 similar revisions provide that the average allowable costs from a provider's most recent fiscal year's cost report not be adjusted for inflation during the State Fiscal Year 2003.

Credit Balance Reporting

A new section is added at 12VAC30-90-257 to provide for the required quarterly filing by each nursing facility of a report of credit balances, representing overpayments, that are reflected on the nursing facility's accounts receivable accounting records applicable only to Medicaid recipients. Additionally the nursing facility will be required to submit to the Department either adjustment claims to correct the amount of the identified credit balances or to remit a check in payment of the amount of the identified credit balances not so adjusted.

Alternatives

Please describe the specific 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.

Indirect Patient Care Ceilings and Inflation

The General Assembly mandated these changes to the State Plan through the Appropriations Act. Due to the legislative mandate, the agency has no discretion in whether or not to implement these changes.

Credit Balance Reporting

The alternative would be to not make provision for this reporting and re-payment of overpayments and otherwise rely on the field audits conducted by the Department on each facility at two-year intervals to identify and implement recovery of these overpayments.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

No public comments were received by the agency during the NOIRA comment period on either the indirect patient care ceilings and inflation issue or the credit balance reporting issue.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

DMAS has examined these regulations and, in so far as is possible, has ensured that they are clearly written and easily understandable by the individuals and entities affected.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

DMAS will include the monitoring, in collaboration with the affected industry, of this regulatory action as part of its ongoing management of State Plan policies and its Executive Order 21(02) activities.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This regulatory action will not have any negative effects on the institution of the family or family stability. It will not increase or decrease disposable family income or erode the marital commitment. It will not discourage economic self-sufficiency, self-pride, or the assumption of family responsibilities.