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## Proposed Regulation Agency Background Document

<b>Agency name</b>	DEPT OF MEDICAL ASSISTANCE SERVICES
<b>Virginia Administrative Code (VAC) citation</b>	12VAC30, Chapter 70
<b>Regulation title</b>	Methods and Standards for Establishing Payment Rates—Inpatient Hospital Services
<b>Action title</b>	Modification of Indirect Medical Education Payments
<b>Document preparation date</b>	

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.*

This regulatory package combines two previous emergency regulatory changes mandated through recent Appropriations Acts for the Medicaid Indirect Medical Education (IME) payment methodology. First, DMAS was required to implement a new supplemental IME payment for hospitals with Medicaid NICU utilization greater than 50 percent (2004 Appropriations Act, Item 326 HHH). Secondly, DMAS was required to implement a new supplemental IME payment for hospitals with Medicaid NICU days in excess of 4,500, which did not qualify based on the utilization threshold from the 2004 Act (2005 Appropriations Act, Item 326 ZZZ).

### 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.

## 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.*

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The purpose of this proposed regulatory action is to implement supplemental payments for qualifying hospitals through Indirect Medical Education (IME) funding based on high Neonatal Intensive Care Unit (NICU) utilization or, alternatively, a high number of NICU days.

## 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.)*

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The section of the State Plan for Medical Assistance that is affected by this change is the Methods and Standards for Establishing Payment Rates-Inpatient Hospital Services (12 VAC 30-70-291).

Item 326 HHH of the 2004 Appropriations Act calls for an IME payment enhancement to non-state government owned hospitals with Medicaid NICU utilization greater than 50 percent (as reported to DMAS by March 1, 2004). Based on data available as of March 1, 2004, there are two private hospitals for which the Medicaid NICU utilization meets this standard. The regulatory change provides additional language to codify the IME enhancement as directed by the Appropriations Act. The total amount of funds to be dispersed among eligible hospitals has been set at \$1.5 million annually. This mandate was effective with State Fiscal Year 2005.

Item 326 ZZZ of the 2005 Appropriations Act calls for an IME payment enhancement to private (Type Two) hospitals with Medicaid NICU days in excess of 4,500 (as reported to DMAS by March 1, 2005) that would not receive enhanced payment under the criterion in Item 326 HHH of the Appropriations Act (described above). Based on data available as of March 1, 2005, there is only one private hospital for which the Medicaid NICU days meet this standard. The regulatory change provides additional language to codify the IME enhancement as directed by the Appropriations Act. The total amount of funds to be dispersed among eligible hospitals has been set at \$0.5 million annually. This mandate was effective with State Fiscal Year 2006.

**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 to the Commonwealth is that increases in reimbursement generally may sustain or enhance access to medical services. The primary disadvantage to the Commonwealth is an increased expenditure of funds for medical services without any directly related and measurable increase in access to care.

**Economic impact**

*Please identify the anticipated economic impact of the proposed regulation.*

<b>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</b>	-SFY 2005 : \$1.5 Million (\$0.75 million GF/\$0.75 million NGF) -SFY 2006 and annually thereafter: \$2.0 Million (\$1.0 million GF/\$1.0 million NGF)
<b>Projected cost of the regulation on localities</b>	No cost to localities
<b>Description of the individuals, businesses or other entities likely to be affected by the regulation</b>	Eligible acute care hospitals
<b>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.</b> 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.	Three acute care hospitals are affected by this regulation. No small businesses are affected.
<b>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.</b>	No costs are borne by the affected hospitals.

**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.*

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The General Assembly mandates are very specific concerning what parameters a hospital must meet in order to be eligible to receive the supplemental payment. These items were authorized by the Appropriations Act and therefore no alternatives are possible.

**Public comment**

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

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No public comments were received on this action.

**Family impact**

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

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These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children; or 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. It does not strengthen or erode the marital commitment and is not expected to affect 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.*

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**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 30-70-291	12 VAC 30-70-291 (D)	Sets forth formula for calculating the standard IME payments	Adds a new paragraph which provides for an additional IME payment for hospitals with 50 percent or greater Medicaid NICU utilization to provide additional mandated funding
12 VAC 30-70-291	12 VAC 30-70-291 (E)	Sets forth formula for calculating the IME payments	Adds new paragraph describing the adjustment in IME methodology for hospitals with greater than 4,500 Medicaid NICU days to provide additional mandated funding.