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## Fast-Track Regulation Agency Background Document

<b>Agency name</b>	Department of Medical Assistance Services
<b>Virginia Administrative Code (VAC) citation(s)</b>	12 VAC 30-70-428; 12 VAC 30-80-20; 12 VAC 30-80-30; 12 VAC 30-90-19
<b>Regulation title(s)</b>	Methods and Standards for Establishing Payment Rates—Inpatient Hospitals, Other Provider Types, and Nursing Facilities
<b>Action title</b>	Supplemental Payments for Various Provider Types (Physicians affiliated with Tidewater medical school, Hospitals affiliated with Type One hospitals and non-state government-owned facilities)
<b>Date this document prepared</b>	November 25, 2014

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

This regulation action creates new supplemental payments for various provider types: private hospital partners of Type One hospitals (both inpatient and outpatient services); physicians affiliated with Eastern Virginia Medical School; and, non-state government owned nursing facilities.

**Statement of final agency action**

Please 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.

I hereby approve the foregoing Agency Background document entitled Supplemental Payments for Various Provider Types with the attached amended State Plan pages (12 VAC 30-70-428; 12 VAC 30-80-20; 12 VAC 30-80-30; and, 12 VAC 30-90-19) and adopt the action stated therein. I certify that this fast track regulatory action has completed all the requirements of the Code of Virginia § 2.2-4012, of the Administrative Process Act.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Cynthia B. Jones, Director  
Dept. of Medical Assistance Services

**Legal basis**

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

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.

These payments are authorized by the 2014 *Acts of the Assembly*, Chapter 2 Item 301 DDDD and funding would come from Intergovernmental Transfers (IGTs) rather than the General Fund. In the case of supplemental payments to providers affiliated with Type One hospitals, IGTs are authorized in the 2014 *Acts of the Assembly*, Chapter 2 Item 197 and in the case of supplemental payments to physicians affiliated with Eastern Virginia Medical School, IGTs are authorized in the 2014 *Acts of the Assembly*, Chapter 2 Item 143.

**Purpose**

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

The purpose of this action is to create supplemental payments to various Medicaid-enrolled provider types: private hospital partners of Type One hospitals (both inpatient and outpatient services); physicians affiliated with Eastern Virginia Medical School; and, nonstate government-owned nursing facilities. This action is not expected to affect the health, safety, or welfare of citizens. It may help these affected facilities remain more fiscally stable than they would otherwise be.

**Rationale for using fast-track process**

*Please explain the rationale for using the fast-track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?*

These proposed regulatory changes are being promulgated through the fast track process because they are expected to be non-controversial. The changes are authorized in the 2014 *Acts of the Assembly*, Item 301 DDDD and funding would come from Intergovernmental Transfers (IGTs) rather than the General Fund. In the case of supplemental payments to providers affiliated with Type One hospitals, IGTs are authorized in the 2014 *Acts of the Assembly*, Item 197 and in the case of supplemental payments to physicians affiliated with Eastern Virginia Medical School, IGTs are authorized in the 2014 *Acts of the Assembly*, Item 143. A sum sufficient appropriation has been included in Item 301 DDDD for non-state government owned nursing facilities. In all cases, DMAS will also enter into Interagency Agreements with the government entities furnishing the IGTs.

**Substance**

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of changes" section below.*

The sections of the State Plan for Medical Assistance that will be affected by this action are: Methods and Standards for Establishing Payment Rates—Inpatient Hospitals (12 VAC 30-70-428), Other Provider Types (12 VAC 30-80-20 and 12 VAC 30-80-30) and Nursing Facilities (12 VAC 30-90-19).

**CURRENT POLICY**

DMAS could make higher payments to many providers but is limited by the General Fund appropriations in the budget used to fund the non-federal share. An alternative funding source for the non-federal share is intergovernmental transfers (IGTs). By using IGTs as a funding source, Virginia can draw down federal funds for higher payments to government providers or

government-affiliated providers. The intent of this regulatory change is to maximize Medicaid payments for targeted government providers or government-affiliated providers using IGTs to fund the difference between current provider payments and the maximum payments allowed by federal law.

### **Supplemental Payments for Private Hospital Partners with Type One Hospitals (Chapter 70)**

Federal regulations establish upper payment limits (UPL) for inpatient and outpatient hospital services. There are separate UPLs for state, other government and private hospitals. UPLs are calculated on an aggregate basis. Under the current DMAS reimbursement policy, regular payments for private hospitals are below the UPL. This amendment would create supplemental payments for qualifying private hospitals that are partners with a Type One hospital; that is, those private hospitals in which the Type One hospital has a non-majority interest. Type One hospitals are the state teaching hospitals. Supplemental payments would be calculated as the difference between charges and regular payments subject to limits agreed upon with CMS. Supplemental payments to Disproportionate Share Hospitals however, cannot exceed a separate limit that applies to them. Total payments to all hospitals cannot exceed the private UPL for each service.

Medicaid inpatient and outpatient payments are currently about 75% of cost. The intent of the action is to provide increased payments for hospitals affiliated with the state teaching hospitals. Currently, only Culpeper Hospital qualifies as a hospital affiliated with a Type One hospital and only through September 30, 2014.

DMAS estimates \$4.2 million annually in payments to providers affiliated with Type One hospitals. Funding of the state share will come from funds at the state teaching hospitals transferred to DMAS and not from general fund appropriations to DMAS.

### **Supplemental Payments for Physicians Affiliated with Publicly Funded Medical Schools in the Tidewater Area (Chapter 80)**

This action establishes supplemental payments for physician practice plans affiliated with publicly funded medical schools in the Tidewater area, such as Eastern Virginia Medical School (EVMS). DMAS intends to make supplemental payments equal to the average commercial rate (ACR) minus regular physician payments. DMAS has calculated an ACR of 135% of Medicare using the methodology approved by CMS.

DMAS anticipates that this will increase annual payments to physicians affiliated with publicly funded medical schools in the Tidewater area by \$1.5 million total funds. The state share will be funded by publicly funded medical schools in the Tidewater area.

### **Supplemental Payments for Nonstate Government-Owned Nursing Facilities (Chapter 90)**

Federal regulations establish an upper payment limit (UPL) for non-state government-owned nursing facilities in the aggregate. Under the current policy, regular payments and existing supplemental payments for the current five non-state government-owned nursing facilities are below the upper payment limit based on what Medicare would have paid using the current Medicare payment methodology. DMAS will calculate a supplemental per diem by fiscal year for each nursing facility using the most recently available base year adjusted for inflation and/or other changes to Medicare or Medicaid reimbursement between the base year and the rate year. Payments will be made quarterly by multiplying net paid days in the prior quarter by the supplemental per diem for the applicable fiscal year. DMAS estimates total annual supplemental payments of \$10.3 million. The non-federal share will be funded by these government facilities resulting in net revenue of \$5.2 million for these facilities.

**RECOMMENDATIONS**

DMAS recommends the adoption of these methodologies to provide supplemental payments to: (i) private hospital partners of Type One hospitals (for inpatient and outpatient services); (ii) physicians affiliated with publicly-funded Tidewater medical school; and, (iii) nonstate government-owned nursing facilities.

**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 there are no disadvantages to the public or the Commonwealth, please indicate.*

There are no disadvantages to the public in this action. The advantage of these supplemental payments to these affected institutions is that they may help to offset some of the budgetary reductions that they are otherwise experiencing. The advantage to the Commonwealth is that these supplemental payments may facilitate these affected institutions remaining in business across the state. Since the affected providers or affiliated local government transfers funds to DMAS to finance the state share, there is no need for General Fund appropriations.

**Requirements more restrictive than federal**

*Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.*

There are no requirements more restrictive than federal in these recommendations.

### Localities particularly affected

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

Only the providers that are government-owned or affiliated are eligible for the supplemental payments in this regulatory action.

### Regulatory flexibility analysis

*Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

This regulatory action is not expected to affect small businesses as it does not impose compliance or reporting requirements, nor deadlines for reporting, nor does it establish performance standards to replace design or operational standards. None of the providers that will be affected by the increased payments created by this action are considered small businesses.

### Economic impact

*Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.*

<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>	There are only incidental costs for the state to implement this proposal.
<b>Projected cost of the new regulations or changes to existing regulations on localities.</b>	There are only incidental costs for some localities to implement this proposal.
<b>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</b>	Supplemental payments for 1) Physicians affiliated with EVMS 2) One hospital partner with a Type One hospital 3) 5 nursing facilities owned by local governments
<b>Agency’s best estimate of the number of such entities that will be affected. Please include an</b>	Supplemental payments for 1) Physicians affiliated with EVMS

<p><b>estimate of the number of small businesses affected.</b> Small business means a business entity, including its affiliates, that:</p> <p>a) is independently owned and operated and;</p> <p>b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>2) One hospital partner with a Type One hospital</p> <p>3) 5 nursing facilities owned by local governments</p>
	<p>There are no costs for individuals or businesses.</p>
<p><b>Beneficial impact the regulation is designed to produce.</b></p>	<p>Additional federal funding for qualifying hospitals, nursing facilities and physician groups.</p>

## 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. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.*

The affected providers are interested in and supportive of maximizing Medicaid reimbursement, which this regulatory action achieves.

## Public participation notice

*If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

## Family Impact

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent 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.*

These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children; nor 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, but may decrease disposable family income depending upon which provider the recipient chooses for the item or service prescribed.

### Detail of changes

*Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please list separately: (1) all differences between the **pre-emergency** regulation and this proposed regulation; and 2) only changes made since the publication of the emergency regulation.*

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
	12 VAC 30-70-428		New section creates quarterly supplemental payments for private hospital partners of Type One hospitals for inpatient services. Contains effective dates, criteria, and reimbursement methodology and payment limit.
12 VAC 30-80-20		The existing section includes cost-based reimbursement methodologies for several services including regular payments for outpatient hospital services.	Creates quarterly supplemental payments for private hospital partners of Type One hospitals for outpatient services. Contains effective dates, criteria, and reimbursement methodology and payment limit.
12 VAC 30-80-30		The existing section includes cost-based reimbursement methodologies for several services including regular payments for physician services.	Creates quarterly supplemental payments for physicians affiliated with public Tidewater medical school for physician services. Contains effective dates, criteria, and reimbursement methodology and payment limit.
12 VAC 30-90-19		The existing section includes a small supplemental payment up to cost.	Creates additional quarterly supplemental payments for non-state government-owned nursing facilities for NF services. Contains effective dates, reimbursement methodology and payment limit.