Virginia Regulatory Town Hall

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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	DEPT OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation	12 VAC30-80
Regulation title	Methods and Standards for Establishing Payment Rates; Other Types of Care
Action title	Prospective APG Outpatient Hospital Reimbursement
Date this document prepared	

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual.*

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

This regulatory action is intended to implement reimbursement changes for outpatient hospitals.

12VAC30-80 is being amended to implement a prospective outpatient hospital reimbursement methodology. Outpatient hospital reimbursement is currently cost-based with outpatient hospitals services being settled to a defined percentage of cost. This action will fully implement an Ambulatory Patient Group (APG) prospective methodology for Medicaid outpatient hospital reimbursement in a budget neutral manner.

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., 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 and 325, 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.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

This proposed regulation is not essential to protect the health, safety, or welfare of citizens. However, implementing a prospective reimbursement methodology will increase the transparency of payment for each clinically meaningful hospital outpatient service and encourage greater provider efficiency. APG implementation will also reduce the amount of retrospective review and cost settlement activities associated with outpatient hospital reimbursement, thereby saving the Department these administrative expenses.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

The section of the State Plan for Medical Assistance that is affected by this change is the Methods and Standards for Establishing Payment Rates; Other Types of Care (12VAC30-80).

Medicaid currently reimburses outpatient hospitals on a percentage of cost. Based on the cost report data submitted by each facility, DMAS reimburses outpatient hospital services a percentage of charge representing an interim rate that is the equivalent of 80 percent of cost. At cost settlement, each facility's costs are settled to 80 percent of cost for the provider's fiscal year end (FYE).

12VAC30-80 is being amended to convert outpatient hospital reimbursement from cost-based reimbursement to a prospective payment methodology based on APGs. The prospective reimbursement methodology defines Ambulatory Patient Groups (APGs) as allowed outpatient procedures and ancillary services that reflect similar patient characteristics and resource utilization performed by outpatient hospitals. This methodology is very similar to the Diagnosis Related Group (DRG) methodology adopted for inpatient hospital reimbursement in 1996. Each APG group is assigned a relative weight that reflects the relative average cost for each APG compared to the relative cost for all other APGs. The statewide base rate for outpatient hospital services is determined by dividing total reimbursement for outpatient hospital services by the

total number of visits for outpatient hospital services. The individual base rate for each hospital will be wage adjusted. The total allowable operating rate per visit will be determined by multiplying the hospital specific base rate times the APG relative weight.

DMAS plans to implement this change in a budget neutral manner. To maintain budget neutral expenditures for outpatient hospital services operational, the base rate will be adjusted during the rebasing process at least every three years. The APG-relative weights to be implemented will be the weights determined and published periodically by DMAS. The weights will be updated at least every three years in concert with rebasing. New outpatient procedures and new relative weights are to be added as necessary between the scheduled weight and rate updates. The affected entities will be notified of these changes, as they occur, via agency guidance documents.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

One alternative to the proposed regulatory action is to continue operating under the existing reimbursement methodology. DMAS can continue to reimburse outpatient services at a percentage of cost; however, other State Medicaid agencies and other payers including Medicare no longer reimburse costs.

Another alternative is to adapt Medicare's reimbursement methodology (ambulatory patient classification) to Medicaid. However, this methodology is closer to a fee schedule which pays for all services rather than consolidating all services in a clinically meaningful category.

According to many reimbursement specialists, using APGs for outpatient hospital reimbursement is the best practice. Converting to a prospective methodology using APGs supports integration of future quality initiatives and helps to control and predict Medicaid spending.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting,

recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website, www.townhall.virginia.gov, or by mail, email, or fax to Carla Russell, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219; email Carla.Russell@dmas.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last day of the public comment period.

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, regulatory advisory panels) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The agency is using the participatory approach in the development of the proposal. 12 VAC 30-70-490 requires DMAS to appoint a Medicaid Hospital Payment Policy Advisory Council. One of the express charges of the advisory council is "the timing and final design of an outpatient payment methodology." Membership in the advisory council is prescribed by regulation, but there will be public notice for all meetings and all interested parties will have the opportunity to participate.

Family impact

Assess the potential 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; 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, but may decrease disposable family income depending upon which provider the recipient chooses for the item or service prescribed.