Virginia Regulatory Town Hall

Proposed Regulation
Agency Background Document

Agency Name:	Dept. of Medical Assistance Services; 12 VAC 30
VAC Chapter Number:	12 VAC 30-70, 12 VAC 30-80, 12 VAC 30-90
Regulation Title:	Upper Payment Limit for Government-Owned Nursing Homes, ICFs-MR, Hospitals and Clinics for Inpatient and Outpatient Services
Action Title:	2002 Upper Payment Limits
Date:	1/17/2003

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summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed.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 regulation authorizes Medicaid to make supplemental payments to non-state government-owned or operated hospitals and clinics and state government-owned hospitals, nursing homes, ICFs-MR and clinics equal to the difference between the maximum permitted under federal law and regulations and what they are currently paid under Medicaid.

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, section 32.1-325, grants to the Board of Medical Assistance Services the authority to administer the Plan for Medical Assistance. The Code of Virginia (1950) as amended, section 32.1-324, authorizes the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the Plan for Medical Assistance according the to the Board's requirements.

Chapter 899, Items 325CC, 325DD and 325RR of the *2002 Acts of Assembly* authorized the Department of Medical Assistance Services to increase reimbursement for government-owned public nursing homes, hospitals, and clinics consistent with the maximum amount allowed under federal laws and regulations and to enact emergency regulations. Federal regulations (42 CFR 447.272 and 42 CFR 447.321) allow aggregate payments for government-owned or operated hospitals, nursing homes, ICFs-MR, or clinics up to 100 percent of a reasonable estimate of the amount that would be paid by Medicare.

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.

The purpose of this regulation is to maximize federal revenue for the state. Assuming that the government-owned or operated providers transfer to DMAS the money needed to make the supplemental payment, DMAS is able to make the supplemental payment at no net cost to either the state or the providers. DMAS intends to negotiate transfer agreements prior to making the Medicaid supplemental payments. After the Medicaid payment is made, DMAS can draw down the federal financial participation (FFP) related to the Medicaid payment.

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 sections of the State Plan for Medical Assistance affected by this amendment are Methods and Standards for Establishing Payment Rates-Inpatient Hospital Services (Attachment 4.19-A (12 VAC 30-70)), Methods and Standards for Establishing Payment Rates-Other Types of Care (Attachment 4.19-B (12 VAC 30-80) and Methods and Standards for Establishing Payment Rates-Long-Term Care Services (Attachment 4.19-D (12 VAC 30-90)).

Under existing regulations, the Department pays most government-owned nursing homes, hospitals, and clinics according to a reimbursement methodology comparable to that applied to other nursing homes, ICFs-MR, hospitals and clinics. This proposed regulatory action provides for a supplemental payment to non-state government-owned hospitals and clinics, and state government-owned nursing homes, ICFs-MR, hospitals, and clinics for inpatient and outpatient services. Existing regulations already provide for supplemental payments to non-state government-owned nursing homes.

Under existing regulations, the total reimbursement to non-state government-owned hospitals and clinics, and state government-owned nursing homes, ICFs-MR, hospitals, and clinics is less than the maximum allowable amount under current federal law and regulations. This proposed regulatory action provides for DMAS to establish separate reimbursement pools for non-state government-owned hospitals and clinics, and for state government-owned nursing homes, ICFs-MR, hospitals, and clinics for inpatient and outpatient services equal to the difference between current aggregate reimbursement and the maximum aggregate amount allowed under federal regulations. Each pool would be distributed in the form of a supplemental payment to government-owned nursing homes, ICFs-MR, hospitals, and clinics.

The proposed regulations provide supplemental reimbursement for inpatient and outpatient services provided by non-state government-owned hospitals and clinics up to the Medicaid upper payment limit as defined under 42 CFR 447.272 and 42 CFR 447.321. The maximum reimbursement for non-state government owned or operated hospitals and clinics is a reasonable estimate of the amount that would be paid by Medicare. This covers services performed in hospitals or clinics owned or operated by local hospital authorities (Lake Taylor Hospital, Southside Regional Medical Center and Chesapeake General Hospital), some local health departments (Fairfax, Arlington and Richmond), and local community services boards.

The proposed regulations also provide supplemental reimbursement for inpatient and outpatient services provided by state government-owned nursing homes, ICFs-MR, hospitals, and clinics up to the Medicaid upper payment limit as defined under 42 CFR 447.272 and 42 CFR 447.321. The maximum reimbursement for state government-owned or operated nursing homes, hospitals, and clinics for inpatient and outpatient services is a reasonable estimate of the amount that would be paid by Medicare. This covers services provided by UVA Medical Center, the VCU Health System, the Virginia Department of Health, and the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services.

Supplemental reimbursements to individual providers may also be subject to limits related to charges and/or disproportionate share hospital (DSH)) payments.

Because approximately 50% of Medicaid payments are federally funded, by maximizing payments to government-owned nursing homes, hospitals, and clinics, the Commonwealth will maximize the federal funding available to Virginia through these increased Medicaid payments. No disadvantages to the public have been identified in connection with this regulation. The agency projects no negative issues involved in implementing this regulatory change.

Providers affected by this action are non-state government-owned hospitals and clinics and state government-owned nursing homes, ICFs-MR, hospitals and clinics. Localities affected are those having government-owned nursing homes, ICFs-MR, hospitals, or clinics. Other providers and localities are not affected, and recipients are not affected.

DMAS and the government-owned or operated providers will enter into transfer agreements so that the providers will provide the state match funding for the supplemental payment.

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.

Government-owned or operated providers fulfill an important and unique role within the Virginia health care system as safety net providers. Many safety-net providers incur costs for which they are not currently reimbursed that are above and beyond the costs incurred by private providers.

Because approximately 50% of Medicaid payments are federally funded, by maximizing payments to government-owned or operated providers, the Commonwealth will maximize the federal funding available to the public sector in Virginia through these increased Medicaid payments. No disadvantages to the public have been identified in connection with this regulation. The agency projects no negative issues involved in implementing this regulatory change.

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.

On an annual basis, DMAS expects to make supplemental payments to government-owned hospitals, nursing homes, ICFs-MR and clinics totaling $54 million from which it will collect $27 million in new federal revenues. The source of funds for the payment will be the government providers who receive supplemental payments.

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.

This regulatory package adds new regulations 12 VAC 30-70-425 for supplemental payments to non-state government-owned hospitals and 12 VAC 30-70-426 for supplemental payments to state government owned hospitals for inpatient services. Subsection A indicates that DMAS will make supplemental payments to non-state government-owned hospitals or to state government owned hospitals for inpatient services. Subsection B spells out the formula for determining the amount and distribution of the supplemental payment. The amount is the difference between the upper payment limit determined by federal regulations and the amount normally paid by Medicaid. This amount is then distributed to the hospitals based on the difference between this cap and the lower of the providers' charges or the DSH limits. Subsection C indicates that there will be one or more payments as determined by DMAS.

This regulatory package also adds new subsections 7 and 8 to 12 VAC 30-80-20. Subsection 7 refers to supplemental payments to non-state government-owned hospitals and Subsection 8 refers to supplemental payments to state government-owned hospitals for outpatient services. Subsections 7a and 8a indicate that DMAS will make supplemental payments to non-state government-owned hospitals or state government-owned hospitals for outpatient services. Subsections 7b and 8b spell out the formula for determining the amount and distribution of the supplemental payment. The amount is the difference between the upper payment limit determined by federal regulations and the amount normally paid by Medicaid. This amount is then distributed to the hospitals based on the difference between this cap and the lower of the providers' charges or the DSH limit. Subsections 7c and 8c indicate that there will be one or more payments as determined by DMAS.

This regulatory package adds new subsections 16 and 18 to 12 VAC 30-80-30. Subsection 16 refers to supplemental payments to state government-owned clinics and Subsection 18 refers to supplemental payments to non-state government-owned clinics for outpatient services. Subsections 16a and 18a indicate that DMAS will make supplemental payments to state government-owned clinics or non-state government-owned clinics for outpatient services. Subsections 16b and 18b spell out the formula for determining the amount and distribution of the supplemental payment. The amount is the difference between the upper payment limit determined by federal regulations and the amount normally paid by Medicaid. This amount is

then distributed to the clinics based on their portion of the upper payment limit. Subsections 16c and 18c indicate that there will be one or more payments as determined by DMAS.

This regulatory package adds new regulations 12 VAC 30-90-17 for supplemental payments to state government-owned ICFs-MR and 12 VAC 30-90-18 for supplemental payments to state government owned nursing homes for inpatient services. Subsection A determines the amount of the supplemental payment. The amount is the difference between the upper payment limit determined by federal regulations and the amount normally paid by Medicaid. Subsections B, C, and D spell out the formula for distributing the supplemental payment. This amount is distributed to each ICF-MR or nursing home based on the bed days for that facility (Subsection B) divided by total bed days for all ICFs-MR or nursing homes (Subsection C) times the total supplemental payment amount (Subsection D). Subsection E indicates that there will be one or more payments as determined by DMAS.

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.

The General Assembly has directed the agency to maximize revenue using upper payment limits. If this state regulation is not adopted the Commonwealth will not be able to maximize the federal funding available to Virginia. The only alternative is to make no change.

Public Comment

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

No comments were received during the NOIRA public comment period.

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.

The agency has reviewed the regulation and determined that it is clearly written and easily understandable. The regulation is similar in structure to 12 VAC 30-90-19.

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 regulation has no impact on recipients or their families. It will not strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; encourage or discourage economic self-sufficiency, self-pride; the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; strengthen or erode the marital commitment; nor increase or decrease disposable family income.