



Virginia  
Regulatory  
Town Hall

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## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	DEPT OF MEDICAL ASSISTANCE SERVICES
<b>Virginia Administrative Code (VAC) citation</b>	12 VAC 30-80
<b>Regulation title</b>	Methods and Standards for Establishing Payment Rates; Other Types of Care
<b>Action title</b>	Ambulatory Surgery Center and Outpatient Rehabilitation Facility Reimbursement
<b>Date this document prepared</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 36 (2006) 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 Ambulatory Surgery Centers (ASCs). The Centers for Medicare and Medicaid Services (CMS) implemented a new reimbursement system for ASCs in calendar year 2007. This action will also implement reimbursement changes for outpatient rehabilitation (rehab) facilities that are currently reimbursed on a cost basis.

### 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, 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.*

DMAS is promulgating this regulation to align the reimbursement methodology for ASCs with Medicare in a budget neutral manner. Reimbursement for outpatient rehab facilities will also be revised to simplify reimbursement in a budget neutral manner.

### 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).

#### ASC

12 VAC 30-80 is being amended to align ASCs reimbursement with newly implemented Medicare ASC reimbursement policies. Medicaid currently reimburses ASC using the Medicare methodology in effect prior to January 1, 2007. In calendar year 2007, Medicare implemented a new interim ASC reimbursement methodology but still provided information so that DMAS could assign new ASC procedure codes to one of the nine ASC groups from the old Medicare methodology. In calendar year 2008, Medicare implemented a new permanent methodology which reimburses ASCs based on Ambulatory Payment Classification (APC) groups assigned to each procedure code. DMAS will fully implement the new Medicare APC groups for Medicaid ASC reimbursement in a budget neutral manner.

#### Outpatient Rehabilitation Facility Reimbursement

12 VAC 30-80 is also being amended to implement a prospective reimbursement methodology for outpatient rehab facilities that will simplify reimbursement and make it more consistent with the methodologies used by other payers. Currently, outpatient rehab facilities are reimbursed on a cost basis described in 12 VAC 30-80-20. A prospective methodology will simplify reimbursement by eliminating cost reports. DMAS intends to implement this in a budget neutral manner.

## 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.*

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The only alternative to the proposed regulatory action is to continue operating under existing reimbursement methodologies. In the case of ASC reimbursement, DMAS can continue to use the old Medicare methodology but it may be increasingly difficult to do so since Medicare no longer provides the background data needed to support it. In the case of outpatient rehab reimbursement, DMAS can continue reimbursement based on costs, but DMAS is responding to concerns from providers about cost reports and from Medicaid MCOs about the difficulty of matching DMAS reimbursement given the disconnect between this reimbursement methodology and the reimbursement methodology used by other payers. The agency will seek comments on the different types of prospective payment systems used to reimburse outpatient rehab services.

## Public participation

*Please indicate the agency is seeking comments on the intended regulatory action, to include 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.*

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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 written comments may do so by mail, email or fax to Carla Russell, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, 804-225-4586, 804-371-8892 fax, [Carla.russell@dmas.virginia.gov](mailto: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, technical advisory committees) 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.*

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DMAS will involve provider associations, subject matter experts and interested parties in the development of the proposed regulation.

### 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.*

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