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Fast-Track Regulation
Agency Background Document

Agency name	DEPT. OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation(s)	12 VAC 30-70-291; 12 VAC 30-70-301; 12 VAC 30-70-425; 12 VAC 30-80-20
Regulation title(s)	Methods and Standards for Establishing Payment Rates - Inpatient Hospital Services; Methods and Standards for Establishing Payment Rates – Other Types of Care;
Action title	2018 Institutional Provider Reimbursement II
Date this document prepared	May 20, 2019

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations.*

Brief Summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The proposed amendments contain three provider reimbursement updates as required by the 2018 Acts of Assembly as follows:

1. The proposed amendment at 12 VAC 30-70-291 updates current state regulations to indicate an additional indirect medical education (IME) payment will be made to freestanding children's hospitals in the District of Columbia.
2. The proposed amendment at 12 VAC 30-70-301 eliminates disproportionate share hospital (DSH) payments to out-of-state children's hospitals, to include freestanding children's hospitals in the District of Columbia.

3. The proposed amendments at 12 VAC 30-70-425 and 12 VAC 30-80-20 updates existing regulations to allow additional supplemental payments to be issued to each non-state government owned acute care hospital for inpatient services provided to Medicaid patients.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

DMAS: Department of Medical Assistance Services
DSH: Disproportionate Share Hospitals
IME: Indirect Medical Education
FY: Fiscal Year
UPL: Upper Payment Limit

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 Regulatory Review Summary entitled "2018 Institutional Provider Reimbursement II" (12 VAC 30-70-291; 12 VAC 30-70-301; 12 VAC 30-70-425; 12 VAC 30-80-20) and adopt the action stated therein. I certify that this final regulatory action has completed all the requirements of the Code of Virginia § 2.2-4012, of the Administrative Process Act.

May 20, 2019_____ /Jennifer S. Lee, M.D./_____

Date Jennifer S. Lee, M.D., Director

Dept. of Medical Assistance Services

Mandate and Impetus

Please identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, board decision, etc.). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

As required by Virginia Code § 2.2-4012.1, please also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track process.

The proposed amendments at 12 VAC 30-70-291 and 12 VAC 30-70-301, are required by the 2018 *Acts of Assembly*, Chapter 2, Item 303.SSS which states:

"Effective July 1, 2018, the Department of Medical Assistance Services shall amend the State Plan for Medical Assistance to make the following changes. The department shall: (i) eliminate eligibility for Disproportionate Share Hospital (DSH) payments for Children's National Medical Center (CNMC); (ii) increase the annual indirect medical education (IME) payments for CNMC by the amount of DSH the hospital was eligible for in fiscal year 2018; and (iii) reduce the Type 2 DSH allocation by this same amount. The department shall have the authority to implement these changes effective July 1, 2018, and prior to completion of any regulatory action to effect such change."

The proposed amendment at 12 VAC 30-70-425 and 12 VAC 30-80-20 are required by the 2018 *Acts of Assembly*, Chapter 2, Item 303.XX.7 which states:

"The department shall amend the State plan for Medical Assistance to implement a supplemental inpatient and outpatient payment for Chesapeake Regional Hospital based on the difference between reimbursement with rates using an adjustment factor of 100% minus current authorized reimbursement subject to the inpatient and outpatient Upper Payment Limits for non-state government owned hospitals. The department shall include in its contracts with managed care organizations a minimum fee schedule for Chesapeake Regional Hospital consistent with rates using an adjustment factor of 100%. The department shall adjust capitation payments to Medicaid managed care organizations to fund this minimum fee schedule. Both the contract changes and capitation rate adjustments shall be compliant with 42 C.F.R. 438.6(c)(1)(iii) and subject to CMS approval. Prior to submitting the State Plan Amendment or making the managed care contract changes, Chesapeake Regional Hospital shall enter into an agreement with the department to transfer the non-federal share for these payments. The department shall have the authority to implement these reimbursement changes consistent with the effective date(s) approved by the Centers for Medicare and Medicaid (CMS). No payments shall be made without CMS approval."

Legal Basis

Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.

Section 32.1-325 of the Code of Virginia authorizes the Board of Medical Assistance Services to administer and amend the State Plan for Medical Assistance and to promulgate regulations. Section 32.1-324 of the Code of Virginia authorizes the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the State Plan for Medical Assistance and to promulgate regulations according to the Board's requirements. The Medicaid authority as established by § 1902 (a) of the Social Security Act (42 USC § 1396a) provides governing authority for payments for services.

Please also see the mandates listed in the prior section, entitled "Mandate and Impetus."

Purpose

Please explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

The proposed amendment at 12 VAC 30-70-291 updates current state regulations to indicate an additional indirect medical education (IME) payment will be made to freestanding children's hospitals in the District of Columbia. The proposed amendment at 12 VAC 30-70-301 eliminates disproportionate share hospital (DSH) payments to out-of-state children's hospitals, to include freestanding children's hospitals in the District of Columbia. The proposed amendments at 12 VAC 30-70-425 and 12 VAC 30-80-20 updates existing regulations to allow additional supplemental payments to be issued to each non-state government owned acute care hospital for inpatient services provided to Medicaid patients.

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.

Currently, DSH payments are being made to out-of-state children's hospitals to include freestanding children's hospitals located in the District of Columbia. The proposed regulations eliminate these DSH payments in 12 VAC 30-70-301 and increase the IME payments to freestanding children's hospitals in the District of Columbia by the amount of DSH payments that the hospital was eligible for in SFY 2018 in 12 VAC 30-70-291. The total Type Two hospital DSH allocation will be reduced by the total amount paid to freestanding children's hospitals in the District of Columbia in SFY 2018. All changes to these two sections are effective July 1, 2018.

Unreimbursed Medicaid cost payments are currently made to non-state government hospitals as certified through provider cost reports and meeting other criteria as outlined in the VAC. Beginning July 1, 2018, additional supplemental payments shall be made to non-state government owned acute-care hospitals for inpatient and outpatient services. The supplemental payments will be made quarterly for inpatient and outpatient services which were provided in the prior quarter. The quarterly payments shall begin with the first quarter in SFY 2019 and will be calculated by multiplying the Medicaid inpatient and outpatient hospital payments paid in that quarter by the inpatient and outpatient Upper Payment Level (UPL) gap percentages for each hospital. UPL gap percentages are calculated annually for hospitals using the most recent year in which the data is available and inflated to the SFY in which the payments are being made. These updates are being made in sections 12 VAC 30-70-425 and 12 VAC 30-80-20.

Issues

Please identify the issues associated with the regulatory change, 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, include a specific statement to that effect.

The primary advantages to the Commonwealth and the public from these regulatory changes is to provide additional reimbursement for certain hospitals. There are no disadvantages to the Commonwealth or the public as a result of this regulatory action.

Requirements More Restrictive than Federal

Please identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.

There are no requirements in this regulation that are more restrictive than applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Please identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

No state agencies, localities, or other entities are particularly affected by this change.

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, please identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Please keep in mind that this is change versus the status quo.

Impact on State Agencies

For your agency: projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail;	Increase in federal fund expenditures (fund 1000). No net increase in general fund expenditures; any increase in general fund

b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources	expenditures will be offset by intergovernmental transfers. Any administrative cost can be absorbed within existing resources.
For other state agencies: projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	None
For all agencies: Benefits the regulatory change is designed to produce.	None

Impact on Localities

Projected costs, savings, fees or revenues resulting from the regulatory change.	None
Benefits the regulatory change is designed to produce.	None

Impact on Other Entities

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	One non-state government owned hospital and one out-of-state children's hospital.
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. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million.	One non-state government owned hospital and one out-of-state children's hospital.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Please be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	None
Benefits the regulatory change is designed to produce.	Increased net reimbursement to non-state government owned hospitals. A reduction in one form of reimbursement for out-state children's hospital will be offset by an increase in another form of reimbursement..

Alternatives

Please describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

No alternatives will meet the requirements of the General Assembly mandate.

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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.

This regulatory change has no effect on small businesses.

Public Participation

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.

Detail of Changes

Please list all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation.

If the regulatory change will be 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 change. Delete inapplicable tables.

If the regulatory change is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below. Please include citations to the specific section(s) of the regulation that are changing.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
12VAC30-70-291		Type Two hospitals shall receive an I<E payment equal to the hospital's Medicaid operating reimbursement times an IME percentage determined as follows: IME percentage for Type Two Hospitals = [1.89 X 991+r)$^{0.405}$-10] X 0.5695.	Effective July 1, 2018, an additional $362,360 IME payment shall be added to the IME payment calculated for freestanding children's hospitals in the District of Columbia. The intent of this change is to update current state regulation to indicate an additional IME payment will be made to freestanding children's hospitals in the District of Columbia.
12VAC30-70-301		DSH eligible hospitals shall have a total Medicaid inpatient utilization rate equal to 14% or higher in the base year using Medicaid days eligible for Medicare DSH or a low income utilization rate in excess of 25%. Type TWO hospital DSH allocation shall equal the amount of DSH paid to Type Two hospitals in state FY 2014 increased annually by the present change in the federal allotment, including any reductions as a result of the Patient Protection and Affordable Care Act, P.L. 111-148, adjusted for the state fiscal year.	Effective July 1, 2018, freestanding children's hospitals in the District of Columbia shall not be eligible for DSH payments. Effective July 1, 2018, the Type Two DSH hospital allocation shall be reduced by the amount of DAH allocated to freestanding children's hospitals in the District of Columbia in state FY 2018. The intent of this change is to eliminate DSH payments to out-of-state children's hospitals, to include freestanding children's hospitals in the District of Columbia.
12VAC30-70-425		Effective July 1, 2005, DMAS shall draw down federal funds to cover unreimbursed Medicaid costs for inpatient services provided by non-state government-owned hospitals as certified by the provider through cost reports.	Effective July 1, 2018, additional supplemental payments will be issued to each non-state government owned acute care hospital for inpatient services provided to Medicaid patients. The intent of this change is to update existing regulations to allow additional supplemental payment to be issued to each non-state government owned acute care hospital for inpatient services provided to Medicaid patients.
12VAC30-80-20		N/A	Effective July 1, 2018, supplemental payments will be issued to qualifying non-state government owned hospitals for outpatient services provided to Medicaid patients. The intent of this change is to update existing regulations to allow additional supplemental payment to be issued to each non-state government owned acute care hospital for inpatient services provided to Medicaid patients.