



Proposed Regulation Agency Background Document

Agency name	Department of Medical Assistance Services
Virginia Administrative Code (VAC) citation	12 VAC 30-90-264
Regulation title	Specialized care services.
Action title	Reimbursement for NF Specialized Care Ancillary Services
Document preparation date	

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

Under existing regulations, DMAS reimburses reasonable costs without limit for covered specialized care ancillary services, except kinetic therapy devices. In response to both the escalating costs and the need for greater consistency in charges submitted for these services, this proposed regulation places a ceiling on ancillary services reimbursement to no more than 150% of average specialized care ancillary costs. The ceiling will be adjusted annually for inflation.

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., the 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.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

The purpose of this action is to implement a reasonable limit on the reimbursement for specialized care ancillary services. Over the past several years, specialized care ancillary service costs have markedly increased and wide variation in costs among facilities have been observed. The wide variation does not appear to correspond to differing levels of severity among specialized care populations and do not always appear to be associated with the severity of the patient's needs. This action is designed to ensure that Medicaid recipients continue to receive appropriate specialized care ancillary services in an efficient manner while maintaining adequate reimbursement.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

DMAS determined that the appropriate ceiling for specialized ancillary care services is \$238.81 per day for calendar year 2004. This ceiling is 150% of average ancillary costs in provider fiscal year 2003 inflated to calendar year 2004. The regulation also provides for a mechanism to inflate the ceiling to the provider fiscal year using an indexing methodology similar to that used for regular nursing home reimbursement. The specific change is found in 12 VAC 30-90-264(8)(a), and consists in adding the following language:

Effective for specialized care days on or after July 1, 2006 reimbursement for reasonable costs shall be subject to a ceiling. The ceiling shall be \$238.81 per day for calendar year 2004 (150% of average costs) and shall be inflated to the appropriate provider fiscal year. For cost report years beginning in each calendar year, ancillary ceilings will be inflated using the moving average for the second quarter of the year, taken from the Virginia Specific Nursing Home Input Price Index published by Global Insight or its successor for the fourth quarter of the previous year.

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 the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

The primary advantage to the Commonwealth and to the agency is that this change in regulations addresses the increased and wide variation in ancillary costs among specialized facilities. This action provides a reimbursement methodology similar to other long-term care payment methodologies by evaluating per diem rates among the facilities providing services to specialized care residents statewide and calculating a statewide ceiling equal to 1.5 times the average ancillary cost. A ceiling that is 150% of the average costs is designed to ensure that Medicaid recipients continue to receive appropriate specialized care ancillary services in an efficient manner while maintaining adequate reimbursement. There are no disadvantages to the agency or to the Commonwealth.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

<p>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</p>	<p>There are no projected costs to the state for implementation of the proposed regulations. It is estimated that the Commonwealth will save approximately \$464,400 total funds in the first year of implementation, and it is expected that savings will continue in subsequent years.</p>
<p>Projected cost of the regulation on localities</p>	<p>None.</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the regulation</p>	<p>Nursing facilities that serve specialized care Medicaid recipients will be affected by the regulation.</p>
<p>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.</p>	<p>DMAS estimates that four out of ten facilities have ancillary costs above the proposed ceiling. One of these facilities qualifies as a small business.</p>
<p>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</p>	<p>The proposed regulation will reduce reimbursement to the four affected facilities by approximately \$464,400 annually. This will reduce reimbursement for small business by \$188,000.</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.

The alternative is to continue to pay specialized care ancillary services that are calculated using the established methodology.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

Commenter	Comment	Agency response
Hobart Harvey	The Virginia Health Care Association (VHCA) requests the opportunity to meet with the Department and provide input into any changes under consideration. VHCA represents the vast majority of Specialized Care providers in the Commonwealth and is well suited to work with DMAS as changes to this program are considered.	The Agency agreed to include the VHCA in discussions as changes to this program are developed.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

This regulation has no impact on recipients or their families. These changes do 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, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; strengthen or erode the marital commitment; or increase or decrease disposable family income.

This regulation affects the reimbursement rates paid for specialized care ancillary services. This change alone would not be expected to affect recipients or their families in any appreciable way.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
12 VAC30-90-264(8)(a)		Reimburses all reasonable ancillary costs.	Adds language to implement a ceiling on the reimbursement for specialized care ancillary services of 150% of average costs for these services. Also describes the yearly adjustment for inflation.