Adverse impact notification sent to Joint Commission on Administrative Rules, House Committee on Appropriations, and Senate Committee on Finance (COV § 2.2-4007.04.C): Yes ☐ Not Needed ☒

If/when this economic impact analysis (EIA) is published in the *Virginia Register of Regulations*, notification will be sent to each member of the General Assembly (COV § 2.2-4007.04.B).

Virginia Department of Planning and Budget

Economic Impact Analysis

12 VAC 30-30 Groups Covered and Agencies Responsible for Eligibility Determination
Department of Medical Assistance Services
Town Hall Action/Stage: 4432/7321
April 18, 2016

Summary of the Proposed Amendments to Regulation

The proposed regulations establish rules for federally required Medicaid presumptive eligibility determinations made by hospitals for their patients seeking treatment.

Result of Analysis

The benefits likely exceed the costs for all proposed changes. An alternative or an additional standard may improve the regulation in measuring a hospital's performance. Additional regulatory language about the length of the disqualification period may improve the regulation. Additional language may be needed to dissuade applicants from being untruthful.

Estimated Economic Impact

Starting in January 2014, the federal Affordable Care Act provided qualified hospitals an opportunity to make Medicaid presumptive eligibility determinations for their patients seeking treatment. States must allow all qualifying hospitals willing to abide by state policies and procedures to perform presumptive eligibility determinations. Federal regulations in 42 CFR 435.1101; 1102 outline the details regarding the implementation of this requirement by the states. Virginia's presumptive eligibility rules were approved by the Centers for Medicare and Medicaid Services (CMS) in July 2015 and have already been implemented under the approved

state plan. In fiscal year 2015, approximately $3.5 million in total expenditures was paid for 19,423 claims involving 2,079 unique recipients.

Under the presumptive eligibility rules, Medicaid eligibility determinations are made by trained hospital staff based on an assessment of the individual's status as a member of a group (i.e. pregnant women, infants and children under age 19, parents and other caretaker relatives, individuals eligible for family planning services, former foster care children, individuals needing treatment for breast and cervical cancer), their income, state residency, and citizenship status. The hospital then assists the individual in completing and submitting a full Medicaid application for future Medicaid coverage. If the individual is found presumptively eligible, he or she is temporarily enrolled in Medicaid and health care providers receive payment for services provided during this interim period. A full application for Medicaid coverage may follow, with the determination of eligibility completed by a local department of social services, or the Department of Medical Assistance Services (DMAS). The presumptive eligibility begins on the date the determination is made and ends on the earlier of the day on which a decision is made on a full Medicaid application, or the last day of the month following the month that the hospital's presumptive eligibility determination was made and no full Medicaid application was filed. Payment for services covered is guaranteed during the presumptive eligibility period. There is no recoupment for Medicaid services provided during that period resulting from erroneous determinations made by qualified entities.

Pursuant to a request by CMS, the proposed regulation establishes two performance standards for hospitals performing presumptive eligibility determinations. In order to maintain their participation to make presumptive eligibility determinations, a hospital is required to ensure (i) that a certain percentage of individuals deemed presumptively eligible will file a full Medicaid application before the end of the presumptive eligibility period, and (ii) that a certain percentage of individuals deemed presumptively eligible will be determined eligible based on the full application. The purpose of the proposed performance standards is to ensure that hospitals are making appropriate presumptive eligibility determinations and fulfilling their oversight responsibilities. If a hospital fails to follow these standards it may be disqualified from making such determinations.

DMAS recognizes if not carefully implemented, the proposed performance standards for participating hospitals could have unintended adverse effects on their ability to participate in the program through no fault of their own.

A performance standard must be under the control of the entity whose performance it measures. In this case, a hospital does not have control over whether the individuals deemed presumptively eligible will file a full Medicaid application. The individual may not want to file a full Medicaid application or may even refuse to do so. The individual's failure to follow through with the full application should not be held against the performance of a qualified hospital and put its participation in jeopardy. In order to avoid such unintended consequences, such cases will be excluded in calculating the performance metric when the hospital certifies that an attempt has been made but the individual declined to follow through with the full application.

Similarly, the hospital does not have control over whether the individual is providing accurate or even truthful information when filing the application for the presumptive eligibility. Additionally, comparison of determinations made at two different points in time may lead to erroneous conclusions as the applicant's financial circumstances may have changed between the interim and the full applications. Thus, a participating hospital will not be held liable if the information provided by the applicant results in a denial of eligibility following the full application; such cases will also be excluded from the data in calculating the performance metric. In the alternative, this performance standard may perhaps focus solely on whether the hospital made an error in its presumptive eligibility determination treating the information on the application as true.

DMAS notes that these two performance measures were suggested by CMS and any revision in these measures would necessitate a state plan amendment. It appears that the states have the option to choose different performance standards than those suggested by CMS.[1]

The primary advantages of this regulatory action are that it enables DMAS to comply with federal requirements, assures individuals timely but limited access to care, promotes Medicaid enrollment among individuals who are eligible for Medicaid but not enrolled, and permits hospitals to receive Medicaid reimbursement for covered services rendered. Since the

[1] See Answer #24, "Medicaid and CHIP FAQs: Implementing Hospital Presumptive Eligibility Programs," January 2014, Centers for Medicare & Medicaid Services.

presumptive eligibility program has already been implemented since July 2015, no significant economic impact is expected upon promulgation of the proposed changes other than providing the rules in the regulations for the affected entities and the public.

The proposed regulation may be improved by addressing the length of the disqualification period and when and how a reinstatement could occur if a hospital fails to meet the performance standards. It does not make sense to prohibit a hospital from participation in this program indefinitely.

Further, as discussed above, there is no recoupment for payments from hospitals for services provided during the presumptive eligibility period. Without such a guarantee, a hospital could not rely on the presumptive eligibility determination and may be inclined to refrain from participation. However, given the unique nature of this program, the applicant should be held liable when he or she intentionally provides false information. The proposed regulation may be further improved by making it clear that the applicant may be held liable or by requiring disclosure of such a potential liability on the application form. Such language would dissuade applicants from being untruthful and mitigate the Commonwealth's exposure to risk of fraud.

Businesses and Entities Affected

The proposed regulation primarily applies to hospitals wishing to participate in presumptive eligibility determinations and the individuals who may presumptively qualify for Medicaid. As of August 2014, there were 57 hospitals making presumptive eligibility determinations. In fiscal year 2015, there were 2,079 recipients identified as presumptively eligible.

Localities Particularly Affected

The proposed changes apply statewide.

Projected Impact on Employment

A hospital may voluntarily choose to participate in presumptive eligibility determinations. Such participation may increase their demand for labor to assist the individuals in the application process.

Effects on the Use and Value of Private Property

Participation in presumptive eligibility determinations helps hospitals receive payment from Medicaid for eligible individuals. In that sense, the proposed regulation has a positive impact on the asset values of participating hospitals.

Real Estate Development Costs

No impact on real estate development costs is expected.

Small Businesses:

Definition

Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million."

Costs and Other Effects

Affected hospitals are not considered small businesses.

Alternative Method that Minimizes Adverse Impact

The proposed changes do not affect small businesses.

Adverse Impacts:

Businesses:

The proposed changes are not anticipated to have an adverse impact on businesses.

Localities:

The proposed amendments should not adversely affect localities.

Other Entities:

The proposed changes are not anticipated to have an adverse impact on other entities.

Legal Mandates

General: The Department of Planning and Budget has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order Number 17 (2014). Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of

businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5)the impact on the use and value of private property.

Adverse impacts: Pursuant to Code § 2.2-4007.04(C): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance within the 45-day period.

If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

ooo