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Fast-Track Regulation Agency Background Document

Agency name	Department of Medical Assistance Services
Virginia Administrative Code (VAC) citation(s)	12 VAC 30-90-10 et seq.
Regulation title(s)	Methods and Standards for Establishing Payment Rates—Long Term Care Services
Action title	Nursing Facility Price-Based Reimbursement
Date this document prepared	

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The current cost-based payment methodology reimburses nursing facilities based on each facility's operating costs in the prior year inflated to the rate year subject to ceilings for defined peer groups. Other costs including capital, nurse aide training, and administrative costs are also reimbursed on a retrospective basis.

In this new methodology, 12 VAC 30-90-10, 12 VAC 30-90-41, 12 VAC 30-90-55, 12 VAC 30-90-60, 12 VAC 30-90-65 are amended and 12 VAC 30-90-44 is established to convert nursing facility reimbursement from cost-based reimbursement to a price-based payment methodology.

12 VAC 30-90-20 is being repealed because its contents have been merged into existing section 12 VAC 30-90-10 in order to eliminate duplicative, overlapping regulatory text.

The direct operating component is adjusted by the Resource Utilization Group (RUG) weights as defined in 12VAC30-90-306 Case-mix index (CMI) to reflect the RUG for each nursing facility resident. DMAS is transitioning from the RUG-III 34 Medicaid grouper in 12VAC30-90-306 to the RUG-IV 48 grouper in state fiscal year (SFY) 2018. DMAS will transition to the new methodology over the next four years in 25-percent increments. 12VAC30-90-36 and 12VAC30-90-37 are amended to convert the existing capital reimbursement to a fully prospective reimbursement using the same Fair Rental Value (FRV) methodology. These sections are also amended to reduce the FRV rental rate from 8.5 percent to 8.0 percent and establish a \$3,000 per bed threshold for major renovation and a mid-year process for adjusting the FRV rate. 12 VAC 30-90-170 is amended to reimburse Nurse Aide Training Competency Evaluation Programs (NATCEPs) costs in a prospective manner. 12 VAC 30-90-180 is amended to reimburse Criminal Records Checks (CRC) costs at a prospective per diem. The capital, NATCEPs and CRC rate components are recalculated annually from one year more recent cost report data. The total per diem amount paid to nursing facilities will be the sum of the case-mix adjusted direct operating per diem, the indirect operating per diem, the capital per diem, the NATCEPs per diem and the CRC per diem. 12 VAC 30-90-278 is established to authorize a private room differential for individuals when the accommodation is medically necessary.

The proposed changes were estimated to be budget neutral in aggregate prior to the additional reductions in the rental rate floor. Individual facility payments may increase or decrease under the new methodology; however, the new payment methodology was not expected to increase or reduce annual payments for nursing facilities in aggregate.

In addition, DMAS is setting out in regulation the requirements and limits for Medicaid coverage of private rooms in nursing facilities (12 VAC 30-90-267). Medicaid covers private rooms in NFs only when it is medically necessary for the individual.

DMAS is also proposing to reimburse the price-based operating rate rather than the transition operating rate to any NF whose licensed bed capacity decreased by at least 30 beds after 2011 and occupancy increased from less than 70 percent in 2011 to more than 80 percent in 2013.

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 Nursing Facility Price Based Reimbursement with the attached amended regulations (12 VAC 30-90-10; 12 VAC 30-90-20; 12 VAC 30-90-36; 12 VAC 30-90-37; 12 VAC 30-90-41; 12 VAC 30-90-44; 12 VAC 30-90-55; 12 VAC 30-90-60; 12 VAC 30-90-65; 12 VAC 30-90-170; 12 VAC 30-90-180; 12 VAC 30-90-267; 12 VAC 30-90-306) and adopt the action stated therein. I certify that this fast track regulatory action has completed all the requirements of the Code of Virginia § 2.2-4012.1, of the Administrative Process Act.

Date

Cynthia B. Jones, Director
Dept. of Medical Assistance Services

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

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. DMAS is relying on this general authority to recommend the addition of the new text in 12 VAC 30-90-267 concerning private room differential payments.

Based on authority under Item 301 KKK of Chapter 2 of the *2014 Acts of the Assembly* and Chapter 665, Item 301 KKK of the *2015 Acts of the Assembly*, this action replaces the existing cost-based nursing facility payment methodology with a price-based methodology and adjusts the reimbursement for capital. This legislative mandate also directed DMAS to reimburse the

price-based operating rate rather than the transition operating rate to any NF whose licensed bed capacity decreased by at least 30 beds after 2011 and occupancy increased from less than 70 percent in 2011 to more than 80 percent in 2013.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The purpose of this action is to replace the current cost-based methodology with the recommended price-based methodology. This action does not directly affect the health, safety, and welfare of citizens of the Commonwealth. It does affect nursing facility providers who provide care to their residents.

Rationale for using fast-track process

Please explain the rationale for using the fast-track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

This regulatory action is being promulgated as a fast track action as the affected industry has agreed to using this part of the regulatory process. The nursing home industry has been actively consulted about these changes and their comments have been addressed in this proposal.

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.

The section of the State Plan for Medical Assistance that is affected by this action is Methods and Standards for Establishing Payment Rates-Long Term Care (12VAC30-90-36 - Nursing facility capital payment methodology; 12VAC30-90-37 - Calculation of FRV per diem rate for capital, calculation of FRV rental amount, change of ownership; 12 VAC 30-90-41 - Nursing facility cost-based reimbursement formula; 12 VAC 30-90-44 - Nursing facility price-based payment methodology; 12 VAC 30-90-170 - NATCEPs costs; 12VAC30-90-180 - Criminal records checks; 12 VAC 30-90-278 - Private Room Differential).

The current cost-based payment methodology reimburses nursing facilities based on each facility's operating costs in the prior year inflated to the rate year subject to ceilings for defined peer groups. Other costs, including capital, nurse aide training, and administrative costs, are also reimbursed on a retrospective basis. Currently, there is no additional reimbursement provided when a NF resident has a medical need to be placed in a private room.

12 VAC 30-90-10, 12 VAC 30-90-41, 12 VAC 30-90-55, 12 VAC 30-90-60, 12 VAC 30-90-65 are being amended and 12 VAC 30-90-44 is being established to convert nursing facility reimbursement from cost-based reimbursement to a price-based payment methodology. The new price-based payment methodology creates prospective payment components for direct and indirect operating costs by peer group. The cost per day will be 105.000 percent of the direct operating day-weighted median for each direct peer group and 100.735 percent of the indirect operating day-weighted median for each indirect peer group. These price-based rates for the operating components will be calculated using nursing facility cost report data in a base year and rebased at least every three years. The price-based rates will also be adjusted by a spending floor to limit the potential gain of low cost facilities, thereby making it possible to implement higher adjustment factors for other facilities at less cost.

The direct operating component will be adjusted by the Resource Utilization Group (RUG) weights as defined in 12VAC30-90-306 Case-mix index (CMI) to reflect the RUG for each nursing facility resident. DMAS shall transition from the RUG-III 34 Medicaid grouper in 12VAC30-90-306 to the RUG-IV 48 grouper in state fiscal year (SFY) 2018.

DMAS will transition to the new methodology over the next four years in 25-percent increments. For the first transition period, the direct operating rates from July 1, 2014 to October 31, 2014 shall be case-mix adjusted on a facility basis using the two most recent facility average quarterly CMI scores. Effective November 1, 2014, nursing facility claims will be reimbursed based on the RUG submitted on individual claims. The RUG weight will be applied to direct operating component to adjust the claim payment for the individual's CMI score.

12VAC30-90-36 and 12VAC30-90-37 are being amended to convert the existing capital reimbursement to a fully prospective reimbursement using the same Fair Rental Value (FRV) methodology. These sections are also being amended to reduce the FRV rental rate from 8.5 percent to 8.0 percent. The new methodology also establishes a \$3,000 per bed threshold for major renovation and a mid-year process for adjusting the FRV rate.

12 VAC 30-90-170 is being amended to reimburse Nurse Aide Training Competency Evaluation Programs (NATCEPs) costs in a prospective manner. The NATCEPs per diem will be calculated by dividing costs by days and inflating to the rate year.

12 VAC 30-90-180 is being amended to reimburse Criminal Records Checks (CRC) costs in a prospective per diem. CRC costs will be calculated by dividing total costs by days and paid prospectively.

The capital, NATCEPs, and CRC rate components shall be recalculated annually from one year more recent cost report data.

The total per diem amount paid to nursing facilities will be the sum of the case-mix adjusted direct operating per diem, the indirect operating per diem, the capital per diem, the NATCEPs per diem, and the CRC per diem.

The proposed changes were estimated to be budget neutral in the aggregate prior to the additional reductions in the rental rate floor. Individual facility payments may increase or decrease under the new methodology; however, the new payment methodology was not expected to increase or reduce annual payments for nursing facilities in aggregate.

12 VAC 30-90-267 is established to authorize a private room differential for individuals when the accommodation is medically necessary. The additional payment amount shall be authorized based on medical necessity criteria established by DMAS.

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 there are no disadvantages to the public or the Commonwealth, please indicate.

The actions identified in this action do not impact the public so there are no advantages or disadvantages for citizens. These actions change the reimbursement methodology for nursing facilities. The primary advantage to the agency and the Commonwealth is replacing an outdated cost-based methodology with more efficient and effective prospective reimbursement. There is no disadvantage to the agency or the Commonwealth. There are no other pertinent matters of interest to the regulated community, government officials, or the public.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include 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 statement to that effect.

There are no requirements more restrictive than federal contained in these recommendations.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There will be no localities that are more affected than others as these requirements will apply statewide.

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) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of 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 proposed regulation.

This regulatory action was undertaken to adjust the nursing facility payment methodology based on the 2014 *Acts of the Assembly* directive and industry standards for prospective reimbursement.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

<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>This action is budget neutral in the aggregate.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>None.</p>
<p>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</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. 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.</p>	<p>Approximately 260 nursing facilities will be affected. DMAS estimates that about 24 facilities may qualify as small businesses because they have less than 120 beds and are not part of nursing home national chain, a hospital, or continuing care retirement community.</p>
<p>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the</p>	<p>This action is budget neutral. No additional administrative cost is expected for providers.</p>

<p>proposed regulatory changes or new regulations.</p>	
<p>Beneficial impact the regulation is designed to produce.</p>	<p>This action allows the Commonwealth to replace an outdated cost-based methodology with more efficient and effective prospective reimbursement.</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. 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 regulation.

This regulatory action was undertaken to replace the current cost-based payment methodology with a prospective payment methodology for nursing facilities that serve the impoverished and medically needy. The only other alternative was to maintain the existing methodology. The new methodology was authorized in detail in the 2014 and 2015 *Acts of the Assembly*.

Public participation notice

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.

Family Impact

Please assess the 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.

These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children; nor 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.

Detail of changes

*Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is 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 action. If the proposed regulation is intended to replace an emergency regulation, please list separately: (1) all differences between the **pre-emergency** regulation and this proposed regulation; and 2) only changes made since the publication of the emergency regulation.*

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
12 VAC 30-90-10		Defines payment methodology for long term care.	Revised to limit cost-based methodology to facilities which are exempt from price-based methodology. (including facilities operated by DBHDS, facilities operated by the Department of Veteran’s Services, and Intermediate Care Facilities for the Intellectually Disabled).
12 VAC 30-90-20		Contains general requirements for the Nursing Home Payment System: 3 separate cost components; regional basis for establishing ceiling limitations; special provisions for DBHDS and Veterans Affairs nursing facilities; reference is given to Medicare principles of reimbursement being used except when such principles are modified by the Virginia methodology.	Is being repealed because it's text has been merged into sec. 10 and duplicative text is removed.
12 VAC 30-90-36		Sets out definitions and methodology of nursing and specialized care facility reimbursement for capital based on fair rental value (FRV).	FRV rate year shall be the same as the SFY. Establishes a \$3,000 per bed threshold for major renovation. Creates a floor of 8.0% for NF rental rates. Rental rate effective for the SFY.

<p>12 VAC 30-90-37</p>		<p>Details of the FRV reimbursement methodology for capital.</p>	<p>Convert to a fully prospective reimbursement method. NF must submit report for the calendar year showing FRV for NF and specialized beds. Establish a mid-year process for adjusting the FRV rate.</p>
<p>12 VAC 30-90-41</p>		<p>Cost-based method of nursing facility reimbursement</p>	<p>Methodology for phasing out old method and moving to new price-based method.</p>
	<p>12 VAC 30-90-44</p>	<p>New section</p>	<p>Convert to a price-based payment reimbursement methodology that creates prospective payment components for direct and indirect operating costs by peer group. Cost per day in the base year will be inflated to the midpoint of the fiscal year rate. Prices will be established and adjusted for direct and indirect peer groups. Direct costs for a resident to be based on RUG level. New method to be transitioned by 25% over 4 years. Formula for calculating the prospective capital rates is defined.</p>
<p>12 VAC 30-90-55</p>		<p>Defines provider payments under cost-based reimbursement.</p>	<p>Sunsets the limitation to pay no more than charges.</p>
<p>12 VAC 30-90-60</p>		<p>Defines the interim rate for new facilities under cost-based reimbursement.</p>	<p>Sunsets cost-based reimbursement provision for new facilities.</p>
<p>12 VAC 30-90-65</p>		<p>Defines the final rate for new facilities under cost-based reimbursement.</p>	<p>Sunsets cost-based reimbursement provisions for new facilities.</p>
<p>12 VAC 30-90-170</p>		<p>Retrospective reimbursement method for NATCEP costs</p>	<p>Reimburse NATCEP costs in a prospective manner (per diem being</p>

			<p>calculated by dividing costs by days and inflating to the current year). Recalculate rates annually from one year more recent cost report data.</p>
12 VAC 30-90-180		Retrospective reimbursement method for criminal records checks	<p>Reimburse criminal records check costs via a prospective per diem (calculated by dividing total costs by days and paid prospectively). Recalculate rates annually from one year more recent cost report data.</p>
	12 VAC 30-90-267	New section	<p>Authorize a private room differential for individuals when medically necessary, with the authorized amount based on criteria established by DMAS.</p>
12 VAC 30-90-306		Case mix index.	<p>The existing case mix index is specified as applying to dates of service between 7/1/2001 and 6/30/2014. The new case-mix formula is specified to begin 7/1/2014 and is tied by reference to the newly created section 12 VAC 30-90-44.</p>