Virginia Regulatory Town Hall

Notice of Intended Regulatory Action
Agency Background Document

Agency Name:	Dept. of Medical Assistance Services 12 VAC 30
VAC Chapter Number:	12 VAC 30-90
Regulation Title:	Methods and Standards for Establishing Payment Rates-Long Term Care Services
Action Title:	Ownership Criteria for Fair Rental Value
Date:	5/22/2003

This information is required prior to the submission to the Registrar of Regulations of a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B). Please refer to Executive Order Twenty-Five (98) and Executive Order Fifty-Eight (99) for more information.

Purpose

Please describe the subject matter and intent of the planned regulation. This description should include a brief explanation of the need for and the goals of the new or amended regulation.

This amendment to existing regulations proposes to clarify the criteria for the period of ownership by a seller of a nursing facility that will qualify that facility for immediate conversion to the full Fair Rental Value methodology of capital cost reimbursement after the sale of the facility to a new owner.

Basis

Please identify the state and/or federal source of legal authority to promulgate the contemplated regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. The correlation between the proposed regulatory action and the legal authority identified above should be explained. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided.

The *Code of Virginia* (1950) as amended, §32.1-325, grants to the Board of Medical Assistance Services (BMAS) the authority to administer and amend the Plan for Medical Assistance. The Code also provides, in the Administrative Process Act (APA) §§ 2.2-4007 and 2.2-4013, for this agency's promulgation of proposed regulations subject to the Governor's review.

Substance

Please detail any changes that would be implemented: this discussion should include a summary of the proposed regulatory action where a new regulation is being promulgated; where existing provisions of a regulation are being amended, the statement should explain how the existing regulation will be changed. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens. In addition, a statement delineating any potential issues that may need to be addressed as the regulation is developed shall be supplied.

The section of the State Plan for Medical Assistance affected by this suggested change is Methods and Standards for Establishing Payment Rates-Long Term Care Services (Attachment 4.19-D, Supplement 1 (12 VAC 30-90-29)).

The existing regulations, effective July 1, 2002, provide for a gradual 10-year transition to the Fair Rental Value (FRV) methodology of determining capital cost reimbursement from the reimbursement of actual depreciation and interest costs incurred. As a general rule, the FRV methodology will increase reimbursement for older facilities that have reduced interest and depreciation expenses. These regulations also provide for an exclusion from the transition period that allows certain facilities to convert to the full FRV immediately after the sale of a facility. The facilities that qualify for the exclusion are those that have been owned by an individual or individuals, and/or by a chain of no more than two facilities. This provision applies to small operators who are selling their facilities, and, in particular, was provided to help small operators get out of the nursing home business as their personal circumstances change. To qualify for the existing exclusion, any sales must be bona fide.

Recently, however, DMAS has received inquiries regarding whether the immediate conversion to the full FRV methodology exclusion would apply to sales by chain entities that structured the sale primarily to try to take advantage of the exclusion. For example, where the sale is essentially between two chain operators, the chain seller would sell a nursing facility to a non-chain entity, the non-chain entity would own it briefly, and then sell the facility to another chain operator, requesting, in the process, immediate conversion to the FRV methodology upon the sale by the non-chain entity. As stated previously, where the sale is not a “bona fide” sale, the exclusion would not be available, and therefore, the transaction described above would not qualify for the exclusion.

Nevertheless, DMAS believes that revisions, such as a minimum holding period, may be necessary to limit potential abuses of this exception. This holding period requirement would not obviate the requirement that any sale transaction be a bona fide sale. DMAS is proposing to require a minimum holding period of three years by the individual(s) and/or small-chain (no more than two facilities) owner and seller of a nursing facility in order for the sale to result in the reimbursement of capital costs, after the sale, under the full Fair Rental Value methodology. As previously stated, the purpose of this change is to clarify that this exclusion from the transition to FRV that provides for immediate conversion to the full FRV methodology is available only to those few small (*i.e.* no more than a two facility chains) operators who have a need to sell in order to get out of the nursing home business.

Further, this change will provide DMAS an objective standard by which DMAS can more readily identify short-term, questionable ownership transactions trying to inappropriately claim the benefits of the exclusion provision. The difference between the capital cost per day under Full FRV as compared to the current transition methodology can range from no change up to $10.00 a day. For a typical 120-bed facility with 30,000 Medicaid days, this could amount to as much as $300,000 additional reimbursement for one year.

Alternatives

Please describe, to the extent known, the specific alternatives to the proposal that have been considered or will be considered to meet the essential purpose of the action.

There is no regulatory alternative to the establishment of this time period criterion. To retain this basic provision of exclusion from the transition process and allow immediate conversion to the full FRV methodology without a minimum holding period permits providers to engage in questionable short-term ownership transactions.

Family Impact Statement

Please provide a preliminary analysis of 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.

This provision affects nursing facility providers and will not impact the institution or stability of families in Virginia.