Virginia Regulatory Town Hall

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Fast Track Regulation
Agency Background Document

Agency name	DMAS
Virginia Administrative Code	12 VAC 30-70
Regulation title	Methods and Standards for Establishing Payment Rates—Inpatient Hospital Care
Action title	Increase in DSH Limit for FY 2005
Document preparation date	

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief summary

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

This regulation temporarily increases the disproportionate share hospital (DSH) supplemental payment limit for Medicaid hospitals. Federal law limits such payments to 100% of a hospital's actual uncompensated costs associated with services provided to Medicaid and uninsured patients. Due to a change in federal law, DMAS is permitted make DSH payments of up to 175% of uncompensated costs in FY2005. This regulatory change implements the increase permitted by federal statute.

Statement of agency final 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 Agency Background Document with the attached amended State Plan pages: Methods and Standards for Establishing Payment Rates -- Inpatient Hospital Services, 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 and is full, true, and correctly dated.

Date	Patrick W. Finnerty, Director Dept. of Medical Assistance Services

Legal basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

Medicaid is authorized to make additional payments to hospitals with a disproportionate share of uncompensated care. In the 1993 OBRA statute, Congress limited DSH payments to a hospital's uncompensated care costs from serving Medicaid and uninsured patients. State regulations mirror this limit. Beginning in 2000, Congress passed the Benefits Improvement and Protection Act (BIPA), which now permits states to temporarily increase the DSH limit to 175% of uncompensated care costs for state fiscal years 2004 and 2005. DMAS proposes to make this change for state fiscal year 2005.

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.

Where feasible, DMAS intends to make an extra DSH payment to UVA and/or VCU Health Systems to maximize federal revenue to the Commonwealth. VCU Health Systems and UVA are Type 1 hospitals that have a more generous DSH formula and thus could take advantage of this higher DSH limit. DMAS may not be able to make the increased payment at the desired level without an increase in the DSH limit. Making this extra DSH payment will not jeopardize DMAS' ability to make DSH payments that it would otherwise make to public and private hospitals now or in the future. Making this extra DSH payment protects the health, safety and welfare of the citizens by maintaining access to health care for Medicaid and uninsured patients.

Rationale for using fast track process

Please explain why the fast track process is being used to promulgate this regulation.

Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from (1) 10 or more persons, (2) any member of the applicable standing committee of either house of the General Assembly or (3) any member of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

This regulatory action will allow DMAS to make the largest possible extra DSH payment in FY 2005 so as to maximize federal revenue. The temporary increase in the DSH limit authorized by Congress will expire at the end of FY2005. This initiative to maximize federal revenue will not otherwise affect payments that would normally be made to either public or private providers either now or in the future. There is no emergency regulatory authority for this change, but it is not expected to be controversial.

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.)

The section of the State Plan for Medical Assistance affected by this action is 4.19-A (Methods and Standards for Establishing Payment Rates - Inpatient Services) (12 VAC 30-70-301). Federal law permits states to pay hospitals that serve a disproportionately higher Medicaid and uninsured population up 100% of their uncompensated costs. This limit is reflected in the Virginia Administrative Code, 12 VAC 30-70-301(D), which states, "No DSH payments shall exceed any applicable limitations upon such payments established by federal law or regulations and OBRA 1993 §13621." This regulatory action modifies 12 VAC 30-70-301 by adding an exception to the general rule in subsection D that applies only to FY2005. In FY2005, the limit on DSH payments will be 175% of the amount calculated under the general rule.

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.

Section 1902(a)(13) of the Social Security Act ("the Act") provides that states, "take into account the situation of hospitals that serve a disproportionate number of low-income patients with special needs." These hospitals, classified as Disproportionate Share Hospitals (DSH), sustain financial losses due to the lower overall payments they receive in serving a large number of Medicaid and uninsured patients. As a result such hospitals require additional state payments in order to maintain their fiscal integrity. Section 1923 of the Act requires states to provide additional Medicaid payments to hospitals that serve larger Medicaid and uninsured populations. These additional payments are made in the form of lump sum payments, referred to as DSH payments. DSH payments are essential to maintaining access to health care for medically vulnerable populations.

Since 1993 the Act has prohibited states from paying more than 100 percent of the uncompensated costs of disproportionate share hospitals. Beginning in 2000, however, the Benefits Improvement and Protection Act (BIPA) permitted states to raise DSH payment levels up to 175 percent of uncompensated care costs for two fiscal years after 2002. This current regulatory change accomplishes this goal. Increasing the DSH limit allows the Commonwealth to maximize federal revenue received as a result of DSH payments. The temporary increase in the federal DSH limit authorized by BIPA was intended to assist states to finance their Medicaid programs. The higher limit allows states, on a temporary basis, to make higher DSH payments than it would otherwise.

The state teaching hospitals rely on Medicaid payments, including DSH, to cover the costs of providing services to Medicaid and indigent patients (indigent care needs). Based upon a recent increase in the federal DSH allotment and increases in Medicaid operating payments, DMAS has calculated that it can make additional DSH payments in FY2005 without jeopardizing its commitment to cover the indigent care costs at the state teaching hospitals now and in the future.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

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	Depending on the size of the additional DSH payment, the Commonwealth will receive additional federal revenue equal to half of the DSH payment.
Projected cost of the regulation on localities	None
Description of the individuals, businesses or other entities likely to be affected by the regulation	State teaching hospitals
Agency's best estimate of the number of such entities that will be affected	One, possibly two state teaching hospitals
Projected cost of the regulation for affected individuals, businesses, or other entities	None

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.

There are no alternatives. If the limit is not increased, DMAS will be limited in making an additional DSH payment and will not have another chance to make the payment.

Family impact

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

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.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes.

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.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
12 VAC 30-70-301	NA	Subsection D limits DSH payments to the total of uncompensated care costs.	For FY2005, the limit would be 175% of the current limit. The temporary increase in the limit is authorized by BIPA.