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## Fast-Track Regulation Agency Background Document

<b>Agency name</b>	DEPT. OF MEDICAL ASSISTANCE SERVICES
<b>Virginia Administrative Code (VAC) citation(s)</b>	12 VAC 30-80-30
<b>Regulation title(s)</b>	Update of Average Commercial Rate for Eastern Virginia Medical School
<b>Action title</b>	Methods and Standards for Establishing Payment Rates; Other Types of Care - Fee For Service Providers
<b>Date this document prepared</b>	April 5, 2019

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

### Brief Summary

*Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

The purpose of this regulatory action is to update the average commercial rate (ACR) calculation of supplemental payments for physicians affiliated with Eastern Virginia Medical School (EVMS) effective November 1, 2018.

### Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

- ACR – Average Commercial Rate
- CMS – Centers for Medicare and Medicaid Services
- DMAS – Department of Medical Assistance Services
- EVMS – Eastern Virginia Medical School

### 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 "Update of Average Commercial Rate for Eastern Virginia Medical School" 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.

April 5, 2019

/Jennifer S. Lee, M.D./

Date

Jennifer S. Lee, M.D., Director

Dept. of Medical Assistance Services

### Mandate and Impetus

Please identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, board decision, etc.). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

As required by Virginia Code § 2.2-4012.1, please also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track process.

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.

In addition, authority for this change is provided in the 2018 *Acts of Assembly, Chapter 2, Item 303.XX.2.a.* which states:

*“The Department of Medical Assistance Services shall promulgate regulations to make supplemental payments to Medicaid physician providers with a medical school located in Eastern Virginia that is a political subdivision of the Commonwealth. The amount of the supplemental payment shall be based on the difference between the average commercial rate approved by CMS and the payments otherwise made to physicians. The department shall have the authority to implement these reimbursement changes consistent with the effective date in the State Plan amendment approved by CMS and prior to completion of any regulatory process in order to effect such changes.”*

### Legal Basis

*Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity’s overall regulatory authority.*

Section 32.1-325 of the Code of Virginia authorizes the Board of Medical Assistance Services to administer and amend the State Plan for Medical Assistance and to promulgate regulations. Section 32.1-324 of the Code of Virginia authorizes the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the State Plan for Medical Assistance and to promulgate regulations according to the Board's requirements. The Medicaid authority as established by § 1902 (a) of the Social Security Act (42 USC § 1396a) provides governing authority for payments for services.

The 2018 *Acts of Assembly, Chapter 2, Item 303.XX.2.a.* states that DMAS shall:

*“The Department of Medical Assistance Services shall promulgate regulations to make supplemental payments to Medicaid physician providers with a medical school located in Eastern Virginia that is a political subdivision of the Commonwealth. The amount of the supplemental payment shall be based on the difference between the average commercial rate approved by CMS and the payments otherwise made to physicians. The department shall have the authority to implement these reimbursement changes consistent with the effective date in the State Plan amendment approved by CMS and prior to completion of any regulatory process in order to effect such changes.”*

## Purpose

*Please explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.*

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The purpose of this action is to update the ACR calculation for supplemental payments for physicians affiliated with EVMS effective November 1, 2018. The updated ACR percentage is 145%.

## 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.*

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### CURRENT POLICY

Currently, supplemental payments are provided to physicians affiliated with EVMS. A physician affiliated with EVMS is a physician who is employed by a publicly funded medical school that is a political subdivision of the Commonwealth of Virginia, who provides clinical services through the faculty practice plan affiliated with the publicly funded medical school, and who has entered in contractual arrangements for the assignment of payments in accordance with 42 CFR 447.10.

Effective October 1, 2015 the supplemental payment set was the difference between the Medicaid payments otherwise made for physician services and 137% of Medicare rates.

### ISSUES

As outlined in 12 VAC 30-80-300, physician supplemental payment amounts shall be calculated using the Medicare equivalent of the ACR methodology prescribed by CMS. The Medicare equivalent of the ACR demonstration shall be updated every three years; the last update was effective October 1, 2015.

### RECOMMENDATIONS

This action will revise the ACR calculation of supplemental payments for physicians affiliated with EVMS effective November 1, 2018 to the difference between the Medicaid payments others made for physician services and 145% of Medicare rates. CMS approved this update in the State Plan on February 1, 2019 with an effective date of November 1, 2018.

### Issues

*Please identify the issues associated with the regulatory change, 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, include a specific statement to that effect.*

These changes create no disadvantages to the public, the Agency, the Commonwealth, or the regulated community. The change implements directives in the state budget and update existing regulations to conform with the State Plan. Furthermore, updating supplemental payment amounts for physicians affiliated with EVMS is expected to be advantageous as it will improve access to services

### Requirements More Restrictive than Federal

*Please identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.*

There are no requirements in this regulation that are more restrictive than applicable federal requirements.

### Agencies, Localities, and Other Entities Particularly Affected

*Please identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.*

Only physicians who are affiliated with EVMS, which is a publicly funded medical school that is a political subdivision of Virginia, who provides clinical services through the faculty practice plan are affected by the regulatory change.

### Economic Impact

*Pursuant to § 2.2-4007.04 of the Code of Virginia, please identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Please keep in mind that this is change versus the status quo.*

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including:</p> <p>a) fund source / fund detail;</p> <p>b) delineation of one-time versus on-going expenditures; and</p> <p>c) whether any costs or revenue loss can be absorbed within existing resources</p>	<p>Fund source – GF (0100)</p> <p>Overall fiscal impact - \$45,554</p> <p>Stateshare/IGT - \$22,777 (ongoing expenditures)</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>None</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>Increased access to service at EVMS.</p>

**Impact on Localities**

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>None</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>Increased access to service at EVMS.</p>

**Impact on Other Entities**

<p>Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.</p>	<p>Physicians who are affiliated with EVMS, which is a publicly funded medical school that is a political subdivision of Virginia, who provides clinical services through the faculty practice plan.</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:</p> <p>a) is independently owned and operated and;</p> <p>b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>One; EVMS (publicly funded).</p> <p>a) None</p> <p>b) None</p>
<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Please be specific and include all costs including, but not limited to:</p> <p>a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses;</p> <p>b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change;</p> <p>c) fees;</p> <p>d) purchases of equipment or services; and</p> <p>e) time required to comply with the requirements.</p>	<p>a) None</p> <p>b) None</p> <p>c) None</p> <p>d) None</p> <p>e) None</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>Increased access to service at EVMS.</p>

## Alternatives

*Please describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.*

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No other alternative would meet the requirements set forth in the 2018 *Acts of Assembly*.

## 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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.*

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This regulatory change has no effect on small businesses.

## Public Participation

*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.*

## Detail of Changes

*Please list all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation.*

*If the regulatory change will be 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 change. Delete inapplicable tables.*

*If the regulatory change is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below. Please include citations to the specific section(s) of the regulation that are changing.*

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Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
12 VAC 30-80-30	N/A	Currently, the supplemental payment amount is the difference between the Medicaid payments otherwise made for physician services and 137% of Medicare rates.	This change updates the Medicaid rate to 145% of Medicare rates. The supplemental payment amount will be the difference between the Medicaid payments otherwise made for physician services and 145% of Medicare rates effective November 1, 2018. Per 12 VAC 30-80-300, physician supplemental payment amounts shall be calculated using the Medicare equivalent of the ACR methodology prescribed by CMS. The Medicare equivalent of the ACR demonstration shall be updated every three years; the last update was effective October 1, 2015. This update is expected to increase access to services at EVMS.