townhall.virginia.gov

Exempt Action: Final Regulation
Agency Background Document

Agency name	Department of Medical Assistance Services
Virginia Administrative Code (VAC) Chapter citation(s)	12VAC30-80-30, 12VAC30-80-36
VAC Chapter title(s)	Methods and Standards for Establishing Payment Rate; Other Types of Care
Action title	Emergency Room Charges
Final agency action date	9/13/2023
Date this document prepared	9/13/2023

This information is required for executive branch review pursuant to Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code.*

Brief Summary

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.

Pursuant to a federal court order (*Va. Hosp. & Healthcare Assoc. et al. v. Roberts et al*., No. 3:20-cv-00587-HEH), the Department of Medical Assistance Services (DMAS) must remove language in 12VAC30-80-30 and 12VAC30-80-36 that was authorized in Item 313.AAAAA of the 2020 Acts of the Assembly. Item 313.AAAAA authorized the pending, reviewing and reducing of fees for avoidable emergency room claims for codes 99282, 99283 and 99284, for both physicians and facilities.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM procedures, "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the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

The Code of Virginia § 32.1 325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance and to promulgate regulations. The Code of Virginia § 32.1-324, grants the Director of the Department of Medical Assistance Services the authority of the Board when it is not in session.

DMAS is implementing these changes through a Final Exempt regulation pursuant to §2.2-4006 (4)(b), as a regulation that is "required by order of any state or federal court of competent jurisdiction where no agency discretion is involved."

Pursuant to a federal court order (*Va. Hosp. & Healthcare Assoc. et al. v. Roberts et al*., No. 3:20-cv-00587-HEH), DMAS must remove language in 12VAC30-80-30 and 12VAC30-80-36 that was authorized in Item 313.AAAAA of the 2020 Acts of the Assembly.

Item 313.AAAAA of the 2020 Acts of the Assembly required DMAS to allow the pending, reviewing and the reducing of fees for avoidable emergency room claims for codes 99282, 99283 and 99284, both physician and facility. The department utilized the avoidable emergency room diagnosis code list currently used for Managed Care Organization (MCO) clinical efficiency rate adjustments. If the emergency room claim was identified as a preventable emergency room diagnosis, the department directed the MCOs to default to the payment amount for code 99281, commensurate with the acuity of the visit. (This also applied to fee-for-service.)

Statement of Final Agency Action

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.

On September 13, 2023, the Department of Medical Assistance Services adopted Final Exempt amendments to 12 VAC 30-80-30, "Fee-for-Service Providers" and 12 VAC 30-80-36, "Fee-for-Service Providers: Outpatient Hospitals" in order to be in compliance with the decision in the federal court order (*Va. Hosp. & Healthcare Assoc. et al. v. Roberts et al*., No. 3:20-cv-00587-HEH).