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## Exempt Action Final Regulation Agency Background Document

<b>Agency name</b>	DEPT OF MEDICAL ASSISTANCE SERVICES
<b>Virginia Administrative Code (VAC) citation(s)</b>	12 VAC 30-90-45
<b>Regulation title(s)</b>	Methods and Standards for Establishing Payment Rates for Long-Term Care
<b>Action title</b>	2018 Institutional Provider Reimbursement
<b>Final agency action date</b>	August 20, 2018
<b>Date this document prepared</b>	August 20, 2018

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA) or an agency's basic statute, the agency is not required, however, is encouraged to provide information to the public on the Regulatory Town Hall using this form. Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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 proposed amendment at 12 VAC 30-90-45 updates existing regulation to reflect supplemental payments to state-owned nursing facilities owned or operated by a Type One hospital.

### 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 Agency Background Summary with the attached amended regulations “2018 Institutional Provider Reimbursement” (12 VAC 30-90-45) and adopt the action stated therein. I certify that this final exempt regulatory action has completed all the requirements of the Code of Virginia § 2.2-4006(A), of the Administrative Process Act.

August 20, 2018

/Jennifer S. Lee, M.D./

Date

Jennifer S. Lee, M.D., 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 and to promulgate regulations. The *Code of Virginia* (1950) as amended, § 32.1-324, authorizes the Director of DMAS to administer and amend the 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 U.S.C. 1396a] provides governing authority for payments for services.

**The proposed amendment at 12 VAC 30-90-45 are required by the 2018 Acts of Assembly, Chapter 2, Item 303.XX.8.a which states:**

“There is hereby appropriated sum-sufficient non-general funds for the department to pay the state share of supplemental payments for nursing homes owned by Type One hospitals (consisting of state-owned teaching hospitals) as provided in the State Plan for Medical Assistance Services. The total supplemental payment shall be based on the difference between the Upper Payment Limit of 42 CFR § 447.272 as approved by CMS and all other Medicaid payments subject to such limit made to such nursing homes. DMAS shall enter into a transfer agreement with any Type One hospital whose nursing home qualifies for such supplemental payments, under which the Type One hospital shall provide the state share in order to match

federal Medicaid funds for the supplemental payments. 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.”

### Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the “Detail of changes” section.) Please be sure to define any acronyms.*

Effective July 1, 2018, state-owned or operated nursing facilities which are owned or operated by a Type One hospital shall receive supplemental payments equal to the nursing facility claim payments multiplied by the UPL gap percentage. The annual UPL gap percentage will be calculated by using the difference between the amount that would be paid under Medicare payment principles for nursing facility services in accordance with 42 CFR 447.272 and the amount Medicaid paid for such services for the numerator and the Medicaid payments made to each facility as the denominator. UPL gap percentages are calculated annually for nursing facilities using the most recent year in which the data is available and inflated to the SFY in which the payments are being made. The supplemental payments will be made quarterly for nursing facility services which were provided in the prior quarter to qualifying facilities. The quarterly payments shall begin with the first quarter in SFY 2018. Maximum aggregate payments to all qualifying facilities shall not exceed the available UPL.

The primary advantages to the Commonwealth and the public from these regulatory changes is to provide additional reimbursement for certain nursing facilities. There are no disadvantages to the Commonwealth or the public as a result of this 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, and do not increase or decrease disposable family income.