



Virginia
Regulatory
Town Hall

Emergency Regulation Agency Background Document

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| Agency Name: | Dept. of Medical Assistance Services (12 VAC 30) |
| VAC Chapter Number: | Chapter 90, sections 20-264, and 280. |
| Regulation Title: | Methods and Standards for Establishing Payment Rates-Long Term Care |
| Action Title: | Nursing Home Payment System |
| Date: | June 2, 2000. ACTION NEEDED BY JUNE 29, 2000 |

Section 9-6.14:4.1(C)(5) of the Administrative Process Act allows for the adoption of emergency regulations. Please refer to the APA, Executive Order Twenty-Four (98), and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the emergency regulation submission package.

Emergency Preamble

Please provide a statement that the emergency regulation is necessary and provide detail of the nature of the emergency. Section 9-6.14:4.1(C)(5) of the Administrative Process Act states that an "emergency situation" means: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date. The statement should also identify that the regulation is not otherwise exempt under the provisions of § 9-6.14:4.1(C)(4).

Please include a brief summary of the emergency action. There is no need to state each provision or amendment.

The Governor is hereby requested to approve this agency's adoption of the emergency regulation entitled Nursing Home Payment System Revisions. This regulation implements the changes directed by the Appropriations Act of the 2000 Session of the General Assembly.

The Code §9-6.14:4.1(C)(5) provides for regulations which an agency finds are necessitated by an emergency situation. To enable the Director, in lieu of the Board of Medical Assistance Services, to comply with the 2000 General Assembly's mandates, he must adopt this emergency

regulation. This issue qualifies as an emergency regulation as provided for in §9-6.14:4.1(C)(5)(ii), because the Appropriation Act requires this regulation to be effective within 280 days from the enactment of the law or regulation. As such, this regulation may be adopted without public comment with the prior approval of the Governor.

Since this emergency regulation will be effective for no more than 12 months and the Director wishes to continue regulating the subject entities, the Department is initiating the Administrative Process Act Article 2 procedures.

Basis

Please identify the state and/or federal source of legal authority to promulgate the emergency regulation. The discussion of this emergency statutory authority should: 1) describe its scope; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. Full citations of legal authority and web site addresses, if available for locating the text of the cited authority, should be provided.

Please provide a statement that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the emergency regulation and that it comports with applicable state and/or federal law.

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 of Virginia (1950) as amended, §32.1-324, grants to the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the Plan for Medical Assistance in lieu of Board action pursuant to the Board's requirements. The Code also provides, in the Administrative Process Act (APA) §9-6.14:4.1(C)(5), for an agency's adoption of emergency regulations subject to the Governor's prior approval.

Subsequent to the emergency adoption action and filing with the Registrar of Regulations, this agency intends to initiate the public notice and comment process contained in Article 2 of the APA. Therefore, approval to file the required Notice of Intended Regulatory Action is also necessary and hereby being requested by this action.

42 CFR Part 447 Subpart C provides for the methods and standards of reimbursement for long-term care services.

Without an emergency regulation, these amendments to the regulations cannot become effective until the publication and concurrent comment and review period requirements of the APA's Article 2 are met. Therefore, an emergency regulation is needed to meet the July 1, 2000, effective date established by the General Assembly.

Substance

Please detail any changes, other than strictly editorial changes, that would be implemented. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Please provide a cross-walk which includes citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes. 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 Virginians. The statement should also delineate any potential issues that may need to be addressed as a permanent final regulation is developed.

The sections of the State Plan affected by this action are Methods and Standards for Establishing Payment Rates-Long-Term Care Services (Attachment 4.19-D, Supplement Nursing Home Payment System (12 VAC 30-90-20 through 12 VAC 30-90-260).

The existing nursing home payment system relies on direct and indirect cost ceilings that have not been updated except for inflation since 1991. Nursing home costs have increased faster than inflation and the 2000 – 2002 Appropriations Act (Chapter 1073) provided that:

1. Direct care ceilings are to be recalculated effective July 1, 2000, and set at 112% of the median of base year cost per day.
2. The use of a direct care efficiency incentive payment is to be eliminated.
3. The Department is to recalculate new ceilings, both direct and indirect, using a new base year at least every two years.
4. The Department is to adjust rates to restore funding for the negative impact of case mix adjustment on aggregate payments.
5. The Department is to adjust rates to incorporate the \$21,700,000 (adjusted for inflation) provided by the 1999 Appropriations Act.
6. Direct care rates are to be set without application of an occupancy standard.
7. Indirect and capital rates are to be set with an occupancy standard of 90%.

8. The Department is to implement a revised capital payment policy.

The Appropriations Act provided approximately \$28 million per year (total funds), in addition to the \$21.7 million per year (total funds) appropriated in 1999, to fund the implementation of these changes.

In addition, HB 2004 of the 1999 Session of the General Assembly provided that effective July 1, 2000, the recapture of depreciation expense payments by the Medicaid program is to be eliminated.

Alternatives

Please describe the specific alternatives that were considered and the rationale used by the agency to select the least burdensome or intrusive method to meet the essential purpose of the action.

These policies were developed in collaboration with the General Assembly and the affected provider community.

Family Impact Statement

Please provide a preliminary analysis of the potential impact of the emergency action on the institution of the family and family stability including to what extent the 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 emergency action is not expected to have a direct impact on the institution of the family and family stability since it provides for the reimbursement of nursing facility providers.