Virginia Regulatory Town Hall

Proposed Regulation
Agency Background Document

Agency Name:	Dept. of Medical Assistance Services
VAC Chapter Number:	Chapter 90
Regulation Title:	Methods and Standards for Establishing Payment Rates-Long Term Care Nursing Home Payment System
Action Title:	NHPS: Resource Utilization Groups (RUGs)
Date:	November 13, 2001

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form,Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

This regulatory action proposes to replace the current Patient Intensity Rating System (PIRS) method of classifying nursing facility residents with the Resource Utilization Groups-III methodology. The RUG-III methodology is a state of the art system developed by the Centers for Medicare and Medicaid Services (CMS) (formerly the Health Care Financing Administration).

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed 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) §§ 2.2-4007 and 2.2-4013, for this agency's promulgation of proposed regulations subject to the Governor's review.

Chapter 1073 of the 2000 Acts of Assembly, Item 319 MM, directed DMAS to implement this Resource Utilization Groups methodology into its Nursing Home Payment System.

Title 42 of the Code of Federal Regulations Part 447, Payment for Services, prescribes State Plan requirements, Federal Financial Participation limitations and procedures concerning payments made by State Medicaid agencies for Medicaid services. States must provide sufficient detail in their plans about their reimbursement methodologies in order that CMS may determine if the methodologies conform to existing federal law and regulations and are therefore approvable for Federal Financial Participation (FFP).

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The purpose of this action is to propose for public comment changes to the Nursing Home Payment System. The proposed changes replace the current PIRS method of classifying residents into groups with the more up to date Resource Utilization Groups-III method of classifying residents.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

The sections of the State Plan for Medical Assistance affected by this action is Methods and Standards for Establishing Payment Rates-Long Term Care (12 VAC 30 Chapter 90, Articles 4, 6, and Appendices I and IV).

This regulatory action is necessary to implement a case-mix payment system that will provide a more equitable method of reimbursement to nursing facilities (NFs). Under the current payment system, nursing facilities receive an average payment for Medicaid residents based on three levels of resident acuity. The resident classification system currently used is known as the Patient Intensity Rating System (PIRS), which was developed prior to 1990. This system groups residents with similar resource needs into three groups: Class A includes an Activity of Daily Living (ADL) impairment score of 0 to 6; Class B includes an ADL impairment score of 7 to 12; and Class C includes an ADL impairment score of 9 or more combined with specific clinical conditions. The PIRS requires the completion of a specific resident assessment instrument (Uniform Assessment Instrument (UAI)) by the providers and this assessment instrument is reviewed by the agency.

Over the past ten years, the types of residents and the delivery of care in nursing facilities have changed. CMS has sponsored research to develop a case mix classification system, Resource Utilization Groups (RUG), Version III, that is used for the Medicare Prospective Payment System and has been implemented by over one-half of the state Medicaid programs across the country. The RUG-III system classifies residents into a 34-group version for use with Medicaid nursing facility resident populations and can be used to objectively determine a facility's case mix. The case-mix index scores for this system are CMS-developed standard case-mix indices based on time studies performed during the middle to late 1990s, and these indices will be the basis for calculating the average case-mix index scores.

The RUG-III resident classification system is based on the CMS Minimum Data Set (MDS) Version 2, a resident assessment data system that is mandated for all Medicare and Medicaid participating facilities. The MDS is an assessment instrument and process that is much more refined than the PIRS assessment. Additionally, the use of the MDS data for case-mix classification will relieve the nursing facilities of the additional burden of completing the PIRS assessment for each Medicaid resident.

The RUG-III resident classification system and the CMS standard weights are the most widely accepted and recognized systems available. CMS continues to provide development and research support for the RUG-III system. By adopting the use of this system, the administrative effort that will be required by the agency in the future is minimized. Further, under the Resource Utilization Groups-III (RUGs III) case mix payment system, nursing facilities will be reimbursed

in a manner more directly commensurate with the particular residents that they serve and therefore, the particular costs that the NFs incur.

Converting to this RUGs III case mix payment system will not have any affect on the current Long Term Care database that DMAS has operated for more than the last ten years. The conversion to the MDS form will just mean that no new data will be added to this computer subsystem.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 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, please include a sentence to that effect.

The proposed changes to operating reimbursement rates are beneficial to providers for several reasons. First, the RUG-III resident classification system will provide a more accurate and refined case mix index on which to base payments compared to the current PIRS system; thus paying NFs more appropriately for the resource utilization and costs of their residents. Second, the RUG-III resident classification system has a further advantage to providers in that it is based on the CMS Minimum Data Set (MDS). The MDS is a resident assessment that all Medicare and Medicaid participating providers must complete according to CMS rules.

The continued use of the PIRS system requires the completion of a second resident assessment instrument. The PIRS assessment will be eliminated upon full adoption of the proposed changes, relieving providers of the administrative burden of completing more than one assessment instrument on each resident. The proposed changes are beneficial to residents of nursing facilities because the RUG-III resident classification system captures the resource use and residents' costs of care more accurately, thus providing more of an incentive for nursing facilities to admit higher acuity residents. No disadvantages to the public have been identified.

The proposed changes to operating reimbursement rates are also beneficial to the agency and Commonwealth. First, the agency is promoting policies that provide accurate and appropriate payments to nursing facilities. The use of the RUG-III resident classification system increases the refinement of the resident classification groups and more appropriately pays nursing facilities for the resource utilization and costs of each facility's residents. Second, the use of the CMS supported RUG-III system and the standard case mix index scores provides the agency and the Commonwealth with the recognition of using the most highly regarded and accepted case mix system available at this time. Further, CMS continues to support research and to make refinements to the RUG-III system which relieves the agency and the Commonwealth of

conducting research studies on an ongoing basis. Third, the use of the MDS in place of the PIRS assessment instrument provides the agency with assessment data that has been reviewed for accuracy and is closely monitored by both the Virginia Department of Health and the agency itself. The PIRS assessment data is monitored solely by the agency. This oversight will result in more accurate and timely data on which to base the nursing facility payment rates. No disadvantages, excluding the costs of conversion to the RUGs system, to the agency have been identified.

There are no known disadvantages to either providers or the agency and the Commonwealth of implementing this RUGs system.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

The operating payment provisions in the proposed regulations are projected to maintain payments at the same level in SFY 2003 as would have been required under the current PIRS reimbursement system regulations. While the proposed regulations are expected to maintain the same total payment to providers, the proposed methodology is expected to result in some providers receiving higher payment rates and some lower payment rates than under the existing methodology. There are no localities that are uniquely affected by these regulations as they apply statewide. This regulatory action has no impact on local departments of social services.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

The proposed changes to the nursing facility reimbursement formula are beneficial to all affected parties since the new methodology will result in more appropriate operating payment rates to nursing facilities. Details of substantive changes to the existing regulations are as follows:

VAC Citation	Substance of the Suggested Change
12VAC30-90-41A.	Changes the use of the Patient Intensity Rating System (PIRS) to the use of the Resource Utilization Group (RUG) III as the resident classification system
12VAC30-90-41A3	Changes the use of the Service Intensity Index (SII) and statements related to the SII, establishes the use of the case mix index (CMI) and the CMS Minimum Data Set (MDS) Version 2.
12VAC30-90-41A4.	Changes the use of the SII in establishing the direct operating cost ceilings and rates to the use of the normalized facility average Medicaid CMI in establishing the direct operating cost ceilings and rates
12VAC30-90-41A4b.	Changes the use of the Service Intensity Index (SII) to the use of the case mix index (CMI) in the calculation of the direct resident care ceilings and rates
12VAC30-90-41A4c	Changes the use of the SII rate adjustment in the direct resident care operating cost base rate to the CMI rate adjustment, applies the CMI rate adjustment to a nursing facility's case mix neutralized prospective direct resident care operating cost base rate.
12VAC30-90-41A4d	Changes reference to applicability of case mix indices.
12VAC30-90-41A5a	Technical changes.
12VAC30-90-41A5c	Technical changes.
12VAC30-90-41B	Technical changes
12VAC30-90-41B1	Replaces 12VAC30-90-41B1 through B2. Establishes new method through B2 for calculating inflation for rate and ceiling setting.
12VAC30-90-41C	Technical changes.

12VAC30-90-60I	Technical changes.
12VAC30-90-271	Adds new line item. Moves nurse staff costs for quality assurance services from indirect cost to direct resident care cost.
12VAC30-90-272H	Removes quality assurance services from indirect costs.
12VAC30-90-272M	Adds clarification phrase.
12VAC30-90-300	Old text repealed/new text establishes the Resource Utilization Group (RUG) III as the resident classification system.
12VAC30-90-301	Old text repealed/new text establishes the use of the case mix index in the payment rate for direct resident care operating costs, establishes the calculations of the CMIs, establishes the correction policy for assessments, establishes the default CMI to be assigned to assessments that cannot be classified into a RUG-III group.
12VAC30-90-302	Old text repealed/new text establishes the applicability of the case mix indices, the methodology, and the time periods.
12VAC30-90-303	Reserved.
12VAC30-90-304.	Deleted/Repealed
12VAC30-90-310.	Deleted/Repealed

Alternatives

Please describe the specific 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.

The existing nursing home payment system is based on a patient classification system that was developed prior to 1990 known as the Patient Intensity Rating System (PIRS). This patient classification system was used to group patients with similar resource needs into three groups: Class A included an Activity of Daily Living (ADL) impairment score of 0 to 6; Class B included an ADL impairment score of 7 to 12; and Class C included an ADL impairment score of 9 or more combined with specific clinical conditions.

The PIRS required the completion of a specific patient assessment instrument by the providers which is reviewed by the Department. Subsequently, CMS developed the Resource Utilization Groups (RUG) III, a patient classification system that classifies residents into a 34-group version for use with Medicaid nursing facility resident populations. This system permits the objective determination of a facility's case mix. The case-mix index scores for this system are CMS-developed standard case-mix indices based on time studies performed during the middle to late 1990s, and these indices will be the basis for calculating the Virginia nursing facilities' average case-mix index scores. The RUG-III patient classification system and the CMS standard weights are the most widely accepted and recognized systems available and have been adopted by approximately one-half of all Medicaid programs for use in their nursing facility payment systems. The RUG-III patient classification system is based on the CMS Minimum Data Set, a resident assessment data system that is mandated for all Medicare and Medicaid participating facilities.

CMS continues to support research regarding the RUG-III system. By adopting the RUG-III patient classification system and the CMS standard case-mix indices, the Department is selecting the most highly respected systems and is selecting systems that require no additional administrative effort.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

DMAS did not receive any comments from the public for this regulated industry during the comment period for the Notice of Intended Regulatory Action.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

DMAS has examined these regulations and, in so far as is possible, has ensured that they are clearly written and understandable by the individuals and entities affected. Due to the unusually complex nature of this subject, simplicity of the regulations for the general public's comprehension would have prohibited achieving the regulations' goals and objectives.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

DMAS and the affected industry will be conducting regular reviews of the impact of these regulations every two years when re-basing is conducted.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which 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.

This regulatory action will not have any negative effects on the institution of the family or family stability. It will not increase or decrease disposable family income or erode the marital commitment. It will not discourage economic self-sufficiency, self-pride, or the assumption of family responsibilities.