



Virginia
Regulatory
Town Hall

Final Regulation Agency Background Document

Agency Name:	Dept. of Medical Assistance Services; 12 VAC 30
VAC Chapter Number:	Chapters 50, 60, and 70
Regulation Title:	Amount, Duration, and Scope of Services
Action Title:	Restrictions on Coverage of Out-of-State Hospital Services
Date:	November 1, 2001; Effective January 2, 2002

Please refer 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* for more information and other materials required to be submitted in the final regulatory action package .

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.

This regulatory action specifically establishes the circumstances in which DMAS will reimburse for inpatient hospital services when they are provided by hospitals outside the Commonwealth. These specific situations exactly conform to 42 CFR 431.52. This action establishes the prior authorization requirements as well as additional standards that must be met for DMAS to cover out of state hospital services.

Changes Made Since the Proposed Stage

Please detail any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication. Please provide citations of the sections of the proposed regulation that have been altered since the proposed stage and a statement of the purpose of each change.

There are no changes in these final, adopted regulations over those which were originally proposed for public comment.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

I hereby approve the foregoing Regulatory Review Summary with the attached amended State Plan pages and adopt the action stated therein. I certify that this final regulatory action has completed all the requirements of the Code of Virginia § 9-6.14:7.1, of the Administrative Process Act.

10/30/2001

/s/ Eric S. Bell

Date

Eric S. Bell Director

Dept. of Medical Assistance Services

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, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final 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) §§9-6.14:7.1 and 9-6.14:9.1, for this agency's promulgation of proposed regulations subject to the Governor's review. The Notice of Intended Regulatory Action for this regulation was filed with the Virginia Register on November 2, 1999 and was published at 16 VR 5:483 (November 22, 1999). The comment period for the Notice of Intended Regulatory Action ended on December 22, 1999.

Title 42 CFR § 431.52 states that Medicaid must be furnished out of state, under the specified conditions, to an eligible individual who is a resident of the State while the individual is in another State to the same extent that Medicaid is furnished to residents in the State.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final 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 proposal is to clarify and expand upon limits to be placed upon coverage of inpatient hospital services by providers who are located outside the borders of the Commonwealth in order to promote the use of Virginia's inpatient hospitals. This action is not expected to affect the public's health, safety or welfare because Virginia hospitals provide all needed medical services and because provisions for emergency situations are included.

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 of the regulatory action's detail.

The sections of the State Plan affected by this action are the Amount, Duration, and Scope of Services (12 VAC 30-50-100, 50-105, 50-140), Standards Established and Methods Used to Assure High Quality of Care (12 VAC 30-60-21), Methods and Standards for Establishing Payment Rates-Inpatient Hospital Services (12 VAC 30-70-120, 70-420).

DMAS is repealing 12 VAC 30-70-120 and 70-420 because, with the implementation of the Diagnosis Related Groups reimbursement methodology for inpatient hospital services (at 12 VAC 30-70-200 et seq.), these VAC sections are no longer valid.

As allowed by 42 CFR § 431.52, DMAS proposes to limit general access to out-of-state general acute care hospitals to only when the service is medically necessary. The out-of-state hospital rendering the service will be required to obtain any needed authorizations prior to payment of its claims.

In order for the out-of-state hospital's claim to be paid, the reasons for the recipient's need for out-of-state services must be one of the following: (i) a medical or surgical emergency exists; (ii) inpatient hospital services are needed and the recipient's health would be endangered if he were required to travel back to the Commonwealth to obtain medical care; (iii) the Commonwealth determines, on the basis of medical advice, that the needed inpatient hospital services, or necessary supplementary resources, are more readily available in another state; or (iv) it is the general practice for recipients in a particular locality to use inpatient hospital resources in another state. DMAS would recognize exceptional circumstances based on the medical needs of the patient.

Use of out-of-state general acute care hospital services in circumstances other than those listed above will be denied.

Issues

Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the 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 advantage to the Commonwealth's taxpayer of this change will be the retention of these tax dollars in the Virginia economy. Inpatient hospitals in the Commonwealth will experience a higher cash flow as they provide care to Virginia Medicaid recipients who, in the past, have routinely sought care in other state's hospitals. Recipients who have a true medical need to obtain specialized medical services will be permitted to do so by the exceptions permitted in this policy. The agency expects that border states' hospitals that have been providing this care (mainly Duke University Hospital, N.C. Baptist Hospital, and Johns Hopkins Hospital) to object to this new restriction. However, the North Carolina Medicaid program already enforces this same requirement on its own Medicaid recipients.

DMAS does not expect there to be any implementation or enforcement costs associated with this change as DMAS has been requiring the prior authorization of inpatient services by enrolled, in-state and out-of-state providers for several years. These new prior authorizations will not significantly add to the current workload of this contractor. DMAS estimates that it expended in FY 2000 approximately \$5.7M of Virginia Medicaid funds to hospitals in the border states. There are no localities that are uniquely affected by these regulations as they will apply statewide.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

DMAS' proposed regulations were published in the September 11, 2000, *Virginia Register* (VR 16:26) for their public comment period from September 11 through November 10, 2000. In addition, DMAS provided the proposed regulations to 58 out-of-state hospitals which will likely be most affected by these regulations. No comments were received.

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 crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.

<u>VAC Section</u>	<u>Change and Impact</u>
12VAC 30-50-100 B	Adds new language that limits this coverage to 4 specified conditions.
12VAC 30-50-105 B	Adds new language that limits this coverage to 4 specified conditions.
12 VAC 30-50-140 M	Adds new language that applies restrictive language for hospital admissions to the admitting physicians.
12 VAC 30-60-21	Adds new language that establishes utilization review criteria that gives DMAS the authority to recover funds expended in situations other than those specified.
12 VAC 30-70-120	Repeals old, unnecessary regulation.
12 VAC 30-70-420	Adds new restrictions to reimbursement methodology language.

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the 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 affects 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, nor the assumption of family responsibilities.