Virginia Regulatory Town Hall

Proposed Regulation
Agency Background Document

Agency Name:	Dept. of Medical Assistance Services 12 VAC 30
VAC Chapter Number:	12 VAC 90
Regulation Title:	Methods and Standards for Establishing Payment Rates-Long Term Care
Action Title:	2000 Nursing Home Payment System
Date:	12/01/2000 NEED ACTION BY 12/15 2000 (previous ER)

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summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed.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 proposed regulation is intended to achieve two main goals: implementation of increased payments for operating costs and implementation of a new capital payment methodology, both of which are authorized by the 2000 Appropriations Act.

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) §§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.

Subsequent to an emergency adoption action, the agency is initiating the public notice and comment process as contained in Article 2 of the APA. The emergency regulation became effective on July 1, 2000. The Code, at §9-6.14:4.1(C) requires the agency to file the Notice of Intended Regulatory Action within 60 days of the effective date of the emergency regulation if it intends to promulgate a permanent replacement regulation. The Notice of Intended Regulatory Action for this regulation was filed with the Virginia Register on August 15, 2000.

Title 42 of the Code of Federal Regulations Part 447 Subpart C regulates the reimbursement of institutional providers of services, such as nursing homes and inpatient hospitals.

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 proposal is to promulgate new permanent regulations, to supersede the existing permanent regulations and the currently operating emergency regulations, to provide for the reimbursement methodology for nursing facility services. These permanent regulations establish the Fair Market Value methodology by phasing out the previous plant cost reimbursement policies and by revising the direct and indirect care ceilings. This regulatory action is not expected to directly affect the public's health, safety, or welfare.

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 affected by this action are the Nursing Home Payment System (Attachment 4.19-D, Supplement 1) (12 VAC 30-90-20 through 12 VAC 30-90-269), Appendices I (12 VAC 30-90-270 through 12 VAC 30-90-276) and II (12 VAC 30-90-280).

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. Furthermore, this was designated to a Fair Market Value system.

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.

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 rules are beneficial to providers because they increase nursing home reimbursement rates. The higher rates necessarily commit the Commonwealth to a higher level of Medicaid expenditures; however, this has been addressed through the appropriation process. Furthermore, an advantage to the agency may be a reduction in the number of provider appeals of cost report adjustment issues during the cost settlement and review process. No disadvantages to the agency have been identified.

The proposed changes to capital reimbursement rules are expected to be generally beneficial to providers. They are anticipated to increase capital payments to providers beginning in SFY2003. The estimated increase is based on the change in methodology is $1.3 million per year from 2003 through 2012. This means that estimated payments in 2012 would be $13 million higher than under the existing methodology. In addition, exceptions granted in the regulations to certain types of facilities are anticipated to cost another $1.3 million per year. This amount is not cumulative however, so the total combined impact of the change in reimbursement and the exceptions would be $2.6 million in 2002, and $14.3 million in 2012. In addition to increasing payments, the new methodology is expected to result in some providers receiving more and some less than under the existing methodology. Some of the changes, both plus and minus, are expected to be significant. In order to prevent undue disruption resulting from these provider specific payment changes, the new methodology is being gradually phased in over ten years (2003 through 2012). The proposed changes to capital reimbursement are not expected to significantly affect the public or the agency.

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 capital payment provisions in the proposed regulations will increase payments by $2.6 million per year (total funds) in SFY2003. Payments are projected to continue to increase by $1.3 million per year for nine more years, so that in SFY2012, payments are projected to be $14.3 million higher as a result of these provisions. 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.
Funding Source/Cost to Localities/Affected Entities: The Department of Medical Assistance Services is established and receives federal financial participation pursuant to Title XIX of the Social Security Act (42 U.S.C. §§ 1396 through 1396v); and Title 32.1, Chapter 10, of the Code of Virginia. The Virginia Medicaid Program is funded with both federal and state funds. The current federal funding participation (FFP) for medical assistance expenditures is 51.67%, which became effective October 1, 1999. This rate will increase to 51.85% on October 1, 2000.

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.

DETAILS OF CHANGES

VAC Citation Federal Citation	Substance of the Suggested Change
12 VAC 30-90-20	General introduction; establishes the NHPS' four basic components; ceiling limitation/divisions; policies for reimbursement of institutions for mental disease.
12 VAC 30-90-21 th 90-28	Reserved.
12 VAC 30-90-29	Contains transition policies from old plant cost to new capital payment methodologies.
12 VAC 30-90-30	Establishes a new occupancy standard for computation of NF per diem rates.
12 VAC 30-90-31	Technical changes.
12 VAC 30-90-32 th 90-33	No changes.
12 VAC 30-90-34	Establishes provider notification requirement in old plant cost article in the event of sale of NF;

	establishes cost report filing requirement for NF seller; repeals depreciation recapture policies.
12 VAC 30-90-35	Establishes the new capital costs (Fair Rental Value) payment method for capital costs related to owning and operating NFs; establishes a ten-year transition policy.
12 VAC 30-90-36	Establishes the method to calculate the Fair Rental Value per diem rate and amount and how ownership changes affect this.
12 VAC 30-90-37	Establishes the use of a Schedule of Assets to determine allowable costs for NF assets, including land improvements, buildings, fixed/major movable equipment.
12 VAC 30-90-38	Establishes the use of a schedule of assets to determine allowable plant costs.
12 VAC 30-90-39	Establishes provider notification requirements in the new Fair Market Value article in the event of the sale of the NF.
12 VAC 30-90-40	Establishes the two components of operating cost as direct patient care operating cost and indirect patient care operating cost and provides for how these cost components are to be calculated.
12 VAC 30-90-41	Repeals indirect payment methods and different ceiling adjustment levels based on licensed bed size; changes to direct/ indirect patient care operating ceilings; elimination of direct care efficiency incentive
12 VAC 30-90-42 th 12 VAC 30-90-43	Repealed.
12 VAC 30-90-44 th 90-49	Reserved.
12 VAC 30-90-50	Establishes allowable costs, deleting references to protecting employees from blood borne pathogens and Hepatitis B immunizations.
12 VAC 30-90-51	Deletes the requirement for 3 bids for construction projects.

12 VAC 30-90-52 th 90-58	No changes.
12 VAC 30-90-59	Reserved.
12 VAC 30-90-60	New facilities defined; changes to occupancy percentage standard.
12 VAC 30-90-61 th 12 VAC 30-90-64	Reserved.
12 VAC 30-90-65	Minor updates.
12 VAC 30-90-66 th 90-69	Reserved.
12 VAC 30-90-70	Minor changes.
12 VAC 30-90-71 th 90-74	Reserved.
12 VAC 30-90-75	No changes.
12 VAC 30-90-76 th 90-79	Reserved.
12 VAC 30-90-80	Increases time for DMAS to conduct field audits.
12 VAC 30-90-81 th 12 VAC 30-90-89	Reserved.
12 VAC 30-90-90	No changes.
12 VAC 30-90-91 th 90-109	Reserved.
12 VAC 30-90-110	No changes.
12 VAC 30-90-111 th 90-119	Reserved.
12 VAC 30-90-120 th 90-125	Minor change to scope of audit.
12 VAC 30-90-126 th 90-129	Reserved.
12 VAC 30-90-130 th 90-133, 90-135	Repealed.
12 VAC 30-90-134	No changes.
12 VAC 30-90-136	Elements of capital payment method excluded from appeals.
12 VAC 30-90-137 th 90-139	Reserved.

12 VAC 30-90-140, 90-150	No changes.
12 VAC 30-90-160	Limits costs of stock acquisitions as not allowable cost.
12 VAC 30-90-165	Establishes stock acquisition policies applicable in the new capital methodology; establishes policies for regulating related and unrelated parties.
12 VAC 30-90-166 th 90-169	Reserved.
12 VAC 30-90-170 th 90-210	No changes.
12 VAC 30-90-171 th 90-179	Reserved.
12 VAC 30-90-220	No changes.
12 VAC 30-90-221	Editorial changes.
12 VAC 30-90-222	No changes.
12VAC 30-90-223 th 90-229	Reserved.
12 VAC 30-90-230	No changes.
12 VAC 30-90-240	Minor change.
12 VAC 30-90-250	Minor change.
12 VAC 30-90-251 th 90-254	Minor to no changes.
12 VAC 30-90-255 th 90-259	Reserved.
12 VAC 30-90-260	Repealed.
12 VAC 30-90-261 th 90-263	Reserved.
12 VAC 30-90-264	Changes to capital cost allowances, occupancy standards, and discontinuing efficiency incentives related to Specialized Care services; minor changes.
12 VAC 30-90-265	Reserved.
12 VAC 30-90-266	Elimination of the originally effective add-on payment amount.

12 VAC 30-90-267 th 90-269	Reserved.
12 VAC 30-90-270	Applicability of entire Appendix I to previous Part II.
12 VAC 30-90-271	No change.
12 VAC 30-90-272	Addition of liability insurance as an authorized indirect patient care operating cost.
12 VAC 30-90-273 th 90-276	No changes.
12 VAC 30-90-280	Appendix II applicability to Subpart II, Article 2; elimination of return on equity capital reimbursement for all plant or capital costs.

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.

Alternatives were discussed with the regulated industry during the development of these proposed regulations and the appropriate ones have been reflected here.

Public Comment

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

No written public comments were received during the NOIRA comment period. The agency had several meetings with the affected industry during the development of these proposed regulations and those conversations are reflected here.

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 easily understandable by the individuals and entities affected.

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.

Due to the phase-in nature of the changes proposed in these regulations, DMAS and the affected industry will be conducting regular reviews of the impact of these regulations.

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.