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Exempt Action: Final Regulation
Agency Background Document

Agency name	Dept. of Medical Assistance Services
Virginia Administrative Code (VAC) Chapter citation(s)	12VAC30-90-10; 12VAC30-90-11; 12VAC30-90-19; 12VAC30-90-20; 12VAC30-90-21; 12VAC30-90-28; 12VAC30-90-29; 12VAC30-90-30; 12VAC30-90-31; 12VAC30-90-32; 12VAC30-90-33; 12VAC30-90-34; 12VAC30-90-35; 12VAC30-90-36; 12VAC30-90-37; 12VAC30-90-38; 12VAC30-90-39; 12VAC30-90-40; 12VAC30-90-41; 12VAC30-90-44; 12VAC30-90-45; 12VAC30-90-50; 12VAC30-90-51; 12VAC30-90-52; 12VAC30-90-53; 12VAC30-90-54; 12VAC30-90-55; 12VAC30-90-56; 12VAC30-90-57; 12VAC30-90-58; 12VAC30-90-60; 12VAC30-90-65; 12VAC30-90-70; 12VAC30-90-75; 12VAC30-90-80; 12VAC30-90-90; 12VAC30-90-110; 12VAC30-90-120; 12VAC30-90-121; 12VAC30-90-122; 12VAC30-90-123; 12VAC30-90-124; 12VAC30-90-125; 12VAC30-90-136; 12VAC30-90-140; 12VAC30-90-150; 12VAC30-90-160; 12VAC30-90-165; 12VAC30-90-170; 12VAC30-90-180; 12VAC30-90-190; 12VAC30-90-200; 12VAC30-90-221; 12VAC30-90-222; 12VAC30-90-230; 12VAC30-90-240; 12VAC30-90-250; 12VAC30-90-251; 12VAC30-90-252; 12VAC30-90-253; 12VAC30-90-254; 12VAC30-90-257; 12VAC30-90-264; 12VAC30-90-266; 12VAC30-90-267; 12VAC30-90-270; 12VAC30-90-271; 272; 12VAC30-90-273; 12VAC30-90-274; 12VAC30-90-275; 12VAC30-90-276; 12VAC30-90-280; 12VAC30-90-290; 12VAC30-90-305; 12VAC30-90-306; 12VAC30-90-307; 12VAC30-90-310; 12VAC30-90-320; 12VAC30-90-330.
VAC Chapter title(s)	Methods and Standards for Establishing Payment Rates for Long-Term Care
Action title	Repeal and Replacement of Chapter 90 Reimbursement Regulations
Final agency action date	July 24, 2025
Date this document prepared	July 24, 2025

This information is required for executive branch review pursuant to Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19. In addition, this information is required by the Virginia Registrar of Regulations

pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

This regulatory action repeals and replaces Chapter 90 of the DMAS reimbursement regulations in direct response to the mandate in HB1600 Item 288.JJJJJ which reads:

The Department of Medical Assistance Services (DMAS) shall have the authority to submit final exempt regulatory packages to repeal existing provider reimbursement regulations in 12 VAC 30-70, 12 VAC 30-80, and 12 VAC 30-90 and replace them with new sections containing text that is identical to the Medicaid state plan as it was in effect on March 1, 2025. Changes shall not impact any aspect of the Medicaid program or increase costs. These regulatory packages shall be promulgated according to the following schedule: Chapter 70 sections shall be submitted for executive branch review within 30 days from the enactment date of this Act; Chapter 80 sections shall be submitted for executive branch review within 60 days from the enactment date of this Act; Chapter 90 sections shall be submitted for executive branch review within 90 days from the enactment date of this Act.

This regulatory action removes the outdated language related to provider reimbursement rates for chapter 12VAC30-90 and replaces it with text from the up-to-date State Plan.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM procedures, "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

The Code of Virginia § 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 § 32.1-324, grants the Director of the Department of Medical Assistance Services the authority of the Board when it is not in session.

This action is mandated by HB1600 Item 288.JJJJJ, which instructs DMAS to repeal text in 12VAC30-90-10; 12VAC30-90-11; 12VAC30-90-19; 12VAC30-90-20; 12VAC30-90-21; 12VAC30-90-28; 12VAC30-90-29; 12VAC30-90-30; 12VAC30-90-31; 12VAC30-90-32; 12VAC30-90-33; 12VAC30-90-34; 12VAC30-90-35; 12VAC30-90-36; 12VAC30-90-37; 12VAC30-90-38; 12VAC30-90-39; 12VAC30-90-40; 12VAC30-90-41; 12VAC30-90-44; 12VAC30-90-45; 12VAC30-90-50; 12VAC30-90-51; 12VAC30-90-52; 12VAC30-90-53; 12VAC30-90-54; 12VAC30-90-55; 12VAC30-90-56; 12VAC30-90-57; 12VAC30-90-58; 12VAC30-90-60; 12VAC30-90-65; 12VAC30-90-70; 12VAC30-90-75; 12VAC30-90-80;

12VAC30-90-90; 12VAC30-90-110; 12VAC30-90-120; 12VAC30-90-121; 12VAC30-90-122; 12VAC30-90-123; 12VAC30-90-124; 12VAC30-90-125; 12VAC30-90-136; 12VAC30-90-140; 12VAC30-90-150; 12VAC30-90-160; 12VAC30-90-165; 12VAC30-90-170; 12VAC30-90-180; 12VAC30-90-190; 12VAC30-90-200; 12VAC30-90-221; 12VAC30-90-222; 12VAC30-90-230; 12VAC30-90-240; 12VAC30-90-250; 12VAC30-90-251; 12VAC30-90-252; 12VAC30-90-253; 12VAC30-90-254; 12VAC30-90-257; 12VAC30-90-264; 12VAC30-90-266; 12VAC30-90-267; 12VAC30-90-270; 12VAC30-90-271; 272; 12VAC30-90-273; 12VAC30-90-274; 12VAC30-90-275; 12VAC30-90-276; 12VAC30-90-280; 12VAC30-90-290; 12VAC30-90-305; 12VAC30-90-306; 12VAC30-90-307; 12VAC30-90-310; 12VAC30-90-320; and 12VAC30-90-330, and replace it with text identical to the Medicaid State Plan as was in effect on March 1, 2025.

This action is exempt from the regulatory process in accordance with Va. Code 2.2-4006(A)(3). DMAS is implementing these changes through a Final Exempt regulation pursuant to §2.2-4006 (A)(1), as a regulation that is "fixing rates or prices."

Statement of Final Agency Action

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.

On July 24, 2025, the Department of Medical Assistance Services has adopted final amendments to the Repeal and Replacement of Chapter 90 Reimbursement Regulations in 12VAC30-90.

DMAS has submitted Final Exempt changes titled Repeal and Replacement of Chapter 90 Reimbursement Regulations which repeal sections: 12VAC30-90-10; 12VAC30-90-11; 12VAC30-90-19; 12VAC30-90-20; 12VAC30-90-21; 12VAC30-90-28; 12VAC30-90-29; 12VAC30-90-30; 12VAC30-90-31; 12VAC30-90-32; 12VAC30-90-33; 12VAC30-90-34; 12VAC30-90-35; 12VAC30-90-36; 12VAC30-90-37; 12VAC30-90-38; 12VAC30-90-39; 12VAC30-90-40; 12VAC30-90-41; 12VAC30-90-44; 12VAC30-90-45; 12VAC30-90-50; 12VAC30-90-51; 12VAC30-90-52; 12VAC30-90-53; 12VAC30-90-54; 12VAC30-90-55; 12VAC30-90-56; 12VAC30-90-57; 12VAC30-90-58; 12VAC30-90-60; 12VAC30-90-65; 12VAC30-90-70; 12VAC30-90-75; 12VAC30-90-80; 12VAC30-90-90; 12VAC30-90-110; 12VAC30-90-120; 12VAC30-90-121; 12VAC30-90-122; 12VAC30-90-123; 12VAC30-90-124; 12VAC30-90-125; 12VAC30-90-136; 12VAC30-90-140; 12VAC30-90-150; 12VAC30-90-160; 12VAC30-90-165; 12VAC30-90-170; 12VAC30-90-180; 12VAC30-90-190; 12VAC30-90-200; 12VAC30-90-221; 12VAC30-90-222; 12VAC30-90-230; 12VAC30-90-240; 12VAC30-90-250; 12VAC30-90-251; 12VAC30-90-252; 12VAC30-90-253; 12VAC30-90-254; 12VAC30-90-257; 12VAC30-90-264; 12VAC30-90-266; 12VAC30-90-267; 12VAC30-90-270; 12VAC30-90-271; 272; 12VAC30-90-273; 12VAC30-90-274; 12VAC30-90-275; 12VAC30-90-276; 12VAC30-90-280; 12VAC30-90-290; 12VAC30-90-305; 12VAC30-90-306; 12VAC30-90-307; 12VAC30-90-310; 12VAC30-90-320; and 12VAC30-90-330.

DMAS is replacing these sections with updated text from the State Plan, and is adding the following sections to the VAC: 12VAC30-91-10; 12VAC30-91-11; 12VAC30-91-19; 12VAC30-91-20; 12VAC30-91-30; 12VAC30-91-40; 12VAC30-91-45; 12VAC30-91-50; 12VAC30-91-60; 12VAC30-91-70; 12VAC30-91-80; 12VAC30-91-81; 12VAC30-91-82; 12VAC30-91-90; 12VAC30-91-100; 12VAC30-91-110; 12VAC30-91-120; 12VAC30-91-130; 12VAC30-91-140; 12VAC30-91-150; 12VAC30-91-160; 12VAC30-91-170; 12VAC30-91-180; 12VAC30-91-181;

12VAC30-91-182; 12VAC30-91-190; 12VAC30-91-200; 12VAC30-91-210; 12VAC30-91-220; 12VAC30-91-230; 12VAC30-91-240; 12VAC30-91-250; 12VAC30-91-270; 12VAC30-91-280; 12VAC30-91-300; 12VAC30-91-305; 12VAC30-91-310; 12VAC30-91-330; 12VAC30-91-350; 12VAC30-91-360; 12VAC30-91-365; 12VAC30-91-370; 12VAC30-91-380; 12VAC30-91-440; 12VAC30-91-450; 12VAC30-91-460; 12VAC30-91-480; 12VAC30-91-490; 12VAC30-91-500; 12VAC30-91-510; 12VAC30-91-520; 12VAC30-91-530; 12VAC30-91-540; 12VAC30-91-550; 12VAC30-91-570; 12VAC30-91-580; 12VAC30-91-590; 12VAC30-91-600; 12VAC30-91-660; 12VAC30-91-670; 12VAC30-91-680; 12VAC30-91-690; 12VAC30-91-700; 12VAC30-91-710; 12VAC30-91-710; 12VAC30-91-720; and 12VAC30-91-730.

Although the repealed sections are being replaced with State Plan text, DMAS has made the following necessary and minor changes to the replacement regulation text: (1) updated "mental retardation" to intellectual disability" in the new 12VAC30-91-360 text in order to remove the offensive term; (2) fixed typographical errors found in the State Plan throughout; (3) adding numbering and/or lettering to the State Plan text throughout for added organization; and (4) updating internal references to repealed regulation sections to the new replacement regulation sections for accuracy and ease of use.

Pursuant to the Code of Virginia § 2.2-4006(A)(3), this final exempt regulatory action is exempt from Article 2 of the Administrative Process Act.

Chapter 90 Replacement Sections Crosswalk

Old Chapter 90 Section	Section Title	Notes	New Chapter 91 Section
10	Methods and standards for establishing payment rates for long-term care		10
11	Public comment process	Not Found in State Plan	11
N/A (not in current VAC)	Supplemental payments for private nursing facility partners of Type One hospitals		30
19	Supplemental payments for government-owned nursing facilities		40
20	--	Previously Repealed	--
21	Reimbursement for individuals in a disaster struck nursing facility		50
28	Mid-year fair rental value (FRV) rate determination		60
29	Transition to new capital payment methodology		70
30	Plant cost		80

31	New nursing facilities and bed additions		90
32	Major capital expenditures		100
33	Financing		110
34	Purchases of nursing facilities (NF)		120
35	General applicability		130
36	Nursing facility capital payment methodology		140
37	Calculation of FRV per diem rate for capital; calculation of FRV rental amount; change of ownership		150
38	Schedule of assets reporting		160
39	Purchases of nursing facilities (NF)		170
40	Operating cost		180
41	Nursing facility reimbursement formula		190
42	--	Previously Repealed	--
43	--	Previously Repealed	--
44	Nursing facility price-based payment methodology		200
45	Supplemental payments for state-owned nursing facilities		45
46-49	--	Previously Reserved	--
50	Allowable costs		220
51	Purchases/related organizations		230
52	Administrator/owner compensation		240
53	Depreciation		250
54	Rent/leases		82
55	Provider payments		270
56	Legal fees/accounting		280
57	Documentation		365
58	Fraud and abuse		300
59	--	Previously Reserved	--

60	~~Interim rate~~ New Nursing Facilities		310
65	Final rate		320
70	Cost report submission		330
75	Reporting form; accounting method; cost report extensions; fiscal year changes		340
80	~~Time frames~~ Prospective Rates		350
90	Retrospective rates		360
110	Record retention		370
120	~~Audit overview; scope of audit~~ Audits		380
121	Field audit requirements		380
122	Provider notification		380
123	Field audit exit conference		380
124	Audit delay		380
125	Field audit time frames		380
126	--	Previously Reserved	--
130	--	Previously Repealed	--
N/A (not in current VAC)	Dispute resolution for state-operated NFs		440
135	--	Previously Repealed	--
136	Elements of capital payment methodology not subject to appeal		450
137	--	Previously Reserved	--
140	~~Individual expense limitation~~ Cost Reimbursement Limitation		460
150	~~Cost report preparation instructions~~ - deleted		--
160	Stock acquisition; merger of unrelated and related parties		480
165	Stock acquisition; merger of unrelated and related parties		490
170	NATCEPs costs		500
180	Criminal records checks		510
190	Use of MMR-240		520

200	Commingled investment income		530
210	Provider notification		540
220	Start-up costs		550
221	Time frames		550
222	Organizational costs		570
223	--	Previously Reserved	--
230	Access to records		580
240	Home office operating costs		590
250	~~Lump sum payment~~ Refund of Overpayments		600
251	Offset		600
252	Payment schedule		600
253	Extension request documentation		600
254	Interest charge on extended repayment		600
225	--	Previously Reserved	--
257	Credit balance reporting		600
258	--	Previously Reserved	--
260	--	Previously Repealed	--
264	Specialized care services		660
265		Previously Reserved	
266 (in State Plan twice)	Traumatic Brain Injury (TBI) payment		20
267	Private room differential		670
N/A (Not in current VAC	Nursing facility value-based purchasing program		680
270	Uniform expense classification	Not found in State Plan	--
271	Direct patient care operating	Not found in State Plan	181
272	Indirect patient care operating costs	Not found in State Plan	182
273	Plant cost definitions	Not found in State Plan	81
274	Nonallowable expenses	Not found in State Plan	305
275	NATCEPs costs	Not found in State Plan	490
276	Criminal records background checks	Not found in State Plan	--
280	Leasing of facilities	Not found in State Plan	82

290	Cost reimbursement limitations	Not found in State Plan	460
300	--	Previously Repealed	--
305	Resource Utilization Groups (RUGs)	Not found in State Plan	690
306	Case-mix index (CMI)	Not found in State Plan	700
307	Applicability of case-mix indices (CMI)	Not found in State Plan	710
310	Normalized Case Mix Index (NCMI)	Not found in State Plan	720
320	National RUG-III categories and weights	Not found in State Plan	730
330	Traumatic brain injury diagnoses	Not found in State Plan	19
	Allowable Costs Requirements	Not found in State Plan	200