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## Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	DEPT. OF MEDICAL ASSISTANCE SERVICES
<b>Virginia Administrative Code (VAC) citation</b>	12VAC 30-80
<b>Regulation title</b>	Methods and Standards for Establishing Payment Rates—Other Types of Care
<b>Action title</b>	State Agency Fee Schedule for RBRVS
<b>Document preparation date</b>	; NEED GOV APPROVAL BY AUG 31 <sup>ST</sup>

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

This information is required for executive review ([www.townhall.state.va.us/dpbpages/apaintro.htm#execreview](http://www.townhall.state.va.us/dpbpages/apaintro.htm#execreview)) and the Virginia Registrar of Regulations ([legis.state.va.us/codecomm/register/regindex.htm](http://legis.state.va.us/codecomm/register/regindex.htm)), pursuant to the Virginia Administrative Process Act ([www.townhall.state.va.us/dpbpages/dpb\\_apa.htm](http://www.townhall.state.va.us/dpbpages/dpb_apa.htm)), Executive Orders 21 (2002) and 58 (1999) ([www.governor.state.va.us/Press\\_Policy/Executive\\_Orders/EOHome.html](http://www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html)), and the *Virginia Register Form, Style, and Procedure Manual* ([http://legis.state.va.us/codecomm/register/download/styl8\\_95.rtf](http://legis.state.va.us/codecomm/register/download/styl8_95.rtf)).

### Preamble

*The APA (Section 2.2-4011) states that an “emergency situation” is: (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.*

- 1) Please explain why this is an “emergency situation” as described above.
- 2) Summarize the key provisions of the new regulation or substantive changes to an existing regulation.

The Administrative Process Act (Section 2.2-4011) states that an “emergency situation” is: (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. This suggested emergency regulation meets the standard at COV 2.2-4011(i) as discussed below.

Virginia is experiencing a growing problem with access to obstetrical and gynecological services for Medicaid and FAMIS recipients due, in part, to stagnant reimbursement in the face of cost increases, including increases in medical malpractice premiums for this physician specialty. This is causing a threat to the health of individuals in need of these services through Medicaid and FAMIS.

The Governor is hereby requested to approve this agency’s adoption of the emergency regulations entitled Methods and Standards for Establishing Payment Rates: Other Types of Care State Agency Fee Schedule for RBRVS (12 VAC 30-80-190) and also authorize the initiation of the promulgation process provided for in § 2.2-4007.

**Purpose**

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

The purpose of this regulatory action is to modify the Medicaid reimbursement methodology for fee-for-service physician rates in order to increase reimbursement to obstetrical providers. Additionally, the contracts that DMAS has with managed care organizations are also being modified to accommodate similar rate increases for physicians practicing through managed care.

**Legal basis**

*Other than the emergency authority described above, please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and 2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

The *Code of Virginia* (1950) as amended, § 32.1-325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. The *Code of Virginia* (1950) as amended, § 32.1-324, authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance according to the Board's requirements. The Medicaid authority as established by § 1902 (a) of the *Social Security Act* [42 U.S.C. 1396a] provides governing authority for payments for services.

**Substance**

*Please detail any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons why the regulation is essential to protect the health, safety, or welfare of Virginians. Delineate any potential issues that may need to be addressed as a permanent final regulation is developed.*

The section of the State Plan for Medical Assistance that is affected by this change is the Methods and Standards for Establishing Payment Rates-Other Types of Care, State Agency Fee Schedule for RBRVS (Attachment 4.19-B, Supplement 4 (12VAC30-80-190).

The Governor convened the Governor’s Work Group on Rural Obstetrical Care to examine issues related to a growing problem of access to obstetrical and gynecological care for women of the Commonwealth. This work group is focusing on multiple issues causing access to care problems in obstetrical and gynecological services (OB/GYN), such as increased cost of professional liability insurance, cultural/legal barriers to care, and reimbursement rates, among others. Based on preliminary findings of the work group, it has been concluded that low reimbursement rates under the Medicaid and FAMIS programs are a significant factor related to the access issue in obstetrics and gynecology for Medicaid and FAMIS recipients. While the work group continues its review and evaluation on these issues, there is no question that addressing the low reimbursement rates for obstetrical and gynecological services will be part of the work group’s comprehensive approach to solving this access problem. As such, the Governor has directed DMAS to implement this rate increase to begin to address the growing problem of access to obstetrical and gynecological care.

Provisions in 12 VAC 30-80-190 describe the methodology by which the reimbursement schedule for physician fees is established and updated. The Governor has declared that a threat to public health exists regarding access to OB/GYN care for Medicaid and FAMIS recipients across the Commonwealth and has directed the Department of Medical Assistance Services (DMAS) to increase Medicaid and FAMIS payment rates for OB/GYN physician services by 34 percent relative to rates currently in effect. This proposed amendment would add language providing that certain physician codes be increased by 34 percent above the normal calculated amounts.

Medicaid covers the cost of delivery for a significant percentage of the children born in Virginia through both the fee-for-service program as well as through managed care. This rate increase will be applied to both fee-for-service and MCOs.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
12 VAC 30-80-190	N/A	Sets forth the process for updating the Physician Fee Schedule	Increases certain physician codes related to OB/GYN care by 34 percent above the calculated rate

## Alternatives

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.*

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As discussed previously, other elements that contribute to current crisis in access to obstetrical care are being evaluated by the Governor's Work Group. All further recommendations from this group that are appropriate to implement through further regulatory action by DMAS will be reflected in the subsequent permanent rule making action.

## Family impact

*Please assess the impact of the emergency regulatory action on the institution of the family and family stability.*

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These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children; or 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. It does not strengthen or erode the marital commitment, nor modify disposable family income. These changes may contribute to strengthening the family unit by improving access to health care as these fee increases are expected to increase the availability of OB/GYN services all over the Commonwealth.