



## Proposed Regulation Agency Background Document

<b>Agency name</b>	DEPT OF MEDICAL ASSISTANCE SERVICES
<b>Virginia Administrative Code (VAC) citation</b>	12 VAC 30-80-190
<b>Regulation title</b>	Methods and Standards for Establishing Payment Rates— Other Types of Care
<b>Action title</b>	Physician Fee Increases
<b>Document preparation date</b>	

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.*

The Items 326 VVV, WWW, and XXX of the 2005 Appropriations Act directed various physician rate increases for an effective date of May 1, 2006. The Agency promulgated emergency regulations to satisfy those mandates. This final regulation follows the previous emergency regulation package and makes the emergency changes final and permanent.

Please note: 12 VAC 30-80-190 was also the subject of a separate, final exempt regulatory action that concerned increases to certain emergency room services. Changes to the structure of 12 VAC 30-80-190 that were made in the previous final exempt action are harmonized in this current final regulation as permanent changes.

## Legal basis

*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., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

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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.

## Purpose

*Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.*

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This regulatory action is intended to implement the mandated physician rate increases included in the 2005 Appropriations Act. Items 326 VVV, WWW, and XXX directed various physician rate increases for an effective date of May 1, 2006. Specifically, the Act mandated a 2.5% increase for Obstetrical and Gynecological Services, a 5% increase for Pediatric Services and a 5% increase for Adult Primary and Preventive Care Services. In order to implement these rate increases, 12 VAC 30-80-190 needs to be amended. This section of the Administrative Code defines the methodology for physician fee schedule rate setting under the Resource Based Relative Value Scale (RBRVS) system.

## Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)*

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Item 326 VVV of the 2005 Appropriations Act mandated a 2.5% reimbursement increase to Obstetrical and Gynecological (OB/GYN) professional services. These same services had been increased based on the Governor's declaration that a threat to public health existed regarding access to OB/GYN care. In response to that public health threat, the Governor directed that rates for OBGYN physician services be increased by 34% effective September 1, 2004. Since the 34% increase directed by the Governor has already been implemented, 12 VAC 30-80-190 is being amended to implement the additional 2.5% increase with an effective date of May 1, 2006.

Item 326 WWW of the 2005 Appropriations Act mandated a 5% reimbursement increase to pediatric physician services. The Item further directed the Department to consult with pediatric provider representatives to determine the procedures most appropriate for inclusion in this rate increase. DMAS has consulted with providers and determined that the Evaluation and Management (E&M) procedure codes delivered to recipients under age 21 represent the most appropriate codes for the pediatric increase. 12 VAC 30-80-190 is being amended to implement the 5% increase with an effective date of May 1, 2006.

Item 326 XXX of the 2005 Appropriations Act mandated a 5% reimbursement increase for adult preventive and primary care physician services. The Item further directed the Department to consult with primary care provider representatives to determine the procedures most appropriate for inclusion in this rate increase. DMAS has consulted with providers and determined that the E&M procedure codes delivered to recipients age 21 and over represent the most appropriate codes for the adult preventive and primary care increase. 12 VAC 30-80-190 is being amended to implement the 5% with an effective date of May 1, 2006.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
12VAC30-80-190	N/A	Defines the RBRVS rate setting methodology for professional fees	The language is modified to increase relevant fees for specific groups of services by amounts specified in the 2005 Appropriations Act and to modify the RBRVS methodology to perpetuate these rate increases in future calculations.

**Issues**

- Please identify the issues associated with the proposed regulatory action, including:*
- 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 the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.*

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The primary advantage to the Commonwealth is that increases in reimbursement generally may sustain or enhance access to medical services. The primary disadvantage to the Commonwealth is an increased expenditure of funds for medical services without any directly related and measurable increase in access to care.

**Economic impact**

*Please identify the anticipated economic impact of the proposed regulation.*

<b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</b>	The projected increase in total expenditures is \$2,418,953 in total funds [\$1,176,126 in General Funds (GF)] for two months in SFY2006, and \$14,513,718/\$7,056,756 [total/GF] funds in SFY 2007.
<b>Projected cost of the regulation on localities</b>	None.
<b>Description of the individuals, businesses or other entities likely to be affected by the regulation</b>	Physicians and other practitioners enrolled in the Virginia Medicaid Program.
<b>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	Approximately 16,200.
<b>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</b>	No net costs to any individuals, businesses or other entities; this regulation is projected to increase reimbursement rates for physicians and other practitioners in order to maintain and increase access to health care services for Medicaid recipients.

**Alternatives**

*Please describe any viable 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 General Assembly mandates are very specific concerning the appropriate physician fee increases. DMAS considered increasing the specific rates referred to in the budget amendment but not separating them into subgroups for the RBRVS update. Under this alternative, the RBRVS update could have reduced rates for the subgroup over time, thus undermining the intent of the budget amendment. The approach in this regulation is the most consistent with the intent of the budget amendment.

**Public comment**

*Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.*

No public comments were received on this action.

### Family impact

*Please assess the impact of the proposed 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 and is not expected to affect disposable family income.

### Detail of changes

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

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**There were no substantive changes between the emergency regulation and the proposed regulation.**