



**COMMONWEALTH of VIRGINIA**  
*Office of the Attorney General*  
*Richmond 23219*

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**MEMORANDUM**

**TO: RENEE WHITE**  
Regulatory Coordinator  
Virginia Department of Medical Assistance Services

**FROM: USHA KODURU**  
Assistant Attorney General

**DATE: January 9, 2006**

**SUBJECT: Final Regulation to Increase Emergency Room Physician Reimbursement**

I have reviewed the attached final regulation to increase the amount of reimbursement for emergency room services delivered by physicians. You have asked the Office of the Attorney General to review and determine if the Department of Medical Assistance Services (“DMAS”) has the legal authority to promulgate the final regulations and if the final regulations comport with state and federal law.

It is this Office’s view that DMAS has the authority to promulgate the proposed regulation, subject to compliance with the provisions of Article 2 of the Administrative Process Act and Executive Orders 21 (2002) and 58 (1999) and has not exceeded that authority. The authority for this final regulation is the 2005 Acts of the Assembly, Item 326 (JJJ (2)), which states that DMAS shall use money from the Virginia Health Care Fund and from Federal funds to “increase reimbursements to physicians delivering services to recipients in hospital emergency rooms by three percent effective May 1, 2006....Such amendments to the State Plan shall become effective within 280 days or less from the enactment of this act.” Based on the foregoing, it is my view that the promulgation of these amendments is exempt from the

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procedures of Article 2 of the Administrative Process Act pursuant to Virginia Code §2.2-4006(A)(4)(a).

If you have any questions, please contact me at 786-4905.

Attachment

cc: Kim F. Piner, Esquire