



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

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**MEMORANDUM**

**TO: BRIAN MCCORMICK**  
Regulatory and Manual Section Manager  
Department of Medical Assistance Services

**FROM: REATHA B. KAY**  
Assistant Attorney General

**DATE: November 9, 2005**

**SUBJECT: Emergency Regulations concerning Physician Fee Increases**

I have reviewed the attached emergency regulations concerning the physician rate increases for Obstetrical and Gynecological Services, Pediatric Services and Adult Primary and Preventative Care Services.

Based on that review, it is this Office's view that the Director, acting on behalf of the Board pursuant to Va. Code § 32.1-324, has the authority to promulgate these regulations, subject to compliance with the provisions of Article 2 of the Administrative Process Act and has not exceeded that authority.

The authority for this emergency action is found in Va. Code § 2.2-4011, which provides that emergency regulations are "[r]egulations that an agency finds are necessitated by an emergency situation." The amendments to the regulations will enable the Director, in lieu of the Board of Medical Assistance Services, to comply with the 2005 Appropriation Act Items 326 VVV, WWW and XXX. Item 326(VVV) provides, in part, that DMAS shall "increase Medicaid reimbursement paid for obstetrical and gynological services, by 2.5 percent effective May 1, 2006. The Department of Medical Assistance Services shall promulgate emergency regulations to effect this change within 280 days or less from the enactment of this act." Item 326(WWW)

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provides, in part, that DMAS shall “increase reimbursement rates paid for pediatric physician services for specific billing codes by five percent effective May 1, 2006. . . .The Department of Medical Assistance Services shall promulgate emergency regulations to effect this change within 280 days or less from the enactment of this act.” Item 326(XXX) provides, in part, that DMAS shall “increase reimbursement rates for preventive and primary care physician services provided to Medicaid recipients over the age of 21, excluding obstetrical and gynecological services, by five percent effective May 1, 2006. . .The Department of Medical Assistance Services shall promulgate emergency regulations to effect this change within 280 days or less from the enactment of this act.”

Accordingly, with the prior approval of the Governor, these regulations qualify for the “emergency” exemption from Article 2 requirements. Please be advised, however, that under Va. Code § 2.2-4011(A), the Department must state in writing the nature of and necessity for such emergency action, and this appears to have been accomplished in the “Agency Background Document.” In addition, the regulations shall be effective for no more than twelve months from the emergency regulatory action on this subject matter. As the Department intends to continue regulating the subject matter governed by this emergency regulation beyond 12 months, it will be necessary to replace these emergency regulations with regulations duly promulgated under Article 2 of the APA. A Notice of Intended Regulatory Action relating to the proposed replacement regulations must be filed with the Registrar within 60 days of the effective date of the emergency regulations. The proposed replacement regulations must be filed with the Registrar within 180 days after the effective date of the emergency regulations.

If you have any questions, please contact me at 786-1841.

cc: Kim F. Piner, Esquire

Attachment