



## ***COMMONWEALTH of VIRGINIA***

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### **MEMORANDUM**

**TO: VICKI SIMMONS**  
Regulatory Coordinator  
Virginia Department of Medical Assistance Services

**FROM: USHA KODURU**  
Assistant Attorney General

**DATE: October 22, 2004**

**SUBJECT: Proposed regulation concerning Physician Emergency Room and OB/GYN Reimbursements**

I am in receipt of the attached proposed regulation to increase reimbursements for physicians for certain emergency room procedures and for OB/GYN physician services. 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 proposed regulation and if the proposed regulation comports with state and federal law.

#### **Increase Reimbursement for Certain Emergency Room Procedures**

Based on my review, pursuant to Item 326(JJJ) of the 2004 Appropriation Act, DMAS has the authority to promulgate this amendment.

The authority for this proposed regulation derives from Virginia Code §§ 32.1-324; 325 which grants to the Board of Medical Assistance Services the authority to administer and amend the plan for Medical Assistance and authorizes the Director of DMAS to administer and amend the plan for Medical Assistance according to the Board's requirements.

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Item 326(JJJ) states that DMAS shall increase reimbursements by two percent to physicians delivering services to recipients in hospital emergency rooms effective July 1, 2004. Item 326(JJJ) requires that emergency regulations to enact this item of the Appropriations Act be promulgated within 280 days or less from the enactment of the Act.

Because these regulations will amend the State Plan, approval by the Center for Medicare and Medicaid Services ("CMS") will also be required.

#### Increase Reimbursement for Certain Obstetric/Gynecological Procedures

Based on my review, DMAS has the authority to promulgate this regulation, subject to compliance with the provisions of Article 2 of the Administrative Process Act and has not exceeded that authority.

The authority for this proposed regulation derives from Virginia Code §§ 32.1-324; 325 which grants to the Board of Medical Assistance Services the authority to administer and amend the plan for Medical Assistance and authorizes the Director of DMAS to administer and amend the plan for Medical Assistance according to the Board's requirements. The Governor has directed DMAS to increase Medicaid and FAMIS payment rates for OB/GYN physician services by 34 percent above the current amounts. The proposed amendment to 12 VAC 30-80-190 would add language that certain physician codes for OB/GYN services be increased by 34 percent above the existing amounts.

Because these regulations will amend the State Plan, approval by CMS will also be required

If you have any questions, please contact me at 225-2741.

cc: Kim F. Piner, Esquire

Attachment