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Fast-Track Regulation Agency Background Document

Agency name	Department of Health
Virginia Administrative Code (VAC) Chapter citation(s)	12VAC5-200
VAC Chapter title(s)	Regulations Governing Eligibility Standards and Charges for Medical Care Services to Individuals
Action title	Amend regulation as a result of a periodic review
Date this document prepared	February 17, 2023

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

This existing regulation establishes a means to identify an individual as medically indigent for the purpose of receiving no-cost medical services by the Department of Health. It also establishes a framework of charges and an incremental charge scale based on a person's ability to pay, which will be consistently applied throughout the Department and its local offices. In addition, it allows services to reduce vaccine-preventable and other communicable diseases to be provided at low or no cost to individuals with limited ability to pay for them.

Amendments are needed to this regulation to make format and style changes, add or update references to the Code of Virginia, remove duplicative language, and add clarifying language. Duplicative language will be removed, and information in some sections will be relocated to other sections for continuity.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

There are no acronyms or technical terms used in this form.

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

The State Board of Health approved these Fast Track amendments to the Regulations Governing Eligibility Standards and Charges for Medical Care Services to Individuals (12VAC5-200) at its quarterly meeting on March 23, 2023.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM procedures, "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

Consistent with Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process.

Some of the text did not meet the definition of a regulation pursuant to Virginia Code § 2.2-4001, and style changes were needed to comply with the Form, Style and Procedure Manual for Publication of Virginia Regulations. Additional opportunities for amendment were identified as part of a periodic review. These amendments are updates to style, format, to add missing references, remove redundancies, and clarify information. There are no changes that will alter the intent, meaning or function of the regulation, therefore, it is appropriate for the fast-track process.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

Section 32.1-11 of the Code of Virginia establishes the authority of the State Board of Health to formulate a program of environmental health services, laboratory services and preventive, curative and restorative medical care services, including home and clinic health services described in Titles V, XVIII, and XIX of the United States Social Security Act and amendments thereto, to be provided by the Department of Health on a regional, district, or local basis. It also establishes the authority of the Board to define the

income limitations for medically indigent persons; prescribe the charges to be paid for medical care services of the Department; prescribe a scale of charges based on the ability to pay; and authorize the Department to charge an amount equal to the allowable charge of an insurer for persons who have private health insurance.

Section 32.1-12 establishes the authority of the Board to make, adopt, promulgate and enforce such regulations and provide for reasonable variances and exemptions that may be necessary to carry out these provisions and other laws of the Commonwealth administered by the Board, the Commissioner of Health, or the Department of Health.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

The amendments are needed to update style, remove redundancies, add missing citations and clarify information. The regulation is essential in providing the local health department offices with clear information about determining whether a person is medically indigent and their eligibility to receive low- or no-cost medical services, therefore protecting the health, safety, and welfare of the citizens of the Commonwealth. The goal of these changes is to produce a more up-to-date regulation with no redundant language.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

There are no new substantive provisions or substantive changes to existing sections.

The current regulation, in section 150, allows free immunizations for children as required by § 32.1-46 of the Code and for adults up to age 21 who are enrolled in school. This action will raise that age limit to 22. The added language "enrolled in public or private primary or secondary school" for those adults appears to be a substantive change but is consistent with statute and current practice.

Issues

Identify the issues associated with the regulatory change, 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 there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

There are no disadvantages to the public or the Commonwealth because of these changes.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There are no applicable federal requirements, or no requirements that exceed applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. “Particularly affected” are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

There are no other state agencies particularly affected by the changes.

Localities Particularly Affected

There are no localities particularly affected by the changes.

Other Entities Particularly Affected

There are no entities particularly affected by the changes.

Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources</p>	<p>There are no projected costs, savings, fees, or revenues resulting from the regulatory change.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>There are no projected costs, savings, fees, or revenues to other state agencies resulting from the regulatory change.</p>

<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	The changes will make the regulation clear and more concise.
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Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

Projected costs, savings, fees or revenues resulting from the regulatory change.	There are no projected costs, savings, fees, or revenues to localities resulting from the regulatory change.
Benefits the regulatory change is designed to produce.	The changes will make the regulation clear and more concise.

Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	There is no impact to other entities.
Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	Not applicable
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	Not applicable
Benefits the regulatory change is designed to produce.	The changes will make the regulation clear and more concise.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small

businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

No alternatives were considered. This regulation addresses the provisions of 32.1-11 and 32.1-12 with no undue burdens.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B of the Code of Virginia, describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

No analysis of alternative regulatory methods was considered. This regulation does not include schedules, compliance reporting deadlines, or any language that impacts small businesses.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

Consistent with § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The Department of Health is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to Lisa Park, 109 Governor St, Richmond, VA 23219, ph-804-864-7018, fax-804-864-7022, lisa.park@vdh.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
200-10		Definitions for words used in this chapter	<p>Change: Updated language and removed specific income level information. This income level information was added to section 110 where other income level information appears. Removed the proof-of-pregnancy information as it relates to family size and changed “A husband and Wife” to “Spouse” in the “Family” or “Family Unit” definition. Removed incorrect Code references from the “Income Scales” definition. A reference to 12VAC5-200-150 was added to the definition for “nonchargeable services.”</p> <p>Intent: It will make information easier to find. The intent of adding the reference in the “nonchargeable services” definition was to clarify that the term specifically references the services listed in that section.</p> <p>Rationale: This will align with WIC and Medicaid which no longer asks for proof of pregnancy, reducing the burden on the patient seeking medical services.</p> <p>Likely Impact: Increased clarity of the Regulations among the regulants.</p>

200-20		Authority for regulations	<p>Change: Repeal section.</p> <p>Intent: It will reduce redundancies in the regulations.</p> <p>Rationale: This section merely re-stated section 32.1.11 of the Code of Virginia and was not needed.</p> <p>Impact: Increased clarity of the Regulations among the regulants.</p>
200-30		Purpose of chapter	<p>Change: Repeal section.</p> <p>Intent: It will reduce discrepancies in the regulations.</p> <p>Rationale: This section is non-regulatory.</p> <p>Impact: Increased clarity of the Regulations among the regulants.</p>
200-40		Administration of chapter explains how fee schedule is established.	<p>Change: Repealed section</p> <p>Intent: It will reduce inconsistencies in the regulations.</p> <p>Rationale: This section contained language that was repeated in section 90. Since section 90 is about charges for services, language from this section was moved to section 90 and duplicative language removed. Section 40 is repealed so that language about charges is now all in one section (90).</p> <p>Likely Impact: Increased clarity of the Regulations among the regulants.</p>
200-50		States who this chapter applies to	<p>Change: Changed a word from plural to singular as per Form, Style and Procedure Manual for Publication of Virginia Regulations.</p> <p>Intent: To conform the section to the <i>Form and Style Manual</i>.</p> <p>Rationale: Conforming will increase the clarity of the Regulations.</p> <p>Likely Impact: Increased clarity of the Regulations among the regulants.</p>
200-60		Application of the Administrative Process Act	<p>Change: Repealed section.</p> <p>Intent: To conform the section to the <i>Form and Style Manual</i>.</p> <p>Rationale: It contained a single, unnecessary sentence about the</p>

			governing of the Administrative Process Act. Likely Impact: Increased clarity of the Regulations among the regulants.
200-80		Defines application process and information required to assess income level	Change: Updated wording to address merging information from another section to include the termination of services, made style changes and removed redundant language. Intent: To update the language to include moved language and to conform the section to the <i>Form and Style Manual</i> . Rationale: Increases the clarity of the Regulations. Likely Impact: These changes will make the section clearer.
200-90		Defines process to establish fees for medical care services	Changes: Added updated language from 32.1.11 related to charging private health insurance and moved language from sections 40 and 100 to keep similar subjects together regarding the charges for services. The language from section 40 includes how the fee schedule is established, service charges, and Medicaid charges. The language from section 100 is the establishment of a mechanism for flat rate charges. Instead of the ability to request permission to round charges to “a convenient value,” health district directors may request permission to round to “the nearest whole dollar.” Intent: To increase the clarity of the Regulation. The intent of the change to the rounding provision is to clarify expectations for rounding of charges. Rationale: The chapter is now more complete. The rationale regarding the rounding provision is that the term “convenient value” is not defined, and the regulation should provide a standard expectation for any changes to charges for services. Likely Impact: Increased clarity of the Regulations among the regulants and VDH and local health district staff.
200-100		Established a mechanism for flat rate charges	Changes: Repealed-combined with section 90 to put similar information together making it more complete.

			<p>Intent: To increase the clarity of the Regulation.</p> <p>Rationale: The provisions of this section were moved in order to make the Regulations clearer.</p> <p>Likely Impact: Increased clarity of the Regulations among the regulants.</p>
200-105		Establishes the method used to charge for services provided to external agencies	<p>Changes: Made a single word strike per the Form, Style and Procedure Manual for Publication of Virginia Regulations.</p> <p>Intent: To update the language to conform the section to the <i>Form and Style Manual</i>.</p> <p>Rationale: Increases the clarity of the Regulations.</p> <p>Likely Impact: These changes will make the section clearer.</p>
200-110		Defines income levels for assessing charges for medical care services	<p>Changes: Information was moved from Definitions section 10 to this section that already included some information about income levels and the charges that those incomes levels will incur for services. Removed a single redundant sentence.</p> <p>Intent: To remove redundancies in the section and group similar regulatory requirements together.</p> <p>Rationale: These changes will make the information easier to follow because it is all in the same chapter now.</p> <p>Likely Impact: Increased clarity of the Regulations among the regulants.</p>
200-120		Lists programs that don't require income verification for specific services	<p>Changes: Added children 6mos-3yrs with WIC for the dental varnish program. The program was initiated a few years ago and just formalizing the process here. Removed information related to Medicaid application and assessing of charges.</p> <p>Intent: To increase the clarity of the section.</p> <p>Rationale: The increase in clarity will help reduce perceived barriers to the services of this section.</p>

			<p>Likely Impact: Reduced a perceived barrier to services included in this section.</p>
200-130		Explanation of charges	<p>Change: This section includes a single sentence, which was updated with style changes only.</p> <p>Intent: To update the language to conform the section to the <i>Form and Style Manual</i>.</p> <p>Rationale: Increases the clarity of the Regulations.</p> <p>Likely Impact: These changes will make the section clearer.</p>
200-140		Redetermination of eligibility	<p>Change: This section includes a single sentence, which was updated with style changes only.</p> <p>Intent: To update the language to conform the section to the <i>Form and Style Manual</i>.</p> <p>Rationale: Increases the clarity of the Regulations.</p> <p>Likely Impact: These changes will make the section clearer.</p>
200-150		Provides a list of services provided at no charge	<p>Changes: Added the single sentence from section 170 related to other medical services provided at no charge to capture related information in the same chapter. Added a clarification to immunizations for persons up to age 22 that ties eligibility for free vaccines to school enrollment as referenced in § 32.1-46 of the Code of Virginia.</p> <p>Intent: To update the language to include language from repealed sections.</p> <p>Rationale: This will provide clarity for those individuals past age 20 who are enrolled in a public or private secondary school.</p> <p>Likely Impact: The Regulations will be clearer. Those who are 22 years old and enrolled in a school program will access required immunizations at no charge.</p>
200-170		The department may provide "other" health care services at no charge	<p>Changes: Repeal this section-The one sentence included in this section will be moved to section 150.</p>

			<p>Intent: To increase the clarity of the Regulations.</p> <p>Rationale: Repealing and moving language will help increase the clarity of the Regulations.</p> <p>Likely Impact: These changes will make the chapter clearer.</p>
200-180		Exceptions for service eligibility to patients	<p>Changes: Repeal this section-The one sentence included in this section allows for exceptions to assessing charges for medical care services.</p> <p>Intent: This change will remove redundant language.</p> <p>Rationale: Exceptions are already addressed in other sections and a stand-alone section is unnecessary.</p> <p>Likely Impact: These changes will make the chapter clearer.</p>
200-220		Section entitled "General" includes information about wavier of charges	<p>Changes: Repeal this section and move appropriate information to Waivers section 230.</p> <p>Intent: This change will clarify the information about waivers and keep it in one section.</p> <p>Rationale: This section included redundancies and confusing wording that conflicted with Waivers section 230.</p> <p>Likely Impact: These changes will make the chapter clearer.</p>
200-230		Provides a mechanism to request a waiver of charges	<p>Changes: Made style changes and added information previously in section 220.</p> <p>Intent: To include language from repealed section 220 and update the language to conform the section to the <i>Form and Style Manual</i>.</p> <p>Rationale: Increases the clarity of the Regulations.</p> <p>Likely Impact: These changes will make the section clearer.</p>
200-270		Provides for appeal rights to patients	<p>Changes: Made style changes, removed redundant language, and added provisions for the notification of appeal decisions.</p>

			<p>Intent: To include provisions for the notification of appeal decisions and update the language to conform the section to the <i>Form and Style Manual</i>.</p> <p>Rational: Changes will make this section clearer.</p> <p>Likely Impact: These changes will make the section clearer.</p>
200-280		Representing information	<p>Changes: Only changes to style were made to this section.</p> <p>Intent: To update the language to conform the section to the <i>Form and Style Manual</i>.</p> <p>Rationale: Increases the clarity of the Regulations.</p> <p>Likely Impact: These changes will make the section clearer.</p>
200-290		Provides the requirement to establish procedures for maintenance and revision of charges	<p>Changes: Removed unnecessary language and added the requirement for income schedules used to determine sliding scale discounts to be available for public inspection.</p> <p>Intent: To remove unnecessary language and increase the clarity of the Regulations.</p> <p>Rationale: Increases the clarity of the Regulations.</p> <p>Likely Impact: These changes will make the section clearer.</p>