



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	Dept. of Medical Assistance Services 12 VAC 30
VAC Chapter Number:	Chapter 50
Regulation Title:	Amount, Duration, and Scope of Services
Action Title:	Expansion of School Based Services
Date:	5/10/00

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

These proposed regulations provide for the expansion of school based services, to supersede the agency's current emergency regulations, in response to a mandate from the 1999 General Assembly. This provides for the extension of skilled nursing services, the coverage of psychiatric and psychological services, and the coverage of screening services. Also, this action specifically excludes from coverage in the schools all services related to family planning services.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

The Code of Virginia (1950) as amended, §32.1-325, grants to the Board of Medical Assistance Services (BMAS) the authority to administer and amend the Plan for Medical Assistance. The Code of Virginia (1950) as amended, §32.1-324, grants to the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the Plan for Medical Assistance in lieu of Board action pursuant to the Board's requirements. The Code also provides, in the Administrative Process Act (APA) §§9-6.14:7.1 and 9-6.14:9.1, for this agency's promulgation of proposed regulations subject to the Governor's review.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The purpose of this proposal is to promulgate permanent regulations, to supersede the current emergency regulations and to provide for the expansion of health care services which can be rendered by employees of school divisions to Special Education Children and be reimbursed by Medicaid. This action is expected to benefit the health and welfare of Special Education children because it will permit them to obtain daily needed medical care while remaining in their educational settings.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

The section of the State Plan affected by this action is the Amount, Duration, and Scope of Services, Other Diagnostic, Screening, Preventive, and Rehabilitative Services, i.e., other than

those provided elsewhere in this plan: Rehabilitative Services: School Based Services (VAC 12 VAC 30-50-229.1).

In 1991, the Department of Medical Assistance Services began covering physical, occupational and speech-language therapies for the special education population in Virginia school divisions. This DMAS coverage expansion began as a result of a study by the Governor's Child Health Task Force as described in its report entitled "Investing in Virginia's Future" (December 1991). Under federal law, Virginia school divisions are required to offer special education services to children with handicapping conditions. DMAS became involved in covering special education services due to budgetary initiatives within the Commonwealth to utilize available federal Medicaid funding for services which otherwise had been funded by state and local sources. The particular services were selected by DMAS for coverage because the existing DMAS requirements for covering them were similar to the definitions and provider qualifications already implemented by the school divisions.

The federal Individuals with Disabilities Education Act (IDEA), as amended (20 U.S.C. § 1400 et seq.) requires school divisions to provide all special education and related services to children with one or more of thirteen specified disabilities. Under the federal IDEA, school divisions prepare an Individualized Education Program (IEP) plan for each child qualifying under IDEA, specifying all special education and related services needed by the child. The IEP is the child-specific definitive document enumerating the care and services required. The children are to receive a "free appropriate" education (federally defined as special education and related services which include transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education), at no cost to the parents. The 1997 federal amendments re-authorizing IDEA added specificity as to the role of Medicaid and other non-education entities in reimbursing for special education services. The greater specificity provided that agencies other than the local school authority had an obligation to precede the local school division in financing necessary special education services.

Federal funds are authorized under IDEA for the services but the majority of the funds have historically been from state and local revenues. The Medicare Catastrophic Coverage Act of 1988 amended Title XIX of the Social Security Act (the authority for the Medicaid program), providing that nothing under the Medicaid statute should be interpreted to prohibit Medicaid payments for services simply because they are prescribed in a child's Individualized Education Program. The IEP may refer to services such as speech therapy or nursing services for the treatment of the child.

For the special education services covered by DMAS, reimbursement is only for the federal portion of the payment. DMAS does not receive a General Fund appropriation to reimburse for these school-based services. The school divisions provide documentation to DMAS that they expended funds for the services billed to DMAS. DMAS then reimburses the local school divisions for the federal share of the payment.

Since the initial DMAS coverage of school-based services in 1991, discussions have been ongoing between DMAS and the Department of Education (DOE) into further service

expansions resulting in the changes that were effective July 1, 1997. In the fall of 1998, a joint legislative subcommittee discussed Medicaid coverage of school-based services resulting in Chapter 967 of The 1999 Virginia Acts of Assembly.

The 1999 Virginia Acts of Assembly Chapter 967 addressed several areas (listed below) of Medicaid coverage of special education services and prompted the current emergency regulation. For example, the legislation addresses coverage of psychological/psychiatric services in schools, changes in provider qualifications for psychologists and speech therapists, substantially revises the DMAS/DOE interagency agreement, revises the payment rates for services, requires development of methods to assist school divisions in identifying Medicaid eligible children, and requires development of a document which combines elements of the DMAS Plan of Care with the DOE Individualized Education Program plan. Chapter 967 includes language not only to address qualifications of psychologists but also speech therapists and directs DMAS to recognize qualifications for services beyond what is currently recognized for reimbursement in non-school settings.

DMAS is also extending, with these regulations, the length of coverage of skilled nursing services for children in special education. Currently in schools, DMAS covers a maximum 90 minutes a day of skilled nursing services. The decision to cover beyond 90 minutes a day of skilled nursing services is based on a Virginia Office of Attorney General memorandum in August of 1999 citing language in Chapter 967 that DMAS coverage is to assist school divisions in the funding of medically necessary services "...by making use of every possible, cost-effective means...", the 1997 amendments to IDEA, and the Garret court decision.

In addition to Virginia's legislative activity, the U.S. Supreme Court issued a decision (Cedar Rapids Community School District v. Garret. 526 U.S.66, 143 L. Ed.2d 154, 119 S.Ct. 992 (1999)) in March of 1999 further affecting DMAS' considerations in expanding coverage of special education services. The Garret case involved a special education child who was wheelchair bound and ventilator dependent who required all day nursing services. The school division (Cedar Rapids) maintained that Garret needed medical services that are not included under the federal Individuals with Disabilities Education Act. The Court rejected this position finding that supportive services (such as nursing care) are included under the IDEA and school districts were required to fund the care, even for children having extensive nursing needs.

While Medicaid was not mentioned in this decision, the Garret case has received considerable publicity and underscores the extensive health care services school divisions must provide to children with special education needs under IDEA. The 1997 federal amendments re-authorizing IDEA provided that states identify agencies, other than education agencies, with responsibility for paying for special education services. These agencies are to have financial responsibility for the special education services preceding the local education agency. Title XIX Medicaid programs are specifically mentioned as part of this process.

These regulatory changes are essential for the economical performance of an important governmental function in that local school divisions will obtain federal Medicaid dollars for these special education services whereas, prior to the current emergency regulations, these services were provided out of state/local budgets.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 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, please include a sentence to that effect.

The advantage for the affected children and their families is that these children will receive necessary health care services, with the parents' knowledge and approval, during the school day without requiring the parents to lose time from their jobs. The advantage to the schools by using their own employees is that the children will lose less instruction time (by eliminating the necessity for travel to a doctor's office). Medicaid coverage of therapy and screening services also serves as a source of income for the schools which replaces previously used local and state dollars. The agency projects no negative issues involved in implementing this proposed change.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

For the 1998-99 school year, DMAS "reimbursed" approximately \$1.76 million to school divisions for Medicaid covered special education services. Slightly more than one-half of this amount is federal funds reimbursed by DMAS and the remaining portion is documented matching funds from school divisions allowing DMAS to draw-down the federal funds. The 1998-99 school year reimbursement represents about 11,200 claims paid for services.

Currently only about 44 school divisions actively bill Medicaid since enrollment by school divisions is voluntary. The expanded coverage in this regulatory package is also only for federal funds reimbursed by DMAS. The three items that account for the federal fund fiscal impact are: coverage for psychiatry and psychological services; the additional speech therapists providing services; and the longer duration of skilled nursing services covered. The total annual federal funds estimated to be needed are \$884,000 but which will be prospectively adjusted (in the HCFA-37 requested funds report). There are no localities that are uniquely affected by these regulations as they apply statewide in so far as local school divisions choose to participate in Medicaid.

The Department of Medical Assistance Services is established under the authority of Title XIX of the federal Social Security Act, Public Law 89-97, as amended; and Title 32.1, Chapter 10, of the Code of Virginia. The Virginia Medicaid Program is funded with both federal and state funds. The current federal funding participation (FFP) for medical assistance expenditures is 51.67%, which became effective October 1, 1999. This rate will increase to 51.85% on October 1, 2000.

This program is not expected to have any impact on local departments of social services as it does not affect eligible groups nor the eligibility determination process.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

VAC Citation	Federal Citation	Substance of the Suggested Change
12 VAC 30-50-229.1 A		Reference to parental consent added; new services added.
12 VAC 30-50-229.1 B		Existing services expanded to conform to law; new service added
12 VAC 30-50-229.1 C		Existing service expanded;
12 VAC 30-50-229.1 D		New services added.

Alternatives

Please describe the specific 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 agency could not exercise policy alternatives as the General Assembly mandated specific policy changes in the earlier referenced bill.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

No comments were received during the NOIRA comment period.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

DMAS has examined these regulations and, in so far as is possible, has ensured that they are clearly written and easily understandable by the individuals and entities affected.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

The Department of Medical Assistance Services, in collaboration with the Department of Education, will monitor the coverage of these services as part of its ongoing Plan monitoring activities.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) 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; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This regulatory action will not have any negative affects on the institution of the family or family stability. It will not increase or decrease disposable family income or erode the marital commitment. It will not discourage economic self-sufficiency, self-pride, nor the assumption of family responsibilities. These proposed regulatory changes will have a positive impact on families of Special Education children. Since parents will be involved in developing their children's Individualized Education Plan, their consent for all of these covered services will be mandatory. These special needs children will be able to obtain some of the daily needed medical care from school nursing staffs which will permit these children to attend school while relieving their families of these demands.