



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: Early and Periodic Screening, Diagnosis and Treatment Services
Action Title:	Residential Psychiatric Treatment for Children/Adolescents
Date:	April 17, 2000

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summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed.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.

This proposed regulation establishes the coverage of residential psychiatric services for children and adolescents under the authority of the Early and Periodic Screening, Diagnosis, and Treatment program.

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.

Subsequent to an emergency adoption action, the agency is initiating the public notice and comment process as contained in Article 2 of the APA. The emergency regulation became effective on January 1, 2000. The Code, at §9-6.14:4.1(C) requires the agency to file the Notice of Intended Regulatory Action within 60 days of the effective date of the emergency regulation if it intends to promulgate a permanent replacement regulation. The Notice of Intended Regulatory Action for this regulation was filed with the Virginia Register on January 6, 2000.

Chapter 464 of the 1998 Acts of Assembly, Item 335.X.2 mandated that the Department promulgate regulations to amend the State Plan for Medical Assistance to expand coverage of inpatient psychiatric services under the Early and Periodic, Screening, Diagnosis and Treatment Program (EPSDT) to include services in residential treatment facilities. The Act mandated that such regulations be in effect on January 1, 2000, and address coverage limitations and utilization review. Such services, defined at 42 CFR §440.160, are nevertheless being covered herein under the authority of 42 CFR 440.40.

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 provide Medicaid reimbursement for a new service: residential psychiatric services for children and adolescents under the Early and Periodic Screening, Diagnosis and Treatment service. Since this will be a newly covered service, the health of Medicaid children who need this service will be benefited.

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 sections of the State Plan affected by this action are the Amount, Duration, and Scope of Services Early and Periodic Screening, Diagnosis and Treatment service (12 VAC 30-10-150, 50-30, 50-130, 50-250, 80-21). The regulations affected by this regulatory action are Amount, Duration, and Scope of Services Early and Periodic Screening, Diagnosis and Treatment Residential Psychiatric Treatment for Children and Adolescents (12 VAC 30-130-850 et. seq).

The Comprehensive Services Act for At-Risk Youth and Families (CSA) (§§2.1-745 through 2.1-759.1 of the Code of Virginia) is a Virginia law designed to help troubled youths and their families. State and local agencies, parents, and private service providers work together to plan and provide services. In each community, local teams decide how to do this. The community policy and management team (CPMT) coordinates agency efforts, manages the available funds, and sees that eligible youths and their families get help. The family assessment and planning team (FAPT) looks at the strengths and needs of individual youths and families, decides what services to provide, and prepares a service plan for each family. Both teams include parents, staff from community service boards, court service units, the departments of health and social services, the schools, and private providers.

In 1997, the Joint Legislative Audit and Review Commission (JLARC) published its "Review of the Comprehensive Services Act." This report made a number of recommendations for improvement of the Comprehensive Services Act. One recommendation urged the use of Medicaid funding to serve children whose placements were in facilities and programs for which Medicaid payment could be made. In this way, federal matching funds could be obtained for services currently funded from state and local funds. As a result of the JLARC report, the 1998 Appropriations Act directed the Department of Medical Assistance Services to add coverage of residential treatment for children and adolescents to the coverage of inpatient psychiatric treatment under the Early and Periodic Screening, Diagnosis and Treatment Program (EPSDT). Medicaid coverage of this new residential treatment became effective on January 1, 2000.

Medicaid currently covers inpatient psychiatric treatment for individuals under age 21 only in psychiatric units of acute care general hospitals or in freestanding psychiatric hospitals. This regulation will provide a lower, less intensive, level of inpatient services for children and adolescents who do not require the intensity of services offered by a hospital setting.

Prior to the current emergency regulations, residential psychiatric services were purchased by the Comprehensive Services Act for children and adolescents who could not be treated on an outpatient basis and who did not need hospital care. These placements were funded from state and local funds. Since Medicaid now covers the service, federal matching funds are available and reduce the amount of state and local funds needed to purchase residential services for these vulnerable children.

The regulations include the definition of the service, coverage limitations, provider qualifications, utilization review, and reimbursement methodology.

The provision of these services through Medicaid will make it possible for children and adolescents who need this service to access it quicker (spending less time on waiting lists) and from a larger number of enrolled providers. This should facilitate service provision, enabling children and adolescents to get better faster and return to their regular life routine.

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 primary advantage of this action is the addition of a Medicaid reimbursable service to replace a service currently paid from only state and local funds. By making federal funding available, savings can be achieved in state General Funds and in expenditures of local governments for children and adolescents served through the Comprehensive Services Act.

The primary disadvantage of this regulation action arises from the federal mandated requirements for Medicaid reimbursement. The federal regulations are prescriptive of provider requirements and utilization management requirements. Because of the prescriptive provider requirements, only a few of the residential care facilities licensed in the Commonwealth can participate in Medicaid payments. These regulations reflect the current federal regulations.

Providers of residential treatment may resist the additional cost of complying with Medicaid's federal regulations. In addition, they may resist Medicaid reimbursement methodologies. Currently, each facility negotiates a unique rate of reimbursement with each local Community Policy and Management Team. The fact that Medicaid will be paying for this service will force the standardization of payment rates. Local governments will have to consider Medicaid reimbursement policies when referring Medicaid eligible children to a Medicaid enrolled residential treatment provider.

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.

The 1999 General Assembly instructed DMAS to provide coverage of services in residential treatment facilities effective January 1, 2000. It was estimated that, at program maturity, approximately 1,600 children who are receiving residential services through the Comprehensive Services Act would be served through Title XIX. The General Funds for these services are to be transferred from CSA to DMAS as funds are expended.

In addition, DMAS was appropriated approximately \$861,000 total funds for FY2000 (\$417,000 GF) for coverage of residential treatment facilities for non-CSA children. This service will be available to all Medicaid-eligible children, as well as VCMSIP-eligible children, regardless of whether they seek assistance through CSA. DMAS expects to serve about 160 non-CSA children when the program reaches maturity.

Presently, CSA reimburses residential treatment providers approximately \$35,000 per child for a year of care. There are no localities that are uniquely affected by these regulations as they apply statewide.

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 a direct impact on local departments of social services, as it does not affect eligible groups nor the eligibility determination process. Local DSS will be affected, as will the other local government entities that participate in the FAPT/CPMT. The effect will entail adjusting to the steps necessary to use Medicaid reimbursement, including negotiating rates, formulating necessary contracts, and providing the necessary information to the Medicaid care provider.

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.

DETAILS OF CHANGES

VAC Citation	Federal Citation	Substance of the Suggested Change
12VAC30-10-150, 50-30, 50-70		Technical language added to incorporate a reference to this new service.
12 VAC 30-50-130		EPSDT section of Amount, Duration, and Scope of Services that establishes coverage of this new service.
12 VAC 30-50-250		Technical language added to incorporate a reference to this new service adjacent to a non-covered optional service that is established by 42 CFR 440.160.
12 VAC 30-80-21		Establishes reimbursement methodology in the Plan, as federally required, for new service.
12 VAC 30-130-850		State-only regulations containing the details of service operations by which pay/no-pay decisions will be made.

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.

DMAS has designed its proposed regulations consistent with the federal regulations (42 CFR 441.150 through 441.182) that establish federal minimum standards for this service. The intent of this alternative is to secure federal financial participation.

Public Comment

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

No public 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.

DMAS routinely monitors the implementation of State Plan changes and will include the monitoring of this change in that ongoing process.

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 is not expected to directly affect the institution of the family or family stability. It is not expected to strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children. It will not affect self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents. It will not affect the marital commitment or affect disposable family income. By providing psychiatric treatment for children and adolescents, this regulatory action may indirectly enhance family stability by reducing dysfunctionality.