



Virginia
Regulatory
Town Hall

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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	DEPT OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation	12 VAC 30-50; 12 VAC 30-60; 12 VAC 30-80, 12 VAC 30-120
Regulation title	Amount, Duration, and Scope of EPSDT Services; Standards Established and Methods Used to Assure High Quality of Care; Methods and Standards for Establishing Payment Rates—Other Types of Providers; Waivered Services
Action title	Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Behavioral Therapy Services
Date this document prepared	

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The proposed regulatory action is intended to promote an improved quality of Medicaid-covered behavioral therapy services provided to children and adolescents who may have autism spectrum disorders and similar developmental disorders. The proposed changes will differentiate Medicaid's coverage of behavioral therapy services, including applied behavior analysis, from coverage of community mental health and other developmental services. Regulatory action is needed to establish provider qualifications and clear criteria for Medicaid payment of these EPSDT Behavioral Therapy Services (BTS).

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a

specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

The *Code of Virginia* (1950) as amended, § 32.1-325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. The *Code of Virginia* (1950) as amended, §§ 32.1-324 and 325, authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance according to the Board's requirements. The Medicaid authority as established by § 1902 (a) of the *Social Security Act* [42 U.S.C. 1396a] provides governing authority for payments for services.

Section 1905 of the *Social Security Act* requires state Medicaid programs to provide early and periodic screening, diagnosis, and treatment (EPSDT) services for individuals who are eligible under the plan and are under the age of 21, to include “Such other necessary health care, diagnostic services, treatment, and other measures described in section 1905(a) to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services, whether or not such services are covered under the State plan.”

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

This regulatory action is essential to protect the health, safety, and welfare, and ensure the quality of rendered services, of children and adolescents covered by Medicaid who demonstrate the medical need for EPSDT Behavioral Therapy Services. The children who receive these services often have autism spectrum disorders or other serious developmental disorders. Changes are needed to distinguish Medicaid coverage of EPSDT Behavioral Therapy Services from community mental health and other behavioral health and developmental services.

This is an EPSDT treatment service. Coverage of EPSDT BTS will not cause more children to be eligible for this service but will assure appropriate treatment of the children who are already in the care delivery system.

Early intensive treatment by trained professionals has been shown to be effective in ameliorating impairments in major life functions arising from autism spectrum disorders and other serious developmental disabilities. DMAS currently authorizes behavioral therapy services on an individual basis to provide diagnostic and treatment services necessary to correct or ameliorate medical conditions such as autism spectrum disorders. Regulations are essential to establish clear criteria for Medicaid payment of these services and to provide appeal and legal support. Regulatory action is needed to ensure that Medicaid individuals and their families and service providers are well informed about service specifications prior to receiving these services. The proposed regulations will need to address provider qualifications.

Substance

Please detail any changes that will be proposed. Be sure to define all acronyms. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

The regulations that will be affected by this action are Amount, Duration, and Scope of Medical and Remedial Care (12 VAC 30-50), Standards Established and Methods Used to Assure High Quality Care (12 VAC 30-60), and Methods and Standards for Establishing Payment Rates; Other Types of Care (12 VAC 30-80), and Waivered Services (12 VAC 30-120).

Currently, Medicaid payment for behavioral therapy services is authorized on an individual case basis under the basic EPSDT definition found in 12 VAC 30-50-131.B.4:

Consistent with the Omnibus Budget Reconciliation Act of 1989 § 6403, early and periodic screening, diagnostic, and treatment services means the following services: screening services, vision services, dental services, hearing services, and such other necessary health care, diagnostic services, treatment, and other measures described in Social Security Act § 1905(a) to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services and which are medically necessary, whether or not such services are covered under the State Plan and notwithstanding the limitations, applicable to recipients ages 21 and over, provided for by the Act § 1905(a).

The proposed regulatory action will add new language to the *Virginia Administrative Code* defining Medicaid coverage under EPSDT that is specific to behavioral modification strategies. These strategies are designed for individuals younger than 21 years of age using systematic interventions, typically provided in the individual's home, to enhance communication skills and decrease maladaptive patterns of behavior which, if left untreated, could lead to more complex problems and the need for a greater or a more restrictive level of care, such as institutionalization. This includes, but is not limited to, applied behavior analysis. The proposed regulatory language will define the scope of Medicaid coverage for EPSDT BTS, qualifications of providers, standards to assure high quality of services, and the method of payment.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

DMAS considered administering EPSDT behavioral therapy services under the existing regulations for EPSDT Intensive In-Home Services. This proved not to be a good fit due to the different treatment modalities and practitioner specialized training and qualifications for EPSDT BTS necessary for effective treatment.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

Please also indicate pursuant to your Public Participation Guidelines whether a panel will be appointed to assist in the development of the proposed regulation. Please state one of the following: 1) a panel will be appointed and the agency's contact if you're interested in serving on the panel is _____; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulatory proposal.

The agency is seeking comments on this regulatory action, including but not limited to 1) ideas to be considered in the development of this proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) the probable effect of the regulation on affected small businesses, and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to Molly Carpenter at mail: Div. of Maternal and Child Health, DMAS, 600 E. Broad St., Suite 1300, Richmond, VA 23219; phone: (804) 786-1493; fax: (804) 225-3961; email: Molly.Carpenter@dmas.virginia.gov . Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

A panel will not be used. A public hearing will not be held following the publication of the proposed stage of this regulatory action.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent 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.

These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children; or 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. It does not strengthen or erode the marital commitment, but may decrease disposable family income depending upon which provider the recipient chooses for the item or service prescribed.