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## Final Regulation Agency Background Document

<b>Agency name</b>	DEPT. OF MEDICAL ASSISTANCE SERVICES
<b>Virginia Administrative Code (VAC) citation</b>	12 VAC 30, Chapter 50
<b>Regulation title</b>	Amount, Duration and Scope of Services: School Health Services;
<b>Action title</b>	School Health Services
<b>Document preparation date</b>	

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.*

This regulatory action is a response to the 2003 Appropriations Act, Items 325 XX and EEE, which directs DMAS to expand school health services. The additional services under this final regulation include: audiology services, medical evaluation services, personal care services, and transportation. All health services will be strictly tied to the student's Individualized Educational Program (IEP). This final regulation is the last step in a four year process of negotiation with the federal Medicaid authority, the Centers for Medicare and Medicaid services (CMS). **This regulatory action began as an emergency regulation in 2003, and proceeded through the proposed stage. All Virginia Medicaid regulatory changes must be approved by CMS, and the changes addressed in this action were the subject of protracted negotiations between CMS and DMAS. This final regulation reflects the ultimate outcome of that four year negotiation process.**

**Statement of final agency action**

*Please 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.*

I hereby approve the foregoing Regulatory Review Summary with the attached amended State Plan pages (12 VAC 30-50-130, 30-50-229.1, 30-50-530) and adopt the action stated therein. I certify that this final regulatory action has completed all the requirements of the Code of Virginia § 2.2-4012, of the Administrative Process Act.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Patrick W. Finnerty, Director  
Dept. of Medical Assistance Services

**Legal basis**

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

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, 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. Finally, Item 302(E) of the 2007 Appropriation Act, states that if CMS “determines that the process for accomplishing the intent of a part, section, subsection, paragraph, clause, or phrase of this Item is out of compliance or in conflict with federal law and regulation and recommends another method of accomplishing the same intent, the Director of the Department of Medical Assistance Services, after consultation with the Attorney General, is authorized to pursue the alternative method.” This package is the result of the recommendations of CMS.

## Purpose

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

The purpose of this final action is to expand coverage of school health services in accordance with federal recommendations. Since school divisions are already under a federal mandate to provide the services covered by this regulation, it is in the interests of the Commonwealth and its citizens to secure whatever additional funding may be available for those services. Expanding Medicaid-covered school health services will give greater opportunity to Virginia students to have healthier lives. Offering these services through the Medicaid program eases the burden on the Commonwealth's citizens to address the medical and educational needs of Virginia students. Therefore, this proposed action is expected to have a significant and positive impact on the health, safety, and welfare of the citizens of the Commonwealth.

## Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.*

The sections of the State Plan for Medical Assistance that are affected by this action are: Skilled Nursing Facility Services, EPSDT, and Family Planning [Supplement 1 to Attachment 3.1-A&B (12 VAC 30-50-130)], School Health Services [Supplement 1 to Attachment 3.1-A&B (12 VAC 30-50-229.1)], which is being repealed and replaced by new text in 12 VAC 30-50-130; and Methods of Providing Transportation [Attachment 3.1D (12 VAC 30-50-530)].

Skilled Nursing Facility Services, EPSDT, school health services and family planning (12 VAC 30-50-130 and 30-50-229.1), and Methods of Transportation (12 VAC 30-50-530).

The federal *Individuals with Disabilities Education Act* (IDEA), as amended, requires school divisions to offer all special education and related services to children with one or more of thirteen specified disabilities. Federal funds are authorized under IDEA for the services, but the majority of the funds have historically been from state and local revenues. Code of Virginia § 32.1-326.3 requires that DMAS maximize access to health care for poor special education students. The expanded services set forth in this proposed regulation will help school divisions meet the requirements of IDEA and meet the requirements of Va. Code § 32.1-326.3. The health services offered through these changes now include audiology services, medical evaluation services, personal care services, and transportation to and from the school campus where necessary to obtain services listed in the student's Individualized Education Program (IEP). In addition, EPSDT screenings can only be billed when the school division is enrolled as a clinic provider. The screenings are for children with fee for service coverage; children in managed care are to receive their screenings from the managed care organizations. Coverage for psychiatric

and psychological evaluation and therapy services is being extended to include services rendered by providers endorsed by the Board of Education as school social workers.

The services set forth in this final regulation are currently provided by Virginia school divisions to children in special education and represent an expansion of DMAS school health services coverage. Consistent with other DMAS covered school-based services for children in special education, the DMAS reimbursement will be the federal share of the payment only with the school division documenting the non-federal matching share. These changes also reduce constraints cited by the school divisions in billing DMAS for services. In particular, service limits and prior authorization for services are removed and school health professionals, other than physicians, may authorize services.

**Issues**

*Please identify the issues associated with the proposed regulatory action, 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, please indicate.

The primary advantages to the public are a significant savings to the Commonwealth and school divisions and enhanced access to health services for Virginia students. There are no disadvantages to the public or the Commonwealth.

**Changes made since the proposed stage**

*Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar's office, please put an asterisk next to any substantive changes.*

<b>Section number</b>	<b>Requirement at proposed stage</b>	<b>What has changed</b>	<b>Rationale for change</b>
12 VAC 30-50-130	Skilled Nursing Facility Services, EPSDT, and Family Planning, describing school health assistant services.	School health assistant services were deleted, and re-issued as personal care services, plus the addition of all other available school health services.	CMS required DMAS to move all its school health services, both old and new, out from the Rehabilitation section of the state regulations and into the EPSDT section. School social workers and additional providers are now recognized for the school psychology services. Service authorization based on the IEP and removal of prior authorization for services were accepted by CMS.

12 VAC 30-50-229.1	School Health Services: listing of available school health services.	This section has been repealed and reiterated in 12 VAC 30-50-130.	CMS required DMAS to move all its school health services, both old and new, out from the Rehabilitation section of the state regulations and into the EPSDT section.
12 VAC 30-50-530	Methods of Transportation: describing school health services-related transportation as a medical service	In the interim, all transportation has moved from being an administrative function to a medical service. Description of school health transportation has changed to a reference to 12 VAC 30-50-130(C).	CMS required DMAS to move transportation as an included school health service to EPSDT.

**Public comment**

*Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.*

DMAS' proposed regulations were published in the July 26, 2004, *Virginia Register* (V.A.R. 20:23) for their public comment period from July 26, 2004, through September 24, 2004). No comments were received.

**All changes made in this regulatory action**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.*

Current section number	Current requirement	Proposed change and rationale
12VAC30-50-130	Provides for screening services, vision services, dental services, hearing services, and such other necessary health care services pursuant to an EPSDT screening.	This final regulation puts all School health services under EPSDT and sets out all provisions pertaining to these services, including authorization for services and utilization review.
12VAC30-50-229.1	Under the Emergency Regulation and the Proposed regulations, school divisions are expanding services to include audiology and medical evaluation. Service limits and prior authorization requirements will be eliminated. This package also allows the Individualized Education Program (IEP) to serve as the authorization for these services. In addition, EPSDT	This section is repealed in this final regulation.

	screenings are being eliminated, and medical evaluation services are provided to children who are not in managed care. Coverage for psychiatric and psychological evaluation and therapy services is being extended to include services rendered by providers endorsed by the Board of Education as school social workers.	
12VAC30-50-530	Provides for necessary transportation for recipients to travel to and from providers of covered medical services. All transportation is covered as a medical service.	The final regulation adds a reference that <u>school transportation is described at 12VAC30-50-130(C).</u>

**Regulatory flexibility analysis**

*Please 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) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of 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 proposed regulation.*

The details of the final regulatory text were dictated by the federal Centers for Medicare and Medicaid Services (CMS). DMAS had little to no discretion to make any changes without direct federal approval. Given the nature of federal involvement in this project, the objectives of this regulatory package could not be reached by any other means.

## Family impact

*Please assess the 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.*

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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.