



## Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Department of Medical Assistance Services
<b>Virginia Administrative Code (VAC) citation</b>	12 VAC 30-50, 30-60, and 30-130
<b>Action title</b>	Add Community-Based Residential Services as covered Medicaid services
<b>Target effective date</b>	Contingent upon CMS approval of underlying SPA

This information is required for executive review ([www.townhall.state.va.us/dpbpages/apaintro.htm#execreview](http://www.townhall.state.va.us/dpbpages/apaintro.htm#execreview)) and the Virginia Registrar of Regulations ([legis.state.va.us/codecomm/register/regindex.htm](http://legis.state.va.us/codecomm/register/regindex.htm)), pursuant to the Virginia Administrative Process Act ([www.townhall.state.va.us/dpbpages/dpb\\_apa.htm](http://www.townhall.state.va.us/dpbpages/dpb_apa.htm)), Executive Orders 21 (2002) and 58 (1999) ([www.governor.state.va.us/Press\\_Policy/Executive\\_Orders/EOHome.html](http://www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html)), and the *Virginia Register Form, Style, and Procedure Manual* ([http://legis.state.va.us/codecomm/register/download/styl8\\_95.rtf](http://legis.state.va.us/codecomm/register/download/styl8_95.rtf)).

### Preamble

*The APA (Section 2.2-4011) states that an “emergency situation” is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date.*

- 1) Please explain why this is an “emergency situation” as described above.*
- 2) Summarize the key provisions of the new regulation or substantive changes to an existing regulation.*

The Virginia Appropriations Act of 2003, Item 325 QQQ, mandates that emergency regulations be promulgated to implement coverage of new community-based residential services. Since DMAS intends to continue regulating the issue contained in this emergency regulation past the effective period permitted by this emergency action, it is also requesting approval of its Notice of Intended Regulatory Action pursuant to Va. Code § 2.2-4007. The effective date of this emergency regulation is contingent upon approval of the underlying State Plan Amendment by the federal Centers for Medicare and Medicaid Services.

## 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.*

This emergency regulatory action will provide for Medicaid coverage of new community-based residential services for children and adolescents. These services are currently paid for with state and local funds through the Comprehensive Services Act (CSA). Providing Medicaid coverage will allow the state to obtain federal financial participation for these same services and thereby significantly reduce the Commonwealth's expenditures in the state CSA budget.

## Legal basis

- 1) *Please confirm that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the emergency regulation and that it comports with applicable state and/or federal law.*
- 2) *Please indicate that the regulation is not otherwise exempt under the provisions of subdivision A.4 of Section 2.2-4006 of the APA.*

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 also provides, in the Administrative Process Act (APA) § 2.2-4011, for this agency's promulgation of emergency regulations subject to the Governor's review, and this regulation is not otherwise exempt under the provisions of subdivision A.4 of Section 2.2-4006 of the APA. The Office of the Attorney General has certified that DMAS has the statutory authority to promulgate this emergency regulation and that it comports with applicable state and/or federal law.

## Substance

*Please detail any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons why the regulation is essential to protect the health, safety, or welfare of Virginians. Delineate any potential issues that may need to be addressed as a permanent final regulation is developed.*

The current regulations that are the subject of this action are: Amount, Duration and Scope of Services (12 VAC 30-50-130), Standards Established and Methods Used to Assure High Quality of Care (12 VAC 30-60-61), and Amount, Duration and Scope of Selected Services (12 VAC 30-130- 860, - 870, - 880, and 12 VAC 30-130-890). Each of these sections is being amended to implement the new covered services. Certain minor changes are made to existing regulations to distinguish between the requirements for current services and the new services. Because the reimbursement methodology for the new services is the same as that for the current services, no regulatory changes are required to initiate payment. The changes are set forth in the chart below:

<b>Current section number</b>	<b>Current description</b>	<b>Proposed change and rationale</b>
12 VAC 30-50-130	Gives scope of skilled nursing services, EPSDT and family planning.	Adds to existing regulations the description of the new community-based residential services, providing for separate levels of service (A and B).
12 VAC 30- 60-61	Describes EPSDT and community mental health services for children.	Adds to existing regulations the utilization review requirements for the new community-based residential services, distinguishing between separate levels of service (A and B).
12 VAC 30-130-860	Describes residential treatment programs.	Designates highest intensity of Residential Treatment programs as Level C services. Adds language to further clarify service eligibility and service requirements. Adds language to clarify that a physician must date the plan of care.
12 VAC 30-130-870	Preauthorization for residential treatment.	Designates highest intensity of Residential Treatment as Level C services. Sets forth authorization, continued stay and discharge criteria for Levels A, B and C services, including written documentation requirements. Deletes outdated reimbursement language to avoid confusion re reimbursement of Level C services. Adds new language re requirements for reimbursement for all levels of services.
12 VAC 30-130-880	Provider qualifications.	Lists licensure requirements for providers of Residential Treatment Services (Level C), Community-Based Services (Level A) and Therapeutic Behavioral Services (Level B).
12 VAC 30-130-890	Qualifications for plans of care and the review of plans of care.	Adds requirement that a physician must sign and date the plan of care; requires the plan of care to include target dates for attainment of goals and objectives for Level C services.
12 VAC 30-130-890	Qualifications for plans of care and the review of plans of care.	Adds initial plan of care requirements for Level A and Level B services. Adds criteria for the Comprehensive Individual Plan of Care (CIPOC) for Levels A and B services.

## 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.*

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The alternative to the current change was to leave community-based residential services at one broad, less defined level of service. This regulation change separates community-based residential care services into three levels based upon the intensity of the service. This new approach was chosen based on input from mental health providers. DMAS also consulted with the state authorities that license both lower level services in group homes [Department of Social Services (DSS)] and those that license the more intensive programs that provide actual treatment [Department of Mental Health, Mental Retardation, and Substance Abuse Services (DMHMRSAS)]. DMAS chose to provide more objective criteria to define each service level because the experience of providers and licensing authorities showed that a single level of service complicated decisions about which licensing agency had authority over a given program; this difficulty ultimately complicated reimbursement issues and access to services. Separating the services into three defined levels facilitates DSS and DMHMRSAS in placing children into the most appropriate setting, and provides for more efficient and accurate provider reimbursement.

## Family impact

*Please assess the impact of the emergency regulatory action on the institution of the family and family stability.*

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This emergency regulation is expected to have a positive impact on the institution of the family and the stability of the family since it will provide greater financial resources for the Commonwealth to address those with mental health needs and enhance access to mental health services. It will not strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; it will not encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, or one's children and/or elderly parents; nor will it strengthen or erode the marital commitment.