REGULATORY REVIEW CHECKLIST

To accompany Regulatory Review Package

Agency Department of Medical Assistance Services

Regulation title Early and Periodic Screening, Diagnosis, and Treatment

Purpose of the regulation To establish the coverage/limits/requirements/reimbursement of residential psychiatric treatment for children and adolescents.

Summary of items attached:

☒ **Item 1:** A copy of the proposed new regulation or revision to existing regulation.

☒ **Item 2:** A copy of the proposed regulation submission package required by the Virginia Administrative Process Act (Virginia Code Section 9-6.14:7.l.G [redesignated Section 9-6.14:7. l.H after January 1, 1995]). These requirements are:

☒ (i) the basis of the regulation, defined as the statutory authority for promulgating the regulations, including the identification of the section number and a brief statement relating the content of the statutory authority to the specific regulation proposed.

☒ (ii) the purpose of the regulation, defined as the rationale or justification for the new provisions of the regulation, from the standpoint of the public's health, safety and welfare.

☒ (iii) the substance of the regulation, defined as the identification and explanation of the key provisions of the regulation that make changes to the current status of the law.

☒ (iv) the issues of the regulation, defined as the primary advantages and disadvantages for the public, and as applicable for the agency or the state, of implementing the new regulatory provisions.

☒ (v) the estimated impact, defined as the projected number of persons affected, the projected costs, expressed as a dollar figure or range, for the implementation and compliance thereof, and the identity of any localities particularly affected by that regulation.

☒ **Item 3:** A statement from the Attorney General that the agency possesses, and has not exceeded, its statutory authority to promulgate the proposed regulation.

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☒ **Item 4:** A statement disclosing whether the contemplated regulation is mandated by state law or federal law or regulation, and, if mandated in whole or in part, a succinct statement of the source (including legal citation) and scope of the mandate, together **with an attached copy of all cited legal provisions.**

☒ **Item 5:** For any proposed regulation that exceeds the specific minimum requirements of a legally binding state or federal mandate, a specific rather than conclusory statement setting forth the reasoning by which the agency has concluded that the proposed regulation is essential to protect the health, safety or welfare of citizens or for the efficient and economical performance of an important governmental function.

☒ **Item 6:** For any proposed regulation that exceeds the specific minimum requirements of a legally binding state or federal mandate, a specific rather than conclusory statement describing the process by which the agency has considered less burdensome and less intrusive alternatives for achieving the essential purpose, the alternatives considered, and the reasoning by which the agency has rejected such alternatives.

☒ **Item 7:** A schedule setting forth when, no later than three (3) years after the proposed regulation is effective, the agency will initiate a review and reevaluation of the regulation to determine if it should be continued, amended, or terminated. Include a description of the specific and measurable goals the proposed regulation is intended to achieve, if practical.

☒ **Item 8:** A detailed fiscal impact analysis prepared in coordination with DPB that includes: (a) the projected cost to the state to implement and enforce the proposed regulation and (b) the source of funds to meet this projected cost.

Dennis G. Smith	7/6/99	VPS 7/9/99
Signature of Agency head	Date	Date forwarded to DPB & Secretary

REGULATORY REVIEW SUMMARY

Amendment to the Plan for Medical Assistance

I. IDENTIFICATION INFORMATION

Title of Proposed Regulation: Early and Periodic Screening, Diagnosis and Treatment: Coverage of Residential Psychiatric Treatment for Children and Adolescents

Director's Approval: July 6, 1999

Public Comment Period: September 13 – November 12, 1999

Proposed Effective Date: January 1, 2000

Agency Contact: Anita Cordill, Policy Analyst
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II. SYNOPSIS

Basis and Authority: 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.

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: The purpose of this action is to promulgate an amendment to the State Plan that provides Medicaid coverage of residential psychiatric treatment services for children and adolescents. This new Medicaid-covered service will benefit the health of the children and adolescents who require this service because previously such children have not had this service available to them.

Summary and Analysis: The sections of the State Plan affected by this action are the Amount, Duration, and Scope of Services, Attachment 3.1 A&B Supplement 1 (12 VAC 30-50-130) and Methods and Standards for Establishing Payment Rates-Other Types of Care, Attachment 4.19-B (12 VAC 30-80-20). The regulations affected by this regulatory action are the Early and Periodic Screening, Diagnosis and Treatment Residential Psychiatric Treatment for Children and Adolescents (12 VAC 30-130-850 through 12 VAC 30-130-899.

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 will become 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.

Residential psychiatric services are presently purchased by the Comprehensive Services Act for children and adolescents who cannot be treated on an outpatient basis

and who do not need hospital care. These placements are currently funded from state and local funds. If Medicaid covers the service, federal matching funds will be available and will 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.

Issues: 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 regulations. In addition, they may resist Medicaid reimbursement methodologies. Currently, each facility negotiates a rate of reimbursement with each local Community Policy and Management Team. Local governments will have to consider Medicaid reimbursement policies when referring Medicaid eligible children to a Medicaid enrolled residential treatment provider.

Fiscal/Budget Impact: 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.

Funding Source/Cost to Localities/Affected Entities: **:** 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 for medical assistance expenditures is 51.60%, which became effective October 1, 1998. It is estimated that this rate will increase to 51.77% on October 1, 1999. Because the federal and state fiscal years do not coincide, "blended" federal funding rates of 51.57% and 51.73% are used to estimate FY 1999 and FY 2000 expenditures respectively.

The funding for residential treatment services for Medicaid children not covered in the Comprehensive Services Act (CSA) is included in the Medicaid program for the 1998-2000 Biennium in Item 335 of the Appropriations Act budget program "Medical Assistance Services (Medicaid)" 456. The subprogram is 45609 "Professional and Institutional Services". The state funding for CSA eligible Medicaid recipients is included in the CSA section of the Appropriation Act, Item 151. As cost are incurred these funds will be transferred from the CSA budget into program 456 and the necessary federal funds will be appropriated to Medicaid. The cost from this regulation will be an ongoing.

Funding for the CSA includes state and local funds. This regulatory action will result in savings to CSA funds, state and local, as federal Medicaid funds will be used to replace CSA funds currently spent for these recipients. These savings may be returned to the localities and General Fund or used to fund other CSA services. There are no localities that are uniquely affected by these regulations as they apply statewide.

CSA funds include merged funds from the Department of Education, the Department of Mental Health, Mental Retardation, and Substance Abuse Services, the Department of Social Services, and the Department of Youth and Family Services. The impact on local departments of social services is unknown at the present time although this service expansion may result in reduced costs for foster care children in residential treatment facilities.

Forms: The Department will use the CAFAS, an assessment instrument already used by all Family Assessment and Planning Teams involved in providing CSA services.

Evaluation: The Department of Medical Assistance Services, in collaboration with the Office of Comprehensive Services will monitor the implementation of the service to determine the rate of placement in residential services, the savings to CSA that result and the level of need and the length of stay for children and adolescents admitted to residential treatment.

III. STATEMENT OF AGENCY ACTION

I hereby approve the foregoing Regulatory Review Summary and the attached amended pages to the State Plan for Medical Assistance for publication for public comment period in conformance to the public notice and comment requirements of the Administrative Process Act, Code of Virginia §9-6.14:7.1., Article 2.

7/6/99
Date

Dennis G. Smith,
Dennis G. Smith, Director
Dept. of Medical Assistance Services

JUSTIFICATION FOR PROPOSED REGULATORY CHANGE
Under Executive Order Twentyfive (98)

I. IDENTIFICATION INFORMATION

Regulation Name: Early and Periodic Screening, Diagnosis and Treatment

Issue Name: Residential Psychiatric Treatment for Children and Adolescents

II. JUSTIFICATION

Federal/State Mandate/Scope

Federal regulations at 42 CFR 440.160 and 441, Subpart D describe the federal regulations for Medicaid coverage of inpatient psychiatric services for individuals under age 21. However, Chapter 464 of the *1998 Acts of Assembly* Item 335 X 2 mandated that the State Plan for Medical Assistance be amended to add coverage of residential psychiatric treatment to be effective January 1, 2000, under the authority of the Early and Periodic Screening, Diagnosis and Treatment program (*42 CFR § 440.40*).

Essential Nature of Regulation

This regulation is essential for the efficient and economical performance of an important governmental function. DMAS must incorporate the service limits, quality assurance requirements and reimbursement methodology for this new service in the State Plan for Medical Assistance in order to claim federal matching dollars. Without the addition of this new service to the Plan, the federal Health Care Financing Administration would deny the needed federal funds. Such a denial would result in the Commonwealth continuing to use 100% General Fund dollars to cover this service. Presently residential treatment is covered under the Comprehensive Services Act with no federal matching. Expanding Medicaid to cover this service will reduce the cost in state General Funds and local matching funds.

There are thousands of children in the Commonwealth who need inpatient psychiatric treatment. Medicaid currently pays for many of these children who are placed in psychiatric hospitals. However, when their condition improves, and they no long require acute care in psychiatric hospitals, they may still not be well enough to return to their own homes. They need a less intensive level of inpatient care for some longer period of time. Residential

psychiatric treatment can provide this less intensive level of care. Other children may be admitted directly to residential treatment and never need inpatient hospital care; thus receiving care in the most cost efficient and least restrictive placement.

Agency Consideration of Alternatives

Medicaid coverage of residential psychiatric treatment, under the authority of the broad range of covered services and treatment options of the Early and Periodic Screening, Diagnosis and Treatment program, is required. DMAS intends to apply the service definitions, the provider qualifications, and the utilization management requirements of 42 CFR Part 441 Subpart D. DMAS will consider any alternatives identified through the public comment process. To the extent that federal regulations permit State defined criteria, DMAS will consider all alternatives that will best accomplish the goals for the program.

Regulation Review Schedule

The regular review of this regulation will occur in conjunction with the review of all agency regulations according to the schedule approved by the Secretary of Health and Human Resources under Executive Order Twentyfive (98).