DECISION BRIEF FOR:
The Honorable James S. Gilmore, III
Governor

SUBJECT: EMERGENCY REGULATION for EPSDT Residential Psychiatric Treatment

ACTION NEEDED BY ----DEC 29TH
RETURN TO DMAS

SUMMARY

1. REQUEST: The Governor is hereby requested to approve this agency's adoption of the emergency regulation entitled EPSDT Residential Psychiatric Treatment. This regulation will permit DMAS to implement this service in conformance to the referenced legislative mandate.

2. RECOMMENDATION: Recommend approval of the Department's request to take an emergency adoption action regarding EPSDT Residential Psychiatric Treatment. The Department intends to initiate the public notice and comment requirements contained in the Code of Virginia §9-6.14:7.1.

/s/ Dennis G. Smith 10/22/99
Dennis G. Smith, Director Date

3. CONCURRENCES:

Secretary of Health and Human Resources:
Concur _____
Concur w/Modifications _____
Disapprove _____

Claude A. Allen Date

Department of Planning and Budget:
Concur _____
Concur w/Modifications _____
Disapprove _____

Signature Date

Title

4. ACTION: Governor

Approve _____
Approve w/ Modifications _____
Deny _____

James S. Gilmore, III Date

5. FILED: Registrar of Regulations

Jane D. Chaffin Date

DISCUSSION

6. BACKGROUND: The sections of the State Plan affected by this action are Amount, Duration and Scope of Services (for both Categorically Needy and Medically Needy) (12 VAC 30-50-130), Methods and Standards for Establishing Payment Rates-Other Types of Services (12 VAC 30-80-21). The regulations affected by this action are Early and Periodic Screening, Diagnosis, and Treatment Services: Residential Psychiatric Treatment for Children and Adolescents (12 VAC 30-130-850 et seq.).

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.

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.

7. AUTHORITY TO ACT: 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) §9-6.14:4.1(C)(5), for an agency's adoption of emergency regulations subject to the Governor's prior approval.

Subsequent to the emergency adoption action and filing with the Registrar of Regulations, this agency intends to initiate the public notice and comment process contained in Article 2 of the APA. Therefore, approval to file the required Notice of Intended Regulatory Action is also necessary and hereby being requested by this action.

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*.

Without an emergency regulation, this amendment to the State Plan and regulations cannot become effective until the publication and concurrent comment and review period requirements of the APA's Article 2 are met. Therefore, an emergency regulation is needed to meet the January 1, 2000 effective date established by the General Assembly.

8. NEED FOR EMERGENCY ACTION: The Code §9-6.14:4.1(C)(5) provides for regulations which an agency finds are necessitated by an emergency situation. To enable the Director, in lieu of the Board of Medical Assistance Services, to comply with the requirement to reimburse for residential psychiatric treatment services, he is to take this adoption action with the Governor's prior approval. This issue qualifies as an emergency regulation as provided for in §9-6.14:4.1(C)(5)(ii), because Virginia statutory law or the appropriation act or federal law requires this regulation to be effective within 280 days from the enactment of the law or regulation. As such, this regulation may be adopted without public comment with the prior approval of the Governor.

Since this emergency regulation will be effective for no more than 12 months and the Director wishes to continue regulating the subject entities, the Department is initiating the Administrative Process Act Article 2 procedures.

9. FISCAL/BUDGETARY 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.

10. RECOMMENDATION: Recommend approval of this request to adopt this emergency regulation to become effective January 1, 2000. From its effective date, this regulation is to remain in force for one full year or until superseded by final regulations. Without an effective emergency regulation, the Department would lack the authority to pay providers for this service for Medicaid eligible children and adolescents.

11. APPROVAL SOUGHT FOR 12 VAC 30-10-150, 12 VAC 30-50-30, 12 VAC 30-50-70, 12 VAC 30-50-130, 12 VAC 30-50-250, 12 VAC 30-80-21, and 12 VAC 30-130-850 through 12 VAC 30-130-899.

    Approval of the Governor is sought for an emergency modification of the Medicaid State Plan in accordance with the Code of Virginia §9-6.14:4.1(C)(5) to adopt the following regulation: