



Final Regulation Agency Background Document

Agency name	DEPT OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation	12 VAC 30-50, 30-80, and 30-120
Regulation title	Amount, Duration and Scope of Medical and Remedial Services; Methods and Standards for Establishing Payment Rates – Other Types of Care; and Waivered Services
Action title	Coverage and Reimbursement of Early Intervention (EI) Services under Part C of IDEA
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*.

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

The regulatory action defines a new approach to payment for Early Intervention services under Medicaid that supports the Virginia Infant and Toddler Connection (I&TC) model for children who are eligible for services under Chapter 53 (§ 2.2-5300 et seq.) of Title 2.2 of the Code of Virginia in accordance with Part C of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1431 et seq.). Early Intervention services are provided in the child's natural environment, engage the family in the intervention, and engage the expertise of a multidisciplinary team to support the direct service provider. The new approach supports Medicaid payment for a broad base of qualified providers with demonstrated knowledge and skills in Early Intervention principles and practices. This regulatory action requires Part C Early Intervention practitioners to be certified by the Department of Behavioral Health and

Developmental Services (DBHDS) as a condition of participation with DMAS as designated Early Intervention service providers in the Medicaid program.

The regulatory action differs from the proposed regulation by adding Early Intervention to the list of services that are provided outside of Medicaid managed care organization networks.

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 or board taking the action, and (3) the title of the regulation.

I hereby approve the foregoing Agency Background document with the attached amended State Plan for Amount, Duration and Scope of Medical and Remedial Services; Methods and Standards for Establishing Payment Rates- Other Types of Care; and Waivered Services (12 VAC 30-50; 12VAC 30-80; and 12VAC 30-120) 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. I hereby certify that these regulations are full, true, and correctly dated.

Date

Gregg A. Pane, M.D., MPA, 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 number(s), 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.

Specifically, the 2009 Appropriations Act, Item 306 TTT, states that:

TTT. The Department of Medical Assistance Services, in consultation with the Department of Mental Health, Mental Retardation and Substance Abuse Services, shall amend the State Plan for Medical Assistance Services in order to comply with the payor of last resort requirements of Part C of the Individuals with Disabilities Education Act (IDEA) of 2004. The Department of Medical Assistance Services shall promulgate regulations to become effective within 280 days or less from the enactment date of this act. The Department shall implement these necessary regulatory changes to be consistent with federal requirements for the Part C program.

The General Assembly explained the nature of this mandate as follows:

This amendment adds language directing the Department of Medical Assistance Services to work with the Department of Behavioral Health and Developmental Services to amend the Medicaid State Plan to ensure that those providing Early Intervention services through the Part C program bill Medicaid first, if appropriate, before billing the Part C program. This ensures that the state is in compliance with federal requirements contained in Part C of the Individuals with Disabilities Education Act (IDEA) of 2004.

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 regulatory action creates a new model for Medicaid coverage of Early Intervention services for children less than three years of age who are eligible for services under Chapter 53 (§ 2.2-5300 et seq.) of Title 2.2 of the Code of Virginia in accordance with Part C of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1431 et seq.). This new methodology fulfills the General Assembly mandate as follows: First, it establishes a framework for ensuring that providers of Early Intervention services for Medicaid children through the Part C program bill Medicaid first before using federal or state-only Part C program funds to comply with the federal Part C payor of last resort requirement set out in 34 CFR 303.527. In order to ensure compliance with federal Part C requirements DMAS, through these regulations, is establishing a newly recognized provider type and specialty to provide services specifically oriented to the requirements of individuals eligible for Part C services. This specialized provider group will support the service delivery system the State adopted to provide Early Intervention services -- the Virginia Infant and Toddler Connection of Virginia (I&TC). The I&TC is administered through local lead agencies. All local efforts are overseen by the Department of Behavior Health and Developmental Services (DBHDS), which receives Virginia's Part C allotment and administers the overall program. DBHDS contracts with local lead agencies to facilitate implementation of EI services statewide. The majority of local lead agencies are under the auspices of Community Services Boards, along with several universities, public health districts, local governments, and local education agencies.

These new regulations establish a broader range of specialized Early Intervention providers to meet the individual child's needs and assure that providers have the specific expertise to effectively address developmental problems in young children as provided for in Part C of IDEA. Routing Medicaid-covered individuals through Medicaid Early Intervention providers ensures that the Commonwealth will draw down the maximum available federal Medicaid match for those Part C services currently paid with state-only funds.

The regulatory action is one component of an administrative initiative to revise the system of financing for Part C Early Intervention services in Virginia and ensure compliance with the payor of last resort requirements of Part C of IDEA. DBHDS has promulgated new regulations for certification of EI providers in tandem with this initiative.

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 Attachment 3.1 A&B (12 VAC 30-50-131) and Attachment 4.19-B (12 VAC 30-80-96 and 12 VAC 30-80-200). The state regulations that are affected by this action are Amount, Duration and Scope of Medical and Remedial Services (12 VAC 30-50-131); Methods and Standards for Establishing Payment Rates – Other Providers (12 VAC 30-80-96 and 12 VAC 30-80-200), and Waivered Services (12 VAC 30-120-360).

As discussed above in the Purpose Section, traditional rehabilitation therapists are not always the most appropriate providers of Early Intervention services. Most of the services needed by the children enrolled in I&TC are habilitative in nature. In other words, they are designed to help a child with an identified developmental concern to achieve a given function for the first time, such as walking or talking. Some children are better served by other practitioners with specialized knowledge and experience regarding child development and Early Intervention methods, together with consultation from licensed rehabilitation therapists as needed.

Prior to implementation of these provisions under emergency authority, local IT&C systems had two choices for serving pre-school children enrolled in Medicaid: (1) provide all Early Intervention services to Medicaid enrollees with the regular licensed rehabilitation therapists, who may lack the specialized knowledge and experience for Early Intervention, or (2) provide some Early Intervention services without Medicaid reimbursement, but pay for them with limited federal Part C, state, or local funds. Early Intervention type services were obtained by a variety of agencies participating with Medicaid; however, there was no uniform reimbursement for Part C services. This disparity made it difficult to support a uniform fee schedule for Part C services across all payment sources. Resolving this disparity is a necessary step to bring Virginia into compliance with the payor of last resort requirement.

These regulations define a new approach to payment for Early Intervention services under Medicaid that supports the IT&C model. The proposed Early Intervention services are provided in the child’s natural environment, engage the family in the intervention, and engage the expertise of a multidisciplinary team to support the direct service provider. The new approach supports Medicaid payment for a broad base of qualified providers with demonstrated knowledge and skills in Early Intervention principles and practices. This regulatory action requires Part C practitioners to be certified by DBHDS as a condition of participation with DMAS as designated Early Intervention service providers in the Medicaid program.

Medicaid payment for defined Early Intervention services provides a framework for ensuring that providers of Early Intervention services through the IT&C model bill Medicaid first, if appropriate, before using Part C program funds to comply with the payor of last resort requirement contained in Part C of IDEA. Certified individuals and agencies who participate with the Agency obtain Part C designation from DMAS and bill for services as Early Intervention providers rather than as a rehabilitation agency provider or another designation. New providers shall enroll to participate with DMAS with a Part C specialty designation in order to bill for EI services. DMAS and DBHDS shall be able to identify services paid for by Medicaid that are provided under the purview of the IT&C model. Early Intervention services are reimbursed using the agency fee schedule. All private and governmental fee-for-service providers are paid according to the same methodology, with separate fees for certified Early Intervention providers who are licensed as physical therapists, physical therapy assistants, occupational therapists, occupational therapy assistants, speech pathologists, or registered nurses to ensure access to Early Intervention services.

It is important to note that there is a distinct difference between EI services, which are medically appropriate only for children under the age of three years, and similar habilitative services available to children aged three years up to age 21. EI services are specifically directed towards children from birth to age three and are not medically indicated for individuals aged three and above.

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 advantage to private citizens of implementing the new provisions is that payment for services from a broader range of trained early intervention providers are available to disabled children covered by Medicaid.

The primary advantage to the Commonwealth is the ability to draw down additional federal Medicaid funds to support Part C early intervention services.

There are no disadvantages to the public or the Commonwealth associated with the proposed regulatory action.

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.

Section number	Requirement at proposed stage	What has changed	Rationale for change
12VAC30-50-131	Early Intervention services are provided in the child’s natural environment, engage the family in the intervention, engage the expertise of a multidisciplinary team to support the direct service provider, and support Medicaid payment for a broad base of qualified providers with demonstrated knowledge of Early Intervention principles and practices. This section requires practitioners to be certified by DBHDS as a condition of participation with DMAS as an Early Intervention provider in the Medicaid program.	<p>Language was added to clarify authority for coverage of EI under federal regulations.</p> <p>Language was added to emphasize that providers must be certified by DHBDS and hold a valid Medicaid provider agreement.</p> <p>Reference to managed care organizations (MCO) was deleted.</p>	<p>This language was added for clarification at the direction of CMS.</p> <p>This language was added for clarification at the direction of CMS.</p> <p>The EI service will be provided outside of the MCO network.</p>
12VAC30-80-96	The proposed service is reimbursed on a fee-for-service basis. All private and governmental fee-for-service providers are paid according to the same methodology. There are separate fees for (1) certified Early Intervention providers who are licensed as a physical therapist, physical therapy assistant, occupational therapist, occupational therapy assistant, speech	<p>Language was added to specify that this service is available only for individuals younger than 21 years of age.</p> <p>Language was added to clarify that EI services provided by a local education agency are reimbursed on a fee-for-service basis in the same manner as other EI providers.</p>	<p>The age specification is a federal requirement for a service provided under EPSDT. This language was added for clarification at the direction of CMS.</p> <p>The reference to local education agencies clarifies that EI services are distinct from school health services, which are reimbursed in a different manner. This language was added for</p>

	pathologist, or registered nurse and (2) other certified Early Intervention providers.		clarification at the direction of CMS.
12VAC30-120-380	This requirement specified that Early Intervention services funded by Medicaid are to be covered as described in 12 VAC30-50-131, AND as defined in the MCO Contract.	* Early Intervention was added to the list of services to be provided outside of the MCO network.	This change was recommended by both EI providers and MCOs because the new EI service approach differs from the traditional services provided by MCOs.

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’s proposed regulations were published in the January 17, 2011, Virginia Register (VR 27:10) for their public comment period from January 17, 2011, through March 18, 2011. Comments were received from the Infant and Toddler Connection of Fairfax-Falls Church, Piedmont Regional Feeding & Oral-Motor Clinic LLC, Medical Billing PRFC, the Mineski Organization; and the Virginia Association of Health Plans. A summary of the comments received and the agency’s response follows:

Commenter	Comment	Agency response
Infant & Toddler Connection of Fairfax-Falls Church	This commenter was pleased with the proposed regulations. It was expressed that the changes will significantly benefit the families and children who are eligible for these services, the providers who do these type services and the State of Virginia who is invested in these types of services. This commenter stated that this regulation clearly lays out the qualifications for providers and provides a consistent payment structure that supports the Federal requirements of Part C IDEA. It will also help insure that families are treated the same across the Commonwealth. This commenter stated that Virginia has much to be proud of for moving in this progressive direction that will greatly benefit those eligible	Thank you for the comments and support of the Early Intervention program. It is the intent of the Early Intervention program to benefit the children and their families. Clear safeguards are necessary to give structure and support for both the children and their families who are in the program, and to the providers who make this program successful.

	<p>families, their children, and those who support them.</p>	
<p>Piedmont Regional Feeding & Oral-Motor Clinic</p>	<p>This commenter expressed overall that the changes will benefit families across the Commonwealth of Virginia, service providers, and Part C agencies that coordinate the services. This commenter also discussed concern for the amount of financial paperwork the service provider will need to attach to the quarterly cost reporting and stated that adding more paperwork will make this an unmanageable requirement. It was indicated that it is unclear whether this requirement is for hospital or for outpatient rehabilitation clinics. The commenter commented on the lack of reimbursement for travel time. It was stated that for those who live in rural areas or large counties, this travel time is in an area that becomes a pure cost with no reimbursement for the company. There are several providers that have retracted from providing Early Intervention Services for this very reason. In addition, it was expressed that there is a need for more providers and that consideration of this issue will ensure that we continue to have qualified providers available to the children that need it the most and at the same time ensure that businesses can continue to keep their Early Intervention/Part C contracts without fear of negative revenue.</p> <p>A second commenter from this organization stated disappointment with the proposal to deny coverage and reimbursement via these services by speech-language pathologists. Speech-language treatment services are greatly needed by the children who would be eligible in the county served by this organization. The lack of coverage of these services will</p>	<p>Quarterly Cost Reporting is not a requirement for Early Intervention (EI) providers. The EI providers use Fee-for-Service procedure codes to bill DMAS for services rendered. DMAS formed a workgroup in the initial stage of the design of this program so that the consumers and the providers would be able to achieve the common goal of improving the developmental health of the enrolled children.</p> <p>The rates were based on a time study of providers throughout the state both in rural and urban areas. As a result of this time study, travel costs were a specific expense category for providers that were taken into account when developing the rates. Prior to this initiative, the rates billed by Part C providers included no consideration for travel time. DMAS realizes that a provider may find themselves traveling outside its normal distances to a home to render services. Some cases require very little travel distance and others a great distance. Because of this, some providers will find the rates generous while others may find that the rates do not cover all of their costs.</p> <p>The Early Intervention (EI) program currently offers physical, occupational, and speech-language pathology to its enrollees. These services are the most accessed services within the EI program with over 60% of its enrollees receiving at least one of these therapies in a given month. DMAS does not have any plans to retract these services in the immediate or distant future. It is clear to DMAS and the families who participate in this program the vital role that these therapies play in the</p>

	<p>prevent the children’s ability to prosper in this community later in life.</p> <p>A third commenter from this organization stated that upon reading the proposed regulations there was confusion as to whether the text was a hyperlink to another website but that the text was easier to follow toward the end of the regulations. This commenter also stated that the concepts of Early Intervention were clearly explained and defined as per the Virginia State requirements and felt that this would be a good document to have on file to give to parents who are new to the system or have questions about staff roles</p>	<p>developmental progress of the children in the EI program.</p> <p>Thank you for your comments and support. We are glad the Early Intervention program was clearly explained and communicated. The regulations are available for the general public and we would be glad to share them with anyone interested.</p>
<p>Medical Billing, PRFC</p>	<p>This commenter expressed that Part C Early Intervention Services rendered to the areas young children is a positive endeavor to help them secure a better future. It was indicated that Early Intervention not only identifies children with special needs and coordinates with local professionals to provide services to those children, it also helps the parents and caregivers with resources and tools to enable them to reinforce the services their children receive. The changes made to Medicaid/Part C Early Intervention payment have greatly improved how Medicaid pays services for these patients. Early Intervention Certified Providers need only to document services rendered and bill using the new Medicaid EI Codes. This commenter feels it would be wonderful if the same type of system could be developed for patients with commercial insurance. The Early Intervention Part C Services is an excellent program working to improve the lives of the children they provide services to as</p>	<p>Thank you for your comments and support. It has been our goal in the design and operation of this program that it would be child-focused while being accessible for providers to render their needed services and be reimbursed appropriately by DMAS. DMAS and the Part-C Office will continue to work with the Early Intervention provider community to make access to services easy for those who need them. Part of this work is the desire to transfer this type of reimbursement and understanding of early intervention to the commercial insurances. We will continue to pursue this with the Part C office as we move forward with this initiative.</p>

	<p>well as their families and communities.</p>	
<p>Mineski Organization</p>	<p>This commenter stated that Federal law allows states to include the services of a variety of licensed health care practitioner in their State Plan coverage. The services of the most common practitioners are addressed through tables specific to them, i.e., podiatrist, chiropractors, optometrists, psychologists and certified registered nurse anesthetists. However, there are other practitioners whose services are covered and directly reimbursed in selected states. Such practitioners include physician assistants, nutritionists, dieticians, dental hygienists, acupuncturists, mechanotherapists, naturopaths, respiratory therapists, and sign and other language interpreters. This commenter stated that States that include these services generally establish copayment and prior approval requirements as well as coverage limitations consistent with other similar services.</p>	<p>Thank you for your comments. It is correct that individuals eligible for State Plan services have access to a variety of licensed health care practitioners. The Early Intervention (EI) program is a specific program that has specific types and number of services for its eligible enrollees. The EI enrollees are not limited to the specific EI program services, they are able to access other needed State Plan services with other health care practitioners outside of the EI program.</p>
<p>Virginia Association of Health Plans</p>	<p>This commenter is proposing that changes be made to the language in 12VAC30-120 B. They suggested that the new language under 12VAC30-120-380A.2 be inserted that lists “EPSDT Early Intervention services provided pursuant to Part C of the Individuals with Disabilities Education Act (IDEA) of 2004 (as defined in 12VAC30-50-131)” to the list of services reimbursed by DMAS and carved out of the MCO contract as this suggested change reflects current practice. In addition this commenter stated that clarification is needed to suggested changes in 12VAC30-50-131.D.2 dealing with early intervention providers. In order to reflect the changes proposed in 12VAC30-120-380 by DMAS, the following additional</p>	<p>Thank you for your very helpful comments on the proposed Early Intervention regulations. We are revising the regulations to stipulate that the new Early Intervention service defined in this regulatory action will be provided outside of the MCO network.</p>

	<p>language was suggested “as stipulated by 12VAC30-120-380 identified and defined by the contracts between DMAS and the MCOs” to be added to the last sentence under D. 2. This would ensure continuity between these two sections regarding the MCO responsibility for EI coverage under EPSDT.</p>	

All changes made in this regulatory action

Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
	<p>12 VAC 30-50-131 Early Intervention services (under EPSDT)</p>	<p>N/A</p>	<p>Early Intervention services would be provided in the child’s natural environment, engage the family in the intervention, engage the expertise of a multidisciplinary team to support the direct service provider, and support Medicaid payment for a broad base of qualified providers with demonstrated knowledge of Early Intervention principles and practices. This section requires practitioners to be certified by DBHDS as a condition of participation with DMAS as an Early Intervention provider in the Medicaid program.</p>
<p>12 VAC 30-80-20 Services that are reimbursed on a cost basis</p>		<p>Community services boards (CSBs) are reimbursed for Early Intervention services on a cost basis through enrollment with DMAS as a rehabilitation agency. The vast majority of rehabilitation services furnished by CSBs are for Early Intervention.</p>	<p>The proposed regulatory action deletes the reference to rehabilitation agencies operated by CSBs being reimbursed their costs for rehabilitation services. All Early Intervention providers, including CSBs, would be reimbursed according to the methodology described in the new subsection, 12 VAC 30-80-96. If CSB providers furnish non-Part C rehabilitation services, they would be paid the rate described in 12 VAC 30-80-200 for those services rather than their costs.</p>
	<p>12 VAC 30-</p>		<p>The proposed Early Intervention service</p>

	80-96 Fee-for service: Early Intervention (under EPSDT).		would be reimbursed on a fee-for-service basis for all providers. All private and governmental fee-for-service providers would be paid according to the same methodology. There would be separate fees for (1) certified Early Intervention providers who are licensed as a physical therapist, physical therapy assistant, occupational therapist, occupational therapy assistant, speech pathologist, or registered nurse and (2) other certified Early Intervention providers.
12 VAC 30-80-200 Prospective reimbursement for rehabilitation agencies		CSBs are enrolled as rehab agencies, and are paid for EI services. Physical rehab. services provided by CSBs are excluded from the payment methodology by which other rehab agencies are reimbursed. The majority of rehab services furnished by CSBs are for EI.	This regulatory action deletes this exclusion from the rehabilitation fee schedule for CSBs because it will no longer be applicable. If CSB providers furnish non-Part C rehabilitation services, they would be paid the rate described in this section for those services rather than their costs.
12 VAC 30-120-360 Definitions			Early Intervention services was added to the list of services to be provided outside of the MCO network. This change was recommended by both EI providers and MCOs because the new EI service approach differs from the traditional services provided by MCOs.

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.

There is no adverse impact on small businesses. No alternative regulatory methods were identified that would accomplish the objectives of applicable law.

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.

These changes will 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 or increase or decrease the disposable family income.