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**Proposed Regulation
Agency Background Document**

Agency name	DEPT. OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation	12 VAC 30-50; 12 VAC 30-60; 12 VAC 30-80, 12 VAC 30-120; 12 VAC 30-130-2000 et seq.
Regulation title	Amount, Duration, and Scope of EPSDT Services; Standards Established and Methods Used to Assure High Quality of Care; Methods and Standards for Establishing Payment Rates—Other Types of Providers; Waivered Services; Amount, Duration, and Scope of Selected Services
Action title	Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Applied Behavior Analysis Services
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

In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.

This action establishes Medicaid coverage for applied behavior analysis services for children under the authority of the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program. EPSDT is a mandatory Medicaid-covered service that offers preventive, diagnostic, and treatment health care services to young people from birth through the age of 21 years. To be covered for this service, these children must have autism or autism spectrum disorders, or other similar developmental delays as demonstrated by their lack of communication skills or lack of interaction with their environments. The proposed regulations define the applied behavior analysis service and specify that providers be licensed by the Board of Medicine as a licensed behavior analyst or by the Department of Behavioral Health and Developmental Services to provide Outpatient services with Applied Behavior Analysis track. This action specifies standards for medical necessity, service-specific provider assessments, individual service plans, care coordina-

tion, clinical supervision, and other standards to assure quality. The applied behavior analysis service will be reimbursed by DMAS outside of the Medallion II managed care contracts.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

*"ABA" means applied behavior analysis.

*"BCBA" means Board Certified Applied Behavior Analyst®.

*"BOM" means the Virginia Board of Medicine.

"DBHDS" means the Virginia Department of Behavioral Health and Developmental Services.

"DMAS" means the Virginia Department of Medical Assistance Services.

*"DSM" means the Diagnostic and Statistical Manual of Mental Disorders.

"EPSDT" means Early and Periodic Screening, Diagnostic, and Treatment services as defined in § 1905(r) of the *Social Security Act*.

*"LMHP" means a licensed mental health professional such as a licensed physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, licensed substance abuse treatment practitioner, licensed marriage and family therapist, or certified psychiatric clinical nurse specialist.

*"LMHP-E" means a mental health professional who has completed a graduate degree and is under the direct personal supervision of a person licensed under Virginia law, who is working towards licensure, and who is in compliance with the appropriate Virginia licensing board.

*(Note: These terms are not used in the accompanying regulations but only in the comments received during the NOIRA comment period.)

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

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 and 325, 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.

Section 1905 of the *Social Security Act* requires state Medicaid programs to provide early and periodic screening, diagnosis, and treatment (EPSDT) services for individuals who are eligible under the plan and are younger than the age of 21, to include “Such other necessary health care, diagnostic services, treatment, and other measures described in section 1905(a) to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services, whether or not such services are covered under the State plan.” If an individual is determined through an EPSDT screening to need a medical service that is not otherwise covered in Virginia’s State Plan, then this provision in federal law requires the Commonwealth to cover that service.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

The proposed regulatory action is intended to promote an improved quality of Medicaid-covered applied behavior analysis services provided to children and adolescents who may have autism spectrum disorders and similar developmental disorders. The proposed regulation will differentiate Medicaid's coverage of applied behavior analysis services from coverage of community mental health and other developmental services.

This regulatory action is essential to protect the health, safety, and welfare of these affected individuals and to ensure the quality of services rendered to children and adolescents who demonstrate the medical need for EPSDT applied behavior analysis services. Regulations are needed to establish clear criteria for Medicaid payment of these services and to provide appeal and legal support. Regulatory action is needed to ensure that Medicaid individuals and their families and service providers are well informed about service specifications prior to receiving or providing these services. These services will allow these children to improve interaction with their schools, families, communities, future employers and jobs and thus benefit a broad range of citizens.

These regulations are not expected to affect the health, safety or welfare of citizens of the Commonwealth.

Substance

Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the "Detail of changes" section.)

The regulations that will be affected by this action are the Amount, Duration, and Scope of Medical and Remedial Care (12 VAC 30-50), Standards Established and Methods Used to Assure High Quality Care (12 VAC 30-60), and Methods and Standards for Establishing Payment Rates; Other Types of Care (12 VAC 30-80), Waivered Services (12 VAC 30-120), and the Amount, Duration, and Scope of Selected Services (12 VAC 30-130-2000 *et seq.*).

CURRENT POLICY

Currently, Medicaid payment for applied behavior analysis services is being authorized on an individual-case basis under the authority provided by the basic EPSDT definition found in 12 VAC 30-50-131.B.4:

"Consistent with the Omnibus Budget Reconciliation Act of 1989 § 6403, early and periodic screening, diagnostic, and treatment services means the following services: screening services, vision services, dental services, hearing services, and such other necessary health care, diagnostic services, treatment, and other measures described in Social Security Act § 1905(a) to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services and which are medically necessary, whether or not such services are covered under the State Plan and notwithstanding the limitations, applicable to recipients ages 21 and over, provided for by the Act § 1905(a)".

The absence of consistently applied definitions, service requirements, required provider qualifications, and quality assurance standards might result in arbitrary decisions that cannot be sustained in an appeal. With increasing numbers of children being diagnosed with autism and autism spectrum disorders, the individual-case-basis method of covering these services is no longer satisfactory or appropriate. It could create inadvertent instances of inequity and unequal service coverage for children in the same eligibility group in violation of federal law. (42 CFR § 440.240) Unequal service coverage could endanger the Commonwealth's federal financial participation for Title XIX.

RECOMMENDATIONS

Children who require the applied behavior analysis services established in this regulatory action demonstrate at least two of the following:

- a. Non-verbal or limited functional communication and pragmatic language skills, unintelligible or echolalia speech, or impairment in receptive or expressive language.
- b. Severe impairment in social interaction, social reasoning, social reciprocity, and interpersonal relatedness.

- c. Frequent, intense behavioral outbursts that are self injurious or aggressive toward others.
- d. Disruptive obsessive, repetitive, or ritualized behaviors.
- e. Difficulty with sensory integration.

DMAS proposes to initiate uniform coverage of applied behavior analysis services for children who have been diagnosed with autism and autism-spectrum disorders. Trained professionals rendering early intensive treatment, such as applied behavior analysis techniques, has been shown to be effective in ameliorating impairments in major life functions arising from autism spectrum disorders and other serious developmental disabilities. Coverage of EPSDT applied behavior analysis will not cause more children to be eligible for this service but will ensure appropriate treatment of the children who are already in the care delivery system.

The proposed regulatory action adds new language to the *Virginia Administrative Code*, under the authority of EPSDT, which is specific to applied behavior analysis strategies, by defining the scope of Medicaid coverage for EPSDT applied behavior analysis services, qualifications of providers, standards to ensure high quality of services, and the method of payment. These strategies are designed for individuals younger than 21 years of age using systematic interventions, typically provided in the individual's home. These services are designed to enhance communication skills and decrease maladaptive patterns of behavior which, if left untreated, could lead to more complex problems and the need for a greater or a more restrictive level of care, such as institutionalization. Successful implementation of applied behavior analysis services requires the participation of a parent.

Medicaid providers of applied behavior analysis services will be licensed by the Board of Medicine as licensed behavior analysts or by DBHDS to provide Outpatient Services with Applied Behavior Analysis Track. Applied behavior analysis services will be excluded from Medicaid managed care contracts and reimbursed by DMAS directly on a fee-for-service basis. Providers will not be reimbursed under a DBHDS Intensive In-Home Services license.

Prior to treatment, a licensed health care practitioner of applied behavior analysis conducts an assessment documenting the child's medical diagnosis and describing how service needs can best be met through applied behavior analysis interventions. The assessment includes a description of the behavior or behaviors targeted for treatment, including data on the frequency, duration, and intensity of the behavior(s). An individualized service plan (ISP) is developed based on the assessment. The ISP describes each targeted behavior, the behavioral modification strategy to be used to manage each targeted behavior, and the measurement and data collection methods to be used for each targeted behavior in the plan.

Applied behavior analysis services are to be authorized for interventions described in the ISP only when (1) services that are more intensive than outpatient clinic care are required to stabilize the child in the family situation, or the child's residence as the setting for services is more likely to be successful than a clinic; (2) at least one parent/guardian or responsible adult with whom the child is living participates in the applied behavior analysis services and makes meaningful, doc-

umented progress in effectively managing behaviors in the home environment; and (3) the child makes meaningful, documented progress in improving the behaviors targeted in the ISP.

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 the regulatory action poses no disadvantages to the public or the Commonwealth, please indicate.

The proposed regulation is advantageous to these affected children and their families by ensuring that practitioners of applied behavior analysis services funded by Medicaid have the education, experience, and supervision necessary to effectively correct or ameliorate problematic behaviors arising from a medical disability. Applied behavior analysis providers have emphasized the importance of relevant education, training, and supervision for direct service practitioners. Regulatory action will ensure that individuals and their families and service providers are well informed about Medicaid service specifications prior to receiving or providing these services, thereby avoiding DMAS’ recovery of provider payments made for inappropriate or inadequate services.

The proposed regulation is advantageous to businesses by establishing criteria for Medicaid payment for these services. The primary disadvantage of these regulations is that some agencies, which currently provide applied behavior analysis services and receive Medicaid reimbursement authorized on an individual-case basis, may no longer qualify for Medicaid payment because they do not meet Medicaid standards.

The primary advantage to the Commonwealth, in the setting of these criteria and standards, will be the statewide uniform application of policies which should result in fewer costly provider appeals. There are no disadvantages to the Commonwealth for this action.

Requirements more restrictive than federal

Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no requirements in this proposal that are more restrictive than federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no requirements that will affect one locality more than another as they apply statewide.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to Molly Carpenter at mail: Div. of Maternal and Child Health, DMAS, 600 E. Broad St., Suite 1300, Richmond, VA 23219; phone: (804) 371-7824; fax: (804) 786-1680; email: Ashley.Harrell@dmass.virginia.gov Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.

During 2010 an informal workgroup discussed program coverage needs, medical necessity criteria, impacts and relationships with other services and provider licensing for EPSDT applied behavior analysis services. The discussions and follow up communications were geared toward the development of DMAS' program policy to define the scope of the service. Additionally, a new outpatient license specialty (for applied behavior analysis) was defined by the Department of Behavioral Health and Developmental Services Office of Licensure.

The workgroup consisted of Board Certified Behavior Analysts, advocates and licensed mental health professionals. Agencies represented consisted of the following community based-mental health providers: Lutheran Family Services, League of Family Therapists, Family Preservation Services and Spectrum Transformation Group and staff from Virginia Commonwealth University Autism Centers of Excellence (ACE), Commonwealth Autism Services, staff from the Department of Behavioral Health and Developmental Services (DBHDS) Office of Licensing and staff from the DMAS Office of Behavioral Health and the DMAS Medical Director.

During the past three years, DMAS' EPSDT staff has interacted with active and potential service providers regarding service authorization requirements, documentation requirements and provid-

ed ongoing technical assistance and dialogue with active service providers about program requirements and service provision issues. Over 30 informal trainings and individual consultations with providers were conducted during 2012. In this time, the service providers have expressed opinions during multiple encounters about how to adjust program policy and provided information about quality issues that have been helpful in the design of pending programmatic changes.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirements creates the anticipated economic impact.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures.	DMAS does not project additional costs to the state to implement and enforce these regulations.
Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.	No impact is expected for localities since local government entities do not render these services.
Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.	Medicaid service providers of behavioral therapy services include both public and private providers. The public providers are the local community services boards. The private providers are mental health service providers and applied behavioral analysis service providers.
Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	In State Fiscal Year 2012, 38 entities provided behavioral therapy services reimbursed by Medicaid. DMAS estimates that 90 percent of these providers are small businesses which offer mental health and applied behavioral analysis services. There are now 245 licensed behavioral analysts.
All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.	No change in costs is projected based on the new regulations.
Beneficial impact the regulation is designed to produce.	The regulations are intended to ensure that adequately trained providers furnish effective ABA services. These regulatory requirements are also intended to prevent Medicaid payments to inadequately trained and inappropriately licensed providers who may render this service.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

DMAS considered administering EPSDT applied behavior analysis services under the existing regulations for EPSDT Intensive In-Home Services. This proved not to be a good fit due to the different treatment modalities and practitioner specialized training and qualifications needed to provide effective ABA services. Intensive In-Home Services are designed to address the needs of children having serious emotional disturbances who are at imminent risk of being placed out of the home, such as in a psychiatric hospital, a group home, or foster care. Most children having autism spectrum and related disorders who need applied behavior analysis services do not meet this definition. An agency that currently provides services under an Intensive In-Home license will need to apply for and receive a modification to its license to add Outpatient services, with an Applied Behavior Analysis Track, in order to continue receiving Medicaid payment for applied behavior analysis services.

The Board of Medicine recently promulgated regulations governing the licensure of behavior analysts and assistant behavior analysts. The regulations require that an applicant for a license to practice as a behavior analyst hold current certification as a Board Certified Behavior Analyst®. DMAS considered reimbursing for applied behavior analysis rendered by or under the supervision of a licensed behavior analyst as a separate service from applied behavior analysis services rendered by or under the supervision of a licensed psychologist or other licensed mental health care professional. DMAS concluded that defining a single Medicaid service for coverage of applied behavior analysis services would provide agencies greater flexibility in the use of staff to meet the needs of a particular child, provide for statewide access, and simplify DMAS' administration of the services. DMAS also considered requiring behavior analysts licensed by the Board of Medicine to also be licensed by DBHDS to provide Outpatient Services in order to receive Medicaid payment for services. This alternative was rejected as unnecessarily burdensome to small businesses.

DMAS considered including Medicaid reimbursement for applied behavior analysis services provided by schools. Some private health insurance policies pay for applied behavior analysis provided by private schools. DMAS does not currently reimburse school divisions for applied behavior analysis services as these services are defined in the proposed regulations. Adding schools as providers would increase costs to the Medicaid program. In addition, the inclusion of schools would likely require extensive justification and negotiation with the Centers for Medicare & Medicaid Services (DMAS' federal funding agency) to ensure that federal matching funds are limited to coverage based on medical needs and not for educational purposes. Therefore, the proposed regulatory action excludes reimbursement to local educational agencies. Once these discussed concerns can be resolved, the Commonwealth may wish to investigate the feasibility of adding schools as Medicaid providers of EPSDT applied behavior analysis services in the future.

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 consulted provider community has emphasized the importance of relevant education, training, and supervision for applied behavior analysis practitioners. These regulations are essential to establish clear, consistent criteria for Medicaid payment to ensure quality of service. Regulatory action will ensure that individuals and their families and service providers are well informed about Medicaid service specifications prior to receiving or providing these services.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

DMAS’ Notice of Intended Regulatory Action was published in the *Virginia Register of Regulations* on January 13, 2013 (VR 29:10). Comments were received from 15 companies and individuals. The summary of comments received and the agency’s responses follow:

Commenter	Comment	Agency response
Far Beyond, LLC (two individuals made the same comment.)	Board Certified Behavioral Analysts (BCBA) should only be allowed to supervise applied behavioral analysis (ABA) cases. Typically, Licensed Mental Health Professionals (LMHPs) do not have the clinical experience, oversight, or coursework to adequately implement effective ABA treatment programs.	The proposed regulation requires supervision by an LMHP, licensed behavior analyst (BCBA), or licensed assistant analyst with the goal of assuring that the service is available statewide and also is flexible enough to meet individual needs while assuring sufficient expertise for effective intervention.
Dominion ABA	After the initial 6 months of prior authorized services, clients are receiving subsequent prior authorization for only 3 months. Given the amount of time/ paperwork required, it would be beneficial for subsequent prior authorization periods to be 4-6 months. It is also difficult to show significant progress in skills in such a short amount of time.	Authorization periods are not defined in the proposed regulation as these will vary based on the individual’s medical needs and progress. Staff who authorize the service will take this suggestion into consideration.
Individual	Agency would be in favor of devel-	The proposed regulations define a range of

	<p>oping requirements for direct services staff similar to QMHP, QIDP or QSAP for practitioners of behavioral Treatment services. Specific training developed and required by DMAS/DBHDS would be welcomed. Agency would not be in favor of requiring a BCBA to supervise behavioral treatment services instead of a Licensed Mental Health Professional (LMHP). In larger areas, contracting with a BCBA would not rule out the provision of behavioral therapy services but it would in SW Virginia. BCBA credentialing does not provide the same training in assessment of underlying mental health symptoms that are known to exist in the autism spectrum disorder and intellectually disabled populations.</p>	<p>qualified practitioners with backgrounds in applied behavior analysis, mental health, or developmental disability with the goal of assuring that the service is available statewide and also is flexible enough to meet individual needs while ensuring sufficient expertise for effective intervention. Services must be provided under the direct supervision of an LMHP, licensed behavior analyst(BCBA), or licensed assistant behavior analyst.</p>
<p>MR Community Services Board</p>	<p>LMHPs are required to have diagnosis and treatment coursework pertaining to all DSM diagnoses, including developmental and intellectual disabilities. This creates an adequate foundation on which to build the necessary ABA by additional training and support. There is no reason to believe than an LMHP cannot utilize such training in implementing an effective ABA program and can also address comorbidities that may exist in the child/family. In the five counties and one city covered by this agency, there are 0 to 1 registered BCBAs within 50 miles of this agency's service locations.</p>	<p>This comment is addressed above.</p>
<p>First Home Care</p>	<p>When requesting a continuation of service, there is a large amount of paperwork that must be submitted. For reauthorizations, it would be helpful to reduce this.</p>	<p>Requirements for submitting documentation for service authorization are not defined in the proposed regulation as these will vary based on the individual's medical needs and progress. Staff who authorizes the service will take this suggestion into consideration.</p>
<p>Family Preservation Services (4 individuals)</p>	<p>LMHPs and LMHP-Es have been functioning successfully in the EPSDT program. A solid understanding of autism and other developmental disabilities should be required for supervisors in the EPSDT program. Both BCBAs and LMHPs/LMHP-Es have much to offer.</p>	<p>There is no such licensing category as LMHP-E. The licensing agency uses LMHP-Supervisees and LMHP-Residents. In this action, DMAS proposes that services be provided under the direct supervision of an LMHP, licensed behavior analyst (BCBA), or licensed assistant behavior analyst to ensure that the service is available statewide and is flexible enough to meet individual needs while ensuring sufficient expertise for effective interventions.</p>

	Please clarify requirements for the maintenance of raw data and whether it must become part of the permanent record.	The proposed regulation does not define maintenance of records requirements particular to behavioral therapy. General requirements applicable to all Medicaid services will apply.
	Requests for extension of services should be granted for an additional 6 months instead of the current 3 months.	This comment is addressed above.
	BCBAs are well equipped to provide oversight of quality treatment services. BCBAs will not have incentive to work for Medicaid-funded agencies due to the current limitations and reimbursement rates. Behavioral therapy can best be provided by professionals with specific training and demonstrated competency in Applied Behavioral Analysis. The 3-month 'turn over rate' for extension requests adds a significant burden to direct care staff. Quality assessment is important. Recommended the option of 7-10 hours for administration and interpretation of the VB-MAPP to children with emerging language development.	<p>The comment about practitioner and supervisory qualifications is addressed above.</p> <p>The comment about extension requests is addressed above.</p> <p>The proposed regulation includes standards to assure high quality assessments. Reimbursement for the initial service-specific provider assessment and ISP is limited to five hours without service authorization. However, DMAS may authorize additional assessment hours on an individual basis if needed (per 12 VAC 30-80-97).</p>
Providence Service Corp.	Behavioral therapy services are most effective when provided by direct care staff with specific training in ABA and proven competencies. Mastery of ADLs should be tracked through use of task analysis for each skill as well as being child-specific developmentally appropriate. Independence should be documented through task analysis by all on the treatment team, family, and attendants.	In order to make services available statewide and to allow reimbursement for a variety of effective behavioral therapy modalities, specific training in ABA is not being required in these proposed regulations. The proposed regulation requires documentation of the individual's progress toward achieving each behavioral objective through analysis and reporting of quantifiable behavioral data.
Grafton	Company would like to see regulations that are consistent with the Behavioral Analyst Certification Board's guidelines and standards. Company supports this Board's position that the BCBA/BCaBA is responsible for an individual's ABA treatment. More time should be permitted and compensated for assessments (up to 10 hours). Reauthorization period should be longer than 3 months; 6 months were recommended. A differential rate of reimbursement is needed for BCBAs and Behavior Specialists.	<p>Qualifications for practitioners are addressed above.</p> <p>Reauthorization periods and payment for assessment hours are addressed above.</p> <p>The proposed regulation does not distinguish BCBAs from other behavioral therapy practitioners for reimbursement rates.</p>

<p>Family Insight</p>	<p>LMHP/LMHP-E with ABA expertise/experience should be included with LBA/BCBAs. Company has benefited greatly from having the LBA train staff but the LBA is not permitted to supervise in the EPSDT program because company is licensed under the Intensive In-home license. Requiring additional training for supervisors and credentialing behavior analysts to provide supervision and assessments would raise the standard of supervision provided to clinicians thereby enhancing the quality of services provided.</p> <p>Counselors should have the specific training and demonstrated competency for the practice of ABA. The ABA Outpatient track more consistently prepared staff to meet the needs of the population served by requiring 40 hours of specialized training. The same training standard should be applied to Intensive In-Home because the same clients are being served but staff qualifications vary drastically.</p> <p>Some things appear to be mentioned twice under Covered Services. Providers want to bill responsibly so further clarification is indicated.</p>	<p>Qualifications for practitioners and supervisors are addressed above.</p> <p>Under the proposed regulation, all Medicaid providers of behavioral therapy services must be licensed by the BOM as a behavior analyst or assistant behavior analyst or by DBHDS to provide Outpatient services. Behavioral therapy will not be reimbursed under an Intensive In-Home Services license.</p> <p>The new regulations clarify covered services and limitations. Covered services, including clinical supervision, are defined specific to behavioral therapy.</p>
<p>Virginia Office for Protection and Advocacy</p>	<p>This agency represents clients seeking ABA services through EPSDT. The new regulations should ensure appropriate licensure and certification of providers ABA services. The regulations should include an evaluation mechanism or the development of a plan of care before the provider requests service authorization to ensure the child's behavioral therapy needs are appropriately addressed.</p>	<p>Services must be provided by or under the supervision of a licensed behavior analyst, licensed assistant behavior analyst or licensed mental health professional. The proposed regulation includes standards for assessment and provides coverage for assessment and planning before the provider requests authorization for services.</p>
<p>Commonwealth Autism Services</p>	<p>Some of the Directors of Special Education have asked how the proposed regulatory action and changes specific to Medicaid coverage may impact the work of our Behavior Analysts in their schools.</p>	<p>The proposed regulations define services provided in the home and will not impact the work of behavior analysts in the schools.</p>

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 do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children; nor 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.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all differences between the **pre-emergency** regulation and this proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
12VAC30-50-130		Applied behavior analysis services are not addressed under EPSDT.	Specifies that applied behavior analysis services will be covered for qualified children under the authority of EPSDT.
12VAC30-50-150		Licensed behavior analysts services are not addressed.	Specifies that licensed behavior analysts and licensed assistant behavior analysts will be reimbursed for children as an EPSDT applied behavior analysis service.
12VAC30-120-380		Applied behavior analysis services are not addressed.	Applied behavior analysis services are to be provided outside of the DMAS managed care networks.
12VAC30-80-97	Specifies that applied behavior analysis services are reimbursed on a fee-for-service		Establishes the method of payment for applied behavior analysis services.

	basis.		
12VAC30-130-2000	<p>Defines the applied behavior analysis therapy services and provider qualifications. Specifies standards for medical necessity, service-specific provider assessment, individual service plan, care coordination, clinical supervision, and other standards.</p>	<p>Regulations governing the licensure of behavior analysts, and other health care professional practitioners rendering applied behavior analysis services.</p>	<p>The criteria for Medicaid payment for applied behavior analysis will be clear to service providers and families of children needing services. Services that do not meet quality standards will be at risk for losing Medicaid reimbursement.</p>