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Final Regulation
Agency Background Document

Agency name	DEPT OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation(s)	12 VAC 30-50-130; 12 VAC 30-60-61; 12 VAC 30-80-97
Regulation title(s)	Amount, Duration, and Scope of Services: Skilled Nursing Facility Services, EPSDT, School Health Services and Family Planning; Utilization Control: Services Related to the Early and Periodic Screening, Diagnosis, and Treatment Program (EPSDT); Community Mental Health Services for Children; Methods and Standards for Establishing Reimbursement Rates: Fee for Service Applied Behavior Analysis (under EPSDT)
Action title	EPSDT Behavioral Therapy Services
Date this document prepared	11/30/2017

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual.*

Brief summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

This action establishes Medicaid coverage for behavioral therapy 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 a psychiatric diagnosis relevant to the need for behavioral therapy services, including but not limited to autism or autism spectrum disorders, or

other similar developmental delays, and they must meet the medical necessity criteria. The proposed regulations define the behavioral therapy service requirements, medical necessity criteria, provider clinical assessment and intake procedures, service planning and progress measurement requirements, care coordination, clinical supervision, and other standards to assure quality.

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.

DBHDS = Department of Behavioral Health and Developmental Services
DMAS = Department of Medical Assistance Services
DSM = Diagnostic Statistical Manual
EPSDT = Early and Periodic Screening, Diagnosis, and Treatment
ISP=Individual Service Plan
LABA=Licensed Assistant Behavior Analyst
LBA=Licensed Behavior Analyst
LMHP = Licensed Mental Health Professional
QMHP = Qualified Mental Health Professional

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 taking the action; and 3) the title of the regulation.

I hereby approve the foregoing Regulatory Review Summary with the attached amended regulations entitled "EPSDT Behavioral Therapy Regulations" (12 VAC 30-50-130; 12 VAC 30-60-61; 12 VAC 30-80-97; 12 VAC 30-120-380) 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.

11/30/2017	/signature/
Date	Cynthia B. Jones, Director
	Dept. of Medical Assistance Services

Legal basis

Please identify the (1) the agency (includes any type of promulgating entity) and (2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency'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, 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. Behavioral therapy services are an EPSDT service.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation 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.

This regulatory action is intended to promote an improved quality of Medicaid-covered behavioral therapy services provided to children and adolescents. The proposed regulation will differentiate Medicaid's coverage of behavioral therapy and 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 behavioral therapy services. Regulations are needed to establish clear criteria for Medicaid payment of these services. 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 interactions with their schools, families, communities, future employers and jobs and thus benefit a broad range of citizens.

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

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both.

Currently, Medicaid payment for behavioral therapy services is being authorized on an individual-case basis under the authority provided by the basic EPSDT definition found in 12 VAC 30-50-130.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 in need of such services, the individual-case-basis method of covering these services is no longer satisfactory or appropriate.

DMAS proposes to initiate uniform coverage of behavioral therapy services for individuals under the age of 21 who meet the medical necessity criteria. Trained professionals rendering early intensive treatment, including but not limited to applied behavior analysis techniques, has been shown to be effective in ameliorating impairments in major life functions arising from autism spectrum disorders and other diagnosed conditions. Coverage of EPSDT behavioral therapy services will not cause more individuals to be eligible for this service but will ensure appropriate treatment of eligible children who are already in the care delivery system as well as those initiating behavioral therapy services.

Prior to treatment, an appropriate health care practitioner conducts an intake documenting the child's medical and psychiatric diagnosis and describing how service needs can best be met through behavioral therapy 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.

Behavioral analysis treatment strategies are systematic interventions that are provided in the family home and in the community. Behavioral therapy may be provided in home or community settings as deemed by DMAS or its contractor as medically necessary treatment. Family training and counseling related to the implementation of the behavioral therapy shall be included as part of the behavioral therapy service. 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 behavioral therapy services requires the participation of a parent or guardian.

The service goal is to ensure that the member's family is trained to successfully manage clinically designed behavioral modification strategies in the home setting. The family involvement in therapy is meant to increase the child's adaptive functioning by training the family in effective methods of behavioral modification strategies. Family members do not have to be present during all hours of therapy. Family members must be present and participate with their treatment plan objectives in an effective manner as documented by the clinical supervisor.

EPSDT Behavioral Therapy services are intended to improve the functional behaviors of the member by integrating multi-disciplinary clinical and medical services with the behavioral therapy protocol to increase the member's adaptive functioning and communicative abilities. Treatment results must be documented to indicate a generalization of behaviors across different settings to maintain the targeted functioning outside of the treatment setting in the patient's residence and the larger community within which the individual resides.

Technical corrections are made to the catch lines of several existing services (12 VAC 30-60-61) to create consistency in regulatory text and improve readability.

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.

This regulation is advantageous to individuals and their families by ensuring that Medicaid funded behavioral therapy services are provided by licensed practitioners with the education, experience, and clinical training necessary to effectively correct or ameliorate problematic behaviors through the use of evidence based behavior modification principles. Regulatory action will ensure that individuals, their families and service providers are well-informed about Medicaid service requirements prior to receiving or providing these services, thereby avoiding DMAS' recovery of provider payments made for inappropriate or inadequate services. This regulatory action will also support the efforts of DMAS and its contractors to provide effective care coordination and administrative oversight of service delivery by clarifying provider requirements and service delivery requirements in the Virginia Administrative Code.

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 and reduced risks for fraud, waste, and abuse. There are no disadvantages to the Commonwealth for this action.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need 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.

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, and does not increase or decrease disposable family income.

Changes made since the proposed stage

*Please list all changes that made to the text of the proposed regulation and the rationale for the changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. *Please put an asterisk next to any substantive changes.*

Section number	Requirement at proposed stage	What has changed	Rationale for change
12VAC30-50-130	Services limited to 26 weeks.	26 week limit removed from B 5 b (1).	Change in B 5 b (1) based on public

		780 unit limit removed from B 5 c.	comment. Text was duplicated in B 5 b (1) and (2); duplicative text was removed from (2) and subdivisions were re-numbered. Change in B 5 c based on public comment from the disability Law Center of Virginia (see p. 15 of this document).
12 VAC 30-50-130	Service is provided primarily in the home but may be intermittently provided in community settings.	Services may be provided in the home or in community settings.	Changes in definition of “behavioral therapy” in B 9 (a) based on public comment.
12VAC30-50-130	No definition of “counseling” included.	Definition of “counseling” included.	Added definition of counseling in B 9 (a) based on public comment.
12VAC30-50-130			Changed “patient’s residence” to “individual’s home” as that is more person-centered.
12VAC30-60-61	Service-specific provider intake is required every three months.	Service-specific provider intake is required prior to treatment.	Changes in H4 and H5 so that the intake is required prior to treatment, and not every three months. In H5, signature requirements for an ISP are included in the definition, so duplicative signature requirements were removed. The list of individuals who may create an ISP was clarified.
12VAC30-60-61	Clinical supervision shall occur weekly.	Clinical supervision of unlicensed staff shall occur weekly.	Change in H 7 based on public comment. In addition, added a requirement that clinical supervision be documented.
12VAC30-60-61	Family training required child to be present.	Family training may be provided without the child present if certain requirements are met.	Added a new paragraph H 8 on family training based on public comment.
12VAC30-60-61	Services shall not be provided in the absence	Services shall not be provided in the absence of an individual or a	Change in H 9 (g)

	of the individual and a parent/guardian.	parent/guardian.	
12VAC30-120-380	Services were not provided by MCOs.	Services may be provided by MCOs.	Section 30-120-380 was edited to allow services to be provided by MCOs. In addition, text related to documentation is not needed, as it is part the Medallion regulatory package that is currently pending, so it was removed from this package.

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. Please distinguish between comments received on Town Hall versus those made in a public hearing or submitted directly to the agency or board.

Commenter	Comment	Agency response
Behavior Analyst at The Faison Center	1. ABA and Behavioral Therapy should be separate treatments and ABA should be solely guided by the DHP regulations governing behavior analysts. Often behavioral therapy run by non-licensed individuals looks more like counseling or behavior modification and not the more specific discipline and practice of ABA. It is confusing to group multiple and different professions as one, and the distinction is necessary, as ABA has been a well-established discipline for nearly a half century. 2. ABA should not be limited by location, but the services should be provided in the location that is most appropriate to the needs of the individual. This may be a clinic, the community, a social	1. DMAS follows DHP regulations for licensing requirements and reimburses for licensed providers acting within the scope of their practice. In § 54.1-2957.17 the Code of Virginia clarifies that the licensure of Behavior Analysts and Assistant Behavior Analysts "shall not be construed as prohibiting any professional licensed, certified, or registered by a health regulatory board from acting within the scope of his practice." DMAS will work with external stakeholders to provide additional program guidance in the EPSDT Behavioral Therapy manual. 2. The service definition allows for settings outside the home with appropriate justification in the ISP. In response to this comment, language in the final draft of these regulations have been updated to remove the references to services being provided primarily in the home. DMAS will work with external

	group, or the home, or other place that meets the needs of the individual. ABA clinics should be required to obtain a license that is appropriate to their business, which is not available at this time. 3. ABA does not necessarily need to be provided individually, but may be appropriate for some individuals in a group setting. The service should be available in a group setting or one-on-one with an individual as is dictated by the individual's needs and outlined in the ISP.	stakeholders to provide additional program guidance regarding services in a clinic setting in the EPSDT Behavioral Therapy manual. DMAS confirmed with DBDHS that due to restrictions in state regulations (12VAC 35-105-20), DBHDS cannot license outpatient clinics operated by professionals licensed by DHP acting within the scope of their practice. 3. Services can now be provided in group setting with justification in the Individual Service Plan (ISP) as long as the child has one on one staff working with the child. DMAS will explore the possibility of a group rate in the future. DMAS will work with external stakeholders to provide additional program guidance regarding services in a group setting in the EPSDT Behavioral Therapy manual.
Behavior Analyst at Capital ABA	Same as comment #1.	See responses to comment #1
Behavior Analyst at Centra Health	Same as comment #1.	See responses to comment #1.
Behavior Analyst at Compass Counseling Services of Virginia	It is necessary to distinguish between ABA therapy and behavioral therapy to ensure the correct application of services. ABA should not be limited to the home setting. Group treatment in ABA can be beneficial. Sessions for family support sometimes occur without the client present to allow the parent to practice strategies before implementing them with the family. Many individuals eligible for EPSDT services may benefit	See response to comment #1 Language has been added to clarify that family training may be provided in the absence of the child if certain requirements are met. Outpatient mental health services are available to children receiving EPSDT Behavioral Therapy Services. Providers should contact Magellan of Virginia or the child's Medicaid MCO for additional information. The Early and Periodic Screening, Diagnostic and Treatment Service (EPSDT) program is federally limited to individuals under the age of 21. Funding

	from an interdisciplinary approach, such as those who have a developmental diagnosis and co-morbid PTSD or other trauma, or a co-morbid mental illness. This population currently has to choose whether he/she gets treatment for skill deficits, or the co-morbid disorder... Making both services available could help shorten the length of treatment for these individuals significantly. Many individuals who would benefit from ABA services are not eligible due to age. Please consider extending coverage past age 22 years old to assist those who have fewer service options available.	to provide Behavioral Therapy to the general Medicaid Population would require budget authority from the Virginia General Assembly.
Director of Education at the Virginia Institute of Autism	Same as comment #1.	See responses to comment #1.
Executive Director at the Virginia Institute of Autism	Same as comment #1.	See responses to comment #1.
Behavior Analyst at the Faison Center	Same as comment #1.	See responses to comment #1.
Behavior Analyst at Compass Counseling Services of NOVA	Same as comment #1. Many individuals over the age of 21 need this service to live an independent and meaningful life well into their adult years and DMAS is urged to remove the age restriction.	The Early and Periodic Screening, Diagnostic and Treatment Service (EPSDT) program is federally limited to individuals under the age of 21. Funding to provide Behavioral Therapy to the general Medicaid Population would require budget authority from the Virginia General Assembly.
Individual	Same as comment #1.	See responses to comment #1.
Individual Behavior	Same as comment #1.	See responses to comment #1.

Analyst		
Behavior Analyst at the Faison Center	Same as comment #1.	See responses to comment #1.
Behavior Analyst and Director of Clinical Services at Next Steps Behavioral Centers	Same as comment #1, item #1. Location of services and the use of small groups should be determined by the treating professional.	Services can now be provided in settings outside the home and in group settings with justification in the ISP as long as the child has one on one staff working with the child. DMAS will explore the possibility of a group rate in the future. DMAS will work with external stakeholders to provide additional program guidance regarding services in a group setting in the EPSDT Behavioral Therapy manual.
Behavior Analyst at RCG Behavioral Health Network	Same as comment #1.	See responses to comment #1.
Behavior Analyst at RCG Behavioral Health Network	Same as comment #1.	See responses to comment #1.
Individual at Comprehensive Autism Partnership Inc.	Similar to comment #1.	See responses to comment #1.
Behavior Analyst at Next Steps Behavioral Centers	Similar to comment #1.	See responses to comment #1.
VP of Operations at the Faison Center	Similar to comment #1.	See responses to comment #1.
Behavior Analyst at the Faison Center	Same as comment #1.	See responses to comment #1.
Behavior Analyst at Next	Similar to comment #1.	See responses to comment #1.

Steps Behavioral Centers		
VP of Operations at the Faison Center	Similar to comment #1.	See responses to comment #1.
Behavior Analyst at Youth and Family Services ASSET Program	Same as comment #1.	See responses to comment #1.
Behavior Analyst at Youth and Family Services ASSET Program	Same as comment #1.	See responses to comment #1.
Family Insight, PC	Same as comment #1.	See responses to comment #1.
Director of Operations, Family Insight, PC	Clients with autism have been harmed by receiving ABA with EPSDT modalities. ABA and EPSDT should be separated and ABA should be provided under DHP guidelines for this client group.	DMAS cannot restrict licensed mental health professionals acting within the scope of their practice as defined by the Virginia Department of Health Professionals (DHP) to provide EPSDT Behavioral Therapy (see also response to comment #1). The Individual Service Plans (ISPs) of these providers are approved by the DMAS Behavioral Health Services Administrator, Magellan of Virginia. Concerns related to these providers may be submitted to Magellan of Virginia or DHP.
Family Insight, PC	Same as comment #1.	See responses to comment #1.
Family Insight, PC	Same as comment #1.	See responses to comment #1.
Behavior Analyst at Family Insight, PC	Same as comment #1.	See responses to comment #1.
Behavior	Same as comment #1.	See responses to comment #1.

Analyst at Family Insight, PC		
Behavior Analyst	Same as comment #1.	See responses to comment #1.
Family Insight, PC	Same as comment #1.	See responses to comment #1.
Behavior Analyst at Compass Counseling Services	Same as comment #1.	See responses to comment #1.
Behavior Analyst at Compass Counseling Services	Similar to comment #1 with additional comments: ABA clinics should be required to obtain a license appropriate to the business, and the commenter believes that DBDHS rather than DOH is the correct licensing agency. To facilitate billing of secondary claims, T codes would be helpful. For individuals that have other primary insurance, two independent assessments and authorizations are required; Medicaid should accept the primary insurance authorization.	Please see responses to comment #1. DBHDS is unable to license clinics operated by professionals licensed by DHP acting within the scope of their practice. Billing codes are not included in the regulations. DMAS maintains authority over Medicaid program and service authorization requirements. DMAS does not accept service authorizations from an individual's primary insurance as the service authorization and program requirements vary across insurance companies.
Behavior Analyst at Mt. Rogers CSB	Similar to comment #1 with additional comments: ABA clinics should be required to obtain a license appropriate to the business. The statement about a service specific provider intake being done face to face with the individual and guardian should be modified to allow the provider to conduct an interview alone with the guardian. The quarterly intake duplicates the requirement for quarterly reviews. Is "a screening to identify physical, mental, or	Please see comments regarding licensing clinics above #32. CMS guidelines require that the individual always be present. Screenings to identify physical, mental or developmental conditions are conducted by the child's primary care provider and therefore not covered under this service. Family counseling and training is listed in these regulations as a covered service. General family support and education is not included. A definition of counseling has been added for clarification.

	developmental conditions" the same as a DMAS-355? If not, clarification is needed. Family support and education are not permitted and these terms need to be defined – a major focus of the service is teaching and modeling for caregivers. "Section 11c references 2 areas of clarification: i."Documentation shall include activities provided, length of services provided, the individual's reaction to that day's activity... "- This last point regarding the individual's reaction seems to move from the data driven model of ABA to a more subjective framework. An individual's reaction is seen through the behaviors observed and data produced. The last point listed seems to open the door to statements such as "he enjoyed the activity, he became frustrated with the activity, etc." which are not objective measures. ii."Documentation shall be prepared to clearly demonstrate efficacy using baseline and service-related data that shows clinical progress and generalization for the child and family members toward the therapy goals as defined in the service plan."- Service plans are developed after a baseline is established. This wording does not provide for such time and staff obtaining baseline data in preparation of the plan would be documenting their efforts, but would not yet have a service plan to document against."	The regulations do not prohibit a provider from documenting an individual's reaction through objective measures. The Regulations require that an initial Individual Service Plan (ISP) be developed at the start of services. The Initial ISP must be updated within 30 days and thereafter at a minimum of every 90 days.

disAbility Law Center of Virginia	dLCV recommends adding 'Service limits may be exceeded based on medical necessity for individuals eligible for EPSDT' directly to the language of both the IIH and TDT sections, to minimize confusion. The behavioral therapy services section 12VAC30-50-130 (B)(8) states: 'c. These services shall be provided in settings that are natural or normal for a child or adolescent without a disability, such as his home, unless there is justification in the ISP, which has been authorized for reimbursement, to include service settings that promote a generalization of behaviors across different settings to maintain the targeted functioning outside of the treatment setting in the patient's residence and the larger community within which the individual resides.' dLCV worked with children need[ing] behavioral therapy to return to a home or community setting. We have learned that children can't get funding for the full amount recommended and are unable to request the additional amount through EPSDT because a child is in a residential placement. The new language in 12VAC30-50-130 (B)(8) seems to suggest that behavioral therapy coverage outside of the home is possible, but our recent experience seems to indicate that is not always the case.	The TDT and IIH sections have been updated with this language. These regulations address EPSDT Behavioral Therapy in a community based setting.
Behavior Analyst, Youth and Family	Same as comment #1.	See responses to comment #1.

Services		
Behavior Analyst and Parent	"In regards to proposed regulation change H7 that specifies that "Clinical supervision shall occur at least weekly..." I am concerned that this change unintentionally usurps both the role of the Board of Medicine to set supervision standards and the judgement of the Licensed Behavior Analyst to set supervision requirements on a case by case basis. In addition I am concerned that the unintended consequences of this rule change would be that fewer children would be served. Why not just align the supervision rule with the current Board of Medicine standard?"	The language was updated to clarify that weekly supervision is required of unlicensed staff and defers to DHP guidelines for licensed staff.

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. Explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation

The changes at the proposed stage were:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
12VAC30-50-130		Behavioral therapy services are not addressed.	Specifies that behavioral therapy services will be covered for qualified children under the authority of EPSDT.
12VAC30-60-61		Behavioral therapy services are not addressed.	Establishes authorization, documentation, staff, and other requirements that will be part of utilization review.
12VAC30-80-97	Specifies that applied behavior analysis services are reimbursed on a fee-for-service basis.		Establishes the method of payment for behavioral therapy services.
12VAC30-		Applied behavior analysis	Behavioral therapy services are to be

120-380		services are not addressed.	provided outside of the DMAS managed care networks. Other changes are editorial in nature to update text.

The changes at the final stage are:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
12VAC30-50-130	Services limited to 26 weeks.	26 week limit removed from B 5 b (1). 780 unit limit removed from B 5 c.	Change in B 5 b (1) based on public comment. Text was duplicated in B 5 b (1) and (2); duplicative text was removed from (2) and subdivisions were re-numbered. Change in B 5 c based on public comment.
12 VAC 30-50-130	Service is provided primarily in the home but may be intermittently provided in community settings.	Services may be provided in the home or in community settings.	Changes in definition of “behavioral therapy” in B 8 (a) based on public comment.
12VAC30-50-130	No definition of “counseling” included.	Definition of “counseling” included.	Added definition of counseling in B 8 (a) based on public comment.
12VAC30-50-130			Changed “patient’s residence” to “individual’s home” as that is more person-centered.
12VAC30-60-61	Service-specific provider intake is required every three months.	Service-specific provider intake is required annually.	Changes in H4 and H5 so that the intake requirements match the annual requirement that is present in other services.
12VAC30-60-61	Clinical supervision shall occur weekly.	Clinical supervision of unlicensed staff shall occur weekly.	Change in H 7 based on public comment.
12VAC30-60-61	Family training required child to be present.	Family training may be provided without the child present if certain requirements are met.	Added a new paragraph H 8 on family training based on public comment.
12VAC30-60-61	Services shall not be provided in the absence of the individual and a parent/guardian.	Services shall not be provided in the absence of an individual or a parent/guardian.	Change in H 9 (g)
12VAC30-120-380	Services were not provided by MCOs.	Services may be provided by MCOs.	Section 30-120-380 was removed from this project because behavioral therapy services may be provided by MCOs.