



Final Regulation Agency Background Document

Agency name	State Board of Behavioral Health and Developmental Services
Virginia Administrative Code (VAC) citation	12 VAC 35-115-10 et seq.
Regulation title	Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded or Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services
Action title	Clarify notification rights for individuals receiving services to comply with Chapter 111 of the 2009 Virginia Acts of Assembly
Date this document prepared	4/28/2011

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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

This regulatory action will amend the existing regulations to clarify that any individual receiving services has the right and opportunity to notify a person of his choice of his (i) location, (ii) general condition, and (iii) transfer to another facility. This change is intended to ensure that an individual will have the support of family members or others while he is receiving services from providers who are licensed, funded, or operated by the Department of Behavioral Health and Developmental Services. This change should also ensure that family members or others are informed about the well-being of a loved one who is receiving services.

This regulatory action will also reflect a name change that occurred since the regulations were last modified. The name change replaces "Mental Health, Mental Retardation, and Substance Abuse Services" with "Behavioral Health and Developmental Services".

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.

The State Board of Behavioral Health and Developmental Services considered the public comment received and adopted final regulatory changes to 12 VAC 35-115 at its April 28, 2011 meeting.

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 State Board of Behavioral Health and Developmental Services has the authority to adopt these regulations under Va. Code §§37.2-203 and 37.2-400 and is required to do so. The revisions are required under Chapter 111 of the 2009 Virginia Acts of Assembly. The legal authority for the Department name change is provided in Chapter 813 of the 2009 Virginia Acts of Assembly.

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.

This Board is required to amend its regulations to comply with the 2009 amendment to § 37.2-400 of the Code of Virginia. This change will promote the health, safety and welfare of persons who are receiving services by ensuring these individuals are afforded the opportunity to notify loved ones of their general condition and whereabouts. This should enable family members and others to provide support to a loved one who is receiving services.

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.

This regulatory action will amend the existing regulations to clarify that any individual receiving services has the right and opportunity to notify a person of his choice of his (i) location, (ii) general condition, and (iii) transfer to another facility. This regulatory action will also reflect a name change that occurred since the regulations were last modified. The name change replaces "Mental Health, Mental Retardation, and Substance Abuse Services" with "Behavioral Health and Developmental Services".

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 regulatory action poses an advantage to the public, particularly consumers and family members as well as providers, by ensuring that providers have the affirmative duty to assure that an individual receiving services has the opportunity to notify someone of his choosing as to his location and general well being. It clarifies the authority for providers to make such a notification. Consumers and family members prompted the change to the VA Code that results in this 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
50	D.4 <u>Providers shall notify a person the individual of his general condition, location, and transfer to another facility.</u>	D.4 <u>Providers shall afford the individual the opportunity to have an individual of his choice notified of his general condition, location, and transfer to another facility.</u>	Public comment received indicated that the right granted required providers to afford the opportunity, not to notified.
80	B.7 <u>Providers shall notify a person of the individual's choice of the individual's general condition, location, and transfer to another facility.</u>	B.7 Providers shall notify a person of the individual's choice of the individual's general condition, location, and transfer to another facility.	This provision is being remove since the provider duty to afford the individual receiving services the opportunity to notify a person of his choosing has already been stated in provision D.4

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.

Commenter	Comment	Agency response
Susan Ward	We suggest clarification of new language in Section D4 of 12VAC35-115-50. As proposed, it <u>requires</u> notification of a patient's condition, location and transfer, while the 2009 legislation requires that the patient be <u>afforded the opportunity</u> to choose an individual to receive such notice.	The final regulatory language regarding provider duties has been modified to address this comment

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
10 and 30		Department of Mental Health, Mental Retardation and Substance Abuse Services and State Mental Health, Mental Retardation and Substance Abuse Board	Replaces terms with Department of Behavioral Health and Developmental Services and State Board of Behavioral Health and Developmental Services -- 2009 General Assembly action.
50		B. lists five specific individual rights	Adds a 6th right --the opportunity to have an individual of his choice notified of his general condition, location and transfer to another facility.
80		B. lists provider's duties	Has been modified to establish that one of the provider duties is to afford an individual receiving services the opportunity to notify an individual of his choosing of his general condition, location and transfer to another facility

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 are no viable alternatives to this regulatory action. Section 37.2-400 of the Code of Virginia was amended to specifically require that each person who is receiving services in a facility or program that is operated, funded or licensed by the Department be afforded the opportunity to have an individual of his choice notified of his general condition, location, and transfer to another facility. This Code change was effective July 1, 2009 and all facilities and programs operated, funded or licensed by the Department must comply with this requirement. The Board must modify its regulations to reflect current Code requirements.

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.

This regulatory action should have a positive impact on families and family stability because it should encourage family members to support their loved ones who are receiving services. This action is not expected to impact family income.