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Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Department of Behavioral Health and Developmental Services (DBHDS)
Virginia Administrative Code (VAC) Chapter citation(s)	12VAC35-46
VAC Chapter title(s)	Regulations for Children's Residential Facilities
Action title	Amend the Children's Residential Licensing regulations to align with the ASAM Criteria
Date this document prepared	6/30/2020

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The Department of Behavioral Health and Developmental Services (DBDHS) was directed by the 2020 General Assembly within the Appropriation Act to utilize emergency authority to promulgate licensing regulations that align with the American Society of Addiction Medicine (ASAM) Levels of Care Criteria or an equivalent set of criteria to ensure the provision of outcome-oriented and strengths-based care in the treatment of addiction. The goal of this regulatory action is to amend the licensing regulations, Regulations for Children's Residential Facilities [12VAC35-46], to align with the ASAM Levels of Care Criteria, which ensure individualized, clinically driven, participant-directed and outcome-informed treatment.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

ASAM- American Society of Addiction Medicine

DBHDS- Department of Behavioral Health and Developmental Services

State Board- State Board of Behavioral Health and Developmental Services

Mandate and Impetus (Necessity for Emergency)

Explain why this rulemaking is an emergency situation in accordance with § 2.2-4011 A and B of the Code of Virginia. In doing so, either:

- a) Indicate whether the Governor's Office has already approved the use of emergency regulatory authority for this regulatory change.*
- b) Provide specific citations to Virginia statutory law, the appropriation act, federal law, or federal regulation that require that a regulation be effective in 280 days or less from its enactment.*

As required by § 2.2-4011, also describe the nature of the emergency and of the necessity for this regulatory change. In addition, delineate any potential issues that may need to be addressed as part of this regulatory change

The 2020 General Assembly directed DBDHS to promulgate emergency regulations to become effective within 280 days or less from the enactment of the Appropriation Act. In addition to being mandated by the General Assembly, the regulatory change is necessary as substance use disorders affect individuals, their families, the workplace, and the general community, therefore DBHDS must incorporate best practices within its licensing regulations in order to promote recovery from the disease of addiction. This is especially a concern with the increase of substance use in general. According to the Monitoring the Futures Survey of 2019, there has been an increase in adolescent marijuana vaping from 2018 to 2019. This increase ranked among the largest single-year increases ever observed by this survey in the past 45 years among all outcomes ever measured. In 2019 the percentage of adolescents who had vaped marijuana in the last 12 months was 21% in 12th grade, 19% in 10th grade, and 7% in 8th grade.

According to the Middle School Virginia Youth Survey conducted by the Virginia Department of Health (VDH), in 2017 approximately 3% of respondents indicated that they used marijuana before age 11 and almost 10% drank alcohol before age 11. That same VDH survey of high school students illustrated that over 30% of this population in 2017 reported using alcohol in the past 30 days. The survey also indicated that 25% of respondents binge drank, 20% reported using marijuana, and approximately 3% used heroin in a 30 day period.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts and Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

DBDHS was directed by the 2020 General Assembly within the Appropriation Act to utilize emergency authority to promulgate regulations which align with a set of criteria to ensure the provision of outcome-oriented and strengths-based care in the treatment of addiction. Item 318 of the 2020 Acts of Assembly Chapter 1289 charges the Department to make the changes within this regulatory action. Section 37.2-203 of the Code of Virginia gives the Board of Behavioral Health and Developmental Services the authority to adopt regulations that may be necessary to carry out the provisions of Title 37.2 of the Code and other laws of the Commonwealth administered by the DBHDS commissioner. The Board of Behavioral Health and Developmental Services voted to adopt this regulatory action on July 15th, 2020.

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

Substance related disorders affect the individual, their families, the workplace and the general community, therefore the department must incorporate best practices in licensing regulations in order to promote remission and recovery from the disease of addiction. Regulations that promote remission and recovery from the disease of addiction are essential to protect the health and welfare of citizens.

Substance use disorders (SUDs) among children, adolescents, and their families pose particular challenges for the community. Given the differences in developmental and emotional growth between youth and adults, the complex needs of this population are remarkably different from those of the traditional adult treatment population, requiring different expertise and guidance. In addition, many adolescents who abuse drugs have a history of physical, emotional, and/or sexual abuse or other trauma.

Behavioral therapies, delivered by trained clinicians, help an adolescent stay off drugs by strengthening his or her motivation to change. The ASAM Criteria (American Society of Addiction Medicine) is designed to provide specific substance use disorder treatment guidance to counselors, clinicians, and case managers. Level 3.5 programming is specifically designed for youth and adults that require 24 hour care and treatment to begin and sustain a recovery process. This type of guidance can significantly improve the treatment outcomes of youth in need of residential services.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

This regulatory action amends the licensing regulations, Regulations for Children's Residential Facilities [12VAC35-46], to align with the ASAM Levels of Care Criteria which ensures individualized, clinically driven, participant-directed and outcome-informed treatment. The regulatory action provides the necessary definitions for the newly aligned services to be provided and creates staff, program admission, discharge and co-occurring enhanced program criteria for ASAM levels of care 3.5 and 3.1.

Issues

Identify the issues associated with the regulatory change, 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, include a specific statement to that effect.

The primary advantage of the regulatory change is to have Children’s Residential Licensing Regulations that incorporate best practices related to treatment of substance use disorders, which in turn will result in citizens of the Commonwealth receiving more effective treatment of substance use disorders. This is an advantage to the public, the agency, and the Commonwealth. The primary disadvantage is that some providers may experience a financial burden in order to comply with the new regulations. There are no known disadvantages to the agency or the Commonwealth.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

As this regulatory action is the result of a General Assembly mandate. There are no viable alternatives.

Periodic Review and Small Business Impact Review Announcement

This Emergency/NOIRA is not being used to announce a periodic review or a small business impact review.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

The Department of Behavioral Health and Developmental Services is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to **Susan Puglisi, 1220 Bank Street, Richmond Virginia 23219, Phone Number: 804-371-2709, email: susan.puglisi@dbhds.virginia.gov**. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

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

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the emergency regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
12VAC35-46-10. Definitions.		Provides current definitions for the Children’s Residential Licensing Regulations.	Change: Adding the following definitions for terms utilized within the ASAM criteria: <ul style="list-style-type: none"> • Allied health professionals; • ASAM; • Clinically managed, low-intensity residential care; • Clinically managed, medium-intensity residential care; • DSM; • Medication assisted treatment; and • Motivational enhancement. Impact: Clear regulations
	12VAC35-46-1150. American Society of Addiction Medicine criteria.		Intent: Briefly describes the purpose of the ASAM criteria Rationale: Explanation of the new Part of the Children’s Residential Licensing Regulations. Impact: Clearer regulations.
	12VAC35-46-1160. Clinically managed, medium-intensity residential services (ASAM Level of care 3.5) staff criteria		Intent: Provide clear staff requirements within clinically-managed, medium-intensity residential care programs, which provide 24 hour supportive treatment. The individuals served by clinically managed medium-intensity residential care are individuals who are not sufficiently stable to benefit from outpatient treatment regardless of intensity of service. Impact: Robust, effective substance use disorder treatment within the Commonwealth.
	12VAC35-46-1170. Clinically		Intent: Provide clear program requirements within clinically-managed, medium-intensity residential care

	managed medium-intensity residential services (ASAM Level of care 3.5) program criteria		<p>programs, which provide 24 hour supportive treatment. The individuals served by clinically-managed, medium-intensity residential care are individuals who are not sufficiently stable to benefit from outpatient treatment regardless of intensity of service.</p> <p>Impact: Robust, effective substance use disorder treatment within the Commonwealth.</p>
	12VAC35-46-1180. Clinically-managed, medium intensity residential services admission criteria.		<p>Intent: Provide clear admission requirements within clinically-managed, medium-intensity residential service programs.</p> <p>Impact: Robust, effective substance use disorder treatment within the Commonwealth which is appropriately administered.</p>
	12VAC35-46-1190. Clinically managed medium-intensity residential services discharge criteria.		<p>Intent: Provide clear discharge requirements within clinically-managed medium-intensity residential service programs.</p> <p>Impact: Robust, effective substance use disorder treatment within the Commonwealth which is appropriately administered.</p>
	12VAC35-46-1200. Clinically managed medium-intensity residential services co-occurring enhanced programs		<p>Intent: Provide additional licensing requirements for medium-intensity residential services programs which treat individuals with co-occurring disorders.</p> <p>Impact: Clarity of the regulations. Clear requirements for providers treating individuals with co-occurring disorders.</p>
	12VAC35-46-1210. Clinically-managed low-intensity residential services (ASAM Level of care 3.1) staff criteria		<p>Intent: Provide clear staff requirements within clinically managed low-intensity residential service program, which provide ongoing therapeutic environment for individuals requiring some structured support.</p> <p>Impact: Robust, effective substance use disorder treatment within the Commonwealth.</p>
	12VAC35-46-1220. Clinically-managed,		<p>Intent: Provide clear program requirements within clinically managed low-intensity residential service programs, which provide ongoing</p>

	low-intensity residential services (ASAM Level of care 3.1) program criteria.		therapeutic environment for individuals requiring some structured support. Impact: Robust, effective substance use disorder treatment within the Commonwealth.
	12VAC35-46-1230. Clinically managed low-intensity residential services admission criteria.		Intent: Provide clear admission requirements within clinically managed low-intensity residential service programs. Impact: Robust, effective substance use disorder treatment within the Commonwealth which is appropriately administered.
	12VAC35-46-1240. Clinically-managed low-intensity residential services discharge criteria.		Intent: Provide clear discharge requirements within clinically managed low – intensity residential service programs. Impact: Robust, effective substance use disorder treatment within the Commonwealth which is appropriately administered.
	12VAC35-46-1250. Clinically-managed low-intensity residential services co-occurring enhanced programs.		Intent: Provide additional licensing requirements for clinically managed low-intensity residential service programs which treat individuals with co-occurring disorders. Impact: Clarity of the regulations. Clear requirements for providers treating individuals with co-occurring disorders.