



Virginia
Regulatory
Town Hall

townhall.virginia.gov

Notice of Intended Regulatory Action (NOIRA) 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 Behavioral Health and Development Services
Action title	Revise regulations to improve Human Rights protections
Date this document prepared	10/20/2012

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*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

Revise regulations to improve administrative and program efficiencies; simplify processes; clarify roles and functions; enhance the user friendliness of the regulations; and eliminate redundancies in statutory requirements. These actions will result in enhanced individual protections for individuals receiving services including those under the DOJ settlement agreement.

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 State Behavioral Health and Developmental Services Board has the authority to promulgate these regulations under Va. Code §§37.2-203 and 37.2-400. Based on a recently completed periodic review and in response to the governor’s regulatory reform initiative, the Board, at its October 11, 2012 meeting, voted to initiate the process to revise these regulations.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

The purpose of this action is to assure human rights protections related to the health, safety and welfare of individuals receiving services from providers licensed, funded or operated by the Department of Behavioral Health and Development Services are effectively administered. With the recent regulatory revision to the 12 VAC 35-115, the specific rights detailed within the regulations do not need to be modified, rather the revisions will focus on enhancing the process for assuring these rights are protected, while reducing unnecessary regulatory burdens on individuals receiving services and public and private providers. These actions will also enhance the program’s capacity to support the individual protections envisioned in the DOJ Agreement;

Substance

Please detail any changes that will be proposed. Be sure to define all acronyms. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

The Board intends to consider updates to the administrative review process to reflect changes in the dispute resolution process which were implemented several years ago; and to evaluate regulatory requirements. The Board also intends to consider revisions for clarity and to ensure that provisions are consistent with other regulations of the Board.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

The Board will consider all viable alternatives for updating these regulations, consistent with legal requirements. This regulatory action is essential to ensure that regulatory requirements are clearly written and understandable, are consistent with all current legal requirements, reflect current standards of practice, and can be easily implemented by all users and stakeholders, including individuals receiving services and their families, community services boards, private providers, and state facilities. Therefore, the Board will seek input and advice from representatives of all of these users to ensure that proposed revisions meet the essential purpose of this action. Specifically, the Board intends to consider the public comments received in response to the periodic review and NOIRA, when drafting revisions to these regulations and review drafts with stakeholder representatives prior to the final promulgation.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

Please also indicate pursuant to your Public Participation Guidelines whether a panel will be appointed to assist in the development of the proposed regulation. Please state one of the following: 1) a panel will be appointed and the agency’s contact if you’re interested in serving on the panel is _____; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulatory proposal.

The Board is seeking comments on this regulatory action, including but not limited to 1) ideas to be considered in the development of this proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also 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) the probable effect of the regulation on affected small businesses, and 3) the description of less intrusive or costly alternatives for 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 **Margaret Walsh, State Human Rights Director**. 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 be held following the publication of the proposed stage of this regulatory action and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi>). Both oral and written comments may be submitted at that time.

Family impact

Assess the potential 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 will ultimately enhance the community resources available to assure the human rights of individuals receiving services is protected. This action is not expected to impact family income.

Periodic review/small business impact review result

If this NOIRA is the result of a periodic review/small business impact review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 14 (2010), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, please include, pursuant to Code of Virginia § 2.2-4007.1 E and F, a discussion of the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

No comments received

Commenter	Comment	Agency response

The regulations are necessary for the protection of public health, safety, and welfare and there is a continuing need to have regulations which specify specific human rights and the available protections afforded individuals receiving services from providers licensed, funded or operated by the Department of Behavioral Health and Development Services. The periodic review did result in the conclusion that it may be possible to reduce the complexity of the administrative review process outlined in the regulations to reduce the regulatory burden on small businesses and to enhance the effective enforcement of individual protections. There appears to be an opportunity to eliminate a provision within the human rights regulations that overlaps or duplicates other existing regulations.