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Proposed Regulation Agency Background Document

Agency name	Department for the Blind and Vision Impaired
Virginia Administrative Code (VAC) Chapter citation(s)	22VAC45-70 22VAC45-80
VAC Chapter title(s)	22VAC45-70 Provision of Services in Rehabilitation Teaching 22VAC45-80 Provision of Independent Living Rehabilitation Services
Action title	Amend 22VAC45-70 while repealing 22VAC45-80
Date this document prepared	November 23, 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 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. If applicable, generally describe the existing regulation.

The Department for the Blind and Vision Impaired (DBVI) seeks to amend 22VAC45-70 (Provision of Services in Rehabilitation Teaching) while simultaneously repealing 22VAC45-80 (Provision of Independent Living Rehabilitation Services).

Virginia Administrative Code Sections 22VAC45-70 and 22VAC45-80 are outdated and include language that is identical or very similar regarding referral for, eligibility determination of, plan for, and scope of rehabilitation teaching and independent living services. DBVI does not operate independent living centers for the blind as described in the 22VAC45-80 and it is important to note that the federal funds that once supported the Independent Living services identified in 22VAC34-80 were no longer available after about 2000. Rather, DBVI coordinates and provides independent living services as part of its Rehabilitation Teaching/Independent Living Program and as ancillary services through its Vocational Rehabilitation Services Program.

This action updates 22VAC45-70 to reflect a change in title, correction of the agency name, and expands rehabilitation teaching services to include independent living services, which is current agency practice and updates definitions and state and federal citations. 22VAC45-80 will be repealed because it is no longer necessary.

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.

"DBVI" means the Department for the Blind and Vision Impaired.

"RT/IL" means Rehabilitation Teaching/Independent Living.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

Executive Order 14 (as amended, July 16, 2018) requires that executive branch agencies consider, review, and promulgate regulations annually. As part of the required periodic review, DBVI staff determined that 22VAC45-70 and 22VAC45-80 should be combined to reflect current practice and the provision of RT/IL services to individuals who are blind, vision impaired, or deafblind. This regulatory action also contributes to Virginia's regulatory reform efforts by eliminating a redundant and unnecessary regulation.

DBVI simultaneously will amend 22VAC45-70 and repeal 22VAC45-80

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 and Acts of 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.

DBVI is the agency initiating this regulatory action. Statutory authority comes from § 51.5-65 of the Code of Virginia, which identifies the functions, duties, and powers of the Commissioner to adopt regulations to carry out the applicable provisions of the chapter.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

The purpose of this regulatory action is to amend 22VAC45-70 to accurately reflect DBVI's RT/IL program under which rehabilitation teaching and independent living services to eligible individuals who are blind, vision impaired, or deafblind are provided.

Additionally, this regulatory action will repeal an unnecessary Virginia Administrative Code section, 22VAC45-80. Among other services described in 22VAC45-80 is the operation of independent living centers for people who are blind and have secondary disabilities; DBVI does not operate independent living centers. DBVI provides independent living services through its RT/IL Program in each of six regional offices and the Virginia Rehabilitation Center for the Blind and Vision Impaired.

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.

Amendments include:

- Changing the title of the regulation from "Provision of Services in Rehabilitation Teaching" to "Regulations Governing the Provision of Rehabilitation Teaching and Independent Living Services".
- Updating the agency name from "Department for the Visually Impaired" to the current name, "Department for the Blind and Vision Impaired".
- Removing outdated definitions and adding new definitions that more fully describe certain terms or that reflect rehabilitation teaching and independent living services provided under DBVI's RT/IL Program.
- Adding the words, "independent living", throughout the regulation to clarify that those services are included along with rehabilitation teaching.
- Clarifying referral and application procedures, eligibility criteria and determination requirements, updating the name of the plan that specifies the services an individual will receive, updating the scope of services available to eligible individuals, and,
- Updating financial participation an individual may have in costs of services.

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.

DBVI is the agency in the Commonwealth charged with updating and maintaining relevant Virginia Administrative Code sections that accurately identify and describe services for eligible individuals who are blind, vision impaired, or deafblind. DBVI considered not amending 22VAC45-70 and maintaining the separate regulation, 22VAC45-80. However, the two regulations contain redundant information and no longer accurately reflect the way DBVI provides rehabilitation teaching and independent living services. Additionally, the federal funding for the provision of independent living services as described in 22VAC45-80 ceased to be available around 2000; these services are now provided through the Rehabilitation Teaching/Independent Living Program which is funded primarily through state funds. This regulatory action streamlines DBVI's Administrative Code regulations by amending 22VAC45-70 to include relevant portions of 22VAC45-80 to reflect current practice, and repealing 22VAC45-80, which no longer will be necessary.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.

There are no proposed amendments to 22VAC45-70 or the repeal of 22VAC45-80 that put forth requirements that are more restrictive than applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

None

Localities Particularly Affected

None

Other Entities Particularly Affected

None

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is change versus the status quo.

Impact on State Agencies

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<i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources	Status quo
<i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the	Status quo

regulatory change, including a delineation of one-time versus on-going expenditures.	
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	Status quo

Impact on Localities

Projected costs, savings, fees or revenues resulting from the regulatory change.	Status quo
Benefits the regulatory change is designed to produce.	Status quo

Impact on Other Entities

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	No other entities affected.
Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	No other entities affected.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	No other individuals, businesses, or other entities affected.
Benefits the regulatory change is designed to produce.	The regulatory change combines duplicative elements of two Administrative Code regulations into one regulation that will accurately describe the provision of rehabilitation teaching and independent living services by the DBVI. 22VAC45-70 Provision of Services in Rehabilitation Teaching will be amended and 22VAC45-80 Provision of Independent Living Rehabilitation Services repealed which subsequently eliminates one unnecessary regulation. The title of the amended 22VAC45-70 will be "Regulations Governing the Provision of Rehabilitation Teaching and Independent Living Services".

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.

DBVI is the agency in the Commonwealth charged with updating and maintaining relevant Virginia Administrative Code sections that accurately identify and describe services for eligible individuals who are blind, vision impaired, or deafblind. DBVI considered not amending 22VAC45-70 and maintaining the separate regulation, 22VAC45-80. However, the two regulations contain redundant information and no longer accurately reflect the way DBVI provides rehabilitation teaching and independent living services. This regulatory action streamlines DBVI’s Administrative Code regulations by amending 22VAC45-70 to include relevant portions of 22VAC45-80 which reflect current practice, and repealing 22VAC45-80, which no longer will be necessary.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, 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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.

DBVI’s Independent Living services include specific services to individuals who are blind and over the age of 55. Service provision is linked directly to the Independent Living Services for Individuals who are Blind Grant Program (Older Blind Grant) which is limited to one federal report (RSA 70 OB) annually. Small business is not impacted by this regulatory action.

Periodic Review and Small Business Impact Review Report of Findings

If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable.

In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (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. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

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

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

No public comment received

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.

A public hearing will not be held following the publication of this 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 proposed 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 chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
22VAC45-70		CHAPTER 70 PROVISION OF SERVICES IN REHABILITATION TEACHING	Amends chapter name to incorporate independent living services provided under the chapter. New name more accurately reflects the intent of the amended regulation.

			<p>REGULATIONS GOVERNING THE PROVISION OF REHABILITATION TEACHING AND INDEPENDENT LIVING SERVICES.</p>
<p>22VAC45-70-10</p>		<p>Part I Introductions Definitions</p>	<p>Removes sub-heading, “Part I Introduction” for consistency with other chapters.</p> <p>Replaces the definition of “Blindness, legal blindness” with definition of “Blind Person” to reflect language in DBVI Code of Virginia §51.5-60.</p> <p>Removes definition of “consumer” because it is an outdated term no longer typically used by DBVI.</p> <p>Adds acronym for Department for the Blind and Vision Impaired (DBVI).</p> <p>Adds definition of “Deafblind person” for the purpose of being able to determine an individual who deafblind as eligible for services.</p> <p>Adds definition of “Department”</p> <p>Adds definition of “Financial Needs Assessment” because the agency uses such assessment to determine the extent to which an individual may participate in cost of services.</p> <p>Adds definition of “Independent Living” because 22VAC45-70 (Provision of Services in Rehabilitation Teaching) is being amended to combine identical or similar services found in 22VAC45-80 (Provision of Independent Living Rehabilitation Services) which is being repealed.</p> <p>Revises the name of the Individualized Written Rehabilitation Program (IWRP) to Rehabilitation Independent Living Program (Plan) which reflects the type of services being provided in the DBVI Rehabilitation Teaching/Independent Living Program.</p> <p>Adds the phrase “independent living” throughout the section to reflect the provision of those same services along with rehabilitation teaching services.</p>

			<p>Revises the definition of “Reasonable expectation” to include the phrase “independent living” and replaces the word “consumer” with “individual” and improves grammar in the definition.</p> <p>Revises the definition of “Rehabilitation teaching” to include persons who are blind or deafblind.</p>
22VAC45-70-20		Referral	<p>Section revised to reflect the referral and application process for individuals seeking rehabilitation teaching and independent living services.</p> <p>Removes subheading for consistency with other DBVI administrative code regulations.</p> <p>Revises the name of the section to include application.</p> <p>Revised to remove extraneous text and improve grammar.</p>
22VAC45-70-30		Eligibility for rehabilitation teaching services	<p>Revises title of the section to include independent living services in order to accurately reflect the name of the services described in the chapter.</p> <p>Removes sub-heading for consistency with other DBVI administrative code sections.</p> <p>Adds statement that clarifies that the program eligibility requirements shall be applied without regard to sex, race, creed, color, or national origin; that no group or individual shall be excluded or found ineligible solely on the basis of the type of disability or on the basis of age; and that no residence requirement shall be imposed that excludes from services any individual who is presently in the Commonwealth.</p> <p>Adds the phrase “independent living” to reflect the provision of those services to eligible individuals.</p> <p>Revises eligibility criteria to reflect current definition of a “blind person.”</p>

			<p>Revised to include optometrists as qualified professions who can provide opinions that night blindness or rapidly progressive eye conditions which will reduce distance vision to 20/200 or less.</p> <p>Revises to improve grammar.</p>
22VAC45-70-40		Eligibility Determination	<p>Revised to replace “consumer” with “individual” and to add the phrase “independent living services”. These revisions reflect the deletion of the definition of “consumer” and the addition of independent living services to the existing regulation.</p>
22VAC45-70-60		The Individualized Written Rehabilitation Teaching Program (IWRP)	<p>Revisions to this section reflect the inclusion of independent living services as reflected in the written plan which guides the provision of rehabilitation teaching and independent living services as they are currently delivered.</p> <p>Revisions change the name of the written plan to The Rehabilitation Teaching and Independent Living Program (Plan)</p> <p>Revisions include adding the phrase “independent living”, replaces “consumer” with “individual, replaces “instructor” with “rehabilitation teacher”, and replaces the acronym (IWRP) with (Plan).</p>
22VAC45-70-70		Scope of rehabilitation teaching services.	<p>Revisions simply add the phrase “independent living” to the title of the section and in the body of the section to reflect the name of the program.</p> <p>Clarifies that scope of services may include referral to and information regarding resources and programs internal and external to DBVI.</p> <p>Revisions replace the word “consumer” with “individual” as described previously in this document.</p> <p>Revised to improve grammar.</p>
22VAC45-70-80		Financial Participation	<p>Revised title of section to add “in cost of services”.</p> <p>Replaces agency name with acronym “DBVI”.</p>

			<p>Adds the phrase independent living” in every place were rehabilitation teaching services are referenced.</p> <p>Revises from 100% to 80% of the federally estimated median income for Virginia when purchased goods and services may be provided at no cost to the recipient who is a person who is blind. The rationale for this change is two decades old. In or around 1999 or 2000, what was then the Independent Living Program referenced in 22VAC45-80 lost its federal funding; the money was never restored. DBVI chose to fold those independent living services, which were very similar, into the Rehabilitation Teaching Program referenced in 22VAC45-70. From that point forward, independent living services have been fully state funded with the exception of grant funds for individuals who are blind and 55 years or older. Decreasing the percentage from 100% to 80% of the federally estimated median income for Virginia was a cost savings measure designed to help DBVI serve as many eligible individuals as possible with those state funds.</p> <p>Revised to reflect that DBVI shall review and change financial participation levels to match federal estimated income levels annually.</p> <p>Revised to remove redundant text, improve grammar, and to replace the word “consumer” with “individual” as described in other sections of this chapter.</p>
22VAC45-80		Chapter 80 Provision of Independent Living Rehabilitation Services Part I Introduction	Chapter 80 being repealed; relevant text included in 22VAC45-70 amendments
22VAC45-80-10		Definitions	Definitions section being repealed; relevant definitions included in the 22VAC45-70-10 amendments
22VAC45-80-20		Referrals	Referrals section being repealed; relevant text included in 22VAC45-70-20 amendments.
22VAC45-80-30		Eligibility for independent living services	Eligibility for Independent living services section being repealed; relevant text included in the 22VAC45-70-30 amendments
22VAC45-80-40		Basic conditions for eligibility	Basic conditions for eligibility section being repealed; relevant text regarding

			eligibility determination included in the 22VAC45-70-40 amendments.
22VAC45-80-50		Certification of eligibility	Certification of eligibility section being repealed; relevant text included in 22VAC45-70-30 and 22VAC45-70-40 amendments.
22VAC45-80-60		Certification of ineligibility	Certification of ineligibility section being repealed; relevant text included in 22VAC45-70-30 and 22VAC45-70-40 amendments.
22VAC45-80-70		The Individualized Written Independent Living Rehabilitation Program (IWRP)	The IWRP section being repealed; relevant text incorporated in 22VAC45-70-60 amendments
22VAC45-80-80		Scope of independent living rehabilitation services for individuals	Scope of independent living services section being repealed; relevant text incorporated into 22VAC45-70-70

If a new VAC Chapter(s) is being promulgated and is not replacing an existing Chapter(s), use Table 2.

Table 2: Promulgating New VAC Chapter(s) without Repeal and Replace

New chapter-section number	New requirements to be added to VAC	Other regulations and laws that apply	Change, intent, rationale, and likely impact of new requirements

If the regulatory change is replacing an **emergency regulation**, and the proposed regulation is identical to the emergency regulation, complete Table 1 and/or Table 2, as described above.

If the regulatory change is replacing an **emergency regulation**, but changes have been made since the emergency regulation became effective, also complete Table 3 to describe the changes made since the emergency regulation.

Table 3: Changes to the Emergency Regulation

Emergency chapter-section number	New chapter-section number, if applicable	Current <u>emergency</u> requirement	Change, intent, rationale, and likely impact of new or changed requirements since emergency stage