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Fast-Track Regulation Agency Background Document

Agency name	Department of Behavioral Health and Developmental Services
Virginia Administrative Code (VAC) citation(s)	12 VAC35-12
Regulation title(s)	Public Participation Guidelines
Action title	Amend Regulations Following Periodic Review
Date this document prepared	September 18, 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 (preferably no more than 2 or 3 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

Section 2.2-4007.02 of the Code of Virginia requires all non-exempt agencies to promulgate public participation guidelines (PPGs) in order to facilitate public involvement in the regulatory process.

Chapter 12 promotes public involvement in the development, amendment or repeal of the regulations of the State Board of Behavioral Health and Developmental Services and the Department of Behavioral Health and Developmental Services. This action is the result of a periodic review; the last review was in 2009. No comments were received during the review.

The proposed amendments bring the regulation into compliance with the following statutes:

- 12VAC35-12-45 (new section), Notification to Licensed Providers: Amend language to incorporate changes in accordance with Chapter 599 of the 2017 Acts of Assembly.

- 12VAC35-12-50, Public Comment:
 - A., Amend language in accordance with § 2.2-4007.02 of the Code of Virginia;
 - D., Amend language to incorporate changes in accordance with Chapter 599 of the 2017 Acts of Assembly regarding comment on changes to guidance documents.
 - E., Amend language in accordance with § 37.2-203 of the Code of Virginia.

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” means the Department of Behavioral Health and Developmental Services.
 “State Board” means the State Board of 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 taking the action; and 3) the title of the regulation.

The State Board approved promulgation of these amendments to 12VAC35-12 *Public Participation Guidelines* using the fast-track process at its meeting on October 4, 2017.

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.

Section 37.2-203 of the Code of Virginia authorizes the State Board to adopt regulations that may be necessary to carry out the provisions of Title 37.2 and other laws of the Commonwealth administered by the commissioner and the department.

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 action is the result of a periodic review. No comments were received during the review. Public participation guidelines exist to promote public involvement in the development, amendment or repeal of state regulations. DBHDS is responsible for the direct care of individuals in its facilities and provides oversight for the state’s publicly funded behavioral health and developmental services system. This

regulatory action will align the regulation in three places with the Code of Virginia and thus facilitate citizen involvement in the regulations of the State Board and DBHDS.

Rationale for using fast-track process

Please explain the rationale for using the fast-track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

This action is the result of a periodic review. No comments were received during the review. Executive Order 17 (2014) allows state agencies to use a fast-track rule making process to expedite regulatory changes that are expected to be non-controversial. This regulatory action reflects opportunities for citizen input into the regulatory process, as already established in the Code of Virginia. Therefore, no controversy is anticipated.

Substance

Please 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.

The proposed amendments bring the regulation into compliance with the following statutes:

- 12VAC35-12-45 (new section), Notification to Licensed Providers: In accordance with Chapter 599 of the 2017 Acts of Assembly, effective July 1, 2017, for all affected DBHDS licensed providers amend language stating that:
 - DBHDS will notify affected providers when new or final regulations are posted on the Regulatory Town Hall website, and when there are public comment periods pursuant to the existing regulatory processes established by Virginia law;
 - DBHDS will notify affected providers each time there are such changes and the opportunity to comment on the changes under consideration, including specific comments regarding an appropriate time frame for the implementation of such changes; and
- 12VAC35-12-50 A., Public Comment: In accordance with § 2.2-4007.02 of the Code of Virginia:
 - Amend language stating that DBHDS shall provide that persons wishing to submit data, views, and arguments related to a regulatory action shall be afforded the opportunity to be accompanied by and represented by counsel or other representative.
- 12VAC35-12-50 D., Public Comment: In accordance with Chapter 599 of the 2017 Acts of Assembly, effective July 1, 2017, for all affected DBHDS licensed providers:
 - Amend language that DBHDS will post guidance document changes under development to the Regulatory Town Hall website for a 30 day public comment period.
- 12VAC35-12-50 E., Public Comment: In accordance with § 37.2-203:
 - Amend language, that at least 30 days prior to the Board's action to adopt, amend, or repeal any regulation regarding substance abuse services, the Board shall present the proposed regulation to the Substance Abuse Services Council for the council's review and comment.

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.

The primary advantage to the public and the Commonwealth is conformation of regulatory provisions regarding public participation to the existing requirements in state law. There are no disadvantages to the public or the Commonwealth.

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 federal requirements applicable to this regulatory action; therefore no requirement is more restrictive than federal law.

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 localities particularly affected by this action.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, 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 is no reason to delay the adoption of these changes by using the standard process. The proposed amendments merely conforms the agency's Public Participation Guidelines regulation to Chapter 599 of the 2017 Acts of Assembly as well as sections 37.2-203 and 2.2-4007.02 of the Code of Virginia.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

<p>Projected cost to the state to implement and enforce the proposed regulation, including: a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures</p>	<p>There are no costs to the state.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>There are no costs to localities.</p>
<p>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</p>	<p>Entities likely to be affected are:</p> <ul style="list-style-type: none"> • Providers licensed by DBHDS; • Individuals and families receiving services in DBHDS licensed facilities; • Individuals and families interested in substance abuse services; • Citizens who wish to be accompanied and represented by counsel or other person when providing views on certain State Board regulatory activities.
<p>Agency’s best estimate of the number of such entities that will be affected. Please 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.</p>	<p>There is no way to estimate the number of people who will utilize council or other representatives when providing views on regulatory activities.</p>
<p>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>There are no projected costs.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>The primary advantage to the public and the Commonwealth is conformation of regulatory provisions regarding public participation to the existing requirements in state law, which will help to ensure their understanding of the processes for public participation.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. 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 regulation.

There are no viable alternatives to this regulatory proposal. The proposed amendments may help to ensure citizen understanding of the processes for public participation.

Public participation notice

If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

Periodic review and small business impact review report of findings

If this fast-track is the result of a periodic review/small business impact review, use this form to report the agency's findings. 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 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include 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.

Commenter	Comment	Agency response

1. No comments were received during the review.
2. The regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.
3. Notice of periodic review was published August 7, 2017, with public comment ending August 28, 2017. While no comments were received, amendments are needed to three sections of the Code of Virginia in order to conform the regulation to the Code.
4. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation.
5. The regulation was last evaluated in 2009. Technology, economic conditions, or other factors have had no impact on the need for the regulation.

Family impact

Please assess the impact of this 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.

There is no impact on individual families or family stability.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below.

For changes to existing regulation(s), please use the following chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
45 (new)	N/A		<p>A new section is created ‘Notification to Licensed Providers’ for all affected DBHDS licensed providers. Specifically:</p> <ul style="list-style-type: none"> • DBHDS will notify affected providers when new or final regulations are posted on the Regulatory Town Hall website, and when there are public comment periods pursuant to the existing regulatory processes established by Virginia law; <p>The intent of the requirements is to proactively provide information available on Town Hall to licensed providers. The likely impact will be:</p> <ul style="list-style-type: none"> • More providers sign up as public users on Town Hall; • An increase in understanding among providers of the regulatory process; and • More comments are received on regulatory actions.
50 A, D, E.	N/A	Section A. Interested persons can submit data, views and arguments, orally or in writing, to the agency.	Section A. In addition to submitting data, views, and arguments, orally or in writing, to the agency - interested persons can also be accompanied and represented by counsel or other representatives.

			<p>In D., for all affected DBHDS licensed providers regarding proposed changes to guidance documents:</p> <ul style="list-style-type: none"> • DBHDS will notify affected providers each time there are such changes and the opportunity to comment on the changes under consideration, including specific comments regarding an appropriate time frame for the implementation of such changes; and • DBHDS will post guidance document changes under development to the Regulatory Town Hall website for a 30 day public comment period. <p>The likely impact will be that some guidance document updates will be delayed by DBHDS in order to accommodate the notification and comment period required.</p> <p>The intent is to allow input from affected providers before any change to a guidance document is finalized.</p> <p>In E to amend language in accordance with § 37.2-203:</p> <ul style="list-style-type: none"> • That at least 30 days prior to the Board's action to adopt, amend, or repeal any regulation regarding substance abuse services, the Board shall present the proposed regulation to the Substance Abuse Services Council for the council's review and comment. <p>The intent of the requirement is to ensure the State Board has input from the subject matter experts on regulatory matters related substance abuse services before taking action on such regulations.</p> <p>The likely impact will be that:</p> <ul style="list-style-type: none"> • The State Board will be better informed on substance abuse matters; • The State Board may have to delay regulatory action in order to accommodate the notification period; and • The Substance Abuse Services Counsel will be better aware of regulatory activity by the State Board
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