



Virginia
Regulatory
Town Hall

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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
Virginia Administrative Code (VAC) citation	12 VAC 35-230
Regulation title	Operations of the Individual and Family Support Program
Action title	Establish an Individual and Family Support Program
Date this document prepared	10/15/12

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

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*.

Preamble

The APA (Code of Virginia § 2.2-4011) states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of subdivision A. 4. of § 2.2-4006.

- 1) *Please explain why this is an emergency situation as described above.*
- 2) *Summarize the key provisions of the new regulation or substantive changes to an existing regulation.*

Chapter 3 of the 2012 Virginia Acts of Assembly (Budget Bill Item 315 V.3) requires the Department of Behavioral Health and Developmental Services to promulgate regulations to establish an Individual and Family Support Program. The legislation states that the Department shall promulgate such regulations within 280 days or less from the enactment date of the act. The enactment date was June 11, 2012. Therefore, this is an "emergency situation" according to the APA (Code of Virginia § 2.2-4011).

The proposed emergency regulations will establish an Individual and Family Support Program (IFSP) for individuals with ID/DD who are on the waiting list for either an ID or a DD waiver. This program is required by the DOJ settlement agreement, which also stipulates that this program will be operational before the end of FY 13.

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. [Please cite the authority you are using to promulgate an emergency regulation.]???

The State Board of Behavioral Health and Developmental Services has the authority under Va. Code § 37.2-203 “to adopt regulations that may be necessary to carry out the provisions of this title and other laws of the Commonwealth administered by the Commissioner or the Department” On October 11, 2012, the State Board of Behavioral Health adopted regulations that will govern the operations of an Individual and Family Support Program.

In addition, Section 2.2-4011 of the Code of Virginia states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of subdivision A. 4. of § 2.2-4006.

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.

The purpose of the regulations is to establish a support program for individuals who are living in their own homes or a family home and are on the statewide waiting list for Intellectual Disability (ID) Medicaid Waiver or the Individual and Family Developmental Disabilities Services (IFDDS) Medicaid Waiver and the family members who are supporting these individuals.

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.

Establishment of this program is required by a recent agreement signed between the Commonwealth and the Department of Justice. This agreement specifies the specific number of individuals to be served

annually by this program. If a sufficient number of qualified applications are not received, then additional regulatory action may be needed.

Substance

Please detail any changes that will be proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate.

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements
10	Definitions		Assures that the terms used in the regulation are understood..
20	Program description		Describes the objectives and service population of the program being established
30	Program eligibility requirements		Identifies who is eligible to receive program support
40	Program implementation		Explains how the program will be implemented
50	Covered services and supports		Details the specific activities and supports that will be covered.
60	Application for funding		Provides details on how to request program support
70	Application review criteria		Explains how DBHDS will evaluate funding requests
80	Funding decision-making process		Establishes the conditions for DBHDS to deny or reduce the amount of an individual funding request and requires that the Department provide applicants with a written notice regarding funding decisions
90	Requests for reconsideration		Provides applicants with an opportunity to provide additional information prior to initiating the formal APA review process
100	Post-funding review		Explains for successful applicants what their responsibilities are with respect to any utilization review
110	Termination of funding for services, supports, or other assistance		Ensures applicants understand how and when funding will be terminated.

The Individual and Family Support Program (IFSP) is designed to support individuals with intellectual disability (ID) or developmental disabilities (DD) and their family members access needed person-centered and family-centered resources, supports, services and other assistance. Individual and Family Support Program funds will be distributed directly to the requesting individual or family member or a third party designated by the individual or family member. Program funds can be used to provide services such as:

- Professionally provided services and supports, such as respite, transportation services, behavioral consultation, and behavior management;
- Assistive technology and home modifications, goods, or products that directly support the individual;
- Temporary rental assistance or deposits;

- Fees for summer camp and other recreation services;
- Temporary assistance with utilities or deposits;
- Dental or medical expenses of the individual;
- Family education, information, and training;
- Peer mentoring and family-to-family supports;
- Emergency assistance and crisis support; or
- Other direct support services as approved by the Department.

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 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 Office of the Attorney General has determined that implementing regulations would be required for DBHDS to operate the program. So there is no alternative to regulation.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include 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 meeting is to be held to receive comments on this notice.

Please also indicate, pursuant to your Public Participation Guidelines, whether a panel has been used in the development of the emergency regulation and whether it will also be used in the development of the proposed regulation.

The agency is seeking comments on the regulation that will permanently replace this emergency regulation, including but not limited to 1) ideas to be considered in the development of the permanent replacement regulation, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) the 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 Lee Price, Director of Developmental Services, (804) 786-5850 (office) (804) 692-0077 (fax) or email lee.price@dbhds.virginia.gov 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 not be held following the publication of the proposed stage of this regulatory action.

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.

DBHDS anticipates that that the regulations will have an extremely positive impact on Virginians with ID or DD and their families. For individuals on the ID or DD waiting lists, the IFSP will provide support for their continued residence in their own home or in their family home. The program will provide limited relief to at least 700 individuals and their families in FY 13 and at least 1,000 individuals and their families over the next nine years in accordance with DOJ settlement agreement requirements.
