



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	Board of Mental Health, Mental Retardation and Substance Abuse Services
VAC Chapter Number:	12 VAC 35-11-10 et seq.
Regulation Title:	Public Participation Guidelines
Action Title:	Amend the regulations
Date:	June 27, 2002

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The proposed amended Public Participation Guidelines establish procedures to involve the public in the development of regulations by the Board for Mental Health, Mental Retardation and Substance Abuse Services (Board). The regulation (i) requires the Department of Mental Health, Mental Retardation and Substance Abuse Services (Department), on behalf of the Board, to maintain a list of individuals and organizations to be notified of the formation of regulations; (ii) allows individuals to petition the Board to develop new regulations or amend existing regulations; and (iii) establishes the process to convene advisory committees to provide technical assistance to the Board in the formation and adoption of regulations. The proposed amendment clarifies that the Board rather than the Department has the legal authority to promulgate regulations and includes new provisions for periodic review of regulations. Additionally, the

proposed provisions incorporate the use of electronic technology to facilitate public participation in the rulemaking process.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

There are two sections of the Code of Virginia that provide legal authority for this regulation. Virginia Code § 37.1-10 authorizes the Board of Mental Health, Mental Retardation and Substance Abuse Services (Board) to promulgate rules and regulations that are necessary to carry out provisions of the law. Virginia Code § 2-2-4007 requires the Board to promulgate public participation guidelines for soliciting the input of interested parties in the formation and development of its regulations. The Office of the Attorney General (OAG) confirms that the Board has the legal authority to promulgate this regulation and is required to do so. In addition, the OAG states that “(t)he proposed amended Guidelines are constitutional and do not conflict with existing federal or state laws or regulations.”

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The general goal of the regulation is to articulate procedures to promote the participation of citizens in the regulatory actions undertaken by the Board. This regulation is an important tool to ensure that the public has the means to participate in the development of regulations. The existing Public Participation Guidelines were promulgated in 1995 and are now somewhat outdated. The amendment updates the regulation, by including provisions for the use of electronic technology to facilitate public participation in the regulatory process. It also adds provisions for periodic review, which will require the Board to review and receive public comment on all of its regulations on a routine basis to determine their effectiveness in achieving their goals. These updates should help ensure that the views of the public are reflected in regulations and that the regulations are designed to include essential protections for the health, safety and welfare of citizens.

In addition, the existing regulation consistently refers to the Department of Mental Health, Mental Retardation and Substance Abuse Services as the entity responsible for promulgation of regulations. This is not consistent with the Virginia Code, which conveys authority for promulgation of regulations on the Board. The amendment clarifies that the Board, rather than the Department, has this legal authority for rulemaking.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

The amendment includes a new “Definitions” section in Part I that defines the important terms used in the regulation. This should help to clarify the regulation.

Part II of the regulation has been changed from “Mailing” list to “Notification” list and includes provisions for communication between the agency and the public either electronically or in writing. It also requires that notice of comment periods and proposed regulations be posted electronically. These provisions are intended to update the regulations and facilitate public involvement in the regulatory process.

A new Part V, “Periodic Review of Regulations,” has been added to require the Board to review and receive public comment on all of its regulations on a routine basis to determine whether these regulations are effective in meeting their specific goals.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term “issues” means: 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 include a sentence to that effect.

The proposed amendments should be advantageous to private citizens and groups with an interest in issues relative to mental health, mental retardation and substance abuse services in Virginia. The updates to the regulation should improve the ability of citizens and groups to communicate with the Board during the regulatory process and help to ensure that the Board considers all relevant issues and concerns when it develops regulations. By expanding the opportunities for such communication, the Board should maximize its ability to consider public input and develop regulations that are responsive to the needs of Virginia citizens.

The proposed amendment should improve the public’s access to the regulatory process and should have no disadvantages to the public or the Commonwealth.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

There is no additional cost to the public or the Commonwealth to implement the amended regulation. The agency and the Commonwealth currently have the technological resources in place to exchange information through electronic means. Implementation of the amendment should not require any additional staff resources or training. Staff members are currently performing functions required by the amended provisions, including posting regulations and related documentation electronically on the Virginia Regulatory Townhall and the Department's website, and communicating via e-mail with members of the public.

The amended regulation will not directly affect or have an impact the cost of localities.

The regulation should make it easier for members of the public who wish to participate in the development and review of the agency's regulations. By providing for communication by electronic means, the regulation may help defray some of the participation expense.

There should be no additional cost to such individuals to associated with such participation.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

Throughout the proposed amended regulation, references to the "Department" have been changed to "Board" to indicate that the Board rather than the Department has the legal authority to promulgate regulations. In addition, Virginia Code citations, included in the regulation, which refer to the Virginia Administrative Process Act, have been updated to reflect the recent re-codification of this law. The following is a summary of other proposed changes:

- A new section 12 VAC 35-11-20 "Definitions" was inserted in Part I of the regulation and the remaining sections were re-numbered accordingly. The new section defines the important terms that are used in the regulation including, "board," "department," "notification lists," and "Virginia Regulatory Townhall." The inclusion of these definitions should help the staff and the public to better understand the provisions. The

definition of “Virginia Regulatory Townhall” includes the internet address for this website to facilitate public access.

- Part II of the regulation was revised and renamed “Notification Lists.” New provisions have been added in section 12 VAC 35-11-40 D of this part of the regulation stating that persons or entities on the notification list may request notices of regulatory issues to be sent to them electronically.
- New provisions were inserted in 12 VAC 35-11-40 requiring that persons on the notification lists be given instructions on how to obtain a copies of any proposed regulations during the public comment period.
- Provisions have been added in 12 VAC 35-11-70 to indicate that copies of proposed regulations during the public comment period shall be available on the Department’s website and that comments can be made by either regular mail, facsimile, on the Virginia Regulatory Townhall, or by electronic means.
- Section 12 VAC 35-11-80 has been revised to require meeting notices to be posted electronically as well as in the Virginia Register of Regulations.
- Section 12 VAC 35-11-100 has been eliminated. This section imposed unnecessary restrictions on terms and conditions for the appointment of ad hoc advisory committees to provide technical assistance to the Board assist with regulatory issues. By deleting this section, the amended regulations will allow the Board greater flexibility to appoint such committees when specific expertise is needed or when groups of individuals indicate their interest in working with the Board on regulatory issues.
- Part V, which consists of a new section 12 VAC 35-11-110 “Periodic Review of Regulations,” has been added to the regulation. This will require the Board to review and receive public comments on each of its regulations at least every three years, or otherwise directed by executive order. The purpose of such review is to consider whether such regulations are effective in meeting their specific goals. This should help to insure that regulations are updated periodically and are responsive to the needs and expectations of the public.
- Re-numbered sections 12 VAC 35-11-50, 12 VAC 35-11-60, 12 VAC 35-11-90, 12 VAC 35-11-100 have been edited for clarity. No substantive provisions have been added or changed.

Alternatives

Please describe the specific 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.

The agency considered several alternatives to address the deficiencies of the current regulations and ensure that the alternative selected is the least burdensome and intrusive means for establishing public participation guidelines.

Alternative 1- Repeal the regulation. This alternative was rejected. The Board is required to promulgate public participation guidelines to comply with its statutory mandate. Moreover, by repealing this regulation, the Board would eliminate an important tool for promoting public participation in the development of regulations.

Alternative 2 - No change to the regulation. This alternative was rejected. The existing regulation has not been revised since it was promulgated in 1995 and changes are needed to clarify the regulation make it consistent with the Virginia Code. In addition, it was determined that certain provisions should be updated and clarified to facilitate public participation in the regulatory process.

Alternative 3 – Amend the regulation. The Board found that the regulation requires minor updates and revisions. Such changes would enhance the effectiveness of the regulation in meeting its specific goal. As part of the drafting process, staff reviewed Public Participation Guidelines that were recently promulgated by other agencies to help to formulate updates to the existing regulation. The Board recommends this alternative.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

One comment was received following the publication of the NOIRA.

This respondent suggested that the Public Participation Guidelines include provisions for (i) notifying interested persons via e-mail of proposed rulemaking; (ii) posting proposed regulations on the Department of Mental Health, Mental Retardation and Substance Abuse Services website; and (iii) involving advisory committees, which include consumers and family members of consumers and their advocates, in all significant regulatory changes.

These comments were considered in drafting the proposed regulations. The amendment includes provisions notifying members of the public of proposed rulemaking by electronic means; posting proposed regulations on the Department's website or the Virginia Regulatory Townhall; and appointing ad hoc advisory committees to assist in the development of regulations.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

The draft was reviewed by members of the Department staff with expertise in the regulatory process and the Office of the Attorney General to ensure that the regulation is clearly written and easily understood by individuals and entities that are affected. The proposed amended regulation reflects the public comment and incorporates provisions for use of technology, which has become standard practice for the public and staff in the development of the Board’s regulations.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

The Board will review the regulation and evaluate the need for amendments or revisions no later than three years following the effective date of the amended regulation and every three years thereafter.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which 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.

The regulation prescribes the process for involving the public in the development of regulations.

The regulation does not erode the authority and rights of parents in the education, nurturing and supervision of their children. The regulation does not discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse or one’s children or elderly parents. This regulatory action should help to ensure that regulations promulgated by the Board will respond to the needs of the public in regard to mental health, mental retardation and substance abuse services and generally facilitate citizens’ participation in the regulatory process.

The regulation should have no impact on marital commitment or family income.