

## 12 VAC 35-11 Public Participation Guidelines

**PART I.****STATEMENT OF PURPOSE GENERAL PROVISIONS.****12 VAC 35-11-10. Purpose.**

The purpose of this chapter is to provide guidelines for the involvement of the public in the development and promulgation of regulations of the ~~Department of~~ State Mental Health, Mental Retardation and Substance Abuse Services Board. The guidelines do not apply to regulations exempted or excluded from the provisions of the Administrative Process Act (§ ~~9-6.14:4.4~~ 2.2-4007 of the Code of Virginia).

**12 VAC 35-11-15. Definitions.**

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Board" means the State Mental Health, Mental Retardation and Substance Abuse Services Board.

"Department" means the Department of Mental Health, Mental Retardation and Substance Abuse Services.

"Notification lists" means lists used by the board to notify persons or entities pursuant to these regulations. Such lists may include lists maintained electronically through a state website (e.g., Virginia Regulatory Townhall) or by any other means.

["Virginia Register" means the publication issued under the provisions of Article 6 (§ 2.2-4031 et seq.) of the Administrative Process Act (§ 2.2-4000 et seq.).]

## 12 VAC 35-11 Public Participation Guidelines

"Virginia Regulatory Townhall" means the state website that is accessible to the public and used to document regulatory changes and solicit public participation in the regulatory development process. The website address for the Virginia Regulatory Townhall is <http://www.townhall.state.va.us>.

## PART II.

MAILING NOTIFICATION LIST.**12 VAC 35-11-20. Composition of the ~~mailing list~~ notification lists.**

A. ~~The Department of Mental Health, Mental Retardation and Substance Abuse Services board~~ shall maintain ~~a list~~ notification lists of persons or entities who have requested to be notified of the formation and promulgation of regulations.

B. Any person or entity may request to be placed on the ~~mailing~~ notification list by indicating so electronically or in writing to the ~~Department of Mental Health, Mental Retardation and Substance Abuse Services board~~. The ~~Department of Mental Health, Mental Retardation and Substance Abuse Services board~~ may add to the list any person or entity it believes will serve the purpose of enhancing participation in the regulatory process.

C. ~~The Department of Mental Health, Mental Retardation and Substance Abuse Services board~~ may maintain additional ~~mailing~~ notification lists for persons or entities who have requested to be informed of specific regulatory issues, proposals, or actions.

D. ~~The Department of Mental Health, Mental Retardation and Substance Abuse Services board~~ shall periodically request those on the ~~mailing list~~ notification lists to indicate their desire to

## 12 VAC 35-11 Public Participation Guidelines

continue to receive documents or be deleted from the list. Persons or entities on a notification list may request that notices be sent electronically. When mail is returned as undeliverable, ~~individuals or organizations~~ such persons or entities shall be deleted from the list.

**12 VAC 35-11-30. Documents to be sent to persons or entities on the ~~mailing list~~ notification lists.**

Persons or entities on the ~~mailing list~~ notification lists described in 12 VAC 35-11-20 shall be mailed the following documents related to the promulgation of regulations:

1. A Notice of Intended Regulatory Action.
2. A Notice of Comment Period on a proposed regulation and instructions on how to obtain a copy of the regulation.
3. A ~~copy of any final regulation adopted by the Department of Mental Health, Mental Retardation and Substance Abuse Services~~ notice that the board has adopted a final regulation and instructions on how to obtain a copy of the regulation.
4. A notice of soliciting comment on a final regulation when the regulatory process has been extended.

**12 VAC 35-11-40. Petition for rulemaking.**

A. As provided in § ~~9-6.14:7.1~~ 2.2-4007 of the Code of Virginia, any person may petition the ~~Department of Mental Health, Mental Retardation and Substance Abuse Services~~ board to develop a new regulation or amend an existing regulation.

B. A petition shall include but need not be limited to the following:

12 VAC 35-11 Public Participation Guidelines

1. The petitioner's name, mailing address, telephone number, and, if applicable, the organization represented in the petition.
2. The number and title of the regulation to be addressed, [if applicable].
3. [ ~~A description of the regulatory problem or need to be addressed~~ The substance and purpose of the rulemaking that is requested ].
4. A recommended addition, deletion, or amendment to the regulation.
- [ 5. A reference to the legal authority of the board to take the action requested.]

C. ~~The Department of Mental Health, Mental Retardation and Substance Abuse Services~~ board shall receive, consider and respond to a petition [ ~~within 180 days as provided in §2.2-4007 A of the Code of Virginia~~ ].

D. Nothing herein shall prohibit the ~~Department of Mental Health, Mental Retardation and Substance Abuse Services~~ board from receiving information from the public and proceeding on its own motion for rulemaking.

**12 VAC 35-11-50. Notice of Intended Regulatory Action.**

A. The Notice of Intended Regulatory Action (NOIRA) shall [~~state the purpose of the action and a brief statement of the need or problem the proposed action will address~~ describe the subject matter and intent of the planned regulation.]

B. The ~~Notice of Intended Regulatory Action~~ NOIRA shall indicate whether the ~~Department of Mental Health, Mental Retardation and Substance Abuse Services~~ board intends to hold a public hearing on the proposed regulation after it is published. If the ~~Department of Mental Health,~~

## 12 VAC 35-11 Public Participation Guidelines

~~Mental Retardation and Substance Abuse Services~~ board does not intend to hold a public hearing, it shall state the reason in the ~~Notice of Intended Regulatory Action~~ NOIRA.

C. ~~The Notice of Intended Regulatory Action shall state that a public hearing will be scheduled, if, during the 30-day comment period, the Department of Mental Health, Mental Retardation and Substance Abuse Services receives requests for a hearing from at least 25 persons. If, prior to the close of the 30-day comment period on the NOIRA, the board receives requests for a public hearing on the proposed regulation from at least 25 persons, such hearing shall be scheduled.~~

**12 VAC 35-11-60. Notice of Comment Period.**

A. The Notice of Comment Period shall indicate that copies of the proposed regulation are available ~~from the Department of Mental Health, Mental Retardation and Substance Abuse Services~~ on the department's website and may be requested in writing from the contact person specified in the Notice of Comment Period.

B. The Notice of Comment Period shall indicate that copies of the statement of substance, issues, basis, purpose, and estimated impact of the proposed regulation may also be requested in writing.

C. The Notice of Comment Period shall make provision for comments pertaining to the proposed regulation by regular mail, facsimile, on the Virginia Regulatory Townhall, or by electronic means.

## 12 VAC 35-11 Public Participation Guidelines

**12 VAC 35-11-70. Notice of meeting.**

A. For any meeting of the ~~Department of Mental Health, Mental Retardation and Substance Abuse Services~~ board or advisory committee at which the formation or adoption of regulation is anticipated, the subject shall be described in the Notice of Meeting, which is posted electronically and transmitted to the Registrar of Regulations for inclusion in The Virginia Register.

B. If the ~~Department of Mental Health, Mental Retardation and Substance Abuse Services~~ board anticipates action on a regulation for which an exemption to the Administrative Process Act is claimed under § ~~9-6.14:4.1~~ 2.2-4006 of the Code of Virginia, the Notice of Meeting shall indicate that a copy of the proposed regulation is available on a state website or may be obtained upon request to the board at least two days prior to the meeting. A copy of the regulation shall be made available to the public attending such meeting.

**12 VAC 35-11-80. Public hearing on regulations.**

The ~~Department of Mental Health, Mental Retardation and Substance Abuse Services~~ board shall conduct a public hearing during the 60-day comment period following the publication of a proposed regulation or amendment to an existing regulation, unless at a noticed meeting the ~~Department of Mental Health, Mental Retardation and Substance Abuse Services~~ board determines that a hearing is not required.

## 12 VAC 35-11 Public Participation Guidelines

**12 VAC 35-11-90. Appointment of committees.**

A. The department of ~~Mental Health, Mental Retardation and Substance Abuse Services~~ may appoint an ad hoc advisory committee on behalf of the board whose responsibility shall be to assist in the review and development of regulations for the ~~Department of Mental Health, Mental Retardation and Substance Abuse Services~~ board.

B. The department of ~~Mental Health, Mental Retardation and Substance Abuse Services~~ may appoint an ad hoc advisory committee on behalf of the board to provide professional specialization or technical assistance when the ~~Department of Mental Health, Mental Retardation and Substance Abuse Services~~ board determines that such expertise is necessary to address a specific regulatory issue or need or when groups of individuals register an interest in working with the ~~agency~~ board.

**12 VAC 35-11-100. Limitation of service. (Repealed.)**

A. ~~An advisory committee which has been appointed by the Department of Mental Health, Mental Retardation and Substance Abuse Services may be dissolved by the Department of Mental Health, Mental Retardation and Substance Abuse Services when:~~

- ~~1. There is no response to the Notice of Intended Regulatory Action, or~~
- ~~2. The Department of Mental Health, Mental Retardation and Substance Abuse Services determines that the promulgation of the regulation is either exempt or excluded from the requirements of the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia).~~

12 VAC 35-11 Public Participation Guidelines

~~B. An advisory committee shall remain in existence no longer than 12 months from its initial appointment.~~

~~1. If the Department of Mental Health, Mental Retardation and Substance Abuse Services determines that the specific regulatory need continues to exist beyond that time, it shall set a specific term for the committee of not more than six additional months.~~

~~2. At the end of that extended term, the Department of Mental Health, Mental Retardation and Substance Abuse Services shall evaluate the continued need and may continue the committee for additional six-month terms.~~

PART V.

PERIODIC REVIEWS.

**12 VAC 35-11-110. Periodic review of regulations.**

A. Unless otherwise directed by executive order, the board shall review and receive comment on each of its existing regulations at least every three years to consider the effectiveness, efficiency, clarity and cost impact of the regulation in achieving its intended goals.

B. Notice of the review shall be transmitted to the Registrar of Regulations for inclusion in the Virginia Register and shall be sent to the notification list identified in 12 VAC 35-11-20.

12 VAC 35-11 Public Participation Guidelines

I certify that this regulation is full, true, and correctly dated.

\_\_\_\_\_  
James S. Reinhard, M. D.  
Commissioner

Department of Mental Health, Mental Retardation and Substance  
Abuse Services

Date\_\_\_\_\_