



Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Mental Health, Mental Retardation and Substance Abuse Board
Virginia Administrative Code (VAC) citation	12VAC35-105 –10 et seq
Regulation title	Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation and Substance Abuse Services
Action title	Addition of provisions for licensing providers of brain injury services.
Document preparation date	September 15, 2005

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 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Preamble

The APA (Code of Virginia § 2.2-4011) states that an “emergency situation” is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date.

- 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 725 of the 2005 Virginia Acts of Assembly (HB2826) requires that the State Mental Health, Mental Retardation and Substance Abuse Services Board adopt regulations for licensing providers of brain injury services. This legislation also requires that the provisions of the Act become effective within 280 days of its enactment. The Board is adopting these emergency regulations to comply with this legislation.

This action will amend the existing Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation and Substance Abuse Services to include provisions for licensing providers of brain injury services. The amendment adds a definition of “brain injury” and incorporates brain injury service providers into the definition of service “provider” that is subject to the licensing provisions. Several other definitions have been added or revised to encompass the providers of brain injury services. The description of providers that are issued licenses has also been expanded to include providers that offer services to persons with brain injury services under the Medicaid Brain Injury Waiver or in a residential service. The amended regulation also includes requirements for provider staffing and supervision of brain injury services and adds requirements for the individualized services plan that address the specific needs individuals receiving brain injury services.

Legal basis

Other than the emergency authority described above, please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and 2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The State Mental Health, Mental Retardation and Substance Abuse Services Board (Board) has the statutory authority to adopt the proposed regulations under Va. Code § 37.1-10 and Chapter 725 of the 2005 Virginia Acts of Assembly.

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.

This regulatory action will add provisions to the existing licensing regulations to enable the Department of Mental Health, Mental Retardation and Substance Abuse Services (Department) to license providers of services under the Medicaid Brain Injury Waiver and residential services for individuals with brain injuries. Virginia does not currently have a Medicaid Brain Injury Waiver but is requesting this waiver from the federal government. For this Waiver to be approved, there must be a licensing mechanism in place. There is no designated licensing authority for residential services serving individuals with brain injuries and some applicants have been denied licensing as a result. This action will allow these services to operate in Virginia. Some residential brain injury services have been licensed as assisted living facilities by the Department of Social Services and licensing authority will be transferred to the Department.

The agency has developed the regulations in collaboration with the Department of Rehabilitative Services and representatives of various stakeholder groups. The regulation is intended to establish a framework for licensing providers of brain injury services to ensure there is appropriate oversight, support, and resources to provide an acceptable standard of care for persons who receive services.

Substance

Please detail any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons why the regulation is essential to protect the health, safety, or welfare of Virginians. Delineate any potential issues that may need to be addressed as a permanent final regulation is developed.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
20		<p>This section provides definitions of terms that are relevant to the current regulations. Terms that are specifically applicable to brain injury services and providers are not used in the current regulations and not defined in this section.</p>	<p>Changes have been made to the definitions of “provider;” “community intermediate care facility/mental retardation;” “day support;” “instrumental activities of daily living (IADL);” “neglect;” “provider;” “residential service;” “residential treatment service;” and “service.” Each definition has been expanded to encompass brain injury services or providers, as appropriate. The definition of “provider” is expanded to include providers of services to persons who receive services under the Brain Injury Waiver or residential services for persons with brain injury. This will require brain injury service providers to be subject to licensing provisions under these regulations.</p> <p>Definitions are added for “activities of daily living;” “brain injury;” “neurobehavioral services;” “qualified brain injury professional (QBIP)” and “qualified paraprofessional in brain injury (QPPBI)” These terms are used in new provisions for brain injury services. The definitions are intended to clarify and facilitate the implementation of the new regulatory requirements.</p>
30		<p>The current provision identifies the types of providers that are subject to licensing requirements under the regulations. These include providers of services to persons with mental illness, mental retardation, substance abuse related problems, or persons with related conditions served under the IFDDS Waiver.</p>	<p>The provision has been expanded to include persons with brain injury served under the Brain Injury Waiver or in a residential service.</p>
590		<p>The current section describes staffing plan requirements for providers.</p>	<p>Staffing plan requirements are added to apply to providers of brain injury services. The regulations require services to be supervised by a QBIP and direct care</p>

			performed by a QPPBI. The credentials for both of these staff positions are defined in Section 20 of the regulations.
660		The current section provides requirements for individualized services plans.	A new provision has been inserted to require individualized services plans for brain injury services to be reassessed and revised more frequently than annually, consistent with the individual's course of recovery.

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.

There are no appropriate alternatives to this regulatory action. The agency is required to adopt emergency regulations to implement the provisions of the Chapter 725 of the Virginia 2005 Acts of Assembly. The agency has developed the regulations in collaboration with a stakeholder group, which included representatives of the Virginia Department of Rehabilitative Services, providers, and community organizations with an interest in brain injury services. This group considered various alternatives for meeting the requirements of the legislation. The agency intends continue to work in collaboration with the stakeholders over the next year to adopt permanent regulations to replace the emergency regulations.

Family impact

Please assess the impact of the emergency regulatory action on the institution of the family and family stability.

This regulatory action will implement requirements for licensing providers of services for persons with brain injury. The licensing standards will provide a means regulatory oversight and accountability of service providers. This should have a positive impact on the stability the families of persons with brain injury by promoting the quality of service and an acceptable standard of care.