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Fast-Track Regulation Agency Background Document

Agency name	Department for the Blind and Vision impaired
Virginia Administrative Code (VAC) citation(s)	<u>22 VAC45-110</u>
Regulation title(s)	Regulations Governing Low Vision
Action title	Update agency name and editing for clarity
Date this document prepared	November 12, 2019

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

22 VAC45-110, Regulations Governing Low Vision includes definitions, eligibility criteria, pre-examination, and financial participation in cost of services.

This Fast-Track regulatory action updates the agency name from the Department for the Visually Handicapped (DVH) to the Department for the Blind and Vision Impaired (DBVI), and revises text in some sections for clarity. There are no substantive changes to the regulation.

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.

“DBVI” means the Department for the Blind and Vision Impaired.

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 Department for the Blind and Vision Impaired is taking action to amend 22VAC45-110 (Regulations Governing Low Vision) using the Fast-Track option on November 12, 2019.

Mandate and Impetus

Please identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, board decision, etc.). For purposes of executive branch review, “mandate” has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

As required by Virginia Code § 2.2-4012.1, please also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track process.

Executive Order 14 (as amended, July 16, 2018) requires that executive branch agencies consider, review, and promulgate regulations annually. As part of the required review, DBVI staff determined that this regulation is grossly outdated. The last time DBVI amended the regulation was in 2002.

The proposed changes to 22 VAC45-110 are noncontroversial. There are no additional costs incurred by DBVI, and existing Low Vision services remain unchanged. Individuals who are blind, vision impaired, or deafblind will be unharmed. The fast-track process is also appropriate because the revisions are not substantive.

Legal Basis

Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity’s overall regulatory authority.

DBVI is the agency promulgating this regulatory action. Statutory authority comes from § 51.5-65 of the Code of Virginia, which identifies the functions, duties, and powers of the Commissioner to adopt regulations to carry out the applicable provisions of the chapter.

Purpose

Please explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

DBVI proposes to amend 22 VAC45-110. The goal of this regulatory action is to change the agency name from the outdated Department for the Visually Handicapped to the current Department for the Blind and Vision Impaired; it is critical that citizens know and can identify the name of the agency in order to access low vision services.

The current regulation contains obsolete language and definitions; revisions modernize definitions to incorporate people first language and remove definitions that use outdated terminology. Additional edits revise wording of the regulation for clarity and readability.

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.

There are no substantive changes to 22 VAC45-110, Regulations Governing Low Vision Services.

Issues

Please identify the issues associated with the regulatory change, 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, include a specific statement to that effect.

There are no issues of concern about or disadvantages to revising this regulation. The advantage to the public is clearer explanation of low vision services delivered by the department to individuals with low vision.

Requirements More Restrictive than Federal

Please identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.

There are no requirements in this regulation that exceed applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Please identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material

impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

No other state agency is particularly affected by the revisions to this regulation.

Localities Particularly Affected

There are no localities particularly affected by the revisions to this regulation

Other Entities Particularly Affected

There are no other entities particularly affected by the revisions to this regulation.

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, please identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Please keep in mind that this is change versus the status quo.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources</p>	<p>There are no additional projected costs, savings, fees, or revenues resulting from this regulatory change.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>There are no additional costs, savings, fees, or revenues resulting from this regulatory change to other state agencies</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>Changes to this regulation clarify agency name, clarify text for readability, and remove outdated definitions. State agencies will be better able to identify the agency (DBVI) that provides Low Vision services to eligible citizens of the Commonwealth.</p>

Impact on Localities

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>No change in projected costs, savings, fees, or revenues resulting from this regulatory change.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>Changes to this regulation clarify agency name, and remove outdated definitions. The changes improve text for readability. Localities will be better able to identify the agency (DBVI) that</p>

	provides deafblind services to eligible citizens of the Commonwealth.
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Impact on Other Entities

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	Generally, these revisions will not have an impact on individuals, businesses, or other entities.
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.	N/A
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Please be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	There are no costs associated with this regulatory change.
Benefits the regulatory change is designed to produce.	Entities outside of state and local governments will be better able to identify that DBVI provides low vision services to eligible citizens of the Commonwealth. Text is easier to understand.

Alternatives

Please describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

There are no viable alternatives to this regulatory change. DBVI is the agency charged with the provision of services to citizens who have low vision. Small businesses are not impacted by the changes in this regulation.

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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.

DBVI is the primary agency providing services to persons who have low vision and subsequently, did not conduct an analysis of alternative regulatory methods. Small businesses are unlikely to be influenced by regulations governing services to individuals who have low vision; DBVI services do not impact sales of low vision aids by small business vendors.

Public Participation

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.

Detail of Changes

Please list all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation.

If the regulatory change will be 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 change. Delete inapplicable tables.

If the regulatory change is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below. Please include citations to the specific section(s) of the regulation that are changing.

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

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
22 VAC 45-110-10		Definitions.	Removed the definition of “Consumer” because agency administration has determined to use people first language when referring to individuals who are receiving services provided by the Low Vision Program. Definitions of “DBVI” and “Department” added to reflect agency name change.

			Definition of “Low vision services” revised for clarity.
22VAC45-110-30		Eligibility	Revised section. Deleted term “visual acuity” and added “vision” to describe vision; replaced “consumer” with “individual” in order to use people first language; replaced “met” with “meets”; added “services and/or”; added “independent living” in order to accurately reflect agency programs and services.
22VAC45-110-40		Pre-Examination	Added hyphen between “pre” and “examination” in the title of the section. Section revised to clarify that the required eye report must be recent (within one year) before a low vision examination will be scheduled.
22VAC45-110-50		Financial Participation	Section revised for clarity. A. Changed title of section to “Financial Participation in cost of services”. Added DBVI acronym referenced in 22VAC45-110-10. Clarified that authorization for services may be issued “if” funds are available and that there “shall” be no “cost” to the individual seeking low vision services as long as funds are available. B. Replaced “Consumer” with “individual’s” to reflect people first language. Replaced “will” with “shall” and otherwise revised definition for clarity. C. Added subsection C. to clarify that individuals who are not receiving services through other DBVI programs shall be responsible for cost associated with low vision services.

If an existing regulation or regulations (or parts thereof) are being repealed and replaced by one or more new regulations, please use the following chart:

Current chapter-section number	New chapter-section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements

If a new regulation is being promulgated, that is not replacing an existing regulation, please use this chart:

New chapter-section number	New requirements	Other regulations and law that apply	Intent and likely impact of new requirements

If the regulatory change is intended to replace an emergency regulation, and is identical to the emergency regulation, please choose and fill out the appropriate chart template from the choices above. In this case “current section number” or “current chapter-section number” would refer to the **pre-emergency** regulation.

If the regulatory change is intended to replace an emergency regulation, but includes changes made since the emergency regulation, please create two charts:

1. A chart describing changes from the **pre-emergency** regulation to the regulatory change, as described in the paragraph above; or if a new chapter is being promulgated, a chart describing the proposed new regulation.
2. A chart describing changes from the **emergency** regulation to the regulatory change. For the second chart please use the following title: “Changes from the Emergency Regulation.” In this case “current section number” or “current chapter-section number” would refer to the **emergency** regulation.