



## Fast Track Proposed Regulation Agency Background Document

<b>Agency name</b>	State Mental Health, Mental Retardation and Substance Abuse Services Board
<b>Virginia Administrative Code (VAC) citation</b>	12VAC35-45-10 et seq. repealing and adopting replacement regulations 12VAC35-46-10 et seq.
<b>Regulation title</b>	Regulations for Providers of Mental Health, Mental Retardation, Substance Abuse and Brain Injury Residential Services for Children (repealing) Regulations for Children's Residential Facilities (adopting)
<b>Action title</b>	The new regulations incorporate the current applicable interdepartmental licensing regulations to allow the Department of Mental Health, Mental Retardation and Substance Abuse Services to comply with Chapter 873 of the 2008 Virginia Acts of Assembly.
<b>Date this document prepared</b>	December 11, 2008

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.*

This action will allow the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) to regulate and license the children's group homes and residential facilities for which it is now the primary licensing agency. The replacement regulations incorporate and consolidate existing applicable regulations 22 VAC 42-11-10 et seq., Standards for Interdepartmental Regulation of Children's Residential Facilities (known as the "core" regulations), and the existing "mental health module" regulations 12 VAC 35-45-10 et seq. The 2008 Virginia General Assembly eliminated the interdepartmental regulation of children's residential facilities and required DMHMRSAS, the Department of Social Services, and the Department of Juvenile Justice to license specific children's residential facilities for which they are now the primary licensing agency. This 2008 legislation requires each of the

forementioned agencies to adopt regulations to replace and restate the existing interdepartmental or core regulations.

The proposed replacement regulations consist of regulatory provisions that are now implemented by DMHMRSAS for facilities that provide mental health, mental retardation, substance abuse and brain injury residential services for children. The State Mental Health, Mental Retardation and Substance Abuse Services Board adopted amended core regulations 22 VAC 42-11-10 et seq. in 2007 pursuant to the standard public process required by the Virginia Administrative Process Act. The proposed replacement regulations simply restate the relevant provisions from the existing interdepartmental regulations and consolidate them with the existing “mental health module” into a new single set of regulations

**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.*

On December 2, 2008 the State Mental Health, Mental Retardation and Substance Abuse Services (MHMRSAS) Board adopted new regulations 12 VAC 35-46-10 et seq., Regulations for Children’s Residential Facilities, and took action to repeal the existing regulations 12 VAC 35-45 -10 et seq., Regulations for Providers of Mental Health, Mental Retardation, Substance Abuse, and Brain Injury Residential Services for Children. The State MHMRSAS Board proposed this action under the fast-track regulatory process.

**Legal basis**

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.*

The State MHMRSAS Board has the authority to adopt these regulations under §37.2-408 of the Code of Virginia, as amended by the 2008 Virginia General Assembly. This authority is mandatory. The 2008 Virginia General Assembly, Chapter 873 of the 2008 Virginia Acts of Assembly, eliminated the interdepartmental regulation of children’s residential facilities and requires DMHMRSAS, the Department of Social Services, and Department of Juvenile Justice to regulate and license the children’s facilities for which they are now the primary licensing agency. This legislation also requires the aforementioned agencies to promulgate regulations to implement the provisions of the legislation no later than October 31, 2009.

**Purpose**

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

The 2008 Virginia General Assembly passed legislation eliminating the Interdepartmental regulatory process and mandated new regulations be promulgated by all the involved agencies, including

DMHMRSAS, to implement this change by October 31, 2009. This regulatory action is essential to ensure the continuity of regulatory oversight and the protection of the health, safety, and welfare of children with mental illness, mental retardation, substance abuse, or brain injury who receive services in facilities subject to licensing under the interdepartmental or core regulations, 22 VAC 42-10-10 et seq. The replacement regulations have been developed to afford the primary regulatory authority to DMHMRSAS to implement the same licensing requirements that have governed these facilities under the interdepartmental regulations. These facilities would now have DMHMRSAS as the single licensing agency, as required by the law. The implementation of these regulations will allow DMHMRSAS and the State MHMRSAS Board to comply with the essential purpose, intent, and oversight responsibilities within the timeframe imposed by the law.

### Rationale for using fast track process

*Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?*

*Please note: If an objection to the use of the fast-track process is received within the 60-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 (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

The replacement regulations simply restate and consolidate the relevant parts of the current interdepartmental or core regulations and the existing mental health module into a new single set of regulations, 12 VAC 35-46-10 et seq. The replacement regulations will not alter the licensing requirements for providers that are governed by the current regulations or impact the existing licensing process for these providers. Therefore, these regulations are not expected to be controversial and are qualified for consideration under the fast-track process. In addition, the regulations just went through a comprehensive revision that went into effect in December 2007. The shortened legislative deadline made it difficult to promulgate these regulations under anything but the fast track process.

### Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)*

There are no new substantial provisions included in the proposed regulations. The proposed replacement regulations enable DMHMRSAS to fulfill its statutory responsibility for licensing and regulating children's residential facilities that provide mental health, mental retardation, substance abuse and brain injury services for children. These service providers are now subject to the same regulatory provisions and oversight under the interdepartmental regulations 22 VAC 42-10-10 et seq. and the mental health module 12 VAC 35-45-10 et seq.

### Issues

*Please identify the issues associated with the proposed regulatory action, 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, please indicate.

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The primary advantage of regulatory action for the public and providers is that it will provide a single comprehensive set of regulatory and licensing requirements for children’s residential facilities that provide mental health, mental retardation, substance abuse and brain injury services. This should simplify the requirements and make them easier to understand for those individuals affected by the regulations. Moreover, this action will not impose any new requirements and facilitate the transition and orientation to the new regulations when they become effective.

The proposed regulatory action will enable DMHMRSAS and the State MHMRSAS Board to comply with the requirements of Chapter 873 of the 2008 Virginia Acts of Assembly in accordance with the timeframe imposed by the law. The new regulations will consolidate all of the regulatory provisions and facilitate the inspection and oversight functions for Department staff.

There are no known disadvantages associated with this regulatory action.

**Requirements more restrictive than federal**

*Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include 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 statement to that effect.*

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There are no requirements in this proposal that are more restrictive than applicable federal requirements.

**Localities particularly affected**

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

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There is no locality in the Commonwealth that is particularly affected by the proposed regulation or would have to bear a disproportionate material impact.

**Regulatory flexibility analysis**

*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) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of 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 proposed regulation.*

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The proposed regulations are essentially a restatement of regulations that are already in effect. The 2008 legislation requires the elimination of the interdepartmental regulation model and requires each of the agencies that were part of this interdepartmental model to promulgate their own licensing regulations. The regulations proposed by the State MHMRSAS Board do not impose any new regulatory requirements on providers. Existing providers are already complying with the regulatory requirements. This approach should simplify compliance by consolidating in one regulatory document all of the relevant licensing requirements for facilities that provide mental health, mental retardation, substance abuse and brain injury services for children and should ease the transition and orientation for these providers, including those who are considered small businesses.

**Economic impact**

*Please identify the anticipated economic impact of the proposed regulation.*

<b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</b>	There is no one time or additional new cost to the state to implement and enforce the proposed regulations.
<b>Projected cost of the regulation on localities</b>	There is no cost associated with this regulation for localities.
<b>Description of the individuals, businesses or other entities likely to be affected by the regulation</b>	This regulation affects providers of mental health, mental retardation, substance abuse residential services for children that are currently subject to licensing by DMHMRSAS. They range from small group homes to large residential treatment facilities.
<b>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.</b> Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	There are currently 174 providers that are currently licensed and will be affected by the proposed regulations. All but two providers that operate 13 facilities are small businesses.
<b>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</b>	There is no anticipated cost impact for the providers that are affected by these regulations. These regulations are the same as the existing regulations.

**Alternatives**

*Please describe any viable 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. 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 regulation.*

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There are no appropriate alternative to this regulatory action. The agency is required to adopt these regulations pursuant to Chapter 873 of the 2008 Virginia Acts of Assembly (SB 472) relating to the licensure of group homes and residential facilities for children. This action provides the means for the agency to comply with the amendments to the law.

### Family impact

*Please assess the 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.*

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This regulatory action will establish regulations allowing DMHMRSAS to assume singular authority for licensing children's residential facilities that are currently licensed under the interdepartmental licensing regulations (core regulations) and the mental health module. These regulations provide a vehicle for protecting children who are admitted to these licensed facilities and for promoting the accountability of service providers. This regulatory action is not expected to impact families.

### Detail of changes

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

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This action will allow the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) to regulate and license the children's group homes and residential facilities for which it is now the primary licensing agency. The replacement regulations incorporate and consolidate existing applicable regulations 22 VAC 42-11-10 et seq., Standards for Interdepartmental Regulation of Children's Residential Facilities (known as the "core" regulations), and the existing "mental health module" regulations 12 VAC 35-45-10 et seq. There are no changes to the current regulatory requirements or administrative process for providers or the agency. However, the new regulations include some minor changes in terminology to clarify the generic provisions that were taken from the interdepartmental (core) regulations. For example, "DMHMRSAS" or "department" replaced the words "regulatory authority" in the general provisions that were taken from the interdepartmental regulations. Also, some definitions taken from the current interdepartmental regulations or module regulations were updated to be consistent with the current Code of Virginia or with the definitions contained in other regulations of the State MHMRSAS Board because many of the providers who are licensed under these regulations are also licensed under other provider regulations administered by the Department.

None of the language changes impact the current licensing process or alter requirements for providers.