



Fast Track Proposed Regulation Agency Background Document

Agency name	Department of Behavioral Health and Developmental Services (DBHDS)
Virginia Administrative Code (VAC) citation	12 VAC35 230
Regulation title	Operations of the Individual and Family Support Program
Action title	Establish an Individual and Family Support Program
Date this document prepared	July 30, 2013

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

The Individual and Family Support Program (IFSP) is designed to support individuals with intellectual disability (ID) or developmental disabilities (DD) and their family members access needed person-centered and family-centered resources, supports, services and other assistance.

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.

All of the acronyms used in this document are spelled out at first use. All technical terms used are defined in the "Definitions" section of the 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 July 23, 2013, the State Board of Behavioral Health and Developmental Services (State Board) adopted permanent regulations, 12 VAC 35-230, *Operation of the Individual and Family Support Program*.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’s overall regulatory authority.

The State Board has the authority under Va. Code § 37.2-203 “to adopt regulations that may be necessary to carry out the provisions of this title and other laws of the Commonwealth administered by the Commissioner or the Department”

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 purpose of the regulations is to establish a support program for individuals who are living in their own homes or a family home and are on the statewide waiting list for Intellectual Disability (ID) Medicaid Waiver or the Individual and Family Developmental Disabilities Services (IFDDS) Medicaid Waiver and the family members who are supporting these individuals

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 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 (i) file notice of the objections 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 Governor released emergency regulations governing the operations of the Individual and Family Support Program in January 2013. In March, the Department of Behavioral Health and Developmental

Services (DBHDS) mailed letters to all the individuals on the ID or IFDDS statewide waiting lists and posted a notice on the DBHDS website that the program was operational. In addition to these two communication strategies, program guidelines along with applications for support were distributed to CSBs, providers, and advocates. By the end of FY 13, DBHDS had received more than 1,700 applications, with 825 individuals and families receiving financial support through the program.

The emergency regulations authorizing this program will expire in January 2014. The FY 14 funding round is scheduled to begin September 3, 2013 and should conclude before the expiration of these emergency regulations. In the settlement agreement with the Department of Justice, the Commonwealth agreed to provide financial support through the program until at least 2021, which will require that the proposed permanent regulations be in place by July 1, 2014.

The extraordinary demand for IFSP resources initially overwhelmed DBHDS resources. In two months, the entire fiscal year allocation was distributed to individuals on either the ID or DD waiver wait list with little controversy. It is important that permanent regulations are in place by July 1, 2014, so that DBHDS can continue to provide supports to this vulnerable population in subsequent state fiscal years.

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.) Please be sure to define any acronyms.

There are no changes from the emergency regulations establishing the IFSP being proposed in the permanent IFSP regulations, which is one of the reasons that fast-track approval is being sought.

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.*

The IFSP provides short term support that will enable individuals who are living in their own homes or a family home and are on the statewide waiting list for Intellectual Disability (ID) Medicaid Waiver or the Individual and Family Developmental Disabilities Services (IFDDS) Medicaid Waiver and the family members who are supporting these individuals continue to remain in their own homes or a family home. The resources provided through the IFSP will benefit individual private citizens and the businesses from which they purchase goods and services. The IFSP benefits local CSBs, DBHDS and the public by assuring that individuals most at risk of institutionalization continue to maintain their community residence.

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.

These regulations are not more restrictive than federal requirements. In fact they are required to implement the Commonwealth's agreement with the Department of Justice.

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.

No locality is particularly affected by the regulations. Individuals around the Commonwealth receive funding through this program.

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) 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.

The Office of the Attorney General has determined that implementing regulations would be required for DBHDS to operate the program. So there is no alternative to regulation.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact. Please keep in mind that we are looking at the impact of the proposed changes to the status quo.

<p>Description of the individuals, businesses or other entities likely to be affected (positively or negatively) by this regulatory proposal. Think broadly, e.g., these entities may or may not be regulated by this board</p>	<p>Individuals who are living in their own homes or a family home and are on the statewide waiting list for Intellectual Disability (ID) Medicaid Waiver or the Individual and Family Developmental Disabilities Services (IFDDS) Medicaid Waiver and the family members who are supporting these individuals</p>
<p>Agency's best estimate of the number of (1) entities that will be affected, including (2) small businesses affected. Small business means a business, including affiliates, that is independently</p>	<p>A minimum of 1,000 individuals will be affected by the program. Most of these individuals will purchase goods and services from small businesses.</p>

owned and operated, employs fewer than 500 full-time employees, or has gross annual sales of less than \$6 million.	
Benefits expected as a result of this regulatory proposal.	Intended to support 1,000 individuals avoid institutionalization
Projected cost to the <u>state</u> to implement and enforce this regulatory proposal.	\$3,000,000 annually
Projected cost to <u>localities</u> to implement and enforce this regulatory proposal.	\$0
All projected costs of this regulatory proposal for <u>affected individuals, businesses, or other entities</u>. Please be specific and include all costs, including projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses, and costs related to real estate development.	Minimal, documentation of appropriate expenditure of allocated funds.

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.

The Attorney General's office has advised the State Board and DBHDS that there is no alternative to meeting the essential purpose of the IFSP other than regulations

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.

DBHDS anticipates that that the regulations will have an extremely positive impact on Virginians with ID or DD and their families. For individuals on the ID or DD waiting lists, the IFSP will provide support for their continued residence in their own home or in their family home. The program will provide limited relief to at least 700 individuals and their families in FY 13 and at least 1,000 individuals and their families over the next nine years in accordance with DOJ settlement agreement requirements.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is 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 action.

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

The permanent regulations do not include any changes from the emergency regulations.