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Final Regulation Agency Background Document

Agency name	Department of Behavioral Health and Developmental Services (DBHDS)
Virginia Administrative Code (VAC) Chapter citation(s)	12VAC35-46
VAC Chapter title(s)	Regulations for Children's Residential Facilities
Action title	Amendments to align with ASAM criteria in the children's residential licensing regulations
Date this document prepared	July 13, 2022

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 (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

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.

The Department of Behavioral Health and Developmental Services (DBDHS) was directed by the 2020 General Assembly within [Item 318.B](#) of the 2020 *Appropriation Act* to utilize emergency authority to promulgate licensing regulations that align with the American Society of Addiction Medicine (ASAM) Levels of Care Criteria or an equivalent set of criteria to ensure the provision of outcome-oriented and strengths-based care in the treatment of addiction. The goal of this regulatory action is to amend the licensing regulations, Regulations for Children's Residential Facilities [12VAC35-46], to align with the ASAM Levels of Care Criteria, which ensure individualized, clinically driven, participant-directed and outcome-informed treatment.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the “Definitions” section of the regulation.

ASAM – American Society of Addiction Medicine

DBHDS – Department of Behavioral Health and Developmental Services

State Board – State Board of Behavioral Health and Developmental Services

Statement of Final Agency Action

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 State Board voted on July 13, 2022, to initiate the final stage of the action titled “Amendments to align with ASAM Criteria in the children’s residential licensing regulations” to amend the Regulations for Children’s Residential Facilities ([12VAC35-46](#)), with some clarifying edits to the language from the proposed stage to the final stage.

Mandate and Impetus

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously reported information, include a specific statement to that effect.

The 2020 General Assembly directed DBDHS to promulgate emergency regulations to become effective within 280 days or less from the enactment of the *Appropriation Act*. This regulatory action is being utilized to enact permanent regulations following the emergency regulations.

In addition to being mandated by the General Assembly, the regulatory change is necessary as substance use disorders affect individuals, their families, the workplace, and the general community; therefore, DBHDS must incorporate best practices within its licensing regulations in order to promote recovery from the disease of addiction. This is especially a concern with the increase of substance use in general. According to the Monitoring the Futures Survey of 2019, there has been an increase in adolescent marijuana vaping from 2018 to 2019. This increase ranked among the largest single-year increases ever observed by this survey in the past 45 years among all outcomes ever measured. In 2019 the percentage of adolescents who had vaped marijuana in the last 12 months was 21% in 12th grade, 19% in 10th grade, and 7% in 8th grade.

According to the Middle School Virginia Youth Survey conducted by the Virginia Department of Health (VDH), in 2017 approximately 3% of respondents indicated that they used marijuana before age 11 and almost 10% drank alcohol before age 11. That same VDH survey of high school students illustrated that over 30% of this population in 2017 reported using alcohol in the past 30 days. The survey also indicated that 25% of respondents binge drank, 20% reported using marijuana, and approximately 3% used heroin in a 30 day period.

Legal Basis

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

DBDHS was directed by the 2020 General Assembly within Item 318.B. of the 2020 *Appropriation Act* to utilize emergency authority to promulgate regulations which align with a set of criteria to ensure the provision of outcome oriented and strengths-based care in the treatment of addiction. This regulatory action is being utilized to enact permanent regulations following the emergency regulations. Section 37.2-203 of the Code of Virginia gives the Board of Behavioral Health and Developmental Services the authority to adopt regulations that may be necessary to carry out the provisions of Title 37.2 of the Code and other laws of the Commonwealth administered by the DBDHS commissioner. The State Board of Behavioral Health and Developmental Services voted to adopt this regulatory action on July 13, 2022.

Purpose

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.

Substance related disorders affect the individual, their families, the workplace, and the general community; therefore, the department must incorporate best practices in licensing regulations in order to promote remission and recovery from the disease of addiction. Regulations that promote remission and recovery from the disease of addiction are essential to protect the health and welfare of citizens.

Substance use disorders (SUDs) among children, adolescents, and their families pose particular challenges for the community. Given the differences in developmental and emotional growth between youth and adults, the complex needs of this population are remarkably different from those of the traditional adult treatment population, requiring different expertise and guidance. In addition, many adolescents who abuse drugs have a history of physical, emotional, or sexual abuse, or other trauma.

Behavioral therapies, delivered by trained clinicians, can help an adolescent stay off drugs by strengthening his motivation to change. The ASAM criteria is designed to provide specific substance use disorder treatment guidance to counselors, clinicians, and case managers. Level 3.5 programming is specifically designed for youth and adults that require 24 hour care and treatment to begin and sustain a recovery process. This type of guidance can significantly improve the treatment outcomes of youth in need of residential services.

Substance

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.

This regulatory action amends the Regulations for Children's Residential Facilities [12VAC35- 46] to align with the ASAM Levels of Care Criteria, which ensures individualized, clinically driven, participant-directed and outcome-informed treatment. The regulatory action provides the necessary definitions for the newly

aligned services to be provided and creates staff, program admission, discharge, and co-occurring enhanced program criteria for ASAM levels of care 3.5 and 3.1

Issues

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.

The primary advantage of the regulatory change to the Regulations for Children’s Residential Facilities is that citizens of the Commonwealth will receive more effective treatment of substance use disorders. This is an advantage to the public, the agency, and the Commonwealth. The primary disadvantage is that some providers may experience a financial burden in order to comply with the new regulations. There are no known disadvantages to the agency or the Commonwealth.

Requirements More Restrictive than Federal

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.

No requirements within the regulation exceed applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously reported information, include a specific statement to that effect.

Other State Agencies Particularly Affected:

The Department of Medical Assistance Services (DMAS) may be particularly affected by the regulatory action as DMAS is a payor to many of the DBHDS providers affected by the regulatory action. DBHDS collaborated with DMAS on the development of this regulatory action.

Localities Particularly Affected:

No locality is particularly affected to the knowledge of DBHDS.

Other Entities Particularly Affected:

Providers of substance abuse services may be particularly affected by the regulation in order to come into compliance with the regulations.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

No public comment was received during the public comment period.

Detail of Changes Made Since the Previous Stage

*List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

Current chapter-section number	New chapter-section number, if applicable	New requirement from previous stage	Updated new requirement since previous stage	Change, intent, rationale, and likely impact of updated requirements
12VAC35-46-10			Addition of ASAM levels of care to the definitions of “Clinically managed, low-intensity residential care” and “Clinically managed, medium-intensity residential care.”	Change: Adding the ASAM levels of care to the definitions of “Clinically managed, low-intensity residential care” and “Clinically managed, medium-intensity residential care.” Intent: Clearer and more transparent regulations.
12VAC35-46-1160			Addition of ASAM level of care to the title, and clarifying edit to note that the staff required to be present 24 hours a day are allied professional staff.	Change: The addition of the ASAM level of care will make the regulations more transparent. The clarifying edit that allied health professional staff must be available 24 hours a day is more in line with the ASAM criteria. This notes what type of staff must be present. Intent: Clearer and more transparent regulations.
12VAC35-46-1170			Addition of ASAM level of care to the title.	Change: The addition of the ASAM level of care will make the regulations more transparent.

			Clarify that MAT shall be made available for individuals with opioid use disorder or alcohol use disorder.	Intent: Clearer and more transparent regulations.
12VAC35-46-1180			Addition of ASAM level of care to the title.	Change: The addition of the ASAM level of care will make the regulations more transparent. Intent: clearer and more transparent regulations.
12VAC35-46-1190			Addition of ASAM level of care to the title.	Change: The addition of the ASAM level of care will make the regulations more transparent. Intent: Clearer and more transparent regulations.
12VAC35-46-1200			Addition of ASAM level of care to the title.	Change: The addition of the ASAM level of care will make the regulations more transparent. Intent: Clearer and more transparent regulations.
12VAC35-46-1210			Addition of ASAM level of care to the title.	Change: The addition of the ASAM level of care will make the regulations more transparent. Intent: Clearer and more transparent regulations.
12VAC35-46-1220			Insertion of clarifying edit noting that the five hours a week must be planned clinical program activities. Removal of language that is not in line with ASAM criteria. Clarify that MAT shall be made available for individuals with opioid use disorder or alcohol use disorder.	Change: Insertion of clarifying edit noting that the five hours a week required must be planned clinical program activities. Removal of language that is not in line with ASAM criteria. Intent: Clearer and more transparent regulations.
12VAC35-46-1230			Addition of ASAM level of care to the title.	Change: The addition of the ASAM level of care

				will make the regulations more transparent. Intent: Clearer and more transparent regulations.
12VAC35-46-1240			Addition of ASAM level of care to the title.	Change: The addition of the ASAM level of care will make the regulations more transparent. Intent: Clearer and more transparent regulations.
12VAC35-46-1250			Addition of ASAM level of care to the title.	Change: The addition of the ASAM level of care will make the regulations more transparent. Intent: Clearer and more transparent regulations.

Detail of All Changes Proposed in this Regulatory Action

*List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of updated requirements
12VAC35-46-10. Definitions.		Provides current definitions for the Children’s Residential Licensing Regulations.	Change: Adding the following definitions for terms utilized within the ASAM criteria: <ul style="list-style-type: none"> • Allied health professional; • ASAM; • Clinically managed, low-intensity residential care; • Clinically managed, medium intensity residential care; • DSM; • Medicated assisted treatment; and • Motivational enhancement Impact: Clear and transparent regulations.

	12VAC35-46-1150 (Reserved).		Intent: Space saver section.
	12VAC35-46-1160. Clinically managed, medium intensity residential services staff criteria.		<p>Intent: Provide clear staff requirements within clinically managed, medium intensity residential care programs, which provide 24 hour supportive treatment. The individuals served by clinically managed medium-intensity residential care are individuals who are not sufficiently stable to benefit from outpatient treatment regardless of intensity of service.</p> <p>Impact: Robust, effective substance use disorder treatment within the Commonwealth.</p>
	12VAC35-46-1170. Clinically managed medium-intensity residential services program criteria.		<p>Intent: Provide clear program requirements within clinically managed, medium intensity residential care programs, which provide 24 hour supportive treatment. The individuals served by clinically managed, medium intensity residential care are individuals who are not sufficiently stable to benefit from outpatient treatment regardless of intensity of service.</p> <p>Impact: Robust, effective substance use disorder treatment within the Commonwealth.</p>
	12VAC35-46-1180. Clinically managed, medium intensity residential services admission criteria.		<p>Intent: Provide clear admission requirements within clinically managed, medium intensity residential service programs</p> <p>Impact: Robust, effective substance use disorder treatment within the Commonwealth that is appropriately administered.</p>
	12VAC35-46-1190. Clinically managed medium intensity residential services discharge criteria.		<p>Intent: Provide clear discharge requirements within clinically-managed medium-intensity residential service programs.</p> <p>Impact: Robust, effective substance use disorder treatment within the Commonwealth that is appropriately administered.</p>
	12VAC35-46-1200.		Intent: Provide additional licensing requirements for medium-intensity

	Clinically managed medium intensity residential services co-occurring enhanced programs.		residential services programs, which treat individuals with co-occurring disorders. Impact: Clarity of the regulations. Clear requirements for providers treating individuals with co-occurring disorders.
	12VAC35-46-1210. Clinically managed low-intensity residential services staff criteria.		Intent: Provide clear staff requirements within clinically managed low-intensity residential service program, which provide ongoing therapeutic environment for individuals requiring some structured support. Impact: Robust, effective substance use disorder treatment within the Commonwealth.
	12VAC35-46-1220. Clinically managed low-intensity residential services program criteria.		Intent: Provide clear program requirements within clinically managed low-intensity residential service programs, which provide ongoing therapeutic environment for individuals requiring some structured support. Impact: Robust, effective substance use disorder treatment within the Commonwealth.
	12VAC35-46-1230. Clinically managed low-intensity residential services admission criteria.		Intent: Provide clear admission requirements within clinically managed low-intensity residential service programs. Impact: Robust, effective substance use disorder treatment within the Commonwealth that is appropriately administered.
	12VAC35-46-1240. Clinically-managed low-intensity residential services discharge criteria.		Intent: Provide clear discharge requirements within clinically managed low-intensity residential service programs. Impact: Robust, effective substance use disorder treatment within the Commonwealth that is appropriately administered.
	12VAC35-46-1250. Clinically-managed low-intensity residential		Intent: Provide additional licensing requirements for clinically managed low-intensity residential service programs, which treat individuals with co-occurring disorders.

	services co-occurring enhanced programs.		Impact: Clarity of the regulations. Clear requirements for providers treating individuals with co-occurring disorders.
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