



Proposed Regulation Agency Background Document

Agency name	State Mental Health, Mental Retardation and Substance Abuse Services Board
Virginia Administrative Code (VAC) citation	12 VAC 35 –45-10 et seq.
Regulation title	Regulations for Providers of Mental Health, Mental Retardation and Substance Abuse Residential Services for Children
Action title	Addition of provisions for issuing an order of summary suspension of the license to operate a residential facility for children
Date this document prepared	April 17, 2006

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*.

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

This action adds a new section to the existing Regulations for Providers of Mental Health, Mental Retardation and Substance Abuse Residential Services for Children, which establishes a process for issuing an order of summary suspension of the license. The existing regulations provide standards for licensing providers of residential treatment services for children with mental illness, mental retardation or substance use disorders and are an addendum to 22VAC42-10-10 et seq., which are generic standards governing a wide variety of residential facilities licensed by the Departments of Mental Health, Mental Retardation and Substance Abuse Services (Department), Social Services, Education, and Juvenile Justice. The standards in this addendum or "Mental Health Module" as it is operationally called, cover a wide range of residential services from small group homes to large residential treatment facilities. The new provisions for issuing an order of summary suspension of the license to operate a facility became effective as emergency regulations in December 2005. The agency is taking this action make these provisions permanent.

The new provisions establish procedures for the Commissioner of Mental Health, Mental Retardation and Substance Abuse Services to issue an order of summary suspension in cases of immediate and substantial threat to the health, safety, and welfare of residents. These include procedures for scheduling

and conducting an administrative hearing when the Commissioner issues an order of summary suspension, including the appointment of a hearing officer by the Executive Secretary of the Supreme Court.

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 Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the 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 § 37.2-100 and Chapter 363 of the 2005 Virginia Acts of Assembly. The authority to adopt the regulations is mandatory.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

This action inserts provisions in the Mental Health Module to allow the Commissioner to suspend the license to operate a group home or residential facility for children when there is an immediate and substantial threat to the health, safety, and welfare of the residents. The regulations provide the basis for the Department to act promptly, in accordance with legal protocols, and ensure protections for the legal rights of all parties that may be affected by an action to suspend a license. These provisions also include a requirement for the Department notify the appropriate agencies when the Commissioner issues an order of summary suspension so families are informed and that plans can be made to relocate the residents of facilities who are affected by the action.

The Board is required to adopt the provisions for issuing an order of summary suspension to comply with legislation enacted by the 2005 Virginia General Assembly. The provisions provide the authority for the Commissioner to address egregious circumstances while ensuring due process for licensees.

Substance

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

These regulations provide the framework to allow the Commissioner to suspend the license of a provider to operate a group home or residential facility for children. Regulations include procedures to govern the appointment of a hearing officer, scheduling an administrative hearing, and notification of parties in conjunction with the issuance of an order of summary suspension of the license. The regulations also establish required timeframes and procedures for the conduct of the hearing, decision-making, and any appeal of the decision. The regulations also require the Department to notify appropriate agencies when the Commissioner issues an order of summary suspension so that relocation plans can be made for residents who are affected by the action taken.

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 the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

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- (1) These provisions are advantageous to the public because they provide additional protections for the health, safety, and welfare of children residing in licensed residential facilities and their families. It allows the Commissioner to act promptly to suspend the operation of residential facilities for children when he finds conditions pose an immediate and substantial threat to residents of the facilities. Prior to the adoption of this legislation and the emergency regulations, no such authority existed. The regulations also include requirements for notification when an order of summary suspension is issued to ensure that plans can be developed for relocation of the facility residents.
 - (2) These provisions are advantageous to the Department because it will enable it to take immediate action to suspend the operation of any residential facility to address egregious circumstances. This action must be taken in conjunction with another administrative proceeding to revoke or deny the license.
 - (3) The regulations include specific procedures to guide the Department in issuing an order of summary suspension to ensure protections for the legal rights of all involved parties.

This regulatory action poses no known disadvantages to the public or Commonwealth.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which are 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.

There are no 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.

There is no locality that is particularly affected by these regulations that will bear a disproportionate material impact that would not be experienced by other localities. These regulatory provisions will apply to any provider of children’s residential facilities that are subject to requirements for licensing.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the Department on behalf of the State Board is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail, email or fax to Leslie Anderson, Virginia Department of Mental Health, Mental Retardation, and Substance Abuse Services, P.O. Box 1797, (804) 371-6885, (804) 692-0066, leslie.anderson@co.dmhmrsas.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last date of the public comment period.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

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	The costs are negligible.
Projected cost of the regulation on localities	None.
Description of the individuals, businesses or other entities likely to be affected by the regulation	Residential facilities serving children
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 (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.	125 residential facilities for children
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.	The regulation provides for the immediate closure of a facility and that would terminate sources of revenue for a program.

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.

There are no appropriate alternatives to this regulatory action. The agency is required to adopt regulations to implement the provisions of the Chapter 363 of the Virginia 2005 Acts of Assembly. The agency adopted emergency regulations to comply with this legislation in December 2005. These regulations were developed in collaboration with a stakeholder group, which included representatives of providers, community organizations and state agencies with an interest in children’s residential facilities. This group considered various alternatives for meeting the requirements of the legislation and attempted to develop the regulatory provisions that can be easily understood and implemented. The proposed regulations are identical to the emergency regulations.

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.

These regulations are largely a re-statement of legislation passed which was fairly prescriptive. The Department, in determining time frames, made those time frames short, so that the closure is resolved in the shortest amount of time and have the least potential impact on both providers and individuals receiving services.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

Commenter	Comment	Agency response
Martin A. Donlan, Jr.	On behalf of Whisper Ridge Behavioral Health Systems and Keystone Behavioral Health Systems asked to be involved in any work groups that met to make	The Department will notify these organizations of any future meetings to review the permanent regulations.

	recommendations in regard to the permanent regulations.	
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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.

This regulatory action will establish procedures for issuing an order of summary suspension of a license to operate a group home or residential facility for children when there is an immediate and substantial threat to the health, safety and welfare of the residents. The regulations provide a vehicle for protecting the children who are admitted to licensed facilities and promoting the accountability of service providers. They also require that parents and guardians be notified when an order is issued. This should have a positive impact on the stability the families with children who are residents in the licensed facilities and support parental rights. It also should encourage parents to be involved in and assume the responsibility for their children.

The regulation should not impact marital commitment or disposable family income.

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.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
	25		This section has been inserted into the existing regulations to establish the process and requirements for the Commissioner to issue an order of summary suspension consistent with the Act. It describes procedures for appointment of a hearing officer and scheduling an administrative hearing in conjunction with the issuance of an order of summary suspension of the license. The regulation also establishes the procedures for the conduct of the hearing, decision-making, and any appeal of the decision. The regulations also require the Department to notify appropriate agencies

			when the Commissioner issues an order of summary suspension so that relocation plans can be made for residents who are affected by the action taken.
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The proposed regulation is intended to replace an emergency regulation. There have been no changes between the pre-emergency regulation and the proposed regulation.