



Proposed Regulation Agency Background Document

Agency name	State Mental Health, Mental Retardation and Substance Abuse Board
Virginia Administrative Code (VAC) citation	12 VAC 35-105-115
Regulation title	Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation, Substance Abuse, the Individual and Family Disabilities Support Waiver, and Brain Injury Residential Services
Action title	Addition of provisions for issuing an order of summary suspension of the license
Date this document prepared	April 25, 2007

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 Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation, Substance Abuse, the Individual and Family Disabilities Support Waiver, and Brain Injury Residential Services (Regulations), which establishes a process for issuing an order of summary suspension of a license for group home or other residential services for adults in cases of immediate threat to the health, safety, and welfare of residents. It also includes provisions for scheduling and conducting an administrative hearing, including the appointment of a hearing officer by the Executive Secretary of the Supreme Court. The regulation is currently in effect as an emergency regulation that will expire in December 2007. The current Regulations provide standards for licensing providers under Virginia Code § 37.2-404.

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 Service Board has the authority to adopt this regulation under Virginia Code § 37.2-203 and Chapter 168 of the 2006 Virginia Acts of Assembly. The authority to adopt the regulation 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.

These provisions are necessary to ensure the health, safety and welfare of individuals receiving services from group homes or other residential facilities for adults that are licensed by the Department. The goal of the amendment is to enable the Commissioner to act quickly to suspend a license when the conditions or practices of the provider pose an immediate and substantial threat to individuals receiving services from the provider. The regulation will also provide the basis for the Department to act 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.

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.)

The provisions allow the Commissioner of Mental Health, Mental Retardation and Substance Abuse services summarily suspend a license to operate a group home or other residential facility for adults when he believes that the conditions pose an immediate and substantial threat to persons receiving services in the facility. The regulation requires the Department to schedule an administrative hearing prior to delivering an order of summary suspension to the licensee. Provisions also guide the decision-making related to the administrative hearing and require notification to the licensee of its appeal rights if a final order of summary suspension is issued.

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.

(1) These provisions are advantageous to the public because they provide additional protections for the health, safety, and welfare of individuals receiving services in licensed group homes and their families. The regulation permanently implements legislative changes that allow the Commissioner to act promptly to suspend the operation of a licensed group home or residential facility when there is evidence of immediate and substantial risk to the residents. Prior to the adoption of this legislation and the emergency regulation, the Commissioner had no immediate recourse for dealing with an urgent problem. Provisions include requirements for notification of appropriate state agencies and family members when an order of summary suspension is issued. This should facilitate relocation of facility residents when the operation of a licensed facility is suspended.

(2) The regulation is advantageous to the Department because it provides authority to take immediate action to suspend the operation of any residential facility if it becomes necessary to address egregious circumstances.

A major advantage to the Commonwealth is that the Department will not have to monitor the operation of a provider that places residents at risk for an extended period while it is involved in a lengthy appeals process.

(3) There are no known disadvantages to this regulation.

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 in the Commonwealth that is particularly affected by the proposed regulation or would have to bear a disproportionate material impact.

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 is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the Department 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, Director, Office of Licensing, DMHMRSAS, P.O. Box 1797, Richmond, VA 23218-1797, telephone 804- 371-6885, fax 804-692-0066, email 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	There cost to the state to implement and enforce the proposed regulation is negligible.
Projected cost of the regulation on localities	Localities may have some minimal staff costs for relocating residents from facilities that are required to cease operation.
Description of the individuals, businesses or other entities likely to be affected by the regulation	The regulation affects group homes for adults and residential treatment facilities that are licensed by the Department.
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.	There are 800 licensed group homes and residential treatment facilities statewide that are all likely small businesses.
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.	This regulation provides for the immediate closure of the facility resulting in the termination of all sources of income for that facility.

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. This regulation applies to adult residential facilities that are generally considered to be small businesses. The Board is required to adopt this regulation in accordance with Chapter 168 of the 2006 Virginia Acts of Assembly. In 2005, the General Assembly provided identical summary suspension authority for group homes and residential facilities for children that was adopted as part of the Regulations for Providers of Mental Health, Mental Retardation and Substance Abuse Residential Services for Children 12 VAC 35-45-10 et seq. The regulatory provisions now being proposed for adult residential facilities are the same as the provisions established for children’s residential facilities.

The Board considered various alternatives for meeting the requirements of the legislation and has developed provisions that can be easily understood and implemented. These provisions were developed in collaboration with the Office of the Attorney General and establish a basic process for the Department to meet the legal requirements of the legislation. There are no less intrusive or less costly alternatives for achieving the purpose of the regulation.

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.

This regulation is largely a restatement of legislation that is fairly prescriptive and requires specific action steps to summarily suspend a provider’s license. The regulation establishes the shortest possible timeframes for taking the required action steps so that a situation can be resolved as soon as possible with minimal impact on service 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.

Comment	Agency response
<p>Two comments (one from a community services board and one from a state mental retardation facility) expressed concern that case managers are required to take immediate action to relocate residents from a residential facility that receives an order of summary suspension. One commenter suggested that the Department place a temporary manager in a facility until the residents can be moved in an orderly manner.</p>	<p>The intent of this statutory authority is to allow the Department to address egregious conditions by immediately relocating residents to protect them from further harm. In order to facilitate the relocation of residents and avoid delays, the Department intends to maintain close communication with relevant case managers and assist them in relocating residents whenever possible. The statute requires the order of summary</p>

	suspension to take effect upon its issuance. There is no discretion to postpone relocation once the order is issued.
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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 provide a vehicle for protecting persons who are admitted to facilities licensed by the Department when the conditions in the facility pose an immediate threat to their health, safety and welfare. The regulation will promote accountability of service providers and require that responsible persons or agencies receive notification when an order of summary suspension is issued. This should have a positive impact on families that have members receiving services in facilities licensed by the Department. The regulatory action should not affect the authority or rights of parents, impact economic self-sufficiency, personal responsibility, 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.

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.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
	115		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 Virginia Code. 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 regulation also requires 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 will replace the existing emergency regulation. The proposed regulation is identical to the emergency regulation that is now in effect.