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Periodic Review and Small Business Impact Review Report of Findings

Agency name	Department for Aging and Rehabilitative Services
Virginia Administrative Code (VAC) Chapter citation(s)	22VAC30-20
VAC Chapter title(s)	Provision of Vocational Rehabilitation Services
Date this document prepared	April 13, 2021

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**.

Acronyms and Definitions

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

DARS = Department for Aging and Rehabilitative Services
Pre-ETS = Pre-employment transition services
PRTF = Psychiatric Residential Treatment Facility (PRTF)
VR = Vocational Rehabilitation
WIOA = Workforce Innovation and Opportunity Act

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 or 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.

For the provision of VR services in the Commonwealth, DARS is subject to the federal Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq., as amended most recently in 2014 by the Workforce Innovation and Opportunity Act (WIOA)) and the ensuing federal VR services regulations found at 34 CFR Part 361 (State Vocational Rehabilitation Services Program).

Section 51.5-118 of the Code of Virginia designates DARS “as the state agency for the purpose of cooperating with the federal government in carrying out the provisions and purposes of the federal Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.) and is empowered and directed to cooperate with the federal government in the administration of such act, to prescribe and provide services as may be necessary for the rehabilitation of persons with disabilities, to provide for the supervision of such services, and to disburse and administer federal funds provided for the rehabilitation of such persons.” (Note: This is subject to the provisions of §§ 51.5-66 and 51.5-77 regarding the Department for the Blind and Vision Impaired.)

Further, the provision of VR services in Virginia is authorized and directed under Article 11 (VR) of Chapter 14 (DARS) or Title 51.5 (Persons with Disabilities) of the Code of Virginia, and Item 339 A and B of the 2020 Appropriation Act.

Lastly, § 51.5-131 of the Code of Virginia authorizes the Commissioner of DARS to promulgate regulations necessary to carry out the provisions of the laws of the Commonwealth administered by DARS.

Alternatives to Regulation

Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

There are no other alternatives to the proposed regulatory action; a periodic review of this regulation is required. This periodic review complies with the requirements in Executive Order 14 (2018).

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

Commenter	Comment	Agency response
Colleen Miller, disAbility Law Center of Virginia	1) Include language in 22VAC30-20-120 requiring each local DARS office to conduct outreach and collaborate with psychiatric residential treatment facilities (PRTFs), and other congregate residential settings that serve transition age youth to coordinate the provision of pre-employment transition services (pre-ETS) as to this underserved population. 2) Define "traditionally unserved and underserved populations," as used in	DARS affirms the commenter’s suggestion regarding the need to ensure coordination of pre-ETS services with students with disabilities in recognized education programs, including PRTFs. Inclusion of language to this effect is better addressed and clarified in the VR policy manual and through communication with VR staff.

	<p>22VAC30-20-120(2)(i), to include transition age youth who reside in PRTFs and other temporary congregate residential settings.</p> <p>In State Fiscal Year (SFY) 2020 a total of 858 unduplicated Virginians under the age of 21 received services in PRTFs funded through the state Children’s Services Act (CSA) program. In SFY 2019, the number was 972.</p> <p>A PRTF is defined in 12VAC30-50-130 as: “A 24-hour, supervised, clinically and medically necessary, out-of-home active treatment program designed to provide necessary support and address mental health, behavioral, substance abuse, cognitive, and training needs of an individual younger than 21 years of age in order to prevent or minimize the need for more intensive treatment.”</p> <p>The youth who reside in PRTFs are significantly underserved by the state VR programs. Many of the individuals who receive services in PRTFs are in need of services and supports to equip them with the requisite skills to successfully transition to community settings, including employment related services. Too many remain in PRTF settings after they are otherwise ready for discharge because of inadequate transition planning and insufficient transition services. Others transition from PRTFs to more restrictive settings than would otherwise be necessary for the same reasons. These individuals constitute a significantly underserved population would benefit immensely from enhanced transition related services and supports.</p> <p>DARS can greatly ameliorate this problem by establishing relationships with PRTFs, and by targeting pre-ETS toward these underserved youth.</p> <p>The regulatory amendments, if implemented, will significantly improve access to much needed pre-ETS for this particularly underserved population of Virginians with disabilities.</p>	<p>DARS will plan to: 1) Update the DARS VR Policy Manual with specific language on serving students with disabilities in recognized education programs, including PRTFs; and 2) Update the DARS Pre-ETS Guidance Document with specific language on serving students with disabilities in recognized education programs, including PRTFs.</p>
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Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

The regulation meets the criteria set out in Executive Order 14 (2018) as it is necessary for the protection of public health, safety and welfare of individuals in the Commonwealth. The regulation ensures VR services are provided in accordance with federal laws and regulations and state laws. The regulation provides VR clients and the public clarity with regard to VR eligibility, types of services, participation in the cost of services, and client rights. No comments have been received indicating that the regulation was not clearly written or easily understandable.

Decision

Explain the basis for the promulgating agency's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

The agency recommends that the regulation be amended. Upon review of the chapter during the periodic review, DARS identified a few areas that could benefit from minor revisions and clarifications.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

There is a continued need for the regulation as it protects the health, welfare, and safety of VR clients.

During the periodic review, DARS received one comment regarding Pre-ETS services for youth in PRTFs and other temporary congregate residential settings.

The regulation is designed to support clarity and ensure transparency in the delivery of VR services in the Commonwealth. The regulation ensures VR services are provided in accordance with federal laws and regulations and state laws.

The regulation aligns and supports compliance with the federal Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq., as amended) and the ensuing federal VR regulations found at 34 CFR Part 361. The regulation does not conflict with federal or state law or regulation. The regulation ensures fidelity to the federal and state intent of the VR program.

The chapter was last revised in 2018 to bring the existing regulation into conformity with the federal regulations found at 34 CFR Part 361 that were amended in 2016. During the 2018 revision, 22VAC30-20 was amended to: (i) provide for pre-employment transition services for students with disabilities; (ii) require that a client obtain competitive employment in an integrated setting before his vocational rehabilitation case be closed with the client obtaining a successful employment outcome (iii) disallow the case of a vocational rehabilitation client to be closed as successful if the client is earning less than the minimum or customary wages/benefits paid for his employment; and (iv) require that individuals with

disabilities receive vocational counseling before they can be employed in positions earning less than minimum or customary wages/benefits paid for their employment.

There is a no small business impact as a result of this regulation.

