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Periodic Review and Small Business Impact Review Report of Findings

Agency name	Department of Behavioral Health and Developmental Services
Virginia Administrative Code (VAC) Chapter citation(s)	12VAC35-250
VAC Chapter title(s)	Peer Recovery Specialists
Date this document prepared	March 20, 2023

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), 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.

"ARTS" means the Virginia Medicaid Addiction and Recovery Treatment Services (ARTS) new substance use disorder (SUD) benefit.

"DBHDS" means the Department of Behavioral Health and Developmental Services

"Recovery" means a process of change through which individuals with mental illness or substance use disorder improve their health and wellness, live self-directed lives, and strive to reach their full potential (as defined by SAMSHA).

"SAMSHA" means the U.S. Substance Abuse and Mental Health Services Administration.

"Peer Recovery Specialist" or "PRS" means a person who by education and experience is professionally qualified to provide collaborative services to assist individuals in achieving sustained recovery from the effects of mental illness, addiction, or both. A peer recovery specialist shall provide such services as an employee or independent contractor of the Department, a provider licensed by the Department, a

practitioner licensed by or holding a permit issued from the Department of Health Professions, or a facility licensed by the Department of Health.

“State Board” means the State Board of Behavioral Health and Developmental Services

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.

Pursuant to Item 311.B. of 2016 Appropriation Act, DBHDS was authorized to promulgate emergency regulations to certify individuals as peer support specialists. Chapter 418 (2017) and Chapter 426 (2017) also required regulatory changes to implement legislative mandates.

Sections 37.2-203 of the Code of Virginia authorize the State Board to adopt regulations that may be necessary to carry out the provisions of Title 37.2 and other laws of the Commonwealth administered by the Commissioner and the Department. On April 5, 2017, the State Board voted to adopt an emergency regulation and initiated regulatory action for the emergency and for the NOIRA. The emergency regulation became effective on 5/12/2017 and the permanent regulation became effective on 3/6/2019.

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 is no alternative to the regulation. This regulation is necessary for individuals to be designated as “peer recovery specialists” (PRS) to have a pathway for the workforce to provide peer services through the Virginia ARTS benefit, which is available to Medicaid members receiving addiction treatment services at all levels of care effective on July 1, 2017.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency’s 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.

No comments were received during the public comment period.

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in the ORM procedures, including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

This regulation meets the criteria set out in the ORM procedures as it is necessary for the protection of public health, safety, and welfare because it provides administrative structure for DBHDS qualifications, education, and experience for peer recovery specialists to ensure that individuals providing peer recovery services in Virginia's public system of behavioral health services demonstrate a baseline of practical knowledge. The availability of peer recovery specialist services was expanded through the Virginia Medicaid Addiction and Recovery Treatment Services (ARTS) new substance use disorder (SUD) benefit. Peer support resources are an integral component of community integration, wellness, resiliency, and recovery.

As stated in the agency background document for the emergency action in 2016, comprehensive behavioral health is essential to population health and cost containment. Behavioral health issues add to medical care costs and individuals with mental illness or substance use disorders or co-occurring mental illness and substance use disorders have higher medical care costs as much as those without them. Peer recovery services help to decrease reliance on institutions and increase focus on community services. The services also facilitate integration of behavioral health and primary care, as well as housing, employment, schools, social services.

The regulation is clearly written and understandable as evidenced by the number reported below of persons who have followed the requirements to become PRS in Virginia.

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).

If the result of the periodic review is to retain the regulation as is, complete the ORM Economic Impact form.

Retain the regulation as is. Since the emergency regulation took effect, 1,155 of peers have become peer recovery specialists. The language was designed to work seamlessly with related regulations from the Department of Medical Assistance Services and the Department of Health Professions; this has proven to be a successful structure.

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.

(1) There is a continued need for the regulation because it provides administrative structure for DBHDS qualifications, education, and experience for peer recovery specialists to ensure that individuals providing peer recovery services in Virginia's public system of behavioral health services demonstrate a baseline of practical knowledge.

(2) No comments were received concerning the regulation during the periodic review.

(3) The regulation makes clear who shall be deemed a peer recovery specialist in Virginia.

(4) The regulation does not overlap, duplicate, or conflict with federal or state law or regulation.

(5) This is the first periodic review since the regulation became effective. Neither technology, economic conditions, nor other factors have changed in the area affected by the regulation. The agency's decision, consistent with applicable law, will minimize the economic impact of this regulation on small businesses in Virginia. Retaining the regulations as established on March 6, 2019, will ensure continuity for providers. Any change to the current regulations could result in an economic impact as providers would be responsible for ensuring that Peer Recovery Specialists meet the qualifications established in Chapter 250. Therefore, the decision to retain the regulations as currently written minimizes costs to small businesses.
