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Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Department of Behavioral Health and Developmental Services (DBHDS)
Virginia Administrative Code (VAC) Chapter citation(s)	12VAC35-105
VAC Chapter title(s)	Rules and Regulations for Licensing Providers by the Department of Behavioral Heath and Developmental Services (12VAC35-105)
Action title	2026 Recovery and Empowerment Center (REC) alignment with Medicaid behavioral health services redesign
Date this document prepared	~~July 14, 2026~~ August 6, 2026 (revised)

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*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this 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 or changes. If applicable, generally describe the existing regulation.

The General Assembly directed the Department of Behavioral Health and Developmental Services (DBHDS) through the budget bill to utilize emergency authority to align licensing regulations with the modifications being made to Medicaid behavioral health services by July 1, 2026. During the 2026 Special Session I, the 2026-2028 Appropriate Act extended the implementation deadline for behavioral health redesign by one year and reauthorized the directive for emergency regulations (Item 297).

To comply with the legislative mandates, the State Board of Behavioral Health and Developmental Services must adopt three separate emergency actions that conform DBHDS Licensing Regulations with

changes to be made by the Department of Medical Assistance Services (DMAS) replacing legacy services with Community Psychiatric Support and Treatment (CPST); Coordinated Specialty Care (CSC); and Mental Health Clubhouse Services (Clubhouse).

This regulatory action will establish the newly licensed service to align with Clubhouse, which in Virginia will be entitled Recovery and Empowerment Center (REC).

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.

Department of Behavioral Health and Developmental Service (DBHDS)
Department of Medical Assistance Services (DMAS)
Recovery and Empowerment Center (REC)
State Board of Behavioral Health and Developmental Services (State Board)

Mandate and Impetus (Necessity for Emergency)

Explain why this rulemaking is an emergency situation in accordance with § 2.2-4011 A and B of the Code of Virginia. In doing so, either:

a) *Indicate whether the Governor's Office has already approved the use of emergency regulatory authority for this regulatory change.*
b) *Provide specific citations to Virginia statutory law, the appropriation act, federal law, or federal regulation that require that a regulation be effective in 280 days or less from its enactment.*

As required by § 2.2-4011, also describe the nature of the emergency and of the necessity for this regulatory change. In addition, delineate any potential issues that may need to be addressed as part of this regulatory change.

Item 293 of the 2024-2026 Appropriation Act directs DBHDS to promulgate emergency regulations, in collaboration with DMAS, to "align licensing regulations with the modifications being made to Medicaid behavioral health services." A regulatory action to establish permanent regulations will follow this emergency action.

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 and 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.

DBHDS was directed by the General Assembly to promulgate emergency regulations that align its provider licensing regulations with the modifications being made by DMAS to Medicaid behavioral health services. Item 293 of the 2024-2026 Appropriation Act mandates the changes within this regulatory action.

Section 37.2-203 of the Code of Virginia gives the State Board 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 DBHDS commissioner. The State Board voted to adopt this regulatory action at its meeting on July 15, 2026.

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

The purpose of this action is to comply with the legislative mandate by aligning DBHDS licensing regulations with anticipated DMAS changes to Medicaid by establishing the new behavioral health service of REC (Mental Health Clubhouse Services).

The goal of REC is to support the recovery of individuals living with serious mental illness by creating a community-based environment that fosters social connection, meaningful engagement, and skill development.

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.

The substantive provisions of this regulatory action include:

1) Definitions necessary for the integration of REC into the Licensing Regulations;
2) Admission criteria for REC;
3) Discharge criteria for REC;
4) Service delivery requirements for REC;
5) Minimum requirements for REC staffing; and
6) REC physical environment standards.

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.

Virginia's behavioral health system is undergoing a multi-phased, interagency process of transformation to enhance the service delivery system. This requires coordination among agencies with responsibilities for licensing, funding, and oversight behavioral health services in the Commonwealth.

The primary advantages of this regulatory action include (1) improving access to a continuum of high-quality behavioral health services for Virginians; (2) ensuring REC providers adhere to a base level of model fidelity; and (3) reducing administrative burden by aligning provider licensing regulations with Medicaid service expectations.

There are no known disadvantages to the public or the Commonwealth.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

There are no alternatives to the regulatory changes contained herein that could achieve the essential purpose of this action, which itself is mandated by the General Assembly.

The amendments are limited to those that are necessary to avoid conflict between DBHDS licensing regulations and planned DMAS modifications to Medicaid behavioral health services. Misalignment would be problematic for licensed providers of behavioral health services seeking DMAS enrollment, many of which are small businesses, as well as for individuals receiving services and their families.

Periodic Review and Small Business Impact Review Announcement

This NOIRA is not being used to announce a periodic review or a small business impact review.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

The Department of Behavioral Health and Developmental Services is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: https://townhall.virginia.gov. Comments may also be submitted by mail, email or fax to Susan Puglisi, 1220 Bank Street, Richmond Virginia, 23219, or susan.puglisi@dbhds.virginia.gov.. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. 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. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the emergency regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
12VAC35-105-20. Definitions.		Definitions for the Licensing Regulations.	Addition of the following terms: "Member" means an individual who participates in Recovery and Empowerment Center services. "Recovery and Empowerment Center" means evidence-based practices that provide side-by-side engagement between members and staff in supporting restoration of skills in symptom management, interpersonal relationships, communication, problem solving, coping skills, and community integration for members living with mental illness. Each Recovery and Empowerment Center provider shall allow members opportunities for skills development, improved wellness, and achieving person-centered goals identified in the individualized services plan. Interventions are designed to alleviate emotional or behavioral symptoms associated with a mental illness with the goal of reintegrating the member into the community and increasing social connectedness beyond a clinical setting. Recovery and Empowerment Centers emphasize long-term support and provide a supportive environment for members with serious mental illness to thrive in their recovery journeys, regardless of

			how long they are engaged in daily activities. "Work-ordered day" means the structure of day-to-day activity within Recovery and Empowerment Center services. A work-ordered day means that members collaborate with staff as colleagues to perform critical tasks for the Recovery and Empowerment Center community. Members and staff share responsibility for running every aspect of the Recovery and Empowerment Center environment, such as filing, maintenance, and participation in consensus-based decision-making regarding all important matters related to the Recovery and Empowerment Center operations. Likely impact: Clearer regulations. Alignment with Medicaid service changes and current evidence-based practices and terminology to provide person-centered treatment.
12VAC35-105-30. Licenses.			Addition of the license type: Recovery and Empowerment Center Likely impact: Clearer regulations. Alignment with Medicaid service changes and current evidence-based practices and terminology to provide person-centered treatment.
	12VAC35-105-1412. Admission criteria.		Intent: Provide clear admission requirements within REC programs. Impact: Robust, effective mental health treatment within the Commonwealth that is appropriately administered.
	12VAC35-105-1414. Discharge criteria.		Intent: Provide clear discharge requirements within REC programs. Impact: Robust, effective mental health treatment within the Commonwealth that is appropriately administered.
	12VAC35-105-1415. Service delivery.		Intent: Provide clear service delivery requirements within REC programs. Impact: Robust, effective mental health treatment within the Commonwealth that is appropriately administered.
	12VAC35-105-1417.		Intent: Provide clear requirements to providers of REC services specifically related to personnel.

	Staffing requirements.		Impact: Robust, effective mental health treatment within the Commonwealth that is appropriately administered.
	12VAC35-105-1419. Physical environment.		Inten: Provide clear physical environment requirements within REC programs. Impact: Robust, effective mental health treatment within the Commonwealth that is appropriately administered.