



## Fast Track Proposed Regulation Agency Background Document

<b>Agency name</b>	State Mental Health, Mental Retardation and Substance Abuse Services Board (Name change to the State Board of Behavioral Health and Developmental Services, effective July 1, 2009.)
<b>Virginia Administrative Code (VAC) citation</b>	12 VAC 35-12-10 et seq
<b>Regulation title</b>	Public Participation Guidelines
<b>Action title</b>	Revised to include public participation in the rulemaking processes undertaken by the Department of Mental Health, Mental Retardation and Substance Abuse Services (Name change to the Department of Behavioral Health and Developmental Services, effective July 1, 2009.)
<b>Date this document prepared</b>	May 1, 2009

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.*

This action amends the Board's public participation regulations to include the rulemaking processes that are undertaken by the Department. The current regulations are applicable only to the State Mental Health Mental Retardation and Substance Abuse Services Board. The stated purpose of these regulations in 12 VAC 35-12-10 and the definition of "agency" in 12 VAC 23-12-20 are changed to include both the Department and the Board. This change will allow the the Department to comply with the requirements in §2.2-4007.02 of the Code of Virginia to facilitate public participation in the formation and development of its regulations.

This action also replaces the name State Mental Health, Mental Retardation and Substance Abuse Services Board with State Board of Behavioral Health and Developmental Services (hereinafter referred to as the Board) and names the current Department of Mental Health, Mental Retardation Substance Abuse Services as the Department of Behavioral Health and Developmental Services (hereinafter

referred to as the Department) consistent with Chapter 840 of the 2009 Virginia Acts of Assembly. This change becomes effective on July 1, 2009.

### Statement of final agency action

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

At its meeting on April 7, 2009 the State Mental Health, Mental Retardation and Substance Abuse Services Board adopted the amendments to its Public Participation Guidelines, 12 VAC 35-12, for promulgation under the fast-track process.

### 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 General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.*

The Board has the authority to adopt these regulations under Va Code § 37.2-203. It is required to develop and adopt public participation guidelines to solicit the input of interested parties in the development of its regulations under Va. Code §2.2-4007.02.

### Purpose

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

The amendment allows the Department to comply with the requirements of the Administrative Process Act (APA), Va. Code § 2.2-4007.02. The APA requires each agency of state government that is empowered by basic laws to make regulations to adopt and use public participation guidelines for soliciting the input of interested parties in the formation and development of its regulations.

Chapter 781 of the 2009 Virginia Acts of Assembly requires the Department (not the Board) to adopt emergency regulations under Item 315, DD. This means that the Department must have public participation guidelines under the APA.

The proposed amendment expands the scope of the Board's public participation guidelines to define the Department as an "agency" that must involve the public in the development of its regulations. Currently, these public participation guidelines apply only to the Board. The amendment will ensure that the public has the opportunity to participate in the development regulations that are required pursuant to the agency's basic law. This public participation will help to protect the health, safety and welfare of Virginia citizens.

## Rationale for using fast track process

*Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?*

*Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

This amendment will not alter or affect the processes that are established by the Board's current public participation guidelines. The current regulations are model public participation guidelines adopted by the Board in 2008 pursuant to Chapter 321 of the 2008 Virginia Acts of Assembly. These model regulations were developed to standardize the public participation process so that interested members of the public know how and when to comment or participate in regulatory actions that affect or interest them. This amendment expands the scope of the Board's regulations to require the Department to comply with this standard public participation process. It is intended to provide the opportunity for public participation in the Department's regulatory processes according to the APA and is not expected to be controversial.

The amendment will also change the name of the Department and the Board consistent with legislation passed in the 2009 Session of the Virginia General Assembly, Chapter 840 of the 2009 Virginia Acts of Assembly. This name change will not have any impact on the public participation process or regulatory requirements and is not expected to be controversial.

## Substance

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

There are no new substantive provisions or substantive changes to the existing sections of the regulations.

## 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 there are no disadvantages to the public or the Commonwealth, please indicate.*

The primary advantage of this regulatory action is that it will facilitate the participation of the interested members of the public in the regulatory activities undertaken by the Department.

This action allows the Department to comply with APA requirements and should enable it to develop regulations that are consistent with the legal authority, are responsive to the public need, are not overly burdensome, and protect the health, safety and welfare of Virginia citizens.

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

**Requirements more restrictive than federal**

*Please identify and describe any requirement of the proposal which is 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 this regulation or bears any disproportionate material impact.

**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 regulatory proposal will have no known adverse impact on small businesses. It ensures that representatives of small businesses in Virginia will have the opportunity to participate and have input into the formation and development of the Department's regulations.

**Economic impact**

*Please identify the anticipated economic impact of the proposed regulation.*

<p><b>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</b></p>	<p>No additional cost to the state to implement or enforce the proposed regulation.</p>
<p><b>Projected cost of the regulation on localities</b></p>	<p>There will be no financial impact on localities. These regulations will ensure that representatives of businesses and localities with an interest in regulations that are developed by the Department will have an opportunity to participate in the formation of these regulations.</p>
<p><b>Description of the individuals, businesses or other entities likely to be affected by the regulation</b></p>	<p>This regulation would affect any individual, business, or locality with an interest in the Department's regulations and intends to participate in the formation of these regulations.</p>
<p><b>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.</b> 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.</p>	<p>It is not possible to project the number of entities that will have an interest specific regulations. As of May 1, 2009, there were 163 public users registered on the Townhall for this agency.</p>
<p><b>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.</b></p>	<p>There are no new costs to affected individuals, businesses or other entities.</p>

**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 reasonable or viable alternatives to this proposal. These regulations are not burdensome or instrusive for small businesses. This proposal will allow the Department to comply with APA requirements. It will use the model regulations that were developed in 2008 to standardize the public process for state agencies. This should enable the Department to develop regulations that are consistent with the legal authority, are responsive to the public need, are not overly burdensome, and protect the health, safety and welfare of Virginia citizens.

**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 not impact on parents rights, family self-sufficiency, marital commitment, or family income. These public participation guidelines will provide a standard process for individuals and families to participate in the formation of regulations so that they may influence regulatory requirements that affect or interest them.

**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.*

For changes to existing regulations, use this chart:

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change and rationale</b>
10		States that the purpose of the regulation is to "promote public involvement" in regulations of the State Mental Health, Mental Retardation and Substance Abuse Board.	Changes the name of the Board to the "Board of Behavioral Health and Developmental Services" and adds the "Department of Behavioral Health and Developmental Services." The name change is consistent with the legislative changes passed by the 2009 Virginia General Assembly. The Department has been inserted into the purpose statement in this section to indicate that these regulations apply to the Department as well as the Board.
20		"Agency" is defined as the State Mental Health, Mental Retardation and Substance Abuse Services Board.	The definition of "agency" has been changed to mean both the State Board of Behavioral Health and Developmental Services and the Department of Behavioral Health and Developmental Services. Both the Board and Department are entities empowered to make regulations or decide cases and will be subject provisions for public participation in accordance with these regulations. The name of the Board is changed consistent with the 2009 legislation.