



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	22 VAC 30 Department of Rehabilitative Services
VAC Chapter Number:	22 VAC 30-30-10
Regulation Title:	Provision of Independent Living Rehabilitation Services
Action Title:	Amend regulations governing provision of independent living services so they comply with federal regulations.
Date:	February 20, 2003

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The amendment is a regulatory-driven change to bring Virginia's state- and federally funded Centers for Independent Living Program into compliance with the federal regulation and enhance consumer rights to reflect rights under the federal regulation. The amendment includes a policy-driven change to reduce consumer cost for services.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the

specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

Code of Virginia 51.5-14

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+51.5-14>

Public Law 105-220 105th Congress The Rehabilitation Act of 1973 as amended in 1998

[http://frwebgate.access.gpo.gov/cgi-](http://frwebgate.access.gpo.gov/cgi-bin/useftp.cgi?IPaddress=162.140.64.21&filename=publ220.105&directory=/diskc/wais/data/105_cong_public_laws)

[bin/useftp.cgi?IPaddress=162.140.64.21&filename=publ220.105&directory=/diskc/wais/data/105_cong_public_laws](http://frwebgate.access.gpo.gov/cgi-bin/useftp.cgi?IPaddress=162.140.64.21&filename=publ220.105&directory=/diskc/wais/data/105_cong_public_laws)

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

This action will update the Department's regulations for Independent Living Services and Virginia's federally funded Centers for Independent Living to comply with federal regulations. This action will regulate state-funded Centers in a manner similar to the federally funded Centers, which is currently being accomplished through state contract. In addition, this action will reduce consumer cost for services and enhance consumer rights.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

The amendment updates all sections regarding federally-funded Centers for Independent Living to make Virginia's implementation of the federal program comply with the federal Independent Living regulation. This action revises sections on eligible applicant agencies, funded activities, allocation of funds among Centers, scope of services, evaluation standards, periodic review, and appeal. The amendment adds similar sections for state-funded Centers to make the state program consistent with the federal program.

The amendment adds those receiving Worker's Compensation or Veteran's Disability to the list of groups not required to pay for services. The amendment makes most services (but not goods), free, regardless of income. For cost services, if the consumer is age 18 or older, the amendment revises the financial needs test to consider only the consumer's income - even if the consumer is living with parents, spouse, etc. The consumer's written consent is required to

release medical or psychological information to third parties. The consumer has the right to have a written service plan if determined eligible. If determined ineligible, the service provider must review the decision with twelve months and thereafter whenever the applicant's status has materially changed.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 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 include a sentence to that effect.

This action was initiated as a result of the 1998 amendments to the Federal Rehabilitation Act, the 1994 amendments to the Federal Independent Living Services regulation, and the growth of the Independent Living Program in Virginia. The current agency regulation was promulgated in 1987. These amendments will conform the state Independent Living regulation to the federal Independent Living regulation. There are several advantages to individuals with disabilities, Centers for Independent Living, and the agency in conforming the state regulation to the federal regulation.

Currently the agency relies on contracts with the state-funded Centers, rather than the existing out dated state regulation, to administer the program. Accordingly, the amendments will bring the state regulations into compliance with the contracts, which are mirrored on the federal regulations. This will eliminate inconsistencies, thereby avoiding possible legal issues and potential confusion among Centers in implementing, and the agency in enforcing, the state regulation and contracts with the Centers. It also will allow for service provision consistency among all of the Centers. In addition, from a legal standpoint, the Office of the Attorney General has advised that the state regulation will provide a state court forum in the event of an appeal or legal challenge. From a consumer standpoint, making the state-funded program consistent with the federally funded program will encourage consistency of services across the state for consumers.

The Federal regulation gives states the option to charge consumers for services and consider the consumer's ability to pay for these services. The amendments update the financial needs test for consumers accessing independent living services. By placing the financial needs test in state regulation, there is an opportunity for public comment on the provisions of the needs test. In the amendments, disabled workers/veterans will be exempt from the needs test. This action is consistent with some other kinds of financial needs tests for people with disabilities and provides a benefit to these two groups. In addition, the amendments exempt more services (but not goods) from the financial needs test. The amendments also will consider only consumer (not family) income for consumers 18 years or older, which should provide greater access to youth transition services to increase self awareness and esteem, self advocacy and self empowerment skills for young adults with significant disabilities still residing with parents after high school.

The proposed amendment will give state-funded Centers an administrative avenue to appeal agency decisions to withhold funding for noncompliance with assurances and evaluation

standards. No administrative avenue exists under current agency regulation - only the legal avenue under the state contract.

From the agency's standpoint, consistency across the state-funded and federally funded Centers for Independent Living Program will ensure consistent statewide services for consumers and will reduce the agency's administrative oversight burden. In addition, there was public comment at the national level when the federal regulation was promulgated. The proposed amendments "mirror" the federal regulation and reflect the national philosophy for independent living (self-help, self-advocacy, and peer counseling) and agency the Independent Living program (eligibility for funding, core services, periodic review, standards and compliance indicators, appeal, etc.).

There are no apparent disadvantages to the public, individuals with significant disabilities, Centers for Independent Living, or the Commonwealth.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

The agency provides programmatic and fiduciary oversight for the Centers for Independent Living. Centers are community-based, cross-disability, nonresidential, non-profit organizations designed and operated within a local community by individuals with disabilities, and provides an array of Independent Living Services. All sixteen (16) of Virginia's Centers and two Satellite Centers receive, via state contract, State General Fund dollars to provide direct services. Five of the Centers receive additional federal funds for the same purpose. The Centers are located in Norfolk, Hampton, the Eastern Shore, Richmond, Fredericksburg, Arlington, Manassas, Charlottesville, Winchester, Danville, Roanoke, Lynchburg, Abingdon, Grundy, Harrisonburg and Big Stone Gap.

In Fiscal Year 2002, the Centers provided comprehensive services to over 5800 individuals with significant disabilities and provided local communities with over 27,000 hours of systems advocacy and community education. All Centers provide four core services to individuals with significant disabilities. The core services are: Information and Referral, Peer Counseling, Independent Living Skills Training, and Individual and Systems Change Advocacy. Based on funding level and local need, each Center also may offer other services and goods to improve the ability of the individual to function independently in the family or community or to continue in employment. Other services to consumers may include: psychological counseling, life skills training, interpreter/reader services for individuals with cognitive or sensory disabilities, attendant care, assistance with transportation and finding accessible housing, and preventive services to decrease the need for similar services in the future. Goods purchased for consumers may include rehabilitation technology, such as wheelchairs, prostheses, hearing aids, or home and vehicle modifications. Systems advocacy and community education services to the

community at large may include disability awareness, technical assistance regarding accessibility and legal issues, as well as general disability related information

State General Fund dollars for Center services currently exceed \$4.3 million dollars. Over the past five years, a portion of the State General Fund dollars was used to establish six new Centers. Part C of Title VII of the Rehabilitation Act provides general operations money for Centers in Virginia in the amount of over \$1.3 million dollars. Operational funds are used for direct services and pay for Peer Counselors, Independent Living Skills Trainers, etc. Additional funds under Title VII, Part B of the Act are granted to Centers under the State Plan for Independent Living. The State Plan is jointly developed and signed by the Statewide Independent Living Council, the Department of Rehabilitative Services, and Department of the Blind and Vision Impaired. The State Plan provides Part B funds to Centers for systems change activities in the amount of over \$450,000. Centers also solicit local and private funding to meet service needs identified at the local level.

There will be no fiscal impact to the federal funds, because the amendments replicate the federal regulation and the current state contracts.

There will be no fiscal impact to state funds, because the agency is already enforcing compliance with the federal regulation via state contract. This includes the amendments requiring the core services, a consumer service record, a written record of each consumer’s service plan, and protection of confidential consumer information. The administrative oversight provisions are also currently enforced by state contract.

There will be no fiscal impact to consumers, Centers, or the agency resulting from adding Worker's Compensation and Veteran's Disability recipients to the list of groups not required to pay for services. In practice, they are not being required to pay for services. Therefore, the Centers and the agency already have absorbed implementation and enforcement costs.

There will be no fiscal impact to consumers, Centers, or the agency resulting from exempting most services (but not goods) from the financial needs test. Operational funds and existing staff are sufficient to serve all consumers. In the event that resources are insufficient to serve all eligible individuals, the agency may implement an order of selection (see 22 VAC 30-30-60). The financial need test will be continue to be used for tangible goods. However, funding is no longer available to purchase goods, and there will continue to be no agency expenditures for goods.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

Revised section	Current section	Detail of Changes
22 VAC 30-30-10	22 VAC 30-30-10	uses federal definitions for terms; no substantive changes
22 VAC 30-30-20	22 VAC 30-30-20	incorporated provisions from 22 VAC 30-30-30, and 22

		VAC 30-30-40, and 22 VAC 30-30-170
N/A	22 VAC 30-30-30	repealed; provisions incorporated into 22 VAC 30-30-20
22 VAC 30-30-31	N/A	adds new section to require all Centers to maintain a consumer service record for each consumer; reflects federal regulation which already applies to federally-funded Centers.
N/A	22 VAC 30-30-40	repealed; provisions incorporated into 22 VAC 30-30-20
22 VAC 30-30-50	22 VAC 30-30-50	subsection B requires the service provider to review the ineligibility determination whenever the applicant's status has materially changed. Incorporates provisions from 22 VAC 30-30-170
22 VAC 30-30-60	22 VAC 30-30-60	reflects federal regulatory language; incorporates provisions from 22 VAC 30-30-190; no substantive changes
22 VAC 30-30-70	22 VAC 30-30-70	subsection A requires recipients of IL services to have a written IL plan unless the recipient signs a waiver. Incorporates provisions from 22 VAC 30-30-240
22 VAC 30-30-80	22 VAC 30-30-80	uses federal scope of IL services; no substantive changes
22 VAC 30-30-90	22 VAC 30-30-90	adds those receiving Worker's Compensation or Veteran's Disability to the list of groups not required to pay for services; makes most services (but not goods) free regardless of income; and considers only the consumer's income (not family's income) if the consumer is age 18 or older.

22 VAC 30-30-100	22 VAC 30-30-100	reflects federal regulatory language; no substantive changes
22 VAC 30-30-110	22 VAC 30-30-110	reflects federal regulatory language; no substantive changes
22 VAC 30-30-120	22 VAC 30-30-120	reflects federal regulatory language; incorporates provisions from 22 VAC 30-30-230; no substantive changes
22 VAC 30-30-130	22 VAC 30-30-130	reflects federal regulatory language; no substantive changes
22 VAC 30-30-140	22 VAC 30-30-140	reflects federal requirements for federally-funded CILs and requires the agency to fund state-funded CILs based on documented need
22 VAC 30-30-150	22 VAC 30-30-150	reflects federal regulatory language; no substantive changes
22 VAC 30-30-160	22 VAC 30-30-160	reflects federal regulatory language; no substantive changes
N/A	22 VAC 30-30-170	repealed; provisions incorporated into 22 VAC 30-30-20
22 VAC 30-30-171	N/A	adds new section on CIL assurances; reflects federal regulation, which already applies to federally-funded Centers
N/A	22 VAC 30-30-180	repealed; provisions incorporated into 22 VAC 30-30-20
22 VAC 30-30-181	N/A	all Centers are subject to same evaluation standards; reflects federal regulation which already applies to federally-funded Centers
N/A	22 VAC 30-30-190	repealed; provisions incorporated into 22 VAC 30-30-60
22 VAC 30-30-191	N/A	all Centers are subject to same compliance indicators; reflects

		federal regulation which already applies to federally-funded Centers
N/A	22 VAC 30-30-200	repealed; incorporated into 22 VAC 30-30-80
22 VAC 30-30-201	N/A	all Centers are subject to the same funded activities; reflects federal regulation which already applies to federally-funded Centers
N/A	22 VAC 30-30-210	repealed; incorporated into 22 VAC 30-30-90
22 VAC 30-30-211	N/A	all Centers are subject to the same periodic review; reflects federal regulation which already applies to federally-funded Centers
22 VAC 30-30-220	22 VAC 30-30-220	reflects federal regulatory language; no substantive changes
N/A	22 VAC 30-30-230	repealed; incorporated into 22 VAC 30-30-120
N/A	22 VAC 30-30-240	repealed; provisions incorporated into 22 VAC 30-30-70
22 VAC 30-30-241	N/A	reflects federal regulatory language on agencies eligible for Independent Living Services program
22 VAC 30-30-250	22 VAC 30-30-250	reflects federal regulatory language; no substantive changes
22 VAC 30-30-260	N/A	all Centers are subject to the same authorized use of Independent Living Services program funds; reflects federal regulation which already applies to federally-funded Centers
22 VAC 30-30-270	N/A	new section on service providers for Independent Living Services program; reflects federal regulatory language
22 VAC 30-30-280	N/A	new section on standards for service providers for

		Independent Living Services program; reflects federal regulatory language
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Alternatives

Please describe the specific 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.

The Department of Rehabilitative Services considered repealing the regulation and relying on the state contract and federal regulations to regulate service providers and protect consumer rights. However, retaining and updating the agency regulation will enable consumers to access the state judicial system in an appeal, and will make the state-funded program consistent with the federal program.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

The agency received no public comment during the NOIRA comment period.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

The State Independent Living Council and directors of Centers for Independent Living reviewed the proposed amendments and indicated the draft is clearly written and easily understandable. These bodies support the agency in promulgating the amendment.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

The regulation is scheduled for review three (3) years after the effective date.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which 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.

The proposal to consider only the consumer's income – and not family's income- if the consumer is age 18 or older, will encourage the adult with disabilities to assume responsibility for oneself, increase access to services that family members may not wish to/be able to pay for, enhance self-determination and independence for adult consumers living with parents, encourage economic self-sufficiency and self-pride, and increase disposable family income by not using financial resources of consumer's family members to pay for consumer's services.

The proposal to exempt consumers receiving Worker's Compensation or Veterans' Disability benefits from the financial needs test will increase access to services and disposable income for these individuals with disabilities.

The proposal to change certain services from "fee-based" to "no cost" will increase consumer access to these services and increase consumer disposable income.