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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)	12 VAC35-46
VAC Chapter title(s)	Regulations for Children's Residential Facilities
Date this document prepared	June 15, 2022

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.

DBHDS – Department of Behavioral Health and Developmental Services
State Board – 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.

Section [37.2-203](#) of the Code of Virginia gives the State Board of Behavioral Health and Developmental Services 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. This regulation is necessary to carry out the licensure requirements of § [37.2-408](#) of the Code of Virginia.

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.

As long as the Code of Virginia requires DBHDS to license services (Title 37.2), specifically § 37.2-408, there is no alternative to these regulations.

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.

A public comment forum was held from 4/25/2022 to 5/16/2022. No comments were received.

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.

This regulation is necessary to carry out the licensure requirements of § 37.2-408 of the Code of Virginia, and meets the requirements of EO14 in that the regulation helps to protect the health, safety, and welfare of children as it articulates specific standards for licensing of facilities providing 24-hour support in conjunction with care and treatment or a training program for behavioral health and developmental services and brain injury services in a setting other than a hospital or training center. The structure of the regulation is straightforward.

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).

Related to this periodic review, an overhaul of these regulations has been underway since the last periodic review, and of the Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services [12VAC35-105]. The plan is to combine Chapter 46 into those main licensing regulations. Three of six planned draft chapters (one general chapter and five service-specific chapters) were published for public comment in May 2021, two more drafts will be published for initial comment by September 2022, and the last is under development. Therefore, the decision remains to amend the regulations.

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) The regulation is needed to carry out the licensure requirements in Title 37.2 of the Code of Virginia, specifically § 37.2-408.

(2) No comments were received.

(3) The complexity of the regulation is straightforward. It articulates specific standards for licensing of organizations and facilities that provide behavioral health and developmental disability services. Because it is intended to establish structures for the health, safety, and welfare of some of Virginia's most vulnerable citizens, some parts of the regulation are more detailed by necessity to help ensure the safety standards.

(4) There are parts of the regulation that are closely associated with regulations from the Department of Social Services, Department of Education, Department of Health, Department of Human Resources Management, Department of Health Professions, the Department of Health, and the Department of Medical Assistance Services, but the regulation does not overlap, duplicate, or conflict with federal or state law or regulation.

(5) The regulation was evaluated four years ago and an overhaul of the regulation has been underway since that time. Technology, economic conditions, or other factors changed during the pandemic. While the department anticipates some of these factors will someday return to their pre-pandemic status, there is also an understanding that some systemic changes resulting from COVID may be more permanent. The overhaul of these regulations and Chapter 105 will address any permanent changes.

The agency's decision to amend the chapter may minimize the economic impact of regulations on small businesses by clarifying expectations for providers. The agency's decision to amend the chapter may also cause an economic impact on small businesses as a goal of the overhaul is to raise the standard of care.