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# COMMONWEALTH of VIRGINIA

DEPARTMENT OF  
BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

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## SPECIAL CALLED MEETING

Monday, October 15, 2018

2:00 p.m.

DBHDS, Central Office, 1220 Bank Street, Richmond, VA 23218

### DRAFT AGENDA

- I. **Call to Order**
- II. **Approval of the Agenda**
- III. **Regulatory Action Item:** Initiate Final Stage for Permanent Adoption of [12VAC35-250](#) Peer Recovery Specialists (see attached documents)
- IV. **Adjournment**

The next regular meeting of the State Board will be on December 4-5, 2018.

Pursuant to Section 2.2-3708.2 of the Code of Virginia and Article 5 Item J of the State Board By-Laws, one member will be calling in remotely due to being more than 60 miles from the primary meeting location.

## Attachment 1 – Basis for Special Called Meeting

**Background:** Chapters [418 and 426](#) of the 2017 General Assembly authorized the Department of Health Professions Board of Counseling to promulgate emergency regulations for the registration of peer recovery specialists who meet the qualifications, education, and experience requirements established by regulations of the State Board of Behavioral Health and Developmental Services.

On April 5, 2017, the State Board voted to adopt an [emergency regulation](#) which 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.

On July 12, 2017, the State Board voted to initiate [the proposed stage](#) for adoption of the permanent regulation. That stage was approved by the Governor on June 29, 2018, and filed with the Registrar the same day. The stage was published along with an announcement of a 60-day public comment period on July 23, 2018. The public comment period closed at noon today. There were no comments on the regulation; this action is not controversial.

**Purpose:** This final regulatory action is brought as the next step of the standard process to comply with Chapters [418 and 426](#) regarding peer recovery specialists. No comments were received during the NOIRA or the proposed stage.

**Explanation:** The emergency extension request was granted by the Governor on September 24, 2018, to extend the emergency regulation currently in effect until May 12, 2019 (or until the permanent regulation becomes effective). However, there is a requirement that the final regulation be filed no sooner than 15 days after the close of the proposed stage public comment period (see the last box under Stage 2 of this [flowchart](#)). The October 3<sup>rd</sup> meeting misses that timeframe by three days (Saturday, October 6<sup>th</sup>).

When the final stage is filed, there must be another 30-day public comment period (Stage 3 of the same flowchart above). In order to be adopted before the emergency expires and because of the Register's publication schedule (a two-week delay), the absolute latest the final peer regulation must be approved through the Executive Branch review in time to file with the Registrar is by noon on March 13, 2019. It would then publish on April 1, 2019, with an announcement of the public comment period, for a final effective date on May 1, 2019.

This timeframe warrants a special called meeting of the Board to allow as much time as possible for the final Executive Branch review, particularly given the holidays and the General Assembly session.

**Change from Proposed:** The final regulation draft language is unchanged from what the State Board approved in the proposed stage, with one amendment that is not

substantive in the following definition:

"DBHDS peer recovery specialist training" means the curriculum developed and approved by DBHDS for the training of persons seeking to meet the Virginia qualifications to be a registration as peer recovery specialists specialist.

**Explanation of Change from Proposed:** The registry with the Board of Counseling exists for the purposes of Medicaid billing. Not everyone working or desiring to work as a peer recovery specialist will want or need to register with the Board of Counseling, if they do not plan to bill Medicaid. The reason for this amendment is to make clear that the training is for any person seeking to work as a peer recovery specialist in Virginia; all must meet the requirements of this chapter. Also, it makes clear that there are Virginia-specific qualifications to be met.

**Action Requested:** Initiate the final stage for the following regulation.  
(<http://townhall.virginia.gov/UM/chartstandardstate.pdf>)

VAC Citation	Title	Date of Last Activity
<a href="#">12 VAC 35 - 250</a>	Peer Recovery Specialists	9/21/2018 (completion of the proposed stage)

**Next Steps:**

- If approved, staff will initiate the final stage for permanent adoption.

## Attachment 2 – Town Hall Form



[townhall.virginia.gov](http://townhall.virginia.gov)

### Final Regulation Agency Background Document

<b>Agency name</b>	Department of Behavioral Health and Developmental Services
<b>Virginia Administrative Code (VAC) citation(s)</b>	12VAC35-250
<b>Regulation title(s)</b>	Peer Recovery Specialists
<b>Action title</b>	New regulation of peer recovery specialists.
<b>Date this document prepared</b>	October 10, 2018

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 (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

### Brief Summary

*Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of 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. If applicable, generally describe the existing regulation.*

Peer Recovery Specialist (“PRS”) staff are individuals who are, or family members of minor or adult children who are, receiving or have received mental health or substance abuse services. PRS are employed or seek to be employed to deliver collaborative support to others who are seeking to recover from a primary diagnosis of mental illness, addiction, or both. As of December 31, 2016, there were 430 certified peer recovery specialists employed across Virginia in public or private mental health or substance use disorder service settings. The availability of PRS services is expanding through the Virginia Medicaid Addiction and Recovery Treatment Services (ARTS) new substance use disorder (SUD) benefit. Under the ARTS benefit, peer support services were made available to Medicaid members effective on April 1, 2017. Peer support resources are an integral component of community integration, wellness, resiliency, and recovery.

Sections [37.2-203](#) and [37.2-304](#) of the Code of Virginia authorize the 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 DBHDS. This regulation 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.

## Acronyms and Definitions

*Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.*

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

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

"State Board" means the State Board 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" 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 DBHDS, a provider licensed by DBHDS, a practitioner licensed by or holding a permit issued from the Department of Health Professions (DHP), or a facility licensed by the Department of Health (VDH).

## 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.*

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On **October 15**, 2018, the State Board voted to adopt the new regulation 12VAC35-250 Peer Recovery Specialists as final to complete the standard permanent process.

## Mandate and Impetus

*Please list all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously-reported information, include a specific statement to that effect.*

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There are no changes to the previously reported information regarding the mandate for this regulatory change or the other system changes that specifically prompted its initiation.

This regulation is necessary for individuals to be designated as "peer recovery specialists" to have a pathway for the workforce to provide peer services through the Virginia ARTS benefit, made available to Medicaid members receiving addiction treatment services at all levels of care effective on April 1, 2017.

Chapters [418](#) and [426](#) of the 2017 General Assembly authorized the DHP Board of Counseling to promulgate emergency regulations for the registration of peer recovery specialists who meet the qualifications, education, and experience requirements established by regulations of the State Board of Behavioral Health and Developmental Services. DBHDS [emergency regulations](#) took effect on May 27, 2017.

Upon promulgation of [emergency regulations by the Board of Counseling](#), registration began with the Board of Counseling. Also upon promulgation of this action by the State Board, permanent regulations will allow DBHDS to continue to set out the requirements for qualifications, education, and experience of individuals as “peer recovery specialists” and those eligible to register with the Board of Counseling as “registered peer recovery specialists.”

## Legal Basis

*Please identify (1) the agency or other promulgating entity, 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 entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.*

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Sections [37.2-203](#) and [37.2-304](#) of the Code of Virginia authorize the 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 DBHDS.

Specifically, chapters [418](#) and [426](#) of the 2017 General Assembly authorized the Department of Health Professions Board of Counseling to promulgate emergency regulations for the registration of peer recovery specialists who meet the qualifications, education, and experience requirements established by regulations of the State Board of Behavioral Health and Developmental Services.

## Purpose

*Please explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.*

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With the creation of Medicaid coverage for peer services in Virginia, this regulation 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. This is a reflection of the need for a standard of commonly understood evidenced-based best practices in the support of people with behavioral health conditions. This field of practice is expected to grow, as is Virginia's network of available peer recovery specialists.

### Background

The following background information on billing is taken from the SAMHSA-HRSA Center for Integrated Health Solutions (CIHS) web site. (<http://www.integration.samhsa.gov/workforce/team-members/peer-providers>)

#### **Billing for Peer Provided Integrated Health Services**

- In the field of behavioral health, Medicaid billing for peer support services began in Georgia in 1999, and quickly expanded nationally in 2007 after the Center for Medicare and Medicaid Services (CMS) sent guidelines to states on how to be reimbursed for services delivered by peer

providers. In 2012, Georgia was approved as the first state to bill for a peer whole health and wellness service delivered by WHAM-trained peer providers.

- CMS' Clarifying Guidance on Peer Services Policy from May 2013 states that any peer provider must "complete training and certification as defined by the state" before providing billable services.
- Beginning January 1, 2014, CMS expanded the type of practitioners who can provide Medicaid prevention services beyond physicians and other licensed practitioners, at a state's discretion, which can include peer providers.

These regulations are needed to support a strong peer workforce through financial sustainability that is ensured when peer services meet criteria for reimbursement like Medicaid billing. The registry with the Board of Counseling exists for the purposes of Medicaid billing. However, not everyone working or desiring to work as a peer recovery specialist will want or need to register with the Board of Counseling, if they do not plan to bill Medicaid.

### **General Explanation of Peer Recovery Services**

According to the U.S. Substance Abuse and Mental Health Services Administration (SAMSHA), the adoption of "recovery" by behavioral health systems in recent years has signaled a dramatic shift in the expectation for positive outcomes for individuals who experience mental or substance use conditions. Today, when individuals with mental illness or substance use disorders seek help, they are met with the knowledge and belief that anyone can recover and manage their conditions successfully. The value of recovery and recovery-oriented behavioral health systems is widely accepted by states, communities, health care providers, peers, families, researchers, and advocates, including the U.S. Surgeon General, the National Academies Health and Medicine Division (HMD), and others.

Peer recovery support services help people:

- Enter and navigate systems of care;
- Remove barriers to recovery;
- Stay engaged in the recovery process; and
- Live full lives in communities of their choice.

The services include culturally and linguistically appropriate services that assist individuals and families working toward recovery from mental illness or substance use disorders. Peer recovery services support enhanced access to evidence-based practices such as supported employment; education; housing; assertive community treatment; illness management; and peer-operated services.

The services may be provided before, during, or after clinical treatment or may be provided to individuals who are not in treatment but seek support services. These services provided by peers are delivered through a variety of community and faith-based groups, treatment providers, schools, and other specialized services.

## **Substance**

*Please 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.*

With one exception explained below, the changes in this final regulation that differ from the emergency regulation are the same as those in the proposed – edits were made only to accommodate DHP's registration of peer recovery specialists, including assuming language for continuing education, and to delete a date-specific requirement for training during the transition to permanent regulations. Specifically,

- In Section 10, adding the definition: "Registered peer recovery specialist" means a peer recovery specialist who is registered by the Virginia Board of Counseling.

- In Section 20, adding a new subsection: D. Any person meeting the qualifications for a peer recovery specialist as set forth in this chapter shall be eligible for registration by the Virginia Board of Counseling.
- In Section 30.A.3., deleting the date by which training must be completed: Complete the DBHDS peer recovery specialist training ~~by April 1, 2018~~.
- Delete Section 45.

**Additional amendment**

There is one additional amendment that is a change from the proposed stage in the following definition:

"DBHDS peer recovery specialist training" means the curriculum developed and approved by DBHDS for the training of persons seeking to meet the Virginia qualifications to be a registration as peer recovery specialists specialist.

**Explanation of Change**

The registry with the Board of Counseling exists for the purposes of Medicaid billing. Not everyone working or desiring to work as a peer recovery specialist will want or need to register with the Board of Counseling, if they do not plan to bill Medicaid. The reason for this amendment is to make clear that the training is for any person seeking to work as a peer recovery specialist in Virginia; all must meet the requirements of this chapter. Also, it makes clear that there are Virginia-specific qualifications to be met.

**Issues**

*Please 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.*

There is no disadvantage to the public or the Commonwealth with these regulatory changes.

**Virginia’s Need**

Comprehensive behavioral health is essential to population health and cost containment.

	<b>National average of state spending</b>	<b>Virginia spending</b>
Hospitals	23% of overall BH budget	46% of overall BH budget
Community	75% of overall BH budget (~\$89 per capita)	51% of overall BH budget (\$47 per capita)

Behavioral health issues drive up to 35% of medical care costs and individuals with mental illness or substance use disorders or co-occurring mental illness and substance use disorders cost up to 2-3 times 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.

This action makes permanent the formalization of the peer recovery specialist professional qualifications, education, and experience to provide collaborative services to assist individuals in achieving sustained recovery from the effects of mental illness, addiction, or both. With the creation of Medicaid coverage for peer services in Virginia, this regulation 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. This is a reflection of the need for a standard of commonly understood evidenced-based best



practices in the support of people with behavioral health conditions. For those peer recovery specialists who wish to bill Medicaid for services, the additional option of registering with the Board of Counseling will be available and is noted in this final DBHDS regulation.

### Requirements More Restrictive than Federal

*Please list all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously-reported information, include a specific statement to that effect.*

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These requirements are not more restrictive than federal requirements.

### Agencies, Localities, and Other Entities Particularly Affected

*Please list all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously-reported information, include a specific statement to that effect.*

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#### Other State Agencies Particularly Affected

There is no state particularly affected by this final regulation. Both the Department of Health Professions and the Department of Medical Assistance Services (DMAS) have adopted regulations to address the legislative mandate and compliment this regulation.

#### Localities Particularly Affected

There is no locality particularly affected by this final regulation.

#### Other Entities Particularly Affected

Individuals needing services, their families, and persons who meet the requirements to be a peer recovery specialist as set forth in this chapter are eligible to register with the Board of Counseling, if they wish to bill Medicaid for services.

### Public Comment

*Please summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. If no comment was received, enter a specific statement to that effect.*

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Commenter	Comment	Agency response

No comments were received during the proposed stage public comment period conducted July 23, 2018 through September 21, 2018.

## Detail of Changes Made Since the Previous Stage

Please list all changes that made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \* Please put an asterisk next to any substantive changes.

Current chapter-section number	New chapter-section number, if applicable	New requirement from previous stage	Updated new requirement since previous stage	Change, intent, rationale, and likely impact of updated requirements
10		"DBHDS peer recovery specialist training" means the curriculum developed and approved by DBHDS for the training of persons seeking registration as peer recovery specialists.	"DBHDS peer recovery specialist training" means the curriculum developed and approved by DBHDS for the training of persons seeking <u>to meet the Virginia qualifications to be a registration as peer recovery specialists specialist.</u>	<p>The reason for this amendment is to make clear that the training is for <u>any</u> person seeking to work as a peer recovery specialist in Virginia; all must meet the requirements of this chapter. The current language implied that <u>only</u> those seeking to register with the Board of Counseling would need to receive the training to become a peer recovery specialist. However, there is a definition for 'peer recovery specialist' and for a 'registered peer recovery specialist.'</p> <p>These two definitions are included because, while registry with the Board of Counseling exists for the purposes of Medicaid billing, not desiring to work as a peer recovery specialist will want or need to bill Medicaid.</p> <p>Also, the amendment makes clear that there are Virginia-specific qualifications to be met.</p>