



Virginia  
Regulatory  
Town Hall

## Emergency Regulation Agency Background Document

<b>Agency Name:</b>	State Board of Mental Health, Mental Retardation, and Substance Abuse Services
<b>VAC Chapter Number:</b>	12 VAC 35-105-10 et. seq.
<b>Regulation Title:</b>	Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation, and Substance Abuse Services
<b>Action Title:</b>	Promulgate Emergency Regulations
<b>Date:</b>	June 27, 2002

Section 9-6.14:4.1(C)(5) of the Administrative Process Act allows for the adoption of emergency regulations. Please refer to the APA, Executive Order Twenty-Four (98), and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the emergency regulation submission package.

### Emergency Preamble

*Please provide a statement that the emergency regulation is necessary and provide detail of the nature of the emergency. Section 9-6.14:4.1(C)(5) of the Administrative Process Act states that an "emergency situation" means: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date. The statement should also identify that the regulation is not otherwise exempt under the provisions of § 9-6.14:4.1(C)(4).*

*Please include a brief summary of the emergency action. There is no need to state each provision or amendment.*

The proposed emergency regulations are required by amendments to Virginia Code § [51.5-14.1](#), *Cooperation of Department with other state departments*, and Virginia Code § [37.1-179](#) et seq., which requires promulgation of regulations to license day support, crisis stabilization, and in-home services funded through the Individual and Family Developmental Disabilities Support (IFDDS) Waiver. The State Board of Mental Health, Mental Retardation and Substance Abuse Services (Board) is required to promulgate

regulations to implement the provisions of the amendments to be effective within 280 days the enactment date of July 1, 2002 (SB 504).

The proposed emergency regulations amend the new Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation, and Substance Abuse Services (12 VAC 35-105-10 et seq.) by incorporating provisions for licensing IFDDS funded services. Funds allocated for IFDDS services have not been fully accessed in the past because there was no state agency designated to license these services.

The proposed regulations are not exempt from the provisions of § 9-6.14:4.1(C)(4). The Board adopted the proposed emergency regulations for promulgation on June 27, 2002, with a proposed effective date of September 19, 2002, concurrent with the effective date of the new licensing regulations.

### Basis

*Please identify the state and/or federal source of legal authority to promulgate the emergency regulation. The discussion of this emergency statutory authority should: 1) describe its scope; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. Full citations of legal authority and web site addresses, if available for locating the text of the cited authority, should be provided.*

*Please provide a statement that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the emergency regulation and that it comports with applicable state and/or federal law.*

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The 2002 Virginia General Assembly amended § 37.1.179 et. seq. of the Code of Virginia to authorize the Department of Mental Health, Mental Retardation, and Substance Abuse Services (DMHMRSAS) to license day support, crisis stabilization, and in-home support services funded through the IFDDS Waiver. The amendment to Virginia Code § 51.5-14.1. *Cooperation of Department with other state departments* further required the promulgation of emergency regulations within 280 days of enactment date of the legislation, which is July 1, 2002.

The Office of the Attorney General (OAG) has certified that the Board has the statutory authority to promulgate the proposed emergency regulations under Virginia Code § 37.1-10. The OAG has also indicated that the "...proposed regulations are constitutional and do not conflict with existing state laws or regulations."

### Substance

*Please detail any changes, other than strictly editorial changes, that would be implemented. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Please provide a cross-walk which includes citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of Virginians. The statement should also*

*delineate any potential issues that may need to be addressed as a permanent final regulation is developed.*

The emergency regulations accomplish the following:

1. Modify several definitions in Section 12 VAC 35-105-20 to reflect the services provided under the IFDDS waiver and add definitions of terms relevant to the services.
2. Incorporate reference to the IFDDS services in 12 VAC 35-105-30.
3. Require supervision be provided by a Qualified Developmental Disabilities Professional (QDDP) in 12 VAC 35-105-590 (C)(2) and that assessment and individual service plans (ISPs) be approved by a QDDP.
4. Require services be accessible to individuals with physical and sensory disabilities in 12 VAC 35-105-280(A).
5. Require the ISP to be consistent with the Consumer Service Plan 12 VAC 35-105-660(I).

These changes to the Board’s licensing regulations were developed in consultation with an advisory group of providers of IFDDS services, advocates, and affected state agencies. The attached crosswalk provides more detailed information about proposed changes.

***Proposed Changes to the Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation, and Substance Abuse Services***

Regulation Section	Subject	Change and Rationale
20 Definitions	“Club house service”	Changed to state that service must not be provided less than 3 days per week which differs from than 5-day requirement in current regulations
	“Consumer service plan”	Definition added because consumer service plans are required for IFDDS services
	“Crisis stabilization”	Definition added because this is a service that will be licensed
	“Day support services”	Definition revised to include developmental disabilities and related conditions to be served in day support

Regulation Section	Subject	Change and Rationale
20 Definitions (continued)	“Developmental disabilities and related conditions”	Definition added to describe the new population to be served
	“IFDDS Waiver”	Definition added to describe the service to be licensed
	“Instrumental activities of daily living”	New definition specific to training provided to individuals served under IFDDS Waiver
	“Neglect”	Revised to apply definition of neglect to individuals served under IFDDS Waiver
	“Provider”	Definition revised to include IFDDS providers
	“Qualified Developmental Disabilities Professional (QDDP)”	New definition added for QDDP who is an individual with credentials comparable to Qualified Mental Health and Mental Retardation Professionals
	“Service”	Definition revised to add IFDDS services
30	“Licenses”	Revised to include IFDDS services as a service that is licensed under the regulations
280 (A)	“Physical Environment”	Revised to require the physical environment for a service to be accessible to individuals with physical and sensory disabilities
590 (C2 and 4)	“Provider Staffing Plan”	Provisions inserted for IFDDS services that are comparable to other licensed services, including requirements for obtaining approval of ISPs and requiring assessments to be carried out by QDDPs.
660 (I)	“Individualized service plan (ISP)”	New provision inserted that requires ISPs for individuals served by the IFDDS waiver to be consistent with the Consumer Service Plan

The regulations assure adequate staffing requirements, physical environment requirements, financial support for services, treatment provision, and human rights compliance, all of which protect the health, safety, and welfare for individuals receiving services from licensed providers.

Implementation of the emergency regulations will determine what issues may need to be further addressed in the permanent regulations. The Board will consider such issues during the promulgation process for permanent regulations which will be initiated simultaneously with the implementation of the emergency regulations.

## Alternatives

*Please describe the specific alternatives that were considered and the rationale used by the agency to select the least burdensome or intrusive method to meet the essential purpose of the action.*

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The Board explored the following alternatives for compliance with SB 504:

Alternative 1--Apply existing *Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation, and Substance Abuse Services* to these services with no changes. This was rejected because these regulations are quite specific to licensing mental health, mental retardation, and substance abuse services. An advisory committee of advocates, providers, and state agency staff reviewed the current regulations and determined the current regulations should be amended to reflect service provision to this population.

Alternative 2--Develop a new set of regulations to license IFDDS Waiver services. This alternative was rejected since day support, crisis stabilization, and in-home support services are already licensed by DMHMRSAS through existing regulations and are applicable to the IFDDS Waiver service providers. New regulations would unnecessarily duplicate the existing regulations.

Alternative 3--Amend the current DMHMRSAS regulations for licensing to include references and requirements unique to IFDDS waiver services. The advisory group determined that a minimal number of changes were necessary and recommended this approach. New regulations, entitled *Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation, and Substance Abuse Services*, become effective September 19, 2002. The proposed emergency regulations amends these new licensing regulations to adapt the provisions to apply to providers of IFDDS waiver services.

## Family Impact Statement

Please provide a preliminary analysis of the potential impact of the emergency action on the institution of the family and family stability including to what extent the 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.

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This emergency action will allow families of individuals with developmental disabilities to access services they have not been able to access before, because there was no entity designated to license these services. Access to services should promote family stability and allow families to better care for their child or family member within the home. It will promote self-sufficiency for families by increasing skills and supports for individuals with developmental disabilities.