



Virginia
Regulatory
Town Hall

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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

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| Agency name | State Mental Health, Mental Retardation and Substance Abuse Services Board |
| Virginia Administrative Code (VAC) citation | 12VAC35-105 |
| Regulation title | Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation, Substance Abuse, the Individual and Family Developmental Disabilities Support Waiver, and Brain Injury Residential Services |
| Action title | Revision of Provider Licensing Regulations |
| Date this document prepared | February 9, 2007 |

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The purpose of this action is to update the current regulations to be consistent with current statutory mandates and standards of practice. The changes will reflect the recodification of Title 37.1 to 37.2, which became effective on October 1, 2005. The goals of the revisions are to promote the Department's mission and vision, which calls for (1) a consumer-driven system of services that supports self-determination, empowerment, recovery, resilience, health, and the highest possible level of consumer participation in all aspects of community life, including work, school, family, and other meaningful relationships; (2) clarity of provisions; (3) accountability; and (4) simplification or reduction or administrative processes that do not promote the previous goals.

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

The State Mental Health, Mental Retardation and Substance Abuse Services Board has the authority to adopt regulations for licensing under Virginia Code § 37.2-404. Providers of services are required to be licensed under Virginia Code §37.2-405. The authority to adopt these regulations is mandatory.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

These regulations govern the provision of community-based services to persons with mental health, mental retardation, substance use disorders, services funded by the Individual and Families Developmental Disability Support (IFDDS) waiver, and brain injury residential services. The essential focus of these regulations is to promote adequate services, health, and safety for persons who receive services from providers. These revisions are needed to update the provisions to reflect the Department's mission, current standards of care, recent changes in the statute as a result of recodification, and to be consistent with other Agency regulations. The revisions are also intended to clarify the requirements for providers and Agency staff to facilitate implementation and accountability.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

The regulatory provisions will be reviewed and modified to ensure they support the current mission of the Department. The Agency will also consider revising provisions to clarify requirements and to align them with other Agency regulations and the law. An advisory committee that has been convened by the Department to represent interested and affected persons has targeted specific aspects of the regulations that will be considered for update and revision. These aspects encompass various administrative processes, screening, orientation, assessments, service programs, and legal services.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

As part of the revision process, the Agency along with the public will assess whether any of the needed clarifications and updates can be accomplished through additional guidance or training rather than revising the regulatory provisions. This revision process will involve an advisory committee, which includes representatives of the Agency, licensed providers, advocates, and consumers. However, it is the consensus of this advisory committee that revising the current regulations is the only practicable alternative for addressing certain issues identified during the periodic review of these regulations. The

advisory committee has assisted the Agency to identify the parts of the regulations that need revision or update. The regulations are required by statute.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so **at the public hearing or** by mail, email or fax to Leslie Anderson, Director, Office of Licensing, Virginia Department of Mental Health, Mental Retardation, and Substance Abuse Services, P. O. Box 1797, Richmond, Virginia 23228, (804) 786-1747; fax number-(804) 786-0066, leslie.anderson@co.dmhmrzas.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period.

A public hearing will be held and notice of the hearing may be found on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) and can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, technical advisory committees) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The agency is using the participatory approach to develop this proposed regulation and has already organized a licensing regulation revision committee and several sub-committees who have met on several occasions to review the regulations. The Committees consist of consumers, families, providers, advocates, and other state agency personnel. On technical issues, the agency may consult with experts in the field.

Family impact

Assess the potential 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 should have a positive impact on families with members receiving services from licensed providers. These regulations govern the services provided to family members from providers who are licensed. To the extent that the regulations improve those services or promote health and safety in those services, they should have a positive impact on families. To address family and consumer impact, the agency has held a series of meetings with consumers and families to seek their input. This participatory approach should enable the Agency to consider the to needs of families in drafting the regulatory revisions and help promote the individual self-determination, empowerment, and self-sufficiency. The regulations are not expected to have any impact on disposable family income.

Periodic review – Public comment

If this NOIRA is not the result of a periodic review of the regulation, please delete this entire section.

If this NOIRA is the result of a periodic review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 21, e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

| Committer | Comment | Agency response |
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| Virginia Association of Community Services Boards (VACSB) | Numerous (16) community services boards (CSBs) commented that specific updates and revisions are needed to all aspects of the current regulations. | The Agency will consider the specific comments in the drafting process for the proposed revisions. The CSBs are licensed providers and are represented on the Licensing Regulation Revision Advisory Committee that has been convened by the Agency. |
| Virginia Board for People with Disabilities | Provided comprehensive comments on all sections of the regulations. The comments proposed integration of the Department’s strategic plan into the regulations, reducing allowed beds, increasing expectations, strengthening provisions for health and safety, and revisions for consistency with other Agency regulations. | The Agency will consider these comments in the drafting process for the proposed revisions. |

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| <p>Virginia Office for Protection and Advocacy (VOPA)</p> | <p>Suggested changes to incorporate recovery, community integration, consumer direction, and empowerment throughout the regulations. Commented on corrective action, licenses, behavior management, and ICF-MRs.</p> | <p>The Agency will consider these comments in the drafting process for the proposed revisions. VOPA was invited to participate on the Licensing Regulation Revision Advisory Committee.</p> |
| <p>Office of Licensing Inspectors</p> | <p>Proposed changes to improve and update all sections of the regulations.</p> | <p>The Department will consider these comments in the drafting process for the proposed revisions.</p> |
| <p>VACSB Consumer Service Record Committee</p> | <p>Suggested revisions and updates to provisions for screening, orientation, assessment, services, and legal services.</p> | <p>The Department will consider the comments in the drafting process for the proposed revisions. Members of this committee are on the Licensing Regulation Revision Advisory Committee.</p> |

A total of 20 organizations/groups submitted comments in response to the periodic review of the Regulations. Many respondents recommended specific revisions to clarify or update current regulatory provisions. The Agency plans to consider these suggestions for specific changes when drafting the amendments to these regulations. In general, it appears that these Regulations are fulfilling an essential function and continue to be necessary to protect public health, safety, and welfare of individuals who are receiving services licensed by the Department.