



Virginia  
Regulatory  
Town Hall

townhall.virginia.gov

## Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Department of Mental Health, Mental Retardation and Substance Abuse Services (to be renamed Department of Behavioral Health and Developmental Services after July 1, 2009)
<b>Virginia Administrative Code (VAC) citation</b>	12 VAC 35 -220-10 et seq.
<b>Regulation title</b>	Certification Requirements for Early Intervention Professionals and Early Intervention Specialists
<b>Action title</b>	To promulgate new regulations to provide certification requirements for early intervention services system practitioners.
<b>Date this document prepared</b>	May 28, 2009

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Preamble

*The APA (Code of Virginia § 2.2-4011) states that an “emergency situation” is: (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.*

- 1) Please explain why this is an “emergency situation” as described above.
- 2) Summarize the key provisions of the new regulation or substantive changes to an existing regulation.

Chapter 781 of the 2009 Virginia Acts of Assembly (Budget Bill Item 315#1c) requires the Department (Department of Behavioral Health and Developmental Services after July 1, 2009) to promulgate

regulations "...to comply with the payor of last resort requirements of Part C of the Individuals with Disabilities Education Act (IDEA) of 2004." The legislation states that the Department shall promulgate such regulations within 280 days or less from the enactment date of the act. The enactment date is April 4, 2009. Therefore, this is an "emergency situation" according to the APA (Code of Virginia § 2.2-4011).

The proposed emergency regulations provide requirements for the certification of early intervention professionals and early intervention specialists who may provide early intervention services and supports to children and their families under the federal Part C program.

**Legal basis**

*Other than the emergency authority described above, 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 Department has the legal authority to promulgate these regulations under Virginia Code § 2.2-5304 and in the Item 315#1c of Chapter 781 of the 2009 Virginia Acts of Assembly. This legal authority is mandatory under Item 315#1c of Chapter 781 of the 2009 Virginia Acts of Assembly.

**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.*

These regulations provide specific requirements for certification of practitioners as early intervention professionals and early intervention specialists under Virginia's early intervention services system. Virginia Code § 2.2-5304 designates the Department as the state lead agency responsible for implementing Virginia's early intervention services system and ensuring compliance with the applicable federal requirements. The goal of these regulations is to ensure the competence of early intervention service providers under the authority granted to the lead agency. The regulations are also intended to provide the basis for the Department to certify qualified practitioners of early intervention services so that they may be enrolled as service providers and receive reimbursement under the Medicaid State Plan. The Department consulted with the Department of Medical Assistance Services in developing these regulations.

**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.*

This regulatory action is required by legislation and will provide a means to ensure that providers have the appropriate credentials to provide and obtain reimbursement for services to children with developmental delays and their families. The proposed regulatory requirements have been developed to reflect professional practice standards in the field and provide a framework for the Department to provide oversight as the lead agency for Virginia's early intervention services system. These regulations will help

to ensure that providers have the expertise to effectively address the needs of Virginia’s children with developmental delays and their families under the federal Part C program and are therefore essential to protect health, safety and welfare of this vulnerable population.

The proposed regulations also will allow for expanded reimbursement for early intervention services under Medicaid, thereby maximizing the availability of federal and State funding under Part C of the Individuals with Disabilities Education Act. This Act is intended to provide necessary supports and services and protect the health, safety and welfare of all infants, toddlers and families eligible under Part C.

**Substance**

*Please detail any changes that will be proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate.*

This is a new regulation. The substantive provisions include:

- A definition of early intervention services and a requirement for specified providers of this service under the Medicaid State Plan to be certified by the Department;
- Specific criteria for practitioners in various disciplines to be certified as early intervention professionals or early intervention specialists;
- Requirements for early intervention professionals who provide supervision to other early intervention personnel;
- Application process requirements for initial certification, recertification, and the restoration of an expired certification; and
- Processes for practitioners to seek reconsideration of a decision to deny certification.

**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 describe the process by which the agency has considered or will consider, other alternatives for achieving the need in the most cost-effective manner.*

There are no viable alternatives to this proposed regulatory action. In its role as State lead agency for Virginia’s early intervention services system, Virginia’s Part C Program has issued policies and procedures to define and ensure consistency with federal regulations as they relate to Virginia’s early intervention system. Since the program's inception, the Department has also issued guidance documents, policy letters, related interpretive materials, and provided technical assistance to local lead agencies. The Department considered various alternative criteria and processes, including the revision of current policies and procedures, to comply with the requirements of Part C of IDEA 2004. However, the Office of the Attorney General has advised the Department that regulations are required to strengthen the Department’s ability to supervise and monitor service providers under Virginia’s Part C program. Regulations have the force of law to compel actions that are necessary to meet federal requirements.

The criteria for early intervention professionals and early intervention specialists are based on existing professional standards for the various health professions. This will provide the least burdensome and cost-effective efficient means for practitioners to meet certification requirements under the Part C program.

**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 meeting 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 for the public comment file may do so by mail, email or fax to Karen Durst at the Department of Behavioral Health and Developmental Services, P.O. Box 1797, Richmond, Virginia, [karen.durst@co.dmhmrsas.virginia.gov](mailto:karen.durst@co.dmhmrsas.virginia.gov). fax 804-371-7959. 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 not be held.

**Participatory approach**

*Please indicate the extent to which an ad hoc advisory group will be used 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 the proposed regulation. The public will be provided the opportunity to comment on the regulatory proposal at the quarterly meetings of the Virginia Interagency Coordinating Council (VICC). In accordance with federal requirements, the VICC has the role of advising and assisting the state lead agency about Part C. The agency will discuss this regulatory proposal and seek input from the VICC members at its regularly scheduled quarterly meetings. Also, interested members of the public will be afforded the opportunity to comment on the regulatory proposal during the public comment portion of the meeting. Notice of the VICC meetings will be posted on the Virginia Regulatory Townhall website [www.townhall.virginia.gov](http://www.townhall.virginia.gov) and on the Commonwealth Calendar. Any person who is interested in attending VICC meetings may contact Karen Durst at the Department to obtain additional information (telephone 804-786-9844, email [karen.durst@co.dmhmrsas.virginia.gov](mailto:karen.durst@co.dmhmrsas.virginia.gov), or by mail at the address provided above).

## 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 proposed regulatory action should have a positive impact on the children with developmental delays and their families who are eligible to receive services under the federal Part C program. These regulations govern practitioners who provide services to children and their families and help to ensure that these services are responsive to individual needs. These services may help support families in attaining self-sufficiency, self-pride, and ultimately help their children with disabilities attain self-sufficiency and self-pride. The regulatory actions should not have any impact on family income.