



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

Agency name	The Department of Behavioral Health and Developmental Services
Virginia Administrative Code (VAC) citation	12 VAC 220 et seq.
Regulation title	CERTIFICATION REQUIREMENTS FOR EARLY INTERVENTION PROFESSIONALS, AND EARLY INTERVENTION SPECIALISTS, AND EARLY INTERVENTION CASE MANAGERS
Action title	To revise regulations to provide certification requirements for early intervention case managers
Date this document prepared	May 16, 2011

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 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Preamble

The APA (Code of Virginia § 2.2-4011) states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of subdivision A. 4. of § 2.2-4006.

- 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 890 of the 2011 Virginia Acts of Assembly (Budget Bill Item 304#Q) requires the Department of Behavioral Health and Developmental Services to promulgate regulations. 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 was May 2, 2011. 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 case managers who may provide early intervention services and supports to children and their families under the federal Part C program.

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. Please include a citation to the emergency language.

The Department has the legal authority to promulgate these regulations under Virginia Code § 2.2-5304 and in the Item 304#Q of Chapter 890 of the 2011 Virginia Acts of Assembly. This legal authority is mandatory under Item 304#Q of Chapter 890 of the 2011 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 case managers 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.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
10		B. Identifies providers who must be certified	Removes specific references to types of providers and generalizes applicability of certification to early intervention practitioners who provide certain services under the Medicaid State Plan.
30		Title indicates that section provides certification of early intervention services	Establishes that the section pertains specifically to certification requirements for Early Intervention Professionals and Specialists
	35		Establishes the certification requirements for Early Intervention Case Managers
50			Adds case manager as a certified practitioner and removes references to the specific type of training that the Department may require of practitioners to apply for certification.
80			Removes references to specific types of practitioner so that the section relates to all early intervention practitioners certified by DBHDS
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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.

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/board 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/board 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.

A public meeting will not be held pursuant to an authorization to proceed without holding a public meeting.

Participatory approach

Please indicate the extent to which an ad hoc advisory group or regulatory advisory panel 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 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.dmhmrzas.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.