



Fast Track Proposed Regulation Agency Background Document

Agency name	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	August 13, 2012

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*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

The proposed regulations will modify 12 VAC 220 et seq of the Virginia Administrative Code to establish the certification requirements for early intervention case managers. The current emergency regulations governing the certification requirements of early intervention case managers have been in effect since February 1, 2012. As of July 2012, 389 professionals have been certified as early intervention case managers with no identified regulatory issues. No change in the emergency regulations that are currently in force is being proposed.

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.

The Governor has designated the department as the lead agency for early intervention services provided through Part C of the Individuals with Disabilities Education Act (20 USC § 1431 et seq.). The duties of the department include promulgating regulations and adopting policies and procedures to implement an early intervention services system and assure consistent and equitable access to such services in consultation with participating agencies, contracting with local lead agencies for implementation of the early intervention services system statewide, providing technical assistance to local early intervention systems, and establishing an interagency system of monitoring and supervising the early intervention system. See Chapter 53 (§ 2.2-5300 et seq.) of Title 2.2 of the Code of Virginia.

Effective February 1, 2012, emergency regulations establish the requirements and process for the certification of early intervention case managers to provide coordination of early intervention services and supports for children and their families under the federal Part C program.

Because the authority to promulgate regulations to comply with the requirements of the federal Part C program was given to the Department, action by the State Board of Behavioral Health and Developmental Services is not required.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’s overall regulatory authority.

The Department has the legal authority to promulgate these regulations under Virginia Code § 2.2-5304 and Chapter 890 of the 2011 Virginia Acts of Assembly (Budget Bill Item 304#Q)

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

These regulations provide specific requirements for certification of early intervention case managers under Virginia’s early intervention services system, as required by Pub.L.No.108-446 § 635(9) and the standards established in 42 CFR 431.51. 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 case managers under the authority granted to the lead agency. The regulations also provide the basis for the Department to certify qualified individuals to coordinate the early intervention services and supports provided to children and their families and allow these individuals to receive reimbursement for the coordination services provided under the Medicaid State Plan Sec. 1902. [42 U.S.C. 1396a] (a). The Department consulted with the public, providers, and other state agencies, including Department of Medical Assistance Services, in developing these regulations.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

The emergency regulations provide practitioners the opportunity to qualify for Medicaid reimbursement and reflect federal and state requirements. Nearly 390 individuals have been certified as Early Intervention Case Managers under the emergency regulations that became effective February 1, 2012. The Virginia Interagency Coordinating Council (VICC) supports adoption of permanent regulations.

Adoption of permanent regulations will permit individuals providing care coordination for the early intervention service system to pursue certification and currently-certified early intervention case managers to continue receiving reimbursement for services performed and accumulate the additional educational credentials require for certification renewal.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.) Please be sure to define any acronyms.

This regulatory action revises existing regulations. The substantive changes include:

- A definition of early intervention case management and a requirement for specified providers of this service under the Medicaid State Plan to be certified by the Department;
- Specific criteria for practitioners to be certified as early intervention case managers;
- 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.

Issues

Please identify the issues associated with the proposed regulatory action, 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, please indicate.

This action poses no disadvantages to the public or the Commonwealth. These regulations establish a certifications process for early intervention case managers that assures individuals completing the certification process are appropriately and adequately prepared and trained to coordinate services to

infant and toddlers with disabilities. The regulations establish the criteria for maintenance of the certification which allows practitioners to seek reimbursement for services rendered.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

These regulations address the requirements of Pub.L.No.108-446 § 635(9) and meet the standards established in 42 CFR 431.51 for certification of early intervention practitioners under Virginia's early intervention services system. The regulations are not more restrictive than federal requirements and reflect professional practice standards in Virginia.

The primary advantage of these regulations is that they 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 service coordination under Medicaid, thereby maximizing the availability of federal and state funding under Part C of the Individuals with Disabilities Education Act.

A possible disadvantage is that providers will need to spend their time to complete training and submit an application. It takes approximately 15 minutes to complete the application and approximately 2 hours for the training.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no localities that are particularly affected by the proposed regulation.

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

There are no viable alternatives to this proposed regulatory action. In the Department's role as State lead agency for Virginia's early intervention services system, it has adopted policies and procedures, as well as providing guidance documents, policy letters, related interpretive materials, and technical assistance that defined and ensured that Virginia's early intervention service system was consistent with federal regulations. 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.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	The process for certification will be managed within current job requirements and the current information technology structure and will not add costs to the state
Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.	Professionals at local lead agencies who provide coordination of services will need to allocate time for training and to apply for re-certification. It is expected that the cost for localities will be minimal.
Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i> .	Providers of early intervention services will be positively impacted because the certification process will ensure a level of knowledge and skills for all service coordinators/case managers who are providing case management services for the children and families for whom they provide services. Families served will be positively impacted by the requirements that service coordinators/case managers meet specific educational requirements as well as possess a level of knowledge specific to the services they will provide to infants and toddlers with disabilities and their families. Businesses will be able to pursue reimbursement for Early Intervention services, which were not previously reimbursable.
Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	There are approximately 70 small businesses that provide early intervention services.
All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other	The cost to businesses related to the requirements is limited to the amount of time it takes to complete the required training and application. The initial application is approximately 3 hours and 30 hours of required training over three years with a re-

<p>administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>application every three years. The reapplication takes about 15 minutes online. Most of the costs for certification have been incurred under the emergency regulations. The majority of case managers in the field have already secured certification. Establishing permanent regulations will assure that continuing professional standards are maintained. The DBHDS database will track renewal dates and generate reminders to individuals and local lead agencies</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>The beneficial impact of these regulations is that they 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.</p> <p>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.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

There are no viable alternatives to this proposed regulatory action. The Department considered various alternative criteria and processes, including the revision of current policies and procedures, to comply with the current federal and state requirements. However, the Office of the Attorney General has advised the Department that regulations are necessary because all public and private practitioners are required to adhere to the provisions for certification.

Family impact

Please assess the 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 service coordination for children and their families to ensure that services are responsive to individual needs. Early intervention services help individuals and families attain self-sufficiency, self-pride, and ultimately help children with disabilities attain self-sufficiency and self-pride. The regulatory actions should not have any impact on family income.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all differences between the **pre-emergency** regulation and this proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

For changes to existing regulation(s), 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
90			Removes references to specific types of practitioner so that the section relates to all early intervention practitioners certified by DBHDS