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## Emergency/NOIRA Regulation Agency Background Document

<b>Agency name</b>	Department of Behavioral Health and Developmental Services
<b>Virginia Administrative Code (VAC) citation(s)</b>	<u>12VAC35-250</u>
<b>Regulation title(s)</b>	Peer Recovery Specialists
<b>Action title</b>	Qualifications, Education, and Experience for Peer Recovery Specialists
<b>Date this document prepared</b>	04/07/2017

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to eighteen months), 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 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. If applicable, generally describe the existing regulation.*

Peer Recovery Specialist ("PRS") staff are individuals who are, or family members of minor or adult children who are, receiving or have received mental health or substance abuse services. PRS are employed or seek to be employed to deliver collaborative support to others who are seeking to recover from a primary diagnosis of mental illness, addiction, or both. As of December 31, 2016, there were 430 certified peer recovery specialists employed across Virginia in public or private mental health or substance use disorder service settings. The availability of PRS services is expected to expand through the Virginia Medicaid Addiction and Recovery Treatment Services (ARTS) new substance use disorder (SUD) benefit. Under the ARTS benefit, peer support services will be made available to Medicaid members effective on July 1, 2017. Peer support resources will be an integral component of community integration, wellness, resiliency, and recovery.

Sections 37.2-203 and 37.2-304 of the Code of Virginia authorize the Board to adopt regulations that may be necessary to carry out the provisions of Title 37.2 and other laws of the Commonwealth administered by the Commissioner and the Department. This regulation provides administrative structure for DBHDS qualifications, education, and experience for peer recovery specialists to ensure that individuals providing peer recovery services in Virginia's public system of behavioral health services demonstrate a baseline of practical knowledge.

Chapters 418 and 426 of the 2017 General Assembly authorized the Department of Health Professions Board of Counseling to promulgate emergency regulations for the registration of peer recovery specialists who meet the qualifications, education, and experience requirements established by regulations of the State Board of Behavioral Health and Developmental Services.

Therefore, upon promulgation of regulations by the Board of Counseling, registration will begin with the Board of Counseling. Also upon promulgation of regulations by the State Board, permanent regulations will allow DBHDS to continue to set out the requirements for qualifications, education, and experience of individuals to be designated as registered peer recovery support specialists.

## Acronyms and Definitions

*Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.*

"ARTS" means the Virginia Medicaid Addiction and Recovery Treatment Services (ARTS) new substance use disorder (SUD) benefit.

"DBHDS" means the Virginia Department of Behavioral Health and Developmental Services.

"State Board" means the State Board of Behavioral Health and Developmental Services.

"Recovery" means a process of change through which individuals with mental illness or substance use disorder improve their health and wellness, live self-directed lives, and strive to reach their full potential (as defined by SAMSHA).

"SAMSHA" means the U.S. Substance Abuse and Mental Health Services Administration.

"Peer Recovery Specialist" means a person who by education and experience is professionally qualified to provide collaborative services to assist individuals in achieving sustained recovery from the effects of mental illness, addiction, or both. A peer recovery specialist shall provide such services as an employee or independent contractor of the Department, a provider licensed by the Department, a practitioner licensed by or holding a permit issued from the Department of Health Professions, or a facility licensed by the Department of Health.

## Emergency Authority

*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. Please explain why this is an emergency situation as described above, and provide specific citations to the Code of Virginia or the Appropriation Act, if applicable.*

Sections 37.2-203 and 37.2-304 of the Code of Virginia authorize the Board to adopt regulations that may be necessary to carry out the provisions of Title 37.2 and other laws of the Commonwealth administered by the Commissioner and the Department. This regulation is necessary for individuals to be designated

as “peer recovery specialists” to have a pathway for the workforce to provide peer services through the Virginia ARTS benefit, which will be made available to Medicaid members receiving addiction treatment services at all levels of care effective on July 1, 2017.

### 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) the promulgating entity, i.e., agency, board, or person.*

Sections 37.2-203 and 37.2-304 of the Code of Virginia authorize the Board to adopt regulations that may be necessary to carry out the provisions of Title 37.2 and other laws of the Commonwealth administered by the Commissioner and the Department. On April 5, 2017, the State Board voted to adopt this emergency regulation and initiate regulatory action for the emergency and for the NOIRA.

### 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.*

With the creation of Medicaid coverage for peer services in Virginia, this regulation provides administrative structure for DBHDS qualifications, education, and experience for peer recovery specialists to ensure that individuals providing peer recovery services in Virginia’s public system of behavioral health services demonstrate a baseline of practical knowledge. This is a reflection of the need for a standard of commonly understood evidenced-based best practices in the support of people with behavioral health conditions. This field of practice is expected to grow, as is Virginia’s network of available peer recovery specialists.

#### Background

The following background information on billing is taken from the SAMHSA-HRSA Center for Integrated Health Solutions (CIHS) web site. (<http://www.integration.samhsa.gov/workforce/team-members/peer-providers>)

#### Billing for Peer Provided Integrated Health Services

- In the field of behavioral health, Medicaid billing for peer support services began in Georgia in 1999, and quickly expanded nationally in 2007 after the Center for Medicare and Medicaid Services (CMS) sent guidelines to states on how to be reimbursed for services delivered by peer providers. In 2012, Georgia was approved as the first state to bill for a peer whole health and wellness service delivered by WHAM-trained peer providers.
- CMS’ Clarifying Guidance on Peer Services Policy from May 2013 states that any peer provider must “complete training and certification as defined by the state” before providing billable services.
- Beginning January 1, 2014, CMS expanded the type of practitioners who can provide Medicaid prevention services beyond physicians and other licensed practitioners, at a state’s discretion, which can include peer providers.

These regulations are needed to support a strong peer workforce through financial sustainability that is ensured when peer services meet criteria for reimbursement like Medicaid billing.

#### General Explanation of Peer Recovery Services

According to the U.S. Substance Abuse and Mental Health Services Administration (SAMSHA), the adoption of “recovery” by behavioral health systems in recent years has signaled a dramatic shift in the expectation for positive outcomes for individuals who experience mental or substance use conditions. Today, when individuals with mental illness or substance use disorders seek help, they are met with the knowledge and belief that anyone can recover and manage their conditions successfully. The value of recovery and recovery-oriented behavioral health systems is widely accepted by states, communities, health care providers, peers, families, researchers, and advocates, including the U.S. Surgeon General, the National Academies Health and Medicine Division (HMD), and others.

Peer recovery support services help people:

- Enter and navigate systems of care;
- Remove barriers to recovery;
- Stay engaged in the recovery process; and
- Live full lives in communities of their choice.

The services include culturally and linguistically appropriate services that assist individuals and families working toward recovery from mental illness or substance use disorders. Peer recovery services support enhanced access to evidence-based practices such as supported employment; education; housing; assertive community treatment; illness management; and peer-operated services.

The services may be provided before, during, or after clinical treatment or may be provided to individuals who are not in treatment but seek support services. These services provided by peers are delivered through a variety of community and faith-based groups, treatment providers, schools, and other specialized services.

**Need**

*Please describe 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.*

**Virginia’s Need**

Comprehensive behavioral health is essential to population health and cost containment.

	<b>National average of state spending</b>	<b>Virginia spending</b>
Hospitals	23% of overall BH budget	46% of overall BH budget
Community	75% of overall BH budget (~\$89 per capita)	51% of overall BH budget (\$47 per capita)

Behavioral health issues drive up to 35% of medical care costs and individuals with mental illness or substance use disorders or co-occurring mental illness and substance use disorders cost up to 2-3 times as much as those without them.

Peer recovery services help to decrease reliance on institutions and increase focus on community services. The services also facilitate integration of behavioral health and primary care, as well as housing, employment, schools, social services.

**Substance**

*Please describe any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of Virginians.*

Explanation: With the creation of Medicaid coverage for peer services in Virginia, this regulation provides administrative structure for DBHDS qualifications, education, and experience for peer recovery specialists to ensure that individuals providing peer recovery services in Virginia’s public system of behavioral health services demonstrate a baseline of practical knowledge. This is a reflection of the need for a standard of commonly understood evidenced-based best practices in the support of people with behavioral health conditions.

If a new regulation is being promulgated, use this chart:

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements
10	Definitions.		<p>The language creates definitions for use in these regulations for:</p> <ul style="list-style-type: none"> <li>• Certifying body</li> <li>• DBHDS Peer Recovery Specialist Training</li> <li>• Individual</li> <li>• Peer recovery support services</li> <li>• Recovery, resiliency, and wellness plan</li> <li>• Peer recovery specialist</li> </ul> <p>The definitions correspond to code language in Senate Bill 1020 (2017), Title 37.2, and federally required language for Medicaid services.</p>
20	Peer recovery specialist.		<p>This language requires peer recovery specialists under this chapter to meet the requirements contained in the chapter in order to use the term “peer recovery specialist.”</p> <p>It also explains that certain family members can provide peer recovery services, and under which agencies authority PRS may operate.</p>
30	Qualifications.		<p>This section establishes minimum educational, training, and experience requirements, with an exception for those certified between April 16, 2015, through December 31, 2016, by a member board of the IC&amp;RC. Two national certifying bodies are mentioned specifically, with accommodation allowing for other bodies to be considered by DBHDS.</p>
40	Minimum standards for certifying bodies and state certification.		<p>The language in this section sets out the threshold requirements for a certifying organization to possibly be recognized as acceptable by DBHDS as a certifying body.</p>
45	Continuing education.		<p>This sets a minimum requirement for continuing education of 20 hours every two years.</p>

50	Curriculum requirements.		The language sets out the specific curriculum content topics of the DBHDS Peer Recovery Specialist Training.
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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.*

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There are no other known alternatives to regulate peer recovery specialists.

## Public participation

*Please indicate whether 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. Please also indicate whether a Regulatory Advisory Panel or a Negotiated Rulemaking Panel has been used in the development of the emergency regulation and whether it will also be used in the development of the permanent regulation.*

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The emergency process does not allow for public comment. However, the language was proposed during the 2017 Session of the Virginia General Assembly in Senate Bill 1020; therefore, the public had the opportunity to comment during legislative process.

The draft regulation was circulated to key stakeholders in early March before submission to the State Board. The State Board meeting is open to the public and allows time at each meeting for public comment. The agency will seek comments on the *permanent* regulatory action following the emergency process.

A public hearing will be held following the publication of the *proposed stage of the permanent* regulatory action and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time. Also at that time, the agency will seek information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: projected reporting, recordkeeping, and other administrative costs; the probable effect of the regulation on affected small businesses; and the description of less intrusive or costly alternatives for achieving the purpose of the regulation. There is no expected negative impact on small businesses.

## Family impact

*Please assess the impact of this 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.*

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The impact on the family from this regulatory action would be additional community resources to promote individual and family recovery, resiliency, and wellness.