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Proposed Regulation Agency Background Document

Agency name	Department of Behavioral Health and Developmental Services
Virginia Administrative Code (VAC) citation(s)	12 VAC35-250
Regulation title(s)	Peer Recovery Specialists
Action title	Qualifications, Education, and Experience for Peer Recovery Specialists
Date this document prepared	June 23, 2017

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 (preferably no more than 2 or 3 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. 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 this action by the State Board, permanent regulations will allow DBHDS to continue to set out the requirements for qualifications, education, and experience of individuals eligible to be designated as registered peer recovery 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.

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.

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 to start the standard process for permanent adoption.

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 was made available to Medicaid members receiving addiction treatment services at all levels of care effective on July 1, 2017.

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.

Upon promulgation of regulations by the Board of Counseling, registration will begin with the Board of Counseling. Also upon promulgation of this action by the State Board, permanent regulations will allow DBHDS to continue to set out the requirements for qualifications, education, and experience of individuals eligible to register with the Board of Counseling as “registered peer recovery specialists”.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe 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.

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.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of changes” section below.

The changes in this proposed regulation differ from the emergency regulation only to accommodate the Department of Health Profession’s registration of peer recovery specialists, including assuming language for continuing education, and to delete a date-specific requirement for training during the transition to permanent regulations. Specifically,

- In Section 10, adding the definition: “Registered peer recovery specialist” means a peer recovery specialist who is registered by the Virginia Board of Counseling.
- In Section 20, adding a new subsection: D. Any person meeting the qualifications for a peer recovery specialist as set forth in this chapter shall be eligible for registration by the Virginia Board of Counseling.
- In Section 30.A.3., deleting the date by which training must be completed: Complete the DBHDS peer recovery specialist training by April 1, 2018.
- Delete Section 45.

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.

Virginia’s Need

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

	National average of state spending	Virginia spending
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.

This action makes permanent the formalization of the peer recovery specialist professional qualifications, education, and experience to provide collaborative services to assist individuals in achieving sustained recovery from the effects of mental illness, addiction, or both. 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. For those peer recovery specialists who wish to bill Medicaid for services, the additional option of registering with the Board of Counseling will be available and is noted in this proposed DBHDS regulation.

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 requirements are not more restrictive than federal requirements.

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 is no locality particularly affected by this proposed regulation.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the State Board of Behavioral Health and Developmental Services is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the State Board is 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 Becky Sterling, DBHDS Recovery Services Director, Post Office Box 1797, Richmond, Virginia 23218-1797, 804-774-2277, fax (804) 371-6638, email becky.sterling@dbhds.virginia.gov. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: <http://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of this stage 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.

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	Any additional responsibility to DBHDS required by the provisions of the regulation can be absorbed with existing resources.
Projected cost of the new regulations or changes to existing regulations on localities.	No additional cost will occur due to the changes from the emergency regulation to the permanent regulation.
Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.	Individuals who currently meet the requirements to be a peer recovery specialist as set forth in this Chapter are eligible to register with the Board of Counseling, if they wish to bill Medicaid for services.
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: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	
All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all	Individuals needing the services will be positively impacted. As of June 15, 2017, there were 466 peer

<p>costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) 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>recovery specialists meeting the requirements of this chapter employed across Virginia in public or private mental health or substance use disorder service settings. The availability of peer recovery specialist 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. Other than fees for receiving DBHDS training, obtaining certification through a certifying body, or to register with the Board of Counseling, there are no expected costs to the professionals.</p> <p>In regard to a) and b) specifically, there are no costs associated with these changes for small businesses.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>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.</p> <p>This action makes permanent the formalization of the peer recovery specialist professional qualifications, education, and experience; thus, the quality and the availability of the service individuals seeking recovery will increase.</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 other viable alternatives to the regulatory action to appropriately regulate this profession.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, 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 other alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law that will assure the level of professional standards across the Commonwealth.

Periodic review and small business impact review report of findings

If you are using this form to report the result of a periodic review/small business impact review that was announced during the NOIRA stage, please indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include a discussion of the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

N/A.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

Commenter	Comment	Agency response

The public comment period for the NOIRA began on May 29, 2017, and closed on June 28, 2017. No comments were received.

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.

The impact of this action will be to enhance family stability and encourage economic self-sufficiency.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation.

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 follow the instructions in the text following the three chart templates below.

Changes to the New Emergency Regulation for the Proposed Regulation

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
			<p>The following changes are intended to accommodate the following: Upon promulgation of regulations by the Board of Counseling, registration will begin with the Board of Counseling. Also upon promulgation of this action by the State Board, permanent regulations will allow DBHDS to continue to set out the requirements for qualifications, education, and experience of individuals eligible to register with the Board of Counseling as “registered peer recovery specialists”.</p>
10		<p>The language creates definitions for use in these regulations for:</p> <ul style="list-style-type: none"> • Certifying body • DBHDS Peer Recovery Specialist Training • Individual • Peer recovery support services • Recovery, resiliency, and wellness plan • Peer recovery specialist <p>The definitions correspond to code language in Senate Bill 1020 (2017), Title 37.2, and federally required language for Medicaid services.</p>	<p>Add the definition: “Registered peer recovery specialist” means a peer recovery specialist who is registered by the Virginia Board of Counseling</p>
20		<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>	<p>Add a new subsection: D. Any person meeting the qualifications for a peer recovery specialist as set forth in this chapter shall be eligible for registration by the Virginia Board of Counseling</p>
30		This section establishes	Section 30.A.3., delete the date by which

		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&RC. Two national certifying bodies are mentioned specifically, with accommodation allowing for other bodies to be considered by DBHDS.	training must be completed: Complete the DBHDS peer recovery specialist training by April 1, 2018 .
40		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.	
45		This sets a minimum requirement for continuing education of 20 hours every two years.	[Delete section.] Transfer this responsibility to the Board of Counseling.
50		The language sets out the specific curriculum content topics of the DBHDS Peer Recovery Specialist Training.	