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Final Regulation
Agency Background Document

Agency name	Virginia Department of Behavioral Health and Developmental Services
Virginia Administrative Code (VAC) Chapter citation(s)	12VAC35-105
VAC Chapter title(s)	Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services
Action title	Amendments to align with enhanced behavioral health services
Date this document prepared	July 13, 2022

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The General Assembly included the following requirements for the Department of Medical Assistance Services (DMAS) within Item 313 of the 2020 Appropriation Act (HB 2005, Chapter 56):

> *YYY. 3. Effective on or after January 1, 2021, DMAS shall implement programmatic changes and reimbursement rates for the following services: assertive community treatment, multi-systemic therapy and family functional therapy.*

4. Effective on or after July 1, 2021, DMAS shall implement programmatic changes and reimbursement rates for the following services: intensive outpatient services, partial hospitalization programs, mobile crisis intervention services, 23 hour temporary observation services, crisis stabilization services and residential crisis stabilization unit services.

In order to further the implementation of these programmatic changes, the General Assembly directed the Department of Behavioral Health and Developmental Services (DBHDS), within Item 318.B. of the 2020 *Appropriation Act*, to promulgate emergency regulations to ensure that the DBHDS licensing regulations support high quality, community-based mental health services and align with the changes being made to the Medicaid behavioral health regulations for the services funded in the budget that support evidence based, trauma-informed, prevention-focused and cost-effective services for members across the lifespan.

The amendments to the Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services ("Licensing Regulations") [12VAC35-105] contained in this action consist of only those changes that are necessary to align the DBHDS Licensing Regulations with changes to Medicaid behavioral health regulations by removing provisions that would conflict with newly funded behavioral health services and establishing new licensed services for those newly funded behavioral health services that cannot be nested under an existing DBHDS license.

As stated above, most of the anticipated newly funded behavioral health services are consistent with existing DBHDS licensed services. For these services, including functional family therapy, multisystemic family therapy, intensive outpatient services, partial hospitalization programs, mobile crisis intervention services, 23 hour temporary observation services, crisis stabilization services, and residential crisis stabilization unit services; only very minimal changes are included in this action. The existing license requirements for Program for Assertive Community Treatment (PACT) services, however, are inconsistent with the Assertive Community Treatment (ACT) services that will be funded as part of the behavioral health enhancement initiative (Project BRAVO). Substantive changes have been made to the service specific sections in the Licensing Regulations for this service to align licensing requirements with ACT service expectations. These changes are intended to ensure that providers licensed to provide ACT services adhere to a base level of fidelity to the ACT model.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

ACT: Assertive community treatment
CPRS: Certified peer recovery specialist
CSAC: Certified substance abuse counselor
DBHDS: Department of Behavioral Health and Developmental Services
DMAS: Department of Medical Assistance Services
ICT: Intensive community treatment
LMHP: Licensed mental health professional
LPN: Licensed professional nurse
PACT: Program of Assertive Community Treatment
QMHP: Qualified mental health professional
RN: Registered nurse

Statement of Final Agency Action

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 State Board voted on July 13, 2022, to initiate the final stage of the action titled "Amend the Licensing Regulations to align with enhanced behavioral health services to amend the Rules and Regulations for

Licensing Providers by the Department of Behavioral Health and Developmental Services (12VAC35-105), with no edits to the language from the proposed stage to the final stage.

Mandate and Impetus

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously reported information, include a specific statement to that effect.

The 2020 General Assembly, per Item 318.B. of the 2020 *Appropriation Act*, directed DBHDS to promulgate emergency regulations, to be effective within 280 days or less from the enactment of the *Act*, to ensure that licensing regulations support high quality community-based mental health services and align with the changes being made to the Medicaid behavioral health regulations. This regulatory action is being utilized to establish permanent regulations following the emergency regulations.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

Section 37.2-203 of the Code of Virginia authorizes the State Board of Behavioral Health and Developmental Services to adopt regulations that may be necessary to carry out the provisions of Title 37.2 of the Code of Virginia and other laws of the Commonwealth administered by the DBHDS Commissioner or the department. On July 15, 2020, the State Board adopted the emergency amendments to regulation 12VAC35-105 and initiated a notice of intended regulatory action for the standard permanent process. The State Board of Behavioral Health and Developmental Services voted to adopt a proposed stage regulatory action on July 28, 2021. The State Board of Behavioral Health and Developmental Services voted to adopt this final stage regulatory action on July 13, 2022.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

The purpose of this regulatory action is to align the DBHDS Licensing Regulations with ongoing interagency efforts to enhance Virginia's behavioral health services system. The changes in this regulatory action will ensure that DBHDS's regulations for behavioral health providers align with changes to Medicaid funded behavioral health services in the Commonwealth by eliminating licensing provisions that conflict with Medicaid service expectations and creating new licensed services for those newly funded services that cannot be nested under an existing DBHDS licensed service.

Substance

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 substantive provisions of this regulatory action include:

1) The creation of a service definition and license for Mental Health Intensive Outpatient Service;
2) Revised definition of Substance Abuse Intensive Outpatient Service;
3) The creation of ACT as a newly licensed service in place of the previously licensed PACT service. This includes modification of the licensing requirements to align with the ACT service model and ensure that providers licensed to provide ACT services meet a basic level of fidelity to the ACT model;
4) Removal of the provisions of the regulations related to intensive community treatment (ICT) as it will no longer be a licensed service.

The new services defined in this action will ensure that Virginia's licensing regulations align with and support the Commonwealth's initiatives to enhance behavioral healthcare in Virginia and support high quality community-based mental health services.

Issues

Identify the issues associated with the regulatory change, 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, include a specific statement to that effect.

Virginia's behavioral health system is undergoing a multi-phased, interagency process of enhancing the behavioral health services available in the Commonwealth. This process requires coordination between agencies with responsibilities for licensing, funding, and overseeing the delivery of behavioral health services in the Commonwealth. The primary advantages of this regulatory action to the public are: 1) ensuring that Virginians have access to a continuum of high quality behavioral health services, 2) ensuring that a base level of model fidelity is adhered to by providers of ACT, and 3) aligning DBHDS licensing regulations and Medicaid service expectations to ensure that the licensing and funding of behavioral health services are congruent.

The aligning of DBHDS and DMAS regulations regarding behavioral health enhancement initiatives will prove an advantage to the Commonwealth because a continuum of publicly funded, high quality, community-based behavioral health services will reduce the need for more costly inpatient hospitalization.

There are no known disadvantages to the public or the Commonwealth to these regulatory changes.

Requirements More Restrictive than Federal

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.

There are no identified requirements which are more restrictive than applicable federal requirements

Agencies, Localities, and Other Entities Particularly Affected

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously reported information, include a specific statement to that effect.

Other State Agencies Particularly Affected

The DMAS regulations and funding streams are complementary to these regulations and the licensed services they address.

Localities Particularly Affected

Many community services boards provide behavioral health services, including PACT and ICT, and will be affected similarly to private providers, but no locality will be particularly affected.

Other Entities Particularly Affected

Any person, entity or organization offering behavioral health services that is licensed by DBHDS will be affected.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

No public comment was receiving during the public comment period.

Detail of Changes Made Since the Previous Stage

*List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

No changes were made to the regulatory text since the previous stage was published in the Virginia Register of Regulations.

Detail of All Changes Proposed in this Regulatory Action

List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s)

*and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of updated requirements
20		Defines terms used within the Licensing Regulations including: "Intensive community treatment service" or "ICT" "Program of assertive community treatment" or "PACT" "Partial hospitalization" Substance Abuse Intensive Outpatient Service	Removes definition of Intensive community treatment service or "ICT" Removes definition of Program of assertive community treatment or "PACT" Removes definition of "Partial Hospitalization" Update definition of Substance Abuse Intensive Outpatient Service Adds new definitions for: • Assertive community treatment or "ACT." • Mental Health Intensive Outpatient Service.
30		Lists services for which providers may be licensed by DBHDS, including: Intensive community treatment (ICT) and Program of Assertive Community Treatment (PACT)	Adds "Mental health intensive outpatient service" as a DBHDS licensed service. Removes "Intensive community treatment (ICT)" and "Program of Assertive Community Treatment (PACT)" from list of licensed services, and replaces with "Assertive Community Treatment (ACT)"
1360		Defines admission and discharge criteria for Intensive Community Treatment (ICT) and Program of Assertive Community Treatment (PACT) providers	Changes Program of Assertive Community Treatment (PACT) to Assertive Community Treatment (ACT) Removes language related to ICT. Adds personality disorder and brain injury to the list of sole diagnoses that render an individual ineligible for ACT services. Updates the criteria for discharge. Makes the following non-substantive language changes: Replaces "substance addition or abuse" with "substance use disorder."

1370		Defines the minimum treatment team and staffing requirements for ICT and PACT teams • Requires ICT and PACT team leader to be a QMHP-A with at least three years' experience in the provision of mental health services to adults with serious mental illness. • Requires ICT teams to be staffed with at least one full time nurse, and PACT teams to be staffed with at least two full time nurses, at least one of whom shall be a Registered Nurse (RN). • Requires ICT and PACT teams to have one full-time vocational specialist and one full-time substance abuse specialist • Requires a peer specialist who is a QPPMH or QMHP-A who is or has been a recipient of mental health services for severe and persistent mental illness. • Requires a psychiatrist who is a physician who is board certified in psychiatry or who is board eligible in psychiatry and is licensed to practice medicine in Virginia • Requires each team to have a psychiatrist on staff, who must be a physician who is board certified in psychiatry or who is board eligible in psychiatry. • Defines minimum staffing capacity for ICT and PACT teams. PACT teams shall have at least 10 full-time equivalent clinical employees or contractors. And PACT and ICT teams must maintain a minimum staff to individual ratio of 1:10.	Removes references to PACT and ICT Creates separate treatment team and staffing requirements for ACT teams. Makes substantive changes to ACT team staffing requirements to align with ACT service requirements, including: • Requires ACT team leader to be a Licensed Mental Health Professional (LMHP), or a Registered Qualified Mental Health Professional-Adult (QMHP-A) if already employed by the employer as a team leader prior to July 1, 2020. • Differentiates nurse staffing requirements based on the size of the ACT Team. o Small ACT teams shall have at least one full-time nurse, who shall be either an RN or an LPN. o Medium ACT teams shall have at least one full time RN, and at least one additional full-time nurse, who shall be LPN's or RNs. o Large ACT teams shall have at least one full-time RN, and at least two additional full-time nurses who shall e LPNs or RNs. • Requires Vocational Specialist to be a registered QMHP with demonstrated expertise in vocational services through experience or education. • Requires ACT Co-occurring disorder specialist to be a LMHP, registered QMHP, or Certified Substance Abuse Specialist (CSAC) with training or experience working with adults with co-occurring serious mental illness and substance use disorder. • Requires a peer recovery specialist to be a Certified Peer

			Recovery Specialist (CPRS) or certify as a CPRS within the first year of employment. • Allows a Psychiatric Nurse Practitioner practicing within the scope of practice of a Psychiatric Nurse Practitioner to fill the psychiatrist position on an ACT team. • Requires generalist clinical staff as follows: o Small ACT teams shall have at least one generalist clinical staff; o Medium ACT teams shall have at least two generalist clinical staff; o Large ACT teams shall have at least three generalist clinical staff. • Defines minimum staff to individual ratios that ACT teams must maintain based on the size of the team and the team's caseload. • Requires ACT teams to have 24-hour responsibility for directly responding to psychiatric crises, including meeting the following criteria: o The team shall be available to individuals in crisis 245 hours per day, seven days per week, including in person when needed as determined by the team; o The team shall be the first-line crisis evaluator and responder for individuals serviced by the team; and o The team shall have access to the practical, individualized crisis plans developed to help them address crises for each individual receiving services.
1380		Defines minimum number of contacts that ICT and PACT teams must make with individuals receiving services, and requires face-to-face contact, or attempts to make face-to-face contact with individuals in accordance with the	• Removes references to ICT and PACT and replaces with ACT. • Language changes for clarity • Requires documentation of attempts to make contact with individuals

		individual's individualized services plan	
1390		Requires daily organizational meetings and progress notes be maintained by ICT and PACT teams	Removes references to ICT and PACT and replaces with ACT
1410		Defines minimum service requirements for ICT and PACT teams Providers shall document that the following services are provided consistent with the individual's assessment and ISP. 1. Ongoing assessment to ascertain the needs, strengths, and preferences of the individual; 2. Case management; 3. Nursing; 4. Support for wellness self-management, including the development and implementation of individual recovery plans, symptom assessment, and recovery education; 5. Psychopharmacological treatment, administration, and monitoring; 6. Substance abuse assessment and treatment for individuals with a co-occurring diagnosis of mental illness and substance abuse; 7. Individual supportive therapy; 8. Skills training in activities of daily living, social skills, interpersonal relationships, and leisure time; 9. Supportive in-home services; 10. Work-related services to help find and maintain employment; 11. Support for resuming education; 12. Support, psychoeducation, consultation, and skill-teaching to family members, and significant others; 13. Collaboration with families and assistance to individuals with children; 14. Direct support to help individuals secure and	Amends service requirements to align with ACT service expectations and philosophy. Providers shall document that the following services are provided consistent with the individual's assessment and ISP. 1. Ongoing assessment to ascertain the needs, strengths, and preferences of the individual; 2. Case management; 3. Nursing; 4. Support for wellness self-management, including the development and implementation of individual recovery plans, symptom assessment, and recovery education; 5. Psychopharmacological treatment, administration, and monitoring; 6. Co-occurring diagnosis substance use disorder services that are non-confrontational, trauma informed, person-centered, consider interactions of mental illness and substance use, and have goals determined by the individual; 7. Empirically supported interventions and psychotherapy; 8. Psychiatric rehabilitation to include skill-building, coaching, and access to necessary resources to help individuals with personal care, safety skills, money management skills, grocery shopping, cooking, food safety and storage, purchasing and caring for clothing, household maintenance and cleaning skills, social skills, and use of transportation and other community resources; 9. Work-related services to help find and maintain employment; 10. Support for resuming education; 11. Support, psychoeducation, consultation, and skill-teaching to family members, and significant others, and broader natural

		maintain decent, affordable housing that is integrated into the broader community and to obtain legal and advocacy services, financial support, money-management services, medical and dental services, transportation, and natural supports in the community; and 15. Mobile crisis assessment, interventions to prevent or resolve potential crises, and admission to and discharge from psychiatric hospitals.	support systems, which shall be directed exclusively to the well-being and benefit of the individual; 12. Collaboration with families and development of family and other natural supports; 13. Assistance in obtaining and maintaining safe, decent, and affordable housing that follows the individual's preferences in level of independence and location, consistent with an evidence based Supportive Housing Model. 14. Direct support to help individuals obtain legal and advocacy services, financial support, money-management services, medical and dental services, transportation, and natural supports in the community; and 15. Mobile Crisis assessment, interventions to prevent or resolve potential crises, and admission to and discharge from psychiatric hospitals. 16. Assistance in developing and maintaining natural supports and social relationships; 17. Medication education, assistance, and support; 18. Peer support services, such as coaching, mentoring, assistance with self-advocacy and self-direction, and modeling recovery practices.