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

Agency name	Department of Behavioral Health and Developmental Services
Virginia Administrative Code (VAC) Chapter citation(s)	12VAC35-46
VAC Chapter title(s)	Regulations for Children's Residential Facilities
Action title	Amend regulations to align with the requirements of the FFPSA
Date this document prepared	September 20, 2021

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 the subject matter, intent, and goals 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 or changes. If applicable, generally describe the existing regulation.

The Department of Behavioral Health and Developmental Services (DBHDS) was mandated by the 2021 General Assembly within [Item 318. D](#) of the 2021 Special Session 1 Appropriation Act to promulgate emergency regulations to amend the Regulations for Children's Residential Facilities [12VAC35-46] to align with the requirements of the federal [Family First Prevention Service Act \(FFPSA\)](#) for children's residential service providers who accept [Title IV-E funding](#) to meet the standards as qualified residential treatment programs (QRTPs). The department received input from the Department of Social Services (DSS) and the Department of Medical Assistance Services (DMAS) in the development of this action, the goal of which is to amend the regulations to align with the FFPSA to meet the standards of QRTPs.

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.

Department of Behavioral Health and Developmental Services – DBHDS

Department of Medical Assistance Services – DMAS

Department of Social Services – DSS

Family First Prevention Service Act – FFPSA

Qualified Residential Treatment Programs – QRTPs

State Board – State Board of Behavioral Health and Developmental Services

Mandate and Impetus (Necessity for Emergency)

Explain why this rulemaking is an emergency situation in accordance with § 2.2-4011 A and B of the Code of Virginia. In doing so, either:

- a) Indicate whether the Governor’s Office has already approved the use of emergency regulatory authority for this regulatory change.*
- b) Provide specific citations to Virginia statutory law, the appropriation act, federal law, or federal regulation that require that a regulation be effective in 280 days or less from its enactment.*

As required by § 2.2-4011, also describe the nature of the emergency and of the necessity for this regulatory change. In addition, delineate any potential issues that may need to be addressed as part of this regulatory change

The 2021 General Assembly mandated the State Board of Behavioral Health to promulgate emergency regulations to become effective within 280 days or less from the enactment of Item 318 D of the 2021 Special Session 1 Appropriation Act.

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 or Acts and 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.

The General Assembly mandated the State Board of Behavioral Health to promulgate emergency regulations to become effective within 280 days or less from the enactment of the 2021 Special Session 1 Appropriation Act (Chapter 552) that align with the requirements of the federal Family First Prevention Service Act in accordance with Item 318 D of the Appropriation Act. Section 37.2-203 of the Code of Virginia gives the State Board of Behavioral Health and Developmental Services the authority 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. The State Board of

Behavioral Health and Developmental Services voted to adopt this regulatory action on September 29, 2021.

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

The purpose of this regulatory action is to align DBHDS Regulations for Children’s Residential Facilities with the requirements of the federal Family First Prevention Service Act to require providers who accept [Title IV-E funding](#) to meet the standards as QRTPs. Providers who do not accept Title IV-E funding shall not be affected by this action.

FFPSA includes reforms to child welfare financing streams by providing prevention services to families of children who are at imminent risk of entering foster care. It seeks to underscore the importance of children growing up in families and seeks to avoid the traumatic experience of children being separated from their families and entering foster care. Specifically, federal reimbursement will be available for trauma-informed mental health services, substance use disorder treatment, and in-home parenting skills training to safely maintain in-home family placement. FFPSA also aims to improve the well-being of children already in foster care by safely reducing placement of children in non-family based settings (e.g. residential treatment programs), and instead increasing placement of children in the least restrictive, most family-based setting appropriate to their individual needs. FFPSA created a specific nonfamily-based placement type called a QRTP, along with a structure around placing children in these types of placements. QRTPs serve children with specific treatment needs who need short term placement out of the home. Federal funding for foster youth with specific treatment needs will only be available for nonfamily-based placements that qualify as a QRTP.

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.

This regulatory action amends Chapter 46 to align with the requirements of the federal FFPSA to require providers who accept Title IV-E funding to meet the standards as QRTPs. Providers who do not accept Title IV-E funding shall not be affected by this action. QRTPs are required to have a trauma-informed treatment model; have registered licensed nursing staff and licensed clinical staff who are available 24 hours a day and seven days a week; facilitate outreach to the family members of the child; facilitate participation of family members in the child’s treatment program; provide or arrange discharge planning and family-based aftercare support for at least six months post-discharge; be licensed; and accredited by an independent, not-for profit, accrediting organization approved by the US Secretary of Health and Human 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.

The primary advantage of the regulatory change is children's residential licensing regulations that incorporate best practices help to enhance support services for families, increase the number of children who remain at home, and build the capacity of communities to support children and families. This is an advantage to the public, the agency, and the Commonwealth. There are no known disadvantages to the agency or the Commonwealth. The primary disadvantage is that some providers may experience a financial burden in order to comply with the new regulations. However, providers have been aware for at least two years of the eventual changes brought in these regulations and providers that do not accept Title IV-E funding shall not be affected by this regulatory change.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

There are no viable alternatives to the regulatory action. The action is mandated by the General Assembly to bring the regulations into alignment with federal law.

Periodic Review and Small Business Impact Review Announcement

This NOIRA is not being used to announce a periodic review or a small business impact review.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

The Department of Behavioral Health and Developmental Services is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email, or fax to **Susan Puglisi, 1220 Bank Street, Richmond, Virginia 23129 Phone Number: 804-371-2709, email: susan.puglisi@dbhds.virginia.gov**. 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 not be held following the publication of the proposed stage of this regulatory action.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. 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. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the emergency regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
N/A	12VAC35-46—1260. <u>Qualified Residential Treatment Programs.</u>	None	<p>Intent: Adding the requirements of a Qualified Residential Treatment Program (QRTP).</p> <p>A qualified residential treatment program shall:</p> <ul style="list-style-type: none"> • Have a trauma-informed treatment model. • Have registered or licensed nursing staff and other clinical staff who are available 24 hours a day and 7 days a week. • Facilitate outreach to family members as appropriate. • Facilitate participation of family members in the child’s treatment program. • Provide or arrange discharge planning and family-based aftercare support for at least six months post-discharge. • Be licensed. • Be accredited by an independent, not-for profit accrediting organization approved by the US Secretary of Health and Human Services. <p>Impact: Compliance with the General Assembly mandate, alignment with federal law, enhancement of support services for families, providing</p>

			<p>assistance to allow children to remain at home, and build the capacity of communities to support children and families</p>
<p>N/A</p>	<p>12VAC35-46-1270. <u>Additional requirements for Q RTP placements for children within the custody of Social Services.</u></p>	<p>None</p>	<p>Intent: Adding the requirements of documentation of the need for placement in a Q RTP.</p> <p><i>The Q RTP shall coordinate with the VDSS, family, and others. Documentation shall be placed within the child's record at the Q RTP. This section does not apply to direct parental placements of children into the Q RTP that are made outside of the social services system.</i></p> <p>Impact: Compliance with the General Assembly mandate, alignment with federal law, enhancement of support services for families, providing assistance to allow children to remain at home, and build the capacity of communities to support children and families</p>