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Fast-Track Regulation Agency Background Document

Agency name	Department of Behavioral Health and Developmental Services
Virginia Administrative Code (VAC) Chapter citation(s)	12 VAC35-260
VAC Chapter title(s)	Certified Recovery Residences
Action title	Amendments to comply with Item 312 L.2. and Chapter 755 (HB277)
Date this document prepared	December 8, 2022; Updated with form 08/30/2023

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), 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.

Chapter 260 [12VAC35-260] was created through a fast track action in March 2020 in compliance with Chapter 220 of the 2019 Acts of Assembly ([HB2045](#)), which added a new section numbered [37.2-431.1](#) in the Code of Virginia creating an avenue for the certification of recovery residences through the Department of Behavioral Health and Developmental Services (DBHDS). That original regulatory action defined “recovery residences” and, as allowed by the enabling legislation, created a voluntary certification for residences that meet standards of credentialing entities specified by DBHDS. The two credentialing entities specified in the regulation are nationally recommended organizations that reportedly follow best practice standards for recovery. The legislation was developed through a stakeholder workgroup over a year and with broad community feedback that called for greater oversight for recovery housing in Virginia.

These new amendments to Chapter 260 are intended to comply with two actions by the 2022 Session of the General Assembly in [Chapter 0755](#) (House Bill 277) of the Acts of Assembly and [Item 312 L.2. of the Appropriation Act](#) to have DBHDS certify residences. Also, the *Appropriations Act* directed DBHDS to

monitor credentialed recovery homes for regulatory compliance and consult with the Virginia Association of Recovery Residences to keep the agency's public website's list of credentialed recovery homes up to date.”

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.

DBHDS – The Department of Behavioral Health and Developmental Services.
VARR – Virginia Association of Recovery Residences.

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 mandated amendments were approved by the State Board of Behavioral Health and Developmental Services at its meeting on December 7, 2022, as a fast track action.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

Consistent with Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process.

These amendments to Chapter 260 are intended to comply with two actions by the 2022 Session of the General Assembly in [Chapter 0755](#) (House Bill 277) and [Item 312 L.2. of the 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 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 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. These amendments to Chapter 260 are intended to comply with two actions by the 2022 Session of the General Assembly in [Chapter 0755](#) (House Bill 277) and [Item 312 L.2. of the Appropriation Act](#).

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 is intended to solve.

As reported in a May 2019 The National Council for Behavioral Health brief, Recovery Housing Issue Brief: Information for State Policymakers:

“Recovery housing” refers to safe, healthy, and substance-free living environments that support individuals in recovery from addiction. While recovery residences vary widely in structure, all are centered on peer support and a connection to services that promote long-term recovery. Recovery housing benefits individuals in recovery by reinforcing a substance-free lifestyle and providing direct connections to other peers in recovery and recovery services and supports.

Many residents live in recovery housing during and/or after outpatient addiction treatment. Length of stay is self-determined and can last for several months to years. Residents often share resources, give experiential advice about how to access health care and social services, find employment, budget and manage finances, handle legal problems, and build life skills. Many recovery homes are organized under the leadership of [a] house manager and require residents to participate in a recovery program, such as 12-step and other mutual aid groups.” (https://www.thenationalcouncil.org/wp-content/uploads/2017/05/Recovery-Housing-Issue-Brief_May-2017.pdf, as excerpted from the U.S. Department of Health and Human Services (HHS), Office of the Surgeon General (2016). Facing Addiction in America: The Surgeon General’s Report on Alcohol, Drugs, and Health. p.5-11. Washington, D.C.: HHS, Retrieved from: <https://addiction.surgeongeneral.gov/sites/default/files/surgeon-generals-report.pdf>)

While many recovery residences are well-run, a national effort has been growing to bring standards to how recovery residences are operated due to “unscrupulous actors running sober living homes who profit off the misery of their occupants.” (Governing Magazine, May 14, 2018. Sober Living Homes and the Regulation They Need. Stratman and Aronberg. Retrieved from: <https://www.governing.com/gov-institute/voices/col-regulation-sober-living-homes-recovery-residences-need.html>).

A stakeholder workgroup was convened in Virginia to receive input from subject matter experts across the state. The legislation developed through the workgroup with broad community feedback that called for greater accountability for recovery housing to ensure the health, safety, and welfare of individuals staying in recovery residences. A compromise was developed with stakeholders to provide departmental oversight to recovery housing without being overly burdensome to these ‘organic’ community-based organizations. Section 37.2-431.1 was codified requiring the promulgation of regulations adopted by the State Board to specify credentialing entities and the application process through DBHDS. Since Chapter 260 became effective in March 2020, certified recovery residences have been held to nationally recognized standards to ensure safety and recovery through effective peer support, mutual accountability, and clear social structures. Voluntary credentialing of recovery housing is intended to make it easier to locate recovery housing for individuals needing such housing and thus create a list of available houses to be utilized by courts, community services boards, individuals, and families.

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 2022 Session of the General Assembly specified in the *Appropriations Act* that DBHDS “shall monitor credentialed recovery homes for regulatory compliance and consult with the Virginia Association of Recovery Residences to keep the agency’s public website’s list of credentialed recovery homes up to date.”

In Chapter 755 of the 2022 Acts of Assembly, the General Assembly further required that all recovery residences be certified by DBHDS and that recovery residences, as a condition of such certification, comply with minimum square footage requirements related to beds and sleeping rooms established by the credentialing entity (VARR or Oxford House) or the Uniform Statewide Building Code, whichever is greater. Chapter 755 of the Acts of Assembly required every person who operates a recovery residence to disclose to potential residents its credentialing entity. If the credentialing entity is the National Alliance for Recovery Residences, the recovery residence is required to disclose the level of support provided by the recovery residence and, if the credentialing entity is Oxford House, Inc., the recovery residence is required to disclose that the recovery residence is self-governed and unstaffed. DBHDS must now include such information on the list of all recovery residences maintained on its website. Recovery residences were exempted from the provisions of the Virginia Landlord and Tenant Act.

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.

There are no identified disadvantages to the public or the Commonwealth in making these amendments. The amendments to the regulation will allow for individuals and families to have more understanding about the recovery options available

Certified recovery residences will continue to be held to nationally recognized standards to ensure safety and recovery through effective peer support, mutual accountability, and clear social structures. Voluntary credentialing of recovery housing and certification by DBHDS is intended to make it easier to locate recovery housing for individuals needing such housing and thus create a list of available houses to be utilized by courts, community services boards, individuals, and families.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.

There are no federal requirements for recovery residences. The National Association of Recovery Residences set national standards in 2011, and the two credentialing entities (VARR and Oxford House) named in the regulation are models identified by the U.S. Department of Health and Human Services Substance Abuse and Mental Health Services Administration (SAMHSA) (<https://www.samhsa.gov/homelessness-programs-resources/hpr-resources/affordable-housing-models-recovery>).

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

There are no other state agencies particularly affected.

Localities Particularly Affected

There are no localities particularly affected.

Other Entities Particularly Affected

There are no other entities particularly affected.

Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.

Impact on State Agencies

<i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources	N/A
<i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	N/A
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	N/A

Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

Projected costs, savings, fees or revenues resulting from the regulatory change.	Table 2
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Benefits the regulatory change is designed to produce.	Table 2
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Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	Tables 1a, 3 and 4
Agency's best estimate of the number of such entities that will be affected. 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.	Tables 1a, 3 and 4
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	Tables 1a, 3 and 4
Benefits the regulatory change is designed to produce.	Tables 1a, 3 and 4

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.

As these amendments are mandated by the General Assembly, there are no alternatives.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B of the Code of Virginia, 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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.

As these amendments were mandated by the General Assembly, there are no less stringent requirements, schedules, deadlines, compliance, reporting, consolidation, or simplification possible, including for small businesses.

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.

Consistent with § 2.2-4011 of the Code of Virginia, 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: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

DBHDS is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

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: Mark Blackwell, Director, DBHDS Office of Recovery Services, PO Box 1797, Richmond, Virginia, 23218-1797; mark.blackwell@dbhds.virginia.gov; fax (804) 371-6638. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

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 proposed 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
10		<p>"Certified recovery residence" means a recovery residence that has been certified by a credentialing entity and is on the certification list maintained by DBHDS.</p> <p>"Credentialing entity" means a nonprofit organization that develops and administers professional certification programs according to nationally recognized recovery housing standards.</p> <p>"DBHDS" means the Virginia Department of Behavioral Health and Developmental Services.</p> <p>"Recovery residence" means a housing facility that (i) provides alcohol-free and illicit-drug-free housing to individuals with substance abuse disorders and individuals with co-occurring mental illnesses and substance abuse disorders and (ii) does not include clinical treatment services.</p>	<ul style="list-style-type: none"> Removes one definition, adds another, and modifies two. All changes are to shift the 'certification' to DBHDS rather than with the 'credentialing entities.' There will be little to no impact from this change. <p>"Certified recovery residence" means a recovery residence that has been certified by a credentialing entity and is on the certification list maintained by DBHDS.</p> <p>"Credentialing entity" means a nonprofit organization that develops and administers professional certification <u>credentialing</u> programs according to nationally recognized recovery housing standards <u>of the National Alliance for Recovery Residences or standards endorsed by Oxford House, Inc.</u></p> <p>"DBHDS" means the Virginia Department of Behavioral Health and Developmental Services.</p> <p><u>"Level of support" means the level of support and structure that a recovery residence provides to residents, as specified in the standards of the National Alliance for Recovery Residences.</u></p> <p>"Recovery residence" means a housing facility that (i) <u>is certified by DBHDS in accordance with this chapter;</u> (ii) provides alcohol-free and illicit-drug-free housing to individuals with substance abuse disorders and individuals with co-occurring mental illnesses and substance abuse disorders and (ii) (iii) does not include clinical treatment services.</p>
20			<ul style="list-style-type: none"> Adds a new subsection B, moving some language from 30 into this section, and adding (in #3) General Assembly requirements about square footage. There will be little to no impact from these changes.

		<p>Any person, nonprofit organization, or business entity seeking to operate a certified recovery residence under this chapter shall for each location (i) meet the qualifications, policies, and practices established by a credentialing entity and (ii) be certified or accredited by or hold a charter from one of the following credentialing entities:</p> <ol style="list-style-type: none"> 1. The Virginia Association of Recovery Residences; or 2. Oxford House. 	<p><u>A. Any person, nonprofit organization, or business entity seeking to operate a certified recovery residence under this chapter shall for each location (i) meet the qualifications, policies, and practices of established by a credentialing entity and (ii) be certified or accredited hold a credential, accreditation, by or hold a charter from one of the following credentialing entities: 1. The the Virginia Association of Recovery Residences; or 2: Oxford House; and (ii) be certified by DBHDS.</u></p> <p><u>B. A certified recovery residence seeking to be certified by DBHDS shall:</u></p> <ol style="list-style-type: none"> 1. <u>Submit a completed application on a form provided by DBHDS;</u> 2. <u>Provide evidence of accreditation by, a charter from, or membership in a credentialing entity listed in this section; and</u> 3. <u>Provide evidence that the recovery residence complies with any minimum square footage requirements related to beds and sleeping rooms established by the credentialing entity or the square footage requirements set forth in § 36-105.4, whichever is greater.</u>
30		<p>List of certified recovery residences.</p> <p>A. DBHDS shall maintain a list of certified recovery residences on its website.</p> <p>B. A certified recovery residence seeking to be included on the certification list shall submit a completed application on a form provided by DBHDS.</p> <p>C. A certified recovery residence seeking to be included on the certification list shall provide evidence of accreditation or certification by, a charter from, or membership in a</p>	<ul style="list-style-type: none"> • Amends section title; adds new language per the legislative mandate for DBHDS to monitor compliance and to consult with the credentialing entities; strikes language in C that is moved to Section 20. There will be little to no impact from these changes. <p>List of certified recovery residences.</p> <p>A. DBHDS shall maintain a list of certified recovery residences on its website.</p> <p>B. A certified recovery residence seeking to be included on the certification list shall submit a completed application on a form provided by DBHDS <u>shall monitor recovery residences for regulatory compliance and shall consult with the credentialing entities to keep the list of recovery homes up to date.</u></p>

		<p>credentialing entity listed in 12VAC35-260-20.</p>	<p>C. A certified recovery residence seeking to be included on the certification list shall provide evidence of accreditation or certification by, a charter from, or membership in a credentialing entity listed in 12VAC35-260-20.</p>
<p>40</p>		<p>Restrictions and violations.</p> <p>A. No person shall advertise, represent, or otherwise imply to the public that a recovery residence or other housing facility is a certified recovery residence unless such recovery residence or other housing facility has been placed on the certification list by DBHDS in accordance with this chapter.</p> <p>B. Any recovery residence that fails to maintain accreditation or certification by, a charter from, or membership in a credentialing entity as required by this chapter shall be removed from the certification list.</p> <p>C. DBHDS may institute civil proceedings in the name of the Commonwealth to enjoin any person from violating the provisions of this chapter and to recover a civil penalty of at least \$200 but no more than \$1,000 for each violation. Such proceedings shall be brought in the general district or circuit court for the county or city in which the violation occurred or where the defendant resides. Civil penalties assessed under this section shall be paid into the Behavioral Health and Developmental Services Trust Fund established in § 37.2-318 of the Code of Virginia.</p>	<ul style="list-style-type: none"> Amend section title; amendments to make clear that certification is from DBHDS; and mandated language regarding disclosures. There will be little to no impact from these changes, except that the disclosures will help citizens seeking to reside in a recovery residence be fully informed of the living situation. <p><u>Disclosures, Restrictions restrictions, and violations.</u></p> <p>A. No person shall <u>operate a recovery residence or advertise, represent, or otherwise imply to the public that a recovery residence or other housing facility is a certified recovery residence by DBHDS unless such recovery residence or other housing facility has been placed on the certification list by DBHDS in accordance with this chapter received certification from DBHDS.</u></p> <p>B. Any recovery residence that fails to maintain <u>accreditation or certification by, a charter from, or membership in a credentialing entity the requirements for certification by DBHDS as required by this chapter shall have the certification revoked and be removed from the certification list.</u></p> <p>C. <u>Every recovery residence shall disclose to each prospective resident its credentialing entity. If the credentialing entity is the National Alliance for Recovery Residences, the recovery residence shall disclose the level of support provided by the recovery residence. If the credentialing entity is Oxford House, Inc., the recovery residence shall disclose that the recovery residence is self-governed and unstaffed.</u></p> <p><u>D.</u></p>
<p>FORMS</p>			<ul style="list-style-type: none"> Application Form updated to mirror Code and budget language.