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Periodic Review and Small Business Impact Review Report of Findings

Agency name	Department of Behavioral Health and Developmental Services
Virginia Administrative Code (VAC) Chapter citation(s)	12 VAC35-225
VAC Chapter title(s)	Requirements for Virginia's Early Intervention System
Date this document prepared	07/17/2020

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**.

Acronyms and Definitions

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

DBHDS – Virginia Department of Behavioral Health and Developmental Services.

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 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.

The Department originally promulgated the regulations under Emergency Regulatory Authority. The Department has the legal authority to promulgate these regulations under Virginia Code § 2.2-5304 and in

the Item 315 H.4 of Chapter 806 of the 2013 Virginia Acts of Assembly. This action is part of the triennial review process.

In addition, these regulations implement Part C of the Individuals with Disabilities Education Act at 20 U.S.C. § 1435(a) and at 34 C.F.R. Part 303 in Virginia.

Alternatives to Regulation

Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

There are no alternatives to this action in response to federal regulatory mandate.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

Commenter	Comment	Agency response
	It would be nice if Virginia would stop charging for EI services	Thank you for your comment. Any fees paid are based on the individual family's ability to pay. No one is denied services based on inability to pay. By collecting family fees and billing insurance, both public and private, Virginia is able to serve more children with developmental needs.
Christy Evanko	<p>The Virginia Association for Behavior Analysis Public Policy Committee suggests that the definition of Applied Behavior Analysis be added to these definitions of the Early Intervention regulations 12VAC35-225-20:</p> <p>Applied Behavior Analysis (ABA) - The design, implementation, and evaluation of environmental modifications using the principles and methods of behavior analysis to produce socially significant improvement in human behavior, including the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior. This service is tiered in that unlicensed persons typically deliver the intervention under the</p>	<p>Thank you. Applied Behavior Analysis (ABA) can be provided within the current regulatory category of Developmental Services. The Infant and Family Individualized Service Plan would include ABA as the modality for providing Developmental Services.</p> <p>The list of definitions in 12 VAC 35-225-20 defines terms used in the current regulations. ABA is not included as it is not specifically mentioned in the regulations. ABA services can be provided when the treatment team identifies ABA as the modality of treatment. The service would be provided within the scope of the Early Intervention service of Developmental Services and as long as the service provided is consistent with the practices of natural environments and coaching.</p>

	<p>supervision of a licensed assistant behavior analyst and/or licensed behavior analyst.</p> <p>While Licensed Behavior Analysts can currently provide some services under the umbrella of early intervention in Virginia, allowing the full practice of ABA for children with developmental disabilities under the age of three. There is a large body of research showing the efficacy and ultimately money-saving (over the lifetime) effects of ABA when used in early intervention for children with autism and other developmental disabilities.</p>	
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Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

The regulation meets the criteria set out in EO 14. The intent of the regulatory revisions is to clarify processes and inform stakeholders of information necessary to provide services to infants and toddlers in need of early intervention services, and their families. The regulations provide clarity for families and stakeholders about procedures for accessing services.

Decision

Explain the basis for the promulgating agency's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

The agency is retaining the regulation, with amendments. Since the regulations were initially promulgated, it was determined that further clarity was needed to specify that the Medicaid appeals process is different from the Early Intervention Part C dispute resolution process. Additionally, since the Department of Medical Assistance Services included Early Intervention Part C services within managed care, procedures for provider enrollment with Medicaid and obtaining parental consent for billing Medicaid and the managed care entities was added. The intent of the regulatory revisions is to clarify processes and inform stakeholders of information necessary to provide services to infants, toddlers, and their families.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (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. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

- 1) As long as there is a federal mandate, there is a continued need for the regulation.
 - 2) There were no complaints received concerning the regulation. The two comments had to do with fees for services and access to ABA services. In regard to fees, any fees paid are based on the individual family's ability to pay. No one is denied services based on inability to pay. By collecting family fees and billing insurance, both public and private, Virginia is able to serve more children with developmental needs. In regard to ABA services, they can be provided within the current regulatory category of Developmental Services. The Infant and Family Individualized Service Plan would include ABA as the modality for providing Developmental Services. ABA services can be provided when the treatment team identifies ABA as the modality of treatment.
 - 3) The regulation is straightforward in setting out a structural framework for DBHDS' designation as the state lead agency responsible for implementing the Virginia early intervention services system and ensuring compliance with federal requirements; establishing the structure of Virginia's early intervention system, including the duties and responsibilities of DBHDS, the coordinating council, and participating agencies; making clear that Virginia's early intervention system, the Infant and Toddler Connection of Virginia, must include the components required by Part C of the Individuals with Disabilities Education Act at 20 USC § 1435(a) and at 34 CFR Part 303.
 - 4) The regulation does not overlap, duplicate, or conflict with federal or state law or regulation. It puts in place the requirements of federal regulation.
 - 5) The regulation most recently underwent periodic review in January 2016. Technology, economic conditions, or other factors have not changed in the area affected by the regulation. The changes in this action are clarifications of current practice and do not require providers to change their practice. This action will minimize questions that a provider might have about documenting consent or the agency that should handle dispute resolution. Therefore, the changes are expected to be helpful to providers.
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