COMMONWEALTH of VIRGINIA

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

DRAFT MEETING AGENDA

Tuesday, October 3 & Wednesday October 4, 2017

Williamsburg Lodge, President Jefferson Board Room
310 S England St, Williamsburg, VA 23185

Tour

Tuesday October 3, 2017 4:30 p.m. – 6:00 p.m.

Eastern State Hospital, 4601 Ironbound Road
Williamsburg VA 23188-2652

4:30 – 6:00 p.m.	**Tour**	*(Board Members Only)*

Regular Meeting

Wednesday October 4, 2017 9:00 a.m.

Williamsburg Lodge, President Jefferson Board Room
310 S England St, Williamsburg, VA 23185

1.	9:00	**Call to Order and Introductions** **Approval of October 4, 2017 Agenda** ➢ *Action Required*	Paula Mitchell *Chair*	
2.	9:10	**Approval of Draft Minutes** **Regular Meeting, July 11-12, 2017** ➢ *Action Required*	Paula Mitchell *Chair*	
3.	9:20	**Public Comment** (*3 minute limit per speaker*)		
4.	9:30	**Hospital Census and Extraordinary Barrier List (EBL)**	Daniel Herr *Assistant Commissioner of Behavioral Health Services*	
5.	10:10	**Commissioner's Report**	Jack Barber, M.D. *Interim-Commissioner*	
6.	10:50	**Regulatory Actions**: **A. General Update – Matrix**	Ruth Anne Walker *Administrative and Regulatory*	

		B. Regulatory Action	*Coordinator, Division of Quality Management and Development*	
7.	11:30	**Lunch: Join VACSB for buffet lunch and speaker Ron Manderscheid**		
8.	1:30	**Workforce Development Challenges and Opportunities**	India Sue Ridout *Co-Director* *Human Resources Development & Management Office, DBHDS* Patricia Bullion *Workforce Development Manager, DBHDS*	
9.	2:15	**Office of Recovery Services Update**	Becky Sterling *Director, Office of Recovery Services*	
10.	2:45	**Miscellaneous** A. Board Liaison Reports B. 2018 Meeting Dates	Paula Mitchell *Chair*	
11.	3:15	**Next Meeting Information**	Will Frank *Director, Legislative Affairs*	
12.	3:30	**Adjournment**	Paula Mitchell *Chair*	

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES
DRAFT MEETING MINUTES
July 12, 2017
DBHDS Central State Office, 13th Floor Main Conference Room,
Jefferson Building 1220 Bank Street, Richmond, VA

Wednesday July 12, 2017	**REGULAR MEETING**
Members Present	Paula N. Mitchell **Chair**, The Hon. Amelia Ross-Hammond, Ph.D., Sandra Price-Stroble, Elizabeth Hilscher, Jack Bruggeman, Jennifer Spangler
Members Absent	Calendria Jones, Moira Mazzi
Staff Present	Will Frank, Legislative Affairs Director Holly Mortlock, Policy Director Heidi Dix, Assistant Commissioner for Policy and Public Affairs
Interim Commissioner's Report	The Interim Commissioner's Report was provided by Chief Deputy Kathy Drumwright. The report included information pertaining to the financial realignment study and the main areas of focus that will be included in the report. DBHDS is looking at other states including Georgia, Ohio, North Carolina, and others. DBHDS is seeking feedback from national consultants on their proposals. The report is due December 1. Members asked questions. She also discussed implementation of the waiver management system. Some of the concern is around certain CMS reporting requirements involving integrating electronic health records (EHRs) with the waiver management system which must be done by June 30, 2018. This effort will be necessary in order to utilize EHR in development of the individual service plans. She also discussed the data warehouse and that DBHDS is exploring opportunities to align DBHDS data with sister agencies to minimize efforts and leverage more data.
Call to Order and Introductions	At 9:00 a.m. Chair Paula Mitchell called the meeting to order and called for introductions of those present.
Approval of July 12 Agenda	The Board unanimously adopted the July 12, meeting agenda.

Officer Elections

Beth Hilscher, Chair of the nominating committee presented the slate of candidates.
Paula Mitchell for Chair
Board unanimously approved

Amelia Ross-Hammond for Vice Chair
The Board unanimously approved.

Beth Hilscher moved to accept minutes and Amelia Ross-Hammond seconded the motion. The Board unanimously approved.

Liaison Assignments

The Committee discussed liaison assignments and strategies for coverage. Amelia Ross-Hammond, Jack Bruggeman, and Paula Mitchell offered liaison updates.

Public Comment

The Chair called for public comments. Bruce Cruzer, Mental Health America Virginia offered comments to the Board regarding MHA and MHAV efforts in Virginia.

Regulatory Update

Ruth Anne Walker, DBHDS Regulatory Coordinator provided an update on the status of DBHDS regulatory actions. Board approval was requested to initiate periodic review on the following items:

- 12VAC35-12 Public Participation Guidelines
- 12VAC 35-200 Regulations for Respite and Emergency Care Admission to Mental Retardation Facilities
- 12 VAC 35-210 Regulations to Govern Temporary Leave from State Mental Health and Mental Retardation Facilities

Amelia Ross-Hammond motioned and Jennifer Spangler seconded. The Board unanimously approved.

Ruth Anne Walker reviewed the proposed plan for Board regulatory review. Paula Mitchell requested motion to endorse the plan for regulatory review, including review of Peer Recovery Specialist regulations. Amelia Ross Hammond motioned and Jennifer Spangler seconded. The Board unanimously approved.

State Human Rights Committee

Deb Lochart provided an overview of the Virginia Human Rights System. She provided updates on system movement including use of data to drive system and make changes. The presentation also included information pertaining to the number of reports and regional breakdown. Ms. Lochart fielded questions and comments from the Board members.

Paula Mitchell requested a motion for approval of the annual report. Elizabeth Hilscher motioned and Jack Bruggeman seconded the motion. The Board unanimously approved.

The Board unanimously approved the recommendations.

Lunch	The Committee recessed for lunch.
Service Quality Process Management (SPQM) Presentation	Stacy Gill, Director of Adult Community Behavioral Health and Allen Wass, DBHDS Data Architect provided a presentation on SQPM. DBHDS learned about SQPM resource through consultation with David Lloyd, national consultant for Same Day Access.
HB1426 Alternative Transportation Workgroup	Will Frank reported on the DBHDS/DCJS study on the Alternative Transportation study required by HB 1426. Members asked questions about logistics and costs.
Committee Reports	
Policy Development & Evaluation	Sandra Price-Stroble and Holly Mortlock provided an update from the Policy Development and Evaluation Committee. Sandra presented Policy 4023 Housing Supports for consideration for approval. The Board unanimously accepted and approved changes.
Budget	Will Frank provided an update from the Planning and Budget Committee, including the Board schedule, meeting plans, and letter to the Governor regarding budget priorities.
Capital Budget Submissions	Marshall Wilson, Director of the Office of Architecture and Engineering presented to the Board on DBHDS Capital budget requests, including Eastern State Hospital, and fielded questions from the Board members.
Miscellaneous Board Letter to the Governor	Will Frank led the discussion on a draft proposal letter to the Governor for the Board's budget recommendations and priorities. Key areas discussed were developing more robust community based services, housing, and Eastern State Hospital.
VACSB Update	Jennifer Faison, Executive Director of VACSB provided an update on the implementation of STEP-Virginia services including Same Day Access and Primary Care Services. VACSB is concerned that while all ten STEP-Virginia services are required in the Code of Virginia, which will cost $220 million to implement. Thus far, the General Assembly has appropriated $4.7 million for Same Day Access. VACSB is working closely with DMAS on the behavioral health carve-in into managed care. Jennifer discussed CSB models of care integration, including one that utilized peer recovery specialists to take individuals to primary care appointments. This has produced significant outcomes.
Next Meeting Information	The next meeting will be October 11, 2017 in Williamsburg, VA.
Adjournment	Having no further business, the meeting was adjourned at 3:25pm.

REGULATORY ACTIVITY STATUS REPORT: OCTOBER 2017 (REVISED 09/18/17)

Board **STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES**

VAC CITATION	CHAPTER TITLE (FULL TITLE)	REGULATIONS IN PROCESS			LAST ACTIVITY	LAST PERIODIC REVIEW*
		PURPOSE	STAGE	STATUS		
12 VAC 35- 12	**Public Participation Guidelines**	To facilitate public involvement in the regulatory process	***Result of Periodic Review***	• **Action Requested: Initiate fast track.** (see Reg. Item II, VI)	08/31/2009	7/18/2017
12 VAC 35-105 **Section 925 B.**	**Licensing-Adult** (Rules and Regulations for Licensing Facilities and Providers of Mental Health, Mental Retardation and Substance Abuse Services)	To update the existing regulation to reflect changes to state law. By deleting all language in Section 925 B., the remaining language would simply cross-reference to § 37.2-406.	**Fast-Track**	• **Current:** Becomes final October 6. • No action requested.	11/07/2011	05/03/2013
12 VAC 35-105	***Licensing-Adult** (Rules and Regulations for Licensing Facilities and Providers of Mental Health, Mental Retardation and Substance Abuse Services)*	*In accordance with the CMS Final Rule and the Settlement Agreement: clarifications to requirements for the health, safety, care and treatment for adults who receive services from providers of residential services.*	*Not yet filed: Emergency/ NOIRA*	• ***Current:** Latest revision to OAG July 7, 2017.*	*11/07/2011*	*05/03/2013*
12 VAC 35-105 **Certain sections.**	**Licensing-Adult** (Rules and Regulations for Licensing Facilities and Providers of Mental Health, Mental Retardation and Substance Abuse Services)	In accordance with Chapter 136 of the 2017 General Assembly to include OTs and OTAs as QMHPs.	*Not yet filed: Emergency*	• **Action Requested: Initiate emergency action.** (See Reg. Item IV; **coming as an addendum to the packet**)	11/07/2011	05/03/2013
12 VAC 35-115 **Section 30 and 105.**	**Human Rights** (Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Behavioral Health and Developmental Services)	To update the existing regulation by adding LBAs to the definition of 'Licensed Professional' in relation to 12 VAC35-115-105 (B and C) only.	***Fast-Track***	• **Action Requested: Initiate fast track.** (See Reg. Item V.) [Permanent revised became effective on February 9, 2017.]	02/09/2017	02/09/2017
12 VAC 35-190	**Regulations Establishing Procedures for Voluntarily Admitting Persons Who Are Mentally Retarded to State Mental Retardation Facilities**	To clearly articulate requirements and actions required to admit a person to a training center; define due process protections afforded to persons who are being admitted and to their families.	*Not yet filed: Fast Track as the result of a Periodic Review*	• **Current:** No action requested; expect December action. (See Reg. Item II)	07/20/2009	7/18/2017

12 VAC 35-200	**Regulations for Respite and Emergency Care Admission to Mental Retardation Facilities**	To clearly articulate requirements required to access emergency services and respite care in a training center.	*Not yet filed: Fast Track as the result of a Periodic Review*	• **Current:** No action requested; expect December action. (See Reg. Item II)	08/17/2009	7/18/2017
12 VAC 35-210	**Regulations to Govern Temporary Leave from State Mental Health and Mental Retardation Facilities**	To establish the general process and requirements related to temporary leave from state facilities, including the conditions for granting leave.	*Not yet filed: Fast Track as the result of a Periodic Review*	• **Current:** No action requested; expect December action. (See Reg. Item II)	11/1/2011	7/18/2017
12VAC35-250	**Peer Recovery Specialist Certification**	To establish certification requirements for peer recovery specialists (Item 311.B. of the *2016 Appropriation Act*).	NOIRA *to Proposed*	• **Current:** Emergency effective on May 12, 2017. Proposed draft receiving DPB review. • No action requested. Hearing to be held once proposed is published. (See Reg. Item III)	05/12/2017	--

*Shows the last time the Periodic Review feature on Town Hall was used for this regulation. A comprehensive periodic review may also have been included during other standard regulatory actions.

COMMONWEALTH of VIRGINIA

JACK BARBER, M.D.
INTERIM COMMISSIONER

DEPARTMENT OF

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MEMORANDUM

To: Members, State Board of Behavioral Health and Developmental Services

From: Ruth Anne Walker, Regulatory Coordinator

Date: September 20, 2017

Re: Regulatory Package

I. Required Periodic Reviews (http://townhall.virginia.gov/UM/chartperiodicreview.pdf)

Background: Existing regulations must be examined at least every four years to review statutory authority and assure that the regulations do not exceed the Board's statutory authority. Investigation should be conducted for any alternatives to the regulation and any need to modify the regulation to meet current needs.

Purpose: Two regulations are submitted to the Board for consideration for review. One pertains to conducting or authorizing human research in which individuals participate as human subjects; the other is the regulation for DBHDS licensed providers of behavioral health and developmental services.

Action Requested: Direct that a periodic review is initiated for the following regulations.

VAC Citation	Title	Last Review
12 VAC 35-105	Rules and Regulations For Licensing Providers by the Department of Behavioral Health and Developmental Services	05/03/2013
12 VAC 35-180	Regulations to Assure the Protection of Participants in Human Research	12/5/2012

Next Steps:
If approved, staff initiates the periodic review. At the conclusion of the 21-day comment period, staff develops recommended Board action on each of the regulations, for consideration at the December meeting. The choices for action are:
A. Propose to retain the regulation in its current form.
B. Propose to amend or abolish the regulation. (Notice of Intended Regulatory Action)
C. Propose to amend the regulation through an exempt action.

II. Update: Periodic Reviews Approved in July

No comments were received on the periodic reviews. Staff edits are expected to update language to mirror language in the Code of Virginia, the Human Rights Regulations (Chapter 115), or current practice.

VAC Citation	Title	Recommendation	Next Step
12 VAC 35-12	**Public Participation Guidelines *(NOTE: See Reg. Item VI.)***	**Amend**	**Action requested on the revised draft for fast track**
12 VAC 35-190	Regulations Establishing Procedures for Voluntarily Admitting Persons Who Are Mentally Retarded to State Mental Retardation Facilities	Amend	OAG informal review; post for comment; request December action
12 VAC 35-200	Regulations for Respite and Emergency Care Admission to Mental Retardation Facilities	Amend	"
12 VAC 35-210	Regulations to Govern Temporary Leave from State Mental Health and Mental Retardation Facilities	Amend	"

III. Update: Ch. 250: Peer Recovery Specialists

Background: 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. The effective dates for the emergency regulation are May 12, 2017, through November 11, 2018.

The public comment period for the NOIRA began on May 29, 2017, and closed on June 28, 2017. On July 12, 2017, the State Board voted to approve a draft and initiated the proposed stage of the standard permanent regulatory process. The proposed draft regulation was certified by the Office of the Attorney General (OAG) and moved to the Department of Planning and Budget (DPB) on August 21, 2017, for the 45-day review period.

Purpose: 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 support specialists.

Action Requested: No action is requested at this time.

VAC Citation	Title	Last Activity	Date
12 VAC 35-250	Peer Recovery Specialists	DPB Review	08/21/2017

Next Steps: (http://townhall.virginia.gov/UM/chartstandardstate.pdf)

- Once the regulation is approved by the Secretary's and Governor's Offices, staff initiates the proposed stage and the State Board holds a public hearing.

IV. Ch. 105: QMHPs (http://townhall.virginia.gov/UM/chartemergencystate.pdf)

*The **emergency** draft of certain sections of the Licensing Regulation will be sent as an addendum to the packet. Portions of this action come under the same authority as the legislation with the peer recovery specialist regulation. As with the peers, the legislation also requires DBHDS and DHP to adopt regulations relating to qualified mental health professionals.*

V. Ch. 115: LBAs (http://townhall.virginia.gov/UM/chartfasttrackstate.pdf)

Background: The Human Rights Regulations received extensive revisions to improve the ability of the Office of Human Rights to perform its Code mandated responsibilities and maximize resources in a manner that promotes the vision of recovery, self-determination, empowerment, and community integration for individuals receiving services. These permanent revisions became effective on February 9, 2017.

Purpose: During the rollout of the regulations, an inadvertent error was discovered in 12 VAC35-115-105(B) (Behavioral Treatment Plans) that could create a barrier to individuals receiving services. This subsection allows providers to use individualized restrictions such as restraint or time out in a behavioral treatment plan to address challenging behaviors that present an immediate danger to the individual or others, but only after a licensed professional has conducted a detailed and systematic assessment of the behavior and the situations in which the behavior occurs.

The Human Rights Regulations defines “licensed professional” as ‘a licensed physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, licensed or certified substance abuse treatment practitioner, or licensed psychiatric nurse practitioner.’ The purpose of this action is to add licensed behavior analysts (LBAs) to those professionals who can develop and implement behavioral treatment plans, thus increasing the number of those professionals available to develop the plans and removing the error.

NOTE: A chart of comments received and DBHDS response to the comments will be included in the addendum to come, with Reg. Item IV.

Action Requested: Approve the attached draft regulation and initiate a fast track action.

Next Steps: If approved, staff initiates the fast track process.

VI. Ch. 12: Public Participation Guidelines

Background: Section 2.2-4007.02 of the Code of Virginia requires all non-exempt agencies to promulgate public participation guidelines (PPGs) in order to facilitate public involvement in the regulatory process.

Chapter 12 promotes public involvement in the development, amendment, or repeal of the regulations of the State Board and the Department. This action is the result of a periodic review; the last review was in 2009. No comments were received during the review.

Purpose: The proposed amendments merely conform the agency's Public Participation Guidelines regulation to Chapter 599 of the 2017 Acts of Assembly, as well as §§ 37.2-203 (regarding the Substance Abuse Services Council) and 2.2-4007.02 (regarding the presence of counsel or other representative with a citizen when giving public comment) of the Code of Virginia.

Action Requested: Approve the attached draft regulation and initiate a fast track action.

VII. Update: Regulatory Plan: October 2017 – December 2018

Background: There are 13 BHDS regulations. Currently, four regulations are due for periodic review; four are in the decision-making process following review. The regulatory plan for the next year addresses the required periodic reviews and shows the forward movement of all known regulatory action items. At the July 12, 2017, meeting, the State Board endorsed the plan intended to give clarity of expectations for State Board meeting agenda items. An updated handout of a chart describing the plan by activity at each board meeting will be provided at the meeting.

Cc: Jack Barber, MD, Interim Commissioner
Kathy Drumwright, Deputy Commissioner
Dev Nair, Ph.D., Assistant Commissioner for Quality Management and Development

Regulatory Item IV. Ch. 105 PROPOSED EMERGENCY DRAFT

Regulatory Item IV:
*The **emergency** draft of certain sections of the Licensing Regulation regarding QMHPs and OTs will be sent as an addendum to this packet.*

This regulatory action is brought under the emergency process to comply with Chapters 136 and 418 of the 2017 Acts of Assembly regarding who shall be included in the definitions of qualified mental health professionals, qualified mental retardation professionals, and qualified paraprofessionals in mental health. The State Board, in Chapter 136, is required to include occupational therapists (OTs) and occupational therapy assistants (OTAs) in certain definitions of the above named professional categories, and to establish corresponding educational and clinical experience for OTs and OTAs that are substantially equivalent to comparable professionals listed in the current licensing regulations.

Certain definitions are deferred, in accordance with Chapter 418, to the Department of Health Professions' Board of Counseling (18VAC115-80).As with the peers, the legislation also requires DBHDS and DHP to adopt regulations relating to qualified mental health professionals.

Regulatory Item V. Ch.115 – Behavioral Treatment Plans

townhall.virginia.gov

Fast-Track Regulation
Agency Background Document

Agency name	Department of Behavioral Health and Developmental Services
Virginia Administrative Code (VAC) citation(s)	12 VAC35-115
Regulation title(s)	Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Behavioral Health and Developmental Services ("Human Rights Regulations")
Action title	Behavioral Treatment Plans
Date this document prepared	September 18, 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.

The Human Rights Regulations received extensive revisions to improve the ability of the Office of Human Rights to perform its Code mandated responsibilities and maximize resources in a manner that promotes the vision of recovery, self-determination, empowerment, and community integration for individuals receiving services. These revisions became effective on February 9, 2017.

During the rollout of the regulations, an inadvertent error was discovered in 12 VAC35-115-105(B) (Behavioral Treatment Plans) that could create a barrier to individuals receiving services. This subsection allows providers to use individualized restrictions such as restraint or time out in a behavioral treatment plan to address challenging behaviors that present an immediate danger to the individual or others, but only after a licensed professional has conducted a detailed and systematic assessment of the behavior and the situations in which the behavior occurs.

Regulatory Item V. Ch.115 – Behavioral Treatment Plans

The Human Rights Regulations defines "licensed professional" as '*a licensed physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, licensed or certified substance abuse treatment practitioner, or licensed psychiatric nurse practitioner.*'

This action will:

- Amend a definition:

  "Independent review committee" means a committee appointed or accessed by a provider to review and approve the clinical efficacy of the provider's behavioral treatment plans and associated data collection procedures. An independent review committee shall be composed of professionals with training and experience in ~~applied~~ behavioral analysis and interventions who are not involved in the development of the plan or directly providing services to the individual.

- Amend language in subsections B and C of 12VAC35-115-105 to state:

  B. Providers may use individualized restrictions such as restraint or time out in a behavioral treatment plan to address challenging behaviors that present an immediate danger to the individual or others, but only after a licensed professional or licensed behavior analyst or board certified behavior analyst has conducted a detailed and systematic assessment of the behavior and the situations in which the behavior occurs. Providers shall document in the individual's services record that the lack of success or probable success of less restrictive procedures attempted or considered, and the risks associated with not treating the behavior, are greater than any risks associated with the use of the proposed restrictions.

  C. Providers shall develop any behavioral treatment plan according to their policies and procedures, which shall ensure that:
  1. Behavioral treatment plans are initiated, developed, carried out, and monitored by professionals who are qualified by expertise, training, education, or credentials to do so;
  2. Behavioral treatment plans include nonrestrictive procedures and environmental modifications that address the targeted behavior; and
  3. Behavioral treatment plans involving the use of restraint or timeout are submitted to an independent review committee, prior to implementation, for review and approval of the technical adequacy of the plan and data collection procedures.

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.

"DBHDS" means the Department of Behavioral Health and Developmental Services.
"LBA" means a Licensed Behavior Analyst.
"State Board" means the State Board of Behavioral Health and Developmental Services.

Statement of final agency action

Please 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 correction to the Human Rights Regulations was approved at the October 4, 2017, meeting of the State Board as a fast track action.

Regulatory Item V. Ch.115 – Behavioral Treatment Plans

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.

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.

LBAs are one of the main professions providing behavioral services in Virginia. Currently, there is a six-month waiting list for behavioral plan development. Without the amendment to the language, it will be more difficult for individuals to have access to behavioral services.

Rationale for using fast-track process

Please explain the rationale for using the fast-track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

These amendments are noncontroversial. LBAs have been a licensed profession in Virginia since the 2012 General Assembly established the profession (2012 Acts of Assembly, Chapter 3) and since then, LBAs have been active in the DBHDS system.

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.

These amendments will enhance protection of rights for individuals in the system by allowing the most appropriately trained professionals (subject matter experts) to develop and implement behavioral treatment plans. This amendment will increase the number of those professionals available to develop the plans.

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.

There is no identified disadvantage to the public or the Commonwealth in making this change.

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.

This is not more restrictive than applicable federal standards.

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.

No locality is particularly affected by this action.

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.

This will facilitate more successful living options for individuals with providers in the community by providing access to additional subject matter experts to prepare behavioral treatment plans for individuals with complex behavioral needs.

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	There is no additional cost to implement and

enforce the proposed regulation, including: **a) fund source / fund detail; and** **b) a delineation of one-time versus on-going expenditures**	enforce the amendment.
Projected cost of the new regulations or changes to existing regulations on localities.	There is no additional cost on localities as a result of these changes.
Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.	Individuals receiving or needing services and their families; providers licensed by DBHDS; LBAs; all professionals listed in the definition of "licensed professional" who conduct behavioral treatment plans.
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.	There are approximately 502 providers utilizing over 800 behavioral treatment plans. There is a six-month waiting list for behavioral plan development. Individuals consistently report that this is a service that they have difficulty in accessing due to the limited number of appropriate licensed professionals.
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 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.**	There is no additional administrative cost for individuals, businesses or other entities.
Beneficial impact the regulation is designed to produce.	By individuals having these plans, there will be less interruption of services or crisis events. This is better for the individuals, their families, and the community.

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 is no other alternative to the regulatory action.

Public participation notice

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.

Periodic review and small business impact review report of findings

If this fast-track is the result of a periodic review/small business impact review, use this form to report the agency's findings. Please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review and (2) 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 the 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.

This action is not the result of a periodic or small business impact review.

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.

This amendment will be a positive impact on families because the family members with disabilities in need of these behavioral plans can receive them more promptly.

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.

For changes to existing regulation(s), please use the following chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements

Regulatory Item V. Ch.115 – Behavioral Treatment Plans

12VAC35-115-30. Definitions.		"Independent review committee" means a committee appointed or accessed by a provider to review and approve the clinical efficacy of the provider's behavioral treatment plans and associated data collection procedures. **An independent review committee shall be composed of professionals with training and experience in applied behavioral analyses** who are not involved in the development of the plan or directly providing services to the individual.	• This action will add and replace language to this definition: '… An independent review committee shall be composed of professionals with training and experience in ~~applied~~ behavioral analysis and interventions…' The term "applied behavioral analysis" was confusing as it can be interpreted to mean a specific professional designation.
12 VAC35-115-105. B. Behavioral Treatment Plans		"B. Providers may use individualized restrictions such as restraint or time out in a behavioral treatment plan to address challenging behaviors that present an immediate danger to the individual or others, **but only after a licensed professional** has conducted a detailed and systematic assessment of the behavior and the situations in which the behavior occurs. Providers shall document in the individual's services record that the lack of success or probable success of less restrictive procedures attempted or considered, and the risks associated with not treating the behavior, are greater than any risks associated with the use of the proposed restrictions."	Subsection B. • Add: 'but only after a licensed professional or licensed behavior analyst or board certified behavior analyst has conducted a detailed and systematic assessment of the behavior…...' This amendment allows the most appropriately trained professionals (subject matter experts) to develop and implement behavioral treatment plans, and will increase the number of those professionals available to develop the plans.
12 VAC35-115-105. C. Behavioral Treatment Plans		Behavioral treatment plans **are submitted to an independent review committee**, prior to implementation, for review and approval of the technical adequacy of the plan and data collection procedures.	Subsection C.3. • Insert: '3. Behavioral treatment plans involving the use of restraint or timeout are submitted to an independent review committee, prior to implementation, for review and approval of the technical adequacy of the plan and data collection procedures.' This addition clarifies that **only** behavioral treatment plans involving the use of restraint or timeout are submitted to an independent review committee; all other behavioral treatment plans are not submitted to the committee.

Regulatory Item V. Ch.115 – Behavioral Treatment Plans

CHAPTER 115
REGULATIONS TO ASSURE THE RIGHTS OF INDIVIDUALS RECEIVING SERVICES FROM PROVIDERS LICENSED, FUNDED, OR OPERATED BY THE DEPARTMENT OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Part I
General Provisions

12VAC35-115-10. Authority and applicability.

A. The Code of Virginia authorizes these regulations to further define and protect the rights of individuals receiving services from providers of mental health, developmental, or substance abuse services in Virginia. This chapter requires providers of services to take specific actions to protect the rights of each individual. This chapter establishes remedies when rights are violated or are in dispute and provides a structure for support of these rights.

B. Providers subject to this chapter include:

1. Facilities operated by the department under Chapters 3 (§ 37.2-300 et seq.) and 7 (§ 37.2-700 et seq.) of Title 37.2 of the Code of Virginia;

2. Sexually violent predator programs established under § 37.2-909 of the Code of Virginia;

3. Community services boards that provide services under Chapter 5 (§ 37.2-500 et seq.) of Title 37.2 of the Code of Virginia;

4. Behavioral health authorities that provide services under Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia;

5. Public or private providers that operate programs or facilities licensed by the department under Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2 of the Code of Virginia except those operated by the Department of Corrections; and

6. Any other providers receiving funding from the department. Providers of services under Part C of the Individuals with Disabilities Education Act (IDEA), 20 USC §§ 1431-1444, that are subject to this chapter solely by receipt of Part C funds from or through the department shall comply with all applicable IDEA regulations found in 34 CFR Part 303 in lieu of this chapter.

C. Unless otherwise provided by law, this chapter applies to all individuals who are receiving services from a public or private provider of services operated, licensed, or funded by the Department of Behavioral Health and Developmental Services, except those operated by the Department of Corrections.

D. This chapter applies to individuals under forensic status and individuals committed to the custody of the department as sexually violent predators, except to the extent that the commissioner may determine this chapter is not applicable to them. The exemption shall be in writing and based solely on the need to protect individuals receiving services, employees, or the general public. The commissioner shall give the State Human Rights Committee (SHRC) chairperson prior notice of all exemptions and provide the written exemption to the SHRC for its information. These exemptions shall be time limited and services shall not be compromised.

12VAC35-115-30. Definitions.

The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

"Abuse" means any act or failure to act by an employee or other person responsible for the care of an individual in a facility or program operated, licensed, or funded by the department, excluding those operated by the Department of Corrections, that was performed or was failed to be performed knowingly, recklessly, or intentionally, and that caused or might have caused

physical or psychological harm, injury, or death to a person receiving care or treatment for mental illness, intellectual disability, or substance abuse. Examples of abuse include acts such as:

1. Rape, sexual assault, or other criminal sexual behavior;

2. Assault or battery;

3. Use of language that demeans, threatens, intimidates, or humiliates the person;

4. Misuse or misappropriation of the person's assets, goods, or property;

5. Use of excessive force when placing a person in physical or mechanical restraint;

6. Use of physical or mechanical restraints on a person that is not in compliance with federal and state laws, regulations, and policies; professionally accepted standards of practice; or the person's individualized services plan; and

7. Use of more restrictive or intensive services or denial of services to punish the person or that is not consistent with his individualized services plan. See § 37.2-100 of the Code of Virginia.

"Administrative hearing" means an administrative proceeding held pursuant to Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Advance directive" means a document voluntarily executed in accordance with § 54.1-2983 of the Code of Virginia or the laws of another state where executed (§ 54.1-2993 of the Code of Virginia). This may include a wellness recovery action plan (WRAP) or similar document as long as it is executed in accordance with § 54.1-2983 of the Code of Virginia or the laws of another state. A WRAP or similar document may identify the health care agent who is authorized to act as the individual's substitute decision maker.

"Authorization" means a document signed by the individual receiving services or that individual's authorized representative that authorizes the provider to disclose identifying information about the individual. An authorization shall be voluntary. To be voluntary, the authorization shall be given by the individual receiving services or his authorized representative freely and without undue inducement; any element of force, fraud, deceit, or duress; or any form of constraint or coercion.

"Authorized representative" means a person permitted by law or this chapter to authorize the disclosure of information or to consent to treatment and services or participation in human research. The decision-making authority of an authorized representative recognized or designated under this chapter is limited to decisions pertaining to the designating provider. Legal guardians, attorneys-in-fact, or health care agents appointed pursuant to § 54.1-2983 of the Code of Virginia may have decision-making authority beyond such provider.

"Behavior intervention" means those principles and methods employed by a provider to help an individual to achieve a positive outcome and to address challenging behavior in a constructive and safe manner. Behavior management principles and methods must be employed in accordance with the individualized services plan and written policies and procedures governing service expectations, treatment goals, safety, and security.

"Behavioral treatment plan," "functional plan," or "behavioral support plan" means any set of documented procedures that are an integral part of the individualized services plan and are developed on the basis of a systematic data collection, such as a functional assessment, for the purpose of assisting an individual to achieve the following:

1. Improved behavioral functioning and effectiveness;

2. Alleviation of symptoms of psychopathology; or

3. Reduction of challenging behaviors.

"Board" means the Board of Behavioral Health and Developmental Services.

"Caregiver" means an employee or contractor who provides care and support services; medical services; or other treatment, rehabilitation, or habilitation services.

"Commissioner" means the Commissioner of the Department of Behavioral Health and Developmental Services.

"Community services board" or "CSB" means the public body established pursuant to § 37.2-501 of the Code of Virginia that provides mental health, developmental, and substance abuse services to individuals within each city and county that established it. For the purpose of these regulations, community services board also includes a behavioral health authority established pursuant to § 37.2-602 of the Code of Virginia.

"Complaint" means an allegation of a violation of this chapter or a provider's policies and procedures related to this chapter.

"Consent" means the voluntary agreement of an individual or that individual's authorized representative to specific services.

Consent shall be given freely and without undue inducement; any element of force, fraud, deceit, or duress; or any form of constraint or coercion. Consent may be expressed through any means appropriate for the individual, including verbally, through physical gestures or behaviors, in Braille or American Sign Language, in writing, or through other methods.

"Department" means the Department of Behavioral Health and Developmental Services.

"Director" means the chief executive officer of any provider delivering services. In organizations that also include services not covered by this chapter, the director is the chief executive officer of the services or services licensed, funded, or operated by the department.

"Discharge plan" means the written plan that establishes the criteria for an individual's discharge from a service and identifies and coordinates delivery of any services needed after discharge.

"Disclosure" means the release by a provider of information identifying an individual.

"Emergency" means a situation that requires a person to take immediate action to avoid harm, injury, or death to an individual or to others.

"Exploitation" means the misuse or misappropriation of the individual's assets, goods, or property. Exploitation is a type of abuse. (See § 37.2-100 of the Code of Virginia.) Exploitation also includes the use of a position of authority to extract personal gain from an individual. Exploitation includes violations of 12VAC35-115-120 and 12VAC35-115-130. Exploitation does not include the billing of an individual's third party payer for services. Exploitation also does not include instances of use or appropriation of an individual's assets, goods or property when permission is given by the individual or his authorized representative:

1. With full knowledge of the consequences;

2. With no inducements; and

3. Without force, misrepresentation, fraud, deceit, duress of any form, constraint, or coercion.

"Governing body of the provider" means the person or group of persons with final authority to establish policy.

"Habilitation" means the provision of individualized services conforming to current acceptable professional practice that enhance the strengths of, teach functional skills to, or reduce or eliminate challenging behaviors of an individual. These services occur in an environment that suits the individual's needs, responds to his preferences, and promotes social interaction and adaptive behaviors.

"Health care operations" means any activities of the provider to the extent that the activities are related to its provision of health care services. Examples include:

1. Conducting quality assessment and improvement activities, case management and care coordination, contacting of health care providers and patients with information about treatment alternatives, and related functions that do not include treatment;

2. Reviewing the competence or qualifications of health care professionals, evaluating practitioner and provider performance, and training, licensing or credentialing activities;

3. Conducting or arranging for medical review, legal services, and auditing functions, including fraud and abuse detection and compliance programs; and

4. Other activities contained within the definition of health care operations in 45 CFR 164.501.

"Health plan" means an individual or group plan that provides or pays the cost of medical care, including any entity that meets the definition of "health plan" in 45 CFR 160.103.

"Historical research" means the review of information that identifies individuals receiving services for the purpose of evaluating or otherwise collecting data of general historical significance.

"Human research" means any systematic investigation, including research development, testing, and evaluation, utilizing human subjects, that is designed to develop or contribute to generalized knowledge. Human research shall not include research exempt from federal research regulations pursuant to 45 CFR 46.101(b).

"Human rights advocate" means a person employed by the commissioner upon recommendation of the State Human Rights Director to help individuals receiving services exercise their rights under this chapter. See 12VAC35-115-260 C.

"Independent review committee" means a committee appointed or accessed by a provider to review and approve the clinical efficacy of the provider's behavioral treatment plans and associated data collection procedures. An independent review committee shall be composed of professionals with training and experience in ~~applied~~ behavioral analysis and interventions who are not involved in the development of the plan or directly providing services to the individual.

"Individual" means a person who is receiving services. This term includes the terms "consumer," "patient," "resident," "recipient," and "client."

"Individualized services plan" or "ISP" means a comprehensive and regularly updated written plan that describes the individual's needs, the measurable goals and objectives to address those needs, and strategies to reach the individual's goals. An ISP is person-centered, empowers the individual, and is designed to meet the needs and preferences of the individual. The ISP is developed through a partnership between the individual and the provider and includes an individual's treatment plan, habilitation plan, person-centered plan, or plan of care.

"Informed consent" means the voluntary written agreement of an individual, or that individual's authorized representative, to surgery, electroconvulsive treatment, use of psychotropic medications, or any other treatment or service that poses a risk of harm greater than that ordinarily encountered in daily life or for participation in human research. To be voluntary, informed consent must be given freely and without undue inducement; any element of force, fraud, deceit, or duress; or any form of constraint or coercion.

"Investigating authority" means any person or entity that is approved by the provider to conduct investigations of abuse and neglect.

"Licensed professional" means a licensed physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, licensed or certified substance abuse treatment practitioner, or licensed psychiatric nurse practitioner.

"Local human rights committee" or "LHRC" means a group of at least five people appointed by the State Human Rights Committee. See 12VAC35-115-270 A for membership and duties.

"Neglect" means failure by a person, program, or facility operated, licensed, or funded by the department, excluding those operated by the Department of Corrections, responsible for providing services to do so, including nourishment, treatment, care, goods, or services necessary to the health, safety, or welfare of an individual receiving care or treatment for mental illness, intellectual disability, or substance abuse. See § 37.2-100 of the Code of Virginia.

"Next friend" means a person designated in accordance with 12VAC35-115-146 B to serve as the authorized representative of an individual who has been determined to lack capacity to consent or authorize the disclosure of identifying information, when required under this chapter.

"Peer-on-peer aggression" means a physical act, verbal threat, or demeaning expression by an individual against or to another individual that causes physical or emotional harm to that individual. Examples include hitting, kicking, scratching, and other threatening behavior. Such instances may constitute potential neglect.

"Person centered" means focusing on the needs and preferences of the individual, empowering and supporting the individual in defining the direction for his life, and promoting self-determination, community involvement, and recovery.

"Program rules" means the operational rules and expectations that providers establish to promote the general safety and well-being of all individuals in the program and to set standards for how individuals will interact with one another in the program. Program rules include any expectation that produces a consequence for the individual within the program. Program rules may be included in a handbook or policies and shall be available to the individual.

"Protection and advocacy agency" means the state agency designated under the federal Protection and Advocacy for Individuals with Mental Illness Act (PAIMI) and the Developmental Disabilities Assistance and Bill of Rights Act (DD). The protection and advocacy agency is the disAbility Law Center of Virginia (dLCV).

"Provider" means any person, entity, or organization offering services that is licensed, funded, or operated by the department.

"Psychotherapy notes" means comments, recorded in any medium by a health care provider who is a mental health professional, documenting and analyzing the contents of conversation during a private counseling session with an individual or a group, joint, or family counseling session that are separated from the rest of the individual's health record. "Psychotherapy notes" shall not include annotations relating to medication and prescription monitoring, counseling session start and stop times, treatment modalities and frequencies, clinical test results, or any summary of any symptoms, diagnosis, prognosis, functional status, treatment plan, or the individual's progress to date.

"Research review committee" or "institutional review board" means a committee of professionals that provides complete and adequate review of research activities. The committee shall be sufficiently qualified through maturity, experience, and diversity of its members, including consideration of race, gender, and cultural background, to promote respect for its advice and counsel in safeguarding the rights and welfare of participants in human research. (See § 37.2-402 of the Code of Virginia and 12VAC35-180.)

"Restraint" means the use of a mechanical device, medication, physical intervention, or hands-on hold to prevent an individual from moving his body to engage in a behavior that places him or others at imminent risk. There are three kinds of restraints:

1. Mechanical restraint means the use of a mechanical device that cannot be removed by the individual to restrict the freedom of movement or functioning of a limb or a portion of an individual's body when that behavior places him or others at imminent risk.

2. Pharmacological restraint means the use of a medication that is administered involuntarily for the emergency control of an individual's behavior when that individual's

behavior places him or others at imminent risk and the administered medication is not a standard treatment for the individual's medical or psychiatric condition.

3. Physical restraint, also referred to as manual hold, means the use of a physical intervention or hands-on hold to prevent an individual from moving his body when that individual's behavior places him or others at imminent risk.

"Restraints for behavioral purposes" means using a physical hold, medication, or a mechanical device to control behavior or involuntarily restrict the freedom of movement of an individual in an instance when all of the following conditions are met: (i) there is an emergency, (ii) nonphysical interventions are not viable, and (iii) safety issues require an immediate response.

"Restraints for medical purposes" means using a physical hold, medication, or mechanical device to limit the mobility of an individual for medical, diagnostic, or surgical purposes, such as routine dental care or radiological procedures and related postprocedure care processes, when use of the restraint is not the accepted clinical practice for treating the individual's condition.

"Restraints for protective purposes" means using a mechanical device to compensate for a physical or cognitive deficit when the individual does not have the option to remove the device. The device may limit an individual's movement, for example, bed rails or a gerichair, and prevent possible harm to the individual or it may create a passive barrier, such as a helmet to protect the individual.

"Restriction" means anything that limits or prevents an individual from freely exercising his rights and privileges.

"SCC" means a specially constituted committee serving an intermediate care facility for individuals with intellectual disabilities as described in the Centers for Medicare and Medicaid Services (CMS) Conditions of Participation (42 CFR 483.440(f)(3)).

"Seclusion" means the involuntary placement of an individual alone in an area secured by a door that is locked or held shut by a staff person, by physically blocking the door, or by any other physical or verbal means, so that the individual cannot leave it.

"Serious injury" means any injury resulting in bodily hurt, damage, harm, or loss that requires medical attention by a licensed physician.

"Services" means care, treatment, training, habilitation, interventions, or other supports, including medical care, delivered by a provider licensed, operated or funded by the department.

"Services record" means all written and electronic information that a provider keeps about an individual who receives services.

"State Human Rights Committee" or "SHRC" means a committee of nine members appointed by the board that is accountable for the duties prescribed in 12VAC35-115-270 C.

"State human rights director" means the person employed by and reporting to the commissioner who is responsible for carrying out the functions prescribed for the position in 12VAC35-115-260 D.

"Time out" means the involuntary removal of an individual by a staff person from a source of reinforcement to a different, open location for a specified period of time or until the problem behavior has subsided to discontinue or reduce the frequency of problematic behavior.

"Treatment" means the individually planned, sound, and therapeutic interventions that are intended to improve or maintain functioning of an individual receiving services delivered by providers licensed, funded, or operated by the department. In order to be considered sound and therapeutic, the treatment shall conform to current acceptable professional practice.

Regulatory Item V. Ch.115 – Behavioral Treatment Plans

12VAC35-115-105. Behavioral treatment plans.

A. A behavioral treatment plan is used to assist an individual to improve participation in normal activities and conditions of everyday living, reduce challenging behaviors, alleviate symptoms of psychopathology, and maintain a safe and orderly environment.

B. Providers may use individualized restrictions such as restraint or time out in a behavioral treatment plan to address challenging behaviors that present an immediate danger to the individual or others, but only after a licensed professional or licensed behavior analyst or board certified behavior analyst has conducted a detailed and systematic assessment of the behavior and the situations in which the behavior occurs. Providers shall document in the individual's services record that the lack of success or probable success of less restrictive procedures attempted or considered, and the risks associated with not treating the behavior, are greater than any risks associated with the use of the proposed restrictions.

C. Providers shall develop any behavioral treatment plan according to their policies and procedures, which shall ensure that:

1. Behavioral treatment plans are initiated, developed, carried out, and monitored by professionals who are qualified by expertise, training, education, or credentials to do so;

2. Behavioral treatment plans include nonrestrictive procedures and environmental modifications that address the targeted behavior; and

3. Behavioral treatment plans involving the use of restraint or timeout are submitted to an independent review committee, prior to implementation, for review and approval of the technical adequacy of the plan and data collection procedures.

D. In addition to any other requirements of 42 CFR 483.440(f)(3), providers that are intermediate care facilities for individuals with intellectual disabilities shall submit any behavioral treatment plan that involves the use of restraint or time out, and its independent review committee approval, to the SCC under 42 CFR 483.440(f)(3) for the SCC's approval prior to implementation.

E. Providers other than intermediate care facilities for individuals with intellectual disabilities shall submit any behavioral treatment plan that involves the use of restraint or time out, and its independent review committee approval, to the LHRC, which shall determine whether the plan is in accordance with this chapter prior to implementation.

F. If either the LHRC or SCC finds that the behavioral treatment plan violates the rights of the individual or is not being implemented in accordance with this chapter, the LHRC or SCC shall notify the director and provide recommendations regarding the proposed plan.

G. Behavioral treatment plans involving the use of restraint or time out shall be reviewed quarterly by the independent review committee and the LHRC or SCC to determine if the use of restraint has resulted in improvements in functioning of the individual.

H. Providers shall not use seclusion in a behavioral treatment plan.

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Fast-Track Regulation
Agency Background Document

Agency name	Department of Behavioral Health and Developmental Services
Virginia Administrative Code (VAC) citation(s)	12 VAC35-12
Regulation title(s)	Public Participation Guidelines
Action title	Amend Regulations Following Periodic Review
Date this document prepared	September 18, 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.

Section 2.2-4007.02 of the Code of Virginia requires all non-exempt agencies to promulgate public participation guidelines (PPGs) in order to facilitate public involvement in the regulatory process.

Chapter 12 promotes public involvement in the development, amendment, or repeal of the regulations of the State Board and the Department. This action is the result of a periodic review; the last review was in 2009. No comments were received during the review.

The proposed amendments bring the regulation into compliance with the following statutes:

- 12VAC35-12-45 (new section), Notification to Licensed Providers: Amend language to incorporate changes in accordance with Chapter 599 of the 2017 Acts of Assembly.
- 12VAC35-12-50, Public Comment:
  - A., Amend language in accordance with § 2.2-4007.02 of the Code of Virginia;
  - D., Amend language to incorporate changes in accordance with Chapter 599 of the 2017 Acts of Assembly regarding comment on changes to guidance documents.
  - E., Amend language in accordance with § 37.2-203 of the Code of Virginia.

Nonsubstantive clarifying amendments: two definitions are added for clarification, State Board and Department.

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.

"Department" or "DBHDS" means the Department of Behavioral Health and Developmental Services.
"State Board" means the State Board of Behavioral Health and Developmental Services.

Statement of final agency action

Please 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 approved promulgation of these amendments to 12VAC35-12 *Public Participation Guidelines* using the fast track process at its meeting on October 4, 2017.

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.

Section 37.2-203 of the Code of Virginia authorizes the State 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.

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.

This action is the result of a periodic review. No comments were received during the review. Public participation guidelines exist to promote public involvement in the development, amendment or repeal of state regulations. DBHDS is responsible for the direct care of individuals in its facilities and provides oversight for the state's publicly funded behavioral health and developmental services system. This regulatory action will align the regulation in three places with the Code of Virginia and thus facilitate citizen involvement in the regulations of the State Board and DBHDS.

Rationale for using fast-track process

Please explain the rationale for using the fast-track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

This action is the result of a periodic review. No comments were received during the review. Executive Order 17 (2014) allows state agencies to use a fast track rule making process to expedite regulatory changes that are expected to be non-controversial. This regulatory action reflects opportunities for citizen input into the regulatory process, as already established in the Code of Virginia. Therefore, no controversy is anticipated.

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 proposed amendments bring the regulation into compliance with the following statutes:

- 12VAC35-12-45 (new section), Notification to Licensed Providers: In accordance with Chapter 599 of the 2017 Acts of Assembly, effective July 1, 2017, for all affected DBHDS licensed providers amend language stating that:
    - DBHDS will notify affected providers when new or final regulations are posted on the Regulatory Town Hall website, and when there are public comment periods pursuant to the existing regulatory processes established by Virginia law;
    - DBHDS will notify affected providers each time there are such changes and the opportunity to comment on the changes under consideration, including specific comments regarding an appropriate time frame for the implementation of such changes; and

- 12VAC35-12-50 A., Public Comment: In accordance with § 2.2-4007.02 of the Code of Virginia:
    - Amend language stating that DBHDS shall provide that persons wishing to submit data, views, and arguments related to a regulatory action shall be afforded the opportunity to be accompanied by and represented by counsel or other representative.

- 12VAC35-12-50 D., Public Comment: In accordance with Chapter 599 of the 2017 Acts of Assembly, effective July 1, 2017, for all affected DBHDS licensed providers:
    - Amend language that DBHDS will post guidance document changes under development to the Regulatory Town Hall website for a 30 day public comment period.

- 12VAC35-12-50 E., Public Comment: In accordance with § 37.2-203:
    - Amend language, that at least 30 days prior to the Board's action to adopt, amend, or repeal any regulation regarding substance abuse services, the Board shall present the proposed regulation to the Substance Abuse Services Council for the council's review and comment.

Nonsubstantive clarifying amendments: two definitions are added for clarification, State Board and Department.

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.

The primary advantage to the public and the Commonwealth is conformation of regulatory provisions regarding public participation to the existing requirements in state law. There are no disadvantages to the public or the Commonwealth.

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.

There are no federal requirements applicable to this regulatory action; therefore no requirement is more restrictive than federal law.

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 are no localities particularly affected by this action.

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 is no reason to delay the adoption of these changes by using the standard process. The proposed amendments merely conforms the agency's Public Participation Guidelines regulation to Chapter 599 of the 2017 Acts of Assembly as well as sections 37.2-203 and 2.2-4007.02 of the Code of Virginia.

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**	There are no costs to the state.
Projected cost of the new regulations or changes to existing regulations on localities.	There are no costs to localities.
Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.	Entities likely to be affected are: • Providers licensed by DBHDS; • Individuals and families receiving services in DBHDS licensed facilities; • Individuals and families interested in substance abuse services; • Citizens who wish to be accompanied and represented by counsel or other person when providing views on certain State Board regulatory activities.
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.	There is no way to estimate the number of people who will utilize council or other representatives when providing views on regulatory activities.
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 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.**	There are no projected costs.
Beneficial impact the regulation is designed to produce.	The primary advantage to the public and the Commonwealth is conformation of regulatory provisions regarding public participation to the existing requirements in state law, which will help to ensure their understanding of the processes for public participation.

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 viable alternatives to this regulatory proposal. The proposed amendments may help to ensure citizen understanding of the processes for public participation.

Public participation notice

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.

Periodic review and small business impact review report of findings

If this fast-track is the result of a periodic review/small business impact review, use this form to report the agency's findings. Please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review and (2) 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 the 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.

Commenter	Comment	Agency response

1. No comments were received during the review.
2. 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.
3. Notice of periodic review was published August 7, 2017, with public comment ending August 28, 2017. While no comments were received, amendments are needed to three sections of the Code of Virginia in order to conform the regulation to the Code.
4. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation.
5. The regulation was last evaluated in 2009. Technology, economic conditions, or other factors have had no impact on the need for the regulation.

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.

There is no impact on individual families or family stability.

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.

For changes to existing regulation(s), please use the following chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
20		--	For clarification, definitions are added for "Department" and "State Board."
45 (new)	N/A	*[Explanation: There is no current requirement specific to licensed providers. All citizens can access Virginia's Town Hall and participate publicly through online comment forums and an email notification service, or otherwise request information of an agency directly.]*	A new section is created 'Notification to Licensed Providers' for all affected DBHDS licensed providers. Specifically: • DBHDS will notify affected providers when new or final regulations are posted on the Regulatory Town Hall website, and when there are public comment periods pursuant to the existing regulatory processes established by Virginia law; The intent of the requirements is to proactively provide information available on Town Hall to licensed providers. The likely impact will be: • More providers sign up as public users on Town Hall; • An increase in understanding among providers of the regulatory process; and • More comments are received on regulatory actions.
50 A, D, E.	N/A	Section A. Interested persons can submit data, views and arguments, orally or in writing, to the agency as required by state law and regulation.	Section A. In addition to submitting data, views, and arguments, orally or in writing, to the agency - interested persons can also be accompanied and represented by counsel or other representatives.

		--	In D., for all affected DBHDS licensed providers regarding proposed changes to guidance documents: • DBHDS will notify affected providers each time there are such changes and the opportunity to comment on the changes under consideration, including specific comments regarding an appropriate time frame for the implementation of such changes; and • DBHDS will post guidance document changes under development to the Regulatory Town Hall website for a 30 day public comment period. The likely impact will be that some guidance document updates will be delayed by DBHDS in order to accommodate the notification and comment period required. The intent is to allow input from affected providers before any change to a guidance document is finalized.
		--	In E to amend language in accordance with § 37.2-203: • That at least 30 days prior to the Board's action to adopt, amend, or repeal any regulation regarding substance abuse services, the Board shall present the proposed regulation to the Substance Abuse Services Council for the council's review and comment. The intent of the requirement is to ensure the State Board has input from the subject matter experts on regulatory matters related substance abuse services before taking action on such regulations. The likely impact will be that: • The State Board will be better informed on substance abuse matters; • The State Board may have to delay regulatory action in order to accommodate the notification period; and • The Substance Abuse Services Counsel will be better aware of regulatory activity by the State Board relating to substance abuse services.

DEPARTMENT OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

CHAPTER 12
PUBLIC PARTICIPATION GUIDELINES

Part I
Purpose and Definitions

12VAC35-12-10. Purpose.

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the State Board of Behavioral Health and Developmental Services and the Department of Behavioral Health and Developmental Services. This chapter does not apply to regulations, guidelines, or other documents exempted or excluded from the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

12VAC35-12-20. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Administrative Process Act" means Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Agency" means the entity of state government empowered by the agency's basic law to make regulations or decide cases. This term includes the State Board of Behavioral Health and Developmental Services and the Department of Behavioral Health and Developmental Services. Actions specified in this chapter may be fulfilled by state employees as delegated by the agency.

"Basic law" means provisions in the Code of Virginia that delineate the basic authority and responsibilities of an agency.

"Commonwealth Calendar" means the electronic calendar for official government meetings open to the public as required by § 2.2-3707 C of the Freedom of Information Act.

“Department” means the Department of Behavioral Health and Developmental Services.

"Negotiated rulemaking panel" or "NRP" means an ad hoc advisory panel of interested parties established by an agency to consider issues that are controversial with the assistance of a facilitator or mediator, for the purpose of reaching a consensus in the development of a proposed regulatory action.

"Notification list" means a list used to notify persons pursuant to this chapter. Such a list may include an electronic list maintained through the Virginia Regulatory Town Hall or other list maintained by the agency.

"Open meeting" means any scheduled gathering of a unit of state government empowered by an agency's basic law to make regulations or decide cases, which is related to promulgating, amending or repealing a regulation.

"Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.

"Public hearing" means a scheduled time at which members or staff of the agency will meet for the purpose of receiving public comment on a regulatory action.

"Regulation" means any statement of general application having the force of law, affecting the rights or conduct of any person, adopted by the agency in accordance with the authority conferred on it by applicable laws.

"Regulatory action" means the promulgation, amendment, or repeal of a regulation by the agency.

"Regulatory advisory panel" or "RAP" means a standing or ad hoc advisory panel of interested parties established by the agency for the purpose of assisting in regulatory actions.

"State Board" means the State Board of Behavioral Health and Developmental Services.

"Town Hall" means the Virginia Regulatory Town Hall, the website operated by the Virginia Department of Planning and Budget at www.townhall.virginia.gov, which has online public comment forums and displays information about regulatory meetings and regulatory actions under consideration in Virginia and sends this information to registered public users.

"Virginia Register" means the Virginia Register of Regulations, the publication that provides official legal notice of new, amended and repealed regulations of state agencies, which is published under the provisions of Article 6 (§ 2.2-4031 et seq.) of the Administrative Process Act.

Part II
Notification of Interested Persons

12VAC35-12-30. Notification list.

A. The agency shall maintain a list of persons who have requested to be notified of regulatory actions being pursued by the agency.

B. Any person may request to be placed on a notification list by registering as a public user on the Town Hall or by making a request to the agency. Any person who requests to be placed on a notification list shall elect to be notified either by electronic means or through a postal carrier.

C. The agency may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.

D. When electronic mail is returned as undeliverable on multiple occasions at least 24 hours apart, that person may be deleted from the list. A single undeliverable message is insufficient cause to delete the person from the list.

E. When mail delivered by a postal carrier is returned as undeliverable on multiple occasions, that person may be deleted from the list.

F. The agency may periodically request those persons on the notification list to indicate their desire to either continue to be notified electronically, receive documents through a postal carrier, or be deleted from the list.

12VAC35-12-40. Information to be sent to persons on the notification list.

A. To persons electing to receive electronic notification or notification through a postal carrier as described in 12VAC35-12-30, the agency shall send the following information:

1. A notice of intended regulatory action (NOIRA).

2. A notice of the comment period on a proposed, a reproposed, or a fast-track regulation and hyperlinks to, or instructions on how to obtain, a copy of the regulation and any supporting documents.

3. A notice soliciting comment on a final regulation when the regulatory process has been extended pursuant to § 2.2-4007.06 or 2.2-4013 C of the Code of Virginia.

B. The failure of any person to receive any notice or copies of any documents shall not affect the validity of any regulation or regulatory action.

12VAC35-12-45. Notification to Licensed Providers.

To providers licensed by the department, the department shall send the following information:

1. At or prior to the time a new regulation relating to licensed providers is posted to the Virginia Regulatory Town Hall, the department shall provide direct notice to licensed providers affected by the new regulatory change that such change has been initiated.

2. At the time that the final stage of a regulation is posted to the Virginia Regulatory Town Hall, the department shall provide direct notice to licensed providers affected by the regulatory change that such final stage has been posted.

Part III
Public Participation Procedures

12VAC35-12-50. Public comment.

A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency; and (ii) be accompanied by and represented by counsel or other representative. Such opportunity to comment shall include an online public comment forum on the Town Hall.

1. To any requesting person, the agency shall provide copies of the statement of basis, purpose, substance, and issues; the economic impact analysis of the proposed or fast-track regulatory action; and the agency's response to public comments received.

2. The agency may begin crafting a regulatory action prior to or during any opportunities it provides to the public to submit comments.

B. The agency shall accept public comments in writing after the publication of a regulatory action in the Virginia Register as follows:

1. For a minimum of 30 calendar days following the publication of the notice of intended regulatory action (NOIRA).

2. For a minimum of 60 calendar days following the publication of a proposed regulation.

3. For a minimum of 30 calendar days following the publication of a reproposed regulation.

4. For a minimum of 30 calendar days following the publication of a final adopted regulation.

5. For a minimum of 30 calendar days following the publication of a fast-track regulation.

6. For a minimum of 21 calendar days following the publication of a notice of periodic review.

7. Not later than 21 calendar days following the publication of a petition for rulemaking.

C. The agency may determine if any of the comment periods listed in subsection B of this section shall be extended.

D. At the time any change to guidance documents related to licensure requirements is being developed, the agency shall provide direct notice to licensed providers affected by the change that such change has been initiated. The department shall post the proposed change to the Virginia Regulatory Town Hall, to include a public comment forum for a period of 30 days. Such notice shall include a description of the change and provide contact information for the department's designated contact person. If it is anticipated that the change shall have an impact on staffing or payment matters for the affected stakeholders, the direct notice to stakeholders shall note this fact and request specific comments regarding an appropriate time frame for the implementation of such changes.

E. Prior to the adoption, amendment, or repeal of any regulation regarding substance abuse services, the Board shall, in addition to the procedures set forth in the Administrative Process Act (§ 2.2-4000 et seq.), present the proposed regulation to the Substance Abuse Services

Council, established pursuant to § 2.2-2696, at least 30 days prior to the Board's action for the Council's review and comment.

F. If the Governor finds that one or more changes with substantial impact have been made to a proposed regulation, he may require the agency to provide an additional 30 calendar days to solicit additional public comment on the changes in accordance with § 2.2-4013 C of the Code of Virginia.

~~E.~~ G. The agency shall send a draft of the agency's summary description of public comment to all public commenters on the proposed regulation at least five days before final adoption of the regulation pursuant to § 2.2-4012 E of the Code of Virginia.

12VAC35-12-60. Petition for rulemaking.

A. As provided in § 2.2-4007 of the Code of Virginia, any person may petition the agency to consider a regulatory action.

B. A petition shall include but is not limited to the following information:

1. The petitioner's name and contact information;

2. The substance and purpose of the rulemaking that is requested, including reference to any applicable Virginia Administrative Code sections; and

3. Reference to the legal authority of the agency to take the action requested.

C. The agency shall receive, consider and respond to a petition pursuant to § 2.2-4007 and shall have the sole authority to dispose of the petition.

D. The petition shall be posted on the Town Hall and published in the Virginia Register.

E. Nothing in this chapter shall prohibit the agency from receiving information or from proceeding on its own motion for rulemaking.

12VAC35-12-70. Appointment of regulatory advisory panel.

A. The agency may appoint a regulatory advisory panel (RAP) to provide professional specialization or technical assistance when the agency determines that such expertise is necessary to address a specific regulatory issue or action or when individuals indicate an interest in working with the agency on a specific regulatory issue or action.

B. Any person may request the appointment of a RAP and request to participate in its activities. The agency shall determine when a RAP shall be appointed and the composition of the RAP.

C. A RAP may be dissolved by the agency if:

1. The proposed text of the regulation is posted on the Town Hall, published in the Virginia Register, or such other time as the agency determines is appropriate; or

2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act.

12VAC35-12-80. Appointment of negotiated rulemaking panel.

A. The agency may appoint a negotiated rulemaking panel (NRP) if a regulatory action is expected to be controversial.

B. An NRP that has been appointed by the agency may be dissolved by the agency when:

1. There is no longer controversy associated with the development of the regulation;

2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act; or

3. The agency determines that resolution of a controversy is unlikely.

Regulatory Item VI. Ch.12 – Public Participation Guidelines

12VAC35-12-90. Meetings.

Notice of any open meeting, including meetings of a RAP or NRP, shall be posted on the Virginia Regulatory Town Hall and Commonwealth Calendar at least seven working days prior to the date of the meeting. The exception to this requirement is any meeting held in accordance with § 2.2-3707 D of the Code of Virginia allowing for contemporaneous notice to be provided to participants and the public.

12VAC35-12-100. Public hearings on regulations.

A. The agency shall indicate in its notice of intended regulatory action whether it plans to hold a public hearing following the publication of the proposed stage of the regulatory action.

B. The agency may conduct one or more public hearings during the comment period following the publication of a proposed regulatory action.

C. An agency is required to hold a public hearing following the publication of the proposed regulatory action when:

1. The agency's basic law requires the agency to hold a public hearing;

2. The Governor directs the agency to hold a public hearing; or

3. The agency receives requests for a public hearing from at least 25 persons during the public comment period following the publication of the notice of intended regulatory action.

D. Notice of any public hearing shall be posted on the Town Hall and Commonwealth Calendar at least seven working days prior to the date of the hearing. The agency shall also notify those persons who requested a hearing under subdivision C 3 of this section.

12VAC35-12-110. Periodic review of regulations.

A. The agency shall conduct a periodic review of its regulations consistent with:

1. An executive order issued by the Governor pursuant to § 2.2-4017 of the Administrative Process Act to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance; and

2. The requirements in § 2.2-4007.1 of the Administrative Process Act regarding regulatory flexibility for small businesses.

B. A periodic review may be conducted separately or in conjunction with other regulatory actions.

C. Notice of a periodic review shall be posted on the Town Hall and published in the Virginia Register.

COMMONWEALTH of VIRGINIA

JACK BARBER, M.D.
INTERIM COMMISSIONER

DEPARTMENT OF
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MEMORANDUM

To: Members, State Board of Behavioral Health and Developmental Services

Fr: Ruth Anne Walker, Regulatory Coordinator

Date: September 26, 2017

Re: Regulatory Package ADDENDUM

This is an addendum to the regulatory package included in the main meeting packet dated September 21, 2017, in regard to two items. Prior to the board meeting, if you have questions on any of the regulatory items, do not hesitate to contact me, (804) 225-2252, ruthanne.walker@dbhds.virginia.gov.

IV. Ch. 105: QMHPs (http://townhall.virginia.gov/UM/chartemergencystate.pdf)

Background: The **emergency** draft of certain sections of the Licensing Regulation are attached as an addendum to the packet. Portions of this action come under the same authority as the legislation with the peer recovery specialist regulation. As with the peers, the legislation also requires DBHDS and the Department of Health Professions to adopt regulations relating to qualified mental health professionals (QMHPs), qualified mental retardation professionals (QMRPs), qualified paraprofessionals in mental health (QMHPPs); and, a registry must be established by DHP.

Purpose: This action will provide compliance with Chapters 136 and 418 of the 2017 Acts of Assembly and consistency across agencies regarding who shall be included in the definitions of QMHPs, QMRPs, and QMHPPs. Also, certain definitions are deferred, in accordance with Chapter 418, to DHP's Board of Counseling (18VAC115-80). The State Board, in Chapter 136, is required to include occupational therapists (OTs) and occupational therapy assistants (OTAs) in certain definitions of the above named professional categories, and to establish corresponding educational and clinical experience for OTs and OTAs that are substantially equivalent to comparable professionals listed in the current licensing regulations.

Action Requested: Approve the draft amendments to Ch.105 and initiate emergency action and a notice of intended regulatory action (NOIRA) for the standard process.

continued next page -

VAC Citation	Title	Last Activity	Date
12 VAC 35-115	Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Behavioral Health and Developmental Services	Final Stage Published	1/9/2017

Next Steps: (http://townhall.virginia.gov/UM/chartstandardstate.pdf)

- Once the draft emergency regulation is approved by the Secretary's and Governor's Offices, staff posts the emergency regulation and posts the NOIRA for the standard process.

V. Ch. 115: LBAs (http://townhall.virginia.gov/UM/chartfasttrackstate.pdf)

Background: During the rollout of the regulations, an inadvertent error was discovered in 12 VAC35-115-105 B (Behavioral Treatment Plans) that could create a barrier to individuals receiving services. The purpose of this action is to add licensed behavior analysts (LBAs) to those professionals who can develop and implement behavioral treatment plans, thus increasing the number of those professionals available to develop the plans and removing the error.

Purpose: A chart of comments received, with DBHDS' response to the comments, is included in this addendum for Reg. Item V.

Cc: Jack Barber, MD, Interim Commissioner
Kathy Drumwright, Deputy Commissioner
Dev Nair, Ph.D., Assistant Commissioner for Quality Management and Development
Will Frank, Director of Legisaltive Affairs and State Board Liaison

Enclosures

townhall.virginia.gov

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) citation(s)	12 VAC35-105
Regulation title(s)	Rules and Regulations For Licensing Providers by the Department of Behavioral Health and Developmental Services
Action title	Adding OTs and OTAs to definitions of qualified professionals
Date this document prepared	September 22, 2017

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to eighteen months), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation. 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 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.

This regulatory action is brought under the emergency process to comply with Chapters 136 and 418 of the 2017 Acts of Assembly regarding who shall be included in the definitions of qualified mental health professionals, qualified mental retardation professionals, and qualified paraprofessionals in mental health. The State Board of Behavioral Health and Developmental Services, in Chapter 136, is required to include occupational therapists and occupational therapy assistants in certain definitions of the above named professional categories, and to establish corresponding educational and clinical experience for occupational therapists and occupational therapy assistants that are substantially equivalent to comparable professionals listed in the current licensing regulations.

Certain definitions are deferred, in accordance with Chapter 418, to the Department of Health Professions' Board of Counseling (18VAC115-80).

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.

"Department" or "DBHDS" means the Department of Behavioral Health and Developmental Services.
"OTA" means occupational therapy assistant.
"OT" means occupational therapists.
"QMHP" means a qualified mental health professional.
"QMHPP" means a qualified mental health paraprofessional.
"QMHP-A" means a qualified mental health professional who provides services to adults.
"QMHP-C" means a qualified mental health professional who provides services to children.
"QMRP" means qualified mental retardation professional.
"State Board" means the State Board of Behavioral Health and Developmental Services.

Emergency Authority

The APA (Code of Virginia § 2.2-4011) states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of subdivision A. 4. of § 2.2-4006. Please explain why this is an emergency situation as described above, and provide specific citations to the Code of Virginia or the Appropriation Act, if applicable.

Chapters 136 and 418 of the 2017 Acts of Assembly.

Legal basis

Other than the emergency authority described above, please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and 2) the promulgating entity, i.e., agency, board, or person.

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.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The purpose of this regulatory action is to be consistent and comply with Chapters 136 and 418 of the 2017 Acts of Assembly regarding who shall be included in the definitions of qualified mental health professionals, qualified mental retardation professionals, and qualified paraprofessionals in mental health.

Also, certain definitions are deferred, in accordance with Chapter 418, to the Department of Health Professions' Board of Counseling (18VAC115-80).

Need

Please describe the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

Chapter 418 of the 2017 Acts of Assembly requires QMHP-As and QMHP-Cs to register with the Department of Health Professions if they have the education and experience to be deemed professionally qualified by the Board of Counseling in accordance with 18VAC115-80. This will be beneficial to the population served by DBHDS because there will be more professional accountability of education, experience, and scope of practice for those professionals.

Occupational therapists (OTs) and occupational therapy assistants (OTAs) are beneficial to the population that DBHDS serves in that OTs and OTAs help develop, improve, sustain, or restore independence to any person who has an injury, illness, disability, or psychological dysfunction.

Substance

Please see below chart for changes to existing sections. DBHDS has determined that these changes will be beneficial to the population served because the requirement of QMHPs registering with the Department of Health Professional will ensure professional oversight of education, experience, and scope of practice. Also, the addition of OTs and OTAs will help develop, improve, sustain, or restore the independent to any person who has an injury, illness, disability, or psychological dysfunction.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, and likely impact of proposed requirements
20		N/A Currently QMHPs are defined only in the DBHDS regulation as: ***"Qualified Mental Health Professional-Adult (QMHP-A)"*** *means a person in the human services field who is trained and experienced in providing psychiatric or mental health services to individuals who have a mental illness; including (i) a doctor of medicine or osteopathy licensed in Virginia; (ii) a doctor of medicine or osteopathy, specializing in psychiatry and*	• The general definition of QMHP from 18VAC115-80-20 is included. In the definitions of QMHP-A and QMHP-C: • Amend the definitions to be a cross-reference to the Board of Counseling regulation (18VAC115-80), with repetition in each definition of the following sentence from the general QMHP definition from 18VAC115-80-20: ○ 'A QMHP-A shall provide such services as an employee or independent contractor of the DBHDS or a provider licensed by the DBHDS.'

		licensed in Virginia; (iii) an individual with a master's degree in psychology from an accredited college or university with at least one year of clinical experience; (iv) a social worker: an individual with at least a bachelor's degree in human services or related field (social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, human services counseling or other degree deemed equivalent to those described) from an accredited college and with at least one year of clinical experience providing direct services to individuals with a diagnosis of mental illness; (v) a person with at least a bachelor's degree from an accredited college in an unrelated field that includes at least 15 semester credits (or equivalent) in a human services field and who has at least three years of clinical experience; (vi) a Certified Psychiatric Rehabilitation Provider (CPRP) registered with the United States Psychiatric Rehabilitation Association (USPRA); (vii) a registered nurse licensed in Virginia with at least one year of clinical experience; or (viii) any other licensed mental health professional. ***"Qualified Mental Health Professional-Child (QMHP-C)"*** *means a person in the human services field who is trained and experienced in providing psychiatric or mental health services to children who have a mental illness. To qualify as a QMHP-C, the individual must have the designated clinical experience and must either (i) be a doctor of medicine or osteopathy licensed in Virginia; (ii) have a master's degree in psychology from an accredited college or university with at least one year of clinical experience with children and adolescents; (iii) have a social work bachelor's*	

		or master's degree from an accredited college or university with at least one year of documented clinical experience with children or adolescents; (iv) be a registered nurse with at least one year of clinical experience with children and adolescents; (v) have at least a bachelor's degree in a human services field or in special education from an accredited college with at least one year of clinical experience with children and adolescents, or (vi) be a licensed mental health professional. ***"Qualified Mental Health Professional-Eligible (QMHP-E)"*** *means a person who has: (i) at least a bachelor's degree in a human service field or special education from an accredited college without one year of clinical experience or (ii) at least a bachelor's degree in a nonrelated field and is enrolled in a master's or doctoral clinical program, taking the equivalent of at least three credit hours per semester and is employed by a provider that has a triennial license issued by the department and has a department and DMAS-approved supervision training program.* Currently, QMRPs and QMHPPs are defined only in the DBHDS regulation as: ***Qualified Mental Retardation Professional (QMRP)"*** *means a person who possesses at least one year of documented experience working directly with individuals who have mental retardation (intellectual disability) or other developmental disabilities and one of the following credentials: (i) a doctor of medicine or osteopathy licensed in Virginia, (ii) a registered nurse licensed in Virginia, or (iii) completion of at least a bachelor's degree in a human services field, including,*	• Amend to read: "Qualified Mental Health Professional-Eligible (QMHP-E)" means a person <u>receiving supervised training in order to qualify as a QMHP in accordance with 18VAC115-80 and **who is registered with** the Board of Counseling</u>. • Change the term to "**Qualified Developmental Disability Professional**," • Insert OTs and amend qualifications as follows: OTs will be required to also have one year of experience with the intellectual disability population or other developmental disability (this is the same requirement for other degrees listed).

		but not limited to sociology, social work, special education, rehabilitation counseling, or psychology. ***"Qualified Paraprofessional in Mental Health (QPPMH)"*** *means a person who must, at a minimum, meet one of the following criteria: (i) registered with the United States Psychiatric Association (USPRA) as an Associate Psychiatric Rehabilitation Provider (APRP); (ii) has an associate's degree in a related field (social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, human services counseling) and at least one year of experience providing direct services to individuals with a diagnosis of mental illness; or (iii) has a minimum of 90 hours classroom training and 12 weeks of experience under the direct personal supervision of a QMHP-Adult providing services to individuals with mental illness and at least one year of experience (including the 12 weeks of supervised experience).*	In the definition of QMHPP: • Insert OTAs • Require OTAs to also have one year of experience with the intellectual disability population or other developmental disability (this is the same requirement for other degrees listed).
590		In C 6 of the subdivision, currently DBHDS regulations state: *6. Supervision of mental health, substance abuse, or co-occurring services that are of a supportive or maintenance nature, such as psychosocial rehabilitation, mental health supports shall be provided by a QMHP-A. An individual who is QMHP-E may not provide this type of supervision.*	After 'shall be provided by a QMHP-A' • Insert: ', a licensed mental health professional, or a mental health professional who is license-eligible and registered with a board of the Department of Health Professions.'
1370		In A 2 of the subdivision, it currently states: *QMHP-Adult and mental health professional standards:* *a. At least 80% of the clinical employees or contractors, not including the program assistant or psychiatrist, shall meet QMHP-Adult standards and shall*	Amend to remove the reference to meeting standards and simplifies the language: • a. At least 80% of the clinical employees or contractors, not including the program assistant or psychiatrist, shall be QMHP-As and shall be qualified to provide the services described in

		be qualified to provide the services described in 12VAC35-105-1410.	12VAC35-105-1410.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

There are no alternatives to this regulatory mandate.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public meeting is to be held to receive comments. Please also indicate whether a Regulatory Advisory Panel or a Negotiated Rulemaking Panel has been used in the development of the emergency regulation and whether it will also be used in the development of the permanent regulation.

The agency is seeking comments on this regulatory action, including but not limited to: ideas to be considered in the development of this proposal, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation.

The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: projected reporting, recordkeeping, and other administrative costs; the probable effect of the regulation on affected small businesses; and the description of less intrusive or costly alternatives for achieving the purpose of the regulation.
Anyone wishing to submit comments may do so via the Regulatory Town Hall website (**http://www.townhall.virginia.gov**), or by mail, email, or fax to **Cleopatra L. Booker, Psy.D., Director, Office of Licensing, Virginia Department of Behavioral Health and Developmental Services, P.O. Box 1797, 1220 Bank Street, Richmond, VA 23218-1797, cleopatra.booker@dbhds.virginia.gov, phone (804) 786-1747, fax (804) 692-0066.** Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

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

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 regulation does not have an impact on the family or family stability.

Periodic review/small business impact review announcement

If you wish to use this emergency/NOIRA to announce a periodic review (§ 2.2-4017 & EO-17 (2014)) and a small business impact review (§ 2.2-4007.1) of this regulation, keep the following text. Modify as necessary for your agency. Otherwise, delete this section.

The agency is not conducting a periodic review through this action.

CHAPTER 105
RULES AND REGULATIONS FOR LICENSING PROVIDERS BY THE DEPARTMENT OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Part I
General Provisions

Article 1
Authority and Applicability

12VAC35-105-10. Authority and applicability.

A. Section 37.2-404 of the Code of Virginia authorizes the commissioner to license providers subject to rules and regulations adopted by the State Board of Behavioral Health and Developmental Services.

B. No provider shall establish, maintain, conduct, or operate any service without first receiving a license from the commissioner.

Article 2
Definitions

12VAC35-105-20. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Abuse" (§ 37.2-100 of the Code of Virginia) means any act or failure to act by an employee or other person responsible for the care of an individual in a facility or program operated, licensed, or funded by the department, excluding those operated by the Virginia Department of Corrections, that was performed or was failed to be performed knowingly, recklessly, or intentionally, and that caused or might have caused physical or psychological harm, injury, or death to a person receiving care or treatment for mental illness, mental retardation (intellectual disability), or substance abuse (substance use disorders). Examples of abuse include acts such as:

1. Rape, sexual assault, or other criminal sexual behavior;
2. Assault or battery;
3. Use of language that demeans, threatens, intimidates, or humiliates the person;
4. Misuse or misappropriation of the person's assets, goods, or property;
5. Use of excessive force when placing a person in physical or mechanical restraint;
6. Use of physical or mechanical restraints on a person that is not in compliance with federal and state laws, regulations, and policies, professional accepted standards of practice, or the person's individualized services plan;
7. Use of more restrictive or intensive services or denial of services to punish the person or that is not consistent with his individualized services plan.

"Activities of daily living" or "ADLs" means personal care activities and includes bathing, dressing, transferring, toileting, grooming, hygiene, feeding, and eating. An individual's degree of independence in performing these activities is part of determining the appropriate level of care and services.

"Admission" means the process of acceptance into a service as defined by the provider's policies.

"Authorized representative" means a person permitted by law or 12VAC35-115 to authorize the disclosure of information or consent to treatment and services or participation in human research.

"Behavior intervention" means those principles and methods employed by a provider to help an individual receiving services to achieve a positive outcome and to address challenging behavior in a constructive and safe manner. Behavior intervention principles and methods must be employed in accordance with the individualized services plan and written policies and procedures governing service expectations, treatment goals, safety, and security.

"Behavioral treatment plan," "functional plan," or "behavioral support plan" means any set of documented procedures that are an integral part of the individualized services plan and are developed on the basis of a systematic data collection, such as a functional assessment, for the purpose of assisting individuals to achieve the following:

1. Improved behavioral functioning and effectiveness;
2. Alleviation of symptoms of psychopathology; or
3. Reduction of challenging behaviors.

"Brain injury" means any injury to the brain that occurs after birth, but before age 65, that is acquired through traumatic or nontraumatic insults. Nontraumatic insults may include anoxia, hypoxia, aneurysm, toxic exposure, encephalopathy, surgical interventions, tumor, and stroke. Brain injury does not include hereditary, congenital, or degenerative brain disorders or injuries induced by birth trauma.

"Care" or "treatment" means the individually planned therapeutic interventions that conform to current acceptable professional practice and that are intended to improve or maintain functioning of an individual receiving services delivered by a provider.

"Case management service" means services that can include assistance to individuals and their family members in assessing needed services that are responsive to the person's individual needs. Case management services include: identifying potential users of the service; assessing needs and planning services; linking the individual to services and supports; assisting the individual directly to locate, develop, or obtain needed services and resources; coordinating services with other providers; enhancing community integration; making collateral contacts; monitoring service delivery; discharge planning; and advocating for individuals in response to their changing needs. "Case management service" does not include maintaining service waiting lists or periodically contacting or tracking individuals to determine potential service needs.

"Clinical experience" means providing direct services to individuals with mental illness or the provision of direct geriatric services or special education services. Experience may include supervised internships, practicums, and field experience.

"Commissioner" means the Commissioner of the Department of Behavioral Health and Developmental Services.

"Community gero-psychiatric residential services" means 24-hour care provided to individuals with mental illness, behavioral problems, and concomitant health problems who are usually age 65 or older in a geriatric setting that is less intensive than a psychiatric hospital but more intensive than a nursing home or group home. Services include assessment and individualized services planning by an interdisciplinary services team, intense supervision, psychiatric care, behavioral treatment planning and behavior interventions, nursing, and other health related services.

"Community intermediate care facility/mental retardation (ICF/MR)" means a residential facility in which care is provided to individuals who have mental retardation (intellectual disability) or a developmental disability who need more intensive training and supervision than may be available in an assisted living facility or group home. Such facilities shall comply with Title XIX of the Social Security Act standards and federal certification requirements, provide health or rehabilitative services, and provide active treatment to individuals receiving services toward the achievement of a more independent level of functioning or an improved quality of life.

"Complaint" means an allegation of a violation of these regulations or a provider's policies and procedures related to these regulations.

"Co-occurring disorders" means the presence of more than one and often several of the following disorders that are identified independently of one another and are not simply a cluster of symptoms resulting from a single disorder: mental illness, mental retardation (intellectual disability), or substance abuse (substance use disorders); brain injury; or developmental disability.

"Co-occurring services" means individually planned therapeutic treatment that addresses in an integrated concurrent manner the service needs of individuals who have co-occurring disorders.

"Corrective action plan" means the provider's pledged corrective action in response to cited areas of noncompliance documented by the regulatory authority. A corrective action plan must be completed within a specified time.

"Correctional facility" means a facility operated under the management and control of the Virginia Department of Corrections.

"Crisis" means a deteriorating or unstable situation often developing suddenly or rapidly that produces acute, heightened, emotional, mental, physical, medical, or behavioral distress; or any situation or circumstance in which the individual perceives or experiences a sudden loss of his ability to use effective problem-solving and coping skills.

"Crisis stabilization" means direct, intensive nonresidential or residential direct care and treatment to nonhospitalized individuals experiencing an acute crisis that may jeopardize their current community living situation. Crisis stabilization is intended to avert hospitalization or rehospitalization; provide normative environments with a high assurance of safety and security for crisis intervention; stabilize individuals in crisis; and mobilize the resources of the community support system, family members, and others for ongoing rehabilitation and recovery.

"Day support service" means structured programs of activity or training services for adults with an intellectual disability or a developmental disability, generally in clusters of two or more continuous hours per day provided to groups or individuals in nonresidential community-based settings. Day support services may provide opportunities for peer interaction and community integration and are designed to enhance the following: self-care and hygiene, eating, toileting, task learning, community resource utilization, environmental and behavioral skills, social skills, medication management, prevocational skills, and transportation skills. The term "day support service" does not include services in which the primary function is to provide employment-related services, general educational services, or general recreational services.

"Department" means the Virginia Department of Behavioral Health and Developmental Services.

"Developmental disabilities" means autism or a severe, chronic disability that meets all of the following conditions identified in 42 CFR 435.1009:

1. Attributable to cerebral palsy, epilepsy, or any other condition, other than mental illness, that is found to be closely related to mental retardation (intellectual disability) because this condition results in impairment of general intellectual functioning or adaptive behavior similar to behavior of individuals with mental retardation (intellectual disability) and requires treatment or services similar to those required for these individuals;

2. Manifested before the individual reaches age 18;

3. Likely to continue indefinitely; and

4. Results in substantial functional limitations in three or more of the following areas of major life activity:

a. Self-care;

b. Understanding and use of language;

c. Learning;

d. Mobility;

e. Self-direction; or

f. Capacity for independent living.

"Discharge" means the process by which the individual's active involvement with a service is terminated by the provider, individual , or authorized representative.

"Discharge plan" means the written plan that establishes the criteria for an individual's discharge from a service and identifies and coordinates delivery of any services needed after discharge.

"Dispense" means to deliver a drug to an ultimate user by or pursuant to the lawful order of a practitioner, including the prescribing and administering, packaging, labeling or compounding necessary to prepare the substance for that delivery. (§ 54.1-3400 et seq. of the Code of Virginia.)

"Emergency service" means unscheduled and sometimes scheduled crisis intervention, stabilization, and referral assistance provided over the telephone or face-to-face, if indicated, available 24 hours a day and seven days per week. Emergency services also may include walk-ins, home visits, jail interventions, and preadmission screening activities associated with the judicial process .

"Group home or community residential service" means a congregate service providing 24-hour supervision in a community-based home having eight or fewer residents. Services include supervision, supports, counseling, and training in activities of daily living for individuals whose individualized services plan identifies the need for the specific types of services available in this setting.

"Home and noncenter based" means that a service is provided in the individual's home or other noncenter-based setting. This includes noncenter-based day support, supportive in-home, and intensive in-home services.

"IFDDS Waiver" means the Individual and Family Developmental Disabilities Support Waiver.

"Individual" or "individual receiving services" means a person receiving services that are licensed under this chapter whether that person is referred to as a patient, consumer, client, resident, student, individual, recipient, family member, relative, or other term. When the term is used, the requirement applies to every individual receiving licensed services from the provider.

"Individualized services plan" or "ISP" means a comprehensive and regularly updated written plan that describes the individual's needs, the measurable goals and objectives to address those needs, and strategies to reach the individual's goals. An ISP is person-centered, empowers the individual, and is designed to meet the needs and preferences of the individual. The ISP is developed through a partnership between the individual and the provider and includes an individual's treatment plan, habilitation plan, person-centered plan, or plan of care, which are all considered individualized service plans.

"Initial assessment" means an assessment conducted prior to or at admission to determine whether the individual meets the service's admission criteria; what the individual's immediate service, health, and safety needs are; and whether the provider has the capability and staffing to provide the needed services.

"Inpatient psychiatric service" means intensive 24-hour medical, nursing, and treatment services provided to individuals with mental illness or substance abuse (substance use

disorders) in a hospital as defined in § 32.1-123 of the Code of Virginia or in a special unit of such a hospital.

"Instrumental activities of daily living" or "IADLs" means meal preparation, housekeeping, laundry, and managing money. A person's degree of independence in performing these activities is part of determining appropriate level of care and services.

"Intensive Community Treatment (ICT) service" means a self-contained interdisciplinary team of at least five full-time equivalent clinical staff, a program assistant, and a full-time psychiatrist that:

1. Assumes responsibility for directly providing needed treatment, rehabilitation, and support services to identified individuals with severe and persistent mental illness especially those who have severe symptoms that are not effectively remedied by available treatments or who because of reasons related to their mental illness resist or avoid involvement with mental health services;
2. Minimally refers individuals to outside service providers;
3. Provides services on a long-term care basis with continuity of caregivers over time;
4. Delivers 75% or more of the services outside program offices; and
5. Emphasizes outreach, relationship building, and individualization of services.

"Intensive in-home service" means family preservation interventions for children and adolescents who have or are at-risk of serious emotional disturbance, including individuals who also have a diagnosis of mental retardation (intellectual disability). Intensive in-home service is usually time-limited and is provided typically in the residence of an individual who is at risk of being moved to out-of-home placement or who is being transitioned back home from an out-of-home placement. The service includes 24-hour per day emergency response; crisis treatment; individual and family counseling; life, parenting, and communication skills; and case management and coordination with other services.

"Investigation" means a detailed inquiry or systematic examination of the operations of a provider or its services regarding an alleged violation of regulations or law. An investigation may be undertaken as a result of a complaint, an incident report, or other information that comes to the attention of the department.

"Licensed mental health professional (LMHP)" means a physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, licensed substance abuse treatment practitioner, licensed marriage and family therapist, or certified psychiatric clinical nurse specialist.

"Location" means a place where services are or could be provided.

"Medically managed withdrawal services" means detoxification services to eliminate or reduce the effects of alcohol or other drugs in the individual's body.

"Mandatory outpatient treatment order" means an order issued by a court pursuant to § 37.2-817 of the Code of Virginia.

"Medical detoxification" means a service provided in a hospital or other 24-hour care facility under the supervision of medical personnel using medication to systematically eliminate or reduce effects of alcohol or other drugs in the individual's body.

"Medical evaluation" means the process of assessing an individual's health status that includes a medical history and a physical examination of an individual conducted by a licensed medical practitioner operating within the scope of his license.

"Medication" means prescribed or over-the-counter drugs or both.

"Medication administration" means the direct application of medications by injection, inhalation, ingestion, or any other means to an individual receiving services by (i) persons

legally permitted to administer medications or (ii) the individual at the direction and in the presence of persons legally permitted to administer medications.

"Medication assisted treatment (Opioid treatment service)" means an intervention strategy that combines outpatient treatment with the administering or dispensing of synthetic narcotics, such as methadone or buprenorphine (suboxone), approved by the federal Food and Drug Administration for the purpose of replacing the use of and reducing the craving for opioid substances, such as heroin or other narcotic drugs.

"Medication error" means an error in administering a medication to an individual and includes when any of the following occur: (i) the wrong medication is given to an individual, (ii) the wrong individual is given the medication, (iii) the wrong dosage is given to an individual, (iv) medication is given to an individual at the wrong time or not at all, or (v) the wrong method is used to give the medication to the individual.

"Medication storage" means any area where medications are maintained by the provider, including a locked cabinet, locked room, or locked box.

"Mental Health Community Support Service (MHCSS)" means the provision of recovery-oriented services to individuals with long-term, severe mental illness. MHCSS includes skills training and assistance in accessing and effectively utilizing services and supports that are essential to meeting the needs identified in the individualized services plan and development of environmental supports necessary to sustain active community living as independently as possible. MHCSS may be provided in any setting in which the individual's needs can be addressed, skills training applied, and recovery experienced.

"Mental illness" means a disorder of thought, mood, emotion, perception, or orientation that significantly impairs judgment, behavior, capacity to recognize reality, or ability to address basic life necessities and requires care and treatment for the health, safety, or recovery of the individual or for the safety of others.

"Mental retardation (intellectual disability)" means a disability originating before the age of 18 years characterized concurrently by (i) significantly subaverage intellectual functioning as demonstrated by performance on a standardized measure of intellectual functioning administered in conformity with accepted professional practice that is at least two standard deviations below the mean; and (ii) significant limitations in adaptive behavior as expressed in conceptual, social, and practical adaptive skills (§ 37.2-100 of the Code of Virginia).

"Neglect" means the failure by an individual or a program or facility operated, licensed, or funded by the department, excluding those operated by the Department of Corrections, responsible for providing services to do so, including nourishment, treatment, care, goods, or services necessary to the health, safety, or welfare of a person receiving care or treatment for mental illness, mental retardation (intellectual disability), or substance abuse (substance use disorders).

"Neurobehavioral services" means the assessment, evaluation, and treatment of cognitive, perceptual, behavioral, and other impairments caused by brain injury that affect an individual's ability to function successfully in the community.

"Outpatient service" means treatment provided to individuals on an hourly schedule, on an individual, group, or family basis, and usually in a clinic or similar facility or in another location. Outpatient services may include diagnosis and evaluation, screening and intake, counseling, psychotherapy, behavior management, psychological testing and assessment, laboratory and other ancillary services, medical services, and medication services. "Outpatient service" specifically includes:

1. Services operated by a community services board or a behavioral health authority established pursuant to Chapter 5 (§ 37.2-500 et seq.) or Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia;

2. Services contracted by a community services board or a behavioral health authority established pursuant to Chapter 5 (§ 37.2-500 et seq.) or Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia; or

3. Services that are owned, operated, or controlled by a corporation organized pursuant to the provisions of either Chapter 9 (§ 13.1-601 et seq.) or Chapter 10 (§ 13.1-801 et seq.) of Title 13.1 of the Code of Virginia.

"Partial hospitalization service" means time-limited active treatment interventions that are more intensive than outpatient services, designed to stabilize and ameliorate acute symptoms, and serve as an alternative to inpatient hospitalization or to reduce the length of a hospital stay. Partial hospitalization is focused on individuals with serious mental illness, substance abuse (substance use disorders), or co-occurring disorders at risk of hospitalization or who have been recently discharged from an inpatient setting.

"Person-centered" means focusing on the needs and preferences of the individual; empowering and supporting the individual in defining the direction for his life; and promoting self-determination, community involvement, and recovery.

"Program of Assertive Community Treatment (PACT) service" means a self-contained interdisciplinary team of at least 10 full-time equivalent clinical staff, a program assistant, and a full- or part-time psychiatrist that:

1. Assumes responsibility for directly providing needed treatment, rehabilitation, and support services to identified individuals with severe and persistent mental illnesses, including those who have severe symptoms that are not effectively remedied by available treatments or who because of reasons related to their mental illness resist or avoid involvement with mental health services;

2. Minimally refers individuals to outside service providers;

3. Provides services on a long-term care basis with continuity of caregivers over time;

4. Delivers 75% or more of the services outside program offices; and

5. Emphasizes outreach, relationship building, and individualization of services.

"Provider" means any person, entity, or organization, excluding an agency of the federal government by whatever name or designation, that delivers (i) services to individuals with mental illness, mental retardation (intellectual disability), or substance abuse (substance use disorders), (ii) services to individuals who receive day support, in-home support, or crisis stabilization services funded through the IFDDS Waiver, or (iii) residential services for individuals with brain injury. The person, entity, or organization shall include a hospital as defined in § 32.1-123 of the Code of Virginia, community services board, behavioral health authority, private provider, and any other similar or related person, entity, or organization. It shall not include any individual practitioner who holds a license issued by a health regulatory board of the Department of Health Professions or who is exempt from licensing pursuant to §§ 54.1-2901, 54.1-3001, 54.1-3501, 54.1-3601 and 54.1-3701 of the Code of Virginia.

"Psychosocial rehabilitation service" means a program of two or more consecutive hours per day provided to groups of adults in a nonresidential setting. Individuals must demonstrate a clinical need for the service arising from a condition due to mental, behavioral, or emotional illness that results in significant functional impairments in major life activities. This service provides education to teach the individual about mental illness, substance abuse, and appropriate medication to avoid complication and relapse and opportunities to learn and use independent skills and to enhance social and interpersonal skills within a consistent program

structure and environment. Psychosocial rehabilitation includes skills training, peer support, vocational rehabilitation, and community resource development oriented toward empowerment, recovery, and competency.

"Qualified mental health professional" or "QMHP" means a person who by education and experience is professionally qualified and registered by the Board of Counseling in accordance with 18VAC115-80 to provide collaborative mental health services for adults or children. A QMHP shall not engage in independent or autonomous practice. A QMHP shall provide such services as an employee or independent contractor of the DBHDS or a provider licensed by the DBHDS.

"Qualified Mental Health Professional-Adult (QMHP-A)" means a person ~~in the human services field who is trained and experienced in providing psychiatric or mental health services to individuals who have a mental illness; including (i) a doctor of medicine or osteopathy licensed in Virginia; (ii) a doctor of medicine or osteopathy, specializing in psychiatry and licensed in Virginia; (iii) an individual with a master's degree in psychology from an accredited college or university with at least one year of clinical experience; (iv) a social worker: an individual with at least a bachelor's degree in human services or related field (social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, human services counseling or other degree deemed equivalent to those described) from an accredited college and with at least one year of clinical experience providing direct services to individuals with a diagnosis of mental illness; (v) a person with at least a bachelor's degree from an accredited college in an unrelated field that includes at least 15 semester credits (or equivalent) in a human services field and who has at least three years of clinical experience; (vi) a Certified Psychiatric Rehabilitation Provider (CPRP) registered with the United States Psychiatric Rehabilitation Association (USPRA); (vii) a registered nurse licensed in Virginia with at least one year of clinical experience; or (viii) any other licensed mental health professional~~ who by education and experience is professionally qualified and registered with the Board of Counseling in accordance with 18VAC115-80 to provide collaborative mental health services for adults. A QMHP-A shall provide such services as an employee or independent contractor of the DBHDS or a provider licensed by the DBHDS.

"Qualified Mental Health Professional-Child (QMHP-C)" means a person ~~in the human services field who is trained and experienced in providing psychiatric or mental health services to children who have a mental illness. To qualify as a QMHP-C, the individual must have the designated clinical experience and must either (i) be a doctor of medicine or osteopathy licensed in Virginia; (ii) have a master's degree in psychology from an accredited college or university with at least one year of clinical experience with children and adolescents; (iii) have a social work bachelor's or master's degree from an accredited college or university with at least one year of documented clinical experience with children or adolescents; (iv) be a registered nurse with at least one year of clinical experience with children and adolescents; (v) have at least a bachelor's degree in a human services field or in special education from an accredited college with at least one year of clinical experience with children and adolescents, or (vi) be a licensed mental health professional~~ who by education and experience is professionally qualified and registered with the Board of Counseling in accordance with 18VAC115-80 to provide collaborative mental health services for children. A QMHP-C shall provide such services as an employee or independent contractor of the DBHDS or a provider licensed by the DBHDS.

"Qualified Mental Health Professional-Eligible (QMHP-E)" means a person ~~who has: (i) at least a bachelor's degree in a human service field or special education from an accredited college without one year of clinical experience or (ii) at least a bachelor's degree in a nonrelated field and is enrolled in a master's or doctoral clinical program, taking the equivalent of at least three credit hours per semester and is employed by a provider that has a triennial license issued by the department and has a department and DMAS-approved supervision training program~~

receiving supervised training in order to qualify as a QMHP in accordance with 18VAC115-80 and who is registered with the Board of Counseling.

"Qualified ~~Mental Retardation~~ Developmental Disability Professional ~~(QMRP)~~ (QDDP)" means a person who possesses at least one year of documented experience working directly with individuals who have ~~mental retardation (intellectual disability)~~ a developmental disability ~~or other developmental disabilities~~ and one of the following credentials: (i) a doctor of medicine or osteopathy licensed in Virginia, (ii) a registered nurse licensed in Virginia, ~~or~~ (iii) a licensed occupational therapist; or (iv) completion of at least a bachelor's degree in a human services field, including, but not limited to sociology, social work, special education, rehabilitation counseling, or psychology.

"Qualified Paraprofessional in Mental Health (QPPMH)" means a person who must~~, at a minimum,~~ meet at least one of the following criteria: (i) registered with the United States Psychiatric Association (USPRA) as an Associate Psychiatric Rehabilitation Provider (APRP); (ii) has an associate's degree in a related field (social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, human services counseling) and at least one year of experience providing direct services to individuals with a diagnosis of mental illness; ~~or~~ (iii) licensed as an occupational therapy assistant and supervised by a licensed occupational therapist, with at least one year of experience providing direct services to individuals with a diagnosis of mental illness; or (iv) has a minimum of 90 hours classroom training and 12 weeks of experience under the direct personal supervision of a QMHP-Adult providing services to individuals with mental illness and at least one year of experience (including the 12 weeks of supervised experience).

"Recovery" means a journey of healing and transformation enabling an individual with a mental illness to live a meaningful life in a community of his choice while striving to achieve his full potential. For individuals with substance abuse (substance use disorders), recovery is an incremental process leading to positive social change and a full return to biological, psychological, and social functioning. For individuals with mental retardation (intellectual disability), the concept of recovery does not apply in the sense that individuals with mental retardation (intellectual disability) will need supports throughout their entire lives although these may change over time. With supports, individuals with mental retardation (intellectual disability) are capable of living lives that are fulfilling and satisfying and that bring meaning to themselves and others whom they know.

"Referral" means the process of directing an applicant or an individual to a provider or service that is designed to provide the assistance needed.

"Residential crisis stabilization service" means (i) providing short-term, intensive treatment to nonhospitalized individuals who require multidisciplinary treatment in order to stabilize acute psychiatric symptoms and prevent admission to a psychiatric inpatient unit; (ii) providing normative environments with a high assurance of safety and security for crisis intervention; and (iii) mobilizing the resources of the community support system, family members, and others for ongoing rehabilitation and recovery.

"Residential service" means providing 24-hour support in conjunction with care and treatment or a training program in a setting other than a hospital or training center. Residential services provide a range of living arrangements from highly structured and intensively supervised to relatively independent requiring a modest amount of staff support and monitoring. Residential services include residential treatment, group or community homes, supervised living, residential crisis stabilization, community gero-psychiatric residential, community intermediate care facility-MR, sponsored residential homes, medical and social detoxification, neurobehavioral services, and substance abuse residential treatment for women and children.

"Residential treatment service" means providing an intensive and highly structured mental health, substance abuse, or neurobehavioral service, or services for co-occurring disorders in a residential setting, other than an inpatient service.

"Respite care service" means providing for a short-term, time limited period of care of an individual for the purpose of providing relief to the individual's family, guardian, or regular care giver. Persons providing respite care are recruited, trained, and supervised by a licensed provider. These services may be provided in a variety of settings including residential, day support, in-home, or a sponsored residential home.

"Restraint" means the use of a mechanical device, medication, physical intervention, or hands-on hold to prevent an individual receiving services from moving his body to engage in a behavior that places him or others at imminent risk. There are three kinds of restraints:

1. Mechanical restraint means the use of a mechanical device that cannot be removed by the individual to restrict the individual's freedom of movement or functioning of a limb or portion of an individual's body when that behavior places him or others at imminent risk.

2. Pharmacological restraint means the use of a medication that is administered involuntarily for the emergency control of an individual's behavior when that individual's behavior places him or others at imminent risk and the administered medication is not a standard treatment for the individual's medical or psychiatric condition.

3. Physical restraint, also referred to as manual hold, means the use of a physical intervention or hands-on hold to prevent an individual from moving his body when that individual's behavior places him or others at imminent risk.

"Restraints for behavioral purposes" means using a physical hold, medication, or a mechanical device to control behavior or involuntary restrict the freedom of movement of an individual in an instance when all of the following conditions are met: (i) there is an emergency; (ii) nonphysical interventions are not viable; and (iii) safety issues require an immediate response.

"Restraints for medical purposes" means using a physical hold, medication, or mechanical device to limit the mobility of an individual for medical, diagnostic, or surgical purposes, such as routine dental care or radiological procedures and related post-procedure care processes, when use of the restraint is not the accepted clinical practice for treating the individual's condition.

"Restraints for protective purposes" means using a mechanical device to compensate for a physical or cognitive deficit when the individual does not have the option to remove the device. The device may limit an individual's movement, for example, bed rails or a gerichair, and prevent possible harm to the individual or it may create a passive barrier, such as a helmet to protect the individual.

"Restriction" means anything that limits or prevents an individual from freely exercising his rights and privileges.

"Screening" means the process or procedure for determining whether the individual meets the minimum criteria for admission.

"Seclusion" means the involuntary placement of an individual alone in an area secured by a door that is locked or held shut by a staff person, by physically blocking the door, or by any other physical means so that the individual cannot leave it.

"Serious injury" means any injury resulting in bodily damage, harm, or loss that requires medical attention by a licensed physician, doctor of osteopathic medicine, physician assistant, or nurse practitioner while the individual is supervised by or involved in services, such as attempted suicides, medication overdoses, or reactions from medications administered or prescribed by the service.

"Service" or "services" means (i) planned individualized interventions intended to reduce or ameliorate mental illness, mental retardation (intellectual disability), or substance abuse (substance use disorders) through care, treatment, training, habilitation, or other supports that are delivered by a provider to individuals with mental illness, mental retardation (intellectual disability), or substance abuse (substance use disorders). Services include outpatient services, intensive in-home services, opioid treatment services, inpatient psychiatric hospitalization, community gero-psychiatric residential services, assertive community treatment and other clinical services; day support, day treatment, partial hospitalization, psychosocial rehabilitation, and habilitation services; case management services; and supportive residential, halfway house, and other residential services; (ii) day support, in - home support, and crisis stabilization services provided to individuals under the IFDDS Waiver; and (iii) planned individualized interventions intended to reduce or ameliorate the effects of brain injury through care, treatment, or other supports or in residential services for persons with brain injury.

"Shall" means an obligation to act is imposed.

"Shall not" means an obligation not to act is imposed.

"Skills training" means systematic skill building through curriculum-based psychoeducational and cognitive-behavioral interventions. These interventions break down complex objectives for role performance into simpler components, including basic cognitive skills such as attention, to facilitate learning and competency.

"Social detoxification service" means providing nonmedical supervised care for the individual's natural process of withdrawal from use of alcohol or other drugs.

"Sponsored residential home" means a service where providers arrange for, supervise, and provide programmatic, financial, and service support to families or persons (sponsors) providing care or treatment in their own homes for individuals receiving services.

"State board" means the State Board of Behavioral Health and Developmental Services. The board has statutory responsibility for adopting 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 commissioner or the department.

"State methadone authority" means the Virginia Department of Behavioral Health and Developmental Services that is authorized by the federal Center for Substance Abuse Treatment to exercise the responsibility and authority for governing the treatment of opiate addiction with an opioid drug.

"Substance abuse (substance use disorders)" means the use of drugs enumerated in the Virginia Drug Control Act (§ 54.1-3400 et seq.) without a compelling medical reason or alcohol that (i) results in psychological or physiological dependence or danger to self or others as a function of continued and compulsive use or (ii) results in mental, emotional, or physical impairment that causes socially dysfunctional or socially disordering behavior; and (iii), because of such substance abuse, requires care and treatment for the health of the individual. This care and treatment may include counseling, rehabilitation, or medical or psychiatric care.

"Substance abuse intensive outpatient service" means treatment provided in a concentrated manner for two or more consecutive hours per day to groups of individuals in a nonresidential setting. This service is provided over a period of time for individuals requiring more intensive services than an outpatient service can provide. Substance abuse intensive outpatient services include multiple group therapy sessions during the week, individual and family therapy, individual monitoring, and case management.

"Substance abuse residential treatment for women with children service" means a 24-hour residential service providing an intensive and highly structured substance abuse service for women with children who live in the same facility.

"Supervised living residential service" means the provision of significant direct supervision and community support services to individuals living in apartments or other residential settings. These services differ from supportive in-home service because the provider assumes responsibility for management of the physical environment of the residence, and staff supervision and monitoring are daily and available on a 24-hour basis. Services are provided based on the needs of the individual in areas such as food preparation, housekeeping, medication administration, personal hygiene, treatment, counseling, and budgeting.

"Supportive in-home service" (formerly supportive residential) means the provision of community support services and other structured services to assist individuals, to strengthen individual skills, and that provide environmental supports necessary to attain and sustain independent community residential living. Services include drop-in or friendly-visitor support and counseling to more intensive support, monitoring, training, in-home support, respite care, and family support services. Services are based on the needs of the individual and include training and assistance. These services normally do not involve overnight care by the provider; however, due to the flexible nature of these services, overnight care may be provided on an occasional basis.

"Therapeutic day treatment for children and adolescents" means a treatment program that serves (i) children and adolescents from birth through age 17 and under certain circumstances up to 21 with serious emotional disturbances, substance use, or co-occurring disorders or (ii) children from birth through age seven who are at risk of serious emotional disturbance, in order to combine psychotherapeutic interventions with education and mental health or substance abuse treatment. Services include: evaluation; medication education and management; opportunities to learn and use daily living skills and to enhance social and interpersonal skills; and individual, group, and family counseling.

"Time out" means the involuntary removal of an individual by a staff person from a source of reinforcement to a different, open location for a specified period of time or until the problem behavior has subsided to discontinue or reduce the frequency of problematic behavior.

"Volunteer" means a person who, without financial remuneration, provides services to individuals on behalf of the provider.

12VAC35-105-590. Provider staffing plan.

A. The provider shall implement a written staffing plan that includes the types, roles, and numbers of employees and contractors that are required to provide the service. This staffing plan shall reflect the:

1. Needs of the individuals served;

2. Types of services offered;

3. The service description; and

4. Number of people to be served at a given time.

B. The provider shall develop a written transition staffing plan for new services, added locations, and changes in capacity.

C. The provider shall meet the following staffing requirements related to supervision.

1. The provider shall describe how employees, volunteers, contractors, and student interns will be supervised in the staffing plan and how that supervision will be documented.

2. Supervision of employees, volunteers, contractors, and student interns shall be provided by persons who have experience in working with individuals receiving services and in providing the services outlined in the service description.

3. Supervision shall be appropriate to the services provided and the needs of the individual. Supervision shall be documented.

4. Supervision shall include responsibility for approving assessments and individualized services plans, as appropriate. This responsibility may be delegated to an employee or contractor who meets the qualification for supervision as defined in this section.

5. Supervision of mental health, substance abuse, or co-occurring services that are of an acute or clinical nature such as outpatient, inpatient, intensive in-home, or day treatment shall be provided by a licensed mental health professional or a mental health professional who is license-eligible and registered with a board of the Department of Health Professions.

6. Supervision of mental health, substance abuse, or co-occurring services that are of a supportive or maintenance nature, such as psychosocial rehabilitation, mental health supports shall be provided by a QMHP-A, a licensed mental health professional, or a mental health professional who is license-eligible and registered with a board of the Department of Health Professions. An individual who is QMHP-E may not provide this type of supervision.

7. Supervision of mental retardation (intellectual disability) services shall be provided by a person with at least one year of documented experience working directly with individuals who have mental retardation (intellectual disability) or other developmental disabilities and holds at least a bachelor's degree in a human services field such as sociology, social work, special education, rehabilitation counseling, nursing, or psychology. Experience may be substituted for the education requirement.

8. Supervision of individual and family developmental disabilities support (IFDDS) services shall be provided by a person possessing at least one year of documented experience working directly with individuals who have developmental disabilities and is one of the following: a doctor of medicine or osteopathy licensed in Virginia; a registered nurse licensed in Virginia; or a person holding at least a bachelor's degree in a human services field such as sociology, social work, special education, rehabilitation counseling, or psychology. Experience may be substituted for the education requirement.

9. Supervision of brain injury services shall be provided at a minimum by a clinician in the health professions field who is trained and experienced in providing brain injury services to individuals who have a brain injury diagnosis including: (i) a doctor of medicine or osteopathy licensed in Virginia; (ii) a psychiatrist who is a doctor of medicine or osteopathy specializing in psychiatry and licensed in Virginia; (iii) a psychologist who has a master's degree in psychology from a college or university with at least one year of clinical experience; (iv) a social worker who has a bachelor's degree in human services or a related field (social work, psychology, psychiatric evaluation, sociology, counseling, vocational rehabilitation, human services counseling, or other degree deemed equivalent to those described) from an accredited college or university with at least two years of clinical experience providing direct services to individuals with a diagnosis of brain injury; (v) a Certified Brain Injury Specialist; (vi) a registered nurse licensed in Virginia with at least one year of clinical experience; or (vii) any other licensed rehabilitation professional with one year of clinical experience.

D. The provider shall employ or contract with persons with appropriate training, as necessary, to meet the specialized needs of and to ensure the safety of individuals being served in residential services with medical or nursing needs; speech, language, or hearing problems; or other needs where specialized training is necessary.

E. Providers of brain injury services shall employ or contract with a neuropsychologist or licensed clinical psychologist specializing in brain injury to assist, as appropriate, with initial assessments, development of individualized services plans, crises, staff training, and service design.

F. Direct care staff who provide brain injury services shall have at least a high school diploma and two years of experience working with individuals with disabilities or shall have successfully completed an approved training curriculum on brain injuries within six months of employment.

12VAC35-105-1370. Treatment team and staffing plan.

A. Services are delivered by interdisciplinary teams.

1. PACT and ICT teams shall include the following positions:

a. Team Leader - one full time QMHP-Adult with at least three years experience in the provision of mental health services to adults with serious mental illness. The team leader shall oversee all aspects of team operations and shall routinely provide direct services to individuals in the community.

b. Nurses - PACT and ICT nurses shall be full-time employees or contractors with the following minimum qualifications: A registered nurse (RN) shall have one year of experience in the provision of mental health services to adults with serious mental illness. A licensed practical nurse (LPN) shall have three years of experience in the provision of mental health services to adults with serious mental illness. ICT teams shall have at least one qualified full-time nurse. PACT teams shall have at least three qualified full-time nurses at least one of whom shall be a qualified RN.

c. One full-time vocational specialist and one full-time substance abuse specialist. These staff members shall provide direct services to individuals in their area of specialty and provide leadership to other team members to also assist individuals with their self identified employment or substance abuse recovery goals.

d. Peer specialists - one or more full-time equivalent QPPMH or QMHP-Adult who is or has been a recipient of mental health services for severe and persistent mental illness. The peer specialist shall be a fully integrated team member who provides peer support directly to individuals and provides leadership to other team members in understanding and supporting individuals' recovery goals.

e. Program assistant - one full-time person with skills and abilities in medical records management shall operate and coordinate the management information system, maintain accounts and budget records for individual and program expenditures, and provide receptionist activities.

f. Psychiatrist - one physician who is board certified in psychiatry or who is board eligible in psychiatry and is licensed to practice medicine in Virginia. An equivalent ratio to 20 minutes (.008 FTE) of psychiatric time for each individual served must be maintained. The psychiatrist shall be a fully integrated team member who attends team meetings and actively participates in developing and implementing each individual ISP.

2. QMHP-Adult and mental health professional standards:

a. At least 80% of the clinical employees or contractors, not including the program assistant or psychiatrist, shall ~~meet~~ be ~~QMHP-Adult~~ QMHP-A's ~~standards and shall be~~ qualified to provide the services described in 12VAC35-105-1410.

b. Mental health professionals - At least half of the clinical employees or contractors, not including the team leader or nurses and including the peer specialist if that person holds such a degree, shall hold a master's degree in a human service field.

3. Staffing capacity:

a. An ICT team shall have at least five full-time equivalent clinical employees or contractors. A PACT team shall have at least 10 full-time equivalent clinical employees or contractors.

b. ICT and PACT teams shall include a minimum number of employees (counting contractors but not counting the psychiatrist and program assistant) to maintain an employee to individual ratio of at least 1:10.

c. ICT teams may serve no more than 80 individuals. PACT teams may serve no more than 120 individuals.

d. A transition plan shall be required of PACT teams that will allow for "start-up" when newly forming teams are not in full compliance with the PACT model relative to staffing patterns and individuals receiving services capacity.

B. ICT and PACT teams shall meet daily Monday through Friday or at least four days per week to review and plan routine services and to address or prevent emergency and crisis situations.

C. ICT teams shall operate a minimum of 8 hours per day, 5 days per week and shall provide services on a case-by-case basis in the evenings and on weekends. PACT teams shall be available to individuals 24 hours per day and shall operate a minimum of 12 hours each weekday and 8 hours each weekend day and each holiday.

D. The ICT or PACT team shall make crisis services directly available 24 hours a day but may arrange coverage through another crisis services provider if the team coordinates with the crisis services provider daily. The PACT team shall operate an after-hours on-call system and be available to individuals by telephone or in person.

12VAC35-105-1410. Service requirements.

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, education, 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 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.

Regulatory Item V. Ch.115 – Behavioral Treatment Plans – ADDENDUM: Comment Chart

State Board of Behavioral Health and Developmental Services
Office of Human Rights

DBHDS RESPONSE TO COMMENTS ON: PROPOSED AMENDMENTS TO CHAPTER 115
REGARDING BEHAVIORAL TREATMENT PLANS AND LICENSED BEHAVIOR ANALYSTS

	Stage	**DRAFT - Request for Comment**		
	VAC	**Chapter 115**		
	Window:	**August 10- August 25, 2017**		
	Date Rcv'd	**Contact**	**Comment**	**DBHDS Response**
1.	8/9/2017	Lisa Snyder Compliance Program Manager Loudoun County Department of Mental Health, Substance Abuse & Developmental Services	I think the three proposed changes would address the concerns we are facing in implementation of the regulations. The only other concern here is within 115-105B that the way the current statement reads, it indicates that all individualized restrictions, not just the use of restraint or time out, require the licensed assessment. Is this the intent or is the intent for licensed assessment to occur only with use of restraint or time out?	• N/A • Individualized restrictions used in a behavioral treatment plan to address challenging behaviors that present an immediate danger to the individual or others require assessment by a licensed professional, or, after these revisions go into effect, by a licensed behavior analyst. Time out and restraint are examples of such restrictions, but they are not the only restrictions that could trigger the assessment.
2.	8/10/2017	Melissa Javier-Barry L'Arche Greater Washington, DC	I agree with and support your amendments and revisions as stated in this draft. Thank you for your work.	• N/A
3.	8/16/2017	Donna Moore DBHDS Psychology Manager-NVMHI	I have reviewed the Draft Revisions and agree with the changes. However, it might take some time before the changes to the revised regulations are enacted. Therefore, would you please provide the facility directors with the guidance that we collaborated on so that they have some direction as to what they must do in the interim.	• Until the revisions are finalized, the requirements in the current regulations should be followed.
4.	8/16/2017	Justin Creech, PBSF Positive Behavior Consulting, LLC	1. How will DBHDS providers access an IRC? I've spoken to providers where this is a concern. Our group even discussed developing an IRC to help providers (for plans other than our own) but we	• These questions are not related to the revisions proposed in this regulatory action and are better addressed through direct inquiry to your advocate or OHR.

			wouldn't be able to do this for free. Also, it looks like PBSF's without a license could NOT recommend restraint or timeout in a plan but they can be on an IRC since they do have the training and experience. Is this accurate? I and probably many other PBSF's typically say "use program crisis procedures" when the individual is danger to self and others. That way it falls onto what their agency provides for crisis training, such as TOVA. 2. It appears that a DBHDS provider would have to take the plan with restraint or time out to an IRC first, get approval, then take this to an LHRC or SCC. Is this accurate? If this is accurate, what would be the purpose of having two different committees review the same plan and approve? So it really could be many months before implementation could occur. 3. It looks like SCC meetings have to go from every 6 months to every 3 months. Is that accurate? If so, I propose keeping it every 6 months as it is difficult to get volunteers to attend. I definitely support not having every plan reviewed. I don't think this would be practical and logistics for review would likely negatively affect the individual receiving necessary and timely supports. I also strongly support adding Licensed Behavior Analysts to the list of professionals.	Behavioral treatment plans with restraint or time out can be written and recommended by a non-licensed positive behavior support facilitator (PBSF), after a licensed professional has conducted a detailed and systemic assessment of the behavior and situations in which the behavior occurs. • This is correct. The IRC and the LHRC's serve different purposes. The IRC looks at the clinical aspects of the plan; the LHRC reviews for rights compliance. • The SCC is a requirement of CMS specifically for ICF/IDD facilities. There are no mandated timeframes for meetings or oversight in general for the SCC within the Human Rights Regulations. • N/A • N/A
5.	8/21/2017	Judy C. Bailey, M.Ed. Consultant on AAC/FC/RPM and PBS Endorsed Positive Behavior Supports (PBS) Facilitator	In reviewing policies and procedures, I tend to read and interpret quite literally. The way I read this, it does not state outright what will be reviewed other than the plan itself. Review of progress (or the lack thereof) is implied, I suppose, but should be stated outright. Do these review groups look at improvements in quality of life measures (many of which are determined by people	

		Director of Everyone Communicates Project Vice President, Virginia TASH Chapter	in the focus person's life and are not in the focus person's control), fidelity of implementation of the entire plan (not just the restrictive procedures), environmental modifications and accommodations, staff learning, and so forth? I fear that reviewers might focus primarily on the individual's response to the restrictive procedure and not consider the big picture, even though we know the effect of the environment and interactions therein are of critical importance. Proposed rewording: **G. Behavioral treatment plans involving the use of restraint or time out shall be reviewed, along with data on overall plan implementation and response and quality of life outcomes, quarterly by the independent review committee and the LHRC or SCC to determine if the use of restraint has resulted in improvements in the functioning of the individual.** This may not be ideal wording yet, as it is rather long and still rather system oriented. It is often hard to spot a person-centered focus and a quality of life focus in policies and procedures like this which read like medical model documents. The phrase "improvements in functioning of the individual" still puts the emphasis on looking at the individual to change rather than the environment, life opportunities, choice, relationships, interactions, and so forth that are not in the individual's control. I'm not sure what to recommend for other wording for this phrase, but something (perhaps an additional sentence) to acknowledge the effect of the individual's life circumstances, as just mentioned, would be welcome.	• This recommendation goes beyond the purpose of this current regulatory action.
6.	8/23/2017	Julie C. Dwyer-Allen, MSEd, BCBA, LBA VA Licensed Behavior Analyst Director of Behavioral Services Community	1. Please confirm than non-restrictive plans do NOT need to be reviewed by an Independent Review Committee. 2. Please clarify if the approved licensed providers also	• Clarification of what plans need to be submitted to an IRC is provided in the proposed revisions to subdivision C 3 of 12VAC35-115-105. • Assuming you mean "licensed

		Residences, Inc	include Licensed Board Certified Assistant Behavior Analysts. If not, I would recommend that it is included.	professionals" as used in subdivision 105 B, that term includes only those professionals listed in that definition at 12 VAC 35-115-30. After this revision becomes effective, "licensed behavior analysts" will also be able to perform the duties specified in in subdivision 105 B. "Licensed assistant behavior analysts" are not included in this revision, and DBHDS does not support making this change at this time.
9	8/24/2017	Christy Evanko, BCBA, LBA Snowflakes ABA, LLC	We agree that Licensed Behavior Analysts and Licensed Assistant Behavior Analysts must be included in these regulations. We also understand the thought behind removing "applied" as this would not include academics in the field. We, the VABA Policy Committee, have made some suggested changes to the wording and attached the document. We would love the chance to discuss the changes with you if you wish. But here is a little explanation: • The correct term is "behavior analysis" instead of "behavioral analysis" so we removed the "al." • We are concerned that the training and experience of professionals is not spelled out in the definition of the independent review committee. Could the committee be comprised solely of QMHPs? It seems that is a possibility with this definition. We feel that at least one licensed person should be a member. • We thought it important to define LBAs and LABAs as it relates to the code. It is intended to be only Virginia Licensed personnel. • In B., we were concerned that the wording "licensed professional, or licensed behavior analyst "made it	• For clarification, as discussed above, these revisions do not include "licensed assistant behavior analysts." • DBHDS agrees; change will be made in the draft. • This recommendation goes beyond the purpose of this regulatory action. • DBHDS does not support making this change at this time. The qualifications for a LBA are spelled out elsewhere, and LABAs are not included in these regulatory changes. • DBHDS does not support making this change at this time.

			sound as if LBAs are not professionals, so we changed the word to including and spelled out the specific licenses (making it necessary for the definition above). • In C1, we are concerned that anyone can say that they are qualified by experience or training, as it's very ambiguous, so we changed the word to licensed, which is clearer and safer for the individual receiving the services. • We felt that "restraint and timeout" are very specific and that plans should be reviewed if they restrict an individual's rights, so we made that change. This is still different from what you describe below that would include all plans, whether restrictive or not, but does not allow professionals to get around it by using different words. We understand that you may not agree with all of our suggestions, but felt that since we had the chance to offer them we should be fully inclusive.	• DBHDS does not support making this change at this time. • DBHDS does not support making this change at this time.
10	8/25/2017	Meneika Keith, MA, QDDP, QMHP Positive Behavior Support Facilitator, Peaceable Life Therapeutic Services, Inc. Owner, Vice President/CFO, Family Sharing, Inc. Resident Professional Counselor, Augusta Psychological Associates	I know this was not part of the draft changes, but I just wanted to be clear about what OHR/DBHDS is identifying as a Behavioral Treatment Plan. It seems as though any individual identified as having behavioral challenges will need a behaviorist. This will be hard for providers to pull off as there are very, very few of us and very, very many individuals in need of us. Can there be a distinction between a Professional Behavioral Treatment Plan and a provider plan to promote behavioral stability that is written by the provider, includes very basic behavioral strategies such as what is taught in the DD Waiver for DSPs, and is non-restrictive in its approach? [Definition of independent review committee] I like this revision, it includes endorsed Positive Behavior Support Facilitators as professionals who can be involved win the IRC. I am still concerned about how every provider who has a Behavior Treatment Plan that	• No comment; this is not part of this regulatory action. • This recommendation goes beyond the purpose of this regulatory action.

			includes a restrictive element would formulate an IRC comprised of behavior analysts or PBSFs to review those plans when it is already hard to find these professionals who are available to even take on new cases, much less sit on an IRC and evaluate a peer's work. Such behaviorists can refuse to do this work, which can put the provider at risk of being non-compliant. The possibility that the provider will then (1) not be able to implement a needed plan for intervention or (2) not try to implement it because they can't find a behaviorist to sit on their committee and take on this task is a real possibility. (more discussed below). [12VAC35-115-105. Behavioral Treatment Plans (C)] I still have concerns, even as revised: 1. This is not just requiring a written order from a licensed professional to justify the use of a restraint, time out, or other individualized restriction, this is requiring a licensed professional to evaluate a treatment plan written by another professional who may or may not already be licensed in another capacity. In addition, it will be submitted to an IRC which will have yet another behaviorist who will also be giving another analysis of the plan written (comments on this below). 2. This significantly delays the implementation of what must be "immediate danger" in order to even be implemented. 3. Being licensed in my residential capacity by DBHDS, this appears to be in contradiction to our risk management requirements to have and utilize behavior intervention techniques during time of "immediate danger" such as Therapeutic Options, Mandt, etc. Would the office consider changing this to something such as: Providers may use individualized restrictions such as restraint or time out **which are to be utilized on an ongoing basis and which are identified** in a behavioral treatment plan to address challenging behaviors that	• DBHDS does not support making this change at this time. • DBHDS does not support making this change at this time.

			present an immediate danger to the individual or others, but only after a licensed professional, or licensed behavior analysist **has documented a recommendation for the need for such restrictions**. Providers shall document in the individual's service record that the lack of success or probably success of less restrictive procedures attempted or considered, and the risks associated with not treating the behavior, are greater than any risks associated with the use of the proposed restrictions. **Continued need for such restrictions must be reviewed by a licensed professional or licensed behavior analyst annually or when changes are needed.** [12VAC35-115-105. Behavioral Treatment Plans (C)] This goes back to my concerns about the structure and role of the IRC. When we used to take our restrictions to the LHRC for review, it was with the understanding that the people on that review committee did not necessarily have professional knowledge of the interventions, medications, or even the services we provide. There may be a "professional" on the committee, but the committee's role was not to "review the technical adequacy of the plan and data collection procedures." The LHRC was specifically entrusted with the goal of looking at the process and procedure of the restriction and assuring that it did not violate the rights of the individual. This new requirement is requiring (1) the IRC to have a behaviorist of some form on the committee who will (2) critique the plan written by another behaviorist. At best, I feel that this requirement of a technical review may be overreaching the authority of any IRC and of OHR/DBHDS, as it requires a behavior professional to engage in giving a "second opinion" and a professional evaluation of a co-professional; at worst, this requirement is in violation of professional ethics. Would the office consider revising this to say something	• DBHDS does not support making this

			such as: Behavioral treatment plans involving the use of restraint or time out are submitted to an independent review committee, prior to implementation, **to assure that the behavior treatment plan and its development process is in keeping with the assurance of the human rights of the individual.** I believe that this revision will address both the issues with this regulation and the issue with the definition of an IRC.	change at this time. The IRC looks at the clinical aspects of the plan; the LHRC reviews for rights compliance.

Proposed 2018 Meeting Dates

April – Wednesday, April 10-11, 2018
Virginia Beach

July – Wednesday, July 10-11, 2018
Richmond

October – Wednesday, October 2-3, 2018
Roanoke

December – Wednesday, December 4-5, 2018
Richmond

2017-2019 Proposed Topics for Upcoming Meetings	
Meeting Date	**Suggested Topics**
July 2017	Biennial Retreat Peer Certification Program Update Progress on Multi- lingual and multi-cultural initiative
October 3 & 4, 2017 Williamsburg	Hospital Census/ EBL Workforce Issues and Workforce Development Possible Discussion on ARTS/Peers
December 4 & 5, 2017 Richmond	Review of Public Education Efforts Pres-Session Update Housing Presentation
April 2018 Hampton Roads (Virginia Beach) Proposed Date: April 10-11, 2018	DOJ Update Post-Session Update Budget Update Early Intervention Presentation Possible Jail Discussion
July 2018 Richmond Proposed Date: July 10-11, 2018	MHFA Training Overview Peer Services Update STEP-VA-SDA Update Possible REVIVE Training
October 2018 Roanoke Proposed Date: October 2-3, 2018	CIT Training Presentation Opioid Presentation Geriatric Services Presentation
December 2018 Richmond Proposed Date: December 4-5, 2018	Pre-Session Update Children's Services Presentation
April 2019	To Be Determined
July 2019	To Be Determined Biennial Retreat

2017 Meeting Schedule

2017 Schedule

- Wednesday, April 4-5, 2017, Winchester
- Wednesday, July 11-12, 2017, Richmond
- Wednesday, October 3,4, 5, 2017, Williamsburg
- Thursday, December 4-5, 2017, Richmond

Event Schedule

Tuesday, October 3-
Wednesday, October 5

Tuesday, **October 3, 2017** **4:30pm-6:00pm**	**Tour of Eastern State Hospital** 4601 Ironbound Road Williamsburg VA 23188-2652 **Dinner** Dinner on your own.
Wednesday, **October 4, 2017** **9:00 a.m. -** **3:30 p.m.**	**Regular Meeting** Williamsburg Lodge, President Jefferson Board Room 310 S England St, Williamsburg, VA 23185
Thursday, **October 5, 2017** **9:00 a.m. -** **5:00 p.m.**	**VACSB October Policy Conference** Williamsburg Lodge 310 S England St, Williamsburg, VA 23185

Directions to the Williamsburg Lodge

310 S England St,
Williamsburg, VA 23185

DIRECTIONS FROM THE EAST – VIA I-64 WEST

Take I-64 West. Take exit 242A to merge onto VA-199 W toward Williamsburg/Jamestown. Merge onto VA-199 W. Take the exit toward Colonial Pkwy. Turn right onto Colonial Pkwy. Take the Newport Ave exit. Turn left onto Newport Ave. Turn left onto S England St/Newport Ave

DIRECTIONS FROM THE WEST – VIA I-64 EAST

Follow I-64 E. Take exit 238 to merge onto VA-143 E toward US-60/Williamsburg/Colonial/Camp Peary. Merge onto VA-143 E. Turn right onto VA-132 S. Turn left onto Visitor Center Dr. Continue straight onto Colonial Pkwy. Turn right toward Newport Ave. Turn right onto Newport Ave. Turn left onto S England St/Newport Ave.

Tuesday, October 3, 2017

Directions to the Eastern State Hospital
4601 Ironbound Road
Williamsburg VA 23188-2652

FROM EAST (Hampton Roads)

Take I-64 West. Take exit 242A to merge onto VA-199 W toward Williamsburg/Jamestown. Turn right onto John Tyler Hwy (signs for State Route 616). Turn left onto Strawberry Plains Rd. Turn right onto Ironbound Rd. Turn left onto VA-322 W. Continue onto Galt Dr. Hospital is on the right.

FROM WEST (Richmond, Northern Virginia, Roanoke, Harrisonburg)

Take I-64 East. Take exit 234 for VA-199/State Route 646 toward Lightfoot. Turn right onto VA-199 E (signs for State Route F-137/State Route 646). Take the VA-612/Longhill Rd exit. Use the left 2 lanes to turn left onto VA-612 S/Longhill Rd. Continue onto DePue Dr. Turn right onto VA-322 E. Hospital will be in front of you.

Virginia Association of Community Services Boards
2017 Public Policy Conference

Conference Schedule-At-A-Glance

Wednesday, October 4, 2017

9:30 am – 5:00 pm	Registration Open (*breakfast on own)* Exhibit Center Open
11:30 am – 12:30 pm	Buffet Luncheon
12:30 pm – 1:15 pm	*National Changes and Constants in Behavioral Healthcare*, presented by Ron Manderscheid, PhD, Executive Director, NACBHDD and NARMH
1:30 pm – 3:00 pm	Conference Workshops – Concurrent

Local Responses to the Changes in Behavioral Healthcare (repeated at 3:30 pm)	Protecting Your CSB: Mitigating Risks and Dealing with the Dreaded Indemnity Clause	Electronic Interventions: Navigating Technology and Behavioral Health	Lessons Learned: Implementation of CCC+ in the Tidewater Area	Overview of Developmental Disabilities for Managers and Administrators	Strengthening Faith-Based and Community Response to the Opioid Crisis

3:00 pm – 3:30 pm	Refreshment Break and Exhibit Center
3:30 pm – 5:00 pm	Conference Workshops - Concurrent

Local Responses to the Changes in Behavioral Healthcare (repeated from 1:30 pm)	Access Redesign Best Practices: Speed Geeking with Mentors	Imagine Zero: Virginia Zero Suicide Initiatives	CCC+- Impact on CSB Administrative Processes/Open Session for QA/Technical Assistance on Clinical & Administrative Issues	Think Safety: Strategies Across the Lifespan for Individuals with DD	Healing the Stigma of Addiction

5:00 pm – 6:00 pm	Wine and Cheese Welcome Reception *with Cash Bar*

Thursday, October 5, 2017

8:00 am – 5:00 pm	Registration and Exhibits Center Open
8:00 am – 9:15 am	Continental Breakfast
9:15 am – 12:00 pm	Virginia Public Policy Panel Presentation
12:00 pm – 1:45 pm	2017 Joseph V. Gartlan, Jr. Award Luncheon
2:00 pm – 5:00 pm	CSB/BHA Board Member Advocacy Training & Networking
2:00 pm – 5:00 pm	Group Meetings *(ED Forum/Councils/HR & Quality Leadership Subcommittees)*
5:00 pm – 6:00 pm	Networking Reception *with Cash Bar and heavy Hor**s d'oeuv**res*

Friday, October 6, 2017

8:00 am – 11:00 am	Registration Desk Open
8:00 am – 9:00 am	Buffet Breakfast
9:00 am – adjourn	VACSB Board of Directors/Business Combined Meeting

Thank you to our conference sponsors! GOLD: Credible Behavioral Health Software
SILVER: Community Counseling Services