



Office of Licensing
Licensing Regulations Overhaul (12VAC35-105)
REGULATORY ADVISORY PANEL
DRAFT MINUTES

Thursday, September 26, 2019
Libbie Mill Library, Henrico VA
10:00 A.M. – 2:00 P.M.

RAP Members Present: Nickie Brandenburger, CFI Principal Investigator and Community Supports Specialist, VCU Center for Family Involvement
Phil Caldwell, Director of Developmental Disability Services, Alexandria CSB
Mindy Carlin, Virginia Association of Community Based Providers
Melissa Constantine, Quality Assurance Administrator, Chesapeake Integrated Behavioral Healthcare
Julie Dwyer-Allen, Senior Clinical Director, Community Residences, Inc.
Christy Evanko, Administrative Director, VABA (VCARDD)
Leslie Ewald, Compliance Officer, It's About Time, Inc.
Jennifer Faison, Executive Director, Virginia Association of Community Services Boards
Jennifer Fidura, Executive Director, Virginia Network of Private Providers
Mark Gleason, CAO, Northwestern CSB
Robin Hubert, Executive Director, On Our Own of Roanoke
Suzanne Klaas, Behavioral Health Policy Analyst, DMAS
Heidi Lawyer, Executive Director, Virginia Board for People with Disabilities
Tina Martina, Director of Developmental Services, Valley CSB
Mary McAdam, Citizen
Teri Morgan, Program Supervisor, Waiver Operations and Contracts, DMAS
Jim Newton, Administrative Director - Behavioral Health, Bon Secours St. Mary's
Candace Roney, SUD Director, District 19 CSB
James Strickland, LPC, CSAC, Hampton Newport News CSB
Kim Taylor, Director of DD Case Management, Mt. Rogers CSB
John Weatherspoon, Executive Director, Wall Residences
Jane Yaun, Executive Director, Rappahannock Area CSB
Elaine Yeatts, Senior Policy Analysts, DHP

Staff Present Jae Benz, Director, Office of Licensing
Emily Bowles, Office of Licensing Associate Director of Licensing, Regulatory Compliance, Quality, and Training
Mackenzie Glasco, Office of Licensing Regional Manager
Taneika Goldman, Deputy Director, Office of Human Rights
Dev Nair, Assistant Commissioner, Division of Compliance, Legislative, and Regulatory Affairs
Ruth Anne Walker, Director, Office of Regulatory Affairs

Handouts: Prior to the start of the meeting, members received hard copies of

- Tracking Chart
- Initial Draft: Response to Periodic Review ('Overhaul').
- A copy of the notice for the public comment period from September 30, 2019, to October 31, 2019.

Welcome and Introductions – Jae Benz, Director, DBHDS Office of Licensing

At 10 a.m., Jae Benz welcomed members of the regulatory advisory panel (RAP). She gave a brief explanation of the state's regulatory periodic review process. As a result of the review conducted on Chapter 105, the agency filed a decision to amend the regulation. After researching the issue, the Office of Licensing decided to revise both the structure and content of the regulations. Before publishing the draft externally, the Office of Licensing sought review internally from other subject matter experts on staff and collaborated with sister agencies. Currently language in Chapter 105 addresses all disabilities, and that is very rare for regulations. This draft general chapter was developed to apply to all disabilities; three disability-specific chapters will be developed in a few months. Ms. Benz stated that the members were selected because they are experts in the field. She asked members to realize that the draft now will be significantly different by the final version and to keep open minds in the review.

After opening comments, Ms. Benz proceeded with introductions at 10:03 a.m.

RAP Workplan and Expectations – Ruth Anne Walker

At 10:08 a.m. Ruth Anne Walker explained the difference between providing professional expertise in the RAP versus comments in the public comment period that would open on Monday, September 30, 2019. The intent of this meeting was to cover the waterfront to highlight significant issues, and the meeting on October 22, 2019, would be for a more significant, deeper discussion of any concerns.

Review of Initial Draft 'Overhaul' of the Licensing Regulations

Beginning at 10:11 a.m., the RAP discussed and suggested efforts on the following (listed in the order discussed):

1. Change of ownership: when there is a death, succession planning.
 2. Screening: versus initial assessment.
 3. General question: how much to align definitions with DMAS definitions.
 4. Change 'fulltime employee' to just 'employee.' ACA definition for 'employee' and 'contractor;' supervision question.
 5. Crisis stabilization: change 'maintain' to 'support' 'as appropriate to their choice.'
 6. Intensive inhome and intensive outpatient: use of 'shall.'
 7. Discuss licensed professional: having these regulations apply versus all under one new chapter for licensed professionals.
 8. Intensive outpatient hours: align with ASAM and substance abuse intensive outpatient. Take hours out of the general chapter.
 9. Medication administration: 'legally permitted' – add cross-reference to Code of Virginia.
 10. Emergency services: 'psychiatric dysfunction' – too prescriptive; may be another issue.
 11. Suggestion to list all Code definitions under one phrase, 'the following definitions will be as defined in the Code of Virginia' rather than list each in its entirety.
 12. Failure to submit renewal application: within 30 days. Make clear what Licensing will do if don't renew.
 13. The acquiring provider needs to provide current financial statements when change of ownership. When the provider is acquiring a license for a service already licensed, then just service modification for new locations.
 14. Day support services: change 'may' to 'shall' provide opportunities for peer interaction.
 15. Service definition: code change regarding DD strike 'reduce or ameliorate.'
 16. Outpatient service: hourly scheduling question; see DMAS.
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17. Internal DBHDS conversation on REACH: is homelessness a criterion for admission; align with DMAS?
 18. Sections 180, 190, 200: sole proprietorship, grandfathering, LBAs, educational requirements, fulltime, specific title versus an employee tasked with implementing policies and procedures.
 19. Board members living on the Virginia border; not all in Virginia.
 20. How to resolve internally tracking DBHDS turnaround time for background checks.
 21. Barrier crimes 'lite:' could cause big problems for providers to maintain a list of non-barrier crimes.
 22. Background checks: Is the language exceeding Code for contractors to have background checks? 20% annual checks - policy for applicant to state barrier crime and after hire, rather than random testing.
 23. Driver's license: 'valid' not 'Virginia.' Also, military.
 24. Employee rights to keep personnel actions private: add 'subject to employment laws.' Only document that something was addressed.
 25. Add 'if applicable' anywhere barrier crimes are mentioned.
 26. Three job references: evidence of reasonable attempt.
 27. Orientation for contractors annually versus one time and done.
 28. Specific days for training to occur with new hires: providers would have to constantly train or postpone hire date to be in sync for training. Also, all don't need CPR and medication administration training.
 29. Tine test: can take a while; check CDC requirements.
 30. Personal residence: distinguish between service and office location.
 31. Mission statement: overkill.
 32. Office hours: 'where personnel or individual records are kept.'
 33. Staff visitors: exception for sponsored residential and possibly, live in group homes.
 34. Add 20% for driving record annual checks, rather than all.
 35. Complaint handling procedures: large extra burden; generally, all policies and tracking is overwhelming, getting lost in the detail.
 36. Competencies: change 'testing' to 'demonstrate.'
 37. Time to keep an individual's service record: do not use Board of Medicine reference because it doesn't apply to everybody; different retention time for minors.
 38. Building and grounds: change from 'any service location;' different from residential setting.
 39. Choice of provider: for guidance, make clear this does not mean it is appropriate to 'doctor shop.'
 40. Building and grounds: clarification for what constitutes a renovation.
 41. Lighting: distinguish between community based and those open at night.
 42. Personal necessities: strike 'a child.'
 43. Animals: needs more clarification.
 44. Swimming pools: need clarification.
 45. Computers and internet access: clarify providers need the 'ability to have access to perform reporting of serious incidents.' Individual has the right to have access.
 46. Emergency preparedness: entire policy section is too prescriptive; move to service specific regulations? MOU with a hotel for emergencies: strike. Outreach and training: 'relative to the site' based on what they do.
 47. Access to telephone in emergencies: too prescriptive; clarify 'a phone that will work.' Relates to Section 810 2b.
 48. Background checks on minors?
 49. Policy changes to Licensing: add 'substantive' policy changes.
 50. Changes to licenses: service modifications within 45 days – not always applicable, contract changes. Need to consider credentialing and DMAS regulations. Also, contact information needs amending.
 51. Employee records: what would 'reasonable verification of employment history' look like?
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52. Distinguish between closure and denial of application.
 53. Natural supports.
 54. Inspection requirements: records in one hour – what is reasonable?
 55. Renewal application: if don't submit within 30 days, make clear Licensing will start the discharge process.
 56. If no citations: note this somehow.
 57. Face sheet: EHR is never outdated; consider technology.
 58. Proposed action (not for this draft review, but note): Typo in last six words of 110 A 3c.
 59. Accurately include legal names with fictitious names.
 60. Administrative structure: how deep down in regard to titles and staff are you looking for? Define business hours? Stringent for 45 days' notice to adjust time to meet client needs.

Members then gave staff their prioritized top concern. The top concern across the group centered on sections 180, 190, and 200 being overly prescriptive.

Next Meeting

Staff confirmed that the next meeting would be on Tuesday, October 22, 2019, from 10 a.m. – 2 p.m. at a different Henrico library, Tuckahoe Library, 1901 Starling Drive, Henrico, VA 23229.

Adjournment

There being no further business, Ms. Benz adjourned the meeting at 1:40 p.m.
