



COMMONWEALTH of VIRGINIA
STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

DRAFT MEETING AGENDA
Tuesday, July 16 & Wednesday July 17, 2019

DBHDS Central Office, Jefferson Building*
1220 Bank Street, Richmond, VA

**Biennial Planning Meeting on Tuesday will be held in the Washington Building.*

Biennial Planning Meeting
Tuesday July 16, 2019 12:30 p.m.
DGS, 5th Floor Conference Room, Washington Building,
1100 Bank Street, Richmond, VA 23219

12:30	Lunch		
1:30	Welcome & Introductions	Paula Mitchell <i>Chair</i>	
1:45	A. Agency Strategic Plan Update B. Agency Initiatives Update	Meghan McGuire <i>Senior Advisor for External Affairs</i> Heidi Dix <i>Deputy Commissioner, Compliance, Regulatory & Legislative Affairs (CRLA)</i>	
2:45	Break		
3:00	Board Planning Session	Heidi Dix <i>Facilitator</i>	
4:15	A. Review of Powers & Duties B. Orientation <i>optional</i>	Ruth Anne Walker <i>Director of Regulatory Affairs</i>	
5:00	Adjourn		

Dinner 6:00 pm – Informal; TBD (no business)

Concurrent Committee Meetings
Wednesday, July 17, 2019 8:30 a.m. – 9:45 a.m.

DBHDS Central Office, 13th Floor Large Conference Room, Jefferson Building
1220 Bank Street, Richmond, VA

	8:30	<ul style="list-style-type: none"> • Policy Committee, 13th Floor Conference Room • Planning and Budget Committee, 11th Floor Conference Room 	<p align="right">Emily Lowrie <i>Senior Policy Advisor, CRLA</i></p> <p align="right">Heidi Dix <i>Deputy Commissioner</i></p>	
	9:45	Adjourn		

Regular Meeting
Wednesday, July 17, 2019
10:00 a.m. – 3:00 p.m.

DBHDS Central State Office, 13th Floor Large Conference Room, Jefferson Building
1220 Bank Street, Richmond, VA 23219

1.	10:00	<p>Call to Order and Introductions</p> <p>Approval of July 17, 2019 Agenda ➤ <i>Action Required</i></p> <p>Approval of Draft Minutes Regular Meeting, April 10, 2019 ➤ <i>Action Required</i></p>	<p align="right">Paula Mitchell <i>Chair</i></p>	
2.	10:15	<p>Officer Elections</p> <p>A. Presentation of the Slate of Candidates</p> <p>B. Nominations from the Floor</p> <p>C. Election ➤ <i>Action Required</i></p> <p>D. Passing of the Gavel</p>	<p align="right">Chair <i>Nominating Committee</i></p>	
3.	10:30	Commissioner's Report	<p align="right">S. Hughes Melton, M.D. <i>Commissioner</i></p>	
4.	11:15	<p>Report Out from Biennial Planning Meeting</p> <ul style="list-style-type: none"> • Letter to the Governor <p>Report Out from Policy Committee ➤ <i>Action Required</i></p>	<p align="right">Chair Heidi Dix</p> <p align="right">Emily Lowrie</p>	
5.	11:30	<p>Regulatory Actions</p> <p>A. Licensing Regulations, 12VAC35-105: ISP grace period. ➤ <i>Action requested: Initiate proposed stage.</i></p>	<p align="right">Ruth Anne Walker <i>Director of Regulatory Affairs</i></p>	

		<p>B. Licensing Regulations, 12VAC35-105, Require a provider statement to any other provider. ➤ <i>Action requested: Initiate fast track.</i></p> <p>C. New Regulation, Certified Recovery Residences, 12VAC35-270. ➤ <i>Action requested: Initiate fast track.</i></p> <p>D. General Update – Regulatory Matrix</p>	<p>Emily Bowles <i>Legal and Regulatory Manager Office of Licensing</i></p> <p>Emily Lowrie <i>Senior Policy Advisor</i></p>	
6.	11:45	Lunch: Break and Collect Lunch		
7.	12:00	State Human Rights Committee	<p>Deb Lochart <i>Director of Office of Human Rights</i></p>	
8.	12:30	Board Liaison Reports		
9.	1:00	Public Comment (<i>3 minute limit per speaker</i>)		
10.	1:15	Update on 2019 Biennial Budget	<p>Josie Mace <i>Financial and Policy Analyst Office of Budget Development</i></p>	
11.	1:45	<p>Meeting Information</p> <p>A. Meeting Calendar ➤ <i>Action Requested</i></p> <p>B. Next Meeting</p>	<p>Heidi Dix</p>	
12.	2:00	Other Business		
13.	2:30	Adjournment	<p>Chair</p>	

NEXT MEETING: The next meeting of the State Board will be on Wednesday, October 2-3, 2019, at a location to be decided.

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES
DRAFT MEETING MINUTES

April 10, 2019

Fairfax/Falls Church Community Services Board
8221 Willow Oaks Corporate Drive Fairfax, VA 22031

April 10, 2019

Regular Meeting

Members Present

Paula N. Mitchell **Chair**, Elizabeth Hilscher **Vice-Chair**, Sandra Price-Stroble, Jack Bruggeman, Moira Mazzi, Becky Graser, Varun Choudhary, and Djuna Osborne

Members Absent

Calendria Jones

Staff Present

Will Frank, Legislative Affairs Director
Ruth Anne Walker, Administrative and Regulatory Coordinator
Susie Puglisi, Regulatory Research Specialist

Call to Order

At 10:00 A.M. Chair Paula Mitchell called the meeting to order.

Approval of Draft Agenda

The Board unanimously adopted the April 10, 2019 meeting agenda.

Approval of Draft Minutes- December 5 meeting

The Board unanimously approved the minutes.

Approval of Draft Minutes- February 19 Special Meeting

The Board unanimously approved the minutes.

Introductions

Chair Paula Mitchell called for the introductions of those present.

Commissioner's Report

Commissioner Hughes Melton presented his report.

Public Comment

Lucy Beadnell from the ARC of Northern Virginia presented on her organization.

Regulatory Actions:

Ruth Anne Walker, Director of Regulatory Affairs provided an update on DBHDS regulatory actions.

2019 General Assembly Update

Will Frank, Legislative Director, provided an update on the 2019 General Assembly Session.

State Human Rights Committee Appointments

Deb Lochart, Director of State Human Rights, reviewed the process for the board to appoint members of the State Human Rights Committee.

The Board unanimously approved the appointments to the State Human Rights Committee.

**Lunch and
Committee Meetings**

Board members collected lunches and broke into their respected committees.

**CSB Presentation
and Tour**

Abbey May from the Fairfax/Falls Church CSB provided an overview of the organization and provided a tour of services located at the Merrifield Center.

Committee Reports

Committee Chair Beth Hilscher reported on the work of reviewing board policies.

Will Frank reported on the work of the Planning and Budget Committee.

**Miscellaneous
Board Liaison
Reports**

Liaison Reports will be included in the next meeting's packet.

**Next Meeting
Information**

The next meeting will be held in July 2019.

Adjournment

Having no other business, Paula Mitchell adjourned the meeting at 2:15pm.

POLICY MANUAL

State Board-of Behavioral Health and Developmental Services Department of Behavioral Health and Developmental Services

POLICY 6005(FIN)94-2 Retention of Unspent State Funds by Community Services Boards

Authority	Board Minutes Dated: <u>July 27, 1994</u> Effective Date: <u>July 1, 1994</u> Approved by Board Chairman: <u>James G. Lumpkin</u>
References	<i>Realizing the Vision: Barriers to an Integrated System</i> , Department of Mental Health, Mental Retardation and Substance Abuse Services, January 27, 1993 State Board Policy 4018 (CSB) 86-9 Community Services Performance Contracts Community Services Performance Contract § 37.2-508 and § 37.2-509 of the Code of Virginia (1950)
Supercedes	STATE BOARD POLICY 3002 (CO) 86-16 System-wide Staff Training
Background	<p>Before FY 1995, the Department applied year-end balances of unspent state funds at community services boards and the behavioral health authority, hereafter referred to as CSBs, to the next year's state fund allocations for CSBs so that the state appropriation and balances equaled state awards. If state balances reported in the fall were below the estimates projected in the previous spring's budget deliberations, a deficit could occur. This happened in FY 1993, and a deficit was averted only by a transfer of funds to the CSB appropriation.</p> <p><i>Realizing the Vision: Barriers to an Integrated System</i>, the Visions Task Force report, recommended preserving any unbudgeted and unspent revenues within the system. The Visions Financial Resources Committee proposed amending § 37.1-199(a) of the Code of Virginia so that CSBs could retain unspent revenues to expand and enhance services. The State Board supported this amendment, but it was not introduced, based on a determination that it could be implemented administratively.</p> <p>Subsequently, the Virginia Association of Community Services Boards and the Department developed a proposal, the basis for this policy, that prevented future deficits, instituted a budget process in which CSB awards equaled the state appropriation, and implemented the Visions recommendation.</p>

Purpose To establish the ability of CSBs to retain balances of unspent state general funds.

Policy It is the policy of the Board that:

- the Department shall allow CSBs to retain balances of unspent state general funds after the end of the fiscal year in which the Department granted those funds;
- the Department shall allocate the funds in the CSB state appropriation without applying estimated year-end balances of unspent state general funds to the next year's CSB awards of state general funds;
- based on the General Assembly Appropriations Act prohibition against using state funds to supplant the funds provided by local governments for existing services, there should be no reduction of local matching funds as a result of a CSB's retention of any balances of unspent state general funds; and
- if a CSB delivers less than the levels of services in its final approved Community Services Performance Contract, established pursuant to § 37.2-508 of the Code of Virginia and State Board Policy 4018, while generating significant balances of unspent state general funds, it may have to return some of its balances to the Department or its state fund allocations in the next fiscal year may be reduced.

It is also the policy of Board that the Department shall apply procedures, which are authorized by § 37.2-509 of the Code of Virginia and are consistent with those in the Community Services Performance Contract, to retrieve unspent state general funds from or reduce future state general fund allocations to a CSB that delivers less than the levels of services in its final approved Performance Contract while generating significant balances of unspent state general funds.

Finally, it is the policy of the Board that the Community Services Performance Contract shall contain principles and procedures for the more effective and consistent utilization of unexpended state general fund balances from previous fiscal years by CSBs.

REGULATORY ACTIVITY STATUS REPORT: JULY 2019 (REVISED 06/28/19)

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		
<u>12 VAC 35-46</u>	Children's Residential <i>(Regulations for Children's Residential Facilities)</i>	To articulate requirements to assure the health, safety, care, and treatment for children who receive services from providers licensed by DBHDS.	Periodic Review Completed; under development	<ul style="list-style-type: none"> Current: Comment period ended 02/08/2018. Staff will initiate draft revisions and seek stakeholder comment in coming months. 	01/22/2013	12/05/2017
<u>12 VAC 35-105</u>	Licensing-Adult <i>(Rules and Regulations for Licensing Facilities and Providers of Mental Health, Mental Retardation and Substance Abuse Services)</i>	To provide specific standards for licensing of organizations and facilities providing behavioral health and developmental disability services. ('Overhaul')	Periodic Review Completed; under development	<ul style="list-style-type: none"> Current: Comment period 12/15/2017. Staff has initiated revisions and will seek stakeholder comment. 		12/05/2017
<u>12 VAC 35-105</u> Certain sections.		In accordance with the CMS Final Rule and the Settlement Agreement: clarifications for the health, safety, care and treatment for adults who receive services from providers of residential services.	Proposed	<ul style="list-style-type: none"> Current: Emergency effective 09/1/2018 (expires 02/29/2020). To Governor's Office 5/27/2019. 	09/01/2018	
<u>12 VAC 35-105</u> Section 675.		ISPs: To allow documentation of each quarterly review or a revised assessment 'no later than 15 calendar days from the date the review was due to be completed.'	Proposed	<ul style="list-style-type: none"> Current: Governor approved 01/04/2019. Comment period will end on 03/06/2019. ➤ Action requested: Initiate proposed. 	02/04/2019	
<u>12 VAC 35-105</u> NEW Section 435.		<i>In accordance with Chapter 776 of the 2019 General Assembly, to require a provider statement to any other provider when a criminal history background check is required.</i>	Fast Track	<ul style="list-style-type: none"> ➤ Action requested: Initiate fast track action. 		
NEW <u>12 VAC 35-270</u>	Certified Recovery Residences	<i>In accordance with Chapter 220 of the 2019 General Assembly, to establish certification of recovery residences.</i>	Fast Track	<ul style="list-style-type: none"> ➤ Action requested: Initiate fast track action. 		

*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

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MEMORANDUM

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

Fr: Ruth Anne Walker, Director of Regulatory Affairs

Date: July 2, 2019

Re: Regulatory Package – Three Action Items

I. ISP Grace Period

Background: Providers licensed by DBHDS are currently required to review the ISP at least every three months from the date of the implementation of the ISP or whenever there is a revised assessment based upon the individual's changing needs or goals. There is no allowance for additional administrative time to document the review, as is allowed in DMAS regulations. Such administrative 'grace periods' are not uncommon.

Purpose: The proposed amendments would align DBHDS and DMAS regulations as to when a quarterly review or a revised assessment of the ISP must be documented, thus allowing practitioners to follow the same process rather than two different processes. This is intended to decrease administrative burdens and allow more time to provide services.

The proposed stage must be filed by August 4, 2019.

Action Requested: Initiate the proposed stage of the standard process.

VAC Citation	Title	Last Activity	Date
12 VAC 35-105	Rules and Regulations For Licensing Providers by the Department of Behavioral Health and Developmental Services	NOIRA	02/04/2019

Next Steps:

- If approved, staff initiates the [proposed stage](#) action.

PROPOSED STAGE DRAFT: Chapter 105

ALLOWING A GRACE PERIOD FOR DOCUMENTATION OF ISPS

12VAC35-105-675. Reassessments and ISP reviews.

A. Reassessments shall be completed at least annually and when there is a need based on the medical, psychiatric, or behavioral status of the individual.

B. The provider shall: (i) update the ISP at least annually. The provider shall and (ii) complete quarterly review reviews of the ISP. The provider shall review the ISP at least every three months from the date of the implementation of the comprehensive ISP or whenever there is a revised assessment based upon the individual's changing needs or goals. These reviews shall evaluate the individual's progress toward meeting the plan's ISP's goals and objectives and the continued relevance of the ISP's objectives and strategies. The provider shall update the goals, objectives, and strategies contained in the ISP, if indicated, and implement any updates made. Documentation of the quarterly review shall be added to the individual's record no later than 15 calendar days from the date the review was due to be completed, with the exception of case management services. Case management quarterly reviews shall be added to the individual's record no later than 30 calendar days from the date the review was due.

**Proposed Regulation
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	Allowing a grace period for documentation of ISPs
Date this document prepared	July 2, 2019

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

This regulatory action to amend Chapter 105 (“Licensing Regulations”) pertains to when a quarterly review of an individualized services plan (ISP) must be documented. It is intended to resolve

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misalignment between DBHDS and DMAS regulations concerning the documentation of quarterly reviews of ISPs by allowing practitioners to follow the same process rather than two different processes. For example, in DMAS regulation [12VAC30-50-226 Community mental health services](#), the definition of “Review of ISP” contains a corresponding 15-day grace period. Also, a grace period has existed since at least 1998 in 12VAC30-60-143 (previously subsection as 140) Community mental health services.

These amendments will relieve an unnecessary administrative burden in which service providers currently must adhere to two separate regulations for the same practice. The current Licensing Regulations will be amended as follows*:

"12VAC35-105-675. Reassessments and ISP reviews.

12VAC35-105-675. Reassessments and ISP reviews.

A. Reassessments shall be completed at least annually and when there is a need based on the medical, psychiatric, or behavioral status of the individual.

B. The provider shall: (i) update the ISP at least annually; ~~The provider shall~~ and (ii) complete quarterly review reviews of the ISP. The provider shall review the ISP at least every three months from the date of the implementation of the comprehensive ISP or whenever there is a revised assessment based upon the individual's changing needs or goals. These reviews shall evaluate the individual's progress toward meeting the ~~plan's~~ ISP's goals and objectives and the continued relevance of the ISP's objectives and strategies. The provider shall update the goals, objectives, and strategies contained in the ISP, if indicated, and implement any updates made. Documentation of the quarterly review shall be added to the individual's record no later than 15 calendar days from the date the review was due to be completed, with the exception of case management services. Case management quarterly reviews shall be added to the individual's record no later than 30 calendar days from the date the review was due.

***Note:** It is relevant in reviewing this action to be aware of the changes to Section 675 in [Regulatory Action 5040](#), and in general to see sections 645 – 665 for Chapter 105 for a broader view of language related to ISPs.

The DBHDS regulatory [action 5091](#) filed on July 16, 2018, received 10 comments from CSBs during the public comment period that ended on March 6, 2019. The comments related to the need to separate case management from the 15-day language.

The State Board of BHDS subsequently concurred with staff's recommendation to shift to the standard regulatory process. This occurred on March 14, 2019. The fast track action now counts as the [NOIRA for this standard action](#).

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.

CSBs – Community services boards.

DBHDS – Department of Behavioral Health and Developmental Services.

DMAS – Department of Medical Assistance Services.

ISP – Individualized services plan.

State Board – State Board of Behavioral Health and Developmental Services.

Mandate and Impetus

Please identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, board decision, etc.).

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For purposes of executive branch review, “mandate” has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

There is no mandate for this regulatory action. It came at the request of community services boards (CSBs) through the Virginia Association of Community Services Boards (VACSB) in April 2018.

Legal Basis

Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity’s overall regulatory authority.

Sections [37.2-203](#) of the Code of Virginia authorize 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. The State Board approved this action for the proposed stage at its meeting on **July 17, 2019**.

Purpose

Please explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it’s intended to solve.

DBHDS and DMAS regulations concerning reviews of individual service plans are not aligned. This creates an unnecessary situation in which service providers must adhere to two separate regulations for the same practice. The proposed change will align DBHDS and DMAS regulations as to when the quarterly review of the ISP must be documented, thus allowing practitioners to follow the same process rather than two different processes. This will decrease administrative burdens and allow more time to provide services.

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.

Providers licensed by DBHDS are currently required to review the ISP at least every three months from the date of the implementation of the ISP or whenever there is a revised assessment based upon the individual’s changing needs or goals. There is no allowance for additional administrative time to document the review, as is allowed in DMAS regulations. Such administrative ‘grace periods’ are not uncommon.

By amending the current Licensing Regulations at the end of Subsection B of 12VAC35-105-675 through this action, providers will be allowed to provide documentation of each quarterly review or a revised assessment in the individual’s record ‘no later than 15 calendar days from the date the review was due to be completed.’ These amendments will not change the current quarterly deadline for the review. Also, clarification is made to exclude case management from this 15-day change, and specific language is

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added regarding 30 days related to case management. This was in response to comments received, as listed below.

Issues

Please identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

There are no identified disadvantages to the public or the Commonwealth in making this change. The advantage for the system will be that providers have more efficient use of time because the regulations will no longer be duplicative in conflicting ways.

Requirements More Restrictive than Federal

Please identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

This requirement is no more restrictive than applicable federal standards.

Agencies, Localities, and Other Entities Particularly Affected

Please identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

No agency, locality, or entity is particularly affected.

Economic Impact

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

Impact on State Agencies

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<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including:</p> <ul style="list-style-type: none"> a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources 	<p>There is no projected impact on DBHDS resulting from this regulatory change.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>There is no projected impact on other state agencies resulting from this regulatory change.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>This regulatory change is not designed to benefit any state agency.</p>

Impact on Localities

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>There is no additional cost to implement and enforce these amendments. It is expected to save staff time in CSBs, which are entities of local government.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>It is expected to decrease administrative burdens on CSB practitioners and allow more time to provide services.</p>

Impact on Other Entities

<p>Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.</p>	<p>Individuals receiving or needing services and their families, and providers licensed by DBHDS.</p>
<p>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:</p> <ul style="list-style-type: none"> 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. 	<p>It is not possible to estimate the exact number of individuals receiving services that will be affected by this regulation. Please see Table 2 in Report Document 552 (2017). However, at least 100,000 would be affected. Currently, DBHDS licenses approximately 1,100 service providers. There is no way to estimate the number of small businesses within the pool of all providers.</p>
<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Please be specific and include all costs including, but not limited to:</p> <ul style="list-style-type: none"> a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements. 	<p>There is no additional administrative cost for individuals, businesses, or other entities.</p>

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Benefits the regulatory change is designed to produce.	Providers will be alleviated of an unnecessary burden and will have more time to devote to the provision of services.
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Alternatives

Please describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

There is no other alternative to the regulatory 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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

There is no other alternative to the regulatory action. This will be a less stringent and simplified requirement for compliance reporting requirements, schedules, and deadlines. There is no establishment of performance standards for small businesses, nor any relation to exemptions for small businesses.

Periodic Review and Small Business Impact Review Report of Findings

If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, please indicate whether the regulatory change meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable.

In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, 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 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.

- 1) There is still a need for this regulation because it provides specific standards for licensing of organizations and facilities that provide behavioral health and developmental disability services.

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- 2) The nature of the 10 complaints or comments received from the public concerning the regulation as submitted in the fast track process had to do with the conflict of requiring case managers to document their quarterly review on the same date as all other providers. If a case manager’s review is due on the same day as reviews by an individual’s other providers (15 calendar days from the date review is due), commenters stated that it is likely that the other provider reviews will not be received by the case manager until the fifteenth day which would not allow the case manager the opportunity to review the documentation in a timely manner in order to complete their review thoroughly. Having different dates allows time for case managers to complete a quality assessment based on the reviews received by the individual’s other providers. This will allow case managers the opportunity to review and synthesize information from other providers into their review and their updates to the ISP, a key requirement of this service and an expectation for case managers assisting individuals. The nine comments submitted through Town Hall can be viewed [here](#).
- 3) The complexity of Chapter 105 can be described as follows:
 - a) To clearly articulate adequate health, safety, care and treatment requirements to assure that individuals receive safe and protected behavioral health and developmental disability services that are appropriate to their needs and levels of functioning.
 - b) To clearly articulate Department procedures and actions necessary to implement regulatory requirements with the least possible cost, intrusiveness to consumers, families, and provider organizations.
 - c) To provide clear and precise criteria for (a) determining mental health, developmental disability, and substance abuse program accountability and, program compliance with regulatory requirements, and (b) taking actions to enforce compliance.
- 4) The regulation does not overlap, duplicate, or conflict with federal or state law or regulation.
- 5) A periodic review of Chapter 105 was conducted 10/30/2017 - 12/15/2017. The system changed notably since the last periodic review due to the requirements of the Settlement Agreement between the United States Department of Justice and Virginia (*United States of America v. Commonwealth of Virginia*, Civil Action No. 3:12cv059-JAG) (“Settlement Agreement”).

Public Comment

Please summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. If no comment was received, enter a specific statement to that effect.

Committer Name	Comments	Response
Lisa Snider	We strongly oppose the change as written. DBHDS indicates the proposed changes are to align the ISP Quarterly Review Dates with DMAS regulations. While the attempt to align requirements is appreciated, this proposed change is not in line with the established processes and DMAS requirements for Developmental Support Coordination (Case Management) and Mental Health Case Management. The current requirement for completing the Case Management/Support Coordination Quarterly is 30 days from the	<p>Because of the similarity of comments, the following is the DBHDS response to all citizens who provided comments:</p> <p>Thank you for your comment.</p> <p>Following the public comment period for the Fast-Track regulatory action, this action was shifted to the standard rulemaking process. The language has been amended during the proposed</p>

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Commenter Name	Comments	Response
	<p>date the Quarterly Review Period ended. This timing is critical for Support Coordinators/Case Managers to complete the requirements of their job and ensure ability to review services provided to individuals. Further, this is critically important for Support Coordinators to meet the expectations for oversight of services as indicated in the DOJ settlement agreement. Other providers must submit their quarterlies to the Support Coordinator so the Support Coordinator can review how all services are going for the individual. Further, the Support Coordination/Case management review of providers' Quarterly ISP reviews helps to identify risks so they can be addressed. It is suggested the regulation be changed to be effective for all services <i>except Case Management Services</i>. Then adding the following requirement for Case Management: Case Management services must complete the Review documentation and add to the individual's record no later than 30 calendar days from the date the review period ended.</p>	<p>stage to state documentation of the quarterly review shall be added to the individual's record no later than 15 calendar days from the date the review was due to be completed, with the exception of case management services. Case management quarterly reviews shall be added to the individual's record no later than 30 calendar days from the date the review was due.</p> <p>The revised language is expected to come to the State Board for initiation of the proposed stage of the standard regulatory process. The previous fast track action counts as the Notice of Intended Regulation.</p>
(no name listed)	<p>We are concerned that "the 15 calendar day from the date the review is due" does not align with current DMAS regs which allows a 10 day grace period for providers and a 30 day grace period for Case Managers. The preference is for the Office of Licensing to align with the DMAS regulation to honor the above grace periods for the Case Management Review to be completed. This will allow sufficient time to receive provider documentation, assess the information received in order to complete a quality CM review. Furthermore, if the expectation becomes that the provider and CM reviews are due on the same day (15 calendar days from the date review is due), it is likely that provider reviews will not be received until the 15th day which would not allow the CM the opportunity to review the documentation in a timely manner in order to complete their review thoroughly and remain in compliance.</p>	
David Meadows	<p>I wanted offer comment to the proposed regulation indicating that the quarterly reviews need to be in the individual's record no later than 15 calendar days from the date the review was due to be completed. This is a concern for Case Managers/Support</p>	

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Commenter Name	Comments	Response
	<p>Coordinators as they need to receive and review the providers quarterly reviews incorporating the information in their review.</p> <p>There are occasions in which the provider is late or does not provide quarterly documentation at all, even with numerous follow up by the CM/SC. This regulation will prevent the CM/SC an opportunity to review the provider quarterlies and synthesize the information as needed. It would also create a potential citation for not meeting a regulation when it is not within their control.</p> <p>Can the regulation be edited to offer a period of time for the CM/SC to review provider quarterlies and then complete the Case Management quarterly?</p> <p>Thanks so much for reviewing the information and working to resolve.</p> <p>If you have any questions or follow up please do not hesitate to contact me directly.</p>	
John Malone	<p>There is some confusion as to whether support coordinators are included in the definition of "provider" noted here. If they are, this would institute an unwelcome change which reduces the amount of time support coordinators have to complete and document a quarterly review. If support coordinators are not intended to be included in the definition of "provider" in this instance, this should be clarified.</p>	
Michele M. Elliott	<p>There is concern about the change in due dates for reviews. Currently direct service providers are required to send their quarterly report to the Case Manager within a 10 day grace period and the Case Manager then has 30 days from the end of the quarter to review the services provided. There are several providers who do not send their quarterly reports within the 10 days and some that do not send the report by the Case Manager's 30 day grace period. For example, in the month of December 2018, Hanover County DD Services had a total of 57 quarterlies to complete by December 31, 2018; 21 were not received within the 10 day grace period. The Hanover County Case Manager's standard response is to follow up with the provider with at least two phone calls and then a standard letter is sent to</p>	

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Commenter Name	Comments	Response
	<p>the provider which is copied to the DBHDS Community Resource Consultant. By December 31, 2018, 15 quarterlies were not received by the case manager’s 30 day grace period. In January, 45 quarterlies were due, 18 were not received by the 10 day grace period and 7 were not received by the end of the month after the Case Manager’s attempts to receive the review. If the Case Manager is going to be required to complete a quarterly review by the 15th day of the month, then provider information will likely not be included. To meet the expectations of the DOJ Settlement, Case Managers must have the time to review the provider information. We would like to suggest that the providers of direct services be allowed a 15 day grace period to complete their quarterly and that Case Management services be required to complete the quarterly review no later than 30 calendar days from the date of the end of the review period. We would also like to see language added to describe how providers are to be held responsible by Licensure if a quarterly is not received within the grace period, as well as a description of expectations of the Case Manager in obtaining the quarterly. Language should also be added to reflect the responsibility of DBHDS staff in providing oversight to those providers who consistently miss sending requested quarterly information. Thank you for your consideration of these comments. If you need any further information, please feel free to contact me.</p>	
Mary Harrison	<p>The proposed licensing change does not align with the regulations set by DMAS regarding ID/DD case management documentation. Per DMAS guidelines, the Support Coordinator (SC) is permitted a 30-day grace period to complete the person-centered review (quarterly). In addition, providers are allowed a 10-day window (within the 30 day period) to complete and submit their provider QRs to the SC. The SC is responsible for obtaining, reviewing and incorporating all provider quarterlies into the person-centered review. The proposed licensing regulation would not allow the SC time to obtain the needed documentation from external providers and complete the person-centered review within the required timeframe. The</p>	

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Commenter Name	Comments	Response
	<p>recommendation would be for the licensing regulation to align with the DMAS regulations to allow a 30-day window to complete the person-centered review.</p>	
Jonina Moskowitz	<p>We sincerely appreciate the efforts of the Office of Licensing to improve coordination with the requirements of the Department of Medical Assistance Services on the topic of quarterly progress reviews. As stated, the proposed change is unclear regarding whether or not the progress review itself may be completed within 15 days of the end of the quarter, or only the documentation of said review. We request language clarification such that the actual review may be completed within a specified window after the end of the quarter. This is a more natural process, as the documentation of such a review is typically completed concurrent with the actual review of affiliated information (e.g. progress notes, summaries provided by other providers). In addition, we request an alteration of the approach, using previously articulated DMAS requirements for providers of intellectual disability services, wherein a reasonable grace period (e.g. 15 days) is allotted to providers of services other than case management, while a more extended grace period is allotted to case managers (e.g. 30 days). This will allow case managers the opportunity to review and synthesize information from other providers into their review and their updates to the ISP, a key requirement of this service and an expectation for support coordinators assisting individuals with developmental disabilities.</p>	
(no name given)	<p>The proposed requirement of having the quarterly reviews in the individual 's record no later than 15 calendar days from the day the review was due to be completed is very alarming when it comes to the IDD Case Management /Support Coordination. This will create an issue for the IDD Case Managers /Support Coordinators require to incorporate into the review information from provider(s) who are not always provide the documentation in timely manner. In order to remain with Licensure compliance and DOJ settlement agreement, the staff must provider summary of the individual progress,</p>	

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Commenter Name	Comments	Response
	<p>lack of progress assessment of the person's identified and unidentified risk.</p> <p>We strongly advocate for that the regulation to exclude the IDD Case Management /Support Coordination from the requirement of having Quarterly Review documentation in record no later than 15 days from the date the review period ended. IDD Case Management ought to complete the the Review documentation and add to the individual's record no later than 30 calendar days from the date the review period ended.</p>	
Vicki Ewing	<p><i>via email</i></p> <p>It would be helpful for all of the regulations to conform, however, since CM/SC must review progress made by the providers of direct service, there should be a difference in the requirements for completion of the quarterly review. See specific comments.</p> <p>Comments There is concern about the change in due dates for reviews. Currently direct service providers are required to send their quarterly report to the Case Manager within a 10 day grace period and the Case Manager then has 30 days from the end of the quarter to review the services provided. To meet the expectations of the DOJ Settlement, Case Managers must have the time to review the provider information. Extending the time for Case Managers will allow sufficient time to receive provider documentation, assess the information received in order to complete a quality CM review. Furthermore, if the expectation becomes that the provider and CM reviews are due on the same day (15 calendar days from the date review is due), it is likely that provider reviews will not be received until the 15th day which would not allow the CM the opportunity to review the documentation in a timely manner in order to complete their review thoroughly and remain in compliance. By having different dates, it allows for the complete process required by both Licensure and DMAS to be completed and result in a quality assessment of the implementation of the ISP.</p> <p>Therefore, we would like to suggest that the providers of direct services be allowed a 15 day grace period to complete their quarterly and that Case Management services be</p>	

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Commenter Name	Comments	Response
	required to complete the quarterly review no later than 30 calendar days from the date of the end of the review period.	
Melanie Bond	The proposed changes to the DBHDS regulation are welcomed, given the Department's attempt to align the requirements put forth by DMAS and DBHDS governing licensed behavioral healthcare Providers. However, the proposed changes should ensure its additions will not contradict the current operations of Case Management/Support Coordination in the completion of related tasks. More specifically, this updated section of regulation [12VAC35-105-675], similar to the original, does not identify whether CM/SC staff is included in the definition of Provider. Clarification of this might require extension of the proposed quarterly submission and filing timelines to accommodate CM/SC responsibilities of acquiring collateral documents from other providers, appraisal and incorporating into quarterly review documentation. A blanket 15-days for completion and submission into the medical record for all Providers is not sufficient in this respect.	

Public Participation

Please include a statement that in addition to any other comments on the regulatory change, the agency is seeking comments on the costs and benefits of the regulatory change and the impacts of the regulated community. Also, indicate whether a public hearing will be held to receive comments.

In addition to any other comments, the State Board is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the State Board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: 1) projected reporting, recordkeeping and other administrative costs; 2) probable effect of the regulation on affected small businesses; and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Written comments must include the name and address of the commenter. Comments may also be submitted by mail, email, or fax to Emily Bowles, Legal and Regulatory Manager, DBHDS Office of Licensing, PO BOX 1151, Richmond, Virginia, 23218-1151, phone (804) 225-3281, fax (804) 692-0066, emily.bowles@dbhds.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

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A public hearing will not be held following the publication of this stage of this regulatory action.

Detail of Changes

Please list all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation.

If the regulatory change will be 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 change. Delete inapplicable tables.

If the regulatory change is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below. Please include citations to the specific section(s) of the regulation that are changing.

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

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
675 B		B. The provider shall update the ISP at least annually. The provider shall review the ISP at least every three months from the date of the implementation of the ISP or whenever there is a revised assessment based upon the individual's changing needs or goals. These reviews shall evaluate the individual's progress toward meeting the plan's goals and objectives and the continued relevance of the ISP's objectives and strategies. The provider shall update the goals, objectives, and strategies contained in the ISP, if indicated, and implement any updates made.	<p>Proposed Changes: B. The provider shall: <u>(i) update the ISP at least annually; –The provider shall (ii) complete quarterly review reviews of the ISP. The provider shall review the ISP at least every three months from the date of the implementation of the <u>comprehensive</u> ISP or whenever there is a revised assessment based upon the individual's changing needs or goals. These reviews shall evaluate the individual's progress toward meeting the plan's <u>ISP's</u> goals and objectives and the continued relevance of the ISP's objectives and strategies. The provider shall update the goals, objectives, and strategies contained in the ISP, if indicated, and implement any updates made. <u>Documentation of the quarterly review shall be added to the individual's record no later than 15 calendar days from the date the review was due to be completed, with the exception of case management services. Case management quarterly reviews shall be added to the individual's record no later than 30 calendar days from the date the review was due.</u></u></p> <p>Intent, rationale, and likely impact: Per DMAS guidelines, the case manager/support coordinator (SC) is permitted a 30-day grace period to complete the person-centered</p>

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			<p>review (quarterly). This is critically important for SCs to meet the expectations for oversight of services as indicated in the Settlement Agreement.</p> <p>Other providers of direct services will be allowed a 15-day grace period to complete quarterly reviews.</p> <p>The changes are intended to resolve misalignment between DBHDS and DMAS regulations concerning quarterly reviews of ISPs, or a revised assessment, by allowing practitioners to follow the same process rather than two different processes, yet allowing for the requirements related to the Settlement Agreement.</p> <p>This phrase is redundant: or whenever there is a revised assessment based upon the individual's changing needs or goals.</p>
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II. Provision of Provider Statement to Any Other Provider

Background: The 2019 General Assembly adopted [Chapter 776](#) (HB2652) to require every licensed provider of all services (excluding children’s residential) to provide a truthful statement regarding the character, ability, and fitness for employment of a current or past employee or other individual currently or previously associated with the provider in a capacity that requires a criminal history background check to any other licensed provider with which the current or past employee has applied for employment or to fill a role that requires a criminal history background check upon receipt of a request for such information from the other licensed provider and written consent to the disclosure of such information executed by the current or past employee or other individual currently or previously associated with the provider in a capacity that requires a criminal history background check. Code of Virginia § 8.01-46.1 provides immunity for employers giving truthful references to a perspective employer. Therefore, as long as the employer is truthful and acts in good faith when providing the reference, claims for defamation by employees will not be successful. Enforcement will focus on whether or not a provider has provided a reference, and not the content of the reference. Nothing in the amended licensing regulations shall require disclosure of information subject to privilege or confidentiality pursuant to § 8.01-581.16, 8.01-581.17, or 32.1-127.1:03 of the Code of Virginia or federal law.

Purpose: The intent of this Section 1 legislation is to protect individuals receiving services from unfit direct care staff as there currently is not a state registry for those with founded cases of abuse and neglect against adults. Technical considerations: Because this is a mandate from the General Assembly, with specific language, staff initially investigated the possibility of recommending an exempt action pursuant to Va. Code § 2.2-4006(A), which exempts, “4. Regulations that are: a. Necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved.” The language staff propose closely tracks the language of the bill, except that it would require the statement to be “in writing,” which is an act of discretion by DBHDS that takes it out of the exempt category. Therefore, staff recommend this mandate proceed as a fast track action. Further, the proposal places the new language in its own new section 12VAC35-105-435, which would follow immediately after 12VAC35-105-430, a section regarding employee or contractor personnel records.

Action Requested: Initiate a fast track action to adopt the amendments.

VAC Citation	Title	Last Activity	Date
12 VAC 35-105	Rules and Regulations For Licensing Providers by the Department of Behavioral Health and Developmental Services	--	--

Next Steps:

- If approved, staff initiates the [fast track](#) action.

Regulatory Item II. Ch. 105 – Fast Track: Provider Statement

CHAPTER 776 of the 2019 Acts of Assembly

An Act to amend regulations governing licensed providers; Board of Behavioral Health and Developmental Services to require disclosure of certain information.

[H 2652]

Approved March 22, 2019

Be it enacted by the General Assembly of Virginia:

1. § 1. That the Board of Behavioral Health and Developmental Services shall amend regulations governing licensed providers to require that every licensed provider provide a statement regarding a current or past employee or other individual currently or previously associated with the provider in a capacity that requires a criminal history background check pursuant to § 37.2-416 or 37.2-506 of the Code of Virginia to any other licensed provider with which the current or past employee has applied for employment or to fill a role that requires a criminal history background check pursuant to § 37.2-416 or 37.2-506 of the Code of Virginia. The statement shall address the character, ability, and fitness for employment in or to otherwise fill the role for which the person has applied and shall be provided upon receipt of a request for such information from the other licensed provider and written consent to the disclosure of such information executed by the current or past employee or other individual currently or previously associated with the provider in a capacity that requires a criminal history background check pursuant to § 37.2-416 or 37.2-506 of the Code of Virginia. Nothing in the amended regulations shall require disclosure of information subject to privilege or confidentiality pursuant to § 8.01-581.16, 8.01-581.17, or 32.1-127.1:03 of the Code of Virginia or federal law.

FAST TRACK DRAFT: Chapter 105 (NEW Sect.435)

EMPLOYEE STATEMENT

12VAC35-105-435. Provision of provider statement to any other provider.

Providers shall give a statement in writing regarding a current or past employee or other individual currently or previously associated with the provider in a capacity that requires a criminal history background check pursuant to § 37.2-416 or 37.2-506 of the Code of Virginia to any other licensed provider with which the current or past employee has applied for employment or to fill a role that requires a criminal history background check pursuant to § 37.2-416 or 37.2-506 of the Code of Virginia. The statement shall address the character, ability, and fitness for employment in or to otherwise fill the role for which the person has applied and shall be provided upon:

1. Receipt of a request for such information from the other licensed provider; and
2. Written consent to the disclosure of such information executed by the current or past employee or other individual currently or previously associated with the provider in a capacity that requires a criminal history background check pursuant to § 37.2-416 or 37.2-506 of the Code of Virginia.

Nothing in this provision shall require disclosure of information subject to privilege or confidentiality pursuant to § 8.01-581.16, 8.01-581.17, or 32.1-127.1:03 of the Code of Virginia or federal law.

Fast-Track Regulation 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	Provision of provider statement to any other provider.
Date this document prepared	July 2, 2019

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

This regulatory action is in compliance with Chapter 776 (HB2652) of the 2019 General Assembly, which requires every licensed provider of all services (excluding children’s residential) to provide a truthful statement regarding the character, ability, and fitness for employment of a current or past employee or other individual currently or previously associated with the provider in a capacity that requires a criminal history background check to any other licensed provider with which the current or past employee has applied for employment or to fill a role that requires a criminal history background check upon receipt of a request for such information from the other licensed provider and written consent to the disclosure of such information executed by the current or past employee or other individual currently or previously associated with the provider in a capacity that requires a criminal history background check.

The proposal places the new language in its own new section 12VAC35-105-435, which would follow immediately after 12VAC35-105-430, a section regarding employee or contractor personnel records.

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 Virginia Department of Behavioral Health and Developmental Services.

“State Board” means 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 new section, 12VAC35-105-435. Provision of provider statement to any other provider, **was approved at the July 17, 2019**, meeting of the State Board as a fast track action.

Mandate and Impetus

Please identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, board decision, etc.). For purposes of executive branch review, “mandate” has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

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

This regulatory action is in compliance with Chapter 776 (HB2652) of the 2019 General Assembly.

Legal Basis

Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity’s overall regulatory authority.

Section 37.2-203 of the Code of Virginia authorizes the Board to adopt regulations that may be necessary to carry out the provisions of Title 37.2 and other laws of the Commonwealth administered by the Commissioner and the Department.

Purpose

Please explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it’s intended to solve.

The intent of the legislative mandate is to protect individuals receiving services from unfit direct care staff as there currently is not a state registry for those with founded cases of abuse and neglect against adults.

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 intent of [Chapter 776](#) (HB2652) is to protect individuals receiving services from unfit direct care staff

Regulatory Item II. Ch. 105 – Fast Track: Provider Statement

as there currently is not a state registry for those with founded cases of abuse and neglect against adults. Technical considerations: Because this is a mandate from the General Assembly, with specific language, staff initially investigated the possibility of recommending an exempt action pursuant to Va. Code § 2.2-4006(A), which exempts, “4. Regulations that are: a. Necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved.” The language staff propose closely tracks the language of the bill, except that it would require the statement to be “in writing,” which is an act of discretion by DBHDS that takes it out of the exempt category. The proposal places the new language in its own new section 12VAC35-105-435, which would follow immediately after 12VAC35-105-430, a section regarding employee or contractor personnel records.

12VAC35-105-435. Provision of provider statement to any other provider.

Providers shall give a statement in writing regarding a current or past employee or other individual currently or previously associated with the provider in a capacity that requires a criminal history background check pursuant to § 37.2-416 or 37.2-506 of the Code of Virginia to any other licensed provider with which the current or past employee has applied for employment or to fill a role that requires a criminal history background check pursuant to § 37.2-416 or 37.2-506 of the Code of Virginia. The statement shall address the character, ability, and fitness for employment in or to otherwise fill the role for which the person has applied and shall be provided upon:

1. Receipt of a request for such information from the other licensed provider; and
2. Written consent to the disclosure of such information executed by the current or past employee or other individual currently or previously associated with the provider in a capacity that requires a criminal history background check pursuant to § 37.2-416 or 37.2-506 of the Code of Virginia.

Nothing in this provision shall require disclosure of information subject to privilege or confidentiality pursuant to § 8.01-581.16, 8.01-581.17, or 32.1-127.1:03 of the Code of Virginia or federal law.

Issues

Please identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

1. The primary advantage to the public, specifically individuals receiving services, is better protection of those individuals from unfit direct care staff.
2. This change will assist the Commonwealth, through the DBHDS Office of Licensing, to help ensure staff with founded cases of abuse and neglect against adults are not able to move from job to job within the system, continually putting individuals at risk of abuse or neglect.
3. Matter of interest: The Code of Virginia § 8.01-46.1 provides immunity for employers giving truthful references to a perspective employer. Therefore, as long as the employer is truthful and acts in good faith when providing the reference, claims for defamation by employees will not be successful. Enforcement will focus on whether or not a provider has provided a reference, and not the content of the reference. Nothing in the amended licensing regulations shall require disclosure of information subject to privilege or confidentiality pursuant to § 8.01-581.16, 8.01-581.17, or 32.1-127.1:03 of the Code of Virginia or federal law.

Requirements More Restrictive than Federal

Regulatory Item II. Ch. 105 – Fast Track: Provider Statement

Please identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There are no applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Please identify any other state agencies, localities, or other entities particularly affected by the regulatory change. “Particularly affected” are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

There are no state agencies particularly affected.

Localities Particularly Affected

There is no locality particularly affected.

Other Entities Particularly Affected

There is no other entity particularly affected.

Economic Impact

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

Impact on State Agencies

<i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources	There is no additional cost to implement and enforce the amendment.
<i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	There is no additional cost to any other state agency due to this amendment.
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	This change will assist the Commonwealth, through the DBHDS Office of Licensing, to help

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	ensure staff with founded cases of abuse and neglect against adults receiving services are not able to move from job to job within the system, continually putting individuals at risk of abuse or neglect.
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Impact on Localities

Projected costs, savings, fees or revenues resulting from the regulatory change.	There is no additional cost to any other locality due to this amendment.
Benefits the regulatory change is designed to produce.	This change will help to ensure local citizens receiving services are better protected from abuse and neglect.

Impact on Other Entities

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	Individuals receiving services and their families; providers licensed by DBHDS; law enforcement officials; courts; community services boards through the reduction of occurrences of abuse and neglect and related criminal charges.
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.	It is not possible to estimate the exact number of individuals receiving services that will be affected by this regulation. Please see Table 2 in Report Document 552 (2017). However, at least 100,000 would be affected. Currently, DBHDS licenses approximately 1,100 service providers. There is no way to estimate the number of small businesses within the pool of all providers.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Please be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	There is no additional administrative cost for individuals, businesses, or other entities.
Benefits the regulatory change is designed to produce.	The intent is to protect individuals receiving services from unfit direct care staff as there currently is not a state registry for those with founded cases of abuse and neglect against adults.

Alternatives

Please describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for

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small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

There is no alternative to this regulatory change. It is less burdensome than a mandatory registry of staff with founded complaints of abuse and neglect.

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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

- 1) This requirement is a less stringent reporting requirement than if there were a mandatory registry.
- 2) There is no set schedule or deadline for provision of a statement. It is 'upon receipt of the request.'
- 3) There are no specific compliance or reporting requirements.
- 4) This does not establish performance standards for small businesses to replace design or operational standards.
- 5) There is no exemption of small businesses from all or any part of the requirements contained in the regulatory change. This is a legislative mandate.

Public Participation

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.

Detail of Changes

Please list all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation.

If the regulatory change will be 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 change. Delete inapplicable tables.

If the regulatory change is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below. Please include citations to the specific section(s) of the regulation that are changing.

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

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
	12VAC35-105-435. Provision of provider statement to any other provider.		<p>The intent of this legislatively mandated amendment to the Licensing Regulations is to protect individuals receiving services from unfit direct care staff as there currently is not a state registry for those with founded cases of abuse and neglect against adults. The new subsection language states:</p> <p><u>Providers shall give a statement in writing regarding a current or past employee or other individual currently or previously associated with the provider in a capacity that requires a criminal history background check pursuant to § 37.2-416 or 37.2-506 of the Code of Virginia to any other licensed provider with which the current or past employee has applied for employment or to fill a role that requires a criminal history background check pursuant to § 37.2-416 or 37.2-506 of the Code of Virginia. The statement shall address the character, ability, and fitness for employment in or to otherwise fill the role for which the person has applied and shall be provided upon:</u></p> <ol style="list-style-type: none"> <u>1. Receipt of a request for such information from the other licensed provider; and</u> <u>2. Written consent to the disclosure of such information executed by the current or past employee or other individual currently or previously associated with the provider in a capacity that requires a criminal history background check pursuant to § 37.2-416 or 37.2-506 of the Code of Virginia.</u> <p><u>Nothing in this provision shall require disclosure of information subject to privilege or confidentiality pursuant to § 8.01-581.16, 8.01-581.17, or 32.1-127.1:03 of the Code of Virginia or federal law.</u></p>

III. Certified Recovery Residences

Background: The 2019 General Assembly adopted [Chapter 220 of the 2019 Acts of Assembly \(HB2045\)](#), which added a new section numbered 37.2-431.1 in the Code of Virginia creating an avenue for the certification of recovery residences through regulations adopted by the State Board of Behavioral Health and Developmental Services. The new regulations define “recovery residences” and, as allowed by the enabling legislation, create a voluntary certification for residences that meet standards of credentialing entities specified by DBHDS.

Purpose: The intent of this Section 1 legislation is to establish a process for the maintenance of a list by DBHDS of certified recovery houses. As allowed in the legislation, DBHDS identifies through the regulation specific credentialing entities and the regulations will require the submission of an application with proof of good standing from one of the specific credentialing entities in order to have a recovery residence added to the list placed on the DBHDS website. Certified recovery residences are to be held to nationally recognized standards to ensure safety and recovery through effective peer support, mutual accountability, and clear social structures. Voluntary certification of recovery housing is intended to make it easier to locate recovery housing for individuals needing such housing and thus create a list of available houses to be utilized by courts, community services boards, individuals, and families.

Action Requested: Initiate a fast track action to adopt the amendments.

VAC Citation	Title	Last Activity	Date
12 VAC 35-270	Rules and Regulations For Licensing Providers by the Department of Behavioral Health and Developmental Services	--	--

Next Steps:

- If approved, staff initiates the [fast track](#) action.

CHAPTER 220 of the 2019 Acts of Assembly

An Act to amend the Code of Virginia by adding in Article 4 of Chapter 4 of Title 37.2 a section numbered 37.2-431.1, relating to Department of Behavioral Health and Developmental Services; certification of recovery residences.

[H 2045]

Approved March 5, 2019

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 4 of Chapter 4 of Title 37.2 a section numbered [37.2-431.1](#) as follows:

§ [37.2-431.1](#). *Certified recovery residences.*

A. *As used in this section:*

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"Certified recovery residence" means a recovery residence that has been certified by the Department.

"Credentialing entity" means a nonprofit organization that develops and administers professional certification programs according to nationally recognized recovery housing standards.

"Recovery residence" means a housing facility that provides alcohol-free and illicit-drug-free housing to individuals with substance abuse disorders and individuals with co-occurring mental illnesses and substance abuse disorders that does not include clinical treatment services.

B. No person shall advertise, represent, or otherwise imply to the public that a recovery residence or other housing facility is a certified recovery residence unless such recovery residence or other housing facility has been certified by the Department in accordance with regulations adopted by the Board. Such regulations may require accreditation by or membership in a credentialing agency as a condition of certification.

C. The Department shall maintain a list of certified recovery residences on its website.

D. The Department may institute civil proceedings in the name of the Commonwealth to enjoin any person from violating the provisions of this section and to recover a civil penalty of at least \$200 but no more than \$1,000 for each violation. Such proceedings shall be brought in the general district or circuit court for the county or city in which the violation occurred or where the defendant resides. Civil penalties assessed under this section shall be paid into the Behavioral Health and Developmental Services Trust Fund established in § 37.2-318.

FAST TRACK DRAFT: Chapter 105 (NEW Chapter 270)

CERTIFIED RECOVERY RESIDENCES

12VAC35-270-10. Definitions.

"Certification list" means the list of certified recovery residences maintained by DBHDS.

"Certified recovery residence" means a recovery residence that has been certified by a credentialing entity and is on the certification list maintained by DBHDS.

"Credentialing entity" means a nonprofit organization that develops and administers professional certification programs according to nationally recognized recovery housing standards.

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

"Recovery residence" means a housing facility that provides alcohol-free and illicit-drug-free housing to individuals with substance abuse disorders and individuals with co-occurring mental illnesses and substance abuse disorders that does not include clinical treatment services.

12VAC35-270-20. Recovery residence.

Any person, nonprofit organization, or business entity seeking to operate a certified recovery residence under this chapter shall for each location (i) meet the qualifications, policies, and practices established by a credentialing entity, and (ii) be certified, accredited, or hold a charter from one of the following credentialing entities:

- 1. The Virginia Association of Recovery Residences (VARR); or**
- 2. Oxford House.**

12VAC35-270-30. List of certified recovery residences.

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A. DBHDS shall maintain a list of certified recovery residences on its website.

B. A certified recovery residence seeking to be included on the certification list shall submit a completed application on a form provided by DBHDS.

C. A certified recovery residence seeking to be included on the certification list shall provide evidence of accreditation or certification by, a charter from, or membership in a credentialing entity.

12VAC35-270-40. Restrictions and violations.

A. No person shall advertise, represent, or otherwise imply to the public that a recovery residence or other housing facility is a certified recovery residence unless such recovery residence or other housing facility has been placed on the certification list by DBHDS in accordance this chapter.

B. Any recovery residence that fails to maintain certification shall be removed from the certification list.

C. DBHDS may institute civil proceedings in the name of the Commonwealth to enjoin any person from violating the provisions of this section and to recover a civil penalty of at least \$200 but no more than \$1,000 for each violation. Such proceedings shall be brought in the general district or circuit court for the county or city in which the violation occurred or where the defendant resides. Civil penalties assessed under this section shall be paid into the Behavioral Health and Developmental Services Trust Fund established in § 37.2-318.

FORMS (12VAC35-270)

Application for Inclusion on the DBHDS Recovery Residences Certification List, Office of Recovery Services Form ##### (eff. #/20##)

Fast-Track Regulation Agency Background Document

Agency name	Department of Behavioral Health and Developmental Services
Virginia Administrative Code (VAC) citation(s)	NEW: 12 VAC35-270
Regulation title(s)	Certified Recovery Residences
Action title	Establishes certification of recovery residences
Date this document prepared	June 28, 2019

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

Regulatory Item II. Ch. 105 – Fast Track: Provider Statement

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.

This regulatory action creates a new chapter, 12 VAC35-270, in compliance with [Chapter 220 of the 2019 Acts of Assembly \(HB2045\)](#), which added a new section numbered 37.2-431.1 in the Code of Virginia creating an avenue for the certification of recovery residences through regulations adopted by the State Board of Behavioral Health and Developmental Services. The new regulations define “recovery residences” and, as allowed by the enabling legislation, create a voluntary certification for residences that meet standards of credentialing entities specified by DBHDS. The two credentialing entities specified in the regulation are nationally recommended organizations that follow best practice standards for recovery. The legislation was developed through a stakeholder workgroup over the last year and with broad community feedback that called for greater oversight for recovery housing in Virginia. The certification process will be the responsibility of the DBHDS Office of Recovery Services. There are no projected costs to this certification.

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.

“Certification list” means the list of certified recovery residences maintained by DBHDS.

"Certified recovery residence" means a recovery residence that has been certified by a credentialing entity and is on the certification list maintained by DBHDS.

“Credentialing entity” means a nonprofit organization that develops and administers professional certification programs according to nationally recognized recovery housing standards.

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

"Recovery residence" means a housing facility that provides alcohol-free and illicit-drug-free housing to individuals with substance abuse disorders and individuals with co-occurring mental illnesses and substance abuse disorders that does not include clinical treatment 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 new regulation, Certified Recovery Residences (12 VAC35-270), was **approved at the July 17, 2019**, meeting of the State Board as a fast track action.

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

Regulatory Item II. Ch. 105 – Fast Track: Provider Statement

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.

Chapter 220 of the 2019 Acts of Assembly (HB2045) added a new section numbered 37.2-431.1 in the Code of Virginia creating an avenue for the certification of recovery residences through regulations adopted by the State Board of Behavioral Health and Developmental Services. Section 37.2-203 of the Code of Virginia authorizes the Board to adopt regulations that may be necessary to carry out the provisions of Title 37.2 and other laws of the Commonwealth administered by the Commissioner and the Department.

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.

As reported in a May 2019 issue of The National Council for Behavioral Health brief, [Recovery Housing Issue Brief: Information for State Policymakers](#):

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

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

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

A stakeholder workgroup was convened over the last year in Virginia to receive input from subject matter experts across the state. The legislation was developed through the workgroup with broad community feedback that called for greater accountability for recovery housing to ensure the health, safety, and welfare of individuals staying in recovery residences. A compromise was developed with stakeholders to provide departmental oversight to recovery housing without being overly burdensome to these ‘organic’ community-based organizations. Certified recovery residences will be held to nationally recognized standards to ensure safety and recovery through effective peer support, mutual accountability, and clear social structures. Voluntary certification of recovery housing is intended to make it easier to locate

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recovery housing for individuals needing such housing and thus create a list of available houses to be utilized by courts, community services boards, individuals, and families.

Section 37.2-431.1 of the Code of Virginia requires the promulgation of regulations adopted by the State Board to specify credentialing entities and the application process through 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?

These amendments are noncontroversial as the certification is voluntary. A stakeholder workgroup was convened over the last year in Virginia to receive input from subject matter experts across the state regarding recovery residences. The legislation mandating the voluntary certification was developed through the workgroup with broad community feedback that called for greater accountability for recovery housing to ensure the health, safety, and welfare of individuals staying in recovery residences. A compromise was developed with stakeholders to provide departmental oversight to recovery housing without being overly burdensome to these 'organic' community-based organizations. The draft regulation is written in a manner to very closely track the legislative language; the draft regulation was posted for [public comment](#) from April 9, 2019 to May 9, 2019. Six comments were received (attached).

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 new regulation establishes a process for the maintenance of a list by DBHDS of certified recovery houses. As allowed in the legislation, DBHDS identifies through the regulation specific credentialing entities and requires the submission of an application with proof of good standing from one of the specific credentialing entities in order to have a recovery residence added to the list on the DBHDS website.

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 are no identified disadvantages to the public or the Commonwealth in making this change. This regulation will allow for individuals and families to find recovery housing easier and faster. It also allows them to find housing that is safe, within their affordability, and has clarity about which populations are served.

Certified recovery residences will be held to nationally recognized standards to ensure safety and recovery through effective peer support, mutual accountability, and clear social structures. Voluntary certification of recovery housing is intended to make it easier to locate recovery housing for individuals

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needing such housing and thus create a list of available houses to be utilized by courts, community services boards, individuals, and families.

Requirements more restrictive than federal

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 not federal requirements for recovery residences, and therefore the requirements cannot be more restrictive. There are national standards and the two credentialing entities named in the regulation are recognized by the U.S. Department of Health and Human Services Substance Abuse and Mental Health Services Administration (SAMHSA).

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.

There are no other alternative regulatory methods consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of [Chapter 220 of the 2019 Acts of Assembly \(HB2045\)](#) through this new, simple regulation to help ensure the level of professional standards across the Commonwealth. Because the certification is voluntary, there is no impact on small business and many (though not all) recovery residences are non-profit entities. The only performance standards are found in the requirements in Section 20; namely, to meet the qualifications, policies, and practices established by one of the specific credentialing entities, and be certified, accredited or hold a charter from one of the two credentialing entities named in the regulation. There are no exemptions as the certification is voluntary.

Economic impact

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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.

<p>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</p>	<p>There is no additional cost to implement and enforce the amendment.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>There is no additional cost on localities as a result of these changes.</p>
<p>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</p>	<p>Individuals receiving or needing services and their families; law enforcement officials; parole or probation officers; courts; community services boards; recovery housing owners and operators; and, recovery organizations.</p>
<p>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.</p>	<p>The number of recovery residences in the Commonwealth is currently unknown as there are no requirements or oversight to own and operate one. In Maryland, 200 recovery homes became certified with the department within the first five years of implementation.</p> <p>It is not possible to estimate the number of individuals that will be affected by this regulation.</p>
<p>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.</p>	<p>There is no additional administrative cost for individuals, businesses, or other entities, except that for recovery homes that wish to be credentialed through the Virginia Association of Recovery Residences (VARR, one of the two credentialing entities) currently there is a VARR annual membership fee of \$500.00 a year, and a \$50.00 payment for every additional house. The VARR inspection fee is included with yearly membership. If the housing is located outside of a 50 mile radius from Richmond, an additional travel fee for the inspector will be required and dependent on the location of the inspection. The credentialing and certification is voluntary.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>Certified recovery residences will be held to nationally recognized standards to ensure safety and recovery, and the list will be a convenience to individuals seeking a home as well as community stakeholders who may assist them (family members, law enforcement, parole or probation officers, the community services boards, and the courts).</p>

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 to establish a voluntary certification list for Virginia.

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 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 to establish a new regulation as mandated by the Virginia General Assembly and therefore 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 have a positive impact on families because they will have greater access to find recovery housing for their family members in recovery, and to find recovery housing that has been deemed to meet national standards. The program will also detail other recovery resources that might be beneficial to the family members as well.

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.

This proposed regulation is a new chapter 270 creating a new voluntary certification list under the Office of Recovery Services. The definitions are intended to give statewide name recognition to successful recovery housing model and provide insight to the regulations regarding the purpose of the program.

The regulation first establishes the voluntary certification program such that should a recovery residence choose to be certified by the department and maintained on the agency web list, it must adhere to nationally recognized standards as demonstrated by membership or charter with one of the two credentialing entities that currently certify houses that meet these standards: the Virginia Association of Recovery Residences and Oxford House.

Any entity wishing to be certified must submit a completed application provided by DBHDS with proof of membership or charter with a credentialing entity.

The regulations impose a penalty for any recovery residence that falsely advertises as a “certified recovery residence” and is not on the DBHDS certification list. DBHDS is given authority to institute civil proceedings should any person violate the provisions of this section.

DIRECTIONS

Tuesday, July 17, 2019

**Virginia Department of Behavioral Health and Developmental Services,
13th Floor Large Conference Room, Jefferson Building, 1220 Bank Street, Richmond, VA 23219**

Time: **Committees at 8:45 a.m.**, Regular Board Meeting at 10 a.m.

- **Planning and Budget Committee** will meet in the 11th Floor Conference Room.
- **Policy and Evaluation Committee** will meet in the 13th Floor Large Conference Room.

Regular Meeting Location: **Virginia Department of Behavioral Health and Developmental Services,
13th Floor Large Conference Room, Jefferson Building,
1220 Bank Street, Richmond, VA 23219**

This page has **driving directions to the DBHDS Central Office in the Jefferson Building**, 1220 Bank Street. Below are general directions based on your starting point. View a [Capitol area site plan](http://www.dbhds.virginia.gov/documents/sitePlan-RichCapitol.pdf) (<http://www.dbhds.virginia.gov/documents/sitePlan-RichCapitol.pdf>) that you can adjust for magnification.

FROM I-64 EAST AND WEST OF RICHMOND

- Driving on I-64 towards Richmond, get onto I-95 South and continue into the downtown area on I-95.
- Take Exit 74B, Franklin Street.
- Follow Directions Below: 'Continue Downtown'

FROM I-95 NORTH OF RICHMOND

- Continue south on I-95 into the downtown area.
- Take Exit 74B, Franklin Street.
- Follow Directions Below: 'Continue Downtown'

FROM I-95 SOUTH OF RICHMOND

- Cross the bridge over the James River.
- Exit to your Right on exit 74C– Route 360 (17th Street is one-way) and continue to Broad Street.
- Turn Right onto Broad Street
- Turn Left onto 14th Street (first light after crossing over I-95)
- Follow Directions Below: 'Continue Downtown'

➤ CONTINUE DOWNTOWN - DIRECTIONS AFTER EXITING I-95

- Turn Right onto Franklin Street at the traffic light at the bottom of the exit.
- Cross through the next light at 14th Street (Franklin Street becomes Bank Street)
- Look for on-street meter parking in the block between 14th and 13th Streets, or on 14th or Main streets. If you do not see parking on this block other parking options are available. View the [parking map](#) and [parking fee table](#) for the area.

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- **The location for the Biennial Planning Meeting is in the Washington Building** near the southeast corner of Capitol Square, at the intersection of 12th and Bank Streets.
 - **The location for the committee meetings and Regular Board Meeting is in the Jefferson Building** on the south-east corner of [Capitol Square](#), at the intersection of 13th/Governor Street and Bank Streets.

If you have any questions about the information in this meeting packet, contact Emily Lowrie, emily.lowrie@dbhds.virginia.gov, 804.774.2277.