



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Mental Health, Mental Retardation and Substance Abuse Services Board (State Board of Behavioral Health and Developmental Services after July 1, 2009)
Virginia Administrative Code (VAC) citation	12 VAC 35-115-10 et seq.
Regulation title	Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded or Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services
Action title	Clarify notification rights for individuals receiving services to comply with Chapter 111 of the 2009 Virginia Acts of Assembly
Date this document prepared	June 3, 2009

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

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

This regulatory action will amend the existing regulations to clarify that individuals receiving services have the right and opportunity to notify a person of his choice of his (i) location, (ii) general condition, and (iii) transfer to another facility. This change is intended to ensure that an individual will have the support of family members or others while he is receiving services from providers who are licensed, funded, or operated by the Department (Department of Behavioral Health and Developmental Services after July 1, 2009). This change should also ensure that family members or others are informed about the well-being of a loved one who is receiving services.

This regulatory action will also change the Department name to the Department of Behavioral Health and Developmental Services.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The State Mental Health, Mental Retardation and Substance Abuse Services Board has the authority to adopt these regulations under Va. Code §§37.2-203 and 37.2-400 and is required to do so. The revisions are required under Chapter 111 of the 2009 Virginia Acts of Assembly. The legal authority for the Department name change is provided in Chapter 813 of the 2009 Virginia Acts of Assembly.

Need

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

This Board is required to amend its regulations to comply with the 2009 amendment to § 37.2-400 of the Code of Virginia. This change will promote the health, safety and welfare of persons who are receiving services by ensuring these individuals are afforded the opportunity to notify loved ones of their general condition and whereabouts. This should enable family members and others to provide support to a loved one who is receiving services.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

The agency proposes to amend the current regulations to include a provision requiring that providers afford individuals receiving services the opportunity to have an individual of their choice notified of their general condition, location, and transfer to another facility.

References to the *Department of Mental Health, Mental Retardation and Substance Abuse Services* in these regulations will be changed to the *Department of Behavioral Health and Developmental Services*.

Alternatives

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

There are no viable alternatives to this regulatory action. Section 37.2-400 of the Code of Virginia was amended to specifically require that each person who is receiving services in a facility or program that is

operated, funded or licensed by the Department be afforded the opportunity to have an individual of his choice notified of his general condition, location, and transfer to another facility. This amendment also requires the Board to adopt regulations delineating this provision.

The Code requires the Board to hold a public hearing in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) prior to adopting regulations to implement the rights of consumers that are delineated in § 37.2-400 of the Code.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 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 comments may do so **at the public hearing** via the Regulatory Townhall website, www.townhall.virginia.gov, or by mail, email or fax to Margaret Walsh, 1220 Bank Street, Richmond, Virginia 23218, telephone number 804-786-3988, fax 804-371-2308 or margaret.walsh@co.dmhmrsas.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period.

A public hearing will be held and notice of the hearing may be found on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) and can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, technical advisory committees) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The agency is not using the participatory approach in development of this proposal. The agency has authorized proceeding without using the participatory approach because it has no discretion in developing the proposed regulation. The specific provision is mandated by Chapter 111 of the 2009 Virginia Acts of Assembly.

Family impact

Assess the potential impact of the proposed 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 regulatory action should have a positive impact on families and family stability because it should encourage family members to support their loved ones who are receiving services. This action is not expected to impact family income.