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Exempt Action: Final Regulation Agency Background Document

Agency name	Department of Behavioral Health and Developmental Services
Virginia Administrative Code (VAC) Chapter citation(s)	<ul style="list-style-type: none">12 VAC35-10512 VAC35-115
VAC Chapter title(s)	<ul style="list-style-type: none">Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental ServicesRegulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Behavioral Health and Developmental Services
Action title	Amendments to ensure that licensing and human rights regulations support high-quality mental health services.
Final agency action date	May 14, 2024
Date this document prepared	May 10, 2024

This information is required for executive branch review pursuant to Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

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.

The 2024 Session of the General Assembly directed the State Board of Behavioral Health and Developmental Services to amend its regulations to ensure they support high-quality crisis services. Crisis services are unique among the services that Department of Behavioral Health and Developmental Services (DBHDS) licenses due to their acute nature. The current Licensing Regulations do not make the necessary distinctions to best serve individuals experiencing crisis or ensure providers have the tools they need to best implement their crisis services. These amendments create a new section VIII of the Licensing Regulations named Crisis Services tailored to crisis receiving centers, community-based crisis

stabilization, crisis stabilizations units, and REACH providers (“REACH” is an acronym for (regional/education/assessment/crisis services/habitation). Most of the provisions included in the action were developed over the course of a year in a part of DBHDS’ overall regulatory overhaul efforts and were carefully vetted by both internal subject matter experts as well as providers as part of a regulatory advisory panel convened for that larger effort. Regulatory advisory panel meetings were held in the summer of 2023 on [June 20th](#), [June 27th](#), and [July 11th](#), and draft language was included in a [general notice](#) with a public comment forum that ended on March 14, 2024. Additional clarifying provisions were developed to specifically address the most recent General Assembly mandate.

This exempt action amends regulations two regulatory chapters to ensure regulatory support of high-quality mental health services and that the regulations align with the changes being made to the Medicaid behavioral health regulations for services funded in this Act in support of the Governor’s Right Help, Right Now Behavioral Health Transformation Plan. See the attached addendum explanatory table by section.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “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.”

The 2024 Session of the General Assembly passed [SB569](#), which requires the State Board of Behavioral health and Developmental Services to amend its licensing and human rights regulations to support high-quality crisis services in crisis receiving centers and crisis stabilization units. The legislation specifically authorizes the appropriate and safe use of seclusion in crisis receiving centers and crisis stabilizations units. The legislation further states that the initial adoption of these regulatory amendments shall be exempt from the Administrative Process Act (APA) to allow for a faster adoption process.

Statement of Final Agency Action

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.

Section 37.2-203 of the Code of Virginia authorizes the State Board of Behavioral Health and Developmental Services 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. At its meeting on May 14, 2024, the State Board voted to initiate this exempt action to amend two chapters:

1. Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services (“Licensing Regulations”) [[12VAC35-105](#)]; and
2. Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Behavioral Health and Developmental Services (“Human Rights Regulations”) [[12VAC35-115](#)].

Crisis Final Exempt (Ch. 105 and 115): Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
12VAC35-105-20 Definitions		Definitions for the licensing regulations	<p>Addition of the following new terms:</p> <ul style="list-style-type: none"> • Community-based crisis stabilization. • Crisis education and prevention plan (CEPP). • Crisis planning team. • Crisis receiving center (CRC). • Crisis stabilization unit (CSU). • Mobile crisis response. • Office of Human Rights. • Regional education assessment crisis services habilitation (REACH). • REACH crisis therapeutic home (CTH). • REACH mobile crisis response. • Signed. • Telehealth. • Telemedicine. • Written. <p>Clear and concise definitions created for the emerging crisis service continuum, that were drafted with assistance from other agencies.</p>
12VAC35-105-30 Licenses		Lists the current license types and describes license addendums	<p>Addition of the following new crisis licenses:</p> <ul style="list-style-type: none"> • Community-based crisis stabilization. • Crisis receiving center. • Crisis stabilization unit. • REACH CTH. • REACH mobile crisis response.

Addendum: DBHDS Explanation Table

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
12VAC35-105-280-Physical environment		Provides physical environment requirements for all licensed providers	Exempts crisis providers from these requirements as crisis providers will be required to fulfill crisis specific physical environment requirements.
12VAC35-105-330 – Beds		Provides requirements for beds operating within residential and inpatient locations	Exempts crisis providers from these requirements as crisis providers will be required to fulfill crisis specific requirements related to beds
12VAC35-105-350-Condition of beds		Provides requirements for the condition of beds within residential and inpatient locations	Exempts crisis providers from these requirements as crisis providers will be required to fulfill crisis specific requirements related to the condition of beds
12VAC35-105-360-Privacy		Provides requirements for privacy	Exempts crisis providers from these requirements as crisis providers will be required to fulfill crisis specific privacy requirements
12VAC35-105-370-Ratios of toilets, basins, and showers or baths		Provides requirements regarding the ratios of toilets, basins and showers or baths in residential and inpatient locations	Exempts crisis providers from these requirements as crisis providers will be required to fulfill crisis specific requirements related to toilets, showers etc.
12VAC35-105-380-Lighting		Provides requirements regarding lighting	Exempts crisis providers from these requirements as crisis providers will have crisis specific requirements related to lighting
12VAC35-105-650 – Assessment policy		Provides requirements regarding the provider’s assessment policy	Exempts crisis providers from these requirements as the regulatory action creates a new crisis assessment process more uniquely tailored to crisis providers
12VAC35-105-660 – Individualized services plan (ISP)		Provides requirements regarding individualized services plans	Exempts crisis providers from these requirements as the regulatory action creates a new safety plan and crisis ISP process more uniquely tailored to crisis providers
12VAC35-105-665-ISP requirements		Provides the required elements of ISPs	Exempts crisis providers from these requirements as the regulatory action creates a new safety plan and crisis ISP process more uniquely tailored to crisis providers
12VAC35-105-693 – Discharge		Provides the required elements of discharge policies and procedures	Exempts crisis providers from these requirements as the regulatory action creates a new discharge process more uniquely tailored to crisis providers (Section is not in the body but listed as -1880 A.)
12VAC35-105-740-Physical examination for		Requires that providers of residential or inpatient services to administer physical exams	Exempts crisis providers from these requirements as the regulatory action creates a new nursing assessment process that is more uniquely tailored to crisis providers

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residential and inpatient services		and lays out the requirements for those physical exams	
12VAC35-105-1120 – Vital signs		Requires providers to take vital signs	Exempts crisis providers from these requirements as the regulatory action creates crisis specific vital signs requirements
	Part VIII – Crisis Services		New part that creates provisions specifically tailored to crisis services and only applies to crisis providers.
	12VAC35-105-1830-Applicability of part		New section that clarifies that Part VIII only applies to crisis receiving centers, community-based crisis stabilization, crisis stabilization units, and REACH providers.
	12VAC35-105-1840-Staffing		New section that lays out the requirements for staffing of crisis receiving centers and community-based crisis stabilization, including those that provide mobile crisis response, crisis stabilization units, and REACH providers.
	12VAC35-105-1850		<p>New section that lays out the requirements for a provider’s crisis assessment policy. A crisis assessment is more tailored to crisis services, and therefore, is intended to be less administratively burdensome. The assessment has different elements based upon the crisis service being provided. More acute services have less elements.</p> <p>Mobile crisis response and CRC assessments include:</p> <ul style="list-style-type: none"> • Diagnosis. • Risk of harm. • Cognitive functional status. • Precipitating issues. • Presenting needs. • Medical issues. • Medications. • Barriers to treatment. • Recovery environment and circle of support. • Communication needs. <p>CSUs and community-based crisis stabilization providers need to collect these additional elements within their assessments:</p>

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			<ul style="list-style-type: none"> • Relevant treatment history. • Housing arrangements. • Trauma. • Involvement in systems, such as the legal system. <p>If applicable to the individual's crisis, the assessment should also include:</p> <ul style="list-style-type: none"> • The individual's social, behavioral, developmental, family history, and supports. • Employment, vocational, and educational background. • Cultural and heritage considerations. • Financial stressors. <p>Crisis providers need only complete one assessment rather than an initial and comprehensive assessment as other providers are required to complete.</p> <p>Crisis assessments must be created as soon as possible after admission but no later than 24 hours after admission.</p>
	<p>12VAC35-105-1860- Safety plans and crisis individualized services plans</p>		<p>New section that lays out the timeframes for safety plans and crisis ISPs to be drafted and implemented. Both a safety plan and crisis ISP are more tailored to crisis services, and therefore, are intended to be less administratively burdensome than the ISP process.</p> <p>Providers of crisis services for individuals with developmental disability are required to develop and implement a crisis education and prevention plan (CEPP), which can be used in lieu of a safety plan, if appropriate. If used as a safety plan, it must be developed and implemented immediately after admission.</p> <p>Providers of mental health and substance abuse crisis services are required to develop and implement a safety plan immediately after admission.</p>

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Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
			<p>A provider must develop and implement a crisis ISP as soon as possible after admission but no later than 48 hours after admission. More acute crisis services are not required to create a crisis ISP, only a safety plan.</p>
	<p>12VAC35-105-1870-Safety plan and crisis ISP requirements</p>		<p>New section that lays out the requirements of safety plans and crisis ISPs. Both a safety plan and crisis ISP are more tailored to crisis services, and therefore, are intended to be less administratively burdensome than the ISP process.</p> <p>All individual's receiving crisis services shall have a safety plan. A safety plan shall include:</p> <ul style="list-style-type: none"> • Warning signs that a crisis is developing. • Internal coping strategies. • People and social settings the individual may turn to for support. • People the individual may ask for help. • Professionals or agencies the individual can contact during a crisis. • Things the individual can do to make his environment safe. <p>A safety plan may include:</p> <ul style="list-style-type: none"> • How to support an individual pre-crisis. • Specific instructions for the systems supporting the individual pre-crisis. • A description of how to support the individual during a crisis. • Specific instructions for the systems supporting an individual during crisis. <p>If an individual requires medication management or seclusion, then the need shall be clearly documented in an attachment to the individual's safety plan.</p>

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Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
			<p>In addition to creating a safety plan, community-based crisis stabilization and crisis stabilization unit providers shall also develop and implement a crisis ISP. A crisis ISP shall include:</p> <ul style="list-style-type: none"> • Relevant and attainable goals. • Services, supports, and frequency of services to accomplish goals. • Any use of seclusion. • The role of the individual and others in implementing the crisis ISP. • Identification of employees responsible for the coordination and integration of services. • A behavioral support or treatment plan. • Projected discharge date.
	<p>12VAC35-105-1180-Crisis discharge planning</p>		<p>New section that lays out discharge requirements for crisis providers (exempt from -693). The provision clearly states that crisis providers are not subject to the provisions of 12VAC35-105-693 that specifies discharge requirements for other licensed providers.</p> <p>This section is tailored to crisis services, and therefore, intended to be less administratively burdensome.</p> <p>Providers of mobile crisis response and crisis receiving centers are not required to provide discharge planning; instead they are required to make referrals to all follow up service providers and document such referrals. This process is typically called a “warm hand off” in the crisis community.</p> <p>Community-based crisis stabilization providers, crisis stabilization units, and REACH providers are required to have discharge policies and procedures including criteria for discharge. These providers are required to provide individuals receiving services with discharge instructions and within 30 days of discharge create a written discharge summary.</p>

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	12VAC35-105-1890-Nursing assessments		<p>New section to replace the requirement for a physical examination. This section is tailored to crisis services with the intent of being less administratively burdensome and with the consideration of the staffing limitations of crisis service providers. CRCs, CSUs, and REACH CTH providers are required to administer nursing assessments within 24 hours of admission. This includes:</p> <ul style="list-style-type: none"> • A screening for communicable diseases including tuberculosis. • Information about the non-psychiatric medical or surgical conditions of an individual. • A determination if there is need for further medical assessment or transfer to a more intensive level of care. • A determination if there is a medical crisis or underlying medical condition causing the crisis. <p>Community-based crisis stabilization providers are not required to administer nursing assessments.</p>
	12VAC35-105-1990 – Vital signs for crisis services		<p>New section that requires crisis receiving centers, crisis stabilization units, and REACH CTH providers to take vital signs upon admission, during the provision of services as ordered, and at discharge.</p>
	12VAC35-105-1910-Bed or Recliners for Crisis Services		<p>New provision that requires crisis receiving centers to arrange for each individual to have a recliner or bed, and crisis stabilization units and REACH CTH providers to arrange for each individual to have a bed. The provisions also lay out requirements for recliners and beds and maintenance of them.</p>
	12VAC35-105-1920-Bedrooms for crisis services		<p>New section that applies to CSUs and REACH CTH providers. The provision lays out the requirements for bedrooms maintained by these providers.</p>
	12VAC35-105-1930-Physical environment		<p>New section that lays out physical environment requirements for crisis providers. These provisions are specifically tailored to crisis services with the understanding that monitoring and injury may be more common in a crisis setting.</p>

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Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
	12VAC35-105-1940- Seclusion		New section that specifies seclusion is only allowed in crisis settings as permitted by the Human Rights Regulations [12VAC35-115].
	12VAC35-105-1950- Seclusion room requirements		New section that specifies the requirements of a seclusion room should seclusion be utilized in a crisis setting.
12VAC35-115-110- Use of seclusion, restraint, and time out		Does not allow seclusion in CRCs and CSUs.	<p>Adds the allowance that seclusion may be ins CRCs and CSUs, within other existing restrictions.</p> <p>Requires that provider not use seclusion unless other less restrictive techniques have been considered and documentation is placed in the individual’s safety plan, crisis ISP, or ISP.</p>