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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Department for Aging and Rehabilitative Services
Virginia Administrative Code (VAC) citation(s)	22 VAC 30-30
Regulation title(s)	Provision of Independent Living Rehabilitation Services
Action title	Amend IL due to WIOA and Periodic Review
Date this document prepared	August 30, 2017

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Subject matter and intent

Please describe briefly the subject matter, intent, and goals of the planned regulatory action.

This Provision of Independent Living Rehabilitation Services regulates the provision of independent living services in Virginia that assist persons with disabilities to live more independently and to improve their quality of life. It has been four years since this regulation has been reviewed. During that time, federal law has changed, and new federal regulations have been implemented. This action is intended to amend the current regulation so that it will comply with the current federal regulation.

In addition, changes have occurred in the independent living movement. Centers for independent living (CILs) are private, non-profit entities that exercise full autonomy over their operations. They are not structured like vocational rehabilitation service, and they have become less dependent upon the state agency that provides vocational rehabilitation services. They receive some federal funds directly for the administration of their programs. They also receive funding from other state agencies to provide services to individuals. The responses to a periodic review showed that the regulations need to be updated to reflect this change.

Legal basis

Please identify the (1) the agency (includes any type of promulgating entity) and(2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should 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's overall regulatory authority.

§ 51.5-117 created the Department for Aging and Rehabilitative Services with powers and duties to ensure effective programs and services, and to improve coordination of these programs and services, for citizens of the Commonwealth who, for reasons of age, disability, or other physical factors, face challenges in living independently in the community and accessing the full range of programs and services to help them achieve independence and an improved quality of life.

§ 51.5-131 gives the Commissioner of the Department for Aging and Rehabilitative Services the power and duty to promulgate regulations necessary to carry out the provisions of the of the laws of the Commonwealth administered by the department.

The Workforce Innovation and Opportunity Act of 2014 ("WIOA," Public Law. 113–128), and its ensuing regulation 45 CFR Part 1329 implements the federal changes to the administration of independent living services and the centers for independent living.

Purpose

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

This action will update the department's regulations for the Provision of Independent Living Services in order to comply with current federal regulations. In addition, the amendment will ensure that Virginia's centers for independent living that receive federal funds will comply with federal regulations. This action will protect the welfare of citizens because it stipulates the specific, core independent living services that are required by the federal regulations. However, it also allows the individual centers the flexibility to provide additional services that are needed by their specific geographical areas if there are additional funding sources available.

Substance

Please briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

The amendment updates all sections regarding federally-funded centers for independent living to make Virginia's implementation of the federal program comply with the federal Independent Living regulation. This action revises sections on eligible applicant agencies, funded activities, and allocation of funds among centers, scope of services, evaluation standards, periodic review, and appeal. No additional sections are being added.

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.

No alternative to this regulation was considered as the Code of Virginia gives the department the power and duty to promulgate regulations necessary to carry out programs administered by the department. However, after receiving public comments from the periodic review, the agency is seeking to amend the existing regulation so that it is more understandable. Certain information in the current regulation is not applicable to the Commonwealth and can be removed from the amended regulation. This will reduce the burden on centers for independent living because they will not have to read through lengthy sections in order to determine which apply to them. There is no impact on small businesses because this regulation addresses the provision of independent living services provided by the centers for independent living.

Public participation

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

The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: projected reporting, recordkeeping, and other administrative costs; the probable effect of the regulation on affected small businesses; and the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to: **Vanessa S. Rakestraw, Ph.D., CRC, 8004 Franklin Farms Drive, Richmond, VA 23229, Vanessa.Rakestraw@dars.virginia.gov, Fax: (804) 662-7663.** Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

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

Periodic review and small business impact review report of findings

If this NOIRA is the result of a periodic review/small business impact review, use this NOIRA 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.

Commenter	Comment	Agency response
<p>Maureen Hollowell, Virginia Association of Centers for Independent Living, provided all public comments received.</p>	<p>The title of this chapter should be reconsidered since IL is not rehab.</p> <p>Updated federal citations needed. Reflect the change in administration from the US Department of Education to the US Department of Health and Human Services. Terms such as the state, the department and the DSU appear to be inconsistently used. Terminology should be defined and then consistently used.</p>	<p>The title of this chapter will be changed to the Provision of Independent Living Services</p> <p>These regulations are written to follow 45 CFR Part 1329, which changed the administration of Independent Living Services and the Centers for Independent Living made under current law in alignment with ACL and HHS policies and practices. In order to be consistent, the terminology and definitions used in the code of federal regulations are used in 22VC30</p>
	<p><i>22VAC30-30-10. Definitions</i></p> <p>“Attendant care” should be termed support not “care”.</p> <p>CILs are organizations and not agencies.</p> <p>“Service provider” could be DARS, a CIL or an individual. The service providers should be required to meet all of the standards of a CIL.</p> <p>“Unserved and underserved groups or populations” are defined. These need to be changed to reflect the planning process that the SILC and the CILs use to determine unserved and underserved.</p>	<p>This regulation will mirror the Code of Federal Regulations wherever possible. Definitions utilized in the regulation shall mirror those found in 45 CFR Part 1329</p> <p>The term used and defined in 45 CFR Part 1329 is “attendant care”. However, the term “personal assistance services” is also defined in this regulation. “Attendant care” is a part of “personal assistance services”.</p> <p>The definition of a Center for Independent Living in 45 CFR Part 1329 is used. Sec 726 of the act</p> <p>The amendment is utilizing the definition of “service provider” found in in 45 CFR Part 1329. In the proposed draft of the amendment, only CILs will be service providers.</p> <p>The definition utilized by 45 CFR Part 1329 is the definition used in this regulation. The regulation does require that this definition include:</p> <ol style="list-style-type: none"> 1. Members of a racial or ethnic minority; 2. Disadvantaged individuals; 3. Individuals with limited English proficiency; <p>or</p> <ol style="list-style-type: none"> 4. Individuals from underserved geographic areas (urban or rural). <p>However, it is not limited to only these groups. Therefore, the regulation is flexible to allow for the SILC’s and CILs’ planning process.</p>
	<p><i>22VAC30-30-20. Eligibility for</i></p>	<p>This section will be amended in an effort to</p>

	<p><i>independent living services.</i> Item B. There is a provision that prohibits the IL “services provider” from imposing any “residence requirement” that excludes any individual who is in Virginia and eligible for IL. There needs to be a practical way to address this requirement and clarification of this requirement.</p> <p>Item D. This item provides authority to the CIL to determine an individual’s eligibility. That is appropriate. However, it appears that if DARS or an individual is contracted with for IL services, DARS or the individual contracted with would establish eligibility. If DARS or an individual is contracted for IL services, the determination of eligibility should be determined by the individual.</p>	<p>clarify this section. No residency requirement may be applied according to the Code of Federal Regulations. An individual who is present in Virginia and otherwise eligible for IL services cannot be denied service because his or her legal residence is not in Virginia. This is also based on sec 725 WIOA standards and assurances</p> <p>As of this writing, the only contract that the DSE has for the provision of IL services is with the CILs. It is planned that the proposed amendment to the regulation will address only CILs as service providers.</p> <p>However, if the DSE enters into contracts with other entities to provide a specific IL service, the terms of the contract between the DSE and future service providers will need to be determined at the time of the contract.</p>
	<p><i>22 VAC30-30-31. Consumer service record.</i> Maintaining a consumer service record for someone using Medicaid fee for service or school services may need to be different from the consumer service records now maintained due to requirements of Medicaid or the school for maintaining records. This item requires that a waiver of the requirement for an IL plan has to be in writing. This should be updated considering the extent to which electronic records are now used.</p>	<p>The proposed amendment will contain only the minimal federal requirements required in the records of all consumers (except those seeking only information and referral services). Any additional requirements that are needed by the payer of a fee for service need to be established between the CIL and payer at the time of service agreement.</p> <p>The WIOA assurances require signatures on the waiver for a plan of IL services.</p>
	<p><i>22VAC30-30-50. Ineligibility</i> Item B requires that if an applicant is found ineligible for IL services, the individual’s status for eligibility shall be reviewed at least once a year, unless the individual refuses the review, they no longer live in Virginia or their whereabouts are not know. Is this process necessary and how often people are being found ineligible? The current regulation seems to be imply that</p>	<p>Federal requirements for eligibility will be reviewed to ascertain what is required.</p> <p>The intention was that the individual had a right to a review of eligibility at least once a</p>

	<p>an individual has the right to have eligibility reconsidered only once a year.</p>	<p>year. This section will be reviewed for clarity.</p>
	<p><i>22VAC30-30-60. Order of selection for services.</i> The regulation predetermines the priorities for order of section for IL services. The priorities should be established by the CILs based on their knowledge of the needs and preferences of people with disabilities in their communities.</p>	<p>This section may be amended or deleted. IF the CILs are able to continue to provide core services to all who are eligible, this section is not required.</p>
	<p><i>22VAC30-30-70. Independent living plan.</i> Item A. of the regulation should make the IL plan the responsibility of the CIL. Item D. requires the IL plan and provision of IL services to “be coordinated to the maximum extent possible with any written rehabilitation program for vocational rehabilitation services”. This is often not practical or desired by the individual.</p>	<p>This section will be amended to delegate this function to the CILs</p> <p>Coordination helps to ensure that the individual programs know what services are being provided in order to benefit to the consumer. If coordination is not desired, then it may not be possible. However, coordination would be possible and required if the VR program is authorizing payment for the specific service for the consumer.</p>
	<p><i>22VAC30-30-80. Scope of IL services for individuals.</i> The fifth core service should be added</p> <p>Item C. states “uniform durational limitations” on IL services cannot be imposed. Some IL services may have limitations established by the funding source.</p>	<p>The fifth core will be added to the amendment</p> <p>This section prohibits across the board limits on duration of service. It does not prohibit service duration as a result of a funding source.</p>
	<p><i>22VAC30-30-90. Participation by individuals in the cost of services.</i> Establishing a process and purpose for financial participation and the cost of living allowance needs to be carefully reviewed and revised to eliminate conflicts with other programs that fund the listed IL services. For example, CILs have agreements with the Virginia Housing Developmental Authority for home modifications and CILs cannot establish financial participation requirements.</p>	<p>CILs provide core services at no cost to the consumer. The section will be revised to reflect this.</p> <p>In addition, this section is being revised to allow CILs more flexibility in providing additional services that are covered by nonfederal funding sources.</p>
	<p><i>22VAC30-30-110. Consumer</i></p>	<p>This section deals with the appeals process.</p>

	<p><i>appeal procedures.</i> This section has specific requirements for providing alternate formats of notice and information. While VACIL agrees that CILs should ensure that effective communication is provided, such as providing alternate formats, this requirement applies throughout all communication and not just the appeal process.</p>	<p>Alternate forms of communication are discussed in other sections as well.</p>
	<p><i>22VAC30-30-120. Protection, use and release of personal information.</i> This section needs to be revised to limit the exchange of personally identifiable information to situations in which there is the need to know and when necessary for the provision of IL. As written, the current regulation is too broad.</p> <p>Item D.3. appears to prohibit the release of an individual's information to the individual. Even in cases of an audit or research activity, the information should be available to the individual.</p>	<p>Exchange of personally identifiable information and protected health information is covered by other regulations with which this regulation must comply. Depending on the type of information that is being released, there are different state and federal regulations that apply. This section is written in an effort to address all possible conditions.</p> <p>This section prohibits the release of information to a third party under certain circumstances. Confidential information cannot be released to a third party if stamped "not for rerelease". It cannot be released to the individual if the originator of the information prohibits the release.</p>
	<p><i>22VAC30-30-131. Agencies eligible for CIL program.</i> Item B.4. should be reviewed to determine the purpose of this item that addresses situations in which the state operates a CIL. Item D. which addresses IL services for individuals who are blind should be reviewed for compliance with federal law and to determine if this is the most cost effective and practical way to provide IL services to individuals who are blind. Item D.4. does not appear to be language specific to Virginia, rather it is a statement from federal language. The entirety of Section 131 should be reviewed to determine if the provisions are federal requirements, if these provisions are necessary, and if the decisions can be made by the CIL or jointly between the CIL and the US Department of Health and</p>	<p>This entire section will be revised to comply with the recent federal regulations and with the changes that have taken place since this regulation was written.</p>

	<p>Human Services. Item F.3.c. requires CILs to “address local personal assistance services issues, including cooperation with DRS in the administration of the Personal Assistance Services (PAS) program”. Considering changes that DARS has made to this program over the years thereby reducing the involvement of CILs and cessation of the advisory council, this item may not be necessary. Item F.3.d. references the DARS “CIL Title VII, Part B Procedures Manual” and other DARS and state policies. These documents should be reviewed for continuing applicability and appropriateness as part of the review of this regulation. Item G.2. discusses the use of a “peer review committee” in selecting a new CIL. The composition of the peer review committee should be addressed in the regulation.</p>	
	<p><i>22VAC30-30-160. Staff</i> The regulation needs to be reviewed for consistent use of the terms CIL and service provider. An example of inconsistent use of these terms is in this section. Item A states that the majority of CIL staff should be people with disabilities. Item B states that the staff of the service provider shall include personnel who are specialists. The service provider is a CIL. Item C. states that the CIL must meet all relevant licensure and certification requirements of DARS. Any licensure and certification requirements should be reviewed for applicability to IL services when determining if this language should remain in the regulation.</p>	<p>This section will be revised to provide consistency and reflect changes that have occurred in the provision of IL services.</p>
	<p><i>22VAC30-30-171. CIL assurances.</i> The assurances listed in the regulation should be reviewed to determine if each assurance is required by federal regulation or law, needs to be continued, the burden placed on the CIL to collect and report information related to the assurances, and the purpose and use of the collected information.</p>	<p>This will be reviewed for federal and state compliance.</p>

	<p><i>22VAC30-30-191. Compliance Indicators</i> Item C.1.g. addresses material in alternative formats. This item should be revised to require alternative formats to ensure effective communication.</p> <p>Item C.3. addresses IL goals. Individuals who receive information and referral are not required to have established goals for this specific service.</p>	<p>This will be added</p> <p>This is addressed in section 31</p>
	<p><i>22VAC30-30-211. Periodic review of centers for independent living.</i> Item A.1. references “state-funded CILs”. While this term is often used by the CILs, SILC and DARS to mean those CILs that do not received federal Part C funding, the term is misleading. All Virginia CILs receive state funding. No Virginia CIL is fully funded with only state funds. A more accurate term should be used to reference CILs who do not receive Part C funding.</p>	<p>This section will be rewritten to clarify the terminology.</p>
	<p><i>22VAC30-30-250. Referrals.</i> If these do not already exist, DARS should develop, establish and maintain written standards and procedures for counselors to pursue IL services from CILs when requested by the individual. Those written standards and procedures and the standards and procedures for CILs should be required to be made public and information provided to individuals receiving DARS-provided vocational services</p> <p>The regulation should include a provision requiring the DARS counselors to inform individuals about IL services.</p>	<p>This is a policy issue and is addressed in the DRS Policy and Procedures Manual which is available online at https://sp.wvrc.net/VRmanual and in the DARS Service Reference Manual. https://www.vadars.org/formscabinet</p> <p>22VAC30-20-95 under Provision of Rehabilitation Services addresses vocational rehabilitation referrals to other service providers.</p>

The regulation for the provision of independent living services is necessary for the protection of the welfare of citizens with disabilities who require these services in order to live independently. Given the public comments summarized in the previous table, it is evident the current regulation is outdated and not written in a manner that is easily understood by current practitioners. It has been four years since the regulation has been evaluated and federal laws and practices in the field of independent living have changed. Thus, the regulation requires amendments to bring it into conformity with the most the most recent federal regulations under 45 CFR Part 1329 as well as current state practices.

Small businesses may be assisted by this regulation in an indirect manner. Individuals with disabilities may receive independent living services that will assist them in obtaining or maintaining employment. Services may also assist individuals to move in or remain in the homes and communities of their choice. These occurrences may impact small business to some degree. However, no major impact to small business impact is expected.