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Periodic Review and Small Business Impact Review Report of Findings

Agency name	Department of Behavioral Health and Developmental Services
Virginia Administrative Code (VAC) Chapter citation(s)	12 VAC35-260
VAC Chapter title(s)	Certified Recovery Residences
Date this document prepared	July 22, 2024

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), 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, 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*.

Acronyms and Definitions

Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.

DBHDS – Department of Behavioral Health and Developmental Services

Legal Basis

Identify (1) the promulgating agency, 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 agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

Section 37.2-203 of the Code of Virginia authorizes the Board to adopt regulations that 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 and authorizes DBHDS to ensure the development of long-range

programs and plans for mental health, developmental, and substance abuse services provided by DBHDS, community services boards, and behavioral health authorities.

Alternatives to Regulation

Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

There are no alternatives to this regulation as it was mandated by the General Assembly. Chapter 260 [12VAC35-260] was created through a fast track action in March 2020 in compliance with Chapter 220 of the 2019 Acts of Assembly, 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 the Department of Behavioral Health and Developmental Services (DBHDS). That original regulatory action defined “recovery residences” and, as allowed by the enabling legislation, created 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 reportedly follow best practice standards for recovery. The legislation was developed through a stakeholder workgroup over a year and with broad community feedback that called for greater oversight for recovery housing in Virginia.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency’s response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

Thirteen comments were received. Please see the next page.

Commenter	Comment	Agency response
David	<p>There should be no changes necessary. Since the inception of these regulations the safety and quality of recovery houses has increased 10fold. The number of accredited houses has increased 5 times over. The national standards recognized in this regulation has the support of operators nation wide and the VA legislative bodies. Each year the law that lead to this regulation is reviewed and expanded to ensure the standards, quality of care, and transparency are maintained at the highest levels. Other states look to VA and model their own policies based on this regulation. Any change has the potential to harm the people that utilize certified recovery residences.</p>	<p>Thank you for your comment.</p>
suddnely a neighbor of a recovery house	<p>Due to investing in too many houses and a market down turn real estate investors have now become sober living investors purely to help with their cash flow. They skimp at every opportunity and create an environment where residents are being churned in and out weekly. The neighborhood around these investor houses suffer. The absolute ease in opening and operating a sober living house by just about anybody needs to be reigned in. They are leaning into the federal protections and operating with impunity at the cost of the residents and their neighbors. AirBNB is out, sober living investing is in.</p>	<p>Thank you for voicing your concerns regarding recovery residences in Virginia.</p> <p>The originating legislation was developed through a workgroup 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 for a list of certified residences on the department's website to allow for greater transparency. Meaning that certified recovery residences are to be held to nationally recognized standards of the organizations to help 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.</p>
John Shinholser	<p>VARR is a quasi government agency much like a CSB so VARR board of directors should by law be held to the same ethics CSB board members are required to abide by this [NOTE: for formatting reasons, the link address was placed within that inserted word.]</p> <p>If DBHDS does this then all controversies go away, anyone in</p>	<p>Thank you for your comments. Such a change would require legislation by the General Assembly.</p>

	<p>DBHDS can contact me and I will explain if you don't understand.</p> <p>More and most important VARR is the solution for Virginia's un-housed addiction population, currently VARR certified recovery residence operators are saving Virginia taxpayers over a 100 million dollars a year just in correction diversion cost alone, VARR is the best value for our states addiction epidemic. I also believe the life saving value is most paramount and pales in comparison.</p>	
<p>Rebecca Leary</p>	<p>Hi there,</p> <p>My original comment became hidden due to a town hall violation policy which I was unaware of. Here is my comment again Without naming specific recovery residences.</p> <p>Most recovery residences exploit participants for Medicaid and should not be allowed to continue; constantly disregarding participants like they are trash is not helping the substance use disorder epidemic. I have also personally seen a lot of discrimination, inhumane treatment, and sexual misconduct by operators in this industry. We need reform for the recovery residences because the people that run them line their own pockets in a tremendous way that incentivizes a revolving door with these residences. Please consider the corrupt nature of the operators paired with a gross lack of oversight that will lead to more deaths and lawsuits in the future. These practices are highly unethical; these recovery residences prey on the most vulnerable people in our society seeking support.</p> <p>Rebecca Leary</p>	<p>Thank you for sharing your concerns.</p> <p>The originating legislation was developed through a workgroup that called for greater accountability for recovery housing to ensure the health, safety, and welfare of individuals staying in recovery residences. Your voice has been heard.</p>
<p>Anonymous</p>	<p>There is a paucity or legitimate programs. There is heavy incentive for resident recidivism. There is a great deal of nepotism and dubious</p>	<p>Your voice has been heard in relation to recovery residences in Virginia. Thank you for voicing your concerns.</p>

	<p>levels of professionalism. Most of these programs are fair at best—those are the ones that keep people generally safe and use them as an income stream and then there are the bad ones that are run like prostitution rings and drug emporiums. Please stop this. There are good people that want to help.</p>	<p>A compromise was developed with stakeholders to provide for list of certified residences on the department's website to allow for greater transparency. Meaning that certified recovery residences are to be held to nationally recognized standard. Organizations 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.</p>
Chelsie Taliaferro	<p>There appears to be significant conflicts of interest within the VARR organization. My primary concern lies with the overlap between the board members being the owner/operators of the recovery residences receiving VARR funding.</p> <p>This overlap raises red flags regarding potential misuse of funds. Reports of run-down facilities, lack of resources, and unsafe conditions for participants suggest a misallocation of resources intended to support addicts in their recovery.</p> <p>It's crucial that VARR implements stricter oversight measures to ensure transparency and responsible use of funding. We must prioritize the well-being of the very people VARR aims to support -- those battling addiction</p>	<p>Thank you for sharing your concerns.</p>
Anonymous	<p>This regulation is not sufficient for "certified" recovery residences. The current system is not working to keep people safe. The "fox guarding the hen house" doesn't work. DBHDS needs to take an active role in regulating these homes.</p>	<p>Thank you for your comment. Certified recovery residences are not licensed services in order to adhere to the model of community-based, peer-run organizations that do not provide clinical services.</p> <p>The originating legislation was developed through a workgroup that called for greater accountability for recovery housing to ensure the health, safety, and welfare of individuals staying in recovery residences while balancing with the recovery and social model of a peer run and peer-led organization that does not provide clinical or treatment services within its walls.</p>
Anonymous	<p>As a taxpayer, we should know what this money is being spent on. Under the current system, the</p>	<p>Thank you for your comment. Your voice on this matter has been noted.</p>

	<p>money goes into the hands of VARR, and from there, there is minimal to no oversight of how these funds are being spent and if they are going to the right places. It's been proven that DBHDS does not seem to have the will, the man-power, the authority, or some combination of the three to properly watch that this money is being put to good use and not lining the pockets of these recovery house and recovery center operators. Huge conflicts of interest have already been shown between VARR and these recovery organization operators. In my opinion, there is enough money to enable DBHDS to provide oversight directly to these recovery organizations, which would eliminate VARR from the loop completely and eliminate some serious perverse incentives.</p>	<p>A compromise was developed with stakeholders to provide for a list of certified residences on the department's website to allow for greater transparency. Meaning that certified recovery residences are held to nationally recognized standards. These organizations help 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.</p>
<p>Anonymous</p>	<p>Real estate speculators / house flippers are now installing sober living businesses into their properties that they cannot sell due to the current market conditions. This is a pure profit move, and they are cutting every corner possible. They openly talk about how this move is almost bulletproof, with federal protections. If this continues to be allowed it will flourish at the cost of vulnerable people's path to sobriety. There must be a way to eliminate these vultures from the recovery system.</p>	<p>Thank you for voicing your concerns regarding recovery residences in Virginia.</p>
<p>Anonymous</p>	<p>Reading the other comments, it appears there is a misapprehension about the purpose of the law. This law exists solely to allow consumers to know whether a specific recovery residence has been certified either by Oxford House or by the Virginia Association of Recovery Residences (VARR) and prevents uncertified residences from representing themselves as such. As written the does give consumers a way to verify whether residences are certified. I do not</p>	<p>Thank you for your comment.</p>

	believe any changes to the law are necessary.	
Anonymous	<p>It's wildly reckless to allow freelance recovery houses to operate with zero oversight. The uncertified houses are full of fraud and corner cutting. People's lives are at stake. They are simply a state/federal money extraction scheme.</p> <p>There needs to be much more scrutiny with these uncertified houses.</p>	<p>Thank you for your comment.</p> <p>The originating legislation was developed through a workgroup that called for greater accountability for recovery housing to ensure the health, safety, and welfare of individuals staying in recovery residences while balancing with the model of a peer run organization that does not provide treatment.</p> <p>A compromise was developed with stakeholders to provide for a list of certified residences on the department's website to allow for greater transparency. Meaning that certified recovery residences are to be held to nationally recognized standards of the organizations to help 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.</p>
CW - Virginia	<p>A comment I would offer is that what is presented focuses on the oversight of the institutions and their operation. The requirements and regulations do not seem to be at a level that would provide quality services. For example, a room with 100 sq feet for two residents is not adequate for a quality environment.</p>	<p>Thank you for your comment.</p> <p>The regulations provide for a list of certified residences on the department's website to allow for greater transparency. Meaning that certified recovery residences are to be held to nationally recognized standards of the organizations to help 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.</p>
Anonymous	<p>The challenge in regulating sober homes is that there are two very different categories of sober homes, and risks for unethical and exploitative behavior are very different between them. About half or just more of sober homes in Virginia are certified by Oxford House and operate independently according to that sober home model. They are self-run, self-supporting, totally nonprofit, and no one is in a position of authority. They also have major studies done on them that are in peer-reviewed publications that show 86.5% total</p>	<p>Thank you for voicing your concerns and providing input regarding recovery residences in Virginia.</p>

	<p>abstinent rates after one year. In most addiction treatment program studies half or more of people have relapsed within six months. The remaining about half of sober homes in Virginia are for-profit, staffed, and/or owner operated and are certified by VARR. In these, there are people making money off the people living in the houses. In these, there are people who are in positions of authority over the people living in the houses. These models of sober homes have not been shown in research to have the high, long-term abstinence rates that have been shown in published research on Oxford House model.</p> <p>What are the problems often seen in sober homes across the country, in Virginia, detailed in Parham Papers? They are all about money or authority. The profit motive is what motivates most of this abuse: patient brokering, financially exploiting addicts and their families, cramming too many people into a house, and other unethical behavior motivated by making money. The other problems are about staff/operators abusing their positions of authority to exploit or abuse vulnerable addicts. Those problems are sometimes rampant in sober homes when it's a money-making model and when it's a model that has people with questionable ethics given authority over residents of the homes. In the first category, the houses that run according to the Oxford House system, no one is making any money off the house and its members, other than a local landlord that charges normal market rent. In those sober homes, no staff are in authority of the residents. They make decisions democratically, manage the bills, enforce the rules, and help support other houses in the same community. There is no one who is in control who can abuse their</p>	
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	<p>power over residents. And in the research, it's the fact that houses are democratic and run themselves that is why the longterm sober rates higher than any other addiction/recovery programs.</p> <p>There is a need for both models. There is a need for way more sober homes. But the reality is, all the bad behavior, abuse, exploitation that the state is concerned about to regulate are all things that happen in for profit, staffed houses, and based on the concept of how Oxford Houses operate those things can't happen because there's no one making money off the people or in authority over them. So if the state wants to make sure sober homes don't have these bad behavior they need to recognize there needs to be a different approach to regulating each, with more focus on the ones that have the abuses. There are still things to monitor in nonprofit Oxford Houses. Because they don't have staff, sometimes get run down, and the state should want to make sure all sober homes provide a nice and safe environment. But the overwhelming majority of potential problems are about financial greed and abuse of power and those problems can't exist in certified Oxford Houses. And because they are unstaffed, more regulation would be difficult for them in a way it is not in staffed ones.</p> <p>Even in regard to the certifying organizations, one makes money off the houses, one does not. NARR affiliates charge certification and renewal fees of all their certified houses. Oxford House does not make a penny from the individual houses. The NARR affiliate is run by all the people that are running the homes and making a lot of money, so they're monitoring themselves while making all that money. Oxford</p>	
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	<p>House doesn't have this conflict of interest because the people certifying and monitoring the homes aren't running the homes or making money from the homes.</p> <p>One prior comment said VARR is the best value for our states addiction epidemic, but that is not true. VARR costs the taxpayers over ten million dollars every year. Oxford House costs the tax payers about twenty times less than that. And for twenty times less, they get as many or more sober homes and their sober outcomes are higher.</p> <p>To have good regulation the state needs to recognize the difference in those models and regulate money-making, staffed, business sober homes differently then evidence-based, nonprofit, non-business Oxford homes.</p>	
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Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in the ORM procedures, including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

Chapter 260 [12VAC35-260] was created through a fast track action in March 2020 in compliance with Chapter 220 of the 2019 Acts of Assembly, 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 the Department of Behavioral Health and Developmental Services (DBHDS). That original regulatory action defined “recovery residences” and, as allowed by the enabling legislation, created 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 reportedly follow best practice standards for recovery. The legislation was developed through a stakeholder workgroup over a year and with broad community feedback that called for greater oversight for recovery housing in Virginia. It was kept very brief in order to be a basic structure without changing the peer-run model.

Decision

Explain the basis for the promulgating agency's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

If the result of the periodic review is to retain the regulation as is, complete the ORM Economic Impact form.

There were no comments that warranted amendments at this time. Certain specific changes mentioned in the comments would require further action by the General Assembly. Note that there is a current mandate regarding SB19 (2024) to which the State Board of Behavioral Health and Developmental Services initiated a responding action through promulgation of an action on July 17, 2024. to comply with the requirements of [Chapter 30](#) of the 2024 Session of the General Assembly to add the requirement that any certified recovery residence in Virginia report any death or serious injury that occurs in the recovery residence to DBHDS.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (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. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

1. There is a continued need for the regulation due to the mandate from the General Assembly.
2. Any significant changes would require further action by the General Assembly. However, the 2024 Session of the General Assembly did pass [Chapter 30](#) to add the requirement that any certified recovery residence in Virginia report any death or serious injury that occurs in the recovery residence to DBHDS.
3. The legislation was developed through a stakeholder workgroup over a year and with broad community feedback that called for greater oversight for recovery housing in Virginia. It was kept very brief in order to be a basic structure without changing the peer-run model. It is important to remember that the model for recovery residences is to be peer-run, unlicensed, and no treatment on site. DBHDS licensed facilities fall under very extensive service regulations for the health, safety, and welfare of individuals receiving services.
4. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation.
5. This is the first periodic review of the regulation since it first became effective. There has been no significant changes to technology, economic conditions, or other factors in the area affected by the regulation