



Fast Track Proposed Regulation Agency Background Document

Agency name	Department of Behavioral Health and Developmental Services
Virginia Administrative Code (VAC) citation	12 VAC 35 -220-10 et seq.
Regulation title	Certification Requirements for Early Intervention Professionals and Early Intervention Specialists
Action title	Establish certification requirements for early intervention services system practitioners.
Date this document prepared	2/5/2010

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*.

Brief summary

Please provide a brief summary (no more than 2 short 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

The proposed regulations will establish a new chapter in the Virginia Administrative Code detailing the certification requirements for early intervention practitioners. The current emergency regulations governing the certification requirements of early intervention services system practitioners are in effect until November 2, 2010. A change from the emergency regulations is being proposed to allow professionals who are authorized to practice in Virginia while awaiting licensure to be certified as Early Intervention Professionals.

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.

Chapter 781 of the 2009 Virginia Acts of Assembly (Budget Bill Item 315 DD) requires that the Department of Behavioral Health and Developmental Services promulgate regulations "...to comply with

the payor of last resort requirements of Part C of the Individuals with Disabilities Education Act (IDEA) of 2004.”

Effective November 3, 2010, emergency regulations establish requirements for the certification of early intervention professionals and early intervention specialists to provide early intervention services and supports to children and their families under the federal Part C program.

Because the authority to promulgate regulations to comply with the requirements of the federal Part C program was given to the Department, action by the State Board of Behavioral Health and Developmental Services is not required.

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 General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

The Department has the legal authority to promulgate these regulations under Virginia Code § 2.2-5304 and in Item 315#1c of Chapter 781 of the 2009 Virginia Acts of Assembly. This legal authority is mandatory under Item 315#1c of Chapter 781 of the 2009 Virginia Acts of Assembly.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail 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.

These regulations provide specific requirements for certification of practitioners as early intervention professionals and early intervention specialists under Virginia’s early intervention services system, as required by Pub.L.No.108-446 § 635(9) and the standards established in 42 CFR 431.51. Virginia Code § 2.2-5304 designates the Department as the state lead agency responsible for implementing Virginia’s early intervention services system and ensuring compliance with the applicable federal requirements. The goal of these regulations is to ensure the competence of early intervention service providers under the authority granted to the lead agency. The regulations are also intended to provide the basis for the Department to certify qualified practitioners of early intervention services so that they may be enrolled as service providers and receive reimbursement under the Medicaid State Plan Sec. 1902. [42 U.S.C. 1396a] (a). The Department consulted with the Department of Medical Assistance Services in developing these regulations.

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?

Please note: If an objection to the use of the fast-track process is received within the 60-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 (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

The emergency regulations provide practitioners the opportunity to qualify for Medicaid reimbursement and reflect federal and state requirements. More than 850 individuals have been certified under the emergency regulations that became effective November 3, 2009. Only one issue with the emergency regulations has been identified and is corrected in the proposed regulations. The Virginia Interagency Coordinating Council (VICC) supports the proposed regulations. The influx of new graduates anticipated in the spring makes it imperative that permanent certification regulations be in place as soon as possible to allow these newly-qualified individuals to become certified as Early Intervention Professionals.

Use of the fast track process will remove a potential barrier to the recruitment of newly qualified individuals who will be graduating from OT and PT programs this spring and who might otherwise seek other employment opportunities. Because these critical healthcare positions are in short supply in Virginia and nationally, providers have a very difficult time recruiting qualified individuals.

Adoption of the proposed regulations will permit early intervention practitioners to continue their certification for reimbursement for services performed and will allow certain professionals qualified to practice in Virginia, but who can not be certified under the emergency regulations, to qualify for certification.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

This is a new regulation. The substantive provisions include:

- A definition of early intervention services and a requirement for specified providers of this service under the Medicaid State Plan to be certified by the Department;
- Specific criteria for practitioners in various disciplines to be certified as early intervention professionals or early intervention specialists;
- Requirements for early intervention professionals who provide supervision to other early intervention personnel;
- Application process requirements for initial certification, recertification, and the restoration of an expired certification; and
- Processes for practitioners to seek reconsideration of a decision to deny certification.

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.

This action poses no disadvantages to the public or the Commonwealth. These regulations establish a certifications process for early intervention practitioners that assures individuals completing the certification process are appropriately and adequately prepared and trained to treat infant and toddlers with disabilities. The regulations establish the criteria for maintenance of the certification which allows practitioners to seek reimbursement for services rendered.

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.

These regulations address the requirements of Pub.L.No.108-446 § 635(9) and meet the standards established in 42 CFR 431.51 for certification of early intervention practitioners under Virginia's early intervention services system. The regulations are not more restrictive than federal requirements and reflect professional practice standards in Virginia.

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.

There are no localities that are particularly affected by the proposed regulation.

Regulatory flexibility analysis

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 viable alternatives to this proposed regulatory action. In the Department's role as State lead agency for Virginia's early intervention services system, it has adopted policies and procedures, as well as providing guidance documents, policy letters, related interpretive materials, and technical assistance that defined and ensured that Virginia's early intervention service system was consistent with federal regulations. The Department considered various alternative criteria and processes, including the revision of current policies and procedures, to comply with the requirements of Part C of IDEA 2004. However, the Office of the Attorney General has advised the Department that regulations are required to strengthen the Department's ability to supervise and monitor service providers under Virginia's Part C program.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

<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>Regulations codify existing practice so there should be no additional cost to the state to implement and enforce proposed regulations</p>
<p>Projected cost of the regulation on localities</p>	<p>none</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the regulation</p>	<p>Individuals who work with children qualified to receive early intervention services; professions such as counselors, educators, family and consumer science professionals, nurses, social workers, occupational/physical therapists and assistants, psychologists, speech pathologists, and therapeutic recreational specialists would be affected by the regulations.</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 (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>More than 850 practitioners have been certified since the emergency regulations took effect in November 2009. It is estimated that the majority of these individuals are independent practitioners or are employed by small businesses or public programs.</p>
<p>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</p>	<p>The criteria for early intervention professionals and early intervention specialists are based on existing professional standards for the various health professions. This will provide the least burdensome and most cost-effective and efficient means for practitioners to meet certification requirements under the Part C program.</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 are no viable alternatives to this proposed regulatory action. The Department considered various alternative criteria and processes, including the revision of current policies and procedures, to comply with the current federal and state requirements. However, the Office of the Attorney General has advised the Department that regulations are necessary because all public and private practitioners are required to adhere to the provisions for certification.

The criteria for early intervention professionals and early intervention specialists are based on existing professional standards for the various health professions. This will provide the least burdensome and most cost-effective and efficient means for individuals to meet early intervention certification requirements.

Family impact

Please assess the 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 proposed regulatory action should have a positive impact on the children with developmental delays and their families who are eligible to receive services under the federal Part C program. These regulations govern practitioners who provide services to children and their families and help to ensure that these services are responsive to individual needs. These services may help support families in attaining self-sufficiency, self-pride, and ultimately help their children with disabilities attain self-sufficiency and self-pride. The regulatory actions should not have any impact on family income.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

Currently, the emergency regulations did not permit professionals who are allowed to practice in Virginia pending licensure to become certified as early intervention professionals, until their licensure process has been completed. The proposed permanent regulations would permit these individuals to become certified as early intervention professionals, as long as they continue to meet their discipline's requirements to practice in Virginia.