



Final Regulation Agency Background Document

Agency name	Department of Rehabilitative Services
Virginia Administrative Code (VAC) citation	_22__ VAC_30__ -_30__
Regulation title	Provision of Independent Living Services
Action title	Amend regulations governing provision of independent living services so they comply with federal regulations
Document preparation date	10/31/03

This information is required for executive review (www.townhall.state.va.us/dbbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dbbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style, and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. If applicable, generally describe the existing regulation. Do **not** state each provision or amendment or restate the purpose and intent of the regulation.*

The amendment is a regulatory-driven change to bring Virginia's state- and federally funded Centers for Independent Living Program into compliance with the federal regulation and enhance consumer rights to reflect rights under the federal regulation. The amendment includes a policy-driven change to reduce consumer cost for services.

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.

On October 31, 2003 the Commissioner of the Department of Rehabilitative Services adopted amendments to existing regulations entitled "Provision of Independent Living Services" (22 VAC 30-30-10 through 22 VAC 30-30-280).

Legal basis

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

If the final text differs from the text at the proposed stage, please indicate whether the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.

The Commissioner of the Department of Rehabilitative Services has legal authority to promulgate this regulation under the Code of Virginia 51.5-14. The federal independent living regulations 34 CFR 364 and 365 do not mandate the state to promulgate this regulation. The final text does not differ from the text at the proposed stage.

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 it 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.

This action will update the Department's regulations for Independent Living Services and Virginia's federally-funded Centers for Independent Living to comply with federal regulations. This action will regulate state-funded Centers in a manner similar to the federally-funded Centers, which is currently being accomplished through state contract. In addition, this action will reduce consumer cost for services and enhance consumer rights.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

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, allocation of funds among Centers, scope of services, evaluation standards, periodic review, and appeal. The amendment adds similar sections for state-funded Centers to make the state program consistent with the federal program. The amendment adds those receiving Worker's Compensation or Veteran's Disability to the list of groups not required to pay for services. The amendment makes most services (but not goods), free, regardless of income. For cost services, if the client is age 18 or older, the amendment revises the financial needs test to consider only the client's income - even if the client is living with parents, spouse, etc. The client's written consent is required to release medical or psychological information to third parties. The client has the right to have a written service plan if determined eligible. If determined ineligible, the service provider must review the decision with twelve months and thereafter whenever the applicant's status has materially changed.

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 was initiated as a result of the 1998 amendments to the Federal Rehabilitation Act, the 1994 amendments to the Federal Independent Living Services regulation, and the growth of the Independent Living Program in Virginia. The current agency regulation was promulgated in 1987. These amendments will conform the state Independent Living regulation to the federal Independent Living regulation. There are several advantages to individuals with disabilities, Centers for Independent Living, and the agency in conforming the state regulation to the federal regulation.

Currently the agency relies on contracts with the state-funded Centers, rather than the existing out dated state regulation, to administer the program. Accordingly, the amendments will bring the state regulations into compliance with the contracts, which are mirrored on the federal regulations. This will eliminate inconsistencies, thereby avoiding possible legal issues and potential confusion among Centers in implementing, and the agency in enforcing, the state regulation and contracts with the Centers. It also will allow for service provision consistency among all of the Centers. In addition, from a legal standpoint, the Office of the Attorney General has advised that the state regulation will provide a state court forum in the event of an appeal or legal challenge. From a consumer standpoint, making the state-funded program consistent with the federally funded program will encourage consistency of services across the state for consumers.

The Federal regulation gives states the option to charge consumers for services and consider the consumer's ability to pay for these services. The amendments update the financial needs test for consumers accessing independent living services. By placing the financial needs test in state regulation, there is an opportunity for public comment on the provisions of the needs test. In the amendments, disabled workers/veterans will be exempt from the needs test. This action is consistent with some other kinds of financial needs tests for people with

disabilities and provides a benefit to these two groups. In addition, the amendments exempt more services (but not goods) from the financial needs test. The amendments also will consider only consumer (not family) income for consumers 18 years or older, which should provide greater access to youth transition services to increase self awareness and esteem, self advocacy and self empowerment skills for young adults with significant disabilities still residing with parents after high school.

The proposed amendment will give state-funded Centers an administrative avenue to appeal agency decisions to withhold funding for noncompliance with assurances and evaluation standards. No administrative avenue exists under current agency regulation - only the legal avenue under the state contract.

From the agency’s standpoint, consistency across the state-funded and federally funded Centers for Independent Living Program will ensure consistent statewide services for consumers and will reduce the agency’s administrative oversight burden. In addition, there was public comment at the national level when the federal regulation was promulgated. The proposed amendments "mirror" the federal regulation and reflect the national philosophy for independent living (self-help, self-advocacy, and peer counseling) and agency the Independent Living program (eligibility for funding, core services, periodic review, standards and compliance indicators, appeal, etc.).

There are no apparent disadvantages to the public, individuals with significant disabilities, Centers for Independent Living, or the Commonwealth.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change
221		corrected reference in F from “C4(d)” to “C5”	When publishing the draft text, the registrar renumbered 22 VAC 30-30-221 section “C4(d)” to “C5” but failed to change the reference in section F from “C4(d)” to “C5”.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency response
	No comments were received	

Enter any other statement here

All changes made in this regulatory action

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

Proposed new section number, if applicable	Current section number	Current requirement	Proposed change and rationale
22 VAC 30-30-10	22 VAC 30-30-10		uses federal definitions for terms; no substantive changes
22 VAC 30-30-20	22 VAC 30-30-20		incorporated provisions from 22 VAC 30-30-30, and 22 VAC 30-30-40, and 22 VAC 30-30-170
N/A	22 VAC 30-30-30		repealed; provisions incorporated into 22 VAC 30-30-20
22 VAC 30-30-31	N/A		adds new section to require all Centers to maintain a consumer service record for each consumer; reflects federal regulation which already applies to federally-funded Centers.
N/A	22 VAC 30-30-40		repealed; provisions incorporated into 22 VAC 30-30-20
22 VAC 30-30-50	22 VAC 30-30-50		subsection B requires the service provider to review the ineligibility determination whenever the applicant's status has materially changed. Incorporates provisions from 22 VAC 30-30-170
22 VAC 30-30-60	22 VAC 30-30-60		reflects federal regulatory language; incorporates provisions from 22 VAC 30-30-190; no substantive changes
22 VAC 30-30-70	22 VAC 30-30-70		subsection A requires recipients of IL services to have a written IL plan unless the recipient signs a waiver. Incorporates provisions from 22 VAC 30-30-240
22 VAC 30-30-80	22 VAC 30-30-80		uses federal scope of IL services; no substantive changes
22 VAC 30-30-90	22 VAC 30-30-90		adds those receiving Worker's Compensation or Veteran's Disability to the list of groups not required to pay for services; makes most services (but not goods) free regardless of income; and considers only the consumer's income (not family's income) if the consumer is age 18 or older.
22 VAC 30-30-100	22 VAC 30-30-100		reflects federal regulatory language; no substantive changes
22 VAC 30-30-110	22 VAC 30-30-110		reflects federal regulatory language; no substantive changes
22 VAC 30-30-120	22 VAC 30-30-120		reflects federal regulatory language; incorporates provisions from 22 VAC 30-30-230; no substantive changes
22 VAC 30-30-130	22 VAC 30-30-130		reflects federal regulatory language; no substantive changes
N/A	22 VAC 30-30-140		repealed
22 VAC 30-30-141	N/A		reflects federal requirements for federally-funded CILs and requires the agency to fund state-funded CILs based on documented need
22 VAC 30-30-150	22 VAC 30-30-150		reflects federal regulatory language; no substantive changes
22 VAC 30-30-160	22 VAC 30-30-160		reflects federal regulatory language; no substantive changes
N/A	22 VAC 30-30-170		repealed; provisions incorporated into 22 VAC 30-30-20

22 VAC 30-30-171	N/A		adds new section on CIL assurances; reflects federal regulation, which already applies to federally-funded Centers
N/A	22 VAC 30-30-180		repealed; provisions incorporated into 22 VAC 30-30-20
22 VAC 30-30-181	N/A		all Centers are subject to same evaluation standards; reflects federal regulation which already applies to federally-funded Centers
N/A	22 VAC 30-30-190		repealed; provisions incorporated into 22 VAC 30-30-60
22 VAC 30-30-191	N/A		all Centers are subject to same compliance indicators; reflects federal regulation which already applies to federally-funded Centers
N/A	22 VAC 30-30-200		repealed; incorporated into 22 VAC 30-30-80
22 VAC 30-30-201	N/A		all Centers are subject to the same funded activities; reflects federal regulation which already applies to federally-funded Centers
N/A	22 VAC 30-30-210		repealed; incorporated into 22 VAC 30-30-90
22 VAC 30-30-211	N/A		all Centers are subject to the same periodic review; reflects federal regulation which already applies to federally-funded Centers
22 VAC 30-30-220	22 VAC 30-30-220		reflects federal regulatory language; no substantive changes
N/A	22 VAC 30-30-230		repealed; incorporated into 22 VAC 30-30-120
N/A	22 VAC 30-30-240		repealed; provisions incorporated into 22 VAC 30-30-70
22 VAC 30-30-241	N/A		reflects federal regulatory language on agencies eligible for Independent Living Services program
22 VAC 30-30-250	22 VAC 30-30-250		reflects federal regulatory language; no substantive changes
22 VAC 30-30-260	N/A		all Centers are subject to the same authorized use of Independent Living Services program funds; reflects federal regulation which already applies to federally-funded Centers
22 VAC 30-30-270	N/A		new section on service providers for Independent Living Services program; reflects federal regulatory language
22 VAC 30-30-280	N/A		new section on standards for service providers for Independent Living Services program; reflects federal regulatory language

Impact on family

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

The proposal to consider only the client's income – and not family's income- if the client is age 18 or older, will encourage the adult with disabilities to assume responsibility for oneself, increase access to services that family members may not wish to/be able to pay for, enhance self-determination and independence for adult clients living with parents, encourage economic self-sufficiency and self-pride, and increase disposable family income by not using financial resources of client's family members to pay for client's services.

The proposal to exempt clients receiving Worker's Compensation or Veterans' Disability benefits from the financial needs test will increase access to services and disposable income for these individuals with disabilities. The proposal to change certain services from "fee-based" to "no cost" will increase client access to these services and increase client disposable income.