



Virginia
Regulatory
Town Hall

Notice of Intended Regulatory Action Agency Background Document

Agency Name:	State Board of Mental Health, Mental Retardation, and Substance Abuse Services
VAC Chapter Number:	12 VAC 35-105-10 et seq.
Regulation Title:	Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation, and Substance Abuse Services
Action Title:	Amend the Regulations
Date:	June 27, 2002

This information is required prior to the submission to the Registrar of Regulations of a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B). Please refer to Executive Order Twenty-Five (98) and Executive Order Fifty-Eight (99) for more information.

Purpose

Please describe the subject matter and intent of the planned regulation. This description should include a brief explanation of the need for and the goals of the new or amended regulation.

The purpose of this action is to promulgate provisions to license day support, crisis stabilization, and in-home support services funded through the Individual and Family Developmental Disabilities Support Waiver (IFDDS) by amending the new Regulations for the Licensing of Providers of Mental Health, Mental Retardation, and Substance Abuse Services to cover providers of these services. This NOIRA is being submitted concurrently with action to promulgate emergency regulations that are proposed to become effective on September 19, 2002.

Licensing of these services is necessary to receive Medicaid IFDDS funding.

Basis

Please identify the state and/or federal source of legal authority to promulgate the contemplated regulation. The discussion of this authority should include a description of its scope and the extent to

which the authority is mandatory or discretionary. The correlation between the proposed regulatory action and the legal authority identified above should be explained. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided.

The 2002 Virginia General Assembly amended § 37.1.179 et. seq. of the Code of Virginia authorized the Department of Mental Health, Mental Retardation, and Substance Abuse Services (DMHMRSAS) to license day support, crisis stabilization, and in-home support services funded through the IFDDS Waiver. The amendment to § 51.5-14.1 of the Code of Virginia. further required the promulgation of emergency regulations within 280 days of its enactment, which is July 1, 2002.

The Board of Mental Health, Mental Retardation and Substance Abuse Services has the authority to promulgate these regulations under Va. Code § 37.1-10.

Substance

Please detail any changes that would be implemented: this discussion should include a summary of the proposed regulatory action where a new regulation is being promulgated; where existing provisions of a regulation are being amended, the statement should explain how the existing regulation will be changed. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens. In addition, a statement delineating any potential issues that may need to be addressed as the regulation is developed shall be supplied.

The action is proposed to amend the existing licensing regulations as follows:

1. Modify several definitions in to reflect the services provided under the IFDDS waiver and add definitions of terms relevant to the services.
2. Incorporate reference to the IFDDS services in 12 VAC 35-105-30.
3. Require supervision be provided by a Qualified Developmental Disabilities Professional (QDDP) in 12 VAC 35-105-590 (C)(2)) and that assessment and individual service plans (ISPs) be approved by a QDDP.
4. Require services be accessible to individuals with physical and sensory disabilities in 12 VAC 35-105-280(A).
5. Require the ISP to be consistent with the Consumer Service Plan 12 VAC 35-105-660(I).

The Board has proposed promulgation of emergency regulations to implement these changes. The following crosswalk provides more detailed information about these specific changes.

Proposed Changes to the *Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation, and Substance Abuse Services*

Regulation Section	Subject	Change and Rationale
20 Definitions	"Club house service"	Changed to state that service must not be provided less than 3 days per week which differs from than 5-day requirement in current regulations
	"Consumer service plan"	Definition added because consumer service plans are required for IFDDS services
	"Crisis stabilization"	Definition added because this is a service that will be licensed
	"Day support services"	Definition revised to include developmental disabilities and related conditions to be served in day support
	"Developmental disabilities and related conditions"	Definition added to describe the new population to be served
	"IFDDS Waiver"	Definition added to describe the service to be licensed
	"Instrumental activities of daily living"	New definition specific to training provided to individuals served under IFDDS Waiver
	"Neglect"	Revised to apply definition of neglect to individuals served under IFDDS Waiver
	"Provider"	Definition revised to include IFDDS providers
	"Qualified Developmental Disabilities Professional (QDDP)"	New definition added for QDDP who is an individual with credentials comparable to Qualified Mental Health and Mental Retardation Professionals

Regulation Section	Subject	Change and Rationale
20 Definitions (continued)	“Service”	Definition revised to add IFDDS services
30	“Licenses”	Revised to include IFDDS services as a service that is licensed under the regulations
280 (A)	“Physical Environment”	Revised to require the physical environment for a service to be accessible to individuals with physical and sensory disabilities
590 (C2 and 4)	“Provider Staffing Plan”	Provisions inserted for IFDDS services that are comparable to other licensed services, including requirements for obtaining approval of ISPs and requiring assessments to be carried out by QDDPs.
660 (I)	“Individualized service plan (ISP)”	New provision inserted that requires ISPs for individuals served by the IFDDS waiver to be consistent with the Consumer Service Plan

These regulations will conform requirements of 12 VAC 35-105-10 et seq. to providers of services funded by the IFDDS waiver. They will assure adequate staffing requirements, physical environment requirements, financial support for services, treatment provision, and human rights compliance, all of which protect the health, safety, and welfare of individuals receiving services.

There may be additional changes to the regulations requested by the public during the public comment period.

Alternatives

Please describe, to the extent known, the specific alternatives to the proposal that have been considered or will be considered to meet the essential purpose of the action.

The Board explored the following alternatives for compliance with SB 504.

Alternative 1--Apply existing *Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation, and Substance Abuse Services* to these services with no changes. This was rejected because these regulations are quite specific to licensing mental health, mental retardation, and substance abuse services. An advisory committee of advocates,

providers, and state agency staff reviewed the current regulations and determined the current regulations should be amended to reflect service provision to this population.

Alternative 2--Develop a new set of regulations to license IFDDS Waiver services. This alternative was rejected since day support, crisis stabilization, and in-home support services are already licensed by DMHMRSAS through existing regulations and are applicable to the IFDDS Waiver service providers. New regulations would unnecessarily duplicate the existing regulations.

Alternative 3--Amend the current DMHMRSAS regulations for licensing to include references and requirements unique to IFDDS waiver services. The advisory group determined that a minimal number of changes were necessary and recommended this approach. New regulations, entitled *Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation, and Substance Abuse Services*, become effective September 19, 2002. The proposed emergency regulations amends these new licensing regulations to adapt the provisions to apply to providers of IFDDS waiver services.

Family Impact Statement

Please provide a preliminary analysis of the potential 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 amendment will allow eligible families of individuals with developmental disabilities to access services they have not been able to access before, because there was no entity designated as the licensing authority for providers of services funded through the IFFDS Waiver. Access to services should promote family stability and allow families to better care for their child or family member within the home. It will promote self-sufficiency for families by increasing skills and supports for individuals with developmental disabilities.