



townhall.virginia.gov

Fast-Track Regulation Agency Background Document

| | |
|---|---|
| Agency name | Department of Behavioral Health and Developmental Services |
| Virginia Administrative Code (VAC) citation(s) | 12 VAC35-105 |
| Regulation title(s) | Rules and Regulations For Licensing Providers by the Department of Behavioral Health and Developmental Services ("Licensing Regulations") |
| Action title | Allowing a grace period for documentation of ISPs |
| Date this document prepared | June 29, 2018; Revised August 17, 2018. |

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*.

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. If applicable, generally describe the existing regulation.

This regulatory action pertains to when a quarterly review of an individualized services plan (ISP) must be documented. It is intended to resolve misalignment between DBHDS and DMAS regulations concerning quarterly reviews of ISPs or a revised assessment by allowing practitioners to follow the same process rather than two different processes. For example, in DMAS regulation [12VAC30-50-226 Community mental health services](#), the definition of "Review of ISP" contains a corresponding 15-day grace period. Also, a grace period has existed since at least 1998 in 12VAC30-60-143 (previously subsection as 140) Community mental health services).

These amendments will relieve an unnecessary administrative burden in which service providers currently must adhere to two separate regulations for the same practice. The current Licensing Regulations will be amended as follows:

"12VAC35-105-675. Reassessments and ISP reviews.

A. Reassessments shall be completed at least annually and when there is a need based on the medical, psychiatric, or behavioral status of the individual.

B. The provider shall update the ISP at least annually. The provider shall complete a quarterly review of the ISP at least every three months from the date of the implementation of the ISP or whenever there is a revised assessment based upon the individual's changing needs or goals. These reviews shall evaluate the individual's progress toward meeting the plan's goals and objectives and the continued relevance of the ISP's objectives and strategies. The provider shall update the goals, objectives, and strategies contained in the ISP, if indicated, and implement any updates made. Documentation of each review shall be added to the individual's record no later than 15 calendar days from the date the review was due to be completed.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

- DBHDS – Department of Behavioral Health and Developmental Services
- DMAS – Department of Medical Assistance Services
- ISP – Individualized services plan
- State Board – State Board of Behavioral Health and Developmental 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.

The amendment to the Licensing Regulations was approved at the July 11, 2018, meeting of the State Board as a fast track action.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

Sections 37.2-203 and 37.2-304 of the Code of Virginia authorize the State Board to adopt regulations 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.

Purpose

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

DBHDS and DMAS regulations concerning reviews of individual service plans are not aligned. This creates an unnecessary situation in which service providers must adhere to two separate regulations for the same practice. The proposed change will align DBHDS and DMAS regulations as to when a quarterly review or a revised assessment of the ISP must be documented, thus allowing practitioners to follow the same process rather than two different processes. This will decrease administrative burdens and allow more time to provide services.

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?

These amendments are noncontroversial. Input from providers indicates support for this change, and any change that aligns DMAS and DBHDS regulations resulting in more effective and efficient business and administrative processes.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of changes" section below.

Providers licensed by DBHDS are currently required to review the ISP at least every three months from the date of the implementation of the ISP or whenever there is a revised assessment based upon the individual's changing needs or goals. There is no allowance for additional administrative time to document the review, as is allowed in DMAS regulations. Such administrative 'grace periods' are not uncommon.

By amending the current Licensing Regulations at the end of Subsection B of 12VAC35-105-675 through this fast track action, providers will be allowed to provide documentation of each quarterly review or a revised assessment in the individual's record 'no later than 15 calendar days from the date the review was due to be completed.' These amendments will not change the current quarterly deadline for the review.

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.

There are no identified disadvantages to the public or the Commonwealth in making this change. The advantage for the system will be that providers have more efficient use of time because the regulations will no longer be duplicative in conflicting ways.

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.

This is not more restrictive than applicable federal standards.

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.

No locality is particularly affected by this action.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, 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.

This action will provide DBHDS-licensed providers with more flexibility. Based on current DBHDS regulations, a provider must properly document the ISP review within three months of the individual's last review. This action will allow providers a 15-day grace period from the date the review was due to be completed to add the proper documentation to the individual's record.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

| | |
|---|--|
| <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>There is no additional cost to implement and enforce the amendment.</p> |
| <p>Projected cost of the new regulations or changes to existing regulations on localities.</p> | <p>There is no additional cost on localities as a result of these changes.</p> |
| <p>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</p> | <p>Individuals receiving or needing services and their families; providers licensed by DBHDS.</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: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p> | <p>It is not possible to estimate the exact number of individuals that will be affected by this regulation. Please see Table 2 in Report Document 552, (2017). However, at least 100,000 would be affected. Currently, DBHDS licenses approximately 1,307 service providers and 3,313 licensed services at 9,152 licensed locations.</p> |
| <p>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p> | <p>There is no additional administrative cost for individuals, businesses, or other entities.</p> |
| <p>Beneficial impact the regulation is designed to produce.</p> | <p>Providers will be alleviated of an unnecessary burden and will have more time to devote to the provision of services.</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 is no other alternative to the regulatory action.

Public participation notice

If an objection to the use of the fast-track process is received within the 30-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: 1) file notice of

the objections with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

Periodic review and small business impact review report of findings

If this fast-track is the result of a periodic review/small business impact review, use this form 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.

This action is not the result of a periodic or small business impact review.

Family impact

Please assess the impact of this 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 be a positive impact on families because the family members with disabilities in need of services provided by DBHDS-licensed providers will receive services more promptly.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below.

For changes to existing regulation(s), please use the following chart:

| Current section number | Proposed new section number, if applicable | Current requirement | Proposed change, intent, rationale, and likely impact of proposed requirements |
|------------------------|--|---------------------|--|
|------------------------|--|---------------------|--|

| | | | |
|-------------------------------------|--|---|---|
| <p>12VAC35-105-20. Definitions.</p> | | <p>"12VAC35-105-675. Reassessments and ISP reviews.</p> <p>A. Reassessments shall be completed at least annually and when there is a need based on the medical, psychiatric, or behavioral status of the individual.</p> <p>B. The provider shall update the ISP at least annually. The provider shall review the ISP at least every three months from the date of the implementation of the ISP or whenever there is a revised assessment based upon the individual's changing needs or goals. These reviews shall evaluate the individual's progress toward meeting the plan's goals and objectives and the continued relevance of the ISP's objectives and strategies. The provider shall update the goals, objectives, and strategies contained in the ISP, if indicated, and implement any updates made.</p> | <p>This action will add an additional sentence at the end of this section:</p> <p>B. The provider shall update the ISP at least annually. The provider shall <u>complete a quarterly review of the ISP at least every three months from the date of the implementation of the ISP or whenever there is a revised assessment based upon the individual's changing needs or goals. These reviews shall evaluate the individual's progress toward meeting the plan's goals and objectives and the continued relevance of the ISP's objectives and strategies. The provider shall update the goals, objectives, and strategies contained in the ISP, if indicated, and implement any updates made. <u>Documentation of each review shall be added to the individual's record no later than 15 calendar days from the date the review was due to be completed.</u></u></p> |
|-------------------------------------|--|---|---|