



Virginia
Regulatory
Town Hall

Proposed Regulation 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:	January 21, 2003

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

These proposed regulations amend the existing Regulations for the Licensing of Providers of Mental Health, Mental Retardation, and Substance Abuse Services. The proposed regulations are identical to the emergency regulations that are currently in effect. The purpose of the amendments is to incorporate provisions to license providers of day support, crisis stabilization, and in-home support services funded through the Individual and Family Developmental Disabilities Support Waiver (IFDDS). Licensing of these services is necessary to receive Medicaid IFDDS funding. These amendments primarily add terminology and a few additional requirements applicable to these newly covered services.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

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 was July 1, 2002. Emergency regulations were promulgated on September 19, 2002.

The Office of the Attorney General has certified that the Board of Mental Health, Mental Retardation and Substance Abuse Services has the authority to promulgate these regulations under Va. Code § 37.1-10 and these regulations are constitutional and do not conflict with existing federal or state laws or regulations.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The purpose of this action is to promulgate provisions to license day support, crisis stabilization, and in-home support services funded through the IFDDS by amending the Regulations for the Licensing of Providers of Mental Health, Mental Retardation, and Substance Abuse Services to cover providers of these services. Amendments were needed to incorporate definitions and references appropriate to the individuals and services covered by the IFDDS waiver. Licensing of these services is necessary for individuals being served under the Developmental Disabilities Waiver to receive Medicaid funding for such services. Prior to the General Assembly designating licensing authority to the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS), providers and families could not access these funds because no agency could license IFDDS services. IFDDS services allow individuals with Developmental Disabilities to be served in community settings.

Emergency regulations were promulgated effective September 19, 2002 for one year. The amended licensing regulations will replace the emergency regulations.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

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 (ISP) 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).

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 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 include a sentence to that effect.

- 1) The advantage of this regulatory action is that DMHMRSAS will be able to license providers of services funded by the IFDDS Waiver by making minimal changes to the existing regulations for licensing providers of mental health, mental retardation and substance abuse services. The promulgation of these regulations will allow individuals to access IFDDS Waiver funding for needed services, since such services may only be provided by licensed providers. It allows providers already licensed by DMHMRSAS to modify existing licenses and begin providing these services. It also allows new providers to become licensed and serve this population.
- 2) The advantages to the Commonwealth is that by minimally amending existing licensing regulations, the implementation of licensing for these services is expedited and can occur at a relatively low cost to the State.
- 3) There is no known disadvantage to the public or Commonwealth associated with the promulgation of these regulations.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

- a.) There is a very minimal cost to the DMHMRSAS Office of Licensing to implement and enforce the proposed regulation. The IFDDS Waiver is a small waiver and most of the providers of such services are currently licensed by DMHMRSAS as mental health or mental retardation service providers. While the implementation of the emergency regulations have resulted in an increased number of providers licensed to provide IFDDS services (approximately 15 providers), these regulations have not resulted in a significant number of brand new providers that are not already licensed by DMHMRSAS. The cost to modify existing licenses, approve a small number of new providers, and monitor these providers, is minimal. The cost is projected to remain that way unless significant additional funding is allocated to the IFDDS waiver. These functions of the Office of Licensing are funded through general fund dollars. The Office of Licensing's annual budget is \$1,105,836 for current FY 2003.
- b.) There is no cost to localities associated with the implementation of the regulations.
- c.) The businesses affected by these regulations are public and private providers who wish to provide IFDDS services. Individuals affected are individuals with developmental disabilities and related conditions using services provided under the IFDDS waiver.
- d.) To date, approximately 15 providers have secured IFDDS licenses under the emergency regulations. Each of these was already licensed by DMHMRSAS as a provider of other services.
- e.) The costs associated with the implementation of these regulations is minimal (if any) to existing providers. The costs impact to new providers licensed by these regulations is not known, as the cost will depend upon the level of services already offered by the provider.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

Proposed Changes to the *Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation, and Substance Abuse Services (these changes are currently in effect as emergency regulations)*

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 <i>(continued)</i>	“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

Alternatives

Please describe the specific 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.

The Board explored the following alternatives to the proposed regulatory action.

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 that 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. The emergency regulations amended the current licensing regulations to modify the provisions to apply to providers of IFDDS waiver services.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

The Department of Medical Assistance Services (DMAS) commented on specific sections of the regulations during the NOIRA period. These comments are detailed below.

12 VAC 35-105-20

- + Replace the terminology “behavioral or positive behavioral support treatment program” with “behavioral treatment or positive behavioral support program.”
- + Omit the reference to clubhouse services for developmental disability providers. The IFDDS Waiver does not cover clubhouse services.
- + Revise definitions to be consistent between these regulations and DMAS Regulations 12 VAC 30-120-700. Although the individual’s preferences are to be addressed through a person-centered service planning and delivery approach, waiver services must be delivered to meet an identified need.
- + In the definition of “day support services,” delete “transportation.” DMAS does not cover/reimburse transportation provided in this manner. Also, replace “to individuals with mental retardation or developmental disabilities or related conditions” with “to individuals with mental retardation or related conditions.”
- + In reference to the definition of “developmental disabilities and related conditions,” “...use this definition for *related conditions* instead of *developmental disabilities* as *related conditions* is what is used in the IFDDS waiver.”
- + Use the terminology “Qualified Development Disabilities Professional (QDDP)” to mean “an individual possessing at least one year of documented experience working directly with individuals who have related conditions and is one of the following: a doctor of medicine or osteopathy, a registered nurse, or an individual holding at least a bachelor’s degree in a human service field including, but not limited to sociology, social work, special education, rehabilitation, counseling or psychology.”

12 VAC 35-105-30.B

- + Add “Crisis stabilization” to the list of licensed services.

12 VAC 35-105-280.A

- + Replace “...and be accessible to individuals with physical and sensory disabilities...” with “...and accessible to individuals with physical and sensory disabilities.”

DMAS also commented that the only IFDDS Waiver service that requires supervision by a QMHP is crisis stabilization. Adding this level of supervision to day support and in-home is a more restrictive requirement and could have a negative impact on providers and ultimately individuals receiving services. Current providers of these services may opt not to provide them due to the additional requirements. DMAS recommends changing the language of this provision to “... or who has equivalent qualifications.”

Agency response

The agency plans to consider revising the emergency regulations, as recommended by DMAS following the completion the public comment period on the proposed regulations. The agency intends to consider DMAS’ comments in conjunction with any other comments it receives from the public and collaborate with other interested and affected persons prior to revising the regulations for final promulgation.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

The Agency has developed the regulations in collaboration with a work group of providers, state agency representatives, and advocates, and revised earlier drafts of the regulations to ensure these regulations are written clearly. The Agency implemented the proposed regulations as emergency regulations in September 2002, and has not identified problems or heard concerns about the clarity of the regulations from affected providers.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

The Department will review and evaluate the need for amendments or revisions to these regulations within three years after promulgation or in accordance with the relevant Executive Order.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which 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.