



Virginia
Regulatory
Town Hall

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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Mental Health, Mental Retardation and Substance Abuse Board
Virginia Administrative Code (VAC) citation	12 VAC 35-105-10 et seq.
Regulation title	Rules and Regulations for Licensing Facilities and Providers of Mental Health, Mental Retardation and Substance Abuse Services
Action title	To add standards for the evaluation of the need and appropriateness of issuance of certain new licenses in accordance with 2005 amendments to the Code of Virginia (SB 753).
Document preparation date	September 9, 2005

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The regulatory action will amend the existing Rules and Regulations for Licensing Facilities and Providers of Mental Health, Mental Retardation and Substance Abuse Services (Regulations) to include standards for the issuance of new licenses to providers of treatment for persons with opiate addiction through the use of methadone, or other opioid replacements. The Board is taking this action to comply with Chapter 7 of the 2005 Virginia Acts of Assembly. This legislation imposes a moratorium on the issuance of new licenses to such providers until standards are in place and also requires the adoption of emergency regulations. The Board is now developing the emergency regulations to comply with this legislation and is filing this notice of intended regulatory in order to expedite the regulatory process for adopting permanent regulations to replace the emergency regulations.

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

Chapter 7 of the 2005 Virginia Acts of Assembly (SB 753) directs the State Mental Health Mental Retardation Substance Abuse Services Board to adopt regulations establishing standards for the issuance of new licenses to providers of treatment for persons with opiate addiction. The Board has the statutory authority to promulgate such regulations pursuant to 2005 Va. Acts ch.7 and Virginia Code § 37.1-10.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed. Include the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. Delineate any potential issues that may need to be addressed as the regulation is developed.

The Agency proposes to amend the existing Regulations, 12 VAC 35-105-10 et seq., to include standards for evaluating the need and appropriateness for the issuance of new licenses to providers of treatment for persons with opiate addiction through the use of methadone or other opioid replacements. These standards will include criteria for (i) determining need for new providers by considering (a) the number of persons residing in the service area who are known or reasonably estimated to be in need of this treatment; (b) the availability or relevant staff in the service area; and (c) the suitability of the building or space to be used to provide the service; (ii) assessing the availability of counseling or other services necessary for effective treatment of persons with opiate addiction; (iii) reviewing existing access to such treatment, including through physicians offices; (iv) evaluating the reasonable parameters, both geographic and demographic of a clinic's service area; and (v) the proposed clinic's plan of operation, including security and accountability measures.

These regulatory provisions are considered essential for protection of the health, safety, and welfare of individuals who receive services. They will provide a framework to ensure that new providers have the necessary resources and support to provide an acceptable standard of treatment. The Agency intends consider the diverse needs and varying circumstances of localities in Virginia when developing these regulatory provisions.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.

The Agency will consult with community representatives, providers, consumers and other stakeholders to seek their assistance in the developing the required standards. The Agency also intends to review similar regulatory provisions from other states in conjunction with this process. These efforts should help to ensure that the Agency considers all viable approaches to comply with the statutory requirements.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability.

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