



Final Regulation Agency Background Document

Agency name	State Mental Health, Mental Retardation and Substance Abuse Services Board
Virginia Administrative Code (VAC) citation	12 VAC 35-200-115
Regulation title	Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation and Substance Abuse, the Individual and Family Developmental Disabilities Support Waiver, and Residential Brain Injury Services
Action title	Addition of provisions for issuing an order of summary suspension of the license
Date this document prepared	October 18, 2007

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

This action adds a new section to the existing Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation and Substance Abuse, the Individual and Family Developmental Disabilities Support Waiver, and Residential Brain Injury Services (Regulations), which establishes a process for issuing an order of summary suspension of the license for group home or other residential services for adults in cases of immediate threat to the health, safety and welfare of residents. It includes provisions for scheduling and conducting an administrative hearing when a provider's license is suspended. This regulation is currently in effect as an emergency regulation that will expire in December 2007. The current regulations provide standards for licensing service providers under §37.2-404.

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 10, 2007 the State Mental Health, Mental Retardation and Substance Abuse Services Board adopted the final amendment 12VAC35-105-115 to the Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation and Substance Abuse, the Individual and Family Developmental Disabilities Support Waiver and Residential Brain Injury Services.

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 numbers, 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.

The State Mental Health, Mental Retardation and Substance Abuse Services Board has the authority under §§ 37.2-203 and Chapter 168 of the 2006 Virginia Acts of Assembly. The authority to adopt the regulation is mandatory.

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.

These provisions are needed to ensure the health, safety, and welfare of individuals who are receiving services from group home or other residential facilities for adults that are licensed by the Department. The goal of the amendment is to enable the Commissioner to act quickly to suspend a license when the conditions or practices of the service provider pose an immediate and substantial threat to individuals receiving services from the provider. The regulation provides the basis for the Department to act in accordance with legal protocols and ensure the protection of the legal rights of all parties that may be affected by an action to suspend a license.

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.

These provisions provide the authority for the Commissioner of Mental Health, Mental Retardation and Substance Abuse Services to suspend a provider's license to operate a group home or other residential facility for adults when conditions pose an immediate threat to the health, safety or welfare of residents of the home or facility. The regulation requires the Department to schedule an administrative hearing prior to delivering the order of summary suspension to the provider. The order of summary suspension takes effect when it is issued and must be delivered to the provider by personal service and certified mail. The

provisions also guide decision-making related to the administrative hearing and require that the licensee be notified of its appeal rights if a final order of summary suspension is issued.

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.*

(1) These provisions are advantageous to the public because they provide additional protections for the health, safety, and welfare of individuals receiving services in licensed group homes and their families. The regulation permanently implements legislative changes that allow the Commissioner to act promptly to suspend the operation of a licensed group home or residential facility when there is evidence of immediate and substantial risk to the residents. Prior to the adoption of this legislation and the emergency regulation, the Commissioner had no immediate recourse for dealing with an urgent problem. Provisions include requirements for notification of appropriate state agencies and family members when an order of summary suspension is issued. This should facilitate relocation of facility residents when the operation of a licensed facility is suspended. This regulation has been in effect in the children’s residential services, and the fact of its existence has seemed to have a positive effect on health and safety in these programs.

(2) The regulation is advantageous to the Department because it provides authority to take immediate action to suspend the operation of any residential facility if it becomes necessary to address egregious circumstances.

(3) A major advantage to the Commonwealth is that the Department will not have to monitor the operation of a provider that places residents at risk for an extended period while it is involved in a lengthy appeals process. This regulation provides the authority to close a facility under extreme circumstances when there is no reasonable or feasible alternative.

(3) There are no known disadvantages to this regulation.

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.

No changes have been made to the text of the proposed regulation since the publication of the proposed stage.

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.

Committer	Comment	Agency response
Manager of Mental Retardation Services, Arlington Community Services Board	Expressed general concern about meeting the immediate or special needs of individuals who must be moved when a providers' license is suspended. Although the commenter did not have an objection to the regulations as written, it was recommended that the process allow another company or manager to take over the provider's operation until the deficiencies are addressed or an appropriate transition can be accomplished.	Summary suspension is used only under dire circumstances when rehabilitation is not possible and the residents are at risk. There is nothing in the regulations or law that prevents the Department from seeking temporary management services for a deficient facility to assist in its rehabilitation. In nearly all circumstances, the Department will work with a deficient provider to improve conditions in lieu of closing a facility. Summary suspension is a last resort and should be available under certain extreme circumstances.

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.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
	115		This section has been inserted into the existing Regulations to establish the process and requirements for the Commissioner to issue an order of summary suspension consistent with the Virginia Code. It describes procedures for appointment of a hearing officer and scheduling an administrative hearing in conjunction with the issuance of an order of summary suspension of the license. The regulation also establishes the procedures for the conduct of the hearing, decision-making, and any appeal of the decision. The regulation also requires the Department to notify appropriate agencies when the Commissioner issues an order of summary suspension so that relocation plans can be made for residents who are affected by the action taken.

Regulatory flexibility analysis

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 regulation is largely a restatement of legislation that is fairly prescriptive and requires specific action steps to summarily suspend a provider's license. The regulation establishes the shortest possible timeframes for taking the required action steps so that a situation can be resolved as soon as possible with minimal impact on service providers and individuals receiving services.

Family impact

Please assess the 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 regulatory action will provide a vehicle for protecting persons who are admitted to facilities licensed by the Department when the conditions in the facility pose an immediate threat to their health, safety and welfare. The regulation will promote accountability of service providers and require that responsible persons or agencies receive notification when an order of summary suspension is issued. This should have a positive impact on families that have members receiving services in facilities licensed by the Department. The regulatory action should not affect the authority or rights of parents, impact economic self-sufficiency, personal responsibility, marital commitment or disposable family income.