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Final Regulation Agency Background Document

Agency name	Department of Behavioral Health and Developmental Services
Virginia Administrative Code (VAC) Chapter citation(s)	12VAC35-46
VAC Chapter title(s)	Regulations for Children's Residential Facilities
Action title	Amend regulations to align with the requirements of the FFPSA
Date this document prepared	September 16, 2023

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The Department of Behavioral Health and Developmental Services (DBHDS) was mandated by the 2021 General Assembly within [Item 318. D.](#) of the 2021 Special Session 1 Appropriation Act to promulgate emergency regulations to amend the Regulations for Children's Residential Facilities [\[12VAC35-46\]](#) to align with the requirements of the federal [Family First Prevention Service Act \(FFPSA\)](#) for children's residential service providers who accept [Title IV-E](#) funding to meet the standards as qualified residential treatment programs (QRTPs). The department received input from the Department of Social Services (DSS) and the Department of Medical Assistance Services (DMAS) in the development of this action. The goal of this action is to make permanent the changes made through [emergency regulations](#) promulgated on September 29, 2021, by the State Board of Behavioral Health and Developmental Services that amended the regulations to align with the FFPSA to meet the standards of QRTPs.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the “Definitions” section of the regulation.

Department of Behavioral Health and Developmental Services – DBHDS

Department of Medical Assistance Services – DMAS

Department of Social Services – DSS

Family First Prevention Service Act – FFPSA

Psychiatric Residential Treatment Facility -- PRTF

Qualified Residential Treatment Programs – QRTPs

State Board – State Board of Behavioral Health and Developmental Services

Statement of Final Agency Action

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 State Board voted on September 27, 2023, to initiate the final stage of the action titled “Amend regulations to align with the requirements of the FFPSA [12VAC35-46]” with no edits to the language from the proposed stage to the final stage.

Mandate and Impetus

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously reported information, include a specific statement to that effect.

The 2021 General Assembly mandated the State Board of Behavioral Health to promulgate emergency regulations through Item 318 D of the 2021 Special Session 1 Appropriation Act. This action is intended to make permanent the changes made through emergency regulations promulgated on September 29, 2021, by the State Board of Behavioral Health and Developmental Services that amended the regulations to align with the FFPSA to meet the standards of QRTPs.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.

Through Item 318. D. of the 2021 Special Session 1 Appropriation Act (Chapter 552), the General Assembly mandated the State Board of Behavioral Health to promulgate emergency regulations that align with the requirements of the federal Family First Prevention Service Act. Section [37.2-203](#) of the Code of Virginia gives the State Board of Behavioral Health and Developmental Services the authority to adopt regulations that may be necessary to carry out the provisions of Title 37.2 of the Code of Virginia and other laws of the Commonwealth administered by the DBHDS Commissioner. The State Board of Behavioral Health and Developmental Services voted to adopt emergency regulations on September 29, 2021. This action makes permanent those regulations. The State Board of Behavioral Health and Developmental Services voted to adopt this final stage regulatory action on September 27, 2023.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety, or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

The purpose of this regulatory action is to align DBHDS Regulations for Children’s Residential Facilities with the requirements of the federal Family First Prevention Service Act to require providers who accept Title IV-E funding to meet the standards as QRTPs. Providers who do not accept Title IV-E funding shall not be affected by this action.

FFPSA includes reforms to child welfare financing streams by providing prevention services to families of children who are at imminent risk of entering foster care. It seeks to underscore the importance of children growing up in families and seeks to avoid the traumatic experience of children being separated from their families and entering foster care. Specifically, federal reimbursement will be available for trauma-informed mental health services, substance use disorder treatment, and in-home parenting skill training to safely maintain in-home family placement. FFPSA also aims to improve the well-being of children already in foster care by safely reducing placement of children in non-family based settings (e.g. residential treatment programs), and instead increasing placement of children in the least restrictive, most family-based setting appropriate to their individual needs. FFPSA created a specific nonfamily-based placement type called a QRTP, along with a structure around placing children in these types of placements. QRTPs serve children with specific treatment needs who need short term placement out of the home. Federal funding for foster youth with specific treatment needs will only be available for nonfamily-based placements that qualify as a QRTP.

Substance

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.

This regulatory action amends Chapter 46 to align with the requirements of the federal FFPSA to require providers who accept Title IV-E funding to meet the standards as QRTPs. Providers who do not accept Title IV-E funding shall not be affected by this action. QRTPs are required to have a trauma-informed treatment model; have registered licensed nursing staff and licensed clinical staff who are available 24 hours a day and seven days a week; facilitate outreach to the family members of the child; facilitate participation of family members in the child’s treatment program; provide or arrange discharge planning and family-based aftercare support for at least six months post-discharge; be licensed; and be accredited by an independent, not-for profit, accrediting organization approved by the US Secretary of Health and Human Services.

Issues

Identify the issues associated with the regulatory change, 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, include a specific statement to that effect.

The primary advantage of the regulatory change is children's residential licensing regulations that incorporate best practices, help to enhance support services for families, increase the number of children who remain at home, and build the capacity of communities to support children and families. This is an advantage to the public, the agency, and the Commonwealth. There are no known disadvantages to the agency or the Commonwealth. The primary disadvantage is that some providers may experience a financial burden in order to comply with the new regulations. However, providers have been aware for at least two years of the eventual changes brought in these regulations and providers that do not accept Title IV-E funding shall not be affected by this regulatory change. Further, as these are federal requirements, the department does not have much discretion in the manner in which they are enacted.

Requirements More Restrictive than Federal

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.

The proposed regulatory action aligns Chapter 46 with the requirements of the federal FFPSA. None of the requirements of the regulatory action are more restrictive than applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously reported information, include a specific statement to that effect.

Other State Agencies Particularly Affected

DSS and DMAS will be affected by this regulatory action. As a result, the department received significant input from the DSS and the DMAS in the development of this action.

Localities Particularly Affected

None identified at this time.

Other Entities Particularly Affected

Families of children who are at imminent risk of entering foster care.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency’s response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

Commenter	Town Hall Comment	Agency Response
Anonymous	QRTP Discharge- Before imposing discharge requirements for residential facilities, please consider how this will be funded as the daily rate for Medicaid ends once a youth discharge from a facility. How are providers meant to pay for this discharge care?	The discharge care requirements are federal requirements. In addition, the department is not a payor; therefore funding questions should be directed to the Department of Medical Assistance Services (DMAS). The department shall forward the commenter’s concern on to DMAS.

Detail of Changes Made Since the Previous Stage

*List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

No changes were made since the previous stage was published.

Detail of All Changes Proposed in this Regulatory Action

*List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of updated requirements
N/A	12VAC35-46—1260. <u>Qualified Residential Treatment Programs.</u>	None.	Intent: Adding the requirements of a Qualified Residential Treatment Program (QRTP). A qualified residential treatment program shall: <ul style="list-style-type: none"> • Have a trauma-informed treatment model.

			<ul style="list-style-type: none"> • Have registered or licensed nursing staff and other clinical staff who are available 24 hours a day and 7 days a week. • Facilitate outreach to family members as appropriate. • Facilitate participation of family members in the child’s treatment program. • Provide or arrange discharge planning and family-based aftercare support for at least six months post discharge. • Be licensed. • Be accredited by an independent, not-for profit accrediting organization approved by the US Secretary of Health and Human Services. <p>Impact: Compliance with the General Assembly mandate, alignment with federal law, enhancement of support services for families, providing assistance to allow children to remain at home, and build the capacity of communities to support children and families.</p>
N/A	<p>12VAC35-46- 1270. <u>Additional requirements for QRTP placements for children within the custody of local social service boards.</u></p>	Nonet.	<p>Intent: Adding the requirements of documentation of the need for placement in a QRTP.</p> <p><i>The QRTP shall coordinate with the VDSS, family, and others. Documentation shall be placed within the child’s record at the QRTP. This section does not apply to direct parental placements of children into the QRTP that are made outside of the social services system.</i></p> <p>Impact: Compliance with the General Assembly mandate, alignment with federal law, enhancement of support services for families, providing assistance to allow children to remain at home, and build the capacity of communities to support children and families.</p>