



Emergency Regulation and 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 the Licensing of Providers of Mental Health, Mental Retardation, and Substance Abuse Services, 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
Document preparation date	August 23, 2006

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

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*.

Preamble

The APA (Code of Virginia § 2.2-4011) states that an “emergency situation” is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date.

- 1) Please explain why this is an “emergency situation” as described above.*
- 2) Summarize the key provisions of the new regulation or substantive changes to an existing regulation.*

Chapter 168 of the 2006 Virginia Acts of Assembly (SB 190) authorizes the Commissioner of Mental Health, Mental Retardation and Substance Abuse Services (Commissioner) to issue an order of summary

suspension of a license to operate a group home or residential facility for adults in cases of immediate threat to the health, safety, and welfare of residents. The legislation requires the State Mental Health, Mental Retardation and Substance Abuse Services Board to implement the provisions of the Act within 280 days of its enactment. The Board is adopting these emergency regulations to comply with this legislation.

In 2005, the Commissioner obtained identical summary suspension authority for children’s group homes and residential facilities which was incorporated into the Regulations for Providers of Mental Health, Mental Retardation and Substance Abuse Residential Services for Children, 12VAC35-45 et seq. The regulatory provisions now being proposed are consistent with provisions that have been established for children’s residential facilities.

This action will add a new section to the existing Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation, and Substance Abuse Services, 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 of any group home or residential facility for adults. The existing regulations provide standards for licensing providers of mental health, mental retardation and substance abuse services under Virginia Code § 37.2-404.

The new section of the regulations establishes procedures for the Commissioner to issue an order of summary suspension. It also includes the procedures for scheduling and conducting an administrative hearing when the Commissioner issues an order of summary suspension, including the appointment of a hearing officer by the Executive Secretary of the Supreme Court.

Legal basis

Other than the emergency authority described above, 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.

The State Mental Health, Mental Retardation and Substance Abuse Services Board (Board) has the statutory authority to adopt the proposed regulations under Va. Code § 37.2-203 and Chapter 168 of the 2006 Virginia Acts of Assembly.

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.

This regulatory action will add procedures to the existing licensing regulations that will enable the Commissioner to issue an order of summary suspension consistent with the statutory authority.

The agency has developed the regulations in collaboration with the Office of the Attorney General. The regulation is intended to provide the process for suspending the license to operate a group home or residential facility for adults in cases of immediate and substantial threat to the health, safety, and welfare of the residents. The regulations will provide the basis for the Department to act in accordance with legal protocols and ensure protections for the legal rights of all parties that may be affected by an action to suspend a license.

Substance

Please detail any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons why the regulation is essential to protect the health, safety, or welfare of Virginians. Delineate any potential issues that may need to be addressed as a permanent final regulation is developed.

For changes to existing regulations, use this chart:

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 Act. 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 regulations also require 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.

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.

There are no appropriate alternatives to this regulatory action. The agency is required to adopt emergency regulations to implement the provisions of the Chapter 168 of the 2006 Virginia Acts of Assembly. The agency has developed these regulations to be consistent with the regulatory process and authority to issue orders of summary suspension of licenses for children’s residential facilities. The agency considered various alternatives for meeting the requirements of the legislation and attempted to develop the regulatory provisions that can be easily understood and implemented. Over the next twelve months, the agency will collaborate with interested persons and stakeholders to review the current provisions and develop permanent regulations to replace the emergency regulations.

Family impact

Please assess the impact of the emergency regulatory action on the institution of the family and family stability.

This regulatory action will establish procedures for issuing an order of summary suspension of a license to operate a group home or residential facility for adults when there is an immediate and substantial threat to the health, safety and welfare of the residents. The regulations provide a vehicle for protecting persons who are admitted to licensed facilities and promoting the accountability of service providers. They also require that legal guardians or responsible family members receive notification when an order is issued. This should have a positive impact on the stability families that have members receiving services in licensed facilities.