



## Proposed Regulation Agency Background Document

<b>Agency name</b>	State Mental Health, Mental Retardation and Substance Abuse Services Board (State Board of Behavioral Health and Developmental Services after July 1, 2009)
<b>Virginia Administrative Code (VAC) citation</b>	12 VAC 35-115-10 et seq.
<b>Regulation title</b>	Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded or Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services
<b>Action title</b>	Clarify notification rights for individuals receiving services to comply with Chapter 111 of the 2009 Virginia Acts of Assembly
<b>Date this document prepared</b>	October 1, 2009

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

*In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.*

This regulatory action will amend the existing regulations to clarify that any individual receiving services has the right and opportunity to notify a person of his choice of his (i) location, (ii) general condition, and (iii) transfer to another facility. This change is intended to ensure that an individual will have the support of family members or others while he is receiving services from providers who are licensed, funded, or operated by the Department of Behavioral Health and Developmental Services. This change should also ensure that family members or others are informed about the well-being of a loved one who is receiving services.

This regulatory action will also change the Department name to the Department of Behavioral Health and Developmental Services.

## Acronyms and Definitions

There are no acronyms used in the Agency Background Document.

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## 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., the agency, board or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

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The State Mental Health, Mental Retardation and Substance Abuse Services Board has the authority to adopt these regulations under Va. Code §§37.2-203 and 37.2-400 and is required to do so. The revisions are required under Chapter 111 of the 2009 Virginia Acts of Assembly. The legal authority for the Department name change is provided in Chapter 813 of the 2009 Virginia Acts of Assembly.

## Purpose

*Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.*

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This Board is required to amend its regulations to comply with the 2009 amendment to § 37.2-400 of the Code of Virginia. This change will promote the health, safety and welfare of persons who are receiving services by ensuring these individuals are afforded the opportunity to notify loved ones of their general condition and whereabouts. This should enable family members and others to provide support to a loved one who is receiving services.

## Substance

*Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the "Detail of changes" section.)*

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This regulatory action will amend the existing regulations to clarify that any individual receiving services has the right and opportunity to notify a person of his choice of his (i) location, (ii) general condition, and (iii) transfer to another facility. This regulatory action will also change the Department name to the Department of Behavioral Health and Developmental Services.

## 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 the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.*

This regulatory action poses an advantage to the public, particularly consumers and family members as well as providers, by ensuring that providers have the affirmative duty to notify someone of the individual's choosing of that individual's location and general well being. It clarifies the authority for providers to make such a notification. Consumers and family members prompted the change to the VA Code that results in this regulatory action.

### Requirements more restrictive than federal

*Please identify and describe any requirement of the proposal, which are more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.*

The proposed regulatory changes are not more restrictive than applicable federal requirements. They establish the rights of individuals receiving services to have persons that they have identified notified as to their location, general condition, and transfer to another facility. Clarifies concerns regarding third party notification and individual protections afforded under the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

### Localities particularly affected

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

There are no localities that will bear a disproportionate material impact with regards to the proposed regulatory changes.

### Public participation

*Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.*

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit comments may do so **at the public hearing** via the Regulatory Townhall website, [www.townhall.virginia.gov](http://www.townhall.virginia.gov), or by mail, email or fax to Margaret Walsh, 1220 Bank Street, Richmond, Virginia 23218, telephone number 804-786-3988, fax 804-371-2308 or [margaret.walsh@dbhds.virginia.gov](mailto:margaret.walsh@dbhds.virginia.gov). Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period.

A public hearing will be held and notice of the hearing may be found on the Virginia Regulatory Town Hall website ([www.townhall.virginia.gov](http://www.townhall.virginia.gov)) and can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

**Economic impact**

*Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.*

<b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures.</b>	The proposed changes will not result in any additional costs.
<b>Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.</b>	The proposed changes will not result in any additional costs.
<b>Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.</b>	All programs and services that are licensed, funded, or operated by the Department of Behavioral Health and Developmental Services.
<b>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	612 providers are licensed by the Department-- Approximately 50 of these providers are governmental entities.
<b>All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and do include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</b>	The proposed changes will not result in any additional costs.
<b>Beneficial impact the regulation is designed to produce.</b>	Clarification of the rights of individuals receiving services from programs licensed, operated or funded by the Department

**Alternatives**

*Please describe any viable 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.*

*Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.*

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There are no viable alternatives to this regulatory action. Section 37.2-400 of the Code of Virginia was amended to specifically require that each person who is receiving services in a facility or program that is operated, funded or licensed by the Department be afforded the opportunity to have an individual of his choice notified of his general condition, location, and transfer to another facility. This amendment also requires the Board to adopt regulations delineating this provision.

The Code requires the Board to hold a public hearing in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) prior to adopting regulations to implement the rights of consumers that are delineated in § 37.2-400 of the Code.

### 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.*

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There are no viable alternatives to this regulatory action. Section 37.2-400 of the Code of Virginia was amended to specifically require that each person who is receiving services in a facility or program that is operated, funded or licensed by the Department be afforded the opportunity to have an individual of his choice notified of his general condition, location, and transfer to another facility. This Code change was effective July 1, 2009 and all facilities and programs operated, funded or licensed by the Department must comply with this requirement. The Board must modify its regulations to reflect current Code requirements.

### Public comment

*Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.*

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No public comments were received during the NOIRA public comment period.

### 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.*

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This regulatory action should have a positive impact on families and family stability because it should encourage family members to support their loved ones who are receiving services. This action is not expected to impact family income.

**Detail of changes**

*Please detail all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact if implemented in each section. Please detail the difference between the requirements of the new provisions and the current practice or if applicable, the requirements of other existing regulations in place.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all provisions of the new regulation or changes to existing regulations between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

For changes to existing regulations, use this chart: 12 VAC 35-115

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change, rationale, and consequences</b>
10 and 30		Department of Mental Health, Mental Retardation and Substance Abuse Services and State Mental Health, Mental Retardation and Substance Abuse Board	Replaces terms with Department of Behavioral Health and Developmental Services and State Board of Behavioral Health and Developmental Services -- 2009 General Assembly action.
50		B. lists five specific individual rights	Adds a 6th right --the opportunity to have an individual of his choice notified of his general condition, location and transfer to another facility.
80		B. lists provider's duties	Modifies duty # 7 to include notifying a person of the individual's choosing of his general condition, location and transfer to another facility.