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## Periodic Review and Small Business Impact Review Report of Findings

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|---------------------------------------------------------------|------------------------------------------------------------|
| <b>Agency name</b>                                            | Department of Behavioral Health and Developmental Services |
| <b>Virginia Administrative Code (VAC) Chapter citation(s)</b> | 12 VAC35-225                                               |
| <b>VAC Chapter title(s)</b>                                   | Requirements for Virginia's Early Intervention System      |
| <b>Date this document prepared</b>                            | 10/3/2024                                                  |

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*.

## Acronyms and Definitions

*Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.*

DBHDS - Department of Behavioral Health and Developmental Services.  
 Part C of IDEA – Individuals with Disabilities Education Act (20 U.S.C. § 1431 et seq.) ("IDEA"):  
 Part C – Early Intervention program for infants and toddlers provides a broad array of services to children with special needs, birth through two years of age, and their families.

## 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 or 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.*

The State Board of the Department of Behavioral Health and Developmental Services has the authority to conduct the periodic review per § 37.2-203 of the Code of Virginia. Also, pursuant to § 2.2-5304 of the Code of Virginia, the Governor designated the Department of Behavioral Health and Developmental Services (1987) as the state lead agency responsible for implementing the Virginia early intervention services system and ensuring compliance with federal requirements.

Sections 2.2-2664, 2.2-5301, 2.2-5303, 2.2-5304, 2.2-5305, and 2.2-5306 of the Code of Virginia establish the structure of Virginia's early intervention system, including the duties and responsibilities of the state lead agency, coordinating council, and participating agencies.

Virginia's early intervention system, the Infant & Toddler Connection of Virginia, must include, at a minimum, the components required by Part C of the Individuals with Disabilities Education Act at 20 USC § 1435(a) and at 34 CFR Part 303.

### Alternatives to Regulation

*Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.*

There are no alternatives to this regulation as they must be in place to implement Part C of IDEA, at 20 U.S.C. § 1431 et seq. and at 34 C.F.R. Part 303, in Virginia. Specifically, continued funding of Virginia's IDEA Part C (Early Intervention) grant from the US Department of Education is dependent on these regulations. Chapter 225 ensures Virginia's current policies, procedures, and practices that require the force of law to successfully enforce and to ensure that the state remains in compliance with federal mandates.

### Public Comment

*Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency's response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.*

| Commenter Name | Comment Title        | Comments                                                                                                                                                                                                                                                                                                                                                                        | DBHDS Response 11/20/2023                                                                                                                                                                                                                                                                                                             |
|----------------|----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Anonymous      | Eligibility Criteria | The requirements seem to eliminate the category of Atypical Development as a reason a child might be found eligible for services, which would reduce the number of children able to access support through EI. This would negatively impact many kids, but would especially affect children referred due to concerns about social-emotional development. Many of the assessment | Thank you for your interest in these regulations and the services. These regulations do not eliminate atypical development as a criteria for eligibility. "Atypical development" is defined in <a href="#">12VAC35-225-20</a> , and the definition of a "child with a disability" in that same section includes atypical development. |

| Commenter Name | Comment Title                                                           | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | DBHDS Response 11/20/2023                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|----------------|-------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                |                                                                         | <p>tools available to EI providers do not look at all components of social-emotional development, and provide broad age ranges for developmental skills in this area. If providers must find a delay of 25% or more, many children who exhibit concerning behaviors, insecure attachment, and difficulties with emotional regulation would be found ineligible and not able to access needed services- while these concerns impact the child's functioning in their day to day routines, they often do not cause a delay of more than 25%. This will place an increased burden on Part B and social services systems, as children and families who do not receive supports for these concerns early on will need more intensive support down the road.</p> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| Anonymous      | Recommendation to increase age criteria for Early Intervention services | <p>Early Intervention services in VA have an age criteria for eligibility to be between birth and 36 months (day before third birthday). As a child exits the program, referrals are often made to Part B services (school based). For the schools, eligibility criteria is based on academic progressions as well as a higher % for developmental delays (40 while Early Intervention is 25%). Often, children referred are at a higher rate of being found ineligible for school-based services after the receiving Early Intervention services which creates a gap in needed services for</p>                                                                                                                                                           | <p>Thank you for your comment. Regarding the age criteria, under federal Part C regulations, states can develop and implement an "extended option" (with approval from USDOE) that would allow a state to continue early intervention services until the child would start kindergarten. However, this option would only apply to children who have been in early intervention and meet eligibility criteria for preschool special education services through the schools. Therefore, it would not fill the gap identified in this comment. In addition, federal funding for the extended option is only available in years when the overall federal appropriation for Part C exceeds a certain amount. Even when it has been available, it is not enough money to offset the additional costs Virginia would incur; additional resources would be required.</p> |

| Commenter Name | Comment Title                         | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | DBHDS Response 11/20/2023                                                                                                                                                                                                               |
|----------------|---------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                |                                       | children between the ages of 3 to Kindergarten. I would propose that the age criteria for Early Intervention services be INCREASED to serve eligible children birth to 4 which would reduce this gap in service. If we continue with the current gap in services, it later becomes expensive to not only the local school systems, but other community agencies as additional support and services will be needed to help the child with delays, atypical development, or diagnoses.                                                                                                                                                                                                                                                                                             | Therefore, an extended option would need to be granted and additional resources allocated to address the concern.                                                                                                                       |
| Anonymous      | Increase in Service Coordination Rate | Every child who receives Early Intervention automatically is provided a Service Coordinator. The Service Coordinator is similar to a Case Manager and plays a vital role in establishing the child and family with community supports and resources as needed. While there has recently been an increase in reimbursement rates, it is not enough to cover the need currently exhibited through VA. Service Coordinators are highly involved, assist families with applications and connections with community agencies (medicaid, WIC, foodstamps, waiver services, clinic services, hospitals, etc). For this coordinated care, we are recommending that Early Intervention Service Coordination rates be increased to match ID/DD services that are currently associated with | Thank you for your comment. Reimbursement rates are not included in the DBHDS regulations. Early intervention reimbursement rates fall under <a href="#">Department of Medical Assistance Services</a> regulations as the payor agency. |

| Commenter Name | Comment Title            | Comments                                                                                                                                                        | DBHDS Response 11/20/2023                                                                                                                                                                                                               |
|----------------|--------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                |                          | Community Services Board.                                                                                                                                       |                                                                                                                                                                                                                                         |
| Anonymous      | Add Eligibility Criteria | Please consider adding an eligibility criteria for children who are at high risk for developmental delays but currently are not meeting other areas of criteria | Thank you for your comment. Additional resources for the early intervention program would need to be allocated to add all children who are at high risk for developmental delays but do not meet the existing criteria for eligibility. |

## Effectiveness

*Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in the ORM procedures, including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.*

In its role as state lead agency for Virginia's early intervention services system, DBHDS defines and ensures consistency with federal regulations as they relate to Virginia's early intervention system. As stated above, these regulations are necessary to interpret federal and state law and help to protect the public health, safety, and welfare of young children by helping them with developmental delays at a critical stage of life. These regulations are also clearly written and easily understandable to the families seeking services, program staff, the community, and the public. And, Virginia's requirements for the Early Intervention system achieve the intended objective in the most efficient, cost-effective manner by closely conforming to the federal requirements.

## Decision

*Explain the basis for the promulgating agency's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).*

*If the result of the periodic review is to retain the regulation as is, complete the ORM Economic Impact form.*

The decision is to amend the regulations to add two professional disciplines to the list of qualified personnel who may seek certification from DBHDS as early intervention professionals under the existing regulation at 12VAC35-225-430-B and four professional disciplines to the list of qualified personnel who may seek certification from DBHDS as early intervention specialists under the existing regulation at 12VAC35-225-430-C. These proposed changes expand the eligible pool of providers to deliver early intervention services for infants and toddlers with disabilities and their families.

## Small Business Impact

*As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors*

*have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.*

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(1) There is a continued need for the regulation. Virginia's early intervention system, the Infant & Toddler Connection of Virginia, must include, at a minimum, the components required by Part C of the Individuals with Disabilities Education Act at 20 USC § 1435(a) and at 34 CFR Part 303.

(2) A commonality across the complaints and comments received concerning the regulation are calls to expand the program to cover more children.

(3) The complexity of the regulation is appropriate in that it closely conforms to the federal requirements; and, the regulation is also clearly written and easily understandable to the families seeking services, program staff, the community, and the public.

(4) The regulation does not overlap, duplicate, or conflict with federal or state law or regulation.

(5) The regulation was last evaluated less than four years ago, and fast track action was promulgated as a result to update certain sections to appropriately align with relevant DMAS regulations. Technology, economic conditions, or other factors have not changed in the area affected by the regulation.

The agency's decision, consistent with applicable law, will have no economic impact on small businesses.

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