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Fast-Track Regulation Agency Background Document

Agency name	Department of Behavioral Health and Developmental Services
Virginia Administrative Code (VAC) Chapter citation(s)	12VAC35-105
VAC Chapter title(s)	Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services
Action title	Valid discharge plans (HB434, 2024)
Date this document prepared	September 27, 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*.

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.

This action amends the existing regulation governing a provider's responsibilities upon discharging an individual from services or when an individual withdraws from a program (12VAC35-105-693) by adding a new subsection to effectuate an additional mandate on substance abuse (substance use disorder) treatment facilities enacted by [Chapter 808](#) of the 2024 Acts of Assembly.

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)
Rules and Regulations for Licensing Providers by DBHDS (Licensing Regulations)

State Board of Behavioral Health and Developmental Services (State Board)

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 to initiate a fast-track action to amend the “Discharge” section of the Licensing Regulations at its meeting on September 25, 2024.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

Consistent with Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process.

Chapter 808 of the 2024 Acts of Assembly mandated DBHDS to amend its regulations to require inpatient and residential substance abuse treatment providers “prepare and record a valid discharge plan” with certain minimum provisions.

DBHDS expects this fast-track rulemaking action to be noncontroversial because it is nondiscretionary and aligns with the legislative mandate that passed the General Assembly unanimously.

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.

Section 37.2-203 of the Code of Virginia authorizes the State Board to adopt regulations necessary to carry out the provisions of Title 37.2 and other laws of the Commonwealth administered by DBHDS, specifically including the development of long-range programs and plans for substance abuse services.

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.

1. The rationale for this regulatory action is the legislative mandate from Chapter 808 of the 2024 Acts of Assembly.
2. Ensuring care coordination and appropriate discharge plans of individuals discharged or withdrawing from residential substance abuse programs may foster better outcomes.

3. The legislation, and this subsequent amendment, is intended to facilitate the return of individuals who are discharged or withdraw from substance abuse treatment programs to their home localities by requiring providers to engage in more intensive service coordination.

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.

A new subsection D is added to 12VAC35-105-693, the regulation governing provider responsibilities related to discharging individuals from service, that enumerates the additional requirements applicable to substance abuse treatment providers.

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.

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1. The primary advantage to the public is a potential for better outcomes for individuals leaving substance abuse treatment programs by improving service coordination after their discharge or withdrawal from treatment. There are no known disadvantages to the public.
 2. The primary advantages to the agency or the Commonwealth are likewise the potential for better outcomes for individuals leaving substance abuse treatment programs by improving service coordination after discharge or withdrawal from treatment. There are no known disadvantages to the agency or the Commonwealth.
 3. The regulated community of substance abuse treatment providers is disadvantaged by an increased compliance burden. There are no other pertinent matters of interest to regulated communities, government officials, or the public.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.

There are no regulatory changes more restrictive than applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. “Particularly affected” are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or

regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

- No other state agencies are particularly affected.

Localities Particularly Affected

- No localities are particularly affected.

Other Entities Particularly Affected

- Inpatient and residential substance abuse treatment providers are particularly affected to a degree not experienced by other DBHDS-licensed providers.

Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources</p>	<p>There is no fiscal impact on DBHDS from this regulatory action.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>There is no fiscal impact on other state agencies from this regulatory action.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>This regulatory action is intended to promote better outcomes for individuals leaving substance abuse treatment programs by requiring providers to engage in more intensive post-discharge service coordination.</p>

Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>There is no fiscal impact on localities from this regulatory action.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>This regulatory action is intended to promote better outcomes for individuals leaving substance abuse treatment programs by requiring providers</p>

	to engage in more intensive service coordination prior to discharge.
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Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

<p>Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.</p>	<p>Inpatient and residential substance abuse treatment providers will be affected by this regulatory action.</p> <p>Individuals receiving substance abuse treatment who are discharged or withdraw from service, and their families, will also be affected by the regulatory change.</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that:</p> <p>a) is independently owned and operated and;</p> <p>b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>DBHDS currently licenses 109 providers of inpatient and residential substance abuse treatment providers (40 inpatient, 69 residential, with 3,995 beds as of 9/30/24) that will be required to comply with the provisions of this new regulatory requirement. Provider entities generally satisfy the definition of a small business in § 2.2-4007.1.A.</p> <p>A total of 23,246 unduplicated individuals received substance use disorder treatment services in Virginia’s publicly funded system of services in FY 2023¹. However, it is not possible to estimate how many of those individuals would receive residential or inpatient services and of that group, how many will be discharged or who might withdraw and, therefore, subject to the provisions of this regulatory action.</p>
<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to:</p> <p>a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses;</p> <p>b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change;</p> <p>c) fees;</p> <p>d) purchases of equipment or services; and</p> <p>e) time required to comply with the requirements.</p>	<p>Small businesses that provide licensed inpatient or residential substance abuse treatment services may incur additional compliance costs as a result of this nondiscretionary regulatory change, such as:</p> <ul style="list-style-type: none"> • Staff resources to coordinate care with individuals’ payors; • Administrative costs associated with increased reporting and recordkeeping; or • Legal services or other disciplinary expenses in the event of sanctions.
<p>Benefits the regulatory change is designed to produce.</p>	<p>This regulatory action is intended to promote better outcomes for individuals leaving or withdrawing substance abuse treatment programs by requiring providers to engage in</p>

¹ Virginia Addiction and Recovery Council *Report on Treatment Programs for FY 2023*.

	more intensive service coordination prior to discharge or withdrawal.
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Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

There is no regulatory alternative that complies with the General Assembly’s legislative mandate pursuant to Chapter 808 of the 2024 Acts of Assembly.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B of the Code of Virginia, 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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.

There is no regulatory alternative that complies with the General Assembly’s legislative mandate pursuant to Chapter 808 of the 2024 Acts of Assembly.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

Consistent with § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

DBHDS is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to: Ruth Anne Walker, P.O. Box 1797, Richmond, VA 23218-1797, email ruthanne.walker@dbhds.virginia.gov, or fax 804-371-4609. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. 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. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
12VAC35-105-693. Discharge.		Six existing subsections, applicable to all DBHDS-licensed service providers, enumerate requirements for: <ul style="list-style-type: none"> • discharge policies and procedures, including medical and clinical criteria; • minimum provisions for discharge instructions; • making appropriate arrangements/referrals to post-discharge service providers; • discharge plans; • individual and family participation; and • detailed written discharge summaries. 	Adds a new subsection, applicable only to inpatient and residential substance abuse treatment programs, requiring that the provider coordinate care with the payor of the individual who is being discharged or who withdraws. The regulatory change also reiterates the existing requirement for providers to coordinate with public and private agencies to make appropriate arrangements and referrals. <p>The rationale for the regulatory change is to comply with legislative directive in Chapter 808 of the 2024 Acts of Assembly.</p> <p><u>D. Prior to discharge from an inpatient or residential substance abuse (substance use disorder) treatment program of any individual admitted to the service or of any individual who has received treatment withdraws from the program,</u></p>

			<p><u>the provider shall prepare and record a valid discharge plan that (i) identifies, and describes the coordination by the provider with, public and private agencies or persons able to deliver any needed services; and (ii) provides care coordination with the individual's payor to assist the individual in executing the discharge plan. Failure by an inpatient or residential program to prepare and record valid discharge plans may result in issuance of a licensing report, reduction in license status, or sanctions enumerated in § 37.2-419 of the Code of Virginia, as deemed appropriate by the department.</u></p>
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