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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Department of Behavioral Health and Developmental Services (DBHDS)
Virginia Administrative Code (VAC) Chapter citation(s)	12VAC35-272
VAC Chapter title(s)	Regulations for Residential and Inpatient Services (12VAC35-272)
Action title	Part 2 of 7: Regulatory Overhaul; Residential Services
Date this document prepared	April 23, 2025

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 the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

In 2017, the Department of Behavioral Health and Developmental Services (DBHDS) conducted a periodic review of the Licensing Regulations. During that review, the Office of Regulatory Affairs (ORA) conducted extensive research on how other states structure their Licensing Regulations. The department also considered comments from internal subject matter experts, providers, and sister agencies when recommending the new licensing structure.

As a result of that review, DBHDS determined the regulations should be amended and broken into service-specific chapters. Therefore, DBHDS will repeal the existing Children's Residential and Licensing Regulations, replacing them with one overarching General Chapter applicable to all providers and five (5) service-specific chapters: Residential, Center-Based, NonCenter-Based, Case Management, and Crisis.

This methodology allows more detailed service-specific regulations where appropriate and offers more clarity for providers regarding exactly which provisions of the licensing regulations apply to their services.

This action will enact the Residential service-specific chapter.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

Board – State Board for Behavioral Health and Developmental Services

Children’s Residential Regulations – Regulations for Children’s Residential Facilities (12VAC35-46)

DBHDS -- Department of Behavioral Health and Developmental Services

Licensing Regulations – Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services (12VAC35-105)

ORA – DBHDS Office of Regulatory Affairs

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.”

Section 2.2-4007.1 of the Virginia Administrative Process Act requires all regulations to be reviewed every four years to determine whether they should be continued without change or be amended or repealed. In 2017, DBHDS conducted a [Periodic Review](#) of the Licensing Regulations and recommended that the regulations should be amended.

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.

Sections 37.2-203 and 37.2-304 of the Code of Virginia authorize the Board to adopt regulations that may be necessary to carry out the provisions of Title 37.2 and other laws of the Commonwealth administered by the Commissioner and DBHDS.

At its meeting on April 2, 2025, the Board voted to authorize staff to initiate this regulatory action.

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

Licensing regulations are integral to protect the health, safety, and welfare of individuals served by behavioral health, substance use, and developmental disability providers within the Commonwealth of Virginia. The existing Children’s Residential and Licensing Regulations often result in confusion because the regulations are necessarily lengthy and as currently structured, contain the requirements for all types of providers in a single chapter. This structure makes the regulations difficult to navigate and often leaves providers unsure or frustrated regarding which provisions of the regulations apply to them.

The purpose of this action is to promulgate the Residential service-specific regulations as part of the comprehensive regulatory overhaul, which will make the regulations more accessible and understandable while allowing space to provide more detail where appropriate for specific provider types.

Substance

Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

This regulatory overhaul will repeal the existing Children’s Residential and Licensing Regulations, replacing them with one overarching General Chapter applicable to all providers and five (5) service-specific chapters: Residential, Center-Based, NonCenter-Based, Case Management, and Crisis. All provisions of the existing Children’s Residential and Licensing Regulations would be reenacted within the new “umbrella” General Chapter and five service-specific chapters, with corrections, streamlining, and strengthening of regulations where appropriate.

This restructuring methodology allows more detailed service-specific regulations where appropriate and more clarity for providers regarding exactly which provisions of the department’s regulations apply to their services.

In anticipation of this overhaul the Department convened two rounds of Regulatory Advisory Panels (RAPs), the first being held in 2019 ([September](#) & [October](#)) and the second being held in the summer of 2023 ([June 20](#), [June 27](#) & [July 11](#)). In addition, drafts of all six of the proposed regulatory chapters have been posted for public comment as General Notices on the Virginia Regulatory Town Hall.

This chapter will be the Residential service-specific chapter (12VAC35-272). The General Notice for the Residential chapter can be found here: [Residential](#).

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 are no viable alternatives to the regulatory action, which decreases the regulatory and compliance burden on providers by improving clarity.

**Periodic Review and
Small Business Impact Review Announcement**

This NOIRA is not being used to announce a periodic review or a small business impact review.

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. In addition, as required by § 2.2-4007.02 of the Code of Virginia, describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

The Department of Behavioral Health and Developmental Services is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

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 Susan Puglisi, 1220 Bank Street, Richmond Virginia, 23219, and susan.puglisi@dbhds.virginia.gov or 804-975-0538. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.