



COMMONWEALTH of VIRGINIA
 STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

DRAFT MEETING AGENDA
 Tuesday, July 11 & Wednesday July 12, 2017

DBHDS Central State Office, 13th Floor Main Conference Room, Jefferson Building
 1220 Bank Street, Richmond, VA

Board Biennial Planning Retreat

Tuesday July 11, 2017 9:30 a.m.

DBHDS Central State Office, 13th Floor Main Conference Room, Jefferson Building
 1220 Bank Street, Richmond, VA

9:30 a.m.	Welcome and Introductions	Paula Mitchell <i>Chair</i>
9:35 a.m.	Brief Business: ID Badge Forms	Will Frank <i>DBHDS Legislative Affairs Director</i>
9:40 a.m.	Travel and Reimbursement Policies	Paula Mitchell <i>Chair</i>
10:00 a.m.	Disability Law Center of Virginia Update	Colleen Miller <i>Executive Director</i>
10:20 a.m.	Orientation, Powers & Duties	Will Frank <i>DBHDS Legislative Affairs Director</i>
11:00 a.m.	National Alliance for Mental Illness (NAMI) Virginia	Stephany Melton Hardison <i>Interim Executive Director</i>
11:20 a.m.	Other Business <ul style="list-style-type: none"> • Proposed 2018 Meeting Dates • Proposed Meeting Topics • Letter to Governor • Nomination Procedures 	Will Frank <i>DBHDS Legislative Affairs Director</i>
12:00 p.m.	Lunch	
1:00 p.m.	Board Discussion <ul style="list-style-type: none"> • Goals, Challenges, Expectations • Priorities 	Paula Mitchell <i>Chair</i>
2:00 p.m.	Adjourn	Paula Mitchell <i>Chair</i>

Regular Meeting

Tuesday July 11, 2017 2:00 p.m.

**DBHDS Central State Office, 13th Floor Main Conference Room, Jefferson Building
1220 Bank Street, Richmond, VA**

	2:00	Policy Committee Meeting 13 th Floor Conference Room	Vacant <i>Vice-Chair</i>	8
	2:00	Planning & Budget Committee 2 nd Floor Conference Room	Paula Mitchell <i>Chair</i>	9

Dinner & Tour

Tuesday July 11, 2017, 5:00 p.m. – 7:00 p.m.

6801 Lucy Corr Boulevard Chesterfield, Virginia 23832

5:00 – 7:00 p.m.	Dinner & Tour	
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Regular Meeting

Wednesday July 12, 2017 9:00 a.m.

**DBHDS Central State Office, 13th Floor Main Conference Room, Jefferson Building
1220 Bank Street, Richmond, VA**

1.	9:00	Commissioner’s Report	Kathy Drumright <i>Chief Deputy Commissioner</i>	
2.	9:30	Call to Order and Introductions Approval of July 12, 2017 Agenda ➤ <i>Action Required</i>	Paula Mitchell <i>Chair</i>	1-2
3.	9:40	Officer Elections A. Presentation of the Slate of Candidates B. Nominations from the Floor C. Election • <i>Action Required</i>	Chair Nominating Committee	
4.	10:00	Approval of Draft Minutes	New Chair	5-7

		<p align="center">Regular Meeting, April 5, 2017</p> <ul style="list-style-type: none"> • <i>Action Required</i> 		
5.	10:10	Public Comment	Invited Participants	
6.	10:40	<p>Regulatory Actions:</p> <p>A. General Update – Matrix</p>	<p>Ruth Anne Walker</p> <p><i>Administrative and Regulatory Coordinator,</i></p> <p><i>Division of Quality Management and Development</i></p>	10-40
7.	11:10	<p>SHRC</p> <p>Annual Report</p> <ul style="list-style-type: none"> ➤ <i>Action Required</i> <p>Membership Appointments</p> <ul style="list-style-type: none"> ➤ <i>Action Required</i> 	<p>Deb Lochart</p> <p><i>Director, Office of Human Rights</i></p>	
8.	11:30	Service Quality Process Management (SQPM) Presentation	<p>Allen Wass,</p> <p><i>Director of Business Analytics</i></p> <p>Stacy Gill,</p> <p><i>Director of Mental health Services</i></p>	
9.	12:00	<p>Lunch: Break and Collect Lunch</p> <p><i>(Working Lunch, Peer Certification Update)</i></p>	<p>Becky Sterling,</p> <p><i>Director, Office of Recovery Services</i></p>	
10.	1:00	HB1426 Alternative Transportation Workgroup	<p>Will Frank</p> <p><i>Director, Legislative Affairs</i></p>	
11.	1:30	<p>Committee Reports</p> <p>A. Policy Development & Evaluation</p> <p>B. Planning & Budget</p>	<p>Holly Mortlock</p> <p><i>Director, Policy</i></p> <p>Will Frank</p> <p><i>Director, Legislative Affairs</i></p>	
12.	2:00	Capital Budget Submissions	Marshall Wilson, P.E.,	3

			<i>Architecture and Engineering</i>	
13.	2:30	Miscellaneous A. Liaison Assignments B. Board Liaison Reports C. Board Letter to Governor	New Chair	
14.	3:00	VACSB Update	Jennifer Faison, <i>VACSB Executive Director</i>	
15.	3:20	Next Meeting Information	Will Frank <i>Director, Legislative Affairs</i>	
16.	3:30	Adjournment	New Chair	

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES
DRAFT MEETING MINUTES
April 5, 2017
NW Works, 3085 Shawnee Drive, Winchester, VA 22601

Wednesday
April 5, 2017

REGULAR MEETING

Members Present	Paula N. Mitchell Chair , Gretta Doering Vice-Chair , The Hon. Amelia Ross-Hammond, Ph.D., Sandra Price-Stroble, Elizabeth Hilscher, Jack Bruggeman, Jennifer Spangler (by phone)
Members Absent	Calendria Jones, James Reinhard, M.D.,
Staff Present	Will Frank, Legislative Affairs Director Holly Mortlock, Policy Director Dev Nair, Assistant Commissioner for Quality Management Michael Schaefer, Assistant Commissioner of Forensic Services Ruth Anne Walker, Regulatory Coordinator
Call to Order and Introductions	At 9:45 a.m. Chair Paula Mitchell called the meeting to order and called for introductions of those present.
Approval of Agenda	The Board unanimously adopted the April 5, meeting agenda.
Public Comment	The Chair called for public comments. No public comments were offered.
Interim Commissioner's Report	The Interim Commissioner's Report was provided by Assistant Commissioner for Quality Management Dev Nair. Dr. Nair discussed the outcome of the General Assembly session, including STEP-Virginia, Same Day Access funding, and next steps to ensure STEP-VA is sustainable. He also discussed efforts to address the state hospital census, and the extraordinary barriers list, and the funding to plan for system alignment with Medicaid, and incentivize development of community services. Members asked questions.
Presentation on Quality Management and Development	Presentation was provided by Dev Nair on Division activities including licensing and human rights, ensuring that activities are meeting a basic standard and a focus on community and hospital quality measures. QMD is also working to ensure that quality is integrated across DBHDS and the provider community, and that quality supports program areas. Other activities include developing a dashboard to better track activities to develop a longer term strategic focus. The Settlement Agreement has been instrumental in improving quality development, and QMD is increasing focus on integrating behavioral health services into such efforts.
Legislative Update	Will Frank provided the Legislative update and a debrief on DBHDS legislative activities.
Regulatory Actions	Ruth Anne Walker, Regulatory Coordinator provided an overview of recent DBHDS regulatory actions related to peer recovery specialists and the

geographic location of opioid replacement treatment sites.
The Board unanimously approved both regulatory actions.

Lunch Break

Overview of Mental Health in Jails

Assistant Commissioner for Forensic Services Michael Schaefer provided an update on Behavioral Health in Jails.

Committee Reports

Holly Mortlock and Gretta Doering provided the Policy and Evaluation Committee update.

The Committee requested Board approval for changes to Policy 1007. Jack Bruggeman motioned to approve the changes and Beth Hilscher seconded. The Board unanimously approved the recommendations.

The committee requested Board approval to rescind policy 4037. Amelia Ross Hammond motioned and Jack Bruggeman seconded. The Board unanimously approved the recommendations.

Will Frank provided the update for the Planning and Budget Committee.

The committee discussed plans for the July Biennial Planning Retreat. They requested an update on STEP-VA, ID badges for all board members, an orientation for new Board Members, and that various stakeholder groups be invited to offer comments.

The committee also heard an update on the Comprehensive State Plan.

Liaison Reports

Beth Hilscher provided a report describing her outreach to Henrico Area Mental Health Services, and learned about their recent partnership with the Daily Planet for primary care screenings and integrated care.

Sandra Price-Stroble- conducted visits to psychosocial rehabilitation facilities, such as Sunshine House and Eagles Nest.

Jack Bruggeman reported that Fairfax/Falls Church has undertaken a big effort to Diversion First. The CSB has expressed concerns with waiver re-design and cost to CSB. In Fairfax/Falls Church there are 491 Priority one on wait list compared to Northwest that has 81 on wait list. This is an ongoing issue.

Amelia Ross Hammond gave an update on the construction of Virginia Beach's new Human Resource Services Building which will house and expand services for CSB as well as Social Services in the City. She also shared that Virginia Beach's Executive Director would be pleased to host the Spring 2018 meeting in Virginia Beach and share their new electronic filing system, and innovative public/private hospital partnerships, etc.. She also attended a NAMI event and participated in a meeting about the Opioid epidemic.

Paula Mitchell reported that Blue Ridge Behavioral Health has already implemented Same Day Access. New River Valley Community Services is partnering with local primary care to coordinate psychiatry and primary

care needs.

**Next Meeting
Information**

July 11-12, 2017 in Richmond, VA

Adjournment

Having no further business to discuss the meeting adjourned at 2:50 p.m.

Planning & Budget Committee
AGENDA
July 11, 2017
DBHDS Central State Office,
1220 Bank Street, Richmond, VA
2nd Floor Conference Room

- I. Call to Order**
- II. 2018 Meeting Topics**
- III. Letter to Governor**
- IV. Next Meeting: October 2017**
- V. Other Business**
- VI. Adjournment**

Policy and Evaluation Committee

AGENDA

July 11, 2017

**DBHDS Central State Office,
1220 Bank Street, Richmond, VA
13th Floor Conference Room**

- I. Call to Order**
- II. Welcome and Introductions**
- III. Adoption of Minutes, April 5, 2017**
- IV. Review of Policy Committee Role and Procedures** *(DBHDS staff experts)*
- V. Review of Policies and Discussion**
(DBHDS staff experts will provide background on current policies and be available to answer questions. Voting on current policies will occur at the October committee meeting.)
- VI. Next Steps in Policy Review**
- VII. Next Meeting: October 11, 2017**
- VIII. Other Business**
- IX. Adjournment**

REGULATORY ACTIVITY STATUS REPORT: JULY 2017 (REVISED 06/23/17)

Board STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES						
VAC CITATION	CHAPTER TITLE (FULL TITLE)	REGULATIONS IN PROCESS			LAST ACTIVITY	LAST PERIODIC REVIEW*
		PURPOSE	STAGE	STATUS		
<u>12 VAC 35-12</u>	Public Participation Guidelines	To facilitate public involvement in the regulatory process	<i>Periodic Review</i>	<ul style="list-style-type: none"> Action Requested: Initiate periodic review. 	08/31/2009	--
<u>12 VAC 35-105 Section 925 B.</u>	Licensing-Adult (Rules and Regulations for Licensing Facilities and Providers of Mental Health, Mental Retardation and Substance Abuse Services)	To update the existing regulation to reflect changes to state law. By deleting all language in Section 925 B., the remaining language would simply cross-reference to § 37.2-406.	Fast-Track	<ul style="list-style-type: none"> Current: Submitted to HHR on June 8, 2017; pending. No action requested of the Board. 	11/07/2011	05/03/2013
<u>12 VAC 35-105</u>	<i>Licensing-Adult (Rules and Regulations for Licensing Facilities and Providers of Mental Health, Mental Retardation and Substance Abuse Services)</i>	<i>In accordance with the CMS Final Rule and the Settlement Agreement: clarifications to requirements for the health, safety, care and treatment for adults who receive services from providers of residential services.</i>	<i>Not yet filed: Emergency/NOIRA</i>	<ul style="list-style-type: none"> Current: OAG returned a second revised draft on May 19, 2017; third revision to OAG June 23, 2017. 	11/07/2011	05/03/2013
<u>12 VAC 35-105 Section 20.</u>	<i>Licensing-Adult (Rules and Regulations for Licensing Facilities and Providers of Mental Health, Mental Retardation and Substance Abuse Services)</i>	<i>In accordance with Chapter 136 of the 2017 General Assembly to include OTs and OTAs as QMHPs.</i>	<i>Not yet filed: Fast-Track</i>	<ul style="list-style-type: none"> Current: General Notice closes June 28, 2017. Comments will be reviewed and a draft developed for October. 	11/07/2011	05/03/2013
<u>12 VAC 35-115 Section 30.</u>	Human Rights (Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Behavioral Health and Developmental Services)	To update the existing regulation by adding LBAs to 12 VAC35-115-105(B) only.	Fast-Track	<ul style="list-style-type: none"> Action Requested: Initiate fast-track. <p>[Permanent revised became effective on February 9, 2017.]</p>	02/09/2017	02/09/2017
<u>12 VAC 35-190</u>	Regulations Establishing Procedures for Voluntarily Admitting Persons Who Are Mentally Retarded to State Mental Retardation Facilities	To clearly articulate requirements and actions required to admit a person to a training center; define due process protections afforded to persons who are being admitted and to their families.	<i>Periodic Review</i>	<ul style="list-style-type: none"> Action Requested: Initiate periodic review. 	07/20/2009	

<u>12 VAC 35-200</u>	Regulations for Respite and Emergency Care Admission to Mental Retardation Facilities	To clearly articulate requirements required to access emergency services and respite care in a training center.	<i>Periodic Review</i>	<ul style="list-style-type: none"> • Action Requested: Initiate periodic review. 	08/17/2009	
<u>12 VAC 35-210</u>	Regulations to Govern Temporary Leave from State Mental Health and Mental Retardation Facilities	To establish the general process and requirements related to temporary leave from state facilities, including the conditions for granting leave.	<i>Periodic Review</i>	<ul style="list-style-type: none"> • Action Requested: Initiate periodic review. 	11/1/2011	12/19/2011
<u>12VAC35-250</u>	Peer Recovery Specialist Certification	To establish certification requirements for peer recovery specialists (Item 311.B. of the <i>2016 Appropriation Act</i>).	<i>NOIRA to Proposed</i>	<ul style="list-style-type: none"> • Current: Emergency effective on May 12, 2017. • Action Requested: Initiate proposed stage for permanent adoption. 	05/12/2017	--

*Shows the last time the Periodic Review feature on Town Hall was used for this regulation. A comprehensive periodic review may also have been included during other standard regulatory actions.



COMMONWEALTH of VIRGINIA

Jack Barber, M.D.
INTERIM COMMISSIONER

DEPARTMENT OF
BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Post Office Box 1797
Richmond, Virginia 23218-1797

Deborah M. Lochart
Director
Office of Human Rights
Telephone (804) 786-0032
Fax (804) 371-6638
www.dbhds.virginia

MEMORANDUM

To: Members, State Board of Behavioral Health and Developmental Services

From: Ruth Anne Walker, Regulatory Coordinator

Date: June 28, 2017

Re: Regulatory Package

I. Required Periodic Reviews

Background: Existing regulations must be examined at least every four years to review statutory authority and assure that the regulations do not exceed the Board's statutory authority. Investigation should be conducted for any alternatives to the regulation and any need to modify the regulation to meet current needs.

Purpose: Four regulations are submitted to the Board for consideration for review. Three pertain to admission to or leave from DBHDS facilities; the fourth is the public participation guidelines regulation required of all non-exempt state agencies.

Action Requested: Direct that a periodic review is initiated for the following regulations.

VAC Citation	Title	Last Activity	Date
<u>12 VAC 35-12</u>	Public Participation Guidelines	Fast-Track Stage Published	8/31/2009
<u>12 VAC 35-190</u>	Regulations Establishing Procedures for Voluntarily Admitting Persons Who Are Mentally Retarded to State Mental Retardation Facilities	Final Stage: Published	7/20/2009
<u>12 VAC 35-200</u>	Regulations for Respite and Emergency Care Admission to Mental Retardation Facilities	Final Stage: Published	8/17/2009
<u>12 VAC 35-210</u>	Regulations to Govern Temporary Leave from State Mental Health and Mental Retardation Facilities	Periodic Review	11/1/2011

Next Steps:

- If approved, staff initiates the periodic review. (Review process chart attached.)
- At the conclusion of the 21-day comment period, staff develops recommended Board action on each of the regulations, for consideration at the October meeting. The choices for action are:
 - A. Propose to retain the regulation in its current form.
 - B. Propose to amend or abolish the regulation. (Notice of Intended Regulatory Action)
 - C. Propose to amend the regulation through an exempt action.

The portion of your package related to periodic reviews contains the following attachment:

- A chart of the periodic review process.
The current regulations may be viewed on Town Hall:
<http://townhall.virginia.gov/L/ViewBoard.cfm?BoardID=65>

II. Chapter 250: Peer Recovery Specialists

Background: On April 5, 2017, the State Board voted to adopt this emergency regulation and initiate regulatory action for the emergency and for the NOIRA to start the standard process for permanent adoption. The effective dates for the emergency regulation are May 12, 2017, through November 11, 2018.

Purpose: The public comment period for the NOIRA began on May 29, 2017, and closed on June 28, 2017. No comments were received as of this mailing. Three planned changes from the emergency regulation in the attached draft proposed regulation are intended to accommodate the following:

- Upon promulgation of regulations by the Board of Counseling, registration will begin with the Board of Counseling.
- Upon promulgation of this action by the State Board, permanent regulations will allow DBHDS to continue to set out the requirements for qualifications, education, and experience of individuals eligible to register with the Board of Counseling as “registered” peer recovery support specialists.

Action Requested: Approve the attached draft as the proposed regulation and initiate the proposed stage of the standard permanent regulatory process.

VAC Citation	Title	Last Activity	Date
12 VAC 35-250	Peer Recovery Specialists	Close of NOIRA public comment	June 28

Next Steps:

- If approved, staff initiates the proposed stage. (Standard process chart attached.)

The portion of your package related to periodic reviews contains the following attachment:

- Regulatory Item II: Ch.250 Draft Proposed Regulation
- Regulatory Item II: Town Hall Form.
- A chart of the Standard process.

III. Human Rights Regulation

Background: The Human Rights Regulations received extensive revisions to improve the ability of the Office of Human Rights to perform its Code mandated responsibilities and maximize resources in a manner that promotes the vision of recovery, self-determination, empowerment, and community integration for individuals receiving services. These permanent revisions became effective on February 9, 2017.

Purpose: During the rollout of the regulations an inadvertent “barrier” was discovered in 12 VAC35-115-105(B) (Behavioral Treatment Plans). This subsection allow providers to use individualized restrictions such as restraint or time out in a behavioral treatment plan to address challenging behaviors that present an immediate danger to the individual or others, but only after a licensed professional has conducted a detailed and systematic assessment of the behavior and the situations in which the behavior occurs.

The Human Rights Regulations defines “licensed professional” as ‘a licensed physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, licensed or certified substance abuse treatment practitioner, or licensed psychiatric nurse practitioner.’ This action will add language to subsection B to state:

"B. Providers may use individualized restrictions such as restraint or time out in a behavioral treatment plan to address challenging behaviors that present an immediate danger to the individual or others, but only after a licensed professional or a licensed behavior analyst has conducted a detailed and systematic assessment of the behavior and the situations in which the behavior occurs. Providers shall document in the individual's services record that the lack of success or probable success of less restrictive procedures attempted or considered, and the risks associated with not treating the behavior, are greater than any risks associated with the use of the proposed restrictions."

Action Requested: Approve the attached draft regulation and initiate a fast-track action.

VAC Citation	Title	Last Activity	Date
<u>12 VAC 35-115</u>	Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Behavioral Health and	Final Stage Published	Jan. 9

	Developmental Services		
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Next Steps:

- If approved, staff initiates the fast-track process. (Fast-track process chart attached.)

The portion of your package related to periodic reviews contains the following attachment:

- Regulatory Item III: Ch.115 Draft Fast-Track Regulation.
- Regulatory Item III: Town Hall Form.
- A chart of the fast-track process.

IV. Regulatory Plan: July 2017 – December 2018

Background: There are 13 BHDS regulations. Currently, eight regulations are due for periodic review. The regulatory plan for the next 18 months addresses the required periodic reviews and shows the forward movement of all known regulatory action items.

Purpose: Clarity of expectations for State Board meeting agenda items.

- A handout of a chart describing the plan by activity at each board meeting will be provided at the meeting.

Action: Endorsement of the regulatory plan.

Cc: Jack Barber, MD, Interim Commissioner
Kathy Drumwright, Deputy Commissioner
Dev Nair, Ph.D., Assistant Commissioner for Quality Management and
Development



townhall.virginia.gov

Proposed Regulation Agency Background Document

Agency name	Department of Behavioral Health and Developmental Services
Virginia Administrative Code (VAC) citation(s)	12 VAC35-250
Regulation title(s)	Peer Recovery Specialists
Action title	<i>Qualifications, Education, and Experience</i> for Peer Recovery Specialists
Date this document prepared	June 28, 2017

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

Peer Recovery Specialist (“PRS”) staff are individuals who are, or family members of minor or adult children who are, receiving or have received mental health or substance abuse services. PRS are employed or seek to be employed to deliver collaborative support to others who are seeking to recover from a primary diagnosis of mental illness, addiction, or both. As of December 31, 2016, there were 430 certified peer recovery specialists employed across Virginia in public or private mental health or substance use disorder service settings. The availability of PRS services is expected to expand through the Virginia Medicaid Addiction and Recovery Treatment Services (ARTS) new substance use disorder (SUD) benefit. Under the ARTS benefit, peer support services will be made available to Medicaid members effective on July 1, 2017. Peer support resources will be an integral component of community integration, wellness, resiliency, and recovery.

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 the Department. *This regulation provides administrative structure for DBHDS qualifications, education, and experience for peer recovery specialists to ensure that individuals providing peer recovery services in Virginia’s public system of behavioral health services demonstrate a baseline of practical knowledge.*

Chapters 418 and 426 of the 2017 General Assembly authorized the Department of Health Professions Board of Counseling to promulgate emergency regulations for the registration of peer recovery specialists who meet the qualifications, education, and experience requirements established by regulations of the State Board of Behavioral Health and Developmental Services.

Therefore, upon promulgation of regulations by the Board of Counseling, registration will begin with the Board of Counseling. Also upon promulgation of this action by the State Board, permanent regulations will allow DBHDS to continue to set out the requirements for qualifications, education, and experience of individuals eligible to be designated as registered peer recovery specialists.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.

“ARTS” means the Virginia Medicaid Addiction and Recovery Treatment Services (ARTS) new substance use disorder (SUD) benefit.

“DBHDS” means the Virginia Department of Behavioral Health and Developmental Services.

“State Board” means the State Board of Behavioral Health and Developmental Services.

“Recovery” means a process of change through which individuals with mental illness or substance use disorder improve their health and wellness, live self-directed lives, and strive to reach their full potential (as defined by SAMSHA).

“SAMSHA” means the U.S. Substance Abuse and Mental Health Services Administration.

“Peer Recovery Specialist” means a person who by education and experience is professionally qualified to provide collaborative services to assist individuals in achieving sustained recovery from the effects of mental illness, addiction, or both. A peer recovery specialist shall provide such services as an employee or independent contractor of the Department, a provider licensed by the Department, a practitioner licensed by or holding a permit issued from the Department of Health Professions, or a facility licensed by the Department of Health.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’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 the Department. On April 5, 2017, the State Board voted to adopt this emergency regulation and initiate regulatory action for the emergency and for the NOIRA to start the standard process for permanent adoption.

This regulation is necessary for *individuals to be designated as "peer recovery specialists"* to have a pathway for the workforce to provide peer services through the Virginia ARTS benefit, which was made available to Medicaid members receiving addiction treatment services at all levels of care effective on July 1, 2017.

Chapters 418 and 426 of the 2017 General Assembly authorized the Department of Health Professions Board of Counseling to promulgate emergency regulations for the registration of peer recovery specialists who meet the qualifications, education, and experience requirements established by regulations of the State Board of Behavioral Health and Developmental Services.

Upon promulgation of regulations by the Board of Counseling, registration will begin with the Board of Counseling. Also upon promulgation of this action by the State Board on *July 12, 2017 (pending)*, permanent regulations will allow DBHDS to continue to set out the requirements for qualifications, education, and experience of individuals eligible to register with the Board of Counseling as "registered peer recovery specialists".

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

With the creation of Medicaid coverage for peer services in Virginia, this regulation provides administrative structure for DBHDS *qualifications, education, and experience* for peer recovery specialists to ensure that individuals providing peer recovery services in Virginia's public system of behavioral health services demonstrate a baseline of practical knowledge. This is a reflection of the need for a standard of commonly understood evidenced-based best practices in the support of people with behavioral health conditions. This field of practice is expected to grow, as is Virginia's network of available peer recovery specialists.

Background

The following background information on billing is taken from the SAMHSA-HRSA Center for Integrated Health Solutions (CIHS) web site. (<http://www.integration.samhsa.gov/workforce/team-members/peer-providers>)

Billing for Peer Provided Integrated Health Services

- In the field of behavioral health, Medicaid billing for peer support services began in Georgia in 1999, and quickly expanded nationally in 2007 after the Center for Medicare and Medicaid Services (CMS) sent guidelines to states on how to be reimbursed for services delivered by peer providers. In 2012, Georgia was approved as the first state to bill for a peer whole health and wellness service delivered by WHAM-trained peer providers.
- CMS' Clarifying Guidance on Peer Services Policy from May 2013 states that any peer provider must "complete training and certification as defined by the state" before providing billable services.
- Beginning January 1, 2014, CMS expanded the type of practitioners who can provide Medicaid prevention services beyond physicians and other licensed practitioners, at a state's discretion, which can include peer providers.

These regulations are needed to support a strong peer workforce through financial sustainability that is ensured when peer services meet criteria for reimbursement like Medicaid billing.

General Explanation of Peer Recovery Services

According to the U.S. Substance Abuse and Mental Health Services Administration (SAMSHA), the adoption of “recovery” by behavioral health systems in recent years has signaled a dramatic shift in the expectation for positive outcomes for individuals who experience mental or substance use conditions. Today, when individuals with mental illness or substance use disorders seek help, they are met with the knowledge and belief that anyone can recover and manage their conditions successfully. The value of recovery and recovery-oriented behavioral health systems is widely accepted by states, communities, health care providers, peers, families, researchers, and advocates, including the U.S. Surgeon General, the National Academies Health and Medicine Division (HMD), and others.

Peer recovery support services help people:

- Enter and navigate systems of care;
- Remove barriers to recovery;
- Stay engaged in the recovery process; and
- Live full lives in communities of their choice.

The services include culturally and linguistically appropriate services that assist individuals and families working toward recovery from mental illness or substance use disorders. Peer recovery services support enhanced access to evidence-based practices such as supported employment; education; housing; assertive community treatment; illness management; and peer-operated services.

The services may be provided before, during, or after clinical treatment or may be provided to individuals who are not in treatment but seek support services. These services provided by peers are delivered through a variety of community and faith-based groups, treatment providers, schools, and other specialized services.

Substance

Please 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.

The changes in this proposed regulation differ from the emergency regulation only to accommodate the Department of Health Profession’s registration of peer recovery specialists, including assuming language for continuing education, and to delete a date-specific requirement for training during the transition to permanent regulations. Specifically,

- In Section 10, adding the definition: “Registered peer recovery specialist” means a peer recovery specialist who is registered by the Virginia Board of Counseling.
- In Section 20, adding a new subsection: D. Any person meeting the qualifications for a peer recovery specialist as set forth in this chapter shall be eligible for registration by the Virginia Board of Counseling.
- In Section 30.A.3., deleting the date by which training must be completed: Complete the DBHDS peer recovery specialist training by April 1, 2018.
- Delete Section 45.

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 there are no disadvantages to the public or the Commonwealth, please indicate.

Virginia’s Need

Comprehensive behavioral health is essential to population health and cost containment.

	National average of state spending	Virginia spending
Hospitals	23% of overall BH budget	46% of overall BH budget
Community	75% of overall BH budget (~\$89 per capita)	51% of overall BH budget (\$47 per capita)

Behavioral health issues drive up to 35% of medical care costs and individuals with mental illness or substance use disorders or co-occurring mental illness and substance use disorders cost up to 2-3 times as much as those without them.

Peer recovery services help to decrease reliance on institutions and increase focus on community services. The services also facilitate integration of behavioral health and primary care, as well as housing, employment, schools, social services.

This action makes permanent the formalization of the peer recovery specialist professional qualifications, *education, and experience* to provide collaborative services to assist individuals in achieving sustained recovery from the effects of mental illness, addiction, or both. With the creation of Medicaid coverage for peer services in Virginia, this regulation provides administrative structure for DBHDS qualifications, education, and experience for peer recovery specialists to ensure that individuals providing peer recovery services in Virginia’s public system of behavioral health services demonstrate a baseline of practical knowledge. This is a reflection of the need for a standard of commonly understood evidenced-based best practices in the support of people with behavioral health conditions. For those peer recovery specialists who wish to bill Medicaid for services, the additional option of registering with the Board of Counseling will be available and is noted in this proposed DBHDS regulation.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is 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.

These requirements are not more restrictive than federal requirements.

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 is no locality particularly affected by this proposed regulation.

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 State Board of Behavioral Health and Developmental Services is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the State 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 written comments for the public comment file may do so by mail, email or fax to Becky Sterling, DBHDS Recovery Services Director, Post Office Box 1797, Richmond, Virginia 23218-1797, 804-774-2277, fax (804) 371-6638, email becky.sterling@dbhds.virginia.gov. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: <http://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. 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 be held following the publication of this stage and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). 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.

<p>Projected cost to the state to implement and enforce the proposed regulation, including: a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures</p>	<p>Any additional responsibility to DBHDS required by the provisions of the regulation can be absorbed with existing resources.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>No additional cost will occur due to the changes from the emergency regulation to the permanent regulation.</p>
<p>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</p>	<p>Individuals who currently meet the requirements to be a peer recovery specialist as set forth in this Chapter are eligible to register with the Board of Counseling, if they wish to bill Medicaid for services.</p>
<p>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. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or</p>	

<p>has gross annual sales of less than \$6 million.</p>	
<p>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) 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.</p>	<p>Individuals needing the services will be positively impacted.</p> <p>As of June 15, 2017, there were 466 peer recovery specialists meeting the requirements of this chapter employed across Virginia in public or private mental health or substance use disorder service settings. The availability of peer recovery specialist services is expected to expand through the Virginia Medicaid Addiction and Recovery Treatment Services (ARTS) new substance use disorder (SUD) benefit. Under the ARTS benefit, peer support services will be made available to Medicaid members effective on July 1, 2017. Other than fees for receiving DBHDS training, obtaining certification through a certifying body, or to register with the Board of Counseling, there are no expected costs to the professionals.</p> <p>In regard to a) and b) specifically, there are no costs associated with these changes for small businesses.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>Peer recovery services help to decrease reliance on institutions and increase focus on community services. The services also facilitate integration of behavioral health and primary care, as well as housing, employment, schools, social services.</p> <p>This action makes permanent the formalization of the peer recovery specialist professional qualifications, <i>education, and experience; thus, the quality and the availability of the service</i> individuals seeking recovery will increase.</p>

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.

There are no other viable alternatives to the regulatory action to appropriately regulate this profession.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, 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.

There are no other alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law that will assure the level of professional standards across the Commonwealth.

Periodic review and small business impact review report of findings

If you are using this form to report the result of a periodic review/small business impact review that was announced during the NOIRA stage, please indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (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.

N/A.

Public comment

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

The public comment period for the NOIRA began on May 29, 2017, and closed on June 28, 2017. No comments were received.

Family impact

Please assess the impact of this 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.

The impact of this action will be to enhance family stability and encourage economic self-sufficiency.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation.

If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below.

Changes to the New Emergency Regulation for the Proposed Regulation

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
			<p>The following changes are intended to accommodate the following: Upon promulgation of regulations by the Board of Counseling, registration will begin with the Board of Counseling. Also upon promulgation of this action by the State Board, permanent regulations will allow DBHDS to continue to set out the requirements for qualifications, education, and experience of individuals eligible to register with the Board of Counseling as “registered peer recovery specialists”.</p>
10		<p>The language creates definitions for use in these regulations for:</p> <ul style="list-style-type: none"> • Certifying body • DBHDS Peer Recovery Specialist Training • Individual • Peer recovery support services • Recovery, resiliency, and wellness plan • Peer recovery specialist <p>The definitions correspond to code language in Senate Bill 1020 (2017), Title 37.2, and federally required language for Medicaid services.</p>	<p>Add the definition: “Registered peer recovery specialist” means a peer recovery specialist who is registered by the Virginia Board of Counseling</p>
20		<p>This language requires peer recovery specialists under this chapter to meet the requirements contained in the chapter in order to use the term “peer recovery specialist.”</p> <p>It also explains that certain family members can provide peer recovery services, and</p>	<p>Add a new subsection: D. Any person meeting the qualifications for a peer recovery specialist as set forth in this chapter shall be eligible for registration by the Virginia Board of Counseling</p>

		under which agencies authority PRS may operate.	
30		This section establishes minimum educational, training, and experience requirements, with an exception for those certified between April 16, 2015, through December 31, 2016, by a member board of the IC&RC. Two national certifying bodies are mentioned specifically, with accommodation allowing for other bodies to be considered by DBHDS.	Section 30.A.3., delete the date by which training must be completed: Complete the DBHDS peer recovery specialist training by April 1, 2018 .
45		This sets a minimum requirement for continuing education of 20 hours every two years.	[Delete section.] Transfer this responsibility to the Board of Counseling.

PROPOSED DRAFT: Ch. 250

CHAPTER 250

PEER RECOVERY SPECIALISTS

12VAC35-250-10. Definitions.

"Certifying body" means an organization approved by DBHDS that has as one of its purposes the certification of peer recovery specialists.

"DBHDS" means the Department of Behavioral Health and Developmental Services.

"DBHDS peer recovery specialist training" means the curriculum developed and approved by DBHDS for the training of persons seeking registration as peer recovery specialists.

"Individual" means a person who is receiving peer recovery support services. This term includes the terms "consumer," "patient," "resident," "recipient," and "client."

"Peer recovery support services" means nonclinical, peer-to-peer activities that engage, educate, and support an individual's self-help efforts to improve his health recovery resiliency and wellness.

"Recovery, resiliency, and wellness plan" means a set of goals, strategies, and actions an individual creates to guide him and his health care team to move the individual toward the maximum achievable independence and autonomy in the community.

"Peer recovery specialist" means a person who by education and experience is professionally qualified to provide collaborative services to assist individuals in achieving sustained recovery from the effects of mental illness, addiction, or both.

"Registered peer recovery specialist" means a peer recovery specialist who is registered by the Virginia Board of Counseling.

12VAC35-250-20. Peer recovery specialist.

A. Any person seeking to be a peer recovery specialist under this chapter shall (i) meet the qualifications, education, and experience requirements established in this chapter and (ii) hold a certification as a peer recovery specialist from a certifying body approved by DBHDS.

B. If the conditions in clauses (i) and (ii) of subsection A of this section are met, a person who is one of the following may act as a peer recovery specialist:

1. A parent of a minor or adult child with a mental illness or substance use disorder or co-occurring mental illness and substance use disorder similar to the individual receiving peer recovery services; or
2. An adult with personal experience with a family member with a mental illness or substance use disorder or co-occurring mental illness and substance use disorder similar to the individual receiving peer recovery services.

C. A peer recovery specialist shall provide such services as an employee or independent contractor of DBHDS, a provider licensed by DBHDS, a practitioner licensed by or holding a permit issued from the Department of Health Professions, or a facility licensed by the Department of Health.

D. Any person meeting the qualifications for a peer recovery specialist set forth in this chapter shall be eligible for registration by the Virginia Board of Counseling.

12VAC35-250-30. Qualifications.

A. Any person seeking to be a peer recovery specialist under this chapter shall:

1. Have a high school diploma or equivalent.
2. Sign and abide by the Virginia Peer Recovery Specialist Code of Ethics, Department of Behavioral Health and Developmental Services, effective April 4, 2017.

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3. Complete the DBHDS peer recovery specialist training ~~by April 1, 2018.~~
4. Show current certification in good standing by the U.S. Department of Veterans Affairs or one of the following certifying bodies:
 - a. National Association for Alcoholism and Drug Abuse Counselors (NAADAC);
 - b. A member board of the International Certification and Reciprocity Consortium (IC&RC); or
 - c. Any other certifying body approved by DBHDS.

B. Individuals certified through the Virginia member board of the IC&RC between April 16, 2015, through December 31, 2016, shall be exempt from completing the DBHDS peer recovery specialist training.

12VAC35-250-40. Minimum standards for certifying bodies.

DBHDS may approve a certification obtained from a certifying body that requires its certificate holders to:

1. Adhere to a code of ethics that is substantially comparable to the Virginia Peer Recovery Specialist Code of Ethics, Department of Behavioral Health and Developmental Services, effective April 4, 2017.
2. Have at least one year of recovery for persons having lived experience with mental illness or substance use disorder conditions, or lived experience as a family member of someone with mental illness or substance use disorder conditions.
3. Complete at least 46 hours of training from the list of curriculum subjects in 12VAC35-250-50.
4. Obtain a passing score on an examination offered by the certifying body testing knowledge of the curriculum subjects identified in 12VAC35-250-50.
5. Obtain and document at least 500 hours of supervised paid or volunteer experience providing peer recovery services in the three years prior to applying for certification. The experience hours shall have been in nonclinical, peer-to-peer recovery-oriented support activities designed to address an individual's recovery and wellness goals.

~~12VAC35-250-45. Continuing education.~~

~~Any person seeking to be a peer recovery specialist under this chapter shall be required to complete a minimum of 20 hours of continuing education every two years from the date of his certification by a certifying body. These hours shall be in courses that cover the topics listed in 12VAC35-250-50.~~

12VAC35-250-50. Curriculum requirements.

A. Any person seeking to be a peer recovery specialist under this chapter shall complete the DBHDS peer recovery specialist training.

B. The curriculum of the peer recovery specialist training shall include training on the following topics:

1. The current body of mental health and substance abuse knowledge;
2. The recovery process;
3. Promoting services, supports, and strategies for recovery;
4. Peer-to-peer services;
5. Crisis intervention;
6. The value of the role of a peer recovery specialist;
7. Basic principles related to health and wellness;
8. Recovery, resiliency, and wellness plans;

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9. Stage-appropriate pathways in recovery support;
10. Ethics and ethical boundaries;
11. Cultural sensitivity and practice;
12. Trauma and its impact on recovery;
13. Community resources; and
14. Delivering peer services within agencies and organizations.

DOCUMENTS INCORPORATED BY REFERENCE (12VAC35-250)

The Virginia Peer Recovery Support Specialist Code of Ethics, Department of Behavioral Health and Developmental Services (eff. 4/2017)



townhall.virginia.gov

Fast-Track Regulation Agency Background Document

Agency name	Department of Behavioral Health and Developmental Services
Virginia Administrative Code (VAC) citation(s)	12 VAC35-115
Regulation title(s)	Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Behavioral Health and Developmental Services (“Human Rights Regulations”)
Action title	Behavioral Treatment Plans
Date this document prepared	June 28, 2017

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The Human Rights Regulations received extensive revisions to improve the ability of the Office of Human Rights to perform its Code mandated responsibilities and maximize resources in a manner that promotes the vision of recovery, self-determination, empowerment, and community integration for individuals receiving services. These revisions became effective on February 9, 2017.

During the rollout of the regulations an inadvertent “barrier” was discovered in 12 VAC35-115-105(B) (Behavioral Treatment Plans). This subsection allow providers to use individualized restrictions such as restraint or time out in a behavioral treatment plan to address challenging behaviors that present an immediate danger to the individual or others, but only after a licensed professional has conducted a detailed and systematic assessment of the behavior and the situations in which the behavior occurs.

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The Human Rights Regulations defines “licensed professional” as ‘a *licensed physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, licensed or certified substance abuse treatment practitioner, or licensed psychiatric nurse practitioner.*’

This action will add language to subsection B to state:

"B. Providers may use individualized restrictions such as restraint or time out in a behavioral treatment plan to address challenging behaviors that present an immediate danger to the individual or others, but only after a licensed professional or a licensed behavior analyst has conducted a detailed and systematic assessment of the behavior and the situations in which the behavior occurs. Providers shall document in the individual's services record that the lack of success or probable success of less restrictive procedures attempted or considered, and the risks associated with not treating the behavior, are greater than any risks associated with the use of the proposed restrictions."

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.

DBHDS – Virginia Department of Behavioral Health and Developmental Services

LBA – Licensed Behavior Analyst

State Board – State Board of Behavioral Health and Developmental Services

Statement of final agency action

Please 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.

At the July 12, 2017, meeting of the State Board, the correction to the Human Rights Regulations as a fast track action was approved.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person'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 the Department.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health,

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safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

Licensed behavior analysts are one of the main professions providing behavioral services in Virginia. Currently, there is a six-month waiting list for behavior plan development. Without the amendment to the language, it will be more difficult for individuals to have access to behavioral services.

Rationale for using fast-track process

Please explain the rationale for using the fast-track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

This amendment is noncontroversial. LBAs have been a licensed profession in Virginia since the 2012 General Assembly established the profession (2012 Acts of Assembly, Chapter 3) and since then, LBAs have been active in the DBHDS system.

Substance

Please 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.

This amendment will enhance protection of rights for individuals in the system by allowing the most appropriately trained professionals (subject matter experts) to develop and implement behavior treatment plans. This amendment will increase the number of those professionals available to develop behavior treatment plans.

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 there are no disadvantages to the public or the Commonwealth, please indicate.

There is no identified disadvantage to the public or the Commonwealth in making this change.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is 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.

This is not more restrictive than applicable federal standards.

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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 is no locality particularly affected by this action.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, 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.

This will facilitate more successful living options with providers in the community by providing access to additional subject matter experts to prepare behavior treatment plans for individuals with complex behavioral needs.

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.

Projected cost to the state to implement and enforce the proposed regulation, including: a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures	There is no additional cost to implement and enforce the amendment.
Projected cost of the new regulations or changes to existing regulations on localities.	There is no additional cost on localities as a result of this change.
Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.	Individuals receiving or needing services and their families; providers licensed by DBHDS; licensed behavior analysts; all professionals listed in the definition of "licensed professional" who conduct behavior treatment plans.
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. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and;	There are approximately 502 providers utilizing over 800 behavior treatment plans. There is a six-month waiting list for behavior plan development. Individuals consistently report that this a service that they have difficulty in accessing due to the limited number of appropriate licensed

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b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	professionals.
All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) 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.	There is no additional administrative cost for individuals, businesses or other entities.
Beneficial impact the regulation is designed to produce.	By individuals having these plans there will be less interruption of services or crisis events. This is better for the individuals, their families, and the community.

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.

There is no other alternative to the regulatory action.

Public participation notice

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.

Periodic review and small business impact review report of findings

If this fast-track is the result of a periodic review/small business impact review, use this form to report the agency's findings. Please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review and (2) indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (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

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evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

This is not the result of a periodic or small business impact review.

Family impact

Please assess the impact of this 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.

This amendment will be a positive impact on families because the family members with disabilities in need of these behavior plans can receive them more promptly.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below.

For changes to existing regulation(s), please use the following chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
12 VAC35-115-105. Behavior Treatment Plans		"B. Providers may use individualized restrictions such as restraint or time out in a behavioral treatment plan to address challenging behaviors that present an immediate danger to the individual or others, but only after a licensed professional has conducted a detailed and systematic assessment of the behavior and the situations in which the behavior occurs. Providers shall document in the individual's services record that the lack of success or probable success of less restrictive procedures attempted or considered, and the risks associated with not treating the	This action will add language to subsection B to state: “... but only after a licensed professional <u>or a licensed behavior analyst</u>”

Regulatory Item III. Ch.115 – Behavior Treatment Plans

		behavior, are greater than any risks associated with the use of the proposed restrictions.”	
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DRAFT: Ch. 115 - Behavior Treatment Plans

CHAPTER 115
REGULATIONS TO ASSURE THE RIGHTS OF INDIVIDUALS RECEIVING SERVICES FROM
PROVIDERS LICENSED, FUNDED, OR OPERATED BY THE DEPARTMENT OF
BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Part I
General Provisions

12VAC35-115-10. Authority and applicability.

A. The Code of Virginia authorizes these regulations to further define and protect the rights of individuals receiving services from providers of mental health, developmental, or substance abuse services in Virginia. This chapter requires providers of services to take specific actions to protect the rights of each individual. This chapter establishes remedies when rights are violated or are in dispute and provides a structure for support of these rights.

B. Providers subject to this chapter include:

1. Facilities operated by the department under Chapters 3 (§ 37.2-300 et seq.) and 7 (§ 37.2-700 et seq.) of Title 37.2 of the Code of Virginia;
2. Sexually violent predator programs established under § 37.2-909 of the Code of Virginia;
3. Community services boards that provide services under Chapter 5 (§ 37.2-500 et seq.) of Title 37.2 of the Code of Virginia;
4. Behavioral health authorities that provide services under Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia;
5. Public or private providers that operate programs or facilities licensed by the department under Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2 of the Code of Virginia except those operated by the Department of Corrections; and
6. Any other providers receiving funding from the department. Providers of services under Part C of the Individuals with Disabilities Education Act (IDEA), 20 USC §§ 1431-1444, that are subject to this chapter solely by receipt of Part C funds from or through the department shall comply with all applicable IDEA regulations found in 34 CFR Part 303 in lieu of this chapter.

C. Unless otherwise provided by law, this chapter applies to all individuals who are receiving services from a public or private provider of services operated, licensed, or funded by the Department of Behavioral Health and Developmental Services, except those operated by the Department of Corrections.

D. This chapter applies to individuals under forensic status and individuals committed to the custody of the department as sexually violent predators, except to the extent that the commissioner may determine this chapter is not applicable to them. The exemption shall be in writing and based solely on the need to protect individuals receiving services, employees, or the general public. The commissioner shall give the State Human Rights Committee (SHRC) chairperson prior notice of all exemptions and provide the written exemption to the SHRC for its information. These exemptions shall be time limited and services shall not be compromised.

12VAC35-115-105. Behavioral treatment plans.

A. A behavioral treatment plan is used to assist an individual to improve participation in normal activities and conditions of everyday living, reduce challenging behaviors, alleviate symptoms of psychopathology, and maintain a safe and orderly environment.

Regulatory Item III. Human Rights - DRAFT AMENDMENT FOR FAST-TRACK

B. Providers may use individualized restrictions such as restraint or time out in a behavioral treatment plan to address challenging behaviors that present an immediate danger to the individual or others, but only after a licensed professional or a licensed behavior analyst has conducted a detailed and systematic assessment of the behavior and the situations in which the behavior occurs. Providers shall document in the individual's services record that the lack of success or probable success of less restrictive procedures attempted or considered, and the risks associated with not treating the behavior, are greater than any risks associated with the use of the proposed restrictions.

C. Providers shall develop any behavioral treatment plan according to their policies and procedures, which shall ensure that:

1. Behavioral treatment plans are initiated, developed, carried out, and monitored by professionals who are qualified by expertise, training, education, or credentials to do so;
2. Behavioral treatment plans include nonrestrictive procedures and environmental modifications that address the targeted behavior; and
3. Behavioral treatment plans are submitted to an independent review committee, prior to implementation, for review and approval of the technical adequacy of the plan and data collection procedures.

D. In addition to any other requirements of 42 CFR 483.440(f)(3), providers that are intermediate care facilities for individuals with intellectual disabilities shall submit any behavioral treatment plan that involves the use of restraint or time out, and its independent review committee approval, to the SCC under 42 CFR 483.440(f)(3) for the SCC's approval prior to implementation.

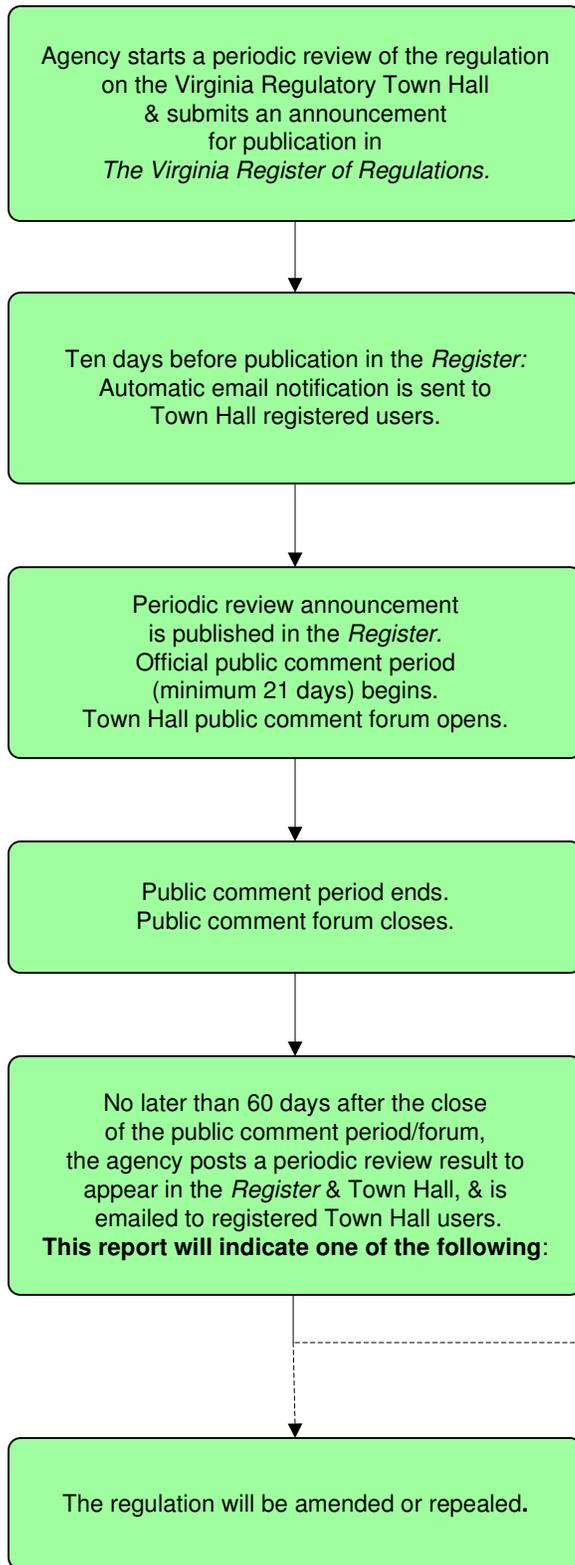
E. Providers other than intermediate care facilities for individuals with intellectual disabilities shall submit any behavioral treatment plan that involves the use of restraint or time out, and its independent review committee approval, to the LHRC, which shall determine whether the plan is in accordance with this chapter prior to implementation.

F. If either the LHRC or SCC finds that the behavioral treatment plan violates the rights of the individual or is not being implemented in accordance with this chapter, the LHRC or SCC shall notify the director and provide recommendations regarding the proposed plan.

G. Behavioral treatment plans involving the use of restraint or time out shall be reviewed quarterly by the independent review committee and the LHRC or SCC to determine if the use of restraint has resulted in improvements in functioning of the individual.

H. Providers shall not use seclusion in a behavioral treatment plan.

How does a periodic review work?

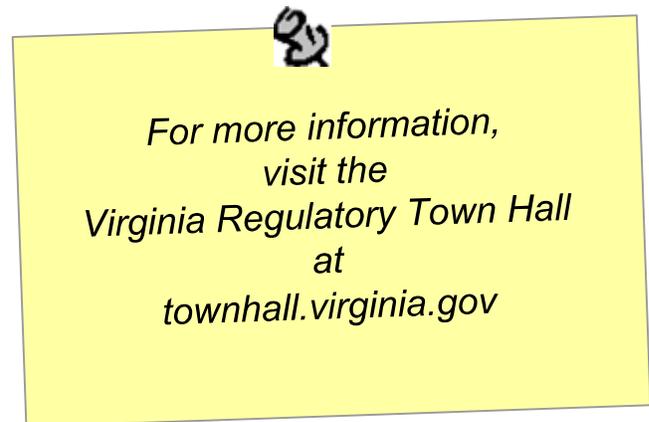


Periodic review of regulations

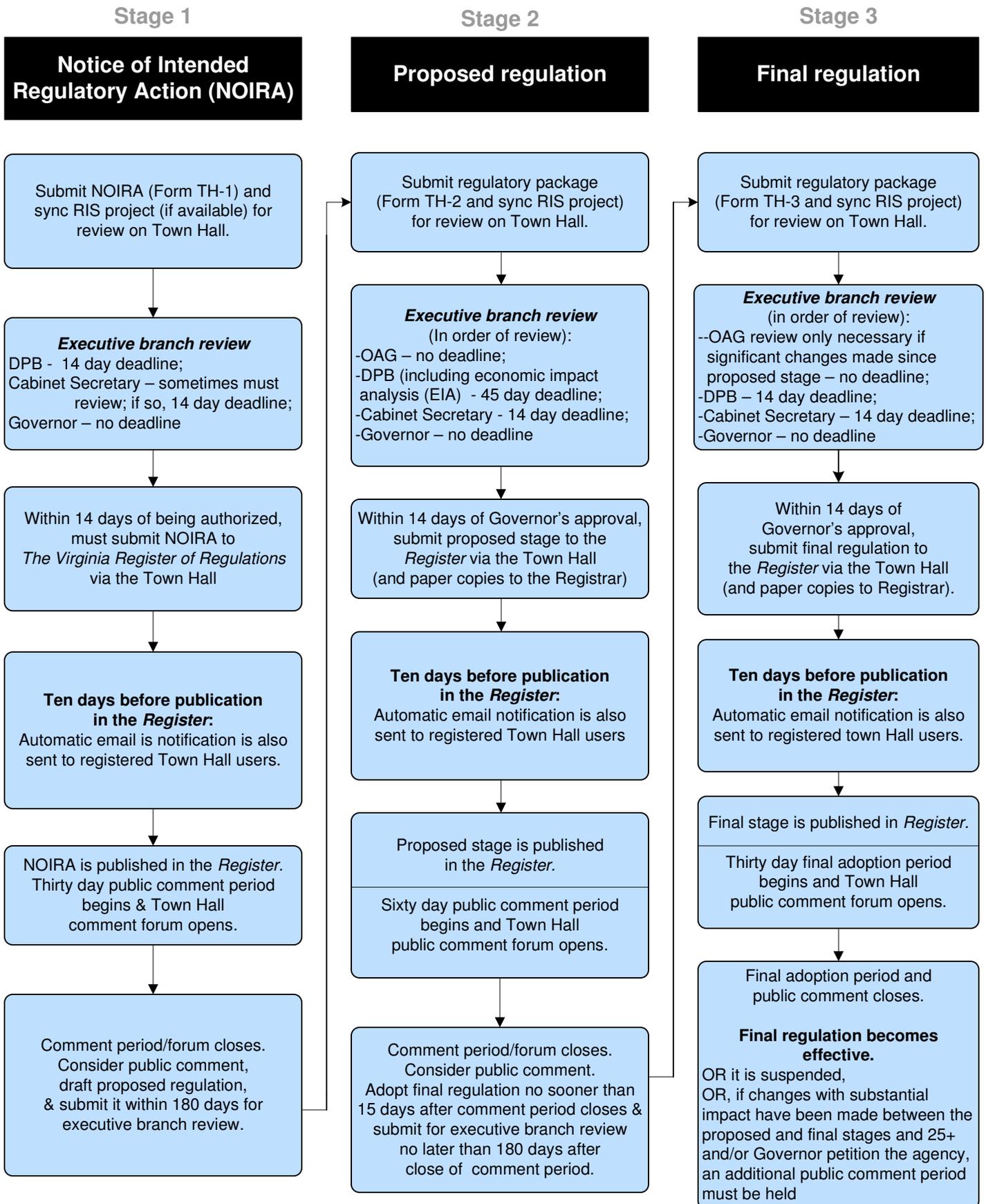
Every state regulation must be reviewed **every four years** to:

- (1) ensure it is supported by statutory authority (as determined by the Office of the Attorney General),
- (2) determine that the regulation is (a) necessary for the protection of public health, safety and welfare and (b) clearly written and easily understandable, and to
- (3) make sure its economic impact on small businesses is minimized as much as possible.

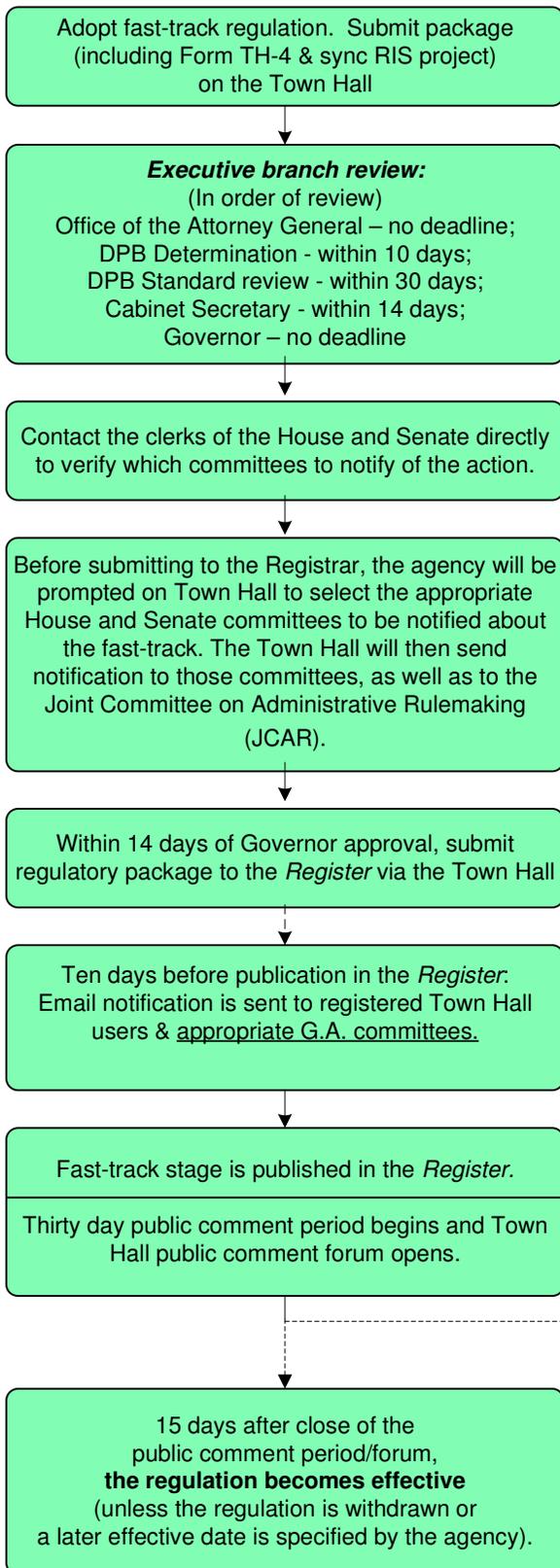
Sources: Sections 2.2-4017 and 2-2-4007.1 of the Code of Virginia and Executive Order 17 (2014)



Standard regulatory process: Guide for state agencies



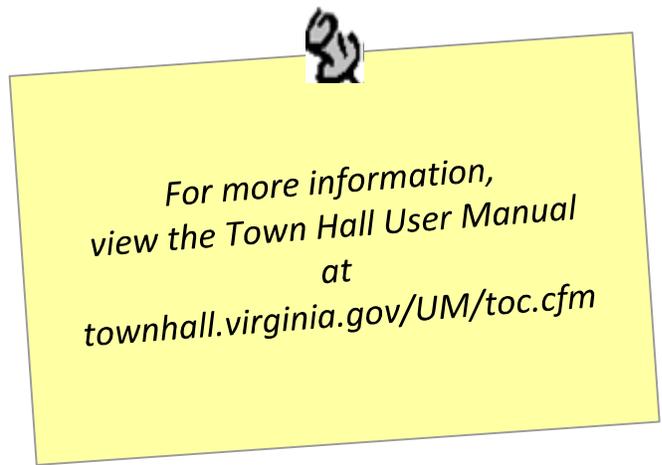
Regulatory process:



Fast-track regulations: Information especially for state agencies

The fast-track process is for proposed regulations that are expected to be noncontroversial. Whether a proposed regulation is noncontroversial is determined by the process detailed on this page.

Source: Section 2.2-4012.1 of the Code of Virginia



State Board Budget Report

As of June 30, 2017

<u>Expenditure Codes/Definitions</u>	<u>Budget</u>	<u>Actual</u>	<u>Balance</u>
12240 Workshop/Conferences	1,500	1,274	226
12270 Employee Training	5,000	3,322	1,678
12640 Food Services	2,000	311	1,689
12820 Travel-Personal Vehicle	3,000	2,687	313
12850 Travel-Subsistence &Lodging	3,400	1,521	1,879
12880 Travel- Meals	2,600	1,037	1,563

Possible 2018 Meeting Dates

April – Wednesday, April 18, 2018

July – Wednesday, July 18, 2018

October – Wednesday, October 3, 2018

December – Wednesday, December 5, 2018

2017 Meeting Schedule

2017 Schedule

- Wednesday, April 4-5, 2017, Winchester
- Wednesday, July 11-12, 2017, Richmond
- Wednesday, October 6, 2017, TBD
- Thursday, December 6, 2017, Richmond

2017

January							February							March						
Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat
1	2	3	4	5	6	7	29	30	31	1	2	3	4	26	27	28	1	2	3	4
8	9	10	11	12	13	14	5	6	7	8	9	10	11	5	6	7	8	9	10	11
15	16	17	18	19	20	21	12	13	14	15	16	17	18	12	13	14	15	16	17	18
22	23	24	25	26	27	28	19	20	21	22	23	24	25	19	20	21	22	23	24	25
29	30	31	1	2	3	4	26	27	28	1	2	3	4	26	27	28	29	30	31	1
5	6	7	8	9	10	11	5	6	7	8	9	10	11	2	3	4	5	6	7	8

April							May							June						
Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat
26	27	28	29	30	31	1	30	1	2	3	4	5	6	28	29	30	31	1	2	3
2	3	4	5	6	7	8	7	8	9	10	11	12	13	4	5	6	7	8	9	10
9	10	11	12	13	14	15	14	15	16	17	18	19	20	11	12	13	14	15	16	17
16	17	18	19	20	21	22	21	22	23	24	25	26	27	18	19	20	21	22	23	24
23	24	25	26	27	28	29	28	29	30	31	1	2	3	25	26	27	28	29	30	1
30	1	2	3	4	5	6	4	5	6	7	8	9	10	2	3	4	5	6	7	8

July							August							September						
Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat
25	26	27	28	29	30	1	30	31	1	2	3	4	5	27	28	29	30	31	1	2
2	3	4	5	6	7	8	6	7	8	9	10	11	12	3	4	5	6	7	8	9
9	10	11	12	13	14	15	13	14	15	16	17	18	19	10	11	12	13	14	15	16
16	17	18	19	20	21	22	20	21	22	23	24	25	26	17	18	19	20	21	22	23
23	24	25	26	27	28	29	27	28	29	30	31	1	2	24	25	26	27	28	29	30
30	31	1	2	3	4	5	3	4	5	6	7	8	9	1	2	3	4	5	6	7

October							November							December						
Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat
1	2	3	4	5	6	7	29	30	31	1	2	3	4	26	27	28	29	30	1	2
8	9	10	11	12	13	14	5	6	7	8	9	10	11	3	4	5	6	7	8	9
15	16	17	18	19	20	21	12	13	14	15	16	17	18	10	11	12	13	14	15	16
22	23	24	25	26	27	28	19	20	21	22	23	24	25	17	18	19	20	21	22	23
29	30	31	1	2	3	4	26	27	28	29	30	1	2	24	25	26	27	28	29	30
5	6	7	8	9	10	11	3	4	5	6	7	8	9	31	1	2	3	4	5	6

Event Schedule

Tuesday, July 11- Wednesday, July 12

<p>Tuesday, July 11, 2017</p> <p><u>9:30am-4:00pm</u></p> <p><u>5:00pm-7:00pm</u></p>	<p>State Board Biennial Planning Retreat</p> <p>DBHDS Central State Office, 13th Floor Main Conference Room, Jefferson Building 1220 Bank Street, Richmond, VA</p> <p>Dinner and Tour</p> <p>Chesterfield CSB, 6801 Lucy Corr Boulevard Chesterfield, Virginia 23832</p> <p>For those members staying overnight. Room have been reserved at the Omni Richmond Hotel 100 S 12th Street, Richmond, VA 23219</p>
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<p>Wednesday, July 12, 2017</p> <p><u>9:00 a.m. - 3:30 p.m.</u></p>	<p>Regular Meeting</p> <p>DBHDS Central State Office, 13th Floor Main Conference Room, Jefferson Building 1220 Bank Street, Richmond, VA</p>
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Directions to the Omni Richmond Hotel

100 S 12th Street, Richmond, VA 23219

Check in starts at 3 p.m.

FROM NEWPORT NEWS-WILLIAMSBURG INTERNATIONAL AIRPORT – 71 MILES

Take I-64 West to Exit 190, merging onto I-95 South. On I-95 South, take Exit 74A onto I-195 (the toll road). Then take the Canal Street exit and **pay the toll (\$0.30)**. Turn right onto 10th Street. Turn right at the light onto Cary Street. For valet parking, take an immediate right onto 12th Street and into the hotel motor entrance.

DIRECTIONS FROM THE NORTH – VIA I-95 SOUTH

On I-95 South, take Exit 74A onto I-195 (toll road). Then take the Canal Street exit and **pay the toll (\$0.30)**. Turn right onto 10th Street. Turn right at the light onto Cary Street. For valet parking, take an immediate right onto 12th Street and into the hotel motor entrance.

DIRECTIONS FROM THE SOUTH – VIA I-95 NORTH

Take I-95 North to Exit 74A onto I-195 (the toll road). Then take the Canal Street exit and **pay the toll (\$0.30)**. Turn right onto 10th Street. Turn right at the light onto Cary Street. For valet parking, take an immediate right onto 12th Street and into the hotel motor entrance.

DIRECTIONS FROM THE EAST – VIA I-64 WEST

Take I-64 West to Exit 190 merging onto I-95 South. On I-95 South, take Exit 74A onto I-195 (toll road). Then take the Canal Street exit and **pay the toll (\$0.30)**. Turn right onto 10th Street. Turn right at the light onto Cary Street. For valet parking, take an immediate right onto 12th Street and into the hotel motor entrance.

DIRECTIONS FROM THE WEST – VIA I-64 EAST

Take I-64 East to I-95 South. From I-95, take Exit 74A onto I-195, the toll road. Take the Canal Street exit and **pay the toll (\$0.30)**. Turn right onto 10th Street. Turn right at the light onto Cary Street. For self-parking, take an immediate right into the James Center underground parking. For valet parking, turn right onto 12th Street and into the hotel motor entrance.

Website for more information: <http://www.omnihotels.com/hotels/richmond>

Tuesday, July 11, 2017

Directions to the Chesterfield Community Services Board

6801 Lucy Corr Boulevard
Chesterfield, Virginia 23832

FROM DOWNTOWN RICHMOND – 19.9 MILES (25 minutes)

Take I-95 South to Petersburg. Take exit 62 for VA-288 N toward Chesterfield/Powhite Pkwy. Take the VA-10 E/Iron Br Rd exit toward Chesterfield. Continue straight onto Iron Bridge Rd. Turn left onto Lucy Corr Blvd. Destination is on right.