

**Unified Regulatory Plan of the Department of Behavioral Health and Developmental Services for
State Fiscal Year 2023**

Submitted on October 3, 2022

Description of the State Board of Behavioral Health and Developmental Services Title 37.2 of the Code of Virginia establishes the Department of Behavioral Health and Developmental Services (DBHDS) as the state authority for the behavioral health and developmental services system for individuals and their families whose lives are affected by mental health or substance use disorders or a developmental disability. The department is authorized by:

- Chapters 3 (§ [37.2-300](#) et seq.) and 7 (§ [37.2-700](#) et seq.) of Title 37.2 of the Code of Virginia to operate DBHDS hospitals, training centers, and other facilities (state facilities); and
- Chapters 5 (§ [37.2-500](#) et seq.) and 6 (§ [37.2-601](#) et seq.) of Title 37.2 of the Code of Virginia to fund and contract with community services boards (CSBs) and behavioral health authorities (BHAs) for the purposes of establishing, maintaining, and promoting prevention, early intervention, treatment, and habilitation services and supports. [A full list of authority is in the VAC [Preface](#).]

Per § [37.2-200](#) of the Code of Virginia, the State Board of Behavioral Health and Developmental Services is a policy making body, within the meaning of § [2.2-2100](#), authorized to promulgate public policies or regulations for the department, state facilities, and CSBs and BHAs. The department operates under the supervision of the Secretary of Health and Human Resources.

EXISTING ACTIONS

Title of Proposed Regulatory Action or Guidance Document 12VAC35-46, Childrens Residential Facilities; ASAM criteria.	
Brief Overview Final amendments to align with ASAM criteria in children's residential facilities as mandated in Item 318.B. of the 2020 <i>Appropriation Act</i> . [Extended emergency eff. 2/20/2021; expires 02/18/2023.]	
Regulatory Stage (check one box)	<input type="checkbox"/> NOIRA <input type="checkbox"/> Proposed Rule <input checked="" type="checkbox"/> Final Rule <input type="checkbox"/> Emergency Rule <input type="checkbox"/> Fast-Track Rule
Additional Description	<input type="checkbox"/> Expedited Rule <input type="checkbox"/> Exempt Rule <input type="checkbox"/> Guidance Document
Legal Authority	<input type="checkbox"/> Action required by federal statute <input checked="" type="checkbox"/> Action required by state statute <input type="checkbox"/> Discretionary action
Deregulatory Component	This action is mandated in Item 318.B. of the 2020 <i>Appropriation Act</i> .
Expected Date	December 2022

Title of Proposed Regulatory Action or Guidance Document	
12VAC35-105, ASAM criteria.	
Brief Overview	
Final amendments to align with ASAM criteria in licensing regulations mandated in Item 318.B. of the 2020 <i>Appropriation Act</i> . [Extended emergency eff. 2/20/2021; expires 02/18/2023.]	
Regulatory Stage (check one box)	<input type="checkbox"/> NOIRA <input type="checkbox"/> Proposed Rule <input checked="" type="checkbox"/> Final Rule <input type="checkbox"/> Emergency Rule <input type="checkbox"/> Fast-Track Rule
Additional Description	<input type="checkbox"/> Expedited Rule <input type="checkbox"/> Exempt Rule <input type="checkbox"/> Guidance Document
Legal Authority	<input type="checkbox"/> Action required by federal statute <input checked="" type="checkbox"/> Action required by state statute <input type="checkbox"/> Discretionary action
Deregulatory Component	This action is mandated in Item 318.B. of the 2020 <i>Appropriation Act</i> .
Expected Date	December 2022

Title of Proposed Regulatory Action or Guidance Document 12VAC35-105, Enhanced behavioral health services.	
Brief Overview Final amendments to align with enhanced behavioral health services as mandated in Item 318.B. of the 2020 <i>Appropriation Act</i> as part of ProjectBravo. [Extended emergency eff. 2/20/2021; expires 02/18/2023.]	
Regulatory Stage (check one box)	<input type="checkbox"/> NOIRA <input type="checkbox"/> Proposed Rule <input checked="" type="checkbox"/> Final Rule <input type="checkbox"/> Emergency Rule <input type="checkbox"/> Fast-Track Rule
Additional Description	<input type="checkbox"/> Expedited Rule <input type="checkbox"/> Exempt Rule <input type="checkbox"/> Guidance Document
Legal Authority	<input type="checkbox"/> Action required by federal statute <input type="checkbox"/> Action required by state statute <input type="checkbox"/> Discretionary action
Deregulatory Component	This action is mandated in Item 318.B. of the 2020 <i>Appropriation Act</i> .
Expected Date	December 2022.

Title of Proposed Regulatory Action or Guidance Document 12VAC35-230, IFSP (Individual Family and Support Program)	
Brief Overview Amendments per Item 313.NN. of the 2022 Appropriation Act (Chapter 2, 2022 Special Session 1 Acts of Assembly) to utilize emergency authority to promulgate regulations that change the current distribution of annual Individual and Family Support Program (IFSP) funds from a ‘first-come-first-served’ basis to one based on program categories and set criteria.	
Regulatory Stage (check one box)	<input checked="" type="checkbox"/> NOIRA <input type="checkbox"/> Proposed Rule <input type="checkbox"/> Final Rule <input checked="" type="checkbox"/> Emergency Rule <input type="checkbox"/> Fast-Track Rule
Additional Description	<input type="checkbox"/> Expedited Rule <input type="checkbox"/> Exempt Rule <input type="checkbox"/> Guidance Document
Legal Authority	<input type="checkbox"/> Action required by federal statute <input checked="" type="checkbox"/> Action required by state statute <input type="checkbox"/> Discretionary action
Deregulatory Component	This action is mandated.
Expected Date	Emergency: January 2023; Standard: April 2024

Title of Proposed Regulatory Action or Guidance Document IFSP Funding Guidelines (DD 07)		
Brief Overview These guidelines shall be developed annually in collaboration with the IFSP State Council (see Item 313.NN.) and published in accordance with regulation, Operation of the Individual and Family Support Program [12VAC35-230]. Previously, requirements were entirely in regulation and based on first come, first served.		
Regulatory Stage (check one box)	<input type="checkbox"/> NOIRA <input type="checkbox"/> Proposed Rule <input type="checkbox"/> Final Rule	<input type="checkbox"/> Emergency Rule <input type="checkbox"/> Fast-Track Rule
Additional Description	<input type="checkbox"/> Expedited Rule <input type="checkbox"/> Exempt Rule	<input checked="" type="checkbox"/> Guidance Document
Legal Authority	<input type="checkbox"/> Action required by federal statute <input checked="" type="checkbox"/> Action required by state statute	<input type="checkbox"/> Discretionary action
Deregulatory Component	DBHDS guidance documents are not enforceable, and therefore, contain no mandates.	
Expected Date	January 2023	

Title of Proposed Regulatory Action or Guidance Document 12VAC35-46, Proposed amendments to align with FFPSA.		
Brief Overview Item 318. D. of the 2021 Special Session 1 Appropriation Act to promulgate emergency regulations to align with the requirements of the federal Family First Prevention Service Act (FFPSA) for children’s residential service providers who accept Title IV-E funding to meet the standards as qualified residential treatment programs (QRTPs). [Emerg. 01/10/2022 - 07/09/2023.]		
Regulatory Stage (check one box)	<input type="checkbox"/> NOIRA <input checked="" type="checkbox"/> Proposed Rule <input type="checkbox"/> Final Rule	<input type="checkbox"/> Emergency Rule <input type="checkbox"/> Fast-Track Rule
Additional Description	<input type="checkbox"/> Expedited Rule <input type="checkbox"/> Exempt Rule	<input type="checkbox"/> Guidance Document
Legal Authority	<input checked="" type="checkbox"/> Action required by federal statute <input checked="" type="checkbox"/> Action required by state statute	<input type="checkbox"/> Discretionary action
Deregulatory Component	These regulations are mandated by the General Assembly to align with federal requirements.	
Expected Date	June 2023	

FUTURE

Title of Proposed Regulatory Action or Guidance Document DBHDS DD Support Coordination (Case Management) Handbook (DD 05)	
Brief Overview The handbook provides information and "how to" guidance regarding developmental disability ("DD") case management services across the system. General content updates are needed as regulations change (including DMAS) and user feedback is collected. Strengthening the support coordinator's/case manager's role is essential to helping ensure effective and accountable services under the Medicaid Development Disability Waivers. The purpose of this handbook is to guide support coordinators in all aspects of their work.	
Regulatory Stage (check one box)	<input type="checkbox"/> NOIRA <input type="checkbox"/> Proposed Rule <input type="checkbox"/> Final Rule <input type="checkbox"/> Emergency Rule <input type="checkbox"/> Fast-Track Rule
Additional Description	<input type="checkbox"/> Expedited Rule <input type="checkbox"/> Exempt Rule <input checked="" type="checkbox"/> Guidance Document
Legal Authority	<input type="checkbox"/> Action required by federal statute <input type="checkbox"/> Action required by state statute <input checked="" type="checkbox"/> Discretionary action
Deregulatory Component	DBHDS guidance documents are not enforceable, and therefore, contain no mandates.
Expected Date	November 2022

Title of Proposed Regulatory Action or Guidance Document Amendments to 12VAC35-260 to comply with HB277 (2022) regarding certified recovery residences.	
Brief Overview HB277 required that all recovery residences be certified by DBHDS and that as a condition of such certification, residences must comply with minimum square footage requirements related to beds and sleeping rooms established by the credentialing entity or the Uniform Statewide Building Code, whichever is greater. A guidance document update will correspond with these amendments.	
Regulatory Stage (check one box)	<input type="checkbox"/> NOIRA <input type="checkbox"/> Proposed Rule <input type="checkbox"/> Final Rule <input type="checkbox"/> Emergency Rule <input checked="" type="checkbox"/> Fast-Track Rule
Additional Description	<input type="checkbox"/> Expedited Rule <input type="checkbox"/> Exempt Rule <input type="checkbox"/> Guidance Document
Legal Authority	<input type="checkbox"/> Action required by federal statute <input checked="" type="checkbox"/> Action required by state statute <input type="checkbox"/> Discretionary action
Deregulatory Component	These changes are mandated by the General Assembly.
Expected Date	December 2022

Title of Proposed Regulatory Action or Guidance Document Certified Recovery Residences (ORS 01)	
Brief Overview This guidance will be updated to correspond with mandated changes to 12VAC35-260, per HB277 (2022). A regulatory action will be before the State Board at the December meeting. <i>While the regulatory action is required, the guidance is not; however, the box is checked under 'legal authority' as it is tied to the regulatory mandate.</i>	
Regulatory Stage (check one box)	<input type="checkbox"/> NOIRA <input type="checkbox"/> Proposed Rule <input type="checkbox"/> Final Rule <input type="checkbox"/> Emergency Rule <input type="checkbox"/> Fast-Track Rule
Additional Description	<input type="checkbox"/> Expedited Rule <input type="checkbox"/> Exempt Rule <input checked="" type="checkbox"/> Guidance Document
Legal Authority	<input type="checkbox"/> Action required by federal statute <input checked="" type="checkbox"/> Action required by state statute <input type="checkbox"/> Discretionary action
Deregulatory Component	DBHDS guidance documents are not enforceable, and therefore, contain no mandates.
Expected Date	March 2023

Title of Proposed Regulatory Action or Guidance Document Amendments to 12VAC35-105 to conform to the federal final rule on Mobile Medication Assisted Treatment Programs.	
Brief Overview This exempt action would integrate federal regulations into the state licensing regulations and allow Virginia providers to provide MAT services in a mobile unit. The allowance of this service is intended to facilitate addressing the opioid crisis and expand opportunities for providers as requested by the provider community.	
Regulatory Stage (check one box)	<input type="checkbox"/> NOIRA <input type="checkbox"/> Proposed Rule <input checked="" type="checkbox"/> Final Rule <input type="checkbox"/> Emergency Rule <input type="checkbox"/> Fast-Track Rule
Additional Description	<input type="checkbox"/> Expedited Rule <input checked="" type="checkbox"/> Exempt Rule <input type="checkbox"/> Guidance Document
Legal Authority	<input checked="" type="checkbox"/> Action required by federal statute <input type="checkbox"/> Action required by state statute <input type="checkbox"/> Discretionary action
Deregulatory Component	There are specific federal requirements for providers who choose to provide mobile MAT services.
Expected Date	December 2022

Title of Proposed Regulatory Action or Guidance Document Amendments to collapse 12VAC35-190 into 12VAC35-200.	
Brief Overview This regulatory action will be a clarifying and streamlining update, and it is already in development.	
Regulatory Stage (check one box)	<input checked="" type="checkbox"/> NOIRA <input type="checkbox"/> Proposed Rule <input type="checkbox"/> Final Rule <input type="checkbox"/> Emergency Rule <input type="checkbox"/> Fast-Track Rule
Additional Description	<input type="checkbox"/> Expedited Rule <input type="checkbox"/> Exempt Rule <input type="checkbox"/> Guidance Document
Legal Authority	<input type="checkbox"/> Action required by federal statute <input type="checkbox"/> Action required by state statute <input checked="" type="checkbox"/> Discretionary action
Deregulatory Component	The admission and discharge requirements to the remaining DBHDS training center are prescribed in sections of Title 37.2 or the US DOJ Settlement Agreement with Virginia. Changes are intended to increase clarity of the regulations.
Expected Date	December 2022

Title of Proposed Regulatory Action or Guidance Document FAC 01 Training Center Admission Process (new)	
Brief Overview This guidance would correspond with the planned action regarding Chapters 190 and 200 filed December 2022.	
Regulatory Stage (check one box)	<input type="checkbox"/> NOIRA <input type="checkbox"/> Proposed Rule <input type="checkbox"/> Final Rule <input type="checkbox"/> Emergency Rule <input type="checkbox"/> Fast-Track Rule
Additional Description	<input type="checkbox"/> Expedited Rule <input type="checkbox"/> Exempt Rule <input checked="" type="checkbox"/> Guidance Document
Legal Authority	<input type="checkbox"/> Action required by federal statute <input type="checkbox"/> Action required by state statute <input checked="" type="checkbox"/> Discretionary action
Deregulatory Component	DBHDS guidance documents are not enforceable, and therefore, contain no mandates.
Expected Date	June 2023

Title of Proposed Regulatory Action or Guidance Document Guidance for Serious Incident Reporting (LIC 17)	
Brief Overview The planned updates to this guidance document will include additional clarification regarding requirements from the DOJ Settlement Agreement for providers of DD services to track specific risks that are common to individuals with developmental disabilities, as part of the provider's quarterly review of serious incidents. The guidance will clarify the expectation and provide examples. <i>This is not required by federal or state statute, but by agreement with the US Department of Justice in implementing the Settlement Agreement with Virginia.</i>	
Regulatory Stage (check one box)	<input type="checkbox"/> NOIRA <input type="checkbox"/> Proposed Rule <input type="checkbox"/> Final Rule <input type="checkbox"/> Emergency Rule <input type="checkbox"/> Fast-Track Rule
Additional Description	<input type="checkbox"/> Expedited Rule <input type="checkbox"/> Exempt Rule <input checked="" type="checkbox"/> Guidance Document
Legal Authority	<input type="checkbox"/> Action required by federal statute <input type="checkbox"/> Action required by state statute <input type="checkbox"/> Discretionary action <input checked="" type="checkbox"/> Other (DOJ Settlement Agr.)
Deregulatory Component	DBHDS guidance documents are not enforceable, and therefore, contain no mandates.
Expected Date	January 2023

Title of Proposed Regulatory Action or Guidance Document Guidance for Risk Management (LIC 21)	
Brief Overview The planned updates to this guidance document will include additional clarification as to how providers can incorporate information from their quarterly review of serious incidents into their annual systemic risk review. Updating this document is necessary to comply with required curative actions of the DOJ Settlement Agreement. <i>This is not required by federal or state statute, but by agreement with the US Department of Justice in implementing the Settlement Agreement with Virginia.</i>	
Regulatory Stage (check one box)	<input type="checkbox"/> NOIRA <input type="checkbox"/> Proposed Rule <input type="checkbox"/> Final Rule <input type="checkbox"/> Emergency Rule <input type="checkbox"/> Fast-Track Rule
Additional Description	<input type="checkbox"/> Expedited Rule <input type="checkbox"/> Exempt Rule <input checked="" type="checkbox"/> Guidance Document
Legal Authority	<input type="checkbox"/> Action required by federal statute <input type="checkbox"/> Action required by state statute <input type="checkbox"/> Discretionary action <input checked="" type="checkbox"/> Other (DOJ Settlement Agr.)
Deregulatory Component	DBHDS guidance documents are not enforceable, and therefore, contain no mandates.
Expected Date	January 2023

Title of Proposed Regulatory Action or Guidance Document Amendments to 12VAC35-46 to reduce regulatory burden.	
Brief Overview This regulatory action will target a package of amendments to reduce regulatory burden on licensed providers.	
Regulatory Stage (check one box)	<input type="checkbox"/> NOIRA <input type="checkbox"/> Proposed Rule <input type="checkbox"/> Final Rule <input type="checkbox"/> Emergency Rule <input checked="" type="checkbox"/> Fast-Track Rule
Additional Description	<input type="checkbox"/> Expedited Rule <input type="checkbox"/> Exempt Rule <input type="checkbox"/> Guidance Document
Legal Authority	<input type="checkbox"/> Action required by federal statute <input type="checkbox"/> Action required by state statute <input checked="" type="checkbox"/> Discretionary action
Deregulatory Component	The specifics are under discussion as the entire chapter is reviewed for this purpose.
Expected Date	March 2023

Title of Proposed Regulatory Action or Guidance Document Amendments to 12VAC35-105 to reduce regulatory burden.	
Brief Overview This regulatory action will target a package of amendments to reduce regulatory burden on licensed providers.	
Regulatory Stage (check one box)	<input type="checkbox"/> NOIRA <input type="checkbox"/> Proposed Rule <input type="checkbox"/> Final Rule <input type="checkbox"/> Emergency Rule <input checked="" type="checkbox"/> Fast-Track Rule
Additional Description	<input type="checkbox"/> Expedited Rule <input type="checkbox"/> Exempt Rule <input type="checkbox"/> Guidance Document
Legal Authority	<input type="checkbox"/> Action required by federal statute <input type="checkbox"/> Action required by state statute <input checked="" type="checkbox"/> Discretionary action
Deregulatory Component	The specifics are under discussion as the entire chapter is reviewed for this purpose.
Expected Date	March 2023

Title of Proposed Regulatory Action or Guidance Document Amendments to 12VAC35-115 to reduce regulatory burden.	
Brief Overview This regulatory action will target a package of amendments to reduce regulatory burden on licensed providers as part of a significant clarifying update already in development. <i>Currently, this is listed as a fast track action; however, given the nature of the regulation (human rights), it may be more appropriate as a standard action.</i>	
Regulatory Stage (check one box)	<input type="checkbox"/> NOIRA <input type="checkbox"/> Proposed Rule <input type="checkbox"/> Final Rule <input type="checkbox"/> Emergency Rule <input checked="" type="checkbox"/> Fast-Track Rule
Additional Description	<input type="checkbox"/> Expedited Rule <input type="checkbox"/> Exempt Rule <input type="checkbox"/> Guidance Document
Legal Authority	<input type="checkbox"/> Action required by federal statute <input type="checkbox"/> Action required by state statute <input checked="" type="checkbox"/> Discretionary action
Deregulatory Component	The specifics are under discussion as the entire chapter is reviewed for this purpose.
Expected Date	March 2023

Title of Proposed Regulatory Action or Guidance Document Reporting Peer-to-Peer Aggression as Neglect (HR 02)	
Brief Overview This guidance will revise and clarify the reporting requirements for peer-on-peer aggressions that occur in licensed or funded community provider settings with the intent of reducing reporting not tied to suspected neglect. The guidance will provide previous incident reporting data, clarify the expectation, and provide examples.	
Regulatory Stage (check one box)	<input type="checkbox"/> NOIRA <input type="checkbox"/> Proposed Rule <input type="checkbox"/> Final Rule <input type="checkbox"/> Emergency Rule <input type="checkbox"/> Fast-Track Rule
Additional Description	<input type="checkbox"/> Expedited Rule <input type="checkbox"/> Exempt Rule <input checked="" type="checkbox"/> Guidance Document
Legal Authority	<input type="checkbox"/> Action required by federal statute <input type="checkbox"/> Action required by state statute <input checked="" type="checkbox"/> Discretionary action
Deregulatory Component	DBHDS guidance documents are not enforceable, and therefore, contain no mandates.
Expected Date	November 2022

Title of Proposed Regulatory Action or Guidance Document	
Uses of Video and Audio Monitoring in a Provider Service Settings (HR 03)	
Brief Overview	
This guidance will clarify the right of individuals receiving services licensed, funded, or operated by DBHDS to reasonable privacy, and clarify and detail expectations regarding provider use of monitoring devices in a service setting.	
Regulatory Stage (check one box)	<input type="checkbox"/> NOIRA <input type="checkbox"/> Proposed Rule <input type="checkbox"/> Final Rule <input type="checkbox"/> Emergency Rule <input type="checkbox"/> Fast-Track Rule
Additional Description	<input type="checkbox"/> Expedited Rule <input type="checkbox"/> Exempt Rule <input checked="" type="checkbox"/> Guidance Document
Legal Authority	<input type="checkbox"/> Action required by federal statute <input type="checkbox"/> Action required by state statute <input checked="" type="checkbox"/> Discretionary action
Deregulatory Component	DBHDS guidance documents are not enforceable, and therefore, contain no mandates.
Expected Date	January 2023

Title of Proposed Regulatory Action or Guidance Document	
Guidance on Reporting Medication Errors as Potential Abuse or Neglect (HR 04)	
Brief Overview	
This guidance will clarify expectations for licensed and funded providers regarding when to report a medication error as potential abuse or neglect; the intent is to reduce reporting that is not tied to suspected neglect. The guidance will clarify terminology and provide examples.	
Regulatory Stage (check one box)	<input type="checkbox"/> NOIRA <input type="checkbox"/> Proposed Rule <input type="checkbox"/> Final Rule <input type="checkbox"/> Emergency Rule <input type="checkbox"/> Fast-Track Rule
Additional Description	<input type="checkbox"/> Expedited Rule <input type="checkbox"/> Exempt Rule <input checked="" type="checkbox"/> Guidance Document
Legal Authority	<input type="checkbox"/> Action required by federal statute <input type="checkbox"/> Action required by state statute <input checked="" type="checkbox"/> Discretionary action
Deregulatory Component	DBHDS guidance documents are not enforceable, and therefore, contain no mandates.
Expected Date	January 2023