

March 4, 2010



April 2, 2010 is the Deadline for Commenting on Proposed Changes to Virginia's Behavioral Health Licensure Rules

CLIENT ADVISORY

On February 1, 2010, the State Board of Behavioral Health and Developmental Services (the "Board") published in the Virginia Register of Regulations proposed changes to the *Rules and Regulations for Licensing of Providers by the Department of Behavioral Health and Developmental Services*. The proposed changes will impact providers of licensed mental health, mental retardation (intellectual disability), substance abuse, developmental disability waiver and brain injury residential services. Examples of the types of licensed services affected by the regulatory changes include group home, residential, ICF/MRs, inpatient psychiatric, day support, opioid treatment, in-home, outpatient, intensive in-home, PACT/ICT and detoxification services.¹

The proposed regulatory changes are intended to enhance the ability of the Department of Behavioral Health and Developmental Services ("DBHDS") to deny applications for licensing, revoke licenses and restrict the activities of provider applicants that do not meet service standards during the provisional licensure period. Also, the proposed revisions are consistent with the DBHDS' current mission, which includes the provision of person-centered planning and goals of recovery and self-determination for individuals receiving licensed services.

I. Summary of Proposed Changes

- Under the current licensure regulations, a provider's financial records must be

¹ The types of licensed services covered by the proposed regulatory changes include: case management, community gero-psychiatric residential, community ICR/MR, residential crisis stabilization, nonresidential crisis stabilization, day support, day treatment (includes clubhouse and therapeutic day treatment for children and adolescents), group home, community residential, inpatient psychiatric, Intensive Community Treatment (ICT), intensive in-home, intensive outpatient, managed withdrawal (including medical detoxification and social detoxification), mental health community support, opioid treatment, outpatient, partial hospitalization, program of assertive community treatment (PACT), psychosocial rehabilitation, residential treatment, respite care, sponsored residential home, substance abuse residential treatment for women with children, supervised living residential and supportive in-home.



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audited at least once every three years. Under the proposed regulations, an audit will no longer be required once every 3 years; instead, “[t]he Department may require an audit of all financial records by an independent Certified Public Accountant...”.

- The proposed regulations require each residential service to designate a staff person as a community liaison responsible for facilitating cooperative relationships with neighbors, local law enforcement personnel, local government officials and the community at large.
- The maximum number of beds allowed in a new community intermediate care/mental retardation facility (“ICF/MR”) will be reduced from 20 to 12 beds. ICF/MRs licensed prior to the effective date of the proposed regulations will be permitted to continue to operate 20 beds.
- The maximum occupancy of shared bedrooms will be 2 individuals in Medicaid waiver group homes seeking licensure after the effective date of the proposed regulations. Under the current licensure regulations, the maximum occupancy of shared bedrooms in a Medicaid group home is 4 individuals.
- The proposed regulations set forth more detailed requirements for providers’ emergency preparedness and response plans. Also, providers of residential services will be required to have, at all times, a 3-day supply of emergency food and water for all residents and staff. Emergency food supplies shall include food that does not require cooking. The water supply shall include 1 gallon of water per person, per day.
- The proposed regulations include new criteria for closing licensed services on Sundays.
- The proposed regulations include descriptions of the required qualifications for individuals who supervise, and are responsible for, approval of assessments and individualized service plans (“ISPs”). Such qualifications have been updated to allow appropriate experience to substitute for a degree in certain instances.
- The proposed regulations set forth changes to the requirements for the initial and comprehensive assessments and ISPs. The revisions enhance the individual’s involvement in the process to create a more “person-centered” ISP. The proposed regulations outline the required scope of the initial and comprehensive assessments and expand the requirements for ISP development. Under the proposed regulations, the timeframe for completion of a comprehensive ISP will be increased from 30 to 60 days after admission under most



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conditions.

- The requirements for sponsor residential homes and case management services have been strengthened under the proposed regulations.

The proposed regulations also add requirements for licensing sponsor residential services for children.

II. Opportunities for Comment

As a part of the regulatory process, the Board will hold a public hearing on March 9, 2010 at 10:00 a.m. in the conference room of the Henrico County CSB Offices. Also, written comments on the proposed regulatory revisions may be provided to the DBHDS

Licensing Office through April 2, 2010. HDJN encourages its clients to view the proposed regulatory changes and participate in the public commenting process. Active participation in the regulatory process will enhance providers' ability to influence the development of these important licensure regulations.

For more information about the proposed regulatory changes or for assistance in submitting written comments to DBHDS, please contact Emily Towey at 804.967.9604 or by email at etowey@hdjn.com. Additional information about Hancock, Daniel, Johnson & Nagle, P.C. is available on the firm's website at www.hdjn.com.

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