

OFFICE OF LICENSING

REGULATORY & GUIDANCE DOCUMENT REVIEW

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VACBP

PURPOSE

- To provide an overview of the regulatory process.
- To discuss the implementation of HB1944.
- To discuss access and notification of guidance documents.
- To discuss how guidance documents impact licensure and inspections.



REGULATION V. STATUTE

- Statute/Law (Code of Virginia) - § 54.1-XXX
 - Adopted by the General Assembly.
 - Enacted, amended, or repealed only by the General Assembly.
 - Legislative actions only take place during the General Assembly session (once per year).
- Regulation (Virginia Administrative Code-VAC) – 18VACXX-YY-ZZ
 - Adopted by a state government agency.
 - Must be authorized by General Assembly (through law).
 - Enacted, amended, or repealed by agency.
 - Regulatory review process can take place at any time.

*A regulation has the **binding effect of law**. Therefore, it affects our lives as much as a statute passed by the legislature.*



REGULATORY SITES

Virginia Regulatory Town Hall

www.townhall.virginia.gov

(DPB staff)

Virginia *Register of Regulations*

<http://register.dls.virginia.gov/>

(Code commission staff under the Division of Legislative Services)

Virginia Administrative Code (VAC)

<http://law.lis.virginia.gov/admincode>

(or go to LIS, left side choice; same staff as for *Register*)

PROCESS GOVERNED BY

- * Administrative Process Act (APA)
(Chapter 40 of Title 2.2 of the *Code of Virginia*);
- * Executive Order Issued by the Governor (pursuant to § 2.2-4013 of the *Code of Virginia*); and
- * Virginia Register of Regulations Form, Style and Procedure Manual for Publication of Virginia Regulations (Ch. 41 of Title 2.2)

PROCESS GOVERNED BY

Executive Order 17 (2014):

- ❖ All regulatory activity should be undertaken with least possible intrusion [emphasis added] into the lives of the citizens of the Commonwealth and be necessary to protect the public health, safety, and welfare.
- ❖ Where applicable and to the extent permitted by law, it shall be the policy of the Commonwealth that **only regulations necessary to interpret the law or to protect the public health, safety, or welfare shall be promulgated.** [emphasis added]
- ❖ Further guidance is set out in sections A – M of Executive Order 17.

PROCESS GOVERNED BY

Executive Order 17 (2014) continued:

Public Participation

H. Agencies **shall actively seek input** [emphasis added] for proposed regulations from interested parties, stakeholders, citizens, and members of the General Assembly....

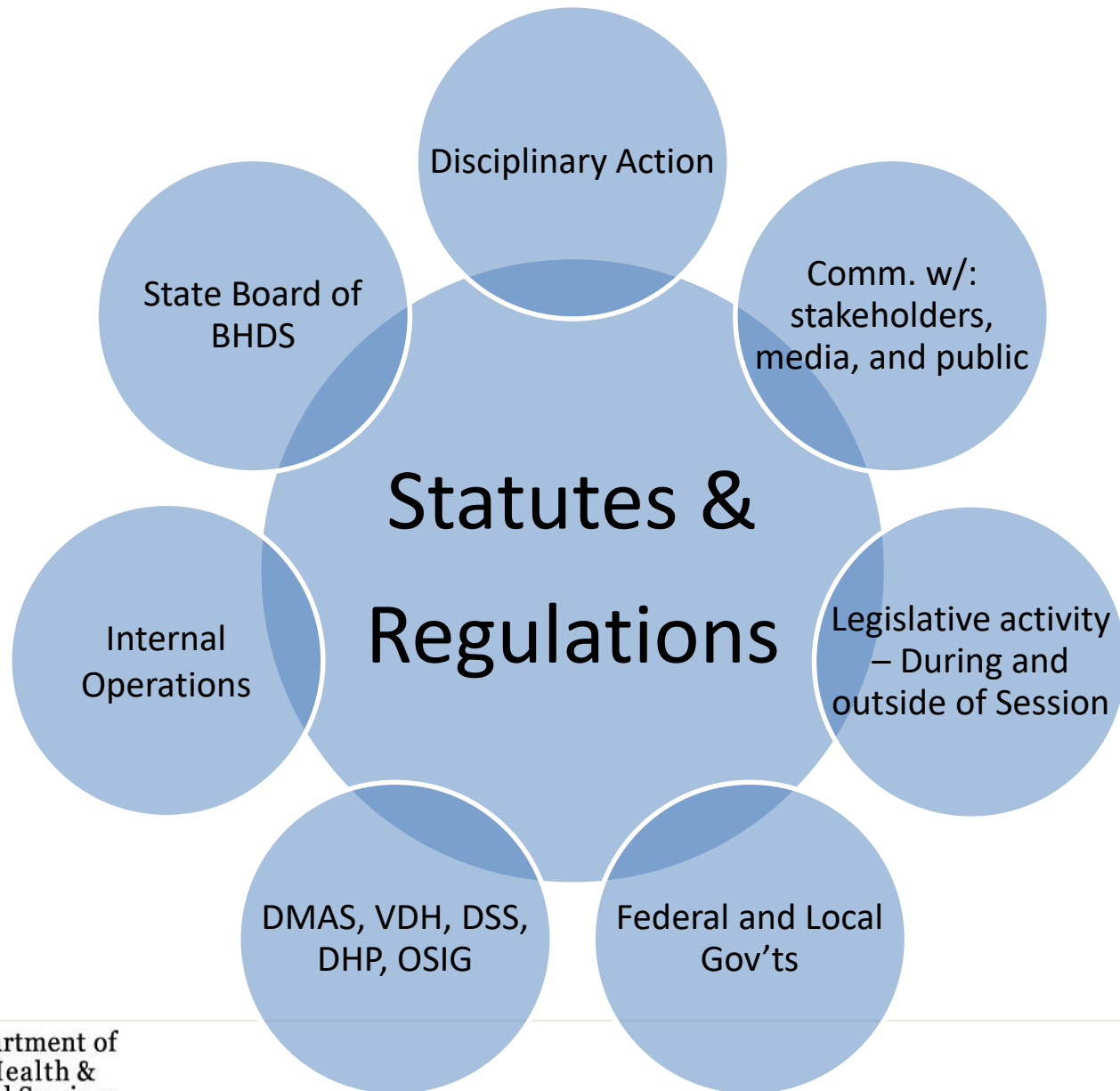
J. All legal requirements related to public participation and all public participation guidelines [PPGs] **shall be strictly followed** [emphasis added] to ensure that citizens have reasonable access and opportunity to present their comments and concerns.

PROCESS GOVERNED BY

Other requirements of Executive Order 17 (2014):

- ❖ **Meeting Notices** - Executive branch agencies shall post the notice of, and agenda for, a public regulatory meeting (*defined as a meeting where the body holding the meeting is having any of its regulations discussed - basically a meeting under § 2.2-3701 with the additional element that particular regulations, or regulations in general, are set to be discussed*) on the Town Hall at least 7 calendar days prior to the date of the meeting.

ALL REG. ACTIVITY CAN INVOLVE:



GUIDANCE DOCUMENTS

Defined in § 2.2-4001 of the *Code of Virginia*:

"Guidance document" means any document developed by a state agency or staff that provides information or guidance of general applicability to the staff or public to interpret or implement statutes or the agency's rules or regulations, excluding agency minutes or documents that pertain only to the internal management of agencies.

Draft language prepared by SME staff; OAG 'informal' review; commissioner then reviews draft language, considers amendments, and approves.

Required to be posted to Town Hall within 10 calendar days of adoption or amendment (per EO17).

GUIDANCE DOCUMENTS, CON'T.

§ 2.2-4103.1. Guidance documents; duty to file with Registrar.

B. It shall be the duty of every agency to **annually file** with the Registrar for publication in the Virginia Register of Regulations **a list of any guidance documents** upon which the agency currently relies. The filing shall be made **on or before January 1 of each year** in a format to be developed by the Registrar. **Each agency shall also (i) maintain a complete list of all** of its currently operative guidance documents and **make the list available** for public inspection, **(ii) make available** for public inspection **the full texts of all guidance documents** to the extent inspection is permitted by law, and **(iii) upon request, make copies of such lists or guidance documents available** without charge, at cost, or upon payment of a reasonable fee.

HB1944 (2017)

In accordance with these changes to the law effective July 1, 2017, for all affected licensed providers:

DBHDS will post guidance document changes under development to the Regulatory Town Hall website for a 30 day public comment period;

DBHDS will notify you each time there are such changes and the opportunity to comment on the changes under consideration, including specific comments regarding an appropriate time frame for the implementation of such changes; and

DBHDS will notify you when new or final regulations are posted on the Regulatory Town Hall website, and when there are public comment periods pursuant to the existing regulatory processes established by Virginia law.

GENERAL NOTICES

A **general notice** is any announcement that an agency wishes to send out to Town Hall's registered public users and to publish in the Virginia Register of Regulations.

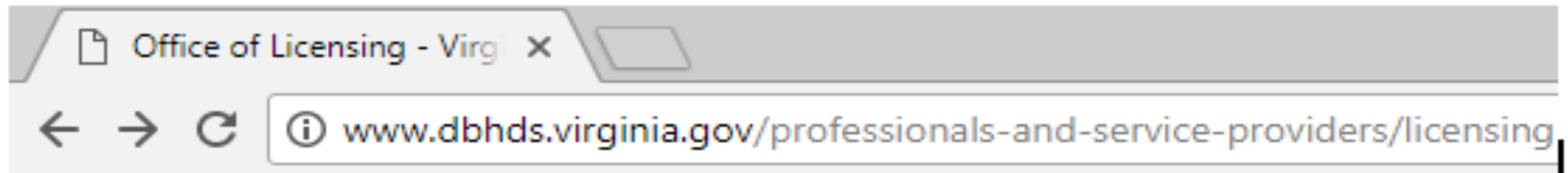
Examples:

1. **Announcing the release of a new guidance document** that interprets some provision of a regulation, or
2. Advising the public that a regulation is being amended through an exempt process and that no public hearing will be held.
3. To launch a public comment forum

Not appropriate for announcing:

- Details relating to meetings, or
- Publication of a regulatory stage in the Virginia Register, e.g., NOIRA, proposed, or final, because the Town Hall automatically sends email notification of these events.

NOTIFICATION TO PROVIDERS



OFFICE OF LICENSING

ANNOUNCEMENTS

- [Policies and Procedures Tracking \(October 2017\)](#)
- [DBHDS Public Notice - 12 VAC 35 - 105 \(July 2017\)](#)
- [Notice to Providers of Changes to Regulations or Guidance Documents \(June 2017\)](#)
- [DBHDS Licensing Incident Reporting Resource Guide \(June 2017\)](#)
- [CHRIS Changes - Case Management Report \(June 2017\)](#)
- [House Bill 1775/Chapter 458 - Replace ID with DD \(June 2017\)](#)

DBHDS LICENSING UPDATE

- [Licensing At A Glance \(Spring 2017\)](#)
- [Licensing At A Glance \(Winter 2017\)](#)

[Regulations](#)

[Guidance and Technical Assistance](#)

[Contact Information](#)

[Complaints](#)

Guidance For Licensed Services

- [Change Of Ownership Process - NEW](#)
- [ASAM Level of Care Crosswalk with DBHDS Licensing Numbers - NEW](#)

HOW TO STAY INFORMED...

Make sure your contact information is **current** with Licensing.

1. Contact your licensing specialist and ask to add your contact information in the licensing database
or
2. Email LicensingAdminSupport@dbhds.virginia.gov
to update your contact information
or
3. Complete a modification application and submit to licensing if company leadership has changed.

POSTING OF GUIDANCE DOCUMENTS

Virginia Regulatory Town x			
townhall.virginia.gov/L/GDocs.cfm			
Agency Department of Behavioral Health and Developmental Services			
ID	Title	Revision Date	Date Posted
LIC 2	Licensing Intensive In-Home Guidance	3/1/2011	12/30/2015
LIC 5	Human Services and Related Fields Approved Degrees/Experience	5/3/2013	12/30/2015
LIC 6	Guidance for Selected Licensing Regulations	11/25/2014	12/30/2016
LIC 7	Case Management Crisis Plans (-1240)	6/5/2017	6/5/2017
LIC 8	Fall Risk Assessments (-720.B.)	6/5/2017	6/5/2017
LIC 9	Nutrition Guidelines and Form (-600)	6/5/2017	6/5/2017
LIC10	Guidance on Ceiling Height Requirements	6/8/2017	6/8/2017
LIC11	Medication Errors	6/8/2017	6/8/2017
LIC12	Guidance for Certificate of Use and Occupancy	6/9/2017	6/9/2017
LIC13	Approved Degrees in Human Services	6/28/2017	6/28/2017
LIC14	Office of Licensing Frequently Asked Questions (FAQs)	6/28/2017	6/28/2017

THE USE OF GUIDANCE DOCUMENTS

Inspections

- Providers use guidance documents to monitor their own compliance .
- Assist with providers and Licensing both interpreting regulations the same.
- Connects Licensing regulations with other state codes or language.

Licensure Status

- Guidance documents, and the notification of them being sent to providers, can be used when issuing corrective action plans.
- Providers can use guidance documents to assist in responding to a corrective action plan.
- Guidance, and evidence of notification of guidance, can be used when sanctioning a provider.

THE USE OF GUIDANCE DOCUMENTS

**Guidance sent to providers
from Licensing are
not additional requirements
or new regulations.**

**Guidance is intended to
assist providers and the department
in the interpretation and
implementation of the regulation.**

REGULATORY PERIODIC REVIEW INITIATED

Board

State Board of Behavioral Health and Developmental Services

Chapter

Rules and Regulations For Licensing Providers by the Department of Behavioral Health and Developmental Services [12 VAC 35 - 105]

Review 1613

Periodic Review of this Chapter

Includes a Small Business Impact Review

Date Filed: 10/11/2017

Review Announcement

Pursuant to Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Behavioral Health and Developmental Services is conducting a periodic review and small business impact review of VAC citation: 12VAC35--105, title of regulation: Rules and Regulations For Licensing Providers by the Department of Behavioral Health and Developmental Services.

The review of this regulation will be guided by the principles in Executive Order 17 (2014).
<http://dph.virginia.gov/regs/EO17.pdf>

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins Monday, October 30, 2017, and ends on Friday, December 15, 2017.

Comments may be submitted online to the Virginia Regulatory Town Hall at <http://www.townhall.virginia.gov/L/Forums.cfm>. Comments may also be sent to Name: Cleopatra L. Booker, Psy.D., Title: Director, DBHDS Office of Licensing, Address: P.O. Box 1797, City: Richmond, State: Virginia, Zip: 23218-1797, Telephone: (804) 786-1747, FAX: (804) 692-0066, email address: cleopatra.booker@dbhds.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

Public Comment Period

Begin Date: 10/30/2017 End Date: 12/15/2017



QUESTIONS...





Virginia Department of
Behavioral Health &
Developmental Services

OFFICE OF LICENSING CONTACT INFORMATION

LicensingAdminSupport@dbhds.virginia.gov