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Virginia Board for People with Disabilities

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HEIDI L. LAWYER
EXECUTIVE DIRECTOR

Washington Building, Capitol Square
1100 Bank Street, 7th Floor
Richmond, Virginia 23219

(804) 786-0016
1-800-846-4464
TTY or VOICE
FAX (804) 786-1118
Info@vbpd.virginia.gov
www.vaboard.org

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Les Saltzberg, Director, Office of Licensing
Department of Behavioral Health and Developmental Services
Jefferson Building, Capitol Square
PO. Box 1797
Richmond, Virginia 23219

RE: Proposed Text, 12 VAC 35-105-10

Dear Mr. Saltzberg:

I am writing on behalf of the Virginia Board to comment on the proposed text for Chapter 105, *Rules and Regulations for the Licensing of Providers by the Department of Behavioral Health and Developmental Services*, 12 VAC-35-105 et seq.. Although the Board had provided comment on the previous version of these regulations in 2006, the significant changes in this proposed text warrant new comment. The Board appreciates the Department's incorporation of person-centered language in this version. We applaud the strengthening of the Department's ability to take disciplinary actions against non-compliant providers as well as strengthening of requirements for Sponsored Homes, both of which can increase protections for individuals served. Further comments are provided by regulation section below.

Definitions:

Case management service – For consistency with person-centered language, the Board suggests either adding “Support coordination” in parentheses after this term or adopting “support coordination” as the key term to be used.

Crisis as defined seems too broad. Suggest the following additional language (in italics)

Crisis means a *deteriorating or unstable* situation, *often developing suddenly or rapidly*, that produces *acute, heightened* emotional, mental, physical, medical or behavioral distress or challenges; or any situation or circumstances in which the individual perceives or experiences a sudden loss of his ability to use effective problem-solving and coping skills.

“*Home and noncenter based*” – Definition is unclear because of use of term “noncenter”. “Noncenter” is not defined. Does “noncenter” mean “not a Training Center”?

12 VAC 35-105-180, Notification of Changes. *Sub-sections D and E* only require a 30-day notice of the provider’s intent to discontinue services to the Department and to the individuals receiving services or their authorized representatives (AR). This time period seems inadequate for locating and obtaining alternative housing or services as well as for adequate transition for the individual with disabilities. The Board recommends increasing the advance notice to the Department to 90 days and the notice to the individuals or their ARs to at least 60 days.

12 VAC 35-105-210, Fiscal Accountability. Fiscal viability of providers, especially new ones, may be more challenging in this recession. As currently written, there does not appear to be a requirement for the provider to notify the Department when either the financial arrangement or the line of credit has been cancelled or significantly reduced, actions which could jeopardize the provider’s fiscal viability. The Board recommends adding a requirement of provider notification to DBHDS in such a situation.

12 VAC 35-105-325, Community Liaison. Substituting language such as “owner or manager or staff designee” would give the provider more options and flexibility regarding this role. This section appears to infer an expectation that a provider be proactive in building “cooperative”, positive relationships with neighbors, police, etc. An explicit statement of the expectation(s) would help provide clearer guidance and help ensure accountability.

12 VAC 35-105-330, Beds. With this proposed regulation, the Department has an opportunity to foster a more person-centered system by limiting the number of beds allowed at a community ICF/MR. While the Board appreciates the Department’s reduction in beds from 20 to 12, this proposed size does not promote a homelike environment. In addition, “at any one location” remains too general, and could allow multiple units to be built on one property. Consistent with our previous comment, the Board recommends changing the language to sub-section B to read as follows (new language in italics): “A community ICF/MR may not have more than ~~12~~ *six* beds at any one location *or on any single property.* (etc.)

12 VAC 35-105-340, Bedrooms. Additional clarity seems indicated for Section B, which allows up to 4 individuals in a single bedroom, except for group homes. While we appreciate the reduction in group home bedroom occupancy, the high occupancy for other residential programs is not in keeping with person-centered practices. The Board asks the Department to consider a maximum occupancy of no more than 2 individuals for non-group home residential programs. If occupancy of four is maintained, addition of details on the types of residential facilities that can have that bedroom occupancy (e.g., short-term or time-limited psychiatric or substance abuse programs) would be helpful.

With regard to group homes, Section B seems in conflict with the Department's observations regarding group homes on page 6 of its Town Hall Agency Background Document (item # 1, *Two in a bedroom*): "Very few homes now place more than two individuals in a bedroom or it is not appropriate for the individuals served to share a bedroom". Group homes typically become a long-term residence for an individual; and individual needs for privacy and personal space should be honored. The Board recommends that section B be revised to require single occupancy bedrooms for group homes, except when an individual prefers to have and explicitly requests a roommate.

12 VAC 35-105-440, Orientation of new employees, contractors, volunteers, and students.

The Board recommends that the required orientation include person-centered principles. Later sections (35-105-660, for example) specifically refer to person-centeredness, and therefore provider and staff familiarity with these principles are needed.

12 VAC 35-105-450, Employee training and development. As written, this section only requires providers to have a policy on retraining on three topics: medication management, behavior management, and emergency preparedness. In light of health concerns about a potential flu epidemic this year, the Board recommends that infection control be added as a required retraining topic in provider policy. Doing so is consistent with the infection control expectation set forth in Article 4, 35-105-720 (Health Care Policy), section D.

12 VAC 35-105-610, Community Participation. Similar to 2006, the Board is concerned that "shall be afforded the opportunity to participate" is vague language that should be rewritten to better support person-centeredness. As now written, this section would consider a provider in compliance who took all the individuals being served to an activity as a group, without offering or considering individual interests and preferences for activities. The Board recommends that language be revised to read: "Individuals ... shall be afforded *opportunities* to participate in community activities *that are based on their personal interests or preferences.* ...

12 VAC 35-105-665. ISP Requirements. The Board recommends adding "*, if applicable*" at the end of item 13, sub-section A ("Recovery plans"). Unless a co-occurring mental illness or substance abuse disorder exists, recovery does not apply to individuals with an intellectual disability or developmental disability.

Section C now allows collaboration with either "the individual or authorized representative, as appropriate". The Board strongly supports involving the individual with a disability in all decisions that affect his or her life, even when an AR is appointed. We therefore recommend revising the end of the sentence to read: "in collaboration with the individual *and [delete "or"]* authorized representative...".

12 VAC 35-105-910, Retention of Individual's service record. If we have understood properly, *section B* requires all providers to maintain the specified individual information (B, subsections 1-5) "permanently". Of concern to the Board is protection of the individual from misuse of his or her identifying information, i.e. identity theft. Is "permanent" retention of this personal information for all individuals served in licensed residential programs required by state or federal law? If so, addition of language referring to the law and specific types of residential programs covered would provide helpful guidance. We recommend that language be added to set a 3-year time limit on retention of the individual information, unless required by state or federal law.

Thank you for this opportunity for input. Please contact me if you have any questions at 786-9369 about our comments.

Sincerely,

Heidi L. Lawyer

Cc: James W. Stewart, III, Acting Commissioner, DBHDS
Charline Davidson, Director, Office of Planning & Development