



COMMONWEALTH of VIRGINIA

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INTERIM COMMISSIONER

DEPARTMENT OF
BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

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MEMORANDUM

To: All Providers Licensed by DBHDS

**From: Cleopatra H. Booker, Psy.D.
Director, Office of Licensing**

Date: June 5, 2017

**Re: Requirements of DBHDS for Notice to Providers of Changes to
Regulations or Guidance Documents**

The 2017 Virginia General Assembly passed House Bill 1944/Chapter 599, which included directives to DBHDS about proactive communication to all 'affected licensed providers' as follows (emphasis added):

- That, **at or prior to the time a new regulation relating to licensed providers is posted** to the Virginia Regulatory Town Hall, the Department of Behavioral Health and Developmental Services shall provide direct notice to licensed providers affected by the new regulatory change that such change has been initiated.
- That, **at the time that the final stage of a regulation is posted** to the Virginia Regulatory Town Hall, the Department of Behavioral Health and Developmental Services shall provide direct notice to licensed providers affected by the regulatory change that such final stage has been posted.
- That, **at the time any change to guidance documents related to licensure requirements is being developed**, the Department of Behavioral Health and Developmental Services shall provide direct notice to licensed providers affected by the change that such change has been initiated. The Department shall **post the proposed change** to the Virginia Regulatory Town Hall, to **include a public comment forum** for a period of 30 days. Such notice shall include a description of the change and provide contact information for the Department's designated contact person. If it is anticipated that the change shall have an impact on staffing or payment matters for the affected stakeholders, the direct notice to stakeholders shall

note this fact and request specific comments regarding an appropriate time frame for the implementation of such changes.

I am writing to inform providers of these new requirements for DBHDS because you will begin to receive direct notices, and to give you instructions on how to:

- proactively sign up to receive notice of DBHDS regulatory and guidance document changes; and,
- submit comments about proposed changes.

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.

**In summary, for the regulatory and policy matters listed above,
a provider can follow the instructions attached
to *automatically* receive email notifications from the Virginia Town Hall and
instructions to make public comment online, (recommended)**

**AND
DBHDS will also proactively communicate such notices directly to providers.**

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

**INSTRUCTIONS TO SIGN UP TO RECEIVE NOTICE
OF REGULATORY AND GUIDANCE DOCUMENT CHANGES**

In order to receive automatic email notification directly from the Town Hall website that DBHDS has given notice (through a 'General Notice') regarding a proposed change to a guidance document, or that a public comment period has opened for a newly proposed regulation or a regulation that is moving through the final stages of adoption, providers must enroll as a public user on the Town Hall website.

To Register as a Public User:

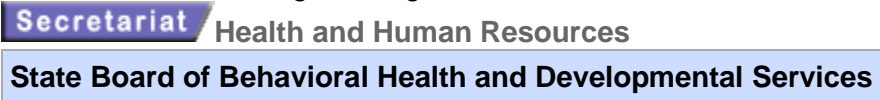
- Go to <http://townhall.virginia.gov/>
 - Click on the button entitled "Sign Up" located at the bottom the left side of the screen.
 - In the screen that opens, enter your email address, name, and a password of your choice.
- Then, you will be brought to a screen that says:
An email has been sent to your email address with a link that will allow you to modify your email preferences. You should receive the email in a few seconds or a few minutes if everything is working normally.
- The email you receive will state:
You are signed up on Virginia's Regulatory Town Hall to receive certain emails. The following link lets you review and modify your preferences. If your email disables links, you may need to copy and paste this link into your browser.
[\[and a link will be included taking you back to your record in Town Hall to finish signing up\]](#)
- When you click on the link in that email, it will take you to a screen that states:
I would like to receive e-mail about:
 - Meetings related to the subject areas I will indicate below
 - Regulatory actions related to the subject areas I will indicate below**-NOTE: Make sure both of these boxes are checked (✓).**
- Then, in the next section, find "Health and Human Resources" on the list.
- Click on the plus sign "(+)" to the left of "Health and Human Resources" to display a list of agencies under "Health and Human Resources."
- Click on and enter a check mark (✓) for the "Department of Behavioral Health and Developmental Services" and any other agencies of your choosing if you wish to receive notice relating to **any of the regulations of an agency**.
- Click on the "(+)" to the left of "Department of Behavioral Health and Developmental Services" to display the name of the State Board of Behavioral Health and Developmental Services.
- Then, click on the "(+)" to the left of "State Board" to display a list of **all** regulations for DBHDS. Click on and enter a check mark (✓) for the specific DBHDS regulations of your choosing. (You can go through this process for any agency's list of regulations.)
- When you are finished placing check marks (✓) by the agencies you wish to receive notices from or regulations you wish to receive notices about, click the blue "Save" button at the bottom of the page.

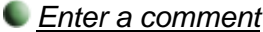
You will now be registered as a public user, and will receive automatic email notices about DBHDS guidance document and regulatory changes (and any other agencies and regulations chosen).

INSTRUCTIONS FOR SUBMITTING ONLINE COMMENTS*
ON REGULATORY AND GUIDANCE DOCUMENT CHANGES

After you have registered as a public user on Town Hall using the instructions above, when you receive an email notifying you about a change to a guidance document or regulation with notice that there is an **opportunity to comment** and you wish to make a comment online, follow these instructions.

To Make a Public Comment Online as a Public User:

- Go to <http://townhall.virginia.gov/>
 - There you will see the following text at the top of the screen:
Public comment forums
[number of] open comment forums, [number] of which have some comments
- Click "open comment forums" and a page will open showing all open comment forums for each agency in the Commonwealth.
- Scroll down to the following heading:


The screenshot shows a navigation menu with 'Secretariat' highlighted in a blue box, followed by 'Health and Human Resources'. Below that, 'State Board of Behavioral Health and Developmental Services' is highlighted in a light blue box.
- Find the item that you wish to comment on.
 - Click on "View and Enter Comments" to the left of the item description.
- Then, click on the text that says:


The screenshot shows a green circular button with the text 'Enter a comment'.
- Type your comment into the text box.
- When you are finished typing your comment, click on the "Submit" button.

Your comment will be added to those in the forum.

Public comment forums are open only during the official comment period for a stage. After the comment period has closed, it is possible to view all of comments made, but not to enter new comments. Once a public comment is submitted to a forum, it becomes part of the official record of a regulatory action and cannot be changed.

***NOTE: Comments may be submitted in hard copy mail, fax, or email rather than online. The information on options to submit comments other than through Town Hall will be included in any notice when comment is being received.**

RESOURCES AND INFORMATION

- **Virginia Regulatory Town Hall** (<http://townhall.virginia.gov/>) is a source of information on current regulatory actions and meetings. It also facilitates public participation through online public comment forums. Through this website, most executive branch agencies submit regulations for review and approval of the Governor. Once through the review process, the regulation is sent to the *Virginia Register* for publication.
- **Charts outlining the different regulatory stages can be viewed here:** <http://townhall.virginia.gov/UM/charts.cfm>
- **Virginia Administrative Code** (<http://law.lis.virginia.gov/admincode>) (VAC) contains the current permanent regulations for the Commonwealth of Virginia. Regulations have the force of law and are written and administered by state agencies as authorized by the General Assembly. The VAC online is updated daily.
- **Virginia Register of Regulations** (<http://register.dls.virginia.gov>) contains current emergency regulations. Because of their temporary nature, emergency regulations are not included in VAC, but are available on the Emergency Regulations tab of this site within two business days of the effective date. The *Virginia Register of Regulations* is an official state publication issued every other week throughout the year. The *Virginia Register* has the following sections: Petitions for Rulemaking, Notices of Intended Regulatory Action (NOIRA), Regulations (Proposed, Final, Fast-Track, and Emergency), Guidance Documents, Governor's Executive Orders, and General Notices.

Emergency regulations may be promulgated in emergency situations after consultation with the Attorney General and approval of the Governor. Emergency regulations are temporary in nature and may be effective for only 18 months unless extended by the Governor for an additional six months. Typically, public comment is not solicited on emergency regulations. Emergency regulations are published in the *Virginia Register*; however, since these regulations have limited duration, they are not included in the *Virginia Administrative Code*. Instead, they are published on a portion of the *Virginia Register* website.

A regulation is a law promulgated by a state agency. The General Assembly must pass a law authorizing or mandating a state agency to write regulations. Unlike statutes (laws) in the Code of Virginia, which change only when the General Assembly is in session, regulations change throughout the year.

A guidance document is written by a state agency **to interpret or clarify** a regulation or statute. Unlike a promulgated regulation, a guidance document does not have the force and effect of law. To see if an agency has any guidance documents, go to the [Virginia Register Guidance Document](http://townhall.virginia.gov/L/GDocs.cfm) (<http://townhall.virginia.gov/L/GDocs.cfm>) web page for more information. Guidance documents are also posted on the Virginia Regulatory Town Hall.

The “effective date” is the date that a regulation goes into effect and must be followed.

The Acts of Assembly are bills passed by the General Assembly and signed by the Governor during a particular legislative session.

The Code of Virginia contains the general and permanent laws of the Commonwealth of Virginia that have been passed by the General Assembly and signed by the Governor.

Laws that are not permanent and of a general application (e.g., are limited in duration or have only local or regional application) may be excluded from the Code. Such bills are often enacted without a Code section number (referred to as "Section 1" bills). You can find uncodified Acts of Assembly, by year, on the Virginia Law Portal at <http://law.lis.virginia.gov/uncodifiedacts>.

The Virginia Administrative Process Act (APA) is the set of Virginia laws that provide the basic framework for regulatory actions in Virginia and is found at Chapter 40 of Title 2.2 of the Code of Virginia. The APA is designed to give state decision makers, businesses, and the public the opportunity to participate in creating regulations by providing recommendations and feedback.

A general notice is any announcement that an agency wishes to make to registered public users of the Town Hall and for publication in the Virginia Register. Basically, there must be some kind of relationship between a general notice and a regulation.

Examples of general notices include (1) announcing the release of a new guidance document that interprets some provision of a regulation, or (2) advising persons that a regulation is being amended through an exempt process and that no public hearing will be held.

A general notice is not appropriate for announcing (1) details relating to meetings or (2) the publication in the Virginia Register of a regulatory stage, e.g., NOIRA, proposed, or final stage, because the Town Hall automatically sends email notification of these events.

Meetings and Public Hearings

All meetings regarding regulations are posted on the Town Hall website. Other meetings may be posted as well, for example, meetings of technical advisory groups; however, meetings not pertaining to regulatory matters can also be posted directly to the Commonwealth Calendar website (<https://commonwealthcalendar.virginia.gov/>).

State users can be assured that any meetings posted on the Town Hall will automatically get posted to the Commonwealth Calendar fulfilling any posting requirements. Manually posting to both websites is never necessary.