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Periodic Review Report of Findings

Agency name	Department of Behavioral Health and Developmental Services
Virginia Administrative Code (VAC) citation	12 VAC35-230
Regulation title	Operation of the Individual and Family Support Program
Date this document prepared	01/17/2019

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Acronyms and Definitions

Please define all acronyms used in this Report. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

"DBHDS" means the Department of Behavioral Health and Developmental Services.

"DD" means Developmental Disability.

"IFSP" means the Individual and Family Support Program.

Legal Basis

Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.

Sections 37.2-203 and 37.2-304 of the Code of Virginia authorize the Board to adopt regulations that may be necessary to carry out the provisions of Title 37.2 and other laws of the Commonwealth administered by the Commissioner and the Department.

In March 2013, the Department of Behavioral Health and Developmental Services (DBHDS) launched the Individual and Family Support Program (IFSP) to assist individuals on the state Medicaid Home and Community- Based (HCBS) Developmental Disability (DD) Waiver waitlist. The goal is to assist individuals with developmental disabilities and their families connect to community resources, supports, and services. Chapter 230 became effective on January 16, 2014.

Alternatives

Please describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

There are no viable alternatives to this regulation. This regulation is necessary for the administration of the IFSP funds.

Public Comment

Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

The commenters received agency responses to their comments previously when the agency considered amending the regulations as the path forward. The agency response here is updated as of January 2019 to reflect the final decision to retain the regulation as is. Both commenters have received the revised comment.

Commenter	Comment	Agency response (Revised January 2019)
Lucy Beadnell, The Arc of Northern Virginia/Virginia Ability Alliance	<p>Comments on Needed Changes to IFSP Regulations</p> <p>Department of Behavioral Health and Developmental Services,</p> <p>The Virginia Ability Alliance is a coalition of Northern Virginia non-profits focused on ensuring all people with disabilities are living a full life in their home community. We have a vested interest in ensuring the Individual and Family Support Program (IFSP) is implemented in a way that fulfills the mandates of the Department of Justice settlement, while meeting the critical needs of the 12,000+ individuals with developmental disabilities on the waiting list for Waiver services.</p>	<p>Thank you for your comments.</p> <p>DBHDS will utilize the comments provided during the regulatory review process to guide future program policies and procedures. It is DBHDS' goal to increasingly incorporate stakeholder involvement as it improves the IFSP Funding Program.</p>

	<p>We submit the following suggestions for updates to the regulations for the IFSP program based upon feedback we have heard from our families who have utilized this program in the past.</p> <ol style="list-style-type: none">1.The annual application period should be, at a minimum, 30 days in duration. If funding is exhausted before the end of the 30 day application period, that announcement should be made publicly through the IFSP application portal and on the DBHDS website.2.The annual application timeline should be announced at least 60 days in advance of the opening of the application period.3.Any individual who is added to the Developmental Disability Waivers waiting list prior to the end of the application period should be eligible to apply for the program.4.A clear policy should be laid out for receipt submissions, including dates by when receipts must be submitted to DBHDS, how submissions of receipts should be made, and penalties for not submitting receipts.5.Each open application period should have an opportunity for families to verify their eligibility to re-apply during the 60 day advance notice of the annual application. The verification should include verification of the person's presence on the waiting list, confirmation of eligibility based on past receipt submission, and opportunities to ask questions about proposed requests.6.In keeping with the provisions of the 2012 Settlement Agreement between the Department of Justice and the Commonwealth, the likelihood of institutionalization and urgency of need should be taken into account when processing applications. Possible solutions include a listing of the individual's priority status on the waiting list, any history of institutionalization, active crises or crisis services	
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	<p>used, and an opportunity for a brief description of urgent or extenuating circumstances. If the funding is not exhausted before the end of the application period, anyone who applies should be funded. If funding is exhausted, priority should go to individuals most at risk of institutionalization.</p> <p>7. Every individual on the waiting list should receive some direct notification of the opening of the program each fiscal year. This could be done through written mail or email, through DBHDS or the Community Services Boards. The current system of relying on a network of organizations and partners willing to share news of the program and/or families proactively checking for information on the DBHDS website is inadequate and further disenfranchises families already disconnected from services and supports.</p> <p>We thank DBHDS for the significant improvements made to the program in the last year and hope that our suggestions are incorporated into the program regulations to further increase the accessibility and value of this program.</p> <p>Sincerely, The Virginia Ability Alliance</p>	
<p>Maureen Hollowell, Virginia Association of Centers for Independent Living</p>	<p>IFSP Regulation Periodic Review</p> <p>The Virginia Association of Centers for Independent Living (VACIL) is a statewide association of Centers for Independent Living (CIL) that advocates for the integration and inclusion of people with disabilities into all aspects of society. A CIL is a consumer-controlled, community-based, cross-disability, nonresidential, private, non-profit agency that is designed and operated within a local community by individuals with disabilities and provides an array of independent living services. VACIL offers the</p>	<p>Thank you for your comments. DBHDS, through its state Individual and Family Support (IFSP) Council, began the initial phase of collecting public input on the administration of the Individual and Family Support Program's direct assistance funds during the development of the State IFSP Plan. The IFSP State Council made numerous recommendations on how to best administer the IFSP funds. The recommendations received to date were incorporated into Virginia's IFSP State Plan for Increasing Support for Virginians with Developmental Disabilities under Goal I.b.</p> <p>DBHDS will utilize the comments provided during the regulatory review process to guide</p>

	<p>following public comment in response to the periodic review of 12VAC35-230, Operation of the Individual and Family Support Program.</p> <p>The application process should prioritize applications based on the individual's access to other supports. For example, individuals who have access to the CCC Plus Waiver personal care, respite, skilled nursing, adult day health, assistive technology and home modifications should not receive IFSP funding before individuals without access to CCC Plus Waiver services.</p> <p>DBHDS should either notify all individuals on the waiting list at the same time about the application process and timeline or require the Community Services Board to do so. The lack of consistent information available to people on the waiting list must be addressed to ensure a fair process.</p> <p>DBHDS or the Community Services Boards should provide direct assistance with the application process to people with disabilities within a timely manner. Assistance should include access to a computer and assistance with completing the application.</p> <p>The application process should be announced no less than 90 days prior to the start of the application timeline.</p> <p>If there are more people who apply in an application period than funds are available, individuals who were funded in the previous application period should not be funded until those who did not previously apply are funded.</p> <p>Thank you for this opportunity to provide public comment.</p>	<p>future program policies and procedures. It is DBHDS' goal to increasingly incorporate stakeholder involvement as it improves the IFSP Funding Program.</p>
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Effectiveness

Pursuant to § 2.2-4017, please indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

These regulations provide a structure for the administration of the IFSP Funding Program, which provides financial assistance to individuals and families awaiting services through one of Virginia's Developmental Disabilities waivers. The assistance provides support for continued living in an independent setting. Without this support, individuals may experience crisis or a lower quality of life. For example, the funding might support the purchase of an electronic tablet that facilitates communication by someone with autism or other developmental disability.

Therefore the regulation is necessary for the protection of the health, safety, and welfare of individuals within the eligible population. As written, it is clear and understandable.

Decision

Please explain the basis for the rulemaking entity's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

This regulation should be retained as is without making changes. The IFSP Funding Program provides financial assistance to individuals and families awaiting services through one of Virginia's DD waivers. Individuals on the waitlist may apply for financial assistance to cover eligible costs that support continued living in an independent setting. These regulations provide a structure for the administration of the program.

The review of the regulations did not indicate any changes are needed at this time to continue to support individuals and families, and come into compliance with the Settlement Agreement.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with the stated objectives of applicable law, will minimize the economic impact of regulations on small businesses.

1. The regulation is needed.
2. Comments are in regard to the application announcement timelines, the application process, eligibility criteria, eligible applicant notification process, and how to prioritize those most at risk of institutionalization.
3. The regulation is not complex. It is a straightforward structure for administration of the disbursement of funds.
4. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation.
5. This is the first periodic review of this regulation, which has been in effect since January 16, 2014.