



COMMONWEALTH of VIRGINIA

NELSON SMITH
COMMISSIONER

DEPARTMENT OF
BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Post Office Box 1797
Richmond, Virginia 23218-1797

Telephone (804) 786-3921
Fax (804) 371-6638
www.dbhds.virginia.gov

MEMORANDUM

To: DBHDS Licensed Providers of Behavioral Health Services
From: Jae Benz, Director, Office of Licensing
Cc: Veronica Davis, Associate Director for State Licensure Operations
Mackenzie Glassco, Associate Director of Quality & Compliance
Date: February 17, 2023
Re: Changes from the Emergency BHE Regulations to the Final BHE Regulations

Purpose: The purpose of this memo is to alert licensed behavioral health providers that the behavioral health enhancement (BHE) regulations will become final and permanent on February 17, 2023, and to highlight changes made to the regulations from the emergency stage to the final stage.

The Department of Behavioral Health and Developmental Services (DBHDS) was directed by the 2020 General Assembly within the Appropriation Act to utilize emergency authority to promulgate licensing regulations which support high quality, community-based mental health services and align with the changes being made to the Medicaid behavioral health regulations for the services funded in the budget that support evidence based, trauma-informed, prevention-focused and cost-effective services for members across the lifespan. The emergency regulations became effective on February 20, 2021. The final, permanent regulations will become effective on February 17, 2023.

Included in this memo is a chart highlighting all the areas in which the regulations changed from the emergency stage to the final stage. This chart is meant to be a tool to provide greater clarity; providers should review the regulations for full requirements.

The Office of Licensing offered several training opportunities to support providers in achieving and maintaining compliance with the behavioral health enhancement when the emergency regulations became effective. These training materials are still available on the Office of Licensing's [website](#). Please take this opportunity to review these materials if you have not already done so.

If you have any questions related to the content of this memorandum, please do not hesitate to reach out directly to your licensing specialist. For additional information on the final BHE regulations, please visit the [Virginia Regulatory Town Hall](#). Soon after becoming effective on February 17th, 2023, all changes will be incorporated within the online regulations [here](#).

Regulation Number	Change From Emergency to Final Stage	Analysis
Throughout the regulation	Removal of provisions and reference to Intensive community treatment service or ICT.	ICT is no longer a licensed or reimbursed service and has been removed from the regulations. (DBHDS does not reimburse services however these regulations were created in partnership with the Department of Medical Assistance Services).
Throughout the regulation	Some definitions and services were changed throughout the regulation to align with the ASAM regulations	These edits promote clarity of the regulations
12VAC35-105-1360	<p>Adds personality disorder, brain injury and autism spectrum disorder to the list of sole diagnoses that render an individual ineligible for ACT services.</p> <p>Also updates the criteria for discharge</p>	These edits are clarifying as ACT is not intended to treat these diagnoses. The criteria for discharge is updated with language to make the criteria more understandable.
12VAC35-105-1370	<p>The requirements for an ACT team leader and co-occurring disorder specialist were amended to also include LMHP-Es.</p> <p>The language was also amended to allow for one full-time or two part-time program assistants on an ACT team.</p> <p>Requirements related to crisis response by ACT teams were amended.</p> <p>Language was added to allow for a transition plan for ACT teams which are newly forming and not in full compliance with the ACT model relative to staffing patterns and individuals receiving services capacity.</p>	<p>These edits were made to address concerns related to work force shortages.</p> <p>These edits were made to address concerns related to work force shortages.</p> <p>These amendments were made following individual provider meetings and public comment. These edits are intended to clarify and simplify the crisis response responsibilities of the team.</p> <p>This language allows providers flexibility when starting a team, however requires that the provider have a plan in place during this transition period. The transition period is limited to six months.</p>

Regulation Number	Change From Emergency to Final Stage	Analysis
12VAC35-105-1380	Language related to the aggregate average of contacts was removed.	Following individual provider meetings as well as the public comment. It was determined that this requirement was inappropriate for licensing regulations and enforcement and was more a scope of practice issue.
12VAC35-105-1390	<p>The language requiring team meetings at least four days per week was moved down from section 1370.</p> <p>Addition that daily logs shall not be considered progress notes. Amending that individual progress notes should be entered each time the individual receives services and should be included in the individual's record. Adding the requirement that ACT teams document attempts at outreach and engagement.</p>	<p>This edit was made to provide greater clarity following public comment.</p> <p>This is a clarifying edit which was amended for greater consistency with billing requirements for DMAS and to provide greater clarity for providers their responsibility to record attempts at outreach and engagement.</p>
12VAC35-105-1410	Minor clarifying edits were made to this section.	These edits were made to provide greater clarity following public comment.