



Proposed Regulation Agency Background Document

Agency name	State Mental Health, Mental Retardation and Substance Abuse Services Board
Virginia Administrative Code (VAC) citation	12 VAC 35 – 200 et seq.
Regulation title	Regulations for Respite and Emergency Care Admissions to Mental Retardation Facilities
Action title	Revisions to clarify, update, and respond to changes in practice related to admissions to state training centers
Date this document prepared	September 14, 2007

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

This action revises the statutory references to reflect the recent re-codification of Title 37.1 to Title 37.2. Changes have been made to definitions of “authorized representative,” and “mental retardation” and several other terms for clarity and consistency with the Virginia Code other regulations of the Board. The application process and requirements for admissions for respite and emergency services have been clarified. The application materials are revised to require a statement from the individual, family member or authorized representative specifically requesting services in the facility.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The State Mental Health, Mental Retardation and Substance Abuse Services Board has the authority under Va. Code §§ 37.2-203 and 37.2-807 to adopt these regulations. The decision to adopt regulations for providing admissions for emergency and respite services is discretionary, but if the Board permits such admissions, the regulations are mandatory under § 37.2-807.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

These revisions are necessary to assure consistency with statutory requirements and ensure that individuals who need respite or emergency services in state facilities have accurate legal guidance for seeking such admissions. State training centers can provide an important safety net of services for persons with mental retardation and their families who qualify for respite or emergency services.

The goal of this action is to ensure that requirements for respite or emergency admissions are clearly articulated to ensure that citizens have access to such services when it is necessary and appropriate. The changes are intended to eliminate any confusion for staff and the public, facilitate communication, and expedite the admission process for emergency or respite services. Therefore, this regulatory action is essential to protect the health, safety, and welfare of citizens.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

A definition for "authorized representative" has been added to be consistent with the terminology in the recently amended Human Rights Regulations, 12VAC35-115-10 et seq. The definition of "legally authorized representative" has been stricken.

The definition of "catastrophe" has been stricken because the requirement that an emergency admission be the result of a catastrophe has been revised to a more flexible interpretation of a "change in an individual's circumstances."

A definition of "individual" has been added for clarity.

The definition of "mental retardation" is updated to reflect the current definition in the Code of Virginia.

The requirements for an application for respite services are revised to include a written statement by the individual or family member specifically requesting such services.

Changes are made to more closely align admissions requirements with the enrollment requirements for the Mental Retardation (MR) Waiver (e.g., regarding psychological evaluation requirements), in the event that a facility should be a MR Waiver provider of respite services funded by the MR Waiver.

A more precise time limit has been given for facility directors to respond to requests for respite admissions (i.e., "by the end of the next working day after receipt of a completed application package").

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

1) Throughout the regulations language changes have been made to support the concept of person-centeredness and a consumer-driven system of services. These changes include the replacement of the word “applicant” with “individual” and deletion of “care and supervision” in the provisions in 12VAC35-200-20 B 2. The admission requirements have also been revised to require a statement from an individual or family to specifically indicate a desire for respite services in the facility.

2) The length of time an individual may remain in a facility is tied to “...the limits defined in § 37.2-807 of the Code of Virginia.” Therefore, the regulations would be consistent with any future change in this Code requirement.

The definition of “authorized representative” is updated to conform to the recently amended Human Rights Regulations. This will eliminate confusion and promote consistent regulatory and administrative processes.

3) There are no other pertinent matters of interest to the regulated community, government officials, and the public.

No disadvantages to the public or the Commonwealth are noted.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which are more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no requirements established in these regulations that are more restrictive than federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

The proposed regulation applies equally to all localities in the Commonwealth.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail, email or fax to Dawn Traver, Office of Mental Retardation, DMHMRSAS, P.O. Box 1797, Richmond, VA 23218-1797, telephone 804-786-0946, FAX 804-692-0077, email dawn.traver@co.dmhmrsas.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last date of the public comment period.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	No additional cost is projected to implement or enforce the amended regulation.
Projected cost of the regulation on localities	No additional cost is projected for localities.
Description of the individuals, businesses or other entities likely to be affected by the regulation	The regulation affects state training centers, local community services boards and behavioral health authorities, and individuals seeking respite or emergency admissions to state training centers.
Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	There are currently five state training centers, 39 local community boards and a behavioral health authority that are affected by these regulations. It is estimated that statewide there are 200-250 annual requests for respite admissions under these regulations. No change in the number of annual requests for admission is anticipated as a result of the amendments to these regulations.
All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.	There is no additional cost to affected entities as a result of the proposed amendments to these regulations.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

The proposed regulatory updates and changes are the least burdensome and intrusive alternative for meeting the intent of this action. The proposed amendment is intended to make the regulations consistent with other recently amended agency regulations, increase person-centeredness, and maximize flexibility while maintaining an orderly and responsive process for temporary facility admissions.

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

These regulations do not affect or govern small businesses. The provisions are applicable to state training centers, community services boards and behavioral health authorities, and individuals seeking respite or emergency admissions to state training centers and their families or caregivers.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

The agency did not receive any public comments following the publication of the NOIRA.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The proposed regulations will strengthen the families of individuals with intellectual disabilities by enabling them to seek and receive respite or emergency services from a state facility during times when they are unable to care for their family member. A brief period of respite or care during times of emergency may enable the family to come together again upon the individual's facility discharge better able to continue meeting the individual's needs.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
10		The section defined the term "applicant." The definition of "individual" has been added to replace "applicant."	The definition of "applicant" was deleted because it is not necessary. The term "individual" has replaced "applicant" in the text of the regulations. This change is consistent with terminology used in other agency regulations and documents and is intended for clarity.
10		The definition of "authorized representative" has been inserted. The definition of "legally authorized representative" has been deleted.	The term "authorized representative" has replaced the term "legally authorized representative" in the text of the regulations. This reference has been clarified to be consistent with the legal requirements and other agency regulations.
10		The definition of "case management community services board" included unnecessary substantive provisions. The Code references were not current.	Substantive provisions have been deleted and Code references are updated to the current Code of Virginia.
10		The section defined the term "catastrophe."	The definition of "catastrophe" has been deleted. It is not needed because the term is no longer used in the text of the regulations. The admission requirements have been revised to be more flexible and no longer require a "catastrophe."
10		The section defined "discharge plan" or "predischarge plan." The definition included an	"Predischarge plan" was deleted for clarity and the Code reference was updated to be consistent with the current Code of Virginia.

		outdated Code reference.	
10		The section defined “emergency care.”	The term “emergency care” was replaced with “emergency admission” for clarity. The meaning is clarified and unnecessary substantive provisions were eliminated.
10		The section defined “guardianship” and contained an outdated Code reference.	The term “guardianship” was replaced with guardian because “guardian” rather than “guardianship” is used in the text of the regulations. The Code reference is updated.
10		The definition of the term “mental retardation” was not consistent with the current Code definition.	The definition of “mental retardation” was revised to be consistent with the current Code of Virginia.
10		The term “respite care” was defined.	The term was changed to “respite” for clarity and consistency with the text of the regulations. The definition was edited for clarity and unnecessary substantive provisions were eliminated.
20 A		This section provides requirements for “respite care.”	The section was renamed “respite admission” for clarity. Terminology was updated and changed for consistency with the defined terms. Provisions for a psychological evaluation were revised to be more flexible. A provision was added to require a statement from the individual, a family member or authorized representative to specifically request the services in the facility. This will help to ensure that the services are consumer-driven and meet individual needs.
20 B		This section provides eligibility requirements for respite care services.	The section is edited for clarity and consistency with the defined terms. The timeframes for decision-making on admission requests were changed to be more specific in B 3.
20 C		This section provides the conditions under which respite services are provided.	The section is revised for clarity and consistency with defined terms. All Code references are updated to the current Code.
30		The section governs emergency admissions.	This section is edited for clarity and consistency with defined terms. The criterion for a “catastrophe” is replaced with “a change in individual’s circumstances” for flexibility in accepting admissions (30 B 1). Code references are updated to the current Code.