



Virginia
Regulatory
Town Hall

Final Regulation Agency Background Document

Agency Name:	DMHMRSAS
VAC Chapter Number:	12 VAC 35-110-10 et seq.
Regulation Title:	Rules and Regulations to Assure the Rights of Residents of Facilities Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services
Action Title:	Repeal
Date:	October 3, 2001

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package .

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.

This regulation became effective July 1, 1983 and was designed to protect the rights of individuals receiving mental health, mental retardation and substance abuse services in facilities operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS). Through this regulation, and to the extent that it is within the reasonable capabilities of the facility, each resident is assured adequate care consistent with sound therapeutic treatment. The regulation was developed to protect the rights of individuals with respect to the assurance of legal rights; evaluation, treatment, and discharge; treatment under the least restrictive conditions; participation in treatment decisions, research, and work activities; disclosure of confidential information; and the rights and remedies for violations.

No change has been made to this regulation since the proposed action to repeal was published in the Virginia Register of Regulations.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

The State Board of Mental Health, Mental Retardation and Substance Abuse Service authorized the final action to repeal 12 VAC 35-110-10 et seq. Rules and Regulations to Assure the Rights of Residents of Facilities Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services at its meeting on May 17, 2001 in conjunction with the promulgation of 12 VAC 35-115-10 et seq., Rules and Regulations to Assure the Rights of Individuals Receiving Services From Providers of Mental Health, Mental Retardation and Substance Abuse Services.

The final proposal to repeal this regulation and promulgation of 12 VAC 35-115-10 et seq. was published in the Virginia Register of Regulations on June 18, 2001. During the final 30-day adoption period, the Agency received more than 25 letters from members of the public requesting a suspension of the regulatory process and an opportunity for an additional 30-day comment period. Therefore, in accordance with the Virginia Administrative Process Act, the Agency published a notice in the Virginia Register of Regulations postponing the effective date of the repeal of this regulation on July 30, 2001 and accepted public comments through August 30, 2001.

At its meeting on September 27, 2001, the State Board of Mental Health, Mental Retardation and Substance Abuse Services authorized final action to repeal this regulation in conjunction with the promulgation of revised final regulations 12 VAC 35-115-10 et seq.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.

The regulation to be repealed was promulgated pursuant to §37.1-84.1 of the Code of Virginia (1950) as amended and applicable sections of Chapter 1.1:1, Title 9, Code of Virginia (1950) as amended, known as the Administrative Process Act. This regulation was necessary to fulfill the department's legislative mandate pursuant to §37.1-84.1 to promulgate regulations

delineating the rights of patients and residents with respect to: nutritionally adequate diet, safe and sanitary housing, participation in non-therapeutic labor, attendance or nonattendance at religious services, participation in treatment decision-making, including due process procedures to be followed when a patient or resident may be unable to make an informed decision, use of telephones, availability of suitable clothing and possession of money and valuables, and related matters. The Code also required that such regulation be applicable to all hospitals and other programs and facilities operated, by the DMHMRSAS .

The Office of the Attorney General has certified that the Board of Mental Health, Mental Retardation and Substance Abuse Services has the authority to repeal the regulation under Va. Code §§ 37.1-10 and 37.1-84.1.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

This regulation was designed to protect the legal and human rights of all residents of facilities operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services. This regulation is to be replaced by a regulation that covers all facilities and programs, operated, licensed and funded by DMHMRSAS. The current regulation was promulgated in 1983 and is being repealed for the following reasons:

- ? The regulation is not consistent for all facilities and programs licensed, funded and operated by the department,
- ? The regulation does not incorporate changes in the law,
- ? The regulation is not clear and specific on the rights of consumers and families,
- ? The regulation does not clearly state the responsibilities of providers,
- ? The regulation does not clearly state the review and resolution process, and
- ? The regulation does not provide timeframes for each stage of review.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.

This regulation has not been revised since 1983. The current regulation is being revised and reformatted to facilitate clarity and consistency of the rights of individuals across community and facility programs, clearly identify provider duties and responsibilities, and describe any exceptions to each regulation.

Issues

Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the 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 there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

Since 1983, numerous problems have been identified with the existing regulation. These problems include:

- ? Inconsistencies between the regulation for facilities operated by the DMHMRSAS, the regulation for licensed inpatient programs and the regulation for community programs resulting in confusion for consumers, families and providers;
- ? Changes in the law are not reflected in the existing regulation;
- ? Changes in practice are not reflected in the existing regulation;
- ? Time frames for the review/resolution of complaints are not specified in the existing regulation, resulting in protracted case reviews;
- ? Multiple regulations are imposed on public and private programs and facilities that provide inpatient and outpatient services;
- ? Confusion for consumers and families often results when an individual moves from one type of program to another (e.g. inpatient to community program) each with a separate set of human rights regulations; and
- ? Time frames for the review and resolution of each complaint are not included in the regulation.

In 1992, the State Board of Mental Health, Mental Retardation and Substance Abuse Services adopted a resolution to consolidate the three existing regulations into a single regulation applicable to all facilities and programs operated, funded or licensed by the DMHMRSAS. A 1996 comprehensive review of the existing human rights regulations and the public comment received during that review demonstrated extensive public support for a single, consolidated regulation. There has been no show of support for maintaining the current regulations.

There are no disadvantages to the public or Commonwealth by the repeal of this regulation and replacement with a consolidated regulation.

Statement of Changes Made Since the Proposed Stage

Please highlight any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication.

No changes were made to this regulation since the proposed stage.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

No public comments were made during the public comment period specifically related to this regulation.

No public comments were made during the additional 30-day public comment period specifically related to this regulation.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.

The Department of Mental Health Mental Retardation and Substance Abuse Services proposes to repeal this regulation and replace it with a regulation which consolidates and revises three separate existing regulations that were promulgated by the department to protect the legal and human rights of consumers of public and private facilities and programs operated, funded and licensed by the department.

Specific changes to the new consolidated regulation includes:

? Clear definition of the composition, role, and function of the internal human rights system, the local human rights committees, and the State Human Rights Committee. A 1999 revision to the Code of Virginia requires that one-third of the appointments made to the state or local human

rights committees be consumers or family members of consumers with at least two consumers who are receiving services on each committee.

? Requirements for monitoring and evaluating of provider compliance with the regulation. A 1999 revision to the Code of Virginia requires that there be periodic reviews of human rights compliance. Licensing by DMHMRSAS will be contingent upon human rights compliance

? Procedures for enforcement and sanctions for violations of human rights. A 1999 revision to the Code of Virginia allows for sanctioning of those providers who fail to comply with human rights regulations.

? Procedures and time frames for the resolution process in the internal human rights system.

? Procedures for the application, review and approval of variances from specific standards or procedures in the regulation.

? Requirements for reporting, data submission and the release of data to the public. A 1999 revision to the Code of Virginia requires that all programs and facilities operated, funded and licensed report information on abuse and neglect, deaths and serious injury, instances of seclusion and restraint, and other information on human rights activities.

? Prohibition of employees of programs and facilities operated, funded, or licensed by the department from serving as the authorized representative of a consumer in the program.

? Format changes to clarify individual rights, provider responsibilities, and exceptions.

? Simplified language to enable consumers, families and providers to easily understand the regulation.

? Updates to standards and terminology to reflect current practice.

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which 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.

This regulation explains the human rights of the individual as a recipient of services in a facility operated by the Department. This regulation provides some assurance to family members that the human rights of their loved ones who are receiving mental health, mental retardation, and substance abuse services are protected and that there are procedural safeguards in place to

address violations to these rights. Such assurance is essential to the peace of mind of many families who have entrusted the care and well-being on their loved one to a service provider.

This regulation has no impact on the institution of the family and family stability.

1. This regulation does not erode the authority and rights of parents in the education, nurturing and supervision of their children. It clearly speaks to the responsibilities of providers to obtain the consent of at least one parent of a minor before any treatment, including medical treatment, begins. It also provides for an individual's next of kin to be designated as a legally authorized representative when an individual lacks the capacity to give consent for any treatment.
2. This regulation does not discourage the economic self-sufficiency, self-pride and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents.
3. This regulation has no effect on the marital commitment; and

This regulation has no effect on family income.