



Final Regulation Agency Background Document

Agency name	State Mental Health, Mental Retardation and Substance Abuse Services Board
Virginia Administrative Code (VAC) citation	12 VAC 35-200-10 et seq.
Regulation title	Regulations for Emergency and Respite Care Admissions to Mental Retardation Facilities
Action title	Revisions to clarify, update, and respond to changes in practice related to state training centers
Date this document prepared	January 7, 2009

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

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

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 the definitions of several terms for clarity and consistency with the Virginia Code and with other regulations of the Board. The application process and requirements for admission are clarified and simplified. Since the publication of the proposed regulation some language and terminology has been revised for clarity, consistency with other regulations, and in response to public comments. For example, "case management community services board" has been replaced with "community services board" to clarify in response to comments received. The term "intellectual disability" is inserted after "mental retardation" to be consistent with common use in the field and respond to public comment. None of these revisions substantively change the process or the requirements for respite or emergency care admissions to state training centers.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On December 2, 2008, the State Mental Health, Mental Retardation and Substance Abuse Services Board took final action to adopt the amended Regulations for Emergency and Respite Care Admissions to State Training Centers for promulgation.

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 numbers, if applicable, and (2) promulgating entity, i.e., 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 respite care and emergency 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. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The Board is required to adopt these regulations to comply with statutory requirements. These regulations will help ensure that individuals who need respite care or emergency services in state training centers have accurate legal guidance for requesting admissions. State training centers can provide an important safety net of services for individuals with mental retardation (intellectual disability) who qualify for respite or emergency admission and their families.

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

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" 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 “case management community services board” has been stricken and replaced with “community services board” or “CSB” for clarity and consistency with the Code of Virginia and in response to public comment. The terminology has been revised throughout the regulations to be consistent.

The definition of “catastrophe” has been stricken and the requirement that an emergency admission is the result of a catastrophe is replaced with a requirement that there is a “change in an individual’s circumstances.” This will allow more flexibility for those seeking admission.

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 and this term is followed by the words “intellectual disability” in parenthesis throughout the regulations. This is consistent with public comment and current usage in this field.

The words “emergency care” is replaced with “emergency” throughout the regulations to be consistent with the terminology used in §37.2-807 of the Code.

The definition of “respite care” is revised for consistency with the common meaning and to clarify in response to public comment.

The term “training center” is defined and replaces the term “facility” throughout the regulations. This is consistent with the Code of Virginia. The application for respite services is changed to require 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”).

The regulations are revised to state that the facility director or designee may consult with the Department staff to find an alternative placement for an individual who is denied emergency admission to a training center. This should promote staff collaboration to provide assistance to individuals in need of services when they cannot be admitted to a training center.

Various non-substantive editorial changes are made throughout the regulation to clarify and to respond to public comment.

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 there are no disadvantages to the public or the Commonwealth, please 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 care 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.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

Section number	Requirement at Proposed stage	What has changed	Rationale for change
10	Defined the term “case management community services board”	Replaced the defined term with “community services board” or “CSB”	Clarified and simplified consistent with the terminology used in the Code of Virginia. This change was made in response to a public comment. The terminology has been revised throughout the regulations to be consistent.
10	Defined “facility” as a “...state training center...”	Replaced the defined term “facility” with “training center.” The meaning of “training center” is the essentially the same as the meaning of “facility.”	Clarified in response to public comment, to be consistent with the new title of these regulations, and Title 37.2 of the Code. The term is replaced throughout the regulations.
10	Defined the term “mental retardation”	Inserted “intellectual disability” in parenthesis following the term “mental retardation.”	Responds to public comment. This is consistent with the common usage in the field. This revision has been made throughout the regulations.

10	Definition of “respite care” means “...temporary care and support to an individual with mental retardation because of medical or other urgent conditions of the person providing care.”	Revised to state that respite care “...means care provided to individuals with mental retardation (intellectual disability) on a short-term basis because of the emergency absense or need to provide routine or periodic relief of the primary caregiver for the individual...”	Clarified meaning of “respite care” to reflect the concept of short-term relief to <u>primary caregivers</u> that provide care individuals with MR (intellectual disability) in their homes. This revision is made in response to public comments and is also consistent with the definition that is currently used by the Department of Medical Assistance services for its MR waiver service program.
20 C 3	Included as a condition for respite care admission that the facility’s health service personnel determine that the facility has the resources to provide health care needs of the individual.	Rewritten to clarify and emphasize. No substantive change.	Changed to respond to public comments received on this provision.
20 C	Stated that no person who is admitted to a training center for respite care may also be admitted under the provisions for standard admission under §37.2-806 of the Code.	Eliminated the second sentence in the paragraph “...No person who is admitted to a training center under the provisions of this chapter shall during the time of such respite care admission, be eligible for admission to any training center under §37.2-806 of the Code of Virginia” Also, replaced the word “standard” with “voluntary.”	Eliminated this statement to clarify and eliminate confusion in response to public comment. Although respite care admission procedures are not intended to circumvent the process for voluntary admissions established in §37.2-806 of the Code, there is no basis to prohibit an individual who is admitted to a training center for respite care to initiate an an application for voluntary admission.
30 B 4	Stated that “Space is available on a unit...”	Replaced “unit” with “residential living area.”	Revised to clarify in response to a comment received.
30 C	Stated that the facility may offer to try to obtain appropriate alternative emergency services for an eligible individual who is denied admission to a training center.	Inserted the phrase that the “facility director or designee...may offer, <u>in consultation with department staff,</u> to try to obtain emergency services from another appropriate facility.”	Change made in response to a comment received and to promote staff collaboration to assist individuals who need emergency services when they cannot be admitted to the training center.

Minor editorial and non-substantive language changes are made in various sections of these regulations.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Committer	Comment	Agency response
<p>John Holland, M.D. Southern Virginia Training Center (SVTC)</p> <p>Mark Diorio, Northern Virginia Training Center (NVTC)</p> <p>Heidi Lawyer, Virginia Board for People with Disabilities (VBPD)* See note at the bottom of this table</p>	<p><u>Definition of “mental retardation”</u></p> <p>Suggest that it may be appropriate to use the term “intellectual disabilities” to replace “mental retardation (MR).”</p> <p>Suggests changing the definition of mental retardation in the regulations to the definition used by the American Association on Mental Retardation.</p>	<p>Recent legislation passed by the Virginia General Assembly has scheduled eventual replacement of the term “intellectual disability” with “mental retardation” in the Code of Virginia. This change is not yet implemented pursuant to the legislation. Therefore, it is premature to make this change in this chapter of the Virginia Administrative Code. However, the agency has inserted the term “intellectual disability” in parenthesis following all use of the term “mental retardation” in these regulations. This is consistent with the intent of the legislation and current usage in the field.</p> <p>The definition of “mental retardation” in the regulations is the same definition used in the current Code of Virginia. No change.</p>
<p>John Holland, M.D., SVTC</p>	<p><u>Definitions of “emergency” and “respite”</u></p> <p>Questions the rationale for striking the statement in the current regulations that emergency and respite admissions should not be used as a means of providing evaluation and program services. Asks whether this means that training centers cannot be compensated for providing such services.</p> <p>Also questions whether there is a process for extending stays beyond 21 consecutive days established by this definition. The definition states that individuals may stay in the facility up to 75 days in a calendar year and a 21-day stay is usually</p>	<p>The changes were intended to make these definitions more consistent with the meaning and intent of respite and emergency services, which is established by Code of Virginia. These revisions will have no impact on compensation for services nor is it intended to have any impact on the scope of services provided by training centers.</p> <p>In Section 20.C the wording has been revised to state that the “...CSB shall develop an updated discharge plan...” for individuals who are receiving respite services when the individual is not being discharged at the agreed upon time. This provides the means for the CSB and facility to extend the length of stay if it</p>

<p>Jean Felts, Southwest Virginia Training Center (SWVTC)</p> <p>Mark Diorio, NVTC</p>	<p>not sufficient to provide evaluation services. Notes that community services boards (CSB) are required to develop a discharge plan when an individual is admitted for respite services.</p> <p>Indicates that the definition of “respite” does not conform to the commonly held understanding of this type of care which is to give short-term temporary relief to those who are caring for a family member.</p> <p>States that respite should only be available to provide short-term relief to parents or guardians who have individuals living in their homes. Training centers should provide respite to services to individuals residing in group homes.</p>	<p>is appropriate. There is no requirement that an individual leave the facility after 21 days if an extension is authorized under these regulations.</p> <p>The definition of “respite” has been clarified to reflect the concept of short-term relief to <u>primary caregivers</u> that provide care individuals with MR (intellectual disability) in their homes, as described by the commenters. This revision is also consistent with the definition that is currently used by the Department of Medical Assistance services for its MR waiver service program.</p>
<p>L. William Yolton</p>	<p><u>Definition of “case management community services board”</u></p> <p>Indicates that the reference to “case management community services board” is confusing. Proposes revising this definition to remove the words “citizens board.” Opines that this citizen’s member board is actually an advisory body and is not involved in performing the case management services.</p>	<p>The definition of “case management community services board” has been replaced with a definition of the term “community services board” for clarity. This definition now states that “Community services board” means a public body established pursuant to §37.2-100 of the Code of Virginia.” Title 37.2 of the Code prescribes and defines the specific duties to be performed by a community services board.</p>
<p>Joseph Scislowicz Chesapeake Community Services Board</p> <p>Jean Felts, SWVTC</p>	<p><u>Section 20 “Respite Care Admissions”</u></p> <p>Requests that a statement be included in the regulations as to the availability of money or funding for respite services when the CSB finds that this service cannot be provided in the community.</p> <p>Suggests that the regulations require applications for respite (and emergency) admissions in training centers be submitted on a form that is specifically tailored for such admissions. Advises that a new form for this purpose is currently being developed by the Department of Mental Health, Mental Retardation and Substance Abuse</p>	<p>It is beyond the scope of these regulations to address the availability of the necessary resources to provide respite services or other alternative services in the community. No change.</p> <p>This form is currently in draft and is not yet finalized or available for use. Although this form is intended to expedite the admission process, it would be premature to require this form be used to request admissions under these regulations. No change.</p>

<p>Heidi Lawyer, VBPD</p>	<p>Services (DMHMRSAS) and should expedite these admissions.</p> <p>Suggests that DMHMRSAS develop a specialized form for emergency and respite admissions.</p> <p>Suggests that Section 20 be divided into two sections. Section 20 should specifically address the process and a new section should be created to specifically to address criteria or eligibility for respite admission.</p> <p>Proposes several updates to the application for admission, including a current psychological assessment rather than one performed within the past three years.</p> <p>Suggests that the regulations define a reasonable timeframe for decision making on applications for respite and reduce the maximum length of stay for respite from 75 to 60-days in a calendar year.</p> <p>Comments that that no individual age 17 years or younger should be eligible for respite admission. (Same comment for emergency admission Section 30)</p> <p>Believes that the application for respite should serve as the source of current information rather than any information that may be on file pursuant to current regulation</p>	<p>See above response.</p> <p>Section 20 of the regulations is currently divided into three subsections. Subsection A describes the process, Subsection B provides the criteria for admission and Subsection C provides the conditions under which the respite is provided by facilities. The suggested re-organization does not appear to offer any significant improvement and could be confusing for users.</p> <p>Updates have been made to the application, including requiring a psychological evaluation that reflects the individual's current functioning (20.A.4).</p> <p>The regulations have been revised to require that decisions on applications be completed "by the end of the next working day following the receipt of a complete application package." The length of stay for respite admissions is prescribed by the Code of Virginia §37.2.807. The provision in the proposed regulations at Section 20.C.1.has been revised to reference this section of the Code rather than identify a specific number of days. This will provide flexibility should the Code be amended regarding the maximum length of stay.</p> <p>The regulations require in Section 20.B, as part of the eligibility criteria for respite, that individuals meet the criteria for regular admission to qualify for respite services in a facility. Therefore, individuals age 17 or younger may be admitted to facilities only when the appropriate resources are available to accommodate them. Only two facilities within the public system have the resources to admit children or adolescents. The agency believes there is no basis to prohibit such individuals from receiving respite care when they are otherwise eligible for this service.</p> <p>The agency agrees with this comment and has deleted this provision in the proposed regulations.</p>
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<p>Mark Diorio, NVTC</p>	<p>(Section 20.C.2.).</p> <p>Suggests addition of provisions requiring facilities to collect data and submit reports to the commissioner whenever persons admitted for respite services stay in a facility more than 21 consecutive days. Proposes that DMHMRSAS monitor and publish summary reports of this data and use such reports for planning improvements in the community system.</p> <p>States that respite should only be available to individuals who have complex medical and behavioral needs. Proposes that physical and nutritional management assessments be included in the admission screening. Notes that children should not be housed on he same living units as adults.</p> <p>Suggests extending the timeframe for decision making on respite applications to 30 days (Section 20.B)</p> <p>Suggests that requests for reconsideration of a decision to deny admission should be submitted to the facility director prior to being submitted to the commissioner.</p> <p>Suggests that the deadline forwarding the application package to the commissioner be extended to three days.</p>	<p>DMHMRSAS administration routinely reviews and collects data that is relevant to its facility admissions for various purposes. However, it is beyond the scope of these regulations to prescribe specific documentation and data collection requirements for DMHMRSAS. No change.</p> <p>The regulations require (Section 20.B) that individuals meet the facility's regular admission criteria. Therefore, the facility would not be required to admit an individual for respite that would not otherwise meet the medical and behavioral criteria for regular admission. Similarly, the facility is not required to admit individuals unless it has the appropriate services and living accommodations. The standard application for facility admission (referenced in 20.A) requires physical and nutritional assessments that are identified by the commenter. No change.</p> <p>It is not appropriate to extend the deadline for decision making on respite services given the circumstances that would necessitate such an admission. The timeframe in the proposed regulations is the next working day following the receipt of a completed application package and is considered reasonable. No change.</p> <p>This process is intended provide a means for individuals to appeal an adverse decision made by the facility director to a higher authority within the DMHMRSAS administration. Therefore, the formal request for reconsideration should not reasonably be filed with the with the facility director who made the disputed decision. However, there is nothing in these regulations that would prohibit an individual from communicating with the facility director about any adverse decision prior to filing a formal request for reconsideration with the commissioner. No change.</p> <p>The application package for a facility admission that is being appealed should be compiled and readily accessible. Therefore, the current 48-hour timeframe for forwarding this material is considered reasonable. No change.</p>
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<p>John Holland, M.D., SVTC</p>	<p>Asks whether a application for regular admission may be taken while an individual has been admitted to the facility for respite or emergency services.</p> <p>Also asks how a facility would handle a situation when a CSB determines that the facility has the appropriate medical resources to meet the needs of an individual but at the time of admission the facility's medical personnel disagrees and finds it cannot meet the individual's needs.</p>	<p>There is nothing in the regulations that would prohibit the initiation of an application for regular admission for an individual who is receiving respite or emergency care in the facility. In order to avoid confusion, the sentence in Section 20.C "...<i>No person who is admitted to a training center under the provisions of this section...</i>" has been eliminated and the word "standard" has been replaced with "voluntary."</p> <p>This type of situation should be resolved on an individual basis with good communication between the facility and the CSB. The regulations establish an application process to promote this communication but give the authority to the facility director to decide whether an individual is eligible for admission based on specific conditions (Section 20.C). One condition for accepting an application is that the facility's health service personnel have determined that that the facility can meet the individual's health care needs. Decision making must consistent with the conditions. No change.</p>
<p>Blue Ridge Behavioral Healthcare</p> <p>Mark Diorio, NVTC</p>	<p><u>Section 30 "Emergency Care Admission"</u></p> <p>Questions the rationale for the reference to "respite care" in first paragraph in Section 30.A. Believes that it is inconsistent with the apparent intent of the Code to distinguish between respite and emergency admissions.</p> <p>Indicates that the provision is misleading because it indicates that the CSB will assume the care for the individual (second paragraph in Section 30.A.) It is actually the facility that will assume responsibility for the individual under this provision.</p> <p>Suggests extending the timeframe in Section 30.A. for receipt of the required information from 48-hours to 72-hours.</p>	<p>The agency agrees that this reference to "respite care" is somewhat confusing. The word "respite" has been stricken from this provision.</p> <p>The words "the facility" have been inserted to clarify this provision.</p> <p>While the regulations provide for a minimal delay in receiving the required information for an emergency admission, every effort should be made to expedite the receipt of this information to assure the health and safety of the individual. The 48-hour delay is reasonable given the circumstances. (See comment of John Holland, M.D. that follows.)</p>

<p>John Holland, M.D., SVTC</p>	<p>Also proposes replacing the word “unit” in Section 30.B.4 to indicate that appropriate <u>residential</u> space is available.</p> <p>Concerned that psychological and medical information may not be immediately available for an emergency admission. Recommends that psychological and medical information be exempted from the provision that allows a temporary delay in the receipt of case information by a facility for an individual seeking emergency services. (30.A. second paragraph)</p> <p>Disagrees with the provision that facilities may offer to try to obtain alternative services from another appropriate facility when they are unable to provide emergency services to an eligible individual. Suggests that it should be the role of DMHMRSAS staff to provide alternatives for the eligible individual.</p>	<p>No change.</p> <p>The language in this criteria been revised to clarify that “...Space is available in a <u>residential living area</u>...”</p> <p>Individuals may be accepted for emergency admission when they require immediate alternative arrangements to protect their health and safety and such arrangements are not available in the community (Section 30.B). In view of these circumstances, it is reasonable to permit a temporary, 48 hour delay for receipt of individual case information. No change.</p> <p>This provision has been revised to state that facility may offer to try to obtain, <u>in consultation with department staff</u>, alternatives to an eligible individual. This is intended to promote staff collaboration to provide assistance to individuals in need of services.</p>
<p>Heidi Lawyer, VBPD</p>	<p>Suggests adding language throughout this section to require that efforts be made to explore community alternatives and require the CSB to refer persons to a Regional Community Support Center (RCSC) for consultation and assessment prior to making a request for an emergency admission.</p> <p>Suggests adding requirements that DMHMRSAS facilities collect specific data, monitor, and submit to the commissioner quarterly reports of persons admitted for emergency services who remain in the facility more than 30 consecutive days or who reach the maximum of 90 days during a fiscal year. DMHMRSAS should publish and distribute summaries of such reports.</p>	<p>RCSCs are not currently available in all Virginia communities and therefore it is not reasonable to require that all potential emergency admissions be referred to RCSCs. One criterion for an emergency facility admission is that alternative resources in the community have been explored and found to be unavailable (Section 30.B.3). This appears generally consistent with the suggested additional language. No change.</p> <p>DMHMRSAS administration routinely reviews and collects data that is relevant to its facility admissions for various purposes. However, it is beyond the scope of these regulations to prescribe specific documentation and data collection requirements for the DMHMRSAS administration. No change.</p>

<p>Demetrios Peratsakis, Executive Directors Forum, Virginia Association of CSBs</p>	<p>Comments that several CSBs and regional partners expressed concern that the regulations require, in Section 30.C, that facility inform the CSB within 24 hours of receiving the request whether the individual is eligible for an emergency admission. Indicates that the CSB would not be informed if the request for emergency admission was made on a weekend or received late Friday afternoon. This coverage is something that regions are working toward but have not yet accomplished.</p>	<p>This provision is in the effective regulations and is intended to expedite services for individuals who in need of immediate or emergency care. Given the circumstances, this timeframe is considered reasonable and efforts should continue to meet this requirement in all regions, statewide. No change.</p>
<p>John Dool, Hampton-Newport News CSB</p>	<p>Concerned that the language in Section 30.C. does not address the true nature of an emergency. The provision that calls for a response within 24-hours should be revised to require that the facility director provide an <u>immediate response</u> upon the receipt of the request for emergency admission.</p>	<p>See above response. The 24-hour timeframe appears is a realistic response time for determining eligibility for an emergency admission. It allows time for facility personnel to make an expedited assessment of the documentation and make a informed decision on the request. No change.</p>

***The comments and suggested revisions provided by the Virginia Board for People with Disabilities (VBPD) were submitted to the agency as part of its periodic review of the current regulations. These comments were considered and used by the agency to develop the proposed regulations that were distributed for public comment during 2008. The agency has reviewed and responded to these comments as part of the public comment stage of this regulatory process, pursuant to the request of VBPD.**

All changes made in this regulatory action

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

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	The term “authorized representative” has replaced the term “legally authorized representative” in the text of the

		inserted. The definition of “legally authorized representative” has been deleted.	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” has been replaced with an updated definition of “community services board” or “CSB.” This definition included unnecessary substantive provisions.	Substantive provisions have been deleted and Code references are updated to the current Code of Virginia. The terminology has been revised throughout the regulations to be consistent.
10		The term “facility” was defined as a “...state training center...”	Replaced the defined term “facility” with “training center.” The meaning of “training center” is the essentially the same as the meaning of “facility” and is consistent with the language used in the Code of Virginia. The terminology has been revised throughout the regulations to be consistent.
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 “pre-discharge plan.” The definition included an outdated Code reference.	“Pre-discharge plan” was deleted for clarity and the Code reference was updated to be consistent with the current Code of Virginia.
10		The section defined “emergency care.”	The term “emergency care” is replaced with “emergency admission” for clarity. The meaning is clarified and unnecessary substantive provisions are eliminated.
10		The section defined “guardianship” and contained an outdated Code reference.	The term “guardianship” is 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” is revised to be consistent with the current Code of Virginia. Also, the term “intellectual disability” is inserted in parentheses after the term “mental retardation” for clarity and to be consistent with the common usage in this field. The terminology is revised throughout the regulations to be consistent.
10		The definition of “respite care” did not reflect the common meaning of this	The definition of “respite care” is rewritten to reflect the concept of short-term relief to <u>primary caregivers</u> that

		type of service.	provide care individuals with MR (intellectual disability) in their homes. This is revision is made in response to public comments and is also consistent with the definition that is currently used by the Department of Medical Assistance services for its MR waiver service program. Unnecessary substantive provisions in this definition are eliminated.
20 A		This section provides requirements for “respite care.”	Terminology is 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 training center. 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 admissions.	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.
20 C		This section provides the conditions under which respite care is provided. Stated that no person who is admitted to a training center for respite care may also be admitted under the provisions for standard admission under §37.2-806 of the Code.	The section is revised for clarity and consistency with defined terms. All Code references are updated. Eliminated the provision regarding standard admissions and changed the word “standard” to “voluntary.” This change is intended to clarify the provision. Although respite care admission procedures are not intended to circumvent the process for voluntary admissions established in §37.2-806 of the Code, there is no basis to prohibit an individual who is admitted to a training center for respite care to initiate an application for voluntary admission.
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. The word “unit” in Section B 4 is replaced with “residential living area” to clarify the meaning of the provision. In Section C the phrase “in consultation

			<p>with department staff...” is inserted to promote staff collaboration to assist individuals who need emergency services when they cannot be admitted to a training center.</p>
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Some minor editorial and non-substantive language changes are made in various sections of these regulations.

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.

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 disability by enabling them to seek and receive respite care or emergency services from a state training center 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 discharge better able to continue meeting the individual’s needs.