



Virginia  
Regulatory  
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## Final Regulation Agency Background Document

<b>Agency name</b>	State Mental Health, Mental Retardation and Substance Abuse Services Board
<b>Virginia Administrative Code (VAC) citation</b>	12 VAC 35-190-10 et seq.
<b>Regulation title</b>	<del>Regulations Establishing Procedures for Voluntarily Admitting Persons Who Are Mentally Retarded</del> <u>Voluntary Admissions to State Mental Retardation Facilities-Training Centers</u>
<b>Action title</b>	Revisions to clarify, update, and respond to changes in practice related to state training centers
<b>Date this document prepared</b>	April 13, 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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 the Board's other regulations. For example, "case management community services board" has been replaced with "community services board" to clarify. The term "intellectual disability" is inserted in parenthesis after "mental retardation" to be consistent with recent changes to the other regulations of the Board. The name "Department of Mental Health, Mental Retardation and Substance Abuse Services" is replaced with the new name, "Department of Behavioral Health and Developmental Services" consistent with legislation passed in the 2009 Session of the General Assembly. None of these revisions substantively change the process or the requirements for 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.*

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On April 7, 2009, the State Mental Health, Mental Retardation and Substance Abuse Services Board took final action to adopt the amended Regulations Establishing Procedures for Voluntarily Admitting Persons who are Mentally Retarded to State Mental Retardation Facilities.

### 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.*

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The State Mental Health, Mental Retardation and Substance Abuse Services Board has the authority under Va. Code §§ 37.2-203 and 37.2-806(B) to adopt these regulations. The Code requires the Board to adopt these regulations under § 37.2-806(B).

### 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.*

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The Board is required to adopt these regulations to comply with statutory requirements. These regulations will help ensure that individuals seeking admission to State training centers have accurate legal guidance for requesting admissions. These regulations are essential to protect the health and welfare of persons who are admitted to state training centers by requiring comprehensive preadmission screening and appropriate documentation for individuals requesting admission. This helps to ensure that admissions to training centers are appropriate and the needs of individuals are addressed when the individual is admitted.

This regulatory action will articulate the requirements for admissions 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. 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.*

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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. The terminology has been revised throughout the regulations to be consistent.

A definition of “licensed professional” has been added and the regulations are revised to require an individual to have a diagnosis of mental retardation (intellectual disability) that is made by a licensed professional.

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 other regulations of this Board and with current usage in this field.

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 services is changed to require a written statement by the individual or family member specifically requesting such services.

The timeframe for the director of a facility to make a decision on an admission request has been reduced from 30 working days to 10 working days.

Several non-substantive language changes are made throughout the regulation for clarity and consistency with the Virginia Code and other regulations of the Board.

## 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.*

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1) 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 revising admission requirements to include a statement from an individual or family to specifically indicate a desire for services in the training center.

2) The regulatory provisions have been updated to be consistent with current Code of Virginia requirements and other regulations of the Board. It allows the agency to adopt regulations to comply with statutory requirements .

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.*

<b>Section number</b>	<b>Requirement at Proposed stage</b>	<b>What has changed</b>	<b>Rationale for change</b>
10	The word “placement” was used in the definition of “admission.”	Replaced “placement” with “acceptance.”	Terminology is clarified.
10	Definition of “authorized representative” included the phrase “...disclosure of information <u>and</u> consent to treatment..”	Replaced <u>and</u> with <u>or</u> .	Consistency with other Board regulations.
10	Commissioner defined as the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services.	Changed the name of the Department to the “Department of Behavioral Health and Developmental Services.”	Consistent with legislation passed in the 2009 Session of the General Assembly. The name change becomes effective on July 1, 2009.
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. 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 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	Definition of “discharge plan” was slightly different from the definition used in other Board regulations.	Made non-substantive language revisions and included an appropriate Code citation.	Definition is consistent with the definition in other Board regulations.
10	Defined the term “mental retardation”	Inserted “intellectual disability” in parenthesis following the term “mental retardation.”	This is consistent with the common usage in the field. This revision has been made throughout the regulations.
21 D 4	The preadmission screening report did not require the individual to specifically request services in the training center.	Included a requirement that the preadmission screening report include a statement from the individual, family member or authorized representative requesting services in the training center.	Changed to be consistent with the concept of person-centered services and other regulations of the Board (12 VAC 35-200).

**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.*

There was no new public comments submitted on the proposed regulations.

**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.*

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change and rationale</b>
10		The definition of "admission" included unnecessary descriptive language.	The definition was simplified 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		Defined "case management community services board." The definition included unnecessary substantive provisions, Code references were not current, and the term was not consistent with terminology used in the Code and other regulations of the Board.	The term "case management community services board" has been replaced with "community services board" or "CSB" consistent with other regulations of the Board. The definition is simplified and Code references are updated.
10		The definition of "discharge plan" included the term "state facility" and Virginia Code references were not current.	The term "state facility" was changed to "training center." This term is replaced to be consistent throughout the regulations. The Code reference was updated to the current Code of Virginia. There were minor editorial changes for clarity.
10		The regulations defined the term "facility."	This definition was deleted. The term "training center" has replaced "facility" throughout the regulations. Therefore, this definition is not necessary.
10		The Code reference used in the definition of "guardian" was not current.	The Code reference is updated and minor editorial revisions are made to clarify this definition.

10		The regulations did not include a definition of "licensed professional."	The definition of "licensed professional" is inserted. Defines this term used in section 30 A of the regulations.
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. Intellectual disability was inserted in parentheses following this term to be consistent with professional usage in the field, pending changes to the Code, and consistency with other regulations of the Board.
21 A and 21 B		This section used the term "facility, "legally authorized representative" and "individual." The Code reference was not current.	Changes were made in terminology for consistency and the provisions regarding residency have been clarified. (An individual may not necessarily live in the same area as his authorized representative.) The Code reference was updated consistent with the current Code of Virginia. "Intellectual disability" was inserted following "mental retardation" consistent with the definition.
21 C		Term "prescreening report" was not consistent with terminology used in the Code of Virginia. The meaning of "status" was not clear. There were specific provisions for the psychological evaluation in C 4.	The term "prescreening report" was replaced with "preadmission screening report" consistent with the term used in the Code of Virginia. This term was replaced throughout the proposed regulations.  The term "status" was replaced to mean housing or living arrangements. Provisions were simplified to require the psychological evaluation to reflect an individual's current functioning.
21 C	21 D	The prescreening report required an individualized education plan, vocational assessment and a completed discharge plan.	A new section D was inserted which made the individualized education plan, vocational report and completed discharge plan optional components of the preadmission screening report. A provision was inserted (D.4) that includes as part of this report, a statement from the individual, family member or authorized representative requesting services in the training center.
30 A	30 C	This provision required the director of the facility to make a decision on an admission request and notify the community services board of the decision within 30 working days of the receipt of the completed preadmission screening report.	Current section 30 A is deleted and replaced with provisions in new section 30 C. The provisions are revised to require that the training center director make a determination on an admission request within 10 working days from the receipt of a completed preadmission screening report.
30 B	30 A	Provides criteria for determining eligibility for admission to a training center.	Provisions are edited for clarity. Revised to require a diagnosis of mental retardation to be made by a "licensed professional" as defined in the regulations rather than an "interdisciplinary team." This is consistent

			with current professional practice.
	30 B		This provision was included in former section 30 C. It has been relocated to 30 B and edited for clarity.
41		States that a person who is seeking admission to a facility may request a reconsideration of the director's decision.	The provision is clarified to state that the parent, guardian, or authorized representative who is applying for admission on behalf of an individual may request the reconsideration. This is consistent with Code requirements. The section is also edited for clarity and consistency other parts of the regulations.
51		Describes the process for initiating a judicial proceeding to obtain certification for admission to a training center pursuant to Virginia Code.	This section is edited for clarity and consistency with the terminology used in other parts of the regulations. The Code citations are updated to be consistent with the current Code of Virginia.

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 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 services training center services and supports when they are needed and appropriate. Training centers may be considered a resource for some individual with intellectual disability and their families. The training center can assist certain individuals to achieve their maximum potential, encourage self pride and self-sufficiency, and help strengthen family relationships.