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Periodic Review and Small Business Impact Review Report of Findings

Agency name	Department of Behavioral Health and Developmental Services
Virginia Administrative Code (VAC) Chapter citation(s)	12 VAC35-200
VAC Chapter title(s)	Regulations for Emergency and Respite Care Admission to State Training Centers
Date this document prepared	02/15/22

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the **Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code**.

Acronyms and Definitions

Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.

DBHDS - Department of Behavioral Health and Developmental Services

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

Section 37.2- 203 of the Code of Virginia gives the State Board of Behavioral Health and Developmental Services the authority to adopt regulations that may be necessary to carry out the provisions of Title 37.2

of the Code and other laws of the Commonwealth administered by the DBHDS commissioner. This regulation is necessary to carry out the requirements of § 37.2-807 of the Code of Virginia.

Alternatives to Regulation

Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

As long as the Code of Virginia requires the existence of training centers (Title 37.2), and emergency and respite care admission (§ 37.2-807), there is no alternative to these regulations.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

One comment was received from the disability Law Center of Virginia (dLCV) addressing two regulations at the same time, Chapter 200 and Chapter 190.

Commenter	Comment	Agency response
Colleen Miller, Executive Director, disability Law Center	<p>On behalf of the disAbility Law Center of Virginia (dLCV) and the people we serve, I write to comment on the periodic review of § 12VAC-35-190, “Regulations for Voluntary Admissions to State Training Centers” and § 12VAC-35-200, “Emergency and Respite Care Admission to State Training Centers.” As the designated Protection and Advocacy system for individuals with disabilities in Virginia, dLCV appreciates the opportunity to provide feedback on this review.</p> <p>Since the DOJ settlement, the role of State Training Centers has shifted. State Training Centers are really only appropriate for individuals who cannot otherwise be served successfully in the community. In addition, Virginia law requires that all voluntary admissions be admitted with a discharge plan. Consequently, we can assume that training centers will become a short-term service provider, rather than housing people for their entire lives. With that in mind, the Commonwealth may wish to consider combining this</p>	Thank you for your comment. Merging the two regulations to reflect a single

<p>section of the regulations with § 12VAC35-200: Emergency and Respite Care Admission to State Training Centers, to reflect a single admission process that promotes short-term admissions.</p> <p>The definition for “Training center” under both sections (a “facility operated by the department that provides training, habilitation, or other individually focused supports to persons with intellectual disabilities”) appears too broad. With the current language, the definition clearly encompasses Hiram Davis Medical Center and also any State Hospital that provides services to individuals with intellectual disabilities (which is all or most of them). We recommend an updated definition to clarify the separate roles of other state facilities.</p> <p>We also recommend updating the definition in these sections to include individuals with Developmental Disabilities, as this is the language that best fits the population and is used by most state agencies at this time. Additionally, § 12VAC35-190-30 (Criteria for Admission) and § 12VAC35-200-30 (Emergency Admission) refer to intellectual disability as the sole qualifying diagnosis. We also recommend updating this to reflect Developmental Disabilities.</p> <p>Section 12VAC35-200-20 (Respite Care Admission) requires a training center providing respite services to provide “adequate staff coverage” and an “appropriate peer group” but these terms are never defined. We recommend creating definitions that operationalize these terms if at all possible.</p> <p>Sections 12VAC35-190-21 (Application for Admission), 12VAC35-190-51 (Judicial Certification), and 12VAC35-200-30 (Emergency Admission) appear to be limited to the actions of parents, guardians and authorized representatives seeking admission to State Training Centers. However, not all individuals with intellectual or</p>	<p>admissions process may be a beneficial change. DBHDS will review this recommendation more thoroughly.</p> <p>Thank you for your comment. Making the recommended change would require a change to 37.2-100 of the Code of Virginia.</p> <p>Thank you for your comment. CFR § 440.150 states that the primary purpose of an ICF/IID is to furnish health or rehabilitative services to persons with intellectual disability or persons with related conditions. This is why § 37.2-100 of the Code of Virginia has a definition for intellectual disability and why the definition of training center is targeted to individuals with intellectual disabilities, and why the regulations are worded to be in line with those definitions and federal requirement.</p> <p>Thank you for your comment. As circumstances within state facilities are ever evolving, this language is appropriate to ensure the flexibility required for leadership to make an informed decision based upon circumstances as they exist at the time the application for admissions is submitted.</p>
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	<p>developmental disabilities have or need these supports. Indeed, they may be their own decision makers. We recommend that these sections be changed to reflect this.</p> <p>Section 12-VAC35-200-30 (Emergency Admission) further sets out admission procedures for minors. As minors are not included in the respite or voluntary admission processes, it is unclear why they are included in the emergency process. Serving juveniles requires specific skills and expertise that training centers may not have. We would urge the Commonwealth to consider whether continuing to admit juveniles to State Training Centers is appropriate.</p> <p>In addition, the application materials listed in § 12VAC35-190-21 (Application for Admission) are minimal and may be better reflected by simply adopting or referring to the application materials listed in § 12VAC35-200-20 (Respite Care Admission).</p> <p>Finally, § 12VAC35-190-30 (Criteria for Admission) states that a decision on admission will be made within 10 working days. As we have seen in recent years, individuals being newly admitted to State Training Centers are often experiencing crises and instability in the community. For many of these individuals, 10 working days may be too long a review period, and could result in individuals being unnecessarily hospitalized in facilities that cannot adequately treat them. If it is, in fact, the State’s intention that State Training Centers become short-term facilities for individuals with ID/DD, then the admission process should be similarly crisis-focused with a shorter decision-making time.</p>	<p>Thank you for your comment. DBHDS will evaluate the appropriateness of this recommendation.</p> <p>Thank you for your comments. DBHDS will review admissions criteria and consider this recommendation further.</p> <p>Thank you for your comment. DBHDS will review the materials requested for admission and develop a single list that ensures the documentation requested is sufficient to make an informed decision regarding admission and discharge planning.</p> <p>Thank you for your comment. DBHDS has a longstanding practice of rendering decisions regarding admissions in a significantly shorter timeframe; however, 10 working days does allow time to address any issues that may arise. With the recent and ongoing expansion of community crisis supports, DBHDS is able to work with support partners to address the needs of individuals experiencing a crisis.</p>
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Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

This regulation is necessary to carry out the requirements of § 37.2-807 of the Code of Virginia, and meets the requirements of EO14 in that the regulation helps to protect the health, safety, and welfare of individuals needing emergency and respite care training centers services as it clearly articulates requirements that must be met to access emergency services and respite care in an intellectual disability training center; helps to ensure that procedures for obtaining emergency services and respite care in a training center are minimally intrusive for individuals and their families. The structure of the regulation is straightforward and succinct.

Decision

Explain the basis for the promulgating agency’s decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

There are amendments expected in an action to be brought for promulgation in 2022, primarily to add two definitions and have the regulations reflect the current admissions practice since the last update in 2018. Namely, the planned action would add “community resource consultant,” and “Critical and Complex Consultation Team” or “C3T.”

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency’s decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

- (1) The regulation is needed to carry out the requirements of § 37.2-807 of the Code of Virginia.
- (2) One comment was received concerning the regulation.
- (3) The regulation is straightforward and minimal while meeting requirements for emergency and respite admission processes.
- (4) The regulation does not overlap, duplicate, or conflict with federal or state law or regulation.
- (5) It has been four years since the regulation was reviewed; technology, economic conditions, or other factors have not changed in the area affected by the regulation.

The agency’s decision will have no economic impact on small businesses.

