



## Notice of Intended Regulatory Action (NOIRA) 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 VAC35-190-10 et seq.
<b>Regulation title</b>	Regulations Establishing Procedures for Voluntarily Admitting Persons Who Are Mentally Retarded to State Mental Retardation Facilities
<b>Action title</b>	Revisions to clarify, update, and respond to changes in practice related to admissions to state mental retardation facilities.
<b>Date this document prepared</b>	September 15, 2006

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Purpose

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

The action will update the current regulation to reflect current practice and terminology, clarify provisions, and to change the statutory references to reflect the recent re-codification of Title 37.1 to 37.2.

This regulation governs the process for voluntary admissions to residential facilities for persons with mental retardation that are operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services (Department). The regulations provide general criteria for admissions consistent with statutory requirements. The regulations are intended to facilitate compliance with admission requirements for eligible individuals and their families and provide consistent legal guidance for community services board (CSB) and facility staff members who oversee the admission process.

### 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., 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 to adopt these regulations and is required to do so under § 37.2-806.

### Need

*Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.*

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The agency has determined that revisions are necessary to ensure that provisions are consistent with statutory requirements and to ensure that those individuals seeking voluntary admission to state training centers have accurate legal guidance for seeking such admissions. Training centers operated by the Department can provide an important safety net of services, including treatment, training or habilitation, for persons with mental retardation and their families who qualify for admissions. The proposed regulatory action will revise the regulations to clearly articulate requirements to ensure citizens have access to services in training centers when it is necessary and appropriate. Therefore, the regulatory action is essential to protect the health, safety and welfare of citizens.

### Substance

*Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.*

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The agency intends to update all statutory references to conform to the re-codification of Title 37.1 to 37.2. Definitions will be updated to reflect changes in statutory language and to relocate substantive provisions from definitions to the substantive parts of the regulations. The agency also intends to consider updates to the admission process and requirements with respect to recent changes in practice and the roles of the consumer and his family, the community services board, and the facility director. The agency also intends to consider revisions for clarification and to ensure that the provisions are consistent with other regulations of the Board.

### Alternatives

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.*

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The agency will consider all viable alternatives for updating these regulations, consistent with legal requirements. The regulations govern voluntary admission process to state training centers for persons with mental retardation. This regulatory action is essential to ensure that regulatory requirements are clearly written and understandable, are consistent with all current legal requirements, reflect current standards of practice, and can be easily implemented by all users and stakeholders, including, consumers and their families, community services boards, and state facility staff. Therefore, the agency

will seek input and advice from representatives of all of these users to ensure that proposed revisions meet the essential purpose of this action. Specifically, the agency intends to consider the public comments received in response to the periodic review and NOIRA, when drafting revisions to these regulations and review drafts with stakeholder representatives prior to the final promulgation.

### Public participation

*Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.*

The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also 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 Cynthia Smith, Office of Mental Retardation Services, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-0946, fax (804) 692-0077, email [cynthia.smith@co.dmhmsas.virginia.gov](mailto:cynthia.smith@co.dmhmsas.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 day of the public comment period.

A public hearing will not be held.

### Participatory approach

*Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, technical advisory committees) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.*

The agency plans to use a participatory approach in development of the proposed regulation. The agency will work with a technical advisory committee of stakeholders to assist in drafting the proposed revisions and reviewing preliminary drafts of the regulations.

### Family impact

*Assess the potential 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.*

This regulation governs the process for voluntary admissions to state training centers for persons with mental retardation. This action is intended to clarify the provisions and ensure that accurate legal guidance is available to persons with mental retardation and their families. These regulations help to guide individuals and families in seeking services from state mental retardation facilities, when appropriate. Therefore, the proposed regulatory action should promote the authority and rights of parents, and help families to assume responsibility and seek resources for a family member with mental retardation.

This action should have no impact on marital commitment or family income.

**Periodic review – Public comment**

*If this NOIRA is the result of a periodic review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 21, e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.*

Committer	Comment	Agency response
Mark Diorio, Northern Virginia Training Center	Revise the definition and provisions describing the role and responsibility of the “case management community services board (CSB).” Add an eligibility criterion for admission requiring consideration of the “least restrictive” alternative and requiring that an applicant (if capable) or his family to specifically agree to the facility placement.	The agency will consider changes to address these issues during the drafting process in consultation with other stakeholders.

<p>Heidi Lawyer, Director, Sandra Hermann, Chair, Virginia Board for People with Disabilities (VBPD)</p>	<p>Recommends specific changes to the definitions, admission process and criteria. Suggests new language and reorganization to create separate sections for the admission process and admission criteria. Also, believes that "as mandatory pre-requisite to filing an application for voluntary admission to a training center that the home CSB refer the individual to the facility's Regional Community Support Center (RCSC) for assessment and treatment recommendations..." The RCSC should also provide written justification as to why training center admission is required and the person cannot remain in the community.</p>	<p>The agency agrees that certain revisions should be made to clarify and update the definitions. The agency will consider adopting the specific revisions suggested by the VBPD in consultation with other stakeholders when drafting proposed regulations.</p>
<p>Alan D. Wooten, Fairfax-Falls Church Community Services Board</p>	<p>Recommends changes to certain definitions to be consistent with the Virginia Code. Also, recommends extending the timeframe requirements for psychological evaluations in 12 VAC 35-190-21.</p>	<p>The agency agrees that some of the definitions should be revised to be consistent with the Virginia Code. The agency intends to consider the suggested changes in consultation with other stakeholders when drafting proposed regulations.</p>
<p>Yvonne Russell, Henrico Area Mental Health and Mental Retardation Services</p>	<p>Recommends specific changes to terminology for consistency with other agency regulations. Proposes adding a required timeframe for the facility to notify the CSB of a decision on a request for admission in section 12 VAC 35-200-20.</p>	<p>The agency agrees that terminology should be updated and revised to be consistent with other agency regulations. The agency intends to consider the specific suggested changes in consultation with other stakeholders.</p>
<p>Martha Bryant</p>	<p>Suggest adding a definition of "developmental delay, cognitive developmental delay and risk for developmental delay consistent with IDEA, Part C and other applicable federal regulations."</p>	<p>The agency will consider the suggestion when drafting changes to the regulation.</p>
<p>Steven Shoon</p>	<p>Suggests revising to the definition of "commissioner" to include a description of "designee." Also suggests other changes in terminology for clarity and consistency with Virginia Code.</p>	<p>The agency agrees that definitions and terminology should be revised for clarity and consistency with the Virginia Code. The agency will consider the specific suggested changes when drafting changes to the regulations.</p>