



## Virginia Department of Planning and Budget **Economic Impact Analysis**

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### **12 VAC 35-190 Regulations for Voluntary Admissions to State Training Centers 12 VAC 35-200 Regulations for Emergency and Respite Care Admission to State Training Centers**

**Department of Behavioral Health and Developmental Services**

**Town Hall Action/Stage: 6286/10076**

April 29, 2024

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The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 19. The analysis presented below represents DPB’s best estimate of the potential economic impacts as of the date of this analysis.<sup>1</sup>

### **Summary of the Proposed Amendments to Regulation**

As the result of a periodic review<sup>2</sup> and Executive Directive 1 (2022)<sup>3</sup> the State Board of Behavioral Health and Developmental Services (Board) has adopted a fast-track regulation to merge Chapter 190 into Chapter 200, and repeal Chapter 190, in order to streamline and clarify the regulation; other changes would update the regulation to reflect current practice.

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<sup>1</sup> Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

<sup>2</sup> See the periodic review associated with Chapter 190 here:

<https://townhall.virginia.gov/L/ViewPReview.cfm?PRid=2076>. See also the periodic review associated with Chapter 200: <https://townhall.virginia.gov/L/viewpreview.cfm?PRID=2077>.

<sup>3</sup> ED 1, which was issued on January 15, 2022, directs executive branch agencies “to initiate regulatory processes to reduce by at least 25 percent the number of regulations not mandated by federal or state statute.” See <https://www.governor.virginia.gov/media/governorvirginiagov/governor-of-virginia/pdf/ed/ED-1-Regulatory-Reduction.pdf>. ED 1 was subsequently amended and reenacted by Executive Order 19 (2022) to “require a 25 percent reduction in regulatory requirements instead of a reduction in regulations.” See <https://townhall.virginia.gov/EO-19-Development-and-Review-of-State-Agency-Regulations.pdf>.

## Background

State training centers are a type of residential facility operated by the Department of Behavioral Health and Developmental Services (DBHDS) that provides highly structured habilitation services including life in a residential neighborhood, care support/training, and learning opportunities in areas such as employment, communication, language, self-care, independent living, socialization, recreation, leisure, music, academic skills and motor development for individuals with intellectual and developmental disabilities.

This regulatory action combines two existing regulatory chapters that address admissions to state training centers by repealing Chapter 190, Regulations for Voluntary Admissions to State Training Centers, and amending Chapter 200, Regulations for Emergency and Respite Care Admission to State Training Centers, to incorporate most of the language from Chapter 190 in order to streamline the regulation; other changes would update regulatory language to reflect current practice.

DBHDS reports that as a result of the U.S. Department of Justice Settlement Agreement with Virginia,<sup>4</sup> the expansion of intellectual and developmental disability waiver slots, and increased rates of service for private providers, respite service for non-emergent care has not been utilized at training centers for several years.<sup>5</sup> DBHDS also reports that training center admission is rarely a part of “emergency need” discussions due to increased community capacity and other improvements within the service system that make it easier to meet emergency residential needs. As a result, there was one respite/emergency admission to a state training facility in 2017 and four in 2018 (four of these five admissions in 2017-2018 were for the same individual); no respite/emergency admissions have occurred since that time.<sup>6</sup> Further, while there used to be five State Training Centers, since April 2020 there has been only one training center, the Southeastern Virginia Training Center located in Chesapeake.<sup>7</sup>

To reflect these changes, the title of the combined Chapter 200 would be changed to “Regulations for Voluntary and Emergency Admission to State Training Centers.” References to

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<sup>4</sup> See <https://dbhds.virginia.gov/doj-settlement-agreement/> for background information.

<sup>5</sup> See page 1 of the Economic Review Form:

[https://townhall.virginia.gov/L/GetFile.cfm?File=65\6286\10076\ORM\\_EconomicImpact\\_DBHDS\\_10076\\_v3.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=65\6286\10076\ORM_EconomicImpact_DBHDS_10076_v3.pdf).

<sup>6</sup> DBHDS further reports that only two emergency requests have been received since 2020 and they were both denied in favor of alternative placements because the leadership team determined that the training center was not an appropriate residential option to meet their care and support needs.

<sup>7</sup> See <https://dbhds.virginia.gov/about-dbhds/facilities/>.

respite care (short-term relief for primary caregivers) would be removed from the title and the regulatory text because, in practice, such admissions only occur in emergency situations.<sup>8</sup> Sections 20 and 30 of Chapter 200, which address applications for respite care admissions and emergency admissions, respectively, would be substantively combined under the new Section 45.A. Section 20 would be re-titled “Requests for Admission” and amended to state that all (emergency and voluntary) requests for admission to a training center shall be processed through the Community Services Board (CSB) and that the CSB must consult with DBHDS, make a referral to the Regional Support Team (RST), and follow up on all recommendations made by the RST. The current text does not involve DBHDS and directs CSBs to consult with the RST; this change reflects current practice, which has evolved to direct placements towards the least restrictive settings that could sufficiently meet the individuals’ needs. This change is reiterated for emergency admissions in the new Section 45.A and for voluntary admissions under Section 45.B.

The new Section 45.A also differs from the requirements currently in Section 30 by increasing the response time for DBHDS to notify the CSB if an emergency admission is accepted from “within 24 hours” to “as quickly as possible but no later than 72 hours.” DBHDS reports that this change would address the use of part-time psychiatric staff by providing them time to consult with the interdisciplinary team, review all documentation, and thoroughly evaluate the request. For instance, this change would give the training center staff adequate time to receive all the documentation for a request made on a Friday, and then make a decision by the following Monday. In addition, DBHDS reports that designated staff work closely with the CSBs to provide guidance and support with identifying resources needed to ensure the provision of appropriate care and services for individuals, including those who may be in need of emergency placement. That staff would be a part of those discussions and able to communicate with all stakeholders if someone was at imminent risk of harm and the 72-hour time frame would jeopardize health and safety.

Other changes to Chapter 200 include adding a definition for the term “community integration manager (CIM)” to reference the DBHDS Central Office position physically located at the one remaining training center. This position provides support and direction for all aspects

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<sup>8</sup> See page 3 of the Agency Background Document (ABD):  
[https://townhall.virginia.gov/L/GetFile.cfm?File=65\6286\10076\AgencyStatement\\_DBHDS\\_10076\\_v2.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=65\6286\10076\AgencyStatement_DBHDS_10076_v2.pdf).

of the individual's transition to the community including addressing identified barriers to discharge. Section 45.A would include a requirement that, "If for any reason a person admitted to a training center for emergency services is not discharged at the agreed upon time, the CSB shall work with the CIM and training center staff to develop a discharge plan as provided in §§ 37.2-505 and 37.2-837 of the Code of Virginia."

In merging Chapter 190 into Chapter 200, a definition of "licensed professional" currently in Chapter 190 would also be added to the definitions in Chapter 200, and the requirements for application for voluntary admission in section 21 would be added to Section 45.B of Chapter 200.<sup>9</sup> Section 45.B would contain one new requirement that the preadmission screening report for voluntary admission include, "A statement from the CSB that the appropriate arrangements are being made to work with the individual and the family member or authorized representative to continue exploring opportunities to discharge the individual to a less restrictive setting." Lastly, sections 30 (Criteria for admission,) 41 (Requests for reconsideration of the director's determination,) and 51 (Judicial certification) of Chapter 190 would be added as sections 35, 50, and 55 of Chapter 200, respectively.

### **Estimated Benefits and Costs**

The proposed amendments would benefit families and caregivers, and their representatives, by streamlining the regulation, removing redundant language, and reflecting changes to current practice, which were implemented to enable placements in the least restrictive community settings. On the other hand, individuals or families seeking emergency placement at a training center may experience a longer wait time for a determination from the training center, from 24 hours to 72 hours, which could result in costs to them as they may have to provide more intensive and/or expensive care at home. However, such costs would be mitigated by CSBs' ability to place individuals in settings other than the training center, possibly sooner. This growth in the capacity for community placement, even for emergency and respite care, is evidenced by the lack of such placements at a training center since 2019.

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<sup>9</sup> As mentioned previously, the language here would be similarly updated as for 45.A. to require CSBs to consult with DBHDS and make a referral to the RST, specifying that, "The CSB shall pursue all recommendations made by the RST. If it is determined that a voluntary admission is still necessary, the CSB shall consult with the department and request an admission to the training center."

CSB staff could face a modest increase in their workload from (a) coordinating with DBHDS and the RST in response to a request for emergency or voluntary admission, (b) working with the CIM to develop a discharge plan for emergency admissions who are not discharged at the agreed upon time, and (c) working on discharging voluntary admissions to a less restrictive setting, as required by the additional statement to be included in the preadmission screening report. However, to the extent that the proposed changes reflect current practice, these costs are likely already being incurred.

### **Businesses and Other Entities Affected**

As described above, the proposed changes would primarily affect individuals and their caregivers seeking emergency or voluntary admission to a training center. The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>10</sup> An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.<sup>11</sup> Because the proposed amendments could potentially result in a longer wait time for emergency admission to a training center, which could result in costs for affected families, an adverse impact is indicated. However, as noted above, such costs would be mitigated by the investments in community placement options that have already been made.

### **Small Businesses<sup>12</sup> Affected:<sup>13</sup>**

The proposed amendments would not adversely affect small businesses.

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<sup>10</sup> Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance.

<sup>11</sup> Statute does not define “adverse impact,” state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

<sup>12</sup> Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.”

<sup>13</sup> If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a

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### **Localities<sup>14</sup> Affected<sup>15</sup>**

No locality would be disproportionately affected. Local governments would not incur new costs.

### **Projected Impact on Employment**

The proposed regulation does not appear to affect total employment.

### **Effects on the Use and Value of Private Property**

The proposed amendments do not appear to affect the value of private property. Real estate development costs would not be affected.

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finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

<sup>14</sup> “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

<sup>15</sup> Virginia Code § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.