



**Virginia
Regulatory
Town Hall**

Proposed Regulation Agency Background Document

Agency Name:	Department of Mental Health, Mental Retardation and Substance Abuse Services
VAC Chapter Number:	12 VAC 35-200-10 et seq.
Regulation Title:	Regulations for Respite and Emergency Care Admissions to State Mental Retardation Facilities
Action Title:	Amend the Regulations
Date:	May 31, 2001

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The existing regulations provide general criteria and procedures for seeking respite and emergency admission to training centers for individuals with mental retardation that are operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services (Department). These regulations were first promulgated in 1979. The proposed amendment revises maximum length of stay to conform to current statutory requirements, clarifies the case management community services board's responsibility for assuring discharges from state training centers and generally updates the existing provisions to be consistent with current

practice and statutory requirements. Minor revisions have also been made to assure internal consistency.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

Virginia's Office of the Attorney General (OAG) advises that the Mental Health, Mental Retardation and Substance Abuse Board (Board) has discretionary authority to promulgate these regulations under § 37.1-10 and § 37.1-65.2 of the *Code of Virginia*. The OAG stated that the proposed amended regulations "...are consistent with constitutional principles and do not conflict with existing state or federal law or regulations."

§ 37.1-10 of the *Code* confers authority to the Board to "...make, adopt and promulgate such rules as may be necessary to carry out the provisions of the title..." § 37.1-65.2 of the *Code* states, "The Board may promulgate regulations to provide for emergency and respite care admissions to mental retardation facilities..." The Board has used this discretionary legal authority to promulgate these regulations.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

Amendments to the existing regulations are necessary to update the criteria and procedures for individuals requesting respite and emergency care admissions and to assure consistency with statutory requirements, current practice and terminology. This amendment will protect the health and welfare of Virginia citizens by ensuring that those who need respite or emergency care admissions will have accurate and legal guidance for seeking such admissions. With the proposed amendments, the regulations will generally meet its major goals by (i) clearly articulating requirements that must be met to access emergency services and respite care in a mental retardation training center; and (ii) assuring that procedures for obtaining such services are minimally intrusive for individuals seeking services and their families with minimal cost to training centers.

The provisions for maximum length of stay in the current regulations are not consistent with § 37.1-65.2 of the *Code of Virginia* which states “No individual shall be admitted to a mental retardation facility under an emergency or respite care admission for more than twenty-one consecutive days or seventy-five days in a calendar year.” The proposed amendment corrects inaccurate references for length of stay that occur in several parts of the existing regulations. The amendment also updates the procedures for admissions to correspond to the *Code of Virginia* at § 37.1-65.1 and § 37.1-197.1, which requires the case management CSBs to be responsible for assuring discharges from state facilities. The existing regulations do not explicitly identify the case management CSB as the entity responsible for processing training center discharges. The proposed amendment also enhances the clarity for users by defining additional terms such as “catastrophe,” “commissioner,” “discharge plan,” “legally authorized representative,” and revising several existing definitions to be consistent with the *Code of Virginia* or the context of provisions. These changes should make the process for admission more logical and therefore facilitate compliance with admission requirements for eligible individuals and families.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action’s changes.

Parts of regulations, which provide procedural guidance, have been clarified and updated to be consistent with statutory requirements and current practice and terminology. The most substantive changes include:

1. Corrections to requirements for maximum length of stay consistent with § 37.1-65.2 of the *Code of Virginia* inserted in the definitions of the terms “emergency care” and “respite care” and in the sections which provide criteria for admission;
2. Insertion of a new definition for “case management community services board (CSB)” and revised provisions for admissions and discharges that clearly indicate that the CSB is responsible for processing admissions and developing the discharge plan as provided in § 37.1-98 and § 37.1-197.1 of the *Code of Virginia*; and
3. Addition of specific procedures for an applicant to request reconsideration from the Commissioner of any decision to deny a request for respite care admission to a training center.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term “issues” means: 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 include a sentence to that effect.

The changes are intended to clarify the requirements and procedures for respite and emergency care admissions in accordance with the current law. This regulation has not been revised since it was first promulgated in 1979. The provisions do not reflect current terminology and changes in practice that have occurred since that time. By providing specific and accurate guidance, the amendment should reduce confusion and facilitate the process for requesting emergency and respite care admissions in state training centers. This should be advantageous to citizens who request such admissions, the case management CSB processing such requests, and the state training centers receiving the applications for admissions. The amendment should have no disadvantages to the public or the Commonwealth.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

There are no projected new or additional costs to implement this amendment beyond the ongoing expenses of the Department's Office of Mental Retardation (OMR), which administers services and programs for individuals with mental retardation. OMR is included in administrative budget for the Department. Budgeted expenses for OMR for the current fiscal year is \$1,285,419 (Program 440, Subprogram 12).

The regulation is not expected to impact the number of admissions or discharges to state training centers and therefore should not impact facility expenses. There are five training centers located statewide. For the period from July 1, 2000 through May 14, 2001, there were 21 emergency admissions and 14 respite care admissions to these state training centers.

This amendment is intended to update and clarify the existing regulations and should have no financial impact on localities, businesses or individuals.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

The amendment will update and clarify the current procedures and requirements for respite and emergency care admissions to state training centers.

1. Certain definitions in 12 VAC 35-200-10 were updated to reflect statutory requirements and current practice and terminology. Provisions for maximum length of stay, which are included in the definitions of “emergency care” and “respite care,” have been revised to conform to § 37.1-65.2 of the *Code of Virginia*. The statutory requirements for length of stay are also incorporated into provisions at 12 VAC 35-200-20.C and 12 VAC 35-200-30.B.
2. New terms, which are used in the regulations, have been defined at 12 VAC 35-200-10 for clarity including: “case management community services board,” “catastrophe,” “commissioner,” “discharge plan,” “guardianship,” and “legally authorized representative.” The definition of “responsible persons” was deleted because this term is no longer used in the regulations and has been replaced with more specific references (i.e. legally authorized representative).
3. 12 VAC 35-200-20.A and 12 VAC 35-200-30.C have been revised to clearly reflect the responsibility of the case management CSB to process applications for emergency and respite care admissions to training centers consistent with § 37.1-65.1 and 37.1-197.1 of the *Code of Virginia*.
4. Specific provisions been inserted at 12 VAC 35-200-20.B for individuals to seek reconsideration from the Commissioner of any decision to deny admission to a training center for respite care services have.
5. Other non-substantive language changes have been made throughout the regulation for clarity and consistency with the regulatory context and terminology.

Alternatives

Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

The Department and the State Board conducted an analysis of the applicable law and the existing regulations and considered several alternatives for meeting the identified needs:

Alternative 1 – No regulations. This alternative was rejected. This review found that these regulations are necessary to assure consistency and equity in the consideration of request for respite and emergency care admissions to state facilities for persons with mental retardation.

Alternative 2 - No change in the regulations. This alternative was rejected. These regulations have not been revised since their promulgation in 1979 and some revisions

are necessary to update the terms and provisions and to conform to current statutory requirements.

Alternative 3 – Amend the regulations. This alternative was accepted. Revisions were needed to update and clarify the provisions.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

No comments were received during the NOIRA comment period.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

The Department through examination of the regulations and review of the statutory requirements and current practice and terminology, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected. The program staff of the Department’s Office of Mental Retardation developed the draft with assistance from the social work staff at the five state training centers who have specific expertise and first hand knowledge of the admission process.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

The Department of Mental Health, Mental Retardation and Substance Abuse Services will review this regulation and evaluate the need for amendments or revisions no later than December 2004 and every three years thereafter.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which 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.

These regulations outline the process for consumers and their families to seek care and support to address individual needs. These regulations respect the authority and rights of families and legally authorized representatives in the education, nurturing and supervising children and also allow individuals receiving services to assume personal responsibility. The regulations should have no impact on marital commitment or disposable family income.