

REGULATIONS ESTABLISHING PROCEDURES FOR THE VOLUNTARY ADMISSION OF PERSONS WHO ARE MENTALLY RETARDED TO STATE MENTAL RETARDATION FACILITIES

12 VAC 35-190-10. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

"Admission" means placement of an individual in a residential facility for ~~the mentally retarded~~ individuals with mental retardation as defined in this chapter so that the facility becomes the individual's ~~primary residence and~~ primary locus of his care, treatment, and training. ~~Specifically excluded from this definition of admission are respite care and transfers as defined in this section.~~

~~"Clinical psychologist" means an individual possessing a doctorate or master's degree from an accredited program with specialized training and one year's experience in treating the mentally retarded.~~

"Case management community services board (CSB)" means a citizens board established pursuant to § 37.1-195 of the Code of Virginia that serves the area in which an adult resides or in which a minor's parent, guardian or legally authorized representative resides. The case management CSB is responsible for case management, liaison with the facility when an individual is admitted to a state training center, and predischarge planning. If an individual, or the parents, guardian or legally authorized representative on behalf of an individual, chooses to reside in a different locality after the individual's discharge from the facility, the community services board serving that locality becomes the case management CSB and works with the original case management CSB, the individual receiving services and the state facility to effect a smooth transition and discharge.

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"Commissioner" means the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services.

"Discharge plan" or "predischarge plan" means a written plan prepared by the case management CSB in consultation with the state facility pursuant to § 37.1-197.1 of the Code of Virginia. This plan is prepared when the individual is admitted to the facility and documents the planning for services after discharge.

~~"Facility" means a state institutions, hospitals, or training centers with a rated capacity of more than 16 beds and devoted to, or having, facilities for the residential care, treatment and training of mentally retarded persons~~ center for individuals with mental retardation under the supervision and management of the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services.

~~"Less restrictive alternative" means a program, facility, or other setting which is of a less confining or structured setting than institutional care and which can adequately provide for the individual's care, treatment, and training in a less confining manner than that provided in an institutional program.~~

["Guardianship" "Guardian"] means:

For Minors - An adult who is either appointed by the court as a legal guardian of said minor or exercises the rights and responsibilities of legal custody by delegation from a biological or adoptive parent, upon provisional adoption or otherwise by operation of law.

For Adults - a person appointed by the court who is responsible for the personal affairs of an incapacitated adult under the order of appointment. The responsibilities may include

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making decisions regarding the individual's support, care, health, safety, habilitation, education and therapeutic treatment. Refer to definition of "incapacitated person" at § 37.1-134.6 of the Code of Virginia.

"Legally authorized representative" means a person permitted by law or regulations to give informed consent for disclosure of information and give informed consent to treatment, including medical treatment and participation in human research on behalf of an individual who lacks the mental capacity to make these decisions.

"Mental retardation" means substantial subaverage general intellectual functioning which originates during the developmental period and is associated with impairment in adaptive behavior.

~~"Physician" means a medical doctor licensed to practice medicine in the Commonwealth with specialized training or one year's experience in treating mentally retarded individuals.~~

~~"Respite care" means the placement of an individual into a facility for the mentally retarded for a period not exceeding 21 consecutive days or more than 75 days in a calendar year when that placement is solely for the purpose of providing temporary care so that parents, guardians, or other persons responsible for the individual may be relieved of that responsibility because of medical or other emergency conditions of the responsible persons or to allow the responsible persons to take a vacation. It shall be the responsibility of the director of a facility to clearly state in the respite admission letter the temporary nature and purpose of such a respite admission and to obtain the agreement of the parents, guardian,~~

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~~or persons responsible for the individual's care to these conditions before accepting the individual into the facility.~~

~~"Responsible person" means those persons having a legitimate concern for the health, safety, and welfare of the person under consideration for admission including, but not limited to relatives, state or local agencies, or the person or persons having responsibility for the primary care of the individual.~~

~~"Transfers" means the transfer of an individual already admitted to a state facility to another state facility by order of the commissioner.~~

12 VAC 35-190-20. Proceedings for judicial certification; application.

~~The initiation for a proceeding for judicial certification shall begin when the parent, guardian, or other responsible person or persons submits a completed application for admission to the facility serving the mentally retarded from that geographic section of the Commonwealth in which the applicant or his parent or guardian is currently residing.~~

~~The date of the application will be deemed to be the date upon which the facility receives the completed application and supporting documentation listed in 12 VAC 35-190-30.~~

12 VAC 35-190-21. Application for admission process.

A. Requests for admission to a facility shall be processed through the case management CSB. A parent, guardian, or legally authorized representative seeking admission to a facility for an individual with mental retardation shall apply first to the CSB that serves the area where the applicant, his parent, guardian, or legally authorized representative is currently residing.

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B. If the case management CSB determines that the services for the individual are not available in the community or the individual chooses to obtain services in the state facility, the CSB shall forward a prescreening report, pursuant to § 37.1-65.1 B of the Code of Virginia, to the facility serving individuals with mental retardation from that geographic section of the state in which the applicant or his parent, guardian, or legally authorized representative is currently residing.

The prescreening report shall include at a minimum:

1. An application for services;
2. A medical history indicating the presence of any current medical problems as well as the presence of any known communicable disease. In all cases, the application shall include any currently prescribed medications as well as any known medication allergies;
3. A social history and current status;
4. A psychological evaluation that has been performed in the past three years unless the facility director or designee determines that sufficient information as to the applicant's abilities and needs is included in other reports received;
5. A current individualized education plan for school-aged applicants unless the facility director or designee determines that sufficient information as to the applicant's abilities and needs is included in other reports received;
6. A vocational assessment for adult applicants unless the facility director or designee determines that sufficient information as to the applicant's abilities and needs is included in other reports received; and

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7. A completed discharge plan outlining the services to be provided upon discharge and anticipated date of discharge.

12 VAC 35-190-30. Determination of suitability for admission.

A. Within 30 ~~calendar~~ working days from the receipt of the completed ~~application and supporting documentation~~ prescreening report, the director of the facility, or his designee, shall ~~provide a written statement to the applicant, his parent, guardian, or other responsible person or persons in whose name the applicant is seeking admission of the findings of the consideration of the application for admission to that facility~~ notify the case management CSB in writing of the determination on the admission request.

B. Determination of suitability for admission by the director shall be based upon the following criteria and shall be so stated in his written ~~statement~~ decision:

1. The individual has a primary diagnosis of mental retardation;

~~2. That~~ The diagnosis of mental retardation has been made by an interdisciplinary team of qualified mental retardation professionals upon review of ~~a social history, psychological evaluation, relevant medical information, and any other material deemed appropriate by the facility to make such a diagnosis~~ the completed prescreening report; and

~~3. That the individual is incapable of requesting his own admission to the facility;~~

~~4. That~~ 3. The facility has available space, training, treatment, and habilitation services appropriate to meet the needs of the individual; ~~and.~~

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~~5. That the combination of services required by the individual is not available in a less restrictive environment.~~

~~If the director finds that the applicant is not suitable for admission to the facility, he shall state the reasons therefore and, if possible, recommend alternative locations for needed services.~~

~~In order for the director to make the above findings, the individual may be admitted to the facility for observation and evaluation for a period not to exceed 48 hours.~~

~~In the event that the parent, guardian, or other responsible person or persons making application for admission disagrees with the findings of the director, he may, in the name of the applicant, request a review of the decision by the Commissioner of the Department of Mental Health and Mental Retardation.~~

~~Notice of the appeal shall be initiated by the parent, guardian, or other responsible person or persons in the form of a written request for such review submitted to the commissioner.~~

~~The commissioner will notify the parent, guardian, or other responsible person or persons of the findings of his review within 30 calendar days from the date of receipt of the notice of appeal.~~

C. If the director finds that the applicant is not suitable for admission to the facility, he shall state the reasons for his decision and may recommend alternative locations for needed services.

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~~12 VAC 35-190-40. Procedural guidelines for admission to facilities.~~

~~The intent of the provisions of § 37.1-65.1 of the Code of Virginia shall be deemed to have been met under the following conditions:~~

- ~~1. When the facility provides to the parent, guardian, or other responsible person or persons and to the court the statement of the applicant's suitability for admission as outlined in 12 VAC 35-190-30.~~
- ~~2. When the parent, guardian, or other responsible person or persons shall present a signed written statement to the court that the applicant is alleged to be mentally retarded, that he has applied for admission to the facility, and that the parent, guardian, or other responsible person is willing to release to the facility the primary care, treatment, and training of the applicant for the duration of the admission period;~~
- ~~3. When the judge hearing the matter has made a finding that the applicant is incapable of requesting his proposed admission pro se;~~
- ~~4. When the judge hearing the matter has made a finding that the facility has approved the proposed admission pursuant to 12 VAC 35-190-30;~~
- ~~5. When the judge hearing the matter has made a finding that there is no less restrictive alternative to institutional confinement consistent with the best interests of the person who is subject of the proceedings; and~~
- ~~6. When the judge hearing the matter has made a finding that the person is in need of institutional training and treatment.~~

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~~The judge shall issue a written certificate stating that the individual is eligible for admission. Such certification shall also specify findings listed in subdivision 3 of this section. This certificate shall be transmitted to the parent, guardian, or other responsible person or persons whose responsibility shall be to submit such certificate to the facility prior to admission of the applicant.~~

~~The judge may on his own motion summon any physician, clinical psychologist, or other qualified mental retardation professional to evaluate the person who was the subject of the proceedings to assist the court in its findings.~~

12 VAC 35-190-41. Requests for reconsideration of the director's determination.

In the event that (i) the case management CSB making the request for admission, or (ii) a person seeking admission to a facility, disagrees with the determination of the director, the CSB, or person seeking admission, or both may request a reconsideration of the determination by submitting a request in writing to the commissioner within 10 days of receiving such determination. Upon receipt of a request for reconsideration, the commissioner shall notify the facility director and the facility director shall forward the prescreening report package and related information to the commissioner within 48 hours. The commissioner shall also provide an opportunity for the person requesting reconsideration to submit for review any additional information or reasons why the admission should be approved. The commissioner shall render a written decision on the request for reconsideration within 30 calendar days of the receipt of the request and notify all involved parties. The commissioner's decision shall be binding.

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~~12 VAC 35-190-50. Procedural guidelines for admission to state training centers.~~

~~A parent, guardian, or other responsible person or persons, including state agencies or persons concerned with the health, safety, and welfare of an individual, who believes a person, such as their child or a ward of the Department of Welfare, should be admitted to a state training center for mentally retarded persons should first contact the training center either by telephone or letter. The local community mental health and mental retardation services board or the state Department of Mental Health and Mental Retardation can help identify the appropriate training center to call. The training center where the person may be admitted will then spell out the correct procedures to follow, including such information needed to determine eligibility for admission.~~

~~The state training center must then determine three things:~~

- ~~1. Is the person mentally retarded? Mental retardation is defined as a disability in which a person functions at a substantial subaverage intellectual level which originated during his developmental period (birth to 18 years), combined with problems in adaptive behavior (inability to care for his own needs such as dressing, eating, toileting, and often inappropriate social behavior). Tests and information to determine whether a person is mentally retarded may be gathered by the staff of the training center. Many times schools, community service boards, local associations for retarded citizens, or other agencies will help a family or an agency gather the information needed;~~
- ~~2. Does the person need institutionalization? Most mentally retarded persons can receive proper care and training in their community. However, sometimes the degree of retardation~~

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~~or associated problems a person may have are so great that the person may require institutional care; and~~

~~3. Does the institution have the space and the ability to provide the type of care and programs that the mentally retarded person needs? Some training centers do not provide some types of care, (for example, 24-hour skilled nursing service). In these cases the training center will work with the parents or agency in finding a more appropriate place for the person to receive the care he needs, including the possibility of the placement in another training center. If the institution makes the decision that it can admit a person, they will commonly make an agreement with the parents that the person will receive certain treatment over a specified period of time. It is the goal of training centers in Virginia to prepare a person for return to community living whenever possible. Sometimes the training center staff may feel that they need to observe the person to make a more informed judgment. In that event, a person may be held at the institution for up to 48 hours.~~

~~The training center, after making its determination, then contacts, in writing, the parent or guardian with their findings.~~

~~If the institution finds that the person is mentally retarded, that he requires institutionalization, and that the institution can provide the programs and care that he needs, the parents or guardian can then petition the district court in their area for a judicial certification to voluntarily admit the mentally retarded person to the facility. The judge must be provided with the information gathered about this person at the institution as well as a letter from the director saying that the person is eligible for admission.~~

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~~The judge must then decide the following:~~

- ~~1. Whether to accept the institution's findings about the mentally retarded person;~~
- ~~2. Whether to order another evaluation of the mentally retarded person. This may be done by a licensed physician or a clinical psychologist appointed by the judge; and~~
- ~~3. Whether there is any less restrictive alternative to care and treatment other than being admitted to a state training facility, such as a group home for mentally retarded persons or a day care program in the community. The judge may request advice from local community services boards or other community agencies.~~

~~If the judge finds that there are no less restrictive alternatives, he shall issue a written order that the mentally retarded person is eligible for voluntary admission to a state training facility.~~

~~This procedure does not guarantee that admission to a state training center will be automatic. Space at the institution may not be available or new programs in the community may have been started depending on the amount of time spent on the due process procedure for an individual. In the event space is unavailable at an institution, the person will be placed on a waiting list.~~

~~This procedure does not constitute an involuntary commitment. It is a due process procedure for voluntary admission to ensure that a mentally retarded person's rights are protected.~~

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12 VAC 35-190-51. Procedure for admission.

Upon receipt of written notification from the facility director that an individual is suitable for admission, the case management CSB will inform the individual or the individual's parent, guardian or legally authorized representative of this decision and assist the parent, guardian or legally authorized representative in initiating a judicial proceeding pursuant to § 37.1-65.1 of the Code of Virginia. When the judge has certified that the individual is eligible for admission to a facility in accordance with [~~§ 37.1-65-C-3~~ § 37.1-65(C) (3)] of the Code of Virginia, a date for admission to the facility will be established.

I certify that this regulation is full, true, and correctly dated.

James S. Reinhard, M.D., Commissioner

Department of Mental Health, Mental Retardation and Substance Abuse Services

Date _____