



Virginia
Regulatory
Town Hall

Periodic Review and
Notice of Intended Regulatory Action
Agency Background Document

Agency Name:	Department of Mental Health, Mental Retardation and Substance Abuse Services
VAC Chapter Number:	12 VAC 35-190-10 et seq
Regulation Title:	Regulations Establishing Procedures for Voluntarily Admitting Persons Who Are Mentally Retarded to State Mental Retardation Facilities
Action Title:	Amend the Regulations
Date:	October 30, 2000

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

This form should be used where the agency is planning to amend or repeal an existing regulation and is required to be submitted to the Registrar of Regulations as a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B).

Summary

Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.

These regulations prescribe the procedure for admitting persons on a voluntary basis to residential training facilities for the mentally retarded that are operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services (Department). The regulations provide general admission criteria and outline the process for making decisions on admission requests. The regulations also include provisions for appealing such decisions.

Basis

Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.

Virginia's Office of the Attorney General advises that the Mental Health Mental Retardation and Substance Abuse Services Board (Board) has the authority to promulgate these regulations under Va. Code §§ 37.1-10 and 37.1-65.1 and is required to do so.

Va. Code § 37.1-10 confers authority to the Board to "...make, adopt and promulgate such rules as may be necessary to carry out the provisions of this title..." Va. Code § 37.1-65.1 requires the Board to promulgate regulations establishing procedures and standards for approving admissions to facilities for the mentally retarded.

Public Comment

Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or particular areas of concern in the regulation. Also please indicate if an informal advisory group was or will be formed for purposes of assisting in the periodic review or development of a proposal.

The notice of this periodic review was published in the Virginia Register on July 31, 2000. The notice requested public comment on the performance and effectiveness of the regulations in meeting stated goals. The Department also sent notice of this review to approximately 150 interested persons and organizations, including advocacy groups, state facilities for the mentally retarded and community services boards. One comment was received from the Henrico Area Mental Health & Retardation Services. The respondent indicated that the regulatory admission criteria for facilities are outdated. These regulations have not been revised since they were first promulgated in 1976. The respondent believes that the regulations are in need of a "major overhaul" in response to the changes which have occurred in "our current environment."

The Department agrees with this respondent that the regulations are somewhat out-of-date as they do not reflect the prevailing objectives and practice of a community focused system of care. The Department proposes to initiate the regulatory process to make the appropriate changes. The Department will consider revising the procedures and criteria for admission in light of the recent changes in practice to ensure that only the most severely disabled and those most in need of care and training will be admitted to training centers.

Effectiveness

Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has

determined that the regulation is essential to protect the health, safety or welfare of citizens. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected.

The major goals of these regulations are:

1. To clearly articulate requirements and actions which are required to admit a person to a mental retardation training facility;
2. To clearly define due process protections afforded to persons with mental retardation who are being admitted to a training center and to their families; and
3. To assure that training center admission procedures are minimally intrusive for individuals and their families and have the minimum possible cost to training centers.

The participants in this review believe that the regulations are generally consistent with these goals. However, there appears to be several areas that can be improved. This review found that some of the definitions are outdated, unnecessary or may not be consistent with existing statutory language. For example, the regulations include a definition of "respite care," which is a term that is not used in the regulations. Therefore, the definition is unnecessary and should be deleted. In addition, the definition of "facility" appears to be too broad in the context of these regulations. This current definition should be revised to mean operated state training centers for persons with mental retardation, which is the only type of facility that is included in the scope of these regulations. The Department proposes to consider revising these and several other existing definitions in order to clarify the terms and to ensure that all definitions are consistent with the current law.

As written, the regulations imply that an individual who is admitted to training center will not return to the community. The Department proposes to consider revising the admission criteria and process in order to reflect the values of a community-based system of care.

Part 12 VAC 35-190-40 of these regulations describe the criteria for judicial certification for eligibility for admission to training centers. Because the criteria are specified in state law, there is no need to restate this judicial criteria in the regulations. By eliminating this criteria, the regulations should become less confusing.

In summary, it has been determined, based on this periodic review, that the regulations serve an essential purpose although there are several areas that should be improved. First, it is recommended that the definitions be updated and clarified. Second, changes should be made to the admissions process and criteria which would reflect the values of a community-based system of care. Finally, the amended regulation should eliminate criteria for the judicial certification which repeat the criteria in state law and are therefore unnecessary.

Alternatives

Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.

The Department and the State Board have conducted an analysis of the applicable law and public comments and have considered several alternatives for resolving the issues identified by this periodic review of the existing regulations.

Alternative 1 - No regulation. This alternative was rejected. State law mandates the promulgation of regulations to establish procedures and standards for admitting persons to state mental retardation facilities.

Alternative 2 - No change to the regulations. This alternative was rejected. The existing regulations have not been revised since their promulgation in 1976 and revisions are necessary to update the current provisions, clarify and update definitions and eliminate regulatory criteria for judicial certification which now provided in state law and are therefore unnecessary and redundant.

Alternative 3 - Amend the regulations. This alternative was accepted. Revisions are needed to update the regulations to reflect current practice and promote appropriate admissions to state training centers for the mentally retarded by targeting the most severely disabled and those most in need of care and training.

Recommendation

Please state whether the agency is recommending the regulation be amended or terminated and the reasons such a recommendation is being made.

The Department and the State Board recommend "Alternative 3" to amend the regulations. This amendment is necessary to update the current provisions. This alternative will allow the Board to comply with the statutory requirement to promulgate regulations to establish procedures and standards for admission of persons to state facilities for the mentally retarded.

Substance

Please detail any changes that would be implemented.

The revisions would not include substantial changes to the format of the regulations. Certain definitions would be changed or eliminated or new definitions would be added if deemed necessary to improve the clarity of the provisions. It is expected that the section of the

regulations which provides procedural guidelines for admissions to state facilities will be revised substantially. This section may describe the specific assessments the supporting documentation needed to seek admission to a state facility and indicate the process for reviewing such documentation at the facility.

Family Impact Statement

Please provide a preliminary 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 help to assure consumers and their families that they will receive an appropriate level of care and support to address their individual needs. These regulations respect the authority and rights of parents in educating, nurturing and supervising their children and assuming responsibility for themselves. This is accomplished by outlining the public process for seeking admission to state-operated facilities for persons with mental retardation and promoting community-based services when it is appropriate. This regulation should have no discernable impact on marital commitment or family income.