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Fast-Track Regulation Agency Background Document

Agency name	Department of Behavioral Health and Developmental Services
Virginia Administrative Code (VAC) citation(s)	12 VAC35-200
Regulation title(s)	Regulations for Emergency and Respite Care Admission to State Training Centers
Action title	Amend Regulations Following Periodic Review
Date this document prepared	April 12, 2018

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

Chapter 200 provides guidance including definitions, policy, and documentation expectations related to individual emergency and respite admissions to state training centers operated by the Department of Behavioral Health and Developmental Services. Specifically, the regulation is designed to:

- Inform individuals, authorized representatives, DBHDS employees, Community Service Board staff, and pertinent stakeholders of the process and procedures related to admitting individuals with an intellectual disability to state training centers for the purpose of providing emergency and respite supports.
- Educate responsible persons on the approved criteria for emergency and respite admissions to training centers.

- Inform individuals and authorized representatives of the appeal process if they should disagree with the admission decision.

This action is the result of a periodic review. No comments were received during the review. With only two exceptions the proposed amendments are not substantive and merely update language to mirror language in the Code of Virginia or in 12VAC35-115, *Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department Of Behavioral Health and Developmental Services* (“Human Rights Regulations”).

There are two changes that mirror practices that have been in place since 2012, which are substantive:

- 1) The addition of the definition of “regional support team” (“RST”) and the function of the RST to the discharge planning process, and
- 2) The addition of the assistant commissioner having responsibility for the training center to the admission process.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.

“RST” means regional support team.

“State Board” means the State Board of Behavioral Health and Developmental Services.

Statement of final agency action

Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

The State Board approved promulgation of these amendments to 12VAC35-200 *Regulations for Emergency and Respite Admission to State Training Centers* using the fast-track process at its meeting on April 11, 2018.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’s overall regulatory authority.

Section 37.2-203 of the Code of Virginia authorizes the State Board to adopt regulations that may be necessary to carry out the provisions of Title 37.2 and other laws of the Commonwealth administered by the commissioner and the department.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health,

safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

Chapter 8 of Title 37.2 of the Code of Virginia allows for emergency or respite admissions to state training centers operated by the Department of Behavioral Health and Developmental Services. For an emergency situation that can be supported through a training center admission after all community resources have been exhausted, or family members or caregivers who seek relief through respite, this regulation is essential to protect the health, safety, and welfare of citizens because it makes clear the procedures for individual emergency and respite admissions to state training centers operated by the Department of Behavioral Health and Developmental Services.

This action is the result of a periodic review. No comments were received during the review. With only two exceptions the proposed amendments are not substantive and merely update language to mirror language in the Code of Virginia or in 12VAC35-115, *Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department Of Behavioral Health and Developmental Services* ("Human Rights Regulations"). The two substantive changes are 1) the addition of the definition of "regional support team" ("RST") and the function of the RST to the discharge planning process, which is initiated at admission, and ii) the addition of the assistant commissioner having responsibility for the training center to the admission process. These two changes mirror practices that have been in place since 2012.

Rationale for using fast-track process

Please explain the rationale for using the fast-track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

This action is the result of a periodic review. No comments were received during the review. The proposed amendments merely update language to mirror current language in state law, regulation, or practices that have been in place since 2012.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of changes" section below.

Updated definitions of:

- Authorized representative
- Community services board
- Individual
- Training center

Added definitions of:

- Admission
- Department
- Intellectual disability
- Regional support team

Added "in consultation with" in two sections:

- For RSTs into the process described in 12VAC35-200-20. Application for admission.

- For the assistant commissioner having responsibility for the training center in 12VAC35-200-30. Criteria for admission.

Deleted the definition for “mental retardation” and the term wherever it appears throughout the regulation.

Issues

Please identify the issues associated with the proposed regulatory action, including: 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 indicate.

This action is the result of a periodic review, which includes a public comment period. The proposed amendments will provide clarity for interested stakeholders and the developmental services system (DBHDS, community services boards, individuals receiving services and their families) by providing updated language to mirror language in the Code of Virginia and 12VAC35-115, and current practice. There are no disadvantages to the public or the Commonwealth.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There is no requirement in the amendments that is more restrictive than federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no localities particularly affected by this action.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational

standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

There is no reason to delay the adoption of these changes by using the standard process. Having updated clarifications in the regulation will be helpful to those in the system using or seeking training center services.

These regulations need to remain in place to ensure the health, safety, and welfare of the individuals receiving training center services and to ensure appropriate use of those services.

These regulations apply to state training centers; therefore small businesses are not directly affected.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

<p>Projected cost to the state to implement and enforce the proposed regulation, including: a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures</p>	<p>There are no costs to the state.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>There are no costs to localities.</p>
<p>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</p>	<p>Entities likely to be affected are:</p> <ul style="list-style-type: none"> • DBHDS facilities; • Individuals and families of individuals receiving services in DBHDS facilities.
<p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that:</p> <p>a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>There is no way to estimate the number of people who will be affected.</p>
<p>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>There are no projected costs.</p>

<p>Beneficial impact the regulation is designed to produce.</p>	<p>Updating language to be consistent and current with today's vernacular related to state facilities, individuals receiving services in state facilities, and authorized representatives of individuals receiving services in state facilities.</p>
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Alternatives

Please describe any viable 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. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

There are no viable alternatives to this regulatory proposal.

Public participation notice

If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

Periodic review and small business impact review report of findings

If this fast-track is the result of a periodic review/small business impact review, use this form to report the agency's findings. 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 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

Commenter	Comment	Agency response

1. No comments were received during the review.
2. The regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

3. As long as the Commonwealth has state training centers, there is a continued need for the regulation. No comments were received during the review. The regulation is three pages long and is very straightforward. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation. The last period review was in 2013. Since that time, technology, economic conditions, or other factors have had no impact on Virginia’s need for the regulation.

Family impact

Please assess the impact of this 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.

Having updated clarifications in the regulation will be helpful to those in the system using or seeking training center services. Otherwise, there is no impact on individual families or family stability.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below.

For changes to existing regulation(s), please use the following chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
10			<p>Updated definitions of:</p> <ul style="list-style-type: none"> • Authorized representative: adding language to make clear the decision-making authority of an authorized representative recognized or designated under this chapter is limited to decisions pertaining to the designating provider. • Community services board: to conform to the definition in § 37.2-100 of the Code of Virginia. • Individual: to conform to the definition in § 37.2-100 of the Code of Virginia. • Training center: to conform to the definition in § 37.2-100 of the Code of Virginia. <p>Added definitions of the following that</p>

			<p>mirror the definition in § 37.2-100 of the Code of Virginia:</p> <ul style="list-style-type: none"> • Admission • Department • Intellectual disability <p>Added the definition of:</p> <ul style="list-style-type: none"> • Regional support team (RST) to reflect the role of RSTs in the system since 2012. <p>Deleted the definition for “mental retardation” and the term wherever it appears throughout the regulation.</p>
20			<p>Added “in consultation with” to reflect current practice since 2012:</p> <ul style="list-style-type: none"> • For ‘the RST’ in the process described in 12VAC35-200-20 A, Application for respite care admission. • For ‘the assistant commissioner responsible for the training center or his designee’ in 12VAC35-200-20 B, Determination of eligibility for respite care services (by the facility director). <p>Also in 20 A 3, clarified that ‘status’ means ‘housing or living arrangements.’</p>
30			<p>Added “in consultation with” to reflect current practice since 2012:</p> <ul style="list-style-type: none"> • For ‘the RST’ in the process described in 12VAC35-200-30 A, regarding the CSB’s determination that an application for emergency admission is appropriate due to a lack of services in the community. • For ‘the assistant commissioner having responsibility for the training center’ in 12VAC35-200-30 C, in regard to the facility director’s requirement of a request for emergency admission to inform the CSB whether the individual is eligible for emergency admission and whether the training center is able to provide emergency services.