



Virginia
Regulatory
Town Hall

Final Regulation Agency Background Document

Agency Name:	Department of Mental Health, Mental Retardation and Substance Abuse Services
VAC Chapter Number:	12VAC 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:	March 20, 2002

Please refer 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* for more information and other materials required to be submitted in the final regulatory action package .

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.

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 (CSB) responsibility for assuring discharges from state training centers and generally updates the existing provisions to be consistent with current practice and statutory requirements. No substantive changes have been made since publication of the proposed regulations.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

At its meeting on March 15, 2002, the State Board for Mental Health, Mental Retardation and Substance Abuse Services took final action to adopt the final amended Rules and Regulations for Respite and Emergency Care Admissions to State Mental Retardation Facilities.

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, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.

Virginia's Office of the Attorney General (OAG) advises that the State Board for Mental Health, Mental Retardation and Substance Abuse (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 final regulations "...are consistent with constitutional principles and do not conflict with existing state or federal law or regulations."

Code of Virginia § 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 the title..." *Code of Virginia* § 37.1-65.2 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 final 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 of the regulatory action’s detail.

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 final regulatory action. The term “issues” means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the 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. These regulations have not been revised since they were first promulgated in 1979. The existing provisions do not reflect current terminology and changes in practice that have occurred since that time. The current regulations do not provide a process for individuals to seek reconsideration when a respite care admission is denied. 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.

Statement of Changes Made Since the Proposed Stage

Please highlight any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication.

There have been no substantive changes made to the text of the proposed regulations since they were published. On the advice of the OAG, non-substantive text revisions were made to the definitions of “case management community services board” and “discharge plan” in the final regulations to make them consistent with the language used in other agency regulations.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

One public comment was received. The respondent requested inclusion in the regulations definitions of “...developmental delay, related conditions and cognitive developmental delay.” The respondent felt the inclusion of definitions of these words would ensure children with such

developmental delays access to care in state training centers for individuals with mental retardation.

The Agency does not propose inclusion of the definitions of terms that were recommended by this respondent.

The Code of Virginia at § 37.1.1 defines a “training center for the mentally retarded” to mean a facility that provides, treatment, training and habilitation for persons with mental retardation. This section of the Code defines mental retardation as “substantial subaverage general intellectual functioning which originates during the developmental period and is associated with impairment in adaptive behavior.” This definition is replicated in the regulations. A child under six years may be considered to have mental retardation, under the Code definition, if there is documented evidence of cognitive and adaptive developmental delay or presence of a syndrome typically associated with mental retardation.

For this reason, the Department does not believe it is necessary for these regulations to include specific provisions to ensure access to state training centers for children with developmental delays.

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 crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.

The amendment will update and clarify the current procedures and requirements for respite and emergency 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 12VAC 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 have been inserted at 12 VAV 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.
5. Other non-substantive language changes have been made throughout the regulations for clarity and consistency with the regulatory context and terminology.

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the 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 income.