



Proposed Regulation Agency Background Document

Agency name	State Mental Health, Mental Retardation and Substance Abuse Services Board
Virginia Administrative Code (VAC) citation	12 VAC 35 -210
Regulation title	Regulations to Govern Temporary Leave from State Mental Health and Mental Retardation Facilities
Action title	Promulgate a new regulation to govern temporary absences or leave practices from state mental health or mental retardation facilities.
Document preparation date	

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

The new regulation will govern the general process and establish requirements for granting temporary leave to individuals receiving services in state mental health and mental retardation facilities. The proposed regulation requires state facilities to include plans for temporary leave as part of individual treatment planning and gives the state facility director final authority to grant this leave. The regulation also defines the types and duration of leave that may be authorized, requires documentation, and defines a "responsible person" for an individual who is on leave status. Provisions also guide state facilities in managing situations when an individual becomes ill or injured during leave, or fails to return to the state facility as scheduled.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The State Mental Health, Mental Retardation and Substance Abuse Services Board has the authority under Va. Code § 37.1-98 (B) to promulgate the proposed *Regulations to Govern Temporary Leave from State Mental Health and Mental Retardation Facilities* and is required to do so if the Department of Mental Health, Mental Retardation and Substance Abuse Services uses temporary leave.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

The Agency believes that this regulation is essential to protect the health, safety and welfare of individuals on temporary leave from state facilities. The provisions are intended to promote successful home or community visits that support the treatment and training goals of the individuals receiving services in state facilities. The regulation will help resolve any inconsistencies in decision-making with regard to leave practices and promote accountability and appropriate care for individuals who are on leave status.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

The regulation identifies three types of temporary leave that may be authorized for individuals receiving services in state facilities, including, short term day passes for periods that do not extend overnight, and family or trial visits which are granted for longer time periods. The regulation describes the time limits and rationale for granting each type of leave and requires the facility to plan temporary leave in collaboration with the individual, his family, and others, including the community services board (CSB), when appropriate. Provisions require state facilities to document the specific authorization and justification for temporary leave episodes in the individual services record and requires the leave to be consistent with the individual's service plan. State facilities may also grant extensions to time limits for episodes of leave under certain conditions. In addition, the regulation identifies who may qualify as a "responsible person" to provide oversight or care to an individual during temporary leave from the state facility.

The regulation also contains provisions for addressing emergencies or unexpected events that occur when an individual is on leave from a state facility, including illness, injury, or death, or when an individual fails to return to the facility on schedule.

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 the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

The new regulation should be advantageous to the public because it requires individuals, family members, CSBs and facility personnel to work together to plan leave situations so that leave episodes are consistent with individual needs and preferences. The regulation also requires facilities to implement standard processes for intervening and assisting individuals, their families or responsible persons to resolve problems that may occur during leave. The provisions establish process requirements for state facilities to use in planning and granting leave that should not be burdensome to the public.

The new regulation will promote agency accountability by requiring all leave to be appropriately authorized and documented. It will standardize leave practices and provide means to enhance therapeutic options available to individuals receiving services in state facilities by granting temporary leave. This regulatory action will allow the Agency to comply with its statutory mandate to promulgate regulations pertaining to temporary leave.

These regulations should not have any impact on businesses. There are no known disadvantages to this regulatory action.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

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	There is no additional cost to the state to implement and enforce the proposed regulation. This regulation standardizes current administrative processes governing temporary leave in state facilities.
Projected cost of the regulation on localities	There is no known cost to localities associated with this regulation.
Description of the individuals, businesses or other entities likely to be affected by the regulation	The regulation will affect state facilities and the individuals who are receiving services in these facilities.
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 (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales	This regulation will primarily impact 14 state mental health and mental retardation facilities, which have an average daily census of approximately 3,500 individuals. (This regulation should not affect the Hiram W. Davis Medical Center, which is primarily a medical and skilled nursing facility or the Virginia Center for Behavioral Rehabilitation)

of less than \$6 million.	
All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.	There are no known costs associated with this regulation for affected state facilities or the individuals receiving services in these facilities. This regulation does not apply to businesses.

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.

There are no known viable alternatives to this regulatory action. The Code requires the Agency to promulgate regulations for temporary leave if the Department uses such leave at its facilities. The Agency requested and received assistance from state facility staff and interested persons in developing the proposed regulations. An advisory group considered the preliminary drafts and assisted the Agency to develop regulations that coincide with existing facility policies and procedures. As a result of this process, the Agency believes that the proposed regulation meets the statutory requirements without being overly burdensome or intrusive to individuals, families or Department staff.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

The Agency received no comments in response to the NOIRA.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

This action to promulgate regulations should have a positive impact on the stability of families with members who are receiving services in state facilities. The new regulation is intended to ensure that leave practices are consistent and promote successful home or community visits for individuals and their families, consistent with individual treatment goals.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

The new regulation requires each state facility to develop specific written policies for authorizing and implementing three types of leave for individuals receiving services in the facilities, including day passes, trial visits, and family visits. The regulation requires facilities to document justification for the leave in the individual's service record. It describes and defines who may be a "responsible person" for an individual who is granted leave from a state facility. The regulation also requires planning for trial visits or family visits to be accomplished in conjunction with individual treatment planning and to involve the individual, his family or legally representative when appropriate, and the case management CSB. The regulation also includes provisions for managing unanticipated events or a situation when the individual becomes ill or injured during a family or trial visit; or fails to return to the facility.