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Fast-Track Regulation Agency Background Document

Agency name	Department of Behavioral Health and Developmental Services
Virginia Administrative Code (VAC) Chapter citation(s)	12VAC35-190 and 12VAC35-200
VAC Chapter title(s)	Regulations for Voluntary Admissions to State Training Centers Regulations for Emergency and Respite Care Admission to State Training Centers
Action title	Streamlining and updating admissions regulations.
Date this document prepared	July 18, 2023 Updated March 4, 2024

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

This action merges two chapters into one, through amendments to Chapter 200 and repeal of Chapter 190. All regulatory language pertaining to admissions to DBHDS training centers are captured in the updated Chapter 200 in order to provide clarity and ease of use. Also, amendments are made to reflect current admissions practice.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

AR – Authorized representative
CIM - Community integration manager
CSB - Community services board
DBHDS – Department of Behavioral Health and Developmental Services
RST - Regional support team
State Board – State Board of Behavioral Health and Developmental Services

Statement of Final Agency Action

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 amendments were approved by the State Board of Behavioral Health and Developmental Services at its meeting on July 12, 2023, as a fast track action.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

Consistent with Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process.

There is no specific mandate tied to this action. More generally, the impetus comes from the recent periodic review and the regulatory review required by [Executive Directive 1](#). While this action does not reduce regulatory requirements, the intent is in line with making regulations clearer and facilitates accountability by becoming reflective of actual practice.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.

The State Board is authorized under [§ 37.2-203](#) of the Code of Virginia to promulgate regulations that may be necessary to carry out the provisions of Title 37.2 and other laws of the Commonwealth administered by the commissioner or DBHDS.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

As long as the Commonwealth continues to provide training center services, a regulation is needed to address admission procedures. The purpose of this regulatory action is to bring all regulatory language pertaining to admissions to DBHDS training centers into one regulatory chapter to provide clarity and ease of use. Also, amendments are made to reflect current admissions practice.

Substance

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.

As named and defined in the U. S. Department of Justice's Settlement Agreement with Virginia (United States of America v. Commonwealth of Virginia, Civil Action No. 3:12cv059-JAG) (<https://dbhds.virginia.gov/doj-settlement-agreement/>; see IV.D.), the term "community integration manager" or "CIM" is added to the regulation to reference the DBHDS Central Office position physically located at the one remaining training center. This position provides support and direction for all aspects of the individual's transition to the community including addressing identified barriers to discharge. The service goal is always to serve individuals in the least restrictive settings most appropriate to suit their needs and this position is integral to help ensure that goal is met.

The definition of respite care is removed as any respite admissions only occur for situations that are emergencies, and thus are captured under the definition of an emergency admission. [Section 807](#) of Title 37.2 of the Code of Virginia is permissive in that it states that the 'Board may adopt regulations to provide for emergency and respite care admissions to training centers.'

The list of criteria for admission from Chapter 190 (voluntary) is blended to with the list in Chapter 200 (emergency, including respite) to be appropriately comprehensive.

Current practices are reflected to demonstrate that:

- During the application process the CSB consults with DBHDS and makes a referral to the RST requesting an emergency meeting, and the CSB is expected to pursue all recommendations made by the RST. Only after it is determined that emergency admission is still necessary does the CSB consult with the department and request an emergency admission to the training center.
- The response time for the department to let the CSB know if the admission is accepted is changed from 24 hours to 72 hours. This provides time for part-time psychiatric staff consultation with the interdisciplinary team to review all documentation and thoroughly evaluate the request.
- The CSB shall work with the DBHDS CIM and training center staff to develop a discharge plan after emergency admission as provided in §§ 37.2-505 and 37.2-837 of the Code of Virginia.

Issues

Identify the issues associated with the regulatory change, 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, include a specific statement to that effect.

1. The primary advantages of this action are that it brings all regulatory language pertaining to admissions to DBHDS training centers into one regulatory chapter to provide clarity and ease of use by individuals needing or receiving training center services and their authorized representatives.

Also, amendments are made to reflect current admissions practice. As the action does not add additional burden or remove protections for individuals, there are no disadvantages to the public.

2. The primary advantage to the Commonwealth is that the regulatory language is reflective of current practice and all admissions language is in one chapter. There is no disadvantage to the Commonwealth.
3. There are no other pertinent matters of interest.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.

There are no regulatory changes more restrictive than applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

No other state agencies are particularly affected.

Localities Particularly Affected

CSBs involved in admission or discharge processes are affected. However, the changes reflect current practice, so there is no increased burden.

Other Entities Particularly Affected

Individuals needing or receiving training center services and their authorized representatives are affected by this regulation.

Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including:</p> <ul style="list-style-type: none"> a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources 	<p>There is no fiscal impact on DBHDS from this regulatory action.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>There is no fiscal impact on other state agencies from this regulatory action.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>DBHDS will have increased clarity in the use of the regulations, and will have clearer accountability for the processes described in the regulation.</p>

Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>There is no fiscal impact on localities from this regulatory action.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>CSBs will have increased clarity in the use of the regulations, and will have clearer accountability for the processes described in the regulation.</p>

Impact on Other Entities

Table 3 reports on the direct costs and benefits impact on families.

<p>Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.</p>	<p>Families that care for individuals potentially in need of respite care at training centers will be affected by this regulatory change. <i>See Table 3 in the EIA.</i></p>
<p>Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that:</p> <ul style="list-style-type: none"> 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><i>See Table 3 in the EIA.</i></p>
<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to:</p> <ul style="list-style-type: none"> a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; 	<p><i>See Table 3 in the EIA.</i></p>

c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	
Benefits the regulatory change is designed to produce.	See Table 3 in the EIA.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

As long as the Commonwealth continues to provide training center services, a regulation is needed to address admission procedures. The only alternative is to leave Chapter 190 and Chapter 200 as currently in effect, which would not reflect current practice.

The purpose of this regulatory action is to bring all regulatory language pertaining to admissions to DBHDS training centers into one regulatory chapter to provide clarity and ease of use. Also, amendments are made to reflect current admissions practice. No increased burden is included in the action for any entity.

Table 1c. of the EIA reports on costs and benefits under an alternative approach.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B of the Code of Virginia, 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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.

Table 1c. of the EIA reports on costs and benefits under an alternative approach.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

Consistent with § 2.2-4011 of the Code of Virginia, 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.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

DBHDS is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax Ruth Anne Walker, P.O. Box 1797, Richmond, VA 23218-1797, fax 804-371-4609, and email ruthanne.walker@dbhds.virginia.gov. To be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
12VAC35-190-10.		Definitions.	(Repealed.) Definitions in 190 and 200 were already identical prior to this action, except that 190 has a definition of "licensed professional," and 200 has definitions for "emergency admission," "less restrictive setting," and "respite care." "Licensed professional" is placed in 200.
12VAC35-190-21.		Application for admission.	(Repealed.) See the newly numbered Section 45 in Chapter 200 below.
12VAC35-190-30.		Criteria for admission.	(Repealed.) See the newly numbered Section 35 in Chapter 200 below.
12VAC35-190-41.		Requests for reconsideration of the director's determination.	(Repealed.) See the newly numbered Section 50 in Chapter 200 below.

12VAC35-190-51.		Judicial certification.	(Repealed.) See the newly numbered Section 55 in Chapter 200 below.
12VAC35-200		Regulations for Emergency and Respite Care Admissions to State Training Centers	Title amended: <ul style="list-style-type: none"> Regulations for <u>Voluntary and Emergency and Respite Care</u> Admission to State Training Centers
12VAC35-200-10.		Definitions.	Amendments include: <ul style="list-style-type: none"> Adding definition: "<u>Community integration manager</u>" or "CIM" to reference the DBHDS Central Office position physically located at the one remaining training center. This position provides support and direction for all aspects of the individual's transition to the community including addressing identified barriers to discharge. The service goal is always to serve individuals in the least restrictive settings most appropriate to suit their needs and this position is integral to help ensure that goal is met. Adding: "<u>or "DBHDS"</u>" to the definition of the Department of Behavioral Health and Developmental Services. Removing the definition of: "Respite care" as any respite service is captured within emergency admissions.
12VAC35-200-20.		Respite care. A. Applications for respite care in training centers shall be processed through the CSB providing case management. A parent, guardian, or authorized representative seeking respite care for an individual with an intellectual disability shall apply first to the CSB that serves the area where the individual, or if a minor, the minor's parent or guardian is currently residing. The CSB shall consult with the RST prior to preparing an application for respite care. If the CSB, in	<ul style="list-style-type: none"> Newly titled: <u>Requests for admission.</u> The section is streamlined to the following: <p>A. Applications for respite care in training centers shall be processed through the CSB providing case management. A parent, guardian, or authorized representative seeking respite care admission to a training center for an individual with an intellectual disability shall apply first to the CSB that serves the area where the individual, or if a minor, the minor's parent or guardian is currently residing. The CSB shall consult with the RST prior to preparing an application for respite care. If the CSB, in consultation with the RST, determines that respite care for the individual is not available in the community, the CSB shall forward an application to a training center</p>

	<p>consultation with the RST, determines that respite care for the individual is not available in the community, the CSB shall forward an application to a training center serving individuals with intellectual disabilities.</p> <p>The application shall include:</p> <ol style="list-style-type: none"> 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 housing or living arrangements; 4. A psychological evaluation that reflects the individual's current functioning; 5. A current individualized education plan for school-aged individuals unless the training center director or designee determines that sufficient information as to the individual's abilities and needs is included in other reports received; 6. A vocational assessment for adults unless the training center director or designee determines that sufficient information as to the individual's abilities and needs is included in other reports received; 7. A statement from the CSB that respite care is not 	<p>serving individuals with intellectual disabilities <u>DBHDS, make a referral to the RST, and follow up on all recommendations made by the RST.</u></p> <ul style="list-style-type: none"> ▪ The list of what the application should include is moved to new Section 45.
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		<p>available in the community for the individual;</p> <p>8. A statement from the CSB that the appropriate arrangements are being made to return the individual to the CSB within the timeframe required under this chapter; and</p> <p>9. A statement from the individual, a family member, or authorized representative specifically requesting services in the training center.</p> <p>B. Determination of eligibility for respite care services shall be based upon the following criteria:</p> <p>1. The individual has a diagnosis of intellectual disability and meets the training center's regular admission criteria;</p> <p>2. The individual's needs are such that, in the event of a need for temporary care, respite care would not be available in a less restrictive setting; and</p> <p>3. The training center has appropriate resources to meet the needs of the individual.</p> <p>By the end of the next working day following receipt of a complete application package, the training center director or the director's designee, in consultation with the assistant commissioner responsible for the training center or the director's designee, shall provide written notice of the director's decision to the CSB. This notice shall state the reasons for the decision.</p>	
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		<p>If it is determined that the individual is not eligible for respite care, the person seeking respite care may ask for reconsideration of the decision by submitting a written request for such reconsideration to the commissioner. Upon receipt of such request, the commissioner or designee shall notify the training center director, and the training center director shall forward the application packet and related information to the commissioner or designee within 48 hours. The commissioner or designee shall provide an opportunity for the person seeking respite care to submit for consideration any additional information or reasons as to why the admission should be approved. The commissioner shall render a written decision on the request for reconsideration within 10 days of the receipt of such request and notify all involved parties. The commissioner's decision shall be binding.</p> <p>C. Respite care shall be provided in training centers under the following conditions:</p> <ol style="list-style-type: none"> 1. The length of the respite care stay at the training center shall not exceed the limits established in § 37.2-807 of the Code of Virginia; 2. Space and adequate staff coverage are available on a residential living area with an appropriate peer group for the individual and suitable resources to meet his needs; and 	
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		<p>3. The training center has resources to meet the individual's health care needs during the scheduled respite stay as determined by a physical examination performed by the training center's health service personnel at the time of the respite admission.</p> <p>If for any reason a person admitted for respite care is not discharged at the agreed upon time, the CSB shall develop an updated discharge plan as provided in §§ 37.2-505 and 37.2-837 of the Code of Virginia.</p> <p>Respite shall not be used as a mechanism to circumvent the voluntary admissions procedures as provided in § 37.2-806 of the Code of Virginia.</p>	
<p>12VAC35-200-30.</p>		<p>Emergency admission.</p>	<p>(Repealed.) See the newly numbered Section 45 below.</p>
	<p>12VAC35-200-35.</p>		<p>Criteria for admission.</p> <ul style="list-style-type: none"> ▪ Language is moved from the previous 12VAC35-200-30 B for the new subsection A. ▪ Language is moved from the previous 12VAC35-200-20 B for the new subsection B.
	<p>12VAC35-200-45.</p>		<p>Application for admission.</p> <ul style="list-style-type: none"> ▪ Moved from the previous Section 30, for 'necessitating immediate, short-term care' (emergency, including respite). ▪ The first paragraph includes amendments to reflect current practice: <p>A. In the event of a change in circumstances necessitating immediate, short-term care for an individual with an intellectual disability, a parent, guardian, or authorized representative may request emergency admission by <u>calling</u> <u>contacting</u> the CSB serving the area where the individual, or in the case of a minor, the minor's parent or guardian resides. Under these circumstances if the CSB, in consultation with the RST, determines that services for the</p>

			<p>individual are not available in the community, the CSB may request an emergency admission to a training center serving individuals with intellectual disabilities. <u>The CSB shall consult with DBHDS and make a referral to the RST requesting an emergency meeting. The CSB shall pursue all recommendations made by the RST. If it is determined that emergency admission is still necessary, the CSB shall consult with the department and request an emergency admission to the training center.</u></p> <ul style="list-style-type: none"> ▪ The list regarding what a request for emergency admission should include is from the previous Section 20. ▪ The time for the director or designee to notify the CSB of the decision regarding an emergency admission is changed from 24 to 72 hours. ▪ Language regarding the CSB and the RST is moved from the previous Section 30 A. ▪ The new B.3.g. includes new text: g. A statement from the CSB that the appropriate arrangements are being made <u>to work with the individual and the family member or authorized representative to continue exploring opportunities to discharge the individual to a less restrictive setting; and</u>
	<p>12VAC35-200-50.</p>		<p>Requests for reconsideration of the director's determination.</p> <ul style="list-style-type: none"> ▪ Existing language from 12VAC35-190-41 is placed here.
	<p>12VAC35-200-55.</p>		<p>Judicial certification.</p> <ul style="list-style-type: none"> ▪ Existing language from 12VAC35-190-51 is placed here, with language added regarding discharge:

			<p>Upon receipt of written notification from the training center director that an individual is eligible for <u>voluntary admission, or if the individual will not be discharged within the required timeframe following an emergency admission</u>, the CSB shall inform the individual and the individual's parent, guardian, or authorized representative of this decision and assist the parent, guardian, or authorized representative in initiating a judicial proceeding pursuant to § 37.2-806 of the Code of Virginia. When the judge has certified that the individual is eligible for admission to a training center in accordance with § 37.2-806 F of the</p>
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			Code of Virginia, a date for admission to the training center shall be established.
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