



Virginia
Regulatory
Town Hall

Proposed Regulation 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 the <u>Voluntary Admission</u> of Persons Who Are Mentally Retarded to State Mental Retardation Facilities
Action Title:	Amend the Regulations
Date:	12/10/01

This information is required pursuant 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*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The existing regulations provide general criteria and procedures 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). These regulations were first promulgated in 1976. The proposed amendment revises provisions to require the case management community services board to be responsible for arranging admissions to and discharges from state training centers; updates definitions of terms; and

generally updates the existing provisions to be consistent with current practice and statutory requirements. The proposed amendment also includes provisions for an applicant to seek reconsideration from the Commissioner of any decision to deny admission to a training center.

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 must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

Virginia's Office of the Attorney General advises that the Mental Health Mental Retardation and Substance Abuse Services (Board) has the authority to promulgate these regulations under *Virginia Code* §§ 37.1-10 and 35.1-65.1 and is required to do so.

Virginia 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..." *Virginia Code* § 37.1-65.1 requires the Board to promulgate regulations establishing procedures and standards for approving admissions to facilities for the mentally retarded.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed 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 describe the requirements and procedures for individuals requesting admission into a mental retardation training facility; 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 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 admission will have accurate and legal guidance for seeking such admissions. With the proposed amendments, the regulations will generally meet its major goals by (i) specifying the requirements that must be met to access voluntary admission 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 the training centers.

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 providing detail of the regulatory action's changes.

Parts of regulations, which provide procedural guidance, have been clarified and updated to be consistent with statutory requirements and current practice and terminology. These revisions have been developed to be consistent with other relevant Agency regulations. The most substantive changes include:

1. Insertion of a new definition for “case management community services board (CSB)” and the revision of the provisions for admissions and discharges to indicate that the case management 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*;
2. Addition of definitions for “commissioner,” “discharge plan,” “guardianship,” and “legally authorized representative” which are needed to clarify the regulatory provisions;
3. Elimination of definitions for “clinical psychologist,” “less restrictive alternative,” “physician,” “respite care,” “responsible person,” and “transfers,” which are terms that are not used in the text of the regulations and are therefore unnecessary;
4. Revision of the definition for “facility” to clarify that state operated training centers for persons with mental retardation are the only type of facility that is included in the scope of these regulations;
5. Elimination of the current section 12 VAC 35-190-40 of these regulations describing the criteria for judicial certification for eligibility for admission to training centers which repeat criteria specified in state law;
6. Addition of procedures to request reconsideration from the Commissioner of any decision to deny a request for voluntary admission to a training center (new section 12 VAC 35-190-40).

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term “issues” means: 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 include a sentence to that effect.

The changes are intended to clarify the requirements and procedures for voluntary admissions in accordance with the current law. These regulations have not been revised since they were promulgated in 1976. The provisions do not reflect current terminology and changes in the practice that have occurred since that time. By providing specific and accurate guidance, the amendment should reduce confusion and facilitate the process for requesting admissions and help promote timely discharges from state training centers, consistent with the current law. This should be advantageous to citizens who request such admissions, and to the CSBs and state facilities that process such applications for admission. The amendment should have no disadvantages to the public or the Commonwealth.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

There are no projected new or additional costs to implement this amendment beyond the ongoing expenses of the Department's Office of Mental Retardation (OMR), which administers services and programs for individuals with mental retardation. OMR is included in administrative budget for the Department. Budgeted expenses for OMR for the current fiscal year is \$1,285,419 (program 440, Subprogram 12).

The regulation is not expected to impact the number of admissions or discharges to state training centers and therefore should not impact facility expenses. There are five training centers located statewide. For the period from December 1, 2000 to May 2, 2001, there were 16 voluntary admissions to these state training centers.

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. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

1. New terms, which are used in the regulations, have been defined at 12 VAC 35-190-10 for clarity including: "case management community services board," "facility," "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). In addition of definitions for "clinical psychologist," "less restrictive alternative," "physician," "respite care," "responsible

person,” and “transfers,” were eliminated because they are not used in the text of the regulations and were therefore unnecessary;

2. 12 VAC 35-190-20 and 12 VAC 35-190-10 of these regulations, describing the criteria for judicial certification for eligibility for admission to training centers, have been deleted. Because the criteria are specified in state law, there is no need to restate this criteria for judicial certification in the regulations. By eliminating these criteria, the regulations should become less confusing.
3. 12 VAC 35-190-20.A and 12 VAC 35-190-30A have been revised to clearly reflect the responsibility of the case management CSB to process applications for voluntary 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 VAC 35-190-40 for individuals and/or the case management CSB to seek reconsideration from the Commissioner of any decision to deny admission to a training center for voluntary admissions.
5. Other non-substantive language changes have been made throughout the regulation for clarity and consistency with the regulatory context and terminology.

Alternatives

Please describe the specific 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.

The Department and the State Board reviewed the applicable law and existing regulations and considered several alternatives for meeting the identified needs:

Alternative 1 – No regulations. This alternative was rejected. State law mandates the promulgation of these regulations to establish procedures and standards for admitting persons to state facilities for persons with mental retardation. These regulations are essential to fulfill the statutory mandate.

Alternative 2 – No change in the regulations. This alternative was rejected. These regulations have not been revised since their promulgation in 1976 and some revisions are necessary to update the terms and provisions and to conform to current statutory requirements. The current regulations do not provide specific, up-to-date legal guidance to persons seeking admissions state facilities for persons with mental retardation.

Alternative 3 – Amend the regulations. This alternative was accepted. Revisions are needed to update and clarify the provisions. The proposed revisions can eliminate any confusion and facilitate the admission and discharge process for state facilities, CSBs and the public.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

The Agency published a notice of intended regulatory action (NOIRA) in the Virginia Register of Regulations on May 21, 2001. A written request for comments was also mailed to interested persons, facilities and organizations. Comments were received from Parents and Associates of the Institutionalized Retarded (PAIR) and Henrico Area Mental Health & Mental Retardation Services.

PAIR proposed revisions to clarify several of the definitions (i.e, “clinical psychologist,” “less restrictive alternative,” “mental retardation,” “responsible person,” etc.). Changes were also suggested to the criteria and definitions, to allow individuals who have a primary diagnosis of either “developmental delay” or “mental retardation” to be admitted to state training centers for individuals with mental retardation.

Response: The agency agrees that certain definitions should be revised and has proposed changes to various definitions (see above) for legal consistency or clarity. However, several of the terms that this respondent proposed to revise have been eliminated in the proposed regulations because these terms are not used in the text of the regulations and therefore definitions are unnecessary.

Title 37.1 of *Virginia Code* establishes the Department as the state authority for persons with mental retardation. The *Virginia Code* 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* also provides a specific definition of “mental retardation” that is replicated in these regulations. On this basis, the regulations have been developed to require persons considered for admission to training centers for the mentally retarded to have a primary diagnosis of mental retardation (12 VAC 35-190-20).

Henrico Area Mental Health & Mental Retardation Services recommended revisions to definitions of “clinical psychologist” and “physician” and proposed that the regulations add a definition of “emergency care.” This respondent also recommended several revisions to the procedures for admission to indicate that CSBs are legally responsible for processing admissions to training centers.

Response: The definitions of terms that the applicant cited for revision/addition are not used in the text of the regulations. Therefore, the definitions of “clinical psychologist” and “physician” have been eliminated from the proposed regulations and the term “emergency” has not been defined, as suggested.

The agency agrees that the procedures for admissions should reflect that the CSB has the legal responsibility for processing admissions to state facilities and has made appropriate revisions to the proposed amended regulations.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

The Department through examination of the regulations and review of the statutory requirements and current practice and terminology, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected. The program staff of the Department's Office of Mental Retardation considered the public comments received by the agency and developed the draft with assistance from the social work staff at the five state training centers who have specific expertise and first hand knowledge of the admission process.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

The Agency will review these regulations and evaluate the need for amendments or revisions within three years after final promulgation of the amended regulations and every three years thereafter.

Family Impact Statement

Please provide an 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 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 family income.