

## Virginia Administrative Code

Database updated through October 15, 2009

### 12VAC35-200-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Authorized representative" means a person permitted by law or regulations to authorize the disclosure of information or consent to treatment and services, including medical treatment, or for the participation in human research on behalf of an individual who lacks the mental capacity to make these decisions.

"Commissioner" means the Commissioner of the Department of Behavioral Health and Developmental Services.

"Community services board" or "CSB" means a public body established pursuant to § 37.2-501 of the Code of Virginia. For the purpose of these regulations, CSB also includes a behavioral health authority established pursuant to § 37.2-602 of the Code of Virginia.

"Discharge plan" means a written plan prepared by the CSB providing case management, in consultation with the training center pursuant to §§ 37.2-505 and 37.2-837 of the Code of Virginia. This plan is prepared when the individual is admitted to the training center and documents the services to be provided upon discharge.

"Emergency admission" means the temporary acceptance of an individual with mental retardation (intellectual disability) into a training center when immediate care is necessary and no other community alternatives are available.

"Guardian" means:

1. For minors -- an adult who is either appointed by the court as a legal guardian of a minor or exercises the rights and responsibilities of legal custody by delegation from a biological or adoptive parent upon provisional adoption or otherwise by operation of law.
2. For adults -- a person appointed by the court who is responsible for the personal affairs of an incapacitated adult under the order of appointment. The responsibilities may include making decisions regarding the individual's support, care, health, safety, habilitation, education and therapeutic treatment. Refer to definition of "incapacitated person" at § 37.2-1000 of the Code of Virginia.

"Individual" means a person for whom respite or emergency services are sought.

"Less restrictive setting" means the service location that is no more intrusive or restrictive of freedom than reasonably necessary to achieve a substantial therapeutic benefit and protection from harm (to self and others) based on an individual's needs.

"Mental retardation (intellectual disability)" means a disability, originating before the age of 18 years, characterized concurrently by (i) significantly subaverage intellectual functioning as demonstrated by performance on a standardized measure of intellectual functioning, administered in conformity with accepted professional practice, that is at least two standard deviations below the mean; and (ii) significant limitations in adaptive behavior as expressed in conceptual, social, and practical adaptive skills.

"Respite care" means care provided to an individual with mental retardation (intellectual disability) on a short-term basis because of the emergency absence of or need to provide routine or periodic relief of the primary caregiver for the individual. Services are specifically designed to provide temporary, substitute care for that which is normally provided by the primary caregiver.

"Training center" means a facility operated by the Department of Behavioral Health and Developmental Services for the treatment, training, or habilitation of persons with mental retardation (intellectual disability).

#### Statutory Authority

§§ 37.2-203 and 37.2-807 of the Code of Virginia.

#### Historical Notes

Derived from VR470-07-02 § 1, eff. December 20, 1980; amended, Virginia Register Volume 18, Issue 16, eff. May 22, 2002; Volume 25, Issue 25, eff. September 16, 2009.

#### **12VAC35-200-20. Respite care admission.**

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 mental retardation (intellectual disability) shall apply first to the CSB that serves the area where the individual, or if a minor, his parent or guardian is currently residing. If the CSB determines that respite care for the individual is not available in the community, it shall forward an application to the training center serving individuals with mental retardation (intellectual disability) from that geographic section of the state in which the individual or his parent or guardian is currently residing.

The application shall include:

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 status;
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 available in the community for the individual;
8. A statement from the CSB that the appropriate arrangements are being made to return the individual to the CSB within the time frame required under this regulation; and
9. A statement from the individual, a family member, or authorized representative specifically requesting services in the training center.

B. Determination of eligibility for respite care services shall be based upon the following criteria:

1. The individual has a diagnosis of mental retardation (intellectual disability) and meets the training center's regular admission criteria;
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
3. The training center has appropriate resources to meet the needs of the individual.

By the end of the next working day following receipt of a complete application package, the training center director, or designee, shall provide written notice of his decision to the CSB. This notice shall state the reasons for the decision.

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.

C. Respite care shall be provided in training centers under the following conditions:

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
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.

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.

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.

Statutory Authority

§§ 37.2-203 and 37.2-807 of the Code of Virginia.

Historical Notes

Derived from VR470-07-02 § 2, eff. December 20, 1980; amended, Virginia Register Volume 18, Issue 16, eff. May 22, 2002; Volume 25, Issue 25, eff. September 16, 2009.

**12VAC35-200-30. Emergency admission.**

A. In the event of a change in an individual's circumstances necessitating immediate, short-term care for an individual with mental retardation (intellectual disability), a parent, guardian, or authorized representative may request emergency admission by calling the CSB serving the area where the individual, or in the case of a minor, his parent or guardian resides. Under these circumstances if the CSB determines that services for the individual are not available in the community, it may request an

emergency admission to the training center serving that geographic area.

The CSB shall make every effort to obtain the same case information required for respite admissions, as described in 12VAC35-200-20 A, before the training center assumes responsibility for the care of the individual in need of emergency services. However, if the information is not available, this requirement may temporarily be waived if, and only if, arrangements have been made for receipt of the required information within 48 hours of the emergency admission.

B. Acceptance for emergency admission shall be based upon the following criteria:

1. A change in the individual's circumstances has occurred requiring immediate alternate arrangements to protect the individual's health and safety;
2. The individual has a diagnosis of mental retardation (intellectual disability) and meets the training center's regular admissions criteria;
3. All other alternate care resources in the community have been explored and found to be unavailable;
4. Space is available on a residential living area with appropriate resources to meet the individual's needs;
5. The training center's health services personnel have determined that the individual's health care needs can be met by the training center's resources; and
6. The length of the emergency stay at the training center shall not exceed the limits established in § 37.2-807 of the Code of Virginia.

C. Within 24 hours of receiving a request for emergency admission, the training center director, or designee, shall inform the CSB whether the individual is eligible for emergency admission and whether the training center is able to provide emergency services.

If the training center is able to provide emergency services, arrangements shall be made to effect the admission as soon as possible.

If the training center is unable to provide emergency services to an eligible individual, the training center director or designee shall provide written notice of this determination to the CSB and may offer in consultation with department staff to try to obtain emergency services from another appropriate facility.

If for any reason a person admitted to a training center for emergency services is not discharged at the agreed upon time, the CSB shall develop a discharge plan as provided in §§ 37.2-505 and 37.2-837 of the Code of Virginia.