

**Department of Behavioral Health and Developmental Services
Regulations for Voluntary Admissions to State Training Centers
12VAC35-190-10 et seq.**

**Public Comments from the
Virginia Office for Protection and Advocacy
August 2009**

The Virginia Office for Protection and Advocacy (VOPA) strongly urges the Department of Behavioral Health and Developmental Services (Department) to withdraw this regulation package. The Department is engaged in several systemic initiatives and planning processes on behalf of individuals with disabilities, specifically individuals with intellectual disabilities. Issuing these regulations will decrease the momentum the Department initiated to achieve real systemic reform and move the service delivery system toward enhanced community-based services. As well, the content of the proposed regulation package appears to be in direct conflict with the position the Department and stakeholders have voiced about being committed to “downsizing” the institutions.

Specifically, the following items are of significant concern to VOPA.

These institutions need to be called what they are; intermediate care facilities for the mentally retarded, ICFs-MR. That is what they are licensed as and that is the level of services that they provide. Historically, training center refers to the entire campus and not all the services on the campus are ICF-MR. VOPA, too, advocated for the elimination of the use of the “R-Word”; however, until the licensing regulations change the name of the service provided, the Department should recognize the service for what it is intended to be. Training center is just as derogatory as the “R-word”. VOPA strongly recommends that the word training center be removed from the entire regulation package.

VOPA is very alarmed that the regulations’ definition of discharge plan omits the inclusion of the individual with intellectual disability or the authorized representative in the “preparation” of the discharge plan. This is a human rights violation. In addition, there is no evidence that the discharge plan is to be considered a living document and to be reviewed and updated as the individual’s needs change and new skills achieved. This too is a human rights violation.

In 12VAC35-190-21.B VOPA strongly urges the Department to change the word “or” to “and”. As written, there is no requirement that the Community Services Board determines that the required services are not available in the community. As written, the application is made simply due to a request for admission.

12VAC35-190-21.C makes no mention of the Community Services Board (CSB) conducting a face-to-face assessment, interview or discussion with the individual or authorized representative. The proposed regulation maintains the practice of making the pre-admission screening process a paper exercise. As well, VOPA strongly recommends

that the CSB be required to identify specifically what services are not available in the community and document what effort was made to locate the necessary services.

The pre-admission screening report omits any requirement of consultation with the Regional Support Centers about identified needs and services available. With the Department's intention that the RCSC are to be the experts available to both the institutions and the community providers, there should be requirement that they are consulted prior to admitting an individual to the state-operated ICF-MR.

12VAC35-190-21.D.3 omits any requirement of the discharge plan to specify goals to be achieved in order to be considered for discharge or benchmarks with target dates. As well, VOPA has seen far too many discharge plans with a list of services to be provided with no specifications of who will provide these services or within what timeframes.

12VAC35-190-30-A.1 VOPA is greatly alarmed that the proposed regulations are striking the word "primary". This action will significantly widen the eligibility criteria for admission. The state operated ICFs-MR already struggle to adequately serve individuals who have more than a single diagnosis of intellectual disability. The Department has already recognized that the most frequent request for admission is for individuals with behavior issues having mild to moderate intellectual disabilities coupled with a mental health diagnosis. With the removal of the word "primary", the Department has created yet another barrier to limiting the focus of the State operated ICF-MRs and to its own efforts to downsize the institutions.

12VAC35-190-30-B VOPA strongly encourages the Department to clarify that the admission request is for ICF-MR level of services provided by the State. The admission request should not be for a building, but for services. In the event the admission is not appropriate, the recommendation should be for an alternative provider, not location. The concept of having a "right to choose" is based on choosing the ICF-MR services instead of community based services. Virginia has committed to providing ICF-MR level of services in its State Medicaid plan. The Department should seize this opportunity to ensure that the choice is not only the state-operated ICF-MR services in a segregated institution or a waiver services waiting list, but rather community-based, person-centered, services.

12VAC35-190-41 – VOPA recommends that both the state operated ICF-MR and the CSB be notified by the Commissioner of requests for reconsideration.