



LISBET R. WARD
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L. MAC McARTHUR-FOX
VICE-CHAIR

NORMA DRAPER
SECRETARY

HEIDI L. LAWYER
DIRECTOR

COMMONWEALTH of VIRGINIA
Virginia Board for People with Disabilities

Ninth Street Office Building
202 North 9th Street, 9th Floor
Richmond, VA 23219

(804) 786-0016
1-800-846-4464

TTY or VOICE
FAX (804) 786-1118

www.vaboard.org

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BY E:MAIL and POST

Leslie Anderson, Director
Office of Licensure
Department of Mental Health, Mental Retardation
and Substance Abuse Services
PO Box 1797
Richmond, VA 23219

Dear Ms. Anderson:

Thank you for the opportunity to provide comment on the proposed *Regulations to Govern Temporary Leave from State Mental Health and State Mental Retardation Facilities* (Chapter 35). In submitting these formal comments, the Board is fulfilling state and federal legislative mandates as well as the agency's mission and strategic vision for people with disabilities.

Under the federal Developmental Disabilities Assistance and Bill of Rights Act of 2000 (P.L. 106-402, the DD Act), the Board is directed to "support and conduct activities to eliminate barriers to access and use of community services by individuals with developmental disabilities, [and to] enhance systems design and redesign...." (Sec.125).

Under the Virginians with Disabilities Act (*Code of Virginia*, Title 51.5, the VDA), the Board is directed "to advise the Secretary of Health and Human Resources and Governor on issues and problems of interest to persons with disabilities" (§51.5-33).

The Board's mission statement is "to improve the lives of people with disabilities by providing a voice for their concerns," and its strategic vision includes a strong commitment to community inclusion to ensure that individuals with disabilities "be given equal opportunity to

achieve independence, contribute to society, and enjoy full inclusion into educational, economic, political, social, and cultural life of the community".

Once again, we appreciate the opportunity for input.

Sincerely,

Heidi Lawyer
Heidi Lawyer

Lisbet Ward
Lisbet Ward

Cc: The Honorable Marilyn Tavenner
Secretary of Health and Human Resources

Gail Jaspen
Deputy Secretary of Health and Human Resources

James Reinhard, M.D., Commissioner
Dept. of Mental Health, Mental Retardation, & Substance Abuse Services

Providing a VOICE for Virginians with Disabilities

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General Comments:

The Board's comments address these regulations as they apply to persons who reside in state Mental Retardation facilities as that is the Board's area of expertise and purview. The Board understands that these regulations also apply to persons residing/receiving treatment in mental health facilities.

Specific Comments

Chapter 35: *Regulations to Govern Temporary Leave from State Mental Health and State Mental Retardation Facilities*

12 VAC 35-210-30. General requirements for temporary leave.

The following language is in the proposed regulations as new language.

- A. Directors of state facilities shall develop written policies for authorizing and implementing the following types of temporary leave from the facility:
 - 1. Day passes for periods that do not extend overnight;
 - 2. Family visits and trial visits for a maximum of 28 consecutive days per episode for individuals in training centers; and
 - 3. Family visits and trial visits for a maximum of 14 consecutive days per episode for individuals in state hospitals.
- B. The justification for all temporary leave shall be documented in the individual's services record. This documentation shall include:
 - 1. The reason for granting the specific type of leave;
 - 2. The benefit to the individual;
 - 3. How the leave addresses a specific objective or objectives in the individual's services plan; and
 - 4. The signature of the facility director or designee authorizing the temporary leave.
- C. Exceptions to time limitations for family visits and trial visits.
Facility directors may extend the time limits, established in subdivision A of this subsection, for family visits or trial visits in individual cases when they determine that the circumstances justify an extension. When an extension is granted, the reasons and justification to support the extension shall be documented in the individual's services record. This documentation shall include:
 - 1. The reason for the time extension;
 - 2. The benefit to the individual; and
 - 3. The signature of the facility director or designee authorizing the extension.
- D. Responsible persons during leave.

Comments: The Board supports the 28 consecutive day family and trial visits. The Board is concerned with the authority of the facility director to extend time limits without more thorough documentation. While the family visits reference in VAC 35 210 30B require documentation of how the leave addresses a specific objective or objectives in the ISP, the extension does not. There also does not seem to be any limitation set on how long the extension can be. There is no mention of Departmental oversight regarding the appropriateness of the initial visit duration

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and/or the extension. This could be a slippery slope in which the training centers could potentially be used as “convalescent” leave. It is the Board’s understanding that, up until the mid-late 1990’s, it was not uncommon to have residents at a Training Center spend 6 consecutive months with family and 6 months at the facility. Department Instructions for the Training Centers actually allowed 6 month convalescent leave. This can dramatically inflate the census of the training centers by the numbers of residents “on-books”, but not at the facility. This Departmental Instruction was changed to reflect the philosophy that if an individual was able to remain at home for 6 months, then he or she should be able to be served in the community full time.

The Board believes that this regulation is inconsistent with current systems transformation efforts, census reduction, and commitment to community services and supports. If there is a belief that families need respite for longer periods of time, the Commonwealth should develop and fund community based respite options.

12 VAC 35-210-60. Family visits.

The following language is in the proposed regulations as new language.

A. Family visits may include visits with the individual’s immediate or extended family, LAR, friends, or other persons arranged by the family or LAR.

1. Training centers shall plan family visits in collaboration with the individual, his family or LAR, and when appropriate, the case management CSB;
2. State hospitals shall plan family visits in collaboration with the individual and his family or LAR, and when appropriate, the case management CSB.

B. When planning family visits facilities shall:

1. Develop plans to address potential emergencies or unexpected events;
2. Consider whether the visit has an impact on the treatment or training schedule and make appropriate accommodations; and
3. Give consideration to the individual’s medical, behavioral, and psychiatric status.

12 VAC 35-210-70. Required authorizations and documentation.

The facility shall not release individuals for trial visits or family visits unless the required authorizations have been obtained and documentation is included in the individual’s services record.

Comments. The Board supports family visits as critical to maintaining family and social relationships and facilitating community integration for the individual. While the Board does not recommend adding a provision for documenting how the leave addresses a specific objective or objectives in the individual’s services plan, consistent with 12 VAC 35-210-30, it may be helpful to add language under B to ensure that person centered planning is occurring with respect to the visit and that the individual’s needs, interests, and desires are being considered in this collaborative planning process. The Board also recommends adding language to relevant sections of the regulations that require the facility to obtain updated responsible party and emergency contact information whenever an individual is released on temporary leave. This responsible party should likewise receive a contact card that contains all phone numbers he/she would need in the event of illness, incident, or death.

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12 VAC 35-210-80. Illness or injury occurring during a family or trial visit.

Proposed language is as follows:

E. All medical expenses incurred by an individual during a trial visit or family visit are the responsibility of the person into whose care that the individual was entrusted or the appropriate local department of social service of the county or city of which the individual was resident at the time of his admission to the facility pursuant to §37.2-837 B of the Code of Virginia.

Code of Virginia 37.2-837 reads as follows: The director may grant a trial or home visit to a consumer in accordance with regulations adopted by the Board. The state facility granting a trial or home visit to a consumer shall not be liable for his expenses during the period of that visit. Such liability shall devolve upon the relative, conservator, person to whose care the consumer is entrusted while on the trial or home visit, or the appropriate local department of social services of the county or city in which the consumer resided at the time of admission pursuant to regulations adopted by the State Board of Social Services.

Comments: This regulation places responsibility for medical expenses on the family/responsible party OR the local DSS. There are two issues that the Board would like to bring forth. First, with respect to the language as suggested, the Board recognizes that this is consistent with current provisions in the *Code of Virginia* but suggests that a review of this *Code* section may be in order. While on temporary/family leave, the Training Center resident remains “on-books” as a Training Center client. It would appear that this code section and corresponding regulation are impracticable and would result in the family/responsible party returning the individual to the Training Center in order to avoid the cost. If the individual is medically fragile, this provision could discourage families from allowing a home visit. In addition, since the average length of stay at a training center is 20+ years, the local DSS is not likely to be aware of the individual.

Second, and even more fundamentally, individuals living in training centers have Medicaid. Thus, it seems that there are two standards: one set of Medicaid services in the institution and another in the community. It would appear that the family would simply need to be aware of the resident’s Medicaid number so that they could access community medical services if necessary. This would not appear to be any different than if a Training Center resident was transferred to a local hospital for treatment of an illness (which would be covered by Medicaid.).

The Board suggests a review of this entire issue, particularly as trial visits are encouraged as a means of pursuing community integration options. The issue is similar to one brought forth at a recent VBPD Board meeting in which the discussion revolved around an individual unable to obtain specialized durable medical equipment in a nursing home but when that individual moves into the community he or she can be approved for this equipment. Medicaid coverage should be just that, regardless of whether the individual resides in an institution or in the community, and all needed services should be available.

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Section F of the proposed regulation reads as follows:

F. If the facility is notified that an individual has died while on temporary leave, the facility director or designee shall:

1. Notify the appropriate facility staff, including, the medical director, risk manager, treatment team leader, and human rights advocate;
2. Notify the case management CSB, if necessary;
3. File the appropriate documentation of the death in accordance with Department policies and procedures; and
4. Notify the state medical examiner in writing of the death.

Comment: Regarding #4 above, the Board recommends placing into regulation the specific time frame in which notification to the state medical examiner is required, i.e., Notify the state medical examiner in writing of the death within XX hours.

12 VAC 35-210-90. Failure to return to training centers

Section C reads as follows:

C. If an individual does not return to the training center from a trial visit or family visit within two hours of the established deadline for his return and the facility is unable to contact the responsible person into whose care the individual was placed, the facility director or designee may extend the period of the visit for up to 24 hours if, in his judgment, the extension is justified. During this period the facility shall continue efforts to contact the responsible person.

Comment: There seems to be a contradiction between section C and the intent of “missing persons”. The rationale for extending the visit for 24 hours when the responsible person cannot be reached is unclear. For safety reasons, when family or responsible parties cannot be reached, the Director should declare the person missing versus extending the visit for 24 hours without knowledge that the individual is safe.

12 VAC 35-210-120. Failure to return to hospitals

Section D. Reads as follows:

D. If an individual is unwilling to return to the facility, the facility director or his designee shall contact the responsible person to determine whether continued hospitalization is appropriate or the individual should be discharged.

1. If there is no evidence that the individual meets the criteria for hospitalization then the facility shall discharge the individual in collaboration with the case management CSB.
2. If the individual has been legally committed to the hospital and the facility director determines that the individual may require further hospitalization or that the individual cannot be located, the facility director shall:
 - a. Ensure that the commitment order is valid;
 - b. Classify the individual as a missing person;
 - c. Alert the case management CSB pursuant to the Department’s policies and procedures for managing of individuals who are missing from state facilities;

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d. Issue a warrant for the individual's return; and

e. Arrange for a physical examination at the time of the individual's return to the facility.

3. If the individual is on voluntary status or the commitment order is no longer valid the facility director, after consulting with the appropriate clinical staff, shall:

a. Discharge the individual; and

b. Alert the case management CSB of the individual's status.

Comments. This regulation addresses only persons who do not wish to be returned to state mental health facilities. What occurs if a person with mental retardation who has not been adjudicated incompetent does not wish to return to a Training Center? Or, if an individual does not wish to return to a training center but his parent/guardian wishes him/her to do so, potentially triggering the need to request a guardian ad litem for the individual? The Board recommends that the Department consider whether a regulatory section addressing choice for Training Center residents should be developed.