



COMMONWEALTH of VIRGINIA

DEPARTMENT OF

BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

S. HUGHES MELTON, MD, MBA
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COMMISSIONER

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MEMORANDUM

To: Affected Stakeholders

From: Emily Bowles
Legal and Regulatory Manager

Cc: Jae Benz, Director
Office of Licensing

Date: July 12, 2019

Re: PUBLIC NOTICE: Request for Comment on Two Draft Guidance Documents
Relating to 12VAC35-46 and 12VAC35-105

Pursuant to Chapter 599 of the 2017 Acts of Assembly and Code of Virginia § 2.2-4002.1, notice is given that two DRAFT guidance documents are posted for public comment.

- Reporting of Serious Incidents to the Office of Licensing regarding Standards for the Regulation of Children's Residential Facilities (12VAC35-46).
Requirement for 90 Days of Operating Expenses, regarding the Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services (12VAC35-105).

Individuals interested in making comments on this draft guidance document may do so on the Town Hall website from Monday, August 5, 2019 through 12 p.m. on Wednesday, September 4, 2019. You must first be registered as a public user to make comments on Town Hall. Comments may also be made by email emily.bowles@dbhds.virginia.gov, fax (804) 692-0066, or hard copy mail (Attn: Emily Bowles, DBHDS, Office of Licensing, Post Office Box 1797, Richmond, Virginia 23218-1797.) All comments must be received by 12 p.m. on Wednesday, September 4, 2019.

Table with 2 columns: Guidance related to regulations and Goals of the Guidance. Content includes DBHDS, DRAFT LIC-18, DRAFT LIC-19, and Clarification of provider requirements.

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MEMORANDUM

To: All Licensed Providers & Licensing Applicants

From: Jae Benz, Director, Office of Licensing

Date: July 12, 2019

Re: Requirement for 90 Days of Operating Expenses

Please be advised that per the [Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services](#) (“Licensing Regulations”), regulation 12VAC35-105-40 states that applicants seeking licensure by DBHDS must submit documentation of “funds or a line of credit sufficient to cover at least 90 days of operating expenses if the provider is a corporation, unincorporated organization or association, a sole proprietor, or a partnership.” (Note that per Code of Virginia § 13.1-1002 a limited liability company (LLC) is defined as an unincorporated organization). In addition, regulation 12VAC35-105-210.A. states that licensed providers shall “document financial arrangements or a line of credit that are adequate to ensure maintenance of ongoing operations for at least 90 days on an ongoing basis. The amount needed shall be based on a working budget showing projected revenue and expenses.” Therefore, both applicants for licensure and licensed providers must be able to provide proof, at any time when requested by a representative from the department, that they have sufficient funds for 90 days of operating expenses, whether in cash or a line of credit.

The Office of Licensing considers a line of credit to be a contractual arrangement between a financial institution, bank, trust company, brokerage firm, or investment dealer and the provider. For all licensed services other than sponsored residential services, **the line of credit should be in the provider’s or owner’s name.** The provider must be able to access funds from the line of credit at any time. Therefore, any applicant for licensure or licensed provider utilizing a line of credit as evidence that they have 90 days of operating expenses, may **only** utilize lines of credit within the provider’s or owner’s name. **Lines of credit in the name of a third party will not be accepted by the Office of Licensing.**

Existing applicants or licensed providers currently utilizing a line of credit in the name of a third party will have 60 days from the publication of this memo to demonstrate to their respective licensing or policy review specialist that they have evidence of 90 days of operating expenses either in a bank account or line of credit in the provider’s or owner’s own name. Following this 60 day period, providers will be cited appropriately for failing to demonstrate evidence of the required funds.

The following forms of financial resources are acceptable to document proof of 90 days of operating expenses for all non-sponsored residential providers: 1) Personal or business savings account; 2) Personal or business checking account; 3) Home equity line of credit; 3) Bank line of credit; 4) Credit card with an available balance. Unacceptable forms of resources include but are not limited to: 1) Promissory notes; 2) Retirement accounts; 3) Life insurance policies; and 4) Gifted funds from other DBHDS licensed entities.

The provider must be able to access the funds from the line of credit at any time. This means that providers utilizing a line of credit must have an **AVAILABLE** line of credit for the amount needed for 90 days operating expenses. Lines of credit that exist, but do not have the necessary amount of funds available to the provider will not be accepted and will be considered to be a violation of the Licensing Regulations. Providers who fail to meet the regulatory requirements of the department may also be subject to the penalties enumerated in Code of Virginia § 37.2-418.

Lastly, for sponsored residential home staff, regulation 12VAC35-105-1180.C.4 states that providers shall document the ability of the sponsored residential home staff to meet the needs of the individuals placed in the home by assessing and documenting the financial capacity of the sponsor to meet the sponsor's own expenses for up to 90 days, independent of payments received for residents living in the home. This means that sponsors themselves, and not the sponsor's employer, must have at all times the financial resources to cover their own mortgage or rent, utilities, dining expenses, etc., for 90 days independent of payments received for residents living in the home. In order to meet regulatory requirements, these resources must be kept separate from accounts from which personal daily operating expenses are withdrawn or from which payments received for residents living in the home are deposited.

If you have any concerns regarding the information contained within this memo please contact your assigned licensing or policy review specialist.

Sincerely,

Jae Benz

Jae Benz
Director, Office of Licensing
DBHDS



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MEMORANDUM

To: Licensed Children's Residential Providers

From: Jae Benz, Director, Office of Licensing

Date: July 12, 2019

Re: Reporting of Serious Incidents to the Office of Licensing

Please be advised that per the [Standards for the Regulation of Children's Residential Facilities](#), regulation 12VAC35-46-1070.C., providers of children's residential services are required to notify the DBHDS Office of Licensing ("OL") within 24 hours of any serious illness or injury, any death of a resident, and **all other situations as required by the department. Effective August 1, 2019** in addition to notifying the department of the serious illness, injury, or death of any resident, OL will require children's residential providers to notify OL within 24 hours of the following situations: 1) Confirmed pregnancy of a resident who was not confirmed to be pregnant upon admission; 2) Criminal charges brought against a resident for acts occurring within the provision of the provider's service; 3) Staff injuries caused by a resident that require medical care by a licensed healthcare professional; and 4) Any resident who has runaway or is missing and whose absence cannot be accounted for or explained by the resident's supervision needs or pattern of behavior.

In accordance with regulation 12VAC35-46-1070.C., reports made to OL shall include the following:

1. The date and time the incident occurred;
2. A brief description of the incident;
3. The action taken as a result of the incident;
4. The name of the person who completed the report;
5. The name of the person who made the report to the placing agency and to either the parent or legal guardian; and
6. The name of the person to whom the report was made.

Such reports shall be made through the department's web-based reporting application (CHRIS). In addition, if a children's residential facility has a confirmed pregnancy of a resident who was not confirmed to be pregnant upon admission, the facility should evaluate to determine if

admission was appropriate based upon the provider's approved admissions criteria in accordance with regulation 12VAC35-46-640. If admission was appropriate, the provider should ensure that the appropriate supports are put in place for the resident who is confirmed pregnant post-admission.

Please be advised that the requirements within this memo will have no effect on the additional reporting requirements located within the [Standards for the Regulation of Children's Residential Facilities](#) and [Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Behavioral Health and Developmental Services](#). If you have any concerns regarding the information contained within this memo or questions as to whether you should report an incident, please contact your assigned licensing specialist for assistance.

Sincerely,

Jae Benz

Jae Benz
Director, Office of Licensing
DBHDS