



# COMMONWEALTH of VIRGINIA

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COMMISSIONER

DEPARTMENT OF  
BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

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## MEMORANDUM

**To:** Licensed Residential Service Providers  
**From:** Jae Benz, Director, Office of Licensing  
**Date:** July 21, 2020  
**Re:** Fire Inspections pursuant to 12VAC35-105-320

**Purpose:** The purpose of this memorandum is to inform and clarify to DBHDS licensed providers of residential services of:

1. Pending changes to the fire inspection requirements (12VAC35-105-320) contained in the Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services (Licensing Regulations); and
2. What providers can expect related to the enforcement of these requirements in the interim period before the pending final regulatory action becomes effective.

**Overview:** On September 1, 2018, [Emergency Regulations](#) took effect that amended the Licensing Regulations in accordance with the requirements of Virginia's Settlement Agreement with the Department of Justice (the DOJ Settlement Agreement). Included in the emergency regulations were amendments that modified 12VAC35-105-320 by striking language from the regulation that previously excluded residential service locations serving eight or fewer individuals from the requirement of documenting, at the time of the provider's original application and annually thereafter, that buildings and equipment be maintained in accordance with the [Virginia Statewide Fire Prevention Code](#). Compliance with the Virginia Statewide Fire Prevention Code is mostly commonly documented by an annual fire inspection conducted by state or local fire officials. Therefore, the effect of this amendment was to require previously excluded providers to obtain annual fire inspections.

On August 1, 2020 when the final permanent regulatory action related to the DOJ Settlement Agreement becomes effective (and supersedes the temporary emergency regulations), 12VAC35-105-320 will revert back to its pre-Emergency Regulation language and residential providers of eight or fewer will once again be

excluded from the annual fire inspection requirements. Instead, the [final permanent regulatory language](#) will include specific fire safety requirements for all providers of residential and center based services, regardless of size. These changes from the emergency language were made in response to public comment received.

On May 15, 2020, the Office of Licensing (OL) issued a [memorandum](#) to providers outlining the documents that OL would request and review when conducting remote inspections during the COVID-19 State of Emergency. Please note that documents pertaining to 12VAC35-105-320 were not among those outlined in that memorandum. As a result, over the past several weeks, licensing specialists have not requested documentation related to annual fire inspections.

Therefore, due to COVID-19 related alterations in the OL's inspection activities, and in consideration of the pending final permanent amendments to 12VAC35-105-320, OL will not be enforcing the fire prevention code requirements of 12VAC35-105-320 for those providers who meet the exclusionary criteria for this requirement in the final permanent amendments for compliance with the DOJ Settlement Agreement in the Licensing Regulations.

Sincerely,

*Jae Benz*

Jae Benz  
Director  
DBHDS Office of Licensing