

CHAPTER 105
RULES AND REGULATIONS FOR LICENSING PROVIDERS BY
THE DEPARTMENT OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

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CHAPTER 105 RULES AND REGULATIONS FOR LICENSING PROVIDERS BY THE DEPARTMENT OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Part I General Provisions

Article 1 Authority and Applicability

12VAC35-105-10. Authority and applicability.

A. Section 37.2-404 of the Code of Virginia authorizes the commissioner to license providers subject to rules and regulations adopted by the State Board of Behavioral Health and Developmental Services.

B. No provider shall establish, maintain, conduct, or operate any service without first receiving a license from the commissioner.

Article 2 Definitions

12VAC35-105-20. Definitions.

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

"Abuse" (§ 37.2-100 of the Code of Virginia) means any act or failure to act by an employee or other person responsible for the care of an individual in a facility or program operated, licensed, or funded by the department, excluding those operated by the Virginia Department of Corrections, that was performed or was failed to be performed knowingly, recklessly, or intentionally, and that caused or might have caused physical or psychological harm, injury, or death to a person receiving care or treatment for mental illness, mental retardation (intellectual disability), or substance abuse (substance use disorders). Examples of abuse include acts such as:

1. Rape, sexual assault, or other criminal sexual behavior;
2. Assault or battery;
3. Use of language that demeans, threatens, intimidates, or humiliates the person;
4. Misuse or misappropriation of the person's assets, goods, or property;
5. Use of excessive force when placing a person in physical or mechanical restraint;
6. Use of physical or mechanical restraints on a person that is not in compliance with federal and state laws, regulations, and policies, professional accepted standards of practice, or the person's individualized services plan;
7. Use of more restrictive or intensive services or denial of services to punish the person or that is not consistent with his individualized services plan.

"Activities of daily living" or "ADLs" means personal care activities and includes bathing, dressing, transferring, toileting, grooming, hygiene, feeding, and eating. An individual's degree of independence in performing these activities is part of determining the appropriate level of care and services.

"Admission" means the process of acceptance into a service as defined by the provider's policies.

"Authorized representative" means a person permitted by law or 12VAC35-115 to authorize the disclosure of information or consent to treatment and services or participation in human research.

"Behavior intervention" means those principles and methods employed by a provider to help an individual receiving services to achieve a positive outcome and to address challenging behavior in a constructive and safe

manner. Behavior intervention principles and methods must be employed in accordance with the individualized services plan and written policies and procedures governing service expectations, treatment goals, safety, and security.

"Behavioral treatment plan," "functional plan," or "behavioral support plan" means any set of documented procedures that are an integral part of the individualized services plan and are developed on the basis of a systematic data collection, such as a functional assessment, for the purpose of assisting individuals to achieve the following:

1. Improved behavioral functioning and effectiveness;
2. Alleviation of symptoms of psychopathology; or
3. Reduction of challenging behaviors.

"Brain injury" means any injury to the brain that occurs after birth, but before age 65, that is acquired through traumatic or nontraumatic insults. Nontraumatic insults may include anoxia, hypoxia, aneurysm, toxic exposure, encephalopathy, surgical interventions, tumor, and stroke. Brain injury does not include hereditary, congenital, or degenerative brain disorders or injuries induced by birth trauma.

"Care" or "treatment" means the individually planned therapeutic interventions that conform to current acceptable professional practice and that are intended to improve or maintain functioning of an individual receiving services delivered by a provider.

"Case management service" means services that can include assistance to individuals and their family members in assessing needed services that are responsive to the person's individual needs. Case management services include: identifying potential users of the service; assessing needs and planning services; linking the individual to services and supports; assisting the individual directly to locate, develop, or obtain needed services and resources; coordinating services with other providers; enhancing community integration; making collateral contacts; monitoring service delivery; discharge planning; and advocating for individuals in response to their changing needs. "Case management service" does not include maintaining service waiting lists or periodically contacting or tracking individuals to determine potential service needs.

"Clinical experience" means providing direct services to individuals with mental illness or the provision of direct geriatric services or special education services. Experience may include supervised internships, practicums, and field experience.

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

"Community gero-psychiatric residential services" means 24-hour care provided to individuals with mental illness, behavioral problems, and concomitant health problems who are usually age 65 or older in a geriatric setting that is less intensive than a psychiatric hospital but more intensive than a nursing home or group home. Services include assessment and individualized services planning by an interdisciplinary services team, intense supervision, psychiatric care, behavioral treatment planning and behavior interventions, nursing, and other health related services.

"Community intermediate care facility/mental retardation (ICF/MR)" means a residential facility in which care is provided to individuals who have mental retardation (intellectual disability) or a developmental disability who need more intensive training and supervision than may be available in an assisted living facility or group home. Such facilities shall comply with Title XIX of the Social Security Act standards and federal certification requirements, provide health or rehabilitative services, and provide active treatment to individuals receiving services toward the achievement of a more independent level of functioning or an improved quality of life.

"Complaint" means an allegation of a violation of these regulations or a provider's policies and procedures related to these regulations.

"Co-occurring disorders" means the presence of more than one and often several of the following disorders that are identified independently of one another and are not simply a cluster of symptoms resulting from a single disorder: mental illness, mental retardation (intellectual disability), or substance abuse (substance use disorders); brain injury; or developmental disability.

"Co-occurring services" means individually planned therapeutic treatment that addresses in an integrated concurrent manner the service needs of individuals who have co-occurring disorders.

"Corrective action plan" means the provider's pledged corrective action in response to cited areas of noncompliance documented by the regulatory authority. A corrective action plan must be completed within a specified time.

"Correctional facility" means a facility operated under the management and control of the Virginia Department of Corrections.

"Crisis" means a deteriorating or unstable situation often developing suddenly or rapidly that produces acute, heightened, emotional, mental, physical, medical, or behavioral distress; or any situation or circumstance in which the individual perceives or experiences a sudden loss of his ability to use effective problem-solving and coping skills.

"Crisis stabilization" means direct, intensive nonresidential or residential direct care and treatment to nonhospitalized individuals experiencing an acute crisis that may jeopardize their current community living situation. Crisis stabilization is intended to avert hospitalization or rehospitalization; provide normative environments with a high assurance of safety and security for crisis intervention; stabilize individuals in crisis; and mobilize the resources of the community support system, family members, and others for ongoing rehabilitation and recovery.

"Day support service" means structured programs of activity or training services for adults with an intellectual disability or a developmental disability, generally in clusters of two or more continuous hours per day provided to groups or individuals in nonresidential community-based settings. Day support services may provide opportunities for peer interaction and community integration and are designed to enhance the following: self-care and hygiene, eating, toileting, task learning, community resource utilization, environmental and behavioral skills, social skills, medication management, prevocational skills, and transportation skills. The term "day support service" does not include services in which the primary function is to provide employment-related services, general educational services, or general recreational services.

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

"Developmental disabilities" means autism or a severe, chronic disability that meets all of the following conditions identified in 42 CFR 435.1009:

1. Attributable to cerebral palsy, epilepsy, or any other condition, other than mental illness, that is found to be closely related to mental retardation (intellectual disability) because this condition results in impairment of general intellectual functioning or adaptive behavior similar to behavior of individuals with mental retardation (intellectual disability) and requires treatment or services similar to those required for these individuals;
2. Manifested before the individual reaches age 18;
3. Likely to continue indefinitely; and
4. Results in substantial functional limitations in three or more of the following areas of major life activity:
 - a. Self-care;
 - b. Understanding and use of language;
 - c. Learning;
 - d. Mobility;
 - e. Self-direction; or
 - f. Capacity for independent living.

"Discharge" means the process by which the individual's active involvement with a service is terminated by the provider, individual, or authorized representative.

"Discharge plan" means the written plan that establishes the criteria for an individual's discharge from a service and identifies and coordinates delivery of any services needed after discharge.

"Dispense" means to deliver a drug to an ultimate user by or pursuant to the lawful order of a practitioner, including the prescribing and administering, packaging, labeling or compounding necessary to prepare the substance for that delivery. (§ 54.1-3400 et seq. of the Code of Virginia.)

"Emergency service" means unscheduled and sometimes scheduled crisis intervention, stabilization, and referral assistance provided over the telephone or face-to-face, if indicated, available 24 hours a day and seven days per week. Emergency services also may include walk-ins, home visits, jail interventions, and preadmission screening activities associated with the judicial process

"Group home or community residential service" means a congregate service providing 24-hour supervision in a community-based home having eight or fewer residents. Services include supervision, supports, counseling, and training in activities of daily living for individuals whose individualized services plan identifies the need for the specific types of services available in this setting.

"Home and noncenter based" means that a service is provided in the individual's home or other noncenter-based setting. This includes noncenter-based day support, supportive in-home, and intensive in-home services.

"IFDDS Waiver" means the Individual and Family Developmental Disabilities Support Waiver.

"Individual" or "individual receiving services" means a person receiving services that are licensed under this chapter whether that person is referred to as a patient, consumer, client, resident, student, individual, recipient, family member, relative, or other term. When the term is used, the requirement applies to every individual receiving licensed services from the provider.

"Individualized services plan" or "ISP" means a comprehensive and regularly updated written plan that describes the individual's needs, the measurable goals and objectives to address those needs, and strategies to reach the individual's goals. An ISP is person-centered, empowers the individual, and is designed to meet the needs and preferences of the individual. The ISP is developed through a partnership between the individual and the provider and includes an individual's treatment plan, habilitation plan, person-centered plan, or plan of care, which are all considered individualized service plans.

"Initial assessment" means an assessment conducted prior to or at admission to determine whether the individual meets the service's admission criteria; what the individual's immediate service, health, and safety needs are; and whether the provider has the capability and staffing to provide the needed services.

"Inpatient psychiatric service" means intensive 24-hour medical, nursing, and treatment services provided to individuals with mental illness or substance abuse (substance use disorders) in a hospital as defined in § 32.1-123 of the Code of Virginia or in a special unit of such a hospital.

"Instrumental activities of daily living" or "IADLs" means meal preparation, housekeeping, laundry, and managing money. A person's degree of independence in performing these activities is part of determining appropriate level of care and services.

"Intensive Community Treatment (ICT) service" means a self-contained interdisciplinary team of at least five full-time equivalent clinical staff, a program assistant, and a full-time psychiatrist that:

1. Assumes responsibility for directly providing needed treatment, rehabilitation, and support services to identified individuals with severe and persistent mental illness especially those who have severe symptoms that are not effectively remedied by available treatments or who because of reasons related to their mental illness resist or avoid involvement with mental health services;
2. Minimally refers individuals to outside service providers;
3. Provides services on a long-term care basis with continuity of caregivers over time;
4. Delivers 75% or more of the services outside program offices; and
5. Emphasizes outreach, relationship building, and individualization of services.

"Intensive in-home service" means family preservation interventions for children and adolescents who have or are at-risk of serious emotional disturbance, including individuals who also have a diagnosis of mental retardation (intellectual disability). Intensive in-home service is usually time-limited and is provided typically in the residence of an individual who is at risk of being moved to out-of-home placement or who is being transitioned back home from an out-of-home placement. The service includes 24-hour per day emergency response; crisis treatment; individual and family counseling; life, parenting, and communication skills; and case management and coordination with other services.

"Investigation" means a detailed inquiry or systematic examination of the operations of a provider or its services regarding an alleged violation of regulations or law. An investigation may be undertaken as a result of a complaint, an incident report, or other information that comes to the attention of the department.

"Licensed mental health professional (LMHP)" means a physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, licensed substance abuse treatment practitioner, licensed marriage and family therapist, or certified psychiatric clinical nurse specialist.

"Location" means a place where services are or could be provided.

"Medically managed withdrawal services" means detoxification services to eliminate or reduce the effects of alcohol or other drugs in the individual's body.

"Mandatory outpatient treatment order" means an order issued by a court pursuant to § 37.2-817 of the Code of Virginia.

"Medical detoxification" means a service provided in a hospital or other 24-hour care facility under the supervision of medical personnel using medication to systematically eliminate or reduce effects of alcohol or other drugs in the individual's body.

"Medical evaluation" means the process of assessing an individual's health status that includes a medical history and a physical examination of an individual conducted by a licensed medical practitioner operating within the scope of his license.

"Medication" means prescribed or over-the-counter drugs or both.

"Medication administration" means the direct application of medications by injection, inhalation, ingestion, or any other means to an individual receiving services by (i) persons legally permitted to administer medications or (ii) the individual at the direction and in the presence of persons legally permitted to administer medications.

"Medication assisted treatment (Opioid treatment service)" means an intervention strategy that combines outpatient treatment with the administering or dispensing of synthetic narcotics, such as methadone or buprenorphine (suboxone), approved by the federal Food and Drug Administration for the purpose of replacing the use of and reducing the craving for opioid substances, such as heroin or other narcotic drugs.

"Medication error" means an error in administering a medication to an individual and includes when any of the following occur: (i) the wrong medication is given to an individual, (ii) the wrong individual is given the medication, (iii) the wrong dosage is given to an individual, (iv) medication is given to an individual at the wrong time or not at all, or (v) the wrong method is used to give the medication to the individual.

"Medication storage" means any area where medications are maintained by the provider, including a locked cabinet, locked room, or locked box.

"Mental Health Community Support Service (MHCSS)" means the provision of recovery-oriented services to individuals with long-term, severe mental illness. MHCSS includes skills training and assistance in accessing and effectively utilizing services and supports that are essential to meeting the needs identified in the individualized services plan and development of environmental supports necessary to sustain active community living as independently as possible. MHCSS may be provided in any setting in which the individual's needs can be addressed, skills training applied, and recovery experienced.

"Mental illness" means a disorder of thought, mood, emotion, perception, or orientation that significantly impairs judgment, behavior, capacity to recognize reality, or ability to address basic life necessities and requires care and treatment for the health, safety, or recovery of the individual or for the safety of others.

"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 (§ 37.2-100 of the Code of Virginia).

"Neglect" means the failure by an individual or a program or facility operated, licensed, or funded by the department, excluding those operated by the Department of Corrections, responsible for providing services to do so, including nourishment, treatment, care, goods, or services necessary to the health, safety, or welfare of a person receiving care or treatment for mental illness, mental retardation (intellectual disability), or substance abuse (substance use disorders).

"Neurobehavioral services" means the assessment, evaluation, and treatment of cognitive, perceptual, behavioral, and other impairments caused by brain injury that affect an individual's ability to function successfully in the community.

"Outpatient service" means treatment provided to individuals on an hourly schedule, on an individual, group, or family basis, and usually in a clinic or similar facility or in another location. Outpatient services may include diagnosis and evaluation, screening and intake, counseling, psychotherapy, behavior management, psychological testing and assessment, laboratory and other ancillary services, medical services, and medication services. "Outpatient service" specifically includes:

1. Services operated by a community services board or a behavioral health authority established pursuant to Chapter 5 (§ 37.2-500 et seq.) or Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia;
2. Services contracted by a community services board or a behavioral health authority established pursuant to Chapter 5 (§ 37.2-500 et seq.) or Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia; or
3. Services that are owned, operated, or controlled by a corporation organized pursuant to the provisions of either Chapter 9 (§ 13.1-601 et seq.) or Chapter 10 (§ 13.1-801 et seq.) of Title 13.1 of the Code of Virginia.

"Partial hospitalization service" means time-limited active treatment interventions that are more intensive than outpatient services, designed to stabilize and ameliorate acute symptoms, and serve as an alternative to inpatient hospitalization or to reduce the length of a hospital stay. Partial hospitalization is focused on individuals with serious

mental illness, substance abuse (substance use disorders), or co-occurring disorders at risk of hospitalization or who have been recently discharged from an inpatient setting.

"Person-centered" means focusing on the needs and preferences of the individual; empowering and supporting the individual in defining the direction for his life; and promoting self-determination, community involvement, and recovery.

"Program of Assertive Community Treatment (PACT) service" means a self-contained interdisciplinary team of at least 10 full-time equivalent clinical staff, a program assistant, and a full- or part-time psychiatrist that:

1. Assumes responsibility for directly providing needed treatment, rehabilitation, and support services to identified individuals with severe and persistent mental illnesses, including those who have severe symptoms that are not effectively remedied by available treatments or who because of reasons related to their mental illness resist or avoid involvement with mental health services;
2. Minimally refers individuals to outside service providers;
3. Provides services on a long-term care basis with continuity of caregivers over time;
4. Delivers 75% or more of the services outside program offices; and
5. Emphasizes outreach, relationship building, and individualization of services.

"Provider" means any person, entity, or organization, excluding an agency of the federal government by whatever name or designation, that delivers (i) services to individuals with mental illness, mental retardation (intellectual disability), or substance abuse (substance use disorders), (ii) services to individuals who receive day support, in-home support, or crisis stabilization services funded through the IFDDS Waiver, or (iii) residential services for individuals with brain injury. The person, entity, or organization shall include a hospital as defined in § 32.1-123 of the Code of Virginia, community services board, behavioral health authority, private provider, and any other similar or related person, entity, or organization. It shall not include any individual practitioner who holds a license issued by a health regulatory board of the Department of Health Professions or who is exempt from licensing pursuant to §§ 54.1-2901, 54.1-3001, 54.1-3501, 54.1-3601 and 54.1-3701 of the Code of Virginia.

"Psychosocial rehabilitation service" means a program of two or more consecutive hours per day provided to groups of adults in a nonresidential setting. Individuals must demonstrate a clinical need for the service arising from a condition due to mental, behavioral, or emotional illness that results in significant functional impairments in major life activities. This service provides education to teach the individual about mental illness, substance abuse, and appropriate medication to avoid complication and relapse and opportunities to learn and use independent skills and to enhance social and interpersonal skills within a consistent program structure and environment. Psychosocial rehabilitation includes skills training, peer support, vocational rehabilitation, and community resource development oriented toward empowerment, recovery, and competency.

"Qualified Mental Health Professional-Adult (QMHP-A)" means a person in the human services field who is trained and experienced in providing psychiatric or mental health services to individuals who have a mental illness; including (i) a doctor of medicine or osteopathy licensed in Virginia; (ii) a doctor of medicine or osteopathy, specializing in psychiatry and licensed in Virginia; (iii) an individual with a master's degree in psychology from an accredited college or university with at least one year of clinical experience; (iv) a social worker: an individual with at least a bachelor's degree in human services or related field (social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, human services counseling or other degree deemed equivalent to those described) from an accredited college and with at least one year of clinical experience providing direct services to individuals with a diagnosis of mental illness; (v) a person with at least a bachelor's degree from an accredited college in an unrelated field that includes at least 15 semester credits (or equivalent) in a human services field and who has at least three years of clinical experience; (vi) a Certified Psychiatric Rehabilitation Provider (CPRP) registered with the United States Psychiatric Rehabilitation Association (USPRA); (vii) a registered nurse licensed in Virginia with at least one year of clinical experience; or (viii) any other licensed mental health professional.

"Qualified Mental Health Professional-Child (QMHP-C)" means a person in the human services field who is trained and experienced in providing psychiatric or mental health services to children who have a mental illness. To qualify as a QMHP-C, the individual must have the designated clinical experience and must either (i) be a doctor of medicine or osteopathy licensed in Virginia; (ii) have a master's degree in psychology from an accredited college or university with at least one year of clinical experience with children and adolescents; (iii) have a social work bachelor's or master's degree from an accredited college or university with at least one year of documented clinical experience with children or adolescents; (iv) be a registered nurse with at least one year of clinical experience with children and adolescents; (v) have at least a bachelor's degree in a human services field or in special education from an accredited college with at least one year of clinical experience with children and adolescents, or (vi) be a licensed mental health professional.

"Qualified Mental Health Professional-Eligible (QMHP-E)" means a person who has: (i) at least a bachelor's degree in a human service field or special education from an accredited college without one year of clinical experience or (ii) at least a bachelor's degree in a nonrelated field and is enrolled in a master's or doctoral clinical program, taking the equivalent of at least three credit hours per semester and is employed by a provider that has a triennial license issued by the department and has a department and DMAS-approved supervision training program.

"Qualified Mental Retardation Professional (QMRP)" means a person who possesses at least one year of documented experience working directly with individuals who have mental retardation (intellectual disability) or other developmental disabilities and one of the following credentials: (i) a doctor of medicine or osteopathy licensed in Virginia, (ii) a registered nurse licensed in Virginia, or (iii) completion of at least a bachelor's degree in a human services field, including, but not limited to sociology, social work, special education, rehabilitation counseling, or psychology.

"Qualified Paraprofessional in Mental Health (QPPMH)" means a person who must, at a minimum, meet one of the following criteria: (i) registered with the United States Psychiatric Association (USPRA) as an Associate Psychiatric Rehabilitation Provider (APRP); (ii) has an associate's degree in a related field (social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, human services counseling) and at least one year of experience providing direct services to individuals with a diagnosis of mental illness; or (iii) has a minimum of 90 hours classroom training and 12 weeks of experience under the direct personal supervision of a QMHP-Adult providing services to individuals with mental illness and at least one year of experience (including the 12 weeks of supervised experience).

"Recovery" means a journey of healing and transformation enabling an individual with a mental illness to live a meaningful life in a community of his choice while striving to achieve his full potential. For individuals with substance abuse (substance use disorders), recovery is an incremental process leading to positive social change and a full return to biological, psychological, and social functioning. For individuals with mental retardation (intellectual disability), the concept of recovery does not apply in the sense that individuals with mental retardation (intellectual disability) will need supports throughout their entire lives although these may change over time. With supports, individuals with mental retardation (intellectual disability) are capable of living lives that are fulfilling and satisfying and that bring meaning to themselves and others whom they know.

"Referral" means the process of directing an applicant or an individual to a provider or service that is designed to provide the assistance needed.

"Residential crisis stabilization service" means (i) providing short-term, intensive treatment to nonhospitalized individuals who require multidisciplinary treatment in order to stabilize acute psychiatric symptoms and prevent admission to a psychiatric inpatient unit; (ii) providing normative environments with a high assurance of safety and security for crisis intervention; and (iii) mobilizing the resources of the community support system, family members, and others for ongoing rehabilitation and recovery.

"Residential service" means providing 24-hour support in conjunction with care and treatment or a training program in a setting other than a hospital or training center. Residential services provide a range of living arrangements from highly structured and intensively supervised to relatively independent requiring a modest amount of staff support and monitoring. Residential services include residential treatment, group or community homes, supervised living, residential crisis stabilization, community gero-psychiatric residential, community intermediate care facility-MR, sponsored residential homes, medical and social detoxification, neurobehavioral services, and substance abuse residential treatment for women and children.

"Residential treatment service" means providing an intensive and highly structured mental health, substance abuse, or neurobehavioral service, or services for co-occurring disorders in a residential setting, other than an inpatient service.

"Respite care service" means providing for a short-term, time limited period of care of an individual for the purpose of providing relief to the individual's family, guardian, or regular care giver. Persons providing respite care are recruited, trained, and supervised by a licensed provider. These services may be provided in a variety of settings including residential, day support, in-home, or a sponsored residential home.

"Restraint" means the use of a mechanical device, medication, physical intervention, or hands-on hold to prevent an individual receiving services from moving his body to engage in a behavior that places him or others at imminent risk. There are three kinds of restraints:

1. Mechanical restraint means the use of a mechanical device that cannot be removed by the individual to restrict the individual's freedom of movement or functioning of a limb or portion of an individual's body when that behavior places him or others at imminent risk.
2. Pharmacological restraint means the use of a medication that is administered involuntarily for the emergency control of an individual's behavior when that individual's behavior places him or others at

imminent risk and the administered medication is not a standard treatment for the individual's medical or psychiatric condition.

3. Physical restraint, also referred to as manual hold, means the use of a physical intervention or hands-on hold to prevent an individual from moving his body when that individual's behavior places him or others at imminent risk.

"Restrains for behavioral purposes" means using a physical hold, medication, or a mechanical device to control behavior or involuntarily restrict the freedom of movement of an individual in an instance when all of the following conditions are met: (i) there is an emergency; (ii) nonphysical interventions are not viable; and (iii) safety issues require an immediate response.

"Restrains for medical purposes" means using a physical hold, medication, or mechanical device to limit the mobility of an individual for medical, diagnostic, or surgical purposes, such as routine dental care or radiological procedures and related post-procedure care processes, when use of the restraint is not the accepted clinical practice for treating the individual's condition.

"Restrains for protective purposes" means using a mechanical device to compensate for a physical or cognitive deficit when the individual does not have the option to remove the device. The device may limit an individual's movement, for example, bed rails or a gerichair, and prevent possible harm to the individual or it may create a passive barrier, such as a helmet to protect the individual.

"Restriction" means anything that limits or prevents an individual from freely exercising his rights and privileges.

"Screening" means the process or procedure for determining whether the individual meets the minimum criteria for admission.

"Seclusion" means the involuntary placement of an individual alone in an area secured by a door that is locked or held shut by a staff person, by physically blocking the door, or by any other physical means so that the individual cannot leave it.

"Serious injury" means any injury resulting in bodily damage, harm, or loss that requires medical attention by a licensed physician, doctor of osteopathic medicine, physician assistant, or nurse practitioner while the individual is supervised by or involved in services, such as attempted suicides, medication overdoses, or reactions from medications administered or prescribed by the service.

"Service" or "services" means (i) planned individualized interventions intended to reduce or ameliorate mental illness, mental retardation (intellectual disability), or substance abuse (substance use disorders) through care, treatment, training, habilitation, or other supports that are delivered by a provider to individuals with mental illness, mental retardation (intellectual disability), or substance abuse (substance use disorders). Services include outpatient services, intensive in-home services, opioid treatment services, inpatient psychiatric hospitalization, community geropsychiatric residential services, assertive community treatment and other clinical services; day support, day treatment, partial hospitalization, psychosocial rehabilitation, and habilitation services; case management services; and supportive residential, halfway house, and other residential services; (ii) day support, in-home support, and crisis stabilization services provided to individuals under the IFDDS Waiver; and (iii) planned individualized interventions intended to reduce or ameliorate the effects of brain injury through care, treatment, or other supports or in residential services for persons with brain injury.

"Shall" means an obligation to act is imposed.

"Shall not" means an obligation not to act is imposed.

"Skills training" means systematic skill building through curriculum-based psychoeducational and cognitive-behavioral interventions. These interventions break down complex objectives for role performance into simpler components, including basic cognitive skills such as attention, to facilitate learning and competency.

"Social detoxification service" means providing nonmedical supervised care for the individual's natural process of withdrawal from use of alcohol or other drugs.

"Sponsored residential home" means a service where providers arrange for, supervise, and provide programmatic, financial, and service support to families or persons (sponsors) providing care or treatment in their own homes for individuals receiving services.

"State board" means the State Board of Behavioral Health and Developmental Services. The board has statutory responsibility for adopting regulations that may be necessary to carry out the provisions of Title 37.2 of the Code of Virginia and other laws of the Commonwealth administered by the commissioner or the department.

"State methadone authority" means the Virginia Department of Behavioral Health and Developmental Services that is authorized by the federal Center for Substance Abuse Treatment to exercise the responsibility and authority for governing the treatment of opiate addiction with an opioid drug.

"Substance abuse (substance use disorders)" means the use of drugs enumerated in the Virginia Drug Control Act (§ 54.1-3400 et seq.) without a compelling medical reason or alcohol that (i) results in psychological or physiological dependence or danger to self or others as a function of continued and compulsive use or (ii) results in mental, emotional, or physical impairment that causes socially dysfunctional or socially disordering behavior; and (iii), because of such substance abuse, requires care and treatment for the health of the individual. This care and treatment may include counseling, rehabilitation, or medical or psychiatric care.

"Substance abuse intensive outpatient service" means treatment provided in a concentrated manner for two or more consecutive hours per day to groups of individuals in a nonresidential setting. This service is provided over a period of time for individuals requiring more intensive services than an outpatient service can provide. Substance abuse intensive outpatient services include multiple group therapy sessions during the week, individual and family therapy, individual monitoring, and case management.

"Substance abuse residential treatment for women with children service" means a 24-hour residential service providing an intensive and highly structured substance abuse service for women with children who live in the same facility.

"Supervised living residential service" means the provision of significant direct supervision and community support services to individuals living in apartments or other residential settings. These services differ from supportive in-home service because the provider assumes responsibility for management of the physical environment of the residence, and staff supervision and monitoring are daily and available on a 24-hour basis. Services are provided based on the needs of the individual in areas such as food preparation, housekeeping, medication administration, personal hygiene, treatment, counseling, and budgeting.

"Supportive in-home service" (formerly supportive residential) means the provision of community support services and other structured services to assist individuals, to strengthen individual skills, and that provide environmental supports necessary to attain and sustain independent community residential living. Services include drop-in or friendly-visitor support and counseling to more intensive support, monitoring, training, in-home support, respite care, and family support services. Services are based on the needs of the individual and include training and assistance. These services normally do not involve overnight care by the provider; however, due to the flexible nature of these services, overnight care may be provided on an occasional basis.

"Therapeutic day treatment for children and adolescents" means a treatment program that serves (i) children and adolescents from birth through age 17 and under certain circumstances up to 21 with serious emotional disturbances, substance use, or co-occurring disorders or (ii) children from birth through age seven who are at risk of serious emotional disturbance, in order to combine psychotherapeutic interventions with education and mental health or substance abuse treatment. Services include: evaluation; medication education and management; opportunities to learn and use daily living skills and to enhance social and interpersonal skills; and individual, group, and family counseling.

"Time out" means the involuntary removal of an individual by a staff person from a source of reinforcement to a different, open location for a specified period of time or until the problem behavior has subsided to discontinue or reduce the frequency of problematic behavior.

"Volunteer" means a person who, without financial remuneration, provides services to individuals on behalf of the provider.

Part II Licensing Process

12VAC35-105-30. Licenses.

A. Licenses are issued to providers who offer services to individuals who have mental illness, mental retardation (intellectual disability), or substance abuse (substance use disorders); have developmental disability and are served under the IFDDS Waiver; or have brain injury and are receiving residential services .

B. Providers shall be licensed to provide specific services as defined in this chapter or as determined by the commissioner. These services include:

1. Case management;
2. Community gero-psychiatric residential;
3. Community intermediate care facility-MR;

4. Residential crisis stabilization;
5. Nonresidential crisis stabilization;
6. Day support;
7. Day treatment, includes therapeutic day treatment for children and adolescents;
8. Group home and community residential;
9. Inpatient psychiatric;
10. Intensive Community Treatment (ICT);
11. Intensive in-home;
12. Managed withdrawal, including medical detoxification and social detoxification;
13. Mental health community support;
14. Opioid treatment /medication assisted treatment;
15. Emergency;
16. Outpatient;
17. Partial hospitalization;
18. Program of assertive community treatment (PACT);
19. Psychosocial rehabilitation;
20. Residential treatment;
21. Respite care;
22. Sponsored residential home;
23. Substance abuse residential treatment for women with children;
24. Substance abuse intensive outpatient;
25. Supervised living residential; and
26. Supportive in-home.

C. A license addendum shall describe the services licensed, the disabilities of individuals who may be served, the specific locations where services are to be provided or administered, and the terms and conditions for each service offered by a licensed provider. For residential and inpatient services, the license identifies the number of individuals each residential location may serve at a given time.

12VAC35-105-40. Application requirements.

A. All providers that are not currently licensed shall be required to apply for a license using the application designated by the commissioner. Providers applying for a license shall submit:

1. A working budget showing projected revenue and expenses for the first year of operation, including a revenue plan.
2. Documentation of working capital to include:
 - a. 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.
 - b. Appropriated revenue if the provider is a state or local government agency, board or commission.
3. Documentation of authority to conduct business in the Commonwealth of Virginia.
4. A disclosure statement identifying the legal names and dates of any services licensed in Virginia or other states that the applicant holds or has held, previous sanctions or negative actions against any license to provide services that the applicant holds or has held in any other state or in Virginia, and the names and dates of any disciplinary actions involving the applicant's current or past licensed services.

B. Providers shall submit an application listing each service to be provided and submit the following items for each service:

1. A staffing plan;
2. Employee credentials and job descriptions containing all the elements outlined in 12VAC35-105-410 A;
3. A service description containing all the elements outlined in 12VAC35-105-580 C; and
4. Records management policy containing all the elements outlined in 12VAC35-105-390 and 12VAC35-105-870 A.

C. The provider shall confirm his intent to renew the license prior to the expiration date of the license and notify the department in advance of any changes in service or location.

12VAC35-105-50. Issuance of licenses.

A. The commissioner may issue the following types of licenses:

1. A conditional license shall be issued to a new provider for services that demonstrates compliance with administrative and policy regulations but has not demonstrated compliance with all the regulations.

a. A conditional license shall not exceed six months.

b. A conditional license may be renewed if the provider is not able to demonstrate compliance with all the regulations at the end of the license period. A conditional license and any renewals shall not exceed 12 successive months for all conditional licenses and renewals combined.

c. A provider holding a conditional license for a service shall demonstrate progress toward compliance.

d. A provider holding a conditional license shall not add services or locations during the conditional period.

e. A group home or community residential service provider shall be limited to providing services in a single location, serving no more than four individuals during the conditional period.

2. A provisional license may be issued to a provider for a service that has demonstrated an inability to maintain compliance with regulations, has violations of human rights or licensing regulations that pose a threat to the health or safety of individuals being served, has multiple violations of human rights or licensing regulations, or has failed to comply with a previous corrective action plan.

a. A provisional license may be issued at any time.

b. The term of a provisional license shall not exceed six months.

c. A provisional license may be renewed; but a provisional license and any renewals shall not exceed 12 successive months for all provisional licenses and renewals combined.

d. A provider holding a provisional license for a service shall demonstrate progress toward compliance.

e. A provider holding a provisional license for a service shall not increase its services or locations or expand the capacity of the service.

f. A provisional license for a service shall be noted as a stipulation on the provider license. The stipulation shall also indicate the violations to be corrected and the expiration date of the provisional license.

3. A full license shall be issued after a provider or service demonstrates compliance with all the applicable regulations.

a. A full license may be granted to a provider for service for up to three years. The length of the license shall be in the sole discretion of the commissioner.

b. If a full license is granted for three years, it shall be referred to as a triennial license. A triennial license shall be granted to providers for services that have demonstrated compliance with the regulations. The commissioner may issue a triennial license to a provider for service that had violations during the previous license period if those violations did not pose a threat to the health or safety of individuals being served and the provider or service has demonstrated consistent compliance for more than a year and has a process in place that provides sufficient oversight to maintain compliance.

c. If a full license is granted for one year, it shall be referred to as an annual license.

d. The term of the first full renewal license after the expiration of a conditional or provisional license shall not exceed one year.

B. The commissioner may add stipulations on a license issued to a provider that may place limits on the provider or to impose additional requirements on the provider.

C. A license shall not be transferred or assigned to another provider. A new application shall be made and a new license issued when there is a change in ownership.

D. A license shall not be issued or renewed unless the provider is affiliated with a local human rights committee.

E. No service shall be issued a license with an expiration date that is after the expiration date of the provider license.

F. A license shall continue in effect after the expiration date if the provider has submitted a renewal application before the date of expiration and there are no grounds to deny the application. The department shall issue a letter stating the provider or service license shall be effective for six additional months if the renewed license is not issued before the date of expiration.

12VAC35-105-60. Modification.

A. A provider shall submit a written service modification application at least 45 days in advance of a proposed modification to its license. The modification may address the characteristics of individuals served (disability, age, or gender), the services offered, the locations where services are provided, existing stipulations, or the maximum number of individuals served under the provider license.

B. Upon receipt of the completed service modification application, the commissioner may revise the provider license. Approval of such request shall be at the sole discretion of the commissioner.

C. A change requiring a modification of the license shall not be implemented prior to approval by the commissioner. The department may send the provider a letter approving implementation of the modification pending the issuance of the modified license.

12VAC35-105-70. Onsite reviews.

A. The department shall conduct an announced or unannounced onsite review of all new providers and services to determine compliance with this chapter.

B. The department shall conduct unannounced onsite reviews of licensed providers and each service at any time and at least annually to determine compliance with these regulations. The annual unannounced onsite reviews shall be focused on preventing specific risks to individuals, including an evaluation of the physical facilities in which the services are provided.

C. The department may conduct announced and unannounced onsite reviews at any time as part of the investigations of complaints or incidents to determine if there is a violation of this chapter.

12VAC35-105-80. Complaint investigations.

The department shall investigate all complaints regarding potential violations of licensing regulations. Complaint investigations may be based on onsite reviews, a review of records, a review of provider reports or telephone interviews.

12VAC35-105-90. Compliance.

A. The department shall determine the level of compliance with each regulation as follows:

1. "Compliance" (C) means the provider clearly meets the requirements of a regulation.
2. "Noncompliance" (NC) means the provider violates or fails to meet part or all of a regulation.
3. "Not Determined" (ND) means that the provider must provide additional information to determine compliance with a regulation.
4. "Not Applicable" (NA) means the provider is specifically exempted from or not required to demonstrate compliance with the provisions of a regulation.

B. The provider, including its employees, contract service providers, student interns, and volunteers, shall comply with all applicable regulations.

12VAC35-105-100. Sanctions.

A. The commissioner may invoke the sanctions enumerated in § 37.2-419 of the Code of Virginia upon receipt of information that a licensed provider is:

1. In violation of the provisions of §§ 37.2-400 through 37.2-422 of the Code of Virginia, these regulations, or the provisions of the Rules 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 (12VAC35-115); and
2. Such violation adversely affects the human rights of individuals, or poses an imminent and substantial threat to the health, safety or welfare of individuals.

The commissioner shall notify the provider in writing of the specific violations found and of his intention to convene an informal conference pursuant to § 2.2-4019 of the Code of Virginia at which the presiding officer will be asked to recommend issuance of a special order.

B. The sanctions contained in the special order shall remain in effect during the pendency of any appeal of the special order.

12VAC35-105-110. Denial, revocation, or suspension of a license.

A. An application for a license or license renewal may be denied and a full, conditional, or provisional license may be revoked or suspended for one or more of the following reasons:

1. The provider or applicant has violated any provisions of Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2 of the Code of Virginia or these licensing regulations;
2. The provider's or applicant's conduct or practices are detrimental to the welfare of any individual receiving services or in violation of human rights identified in § 37.2-400 of the Code of Virginia or the human rights regulations (12VAC35-115);
3. The provider or applicant permits, aids, or abets the commission of an illegal act;
4. The provider or applicant fails or refuses to submit reports or to make records available as requested by the department;
5. The provider or applicant refuses to admit a representative of the department who displays a state-issued photo identification to the premises;
6. The provider or applicant fails to submit or implement an adequate corrective action plan; or
7. The provider or applicant submits any misleading or false information to the department.

B. A provider shall be notified in writing of the department's intent to deny, revoke, or suspend a license; the reasons for the action; the right to appeal; and the appeal process. The provider has the right to appeal the department's decision under the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

12VAC35-105-115. Summary suspension.

A. In conjunction with any proceeding for revocation, denial, or other action, when conditions or practices exist that pose an immediate and substantial threat to the health, safety, and welfare of the individuals living there, the commissioner may issue an order of summary suspension of the license to operate any group home or residential service for adults when he believes the operation of the home or residential service should be suspended during the pendency of such proceeding.

B. Prior to the issuance of an order of summary suspension, the department shall contact the Executive Secretary of the Supreme Court of Virginia to obtain the name of a hearing officer. The department shall schedule the time, date, and location of the administrative hearing with the hearing officer.

C. The order of summary suspension shall take effect upon its issuance. It shall be delivered by personal service and certified mail, return receipt requested, to the address of record of the licensee as soon as practicable. The order shall set forth:

1. The time, date, and location of the hearing;
2. The procedures for the hearing;
3. The hearing and appeal rights; and
4. Facts and evidence that formed the basis for the order of summary suspension.

D. The hearing shall take place within three business days of the issuance of the order of summary suspension.

E. The department shall have the burden of proving in any summary suspension hearing that it had reasonable grounds to require the licensee to cease operations during the pendency of the concurrent revocation, denial, or other proceeding.

F. The administrative hearing officer shall provide written findings and conclusions together with a recommendation as to whether the license should be summarily suspended to the commissioner within five business days of the hearing.

G. The commissioner shall issue a final order of summary suspension or make a determination that the summary suspension is not warranted based on the facts presented and the recommendation of the hearing officer within seven business days of receiving the recommendation of the hearing officer.

H. The commissioner shall issue and serve on the group home or residential facility for adults or its designee by personal service or by certified mail, return receipt requested either:

1. A final order of summary suspension including (i) the basis for accepting or rejecting the hearing officer's recommendation, and (ii) notice that the licensee of the group home or residential service may appeal the commissioner's decision to the appropriate circuit court no later than 10 days following issuance of the order; or

2. Notification that the summary suspension is not warranted by the facts and circumstances presented and that the order of summary suspension is rescinded.

I. The licensee may appeal the commissioner's decision on the summary suspension to the appropriate circuit court no more than 10 days after issuance of the final order.

J. The outcome of concurrent revocation, denial, and other proceedings shall not be affected by the outcome of any hearing pertaining to the appropriateness of the order of summary suspension.

K. At the time of the issuance of the order of summary suspension, the department shall contact the appropriate agencies to inform them of the action and the need to develop relocation plans for the individuals receiving residential or center-based services, and ensure that any other legal guardians or responsible family members are informed of the pending action.

12VAC35-105-120. Variances.

The commissioner may grant a variance to a specific regulation if he determines that such a variance will not jeopardize the health, safety or welfare of individuals and upon demonstration by the provider requesting such variance that complying with the regulation would be a hardship unique to the provider. A provider shall submit a request for a variance in writing to the commissioner. A variance may be time limited or have other conditions attached to it. The department must approve a variance prior to implementation.

12VAC35-105-130. Confidentiality of records.

Records that are confidential under federal or state law shall be maintained as confidential by the department and shall not be further disclosed except as required or permitted by law.

Part III
Administrative Services

Article 1
Management and Administration

12VAC35-105-140. License availability.

The current license or a copy shall be prominently displayed for public inspection in all service locations.

12VAC35-105-150. Compliance with applicable laws, regulations and policies.

The provider including its employees, contractors, students, and volunteers shall comply with:

1. These regulations;
2. The terms and stipulations of the license;
3. All applicable federal, state, or local laws and regulations including:
 - a. Laws regarding employment practices including the Equal Employment Opportunity Act;

- b. The Americans with Disabilities Act and the Virginians with Disabilities Act;
 - c. Occupational Safety and Health Administration regulations;
 - d. Virginia Department of Health regulations;
 - e. Laws and regulations of the Department of Health Professions;
 - f. Virginia Department of Medical Assistance Services regulations;
 - g. Uniform Statewide Building Code; and
 - h. Uniform Statewide Fire Prevention Code.
4. Section 37.2-400 of the Code of Virginia and related human rights regulations adopted by the state board; and
5. The provider's own policies. All required policies shall be in writing.

12VAC35-105-155. Preadmission screening, discharge planning, involuntary commitment, and mandatory outpatient treatment orders.

A. Providers responsible for complying with §§ 37.2-505 and 37.2-606 of the Code of Virginia regarding community service board and behavioral health authority preadmission screening and discharge planning shall implement policies and procedures that include:

- 1. Identification, qualification, training, and responsibilities of employees responsible for preadmission screening and discharge planning.
- 2. Completion of a discharge plan prior to an individual's discharge in consultation with the state facility that:
 - a. Involves the individual or his authorized representative and reflects the individual's preferences to the greatest extent possible consistent with the individual's needs.
 - b. Involves mental health, mental retardation (intellectual disability), substance abuse, social, educational, medical, employment, housing, legal, advocacy, transportation, and other services that the individual will need upon discharge into the community and identifies the public or private agencies or persons that have agreed to provide them.

B. Any provider who serves individuals through an emergency custody order, temporary detention order, or mandatory outpatient treatment order shall implement policies and procedures to comply with §§ 37.2-800 through 37.2-817 of the Code of Virginia.

12VAC35-105-160. Reviews by the department; requests for information.

- A. The provider shall permit representatives from the department to conduct reviews to:
- 1. Verify application information;
 - 2. Assure compliance with this chapter; and
 - 3. Investigate complaints.
- B. The provider shall cooperate fully with inspections and provide all information requested to assist representatives from the department who conduct inspections.
- C. The provider shall collect, maintain, and report or make available to the department the following information:
- 1. Each allegation of abuse or neglect shall be reported to the assigned human rights advocate and the individual's authorized representative within 24 hours from the receipt of the initial allegation. Reported information shall include the type of abuse, neglect, or exploitation that is alleged and whether there is physical or psychological injury to the individual.
 - 2. Each instance of death or serious injury shall be reported in writing to the department's assigned licensing specialist within 24 hours of discovery and by phone to the individual's authorized representative within 24 hours. Reported information shall include the following: the date and place of the individual's death or serious injury; the nature of the individual's injuries and the treatment received; and the circumstances of the death or serious injury. Deaths that occur in a hospital as a result of illness or injury occurring when the individual was in a licensed service shall be reported.
 - 3. Each instance of seclusion or restraint that does not comply with the human rights regulations or approved variances or that results in injury to an individual shall be reported to the individual's authorized representative and the assigned human rights advocate within 24 hours.

D. The provider shall submit, or make available, reports and information that the department requires to establish compliance with these regulations and applicable statutes.

E. Records that are confidential under federal or state law shall be maintained as confidential by the department and shall not be further disclosed except as required or permitted by law; however, there shall be no right of access to communications that are privileged pursuant to § 8.01-581.17 of the Code of Virginia.

F. Additional information requested by the department if compliance with a regulation cannot be determined shall be submitted within 10 business days of the issuance of the licensing report requesting additional information. Extensions may be granted by the department when requested prior to the due date, but extensions shall not exceed an additional 10 business days.

G. Applicants and providers shall not submit any misleading or false information to the department.

12VAC35-105-170. Corrective action plan.

A. If there is noncompliance with any applicable regulation during an initial or ongoing review or investigation, the department shall issue a licensing report describing the noncompliance and requesting the provider to submit a corrective action plan for each violation cited.

B. The provider shall submit to the department and implement a written corrective action plan for each regulation with which it is found to be in violation as identified in the licensing report.

C. The corrective action plan shall include a:

1. Description of the corrective actions to be taken that will minimize the possibility that the violation will occur again;
2. Date of completion for each corrective action; and
3. Signature of the person responsible for the service.

D. The provider shall submit a corrective action plan to the department within 15 business days of the issuance of the licensing report. Extensions may be granted by the department when requested prior to the due date, but extensions shall not exceed an additional 10 business days. An immediate corrective action plan shall be required if the department determines that the violations pose a danger to individuals receiving the service.

E. Upon receipt of the corrective action plan, the department shall review the plan and determine whether the plan is approved or not approved. The provider has an additional 10 business days to submit a revised corrective action plan after receiving a notice that the plan submitted has not been approved by the department.

F. When the provider disagrees with a citation of a violation, the provider shall discuss this disagreement with the licensing specialist initially. If the disagreement is not resolved, the provider may ask for a meeting with the licensing specialist's supervisor, in consultation with the director of licensing, to challenge a finding of noncompliance. The determination of the director is final.

G. The provider shall monitor implementation of approved corrective action and include a plan for monitoring in its quality assurance activities specified in 12VAC30-105-620.

12VAC35-105-180. Notification of changes.

A. The provider shall notify the department in writing prior to implementing changes that affect:

1. Organizational or administrative structure, including the name of the provider;
2. Geographic location of the provider or its services;
3. Service description as defined in these regulations;
4. Significant changes to the staffing plan, position descriptions, or employee or contractor qualifications; or
5. Bed capacity for services providing residential or inpatient services.

B. The provider shall not implement the specified changes without the prior approval of the department.

C. The provider shall provide any documentation necessary for the department to determine continued compliance with these regulations after any of these specified changes are implemented.

D. A provider shall notify the department in writing of its intent to discontinue services 30 days prior to the cessation of services. The provider shall continue to provide all services that are identified in each individual's ISP after it has given official notice of its intent to cease operations and until each individual is appropriately discharged.

The provider shall further continue to maintain substantial compliance with all applicable regulations as it discontinues its services.

E. All individuals receiving services and their authorized representatives shall be notified of the provider's intent to cease services in writing 30 days prior to the cessation of services. This written notification shall be documented in each individual's ISP.

12VAC35-105-190. Operating authority, governing body and organizational structure.

A. The provider shall provide the following evidence of its operating authority:

1. Public organizations shall provide documents describing the administrative framework of the governmental department of which it is a component or describing the legal and administrative framework under which it was established and operates.
2. All private organizations except sole proprietorships shall provide a certificate from the State Corporation Commission.

B. The provider shall provide an organizational chart that clearly identifies its governing body and organizational structure.

C. The provider shall document the role and actions of the governing body, which shall be consistent with its operating authority. The provider shall identify its operating elements and services, the internal relationship among these elements and services, and its management or leadership structure.

12VAC35-105-200. Appointment of administrator.

The provider shall appoint qualified persons to whom it delegates, in writing, the authority and responsibility for the administrative direction and day-to-day operation of the provider and its services.

12VAC35-105-210. Fiscal accountability.

A. The provider 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.

B. At the end of each fiscal year, the provider shall prepare, according to generally accepted accounting principles (GAAP) or those standards promulgated by the Governmental Accounting Standards Board (GASB) and the State Auditor of Public Accounts:

1. An operating statement showing revenue and expenses for the fiscal year just ended.
2. A balance sheet showing assets and liabilities for the fiscal year just ended. The department may require an audit of all financial records by an independent Certified Public Accountant (CPA) or as otherwise provided by law or regulation.
3. Providers operating as a part of a local government agency are not required to provide a balance sheet; however, they shall provide a financial statement.

C. The provider shall have written internal controls to minimize the risk of theft or embezzlement of provider funds.

D. The provider shall identify in writing the title and qualifications of the person who has the authority and responsibility for the fiscal management of its services. At a minimum, the person who has the authority and responsibility for fiscal management shall be bonded or otherwise indemnified.

E. The provider shall notify the department in writing when its line of credit or other financial arrangement has been cancelled or significantly reduced at any time during the licensing period.

12VAC35-105-220. Indemnity coverage.

To protect the interests of individuals, employees, and the provider from risks of liability, there shall be indemnity coverage to include:

1. General liability;
2. Professional liability;
3. Commercial vehicular liability; and
4. Property damage.

12VAC35-105-230. Written fee schedule.

If the provider charges for services, the written schedule of rates and charges shall be available to the individual or authorized representative upon request.

12VAC35-105-240. Policy on funds of individuals receiving services.

A. The provider shall implement a policy for handling funds of individuals receiving services, including providing for separate accounting of individual funds.

B. The provider shall have documented financial controls to minimize the risk of theft or embezzlement of funds of individuals receiving services.

C. The provider shall purchase a surety bond or otherwise provide assurance for the security of all funds of individuals receiving services deposited with the provider.

12VAC35-105-250. Deceptive or false advertising.

A. The provider shall not use any advertising that contains false, misleading or deceptive statements or claims, or false or misleading disclosure of fees and payment for services.

B. The provider's name and service names shall not imply the provider is offering services for which it is not licensed.

Article 2
Physical Environment

12VAC35-105-260. Building inspection and classification.

All locations shall be inspected and approved as required by the appropriate building regulatory entity. Documentation of approval shall be a Certificate of Use and Occupancy indicating the building is classified for its proposed licensed purpose. The provider shall submit a copy of the Certificate of Use and Occupancy to the department for new locations. This section does not apply to correctional facilities or home and noncenter-based services. Sponsored residential service providers shall certify that their sponsored residential homes comply with this regulation.

12VAC35-105-265. Floor plans.

All services shall submit floor plans with room dimensions to the department for new locations. This does not apply to home or noncenter-based services.

12VAC35-105-270. Building modifications.

A. The provider shall submit building plans and specifications for any planned construction at a new location, changes in the use of existing locations, and any structural modifications or additions to existing locations where services are provided for review by the department to determine compliance with the licensing regulations. This section does not apply to correctional facilities, jails, or home and noncenter-based services.

B. The provider shall submit an interim plan to the department addressing safety and continued service delivery if new construction involving structural modifications or additions to existing buildings is planned.

12VAC35-105-280. Physical environment.

A. The physical environment, design, structure, furnishings, and lighting shall be appropriate to the individuals served and the services provided.

B. The physical environment shall be accessible to individuals with physical and sensory disabilities, if applicable.

C. The physical environment and furnishings shall be clean, dry, free of foul odors, safe, and well-maintained.

D. Floor surfaces and floor coverings shall promote mobility in areas used by individuals and shall promote maintenance of sanitary conditions.

E. The physical environment shall be well ventilated. Temperatures shall be maintained between 65°F and 80°F in all areas used by individuals.

F. Adequate hot and cold running water of a safe and appropriate temperature shall be available. Hot water accessible to individuals being served shall be maintained within a range of 100-110°F. If temperatures cannot be

maintained within the specified range, the provider shall make provisions for protecting individuals from injury due to scalding.

G. Lighting shall be sufficient for the activities being performed and all areas within buildings and outside entrances and parking areas shall be lighted for safety.

H. Recycling, composting, and garbage disposal shall not create a nuisance, permit transmission of disease, or create a breeding place for insects or rodents.

I. If smoking is permitted, the provider shall make provisions for alternate smoking areas that are separate from the service environment. This subsection does not apply to home-based services.

J. For all program areas added after September 19, 2002, minimum room height shall be 7-1/2 feet.

K. This section does not apply to home and noncenter-based services. Sponsored residential services shall certify compliance of sponsored residential homes with this section.

12VAC35-105-290. Food service inspections.

Any location where the provider is responsible for preparing or serving food shall request inspection and shall obtain approval by state or local health authorities regarding food service and general sanitation at the time of the original application and annually thereafter. Documentation of the most recent three inspections and approval shall be kept on file. This section does not apply to sponsored residential services or to group homes or community residential homes.

12VAC35-105-300. Sewer and water inspections.

A. Service locations shall be on a public water and sewage system or on a nonpublic water and sewage system. Prior to a location being licensed, the provider shall obtain the report from the building inspector pertaining to the septic system and its capacity. Nonpublic water and sewer systems shall be maintained in good working order and in compliance with local and state laws. Providers of sponsored residential home services shall certify that their sponsored residential homes comply with this section.

B. Service locations that are not on a public water system shall have a water sample tested prior to being licensed and annually by an accredited, independent laboratory for the absence of chloroform. The water sample shall also be tested for lead or nitrates if recommended by the local health department. Documentation of the three most recent inspections shall be kept on file.

12VAC35-105-310. Weapons.

The provider or facility shall have and implement a written policy governing the use and possession of firearms, pellet guns, air rifles, and other weapons on the premises, including parking areas, of the provider's services. The policy shall provide that no firearms, pellet guns, air rifles, and other weapons shall be permitted unless the weapons are:

1. In the possession of licensed security or sworn law-enforcement personnel;
2. Kept securely under lock and key; or
3. Used under the supervision of a responsible adult in accordance with policies and procedures developed by the provider for the weapons' lawful and safe use.

12VAC35-105-320. Fire inspections.

The provider shall document at the time of its original application and annually thereafter that buildings and equipment in residential service locations serving more than eight individuals are maintained in accordance with the Virginia Statewide Fire Prevention Code (13VAC5-51). This section does not apply to correctional facilities or home and noncenter-based or sponsored residential home services.

12VAC35-105-325. Community liaison.

Each residential service shall designate a staff person as a community liaison responsible for facilitating cooperative relationships with neighbors, local law-enforcement personnel, local government officials, and the community at large.

Article 3
Physical Environment of Residential/Inpatient Service Locations

12VAC35-105-330. Beds.

A. The provider shall not operate more beds than the number for which its service location or locations are licensed.

B. A community ICF/MR may not have more than 12 beds at any one location. This applies to new applications for services and not to existing services or locations licensed prior to December 7, 2011.

12VAC35-105-340. Bedrooms.

A. Bedrooms shall meet the following square footage requirements:

1. Single occupancy bedrooms shall have no less than 80 square feet of floor space.
2. Multiple occupancy bedrooms shall have no less than 60 square feet of floor space per individual.
3. This subsection does not apply to community gero-psychiatric residential services.

B. No more than four individuals shall share a bedroom, except in group homes where no more than two individuals shall share a room. This does not apply to group home locations licensed prior to December 7, 2011.

C. Each individual shall have adequate private storage space accessible to the bedroom for clothing and personal belongings.

D. This section does not apply to correctional facilities and jails. Providers of sponsored residential home services shall certify that their sponsored residential homes comply with this section.

12VAC35-105-350. Condition of beds.

Beds shall be clean, comfortable, and equipped with a mattress, pillow, blankets, and bed linens. When a bed is soiled, providers shall assist individuals with bathing as needed, and provide clean clothing and bed linen. Providers of sponsored residential home services shall certify that their sponsored residential homes comply with this section.

2VAC35-105-360. Privacy.

A. Bedroom and bathroom windows and doors shall provide privacy.

B. Bathrooms intended for use by more than one individual at the same time shall provide privacy for showers and toilets.

C. No required path of travel to the bathroom shall be through another bedroom.

D. This section does not apply to correctional facilities and jails. Providers of sponsored residential home services shall certify that their sponsored residential homes comply with this section.

12VAC35-105-370. Ratios of toilets, basins, and showers or baths.

For all residential and inpatient locations established, constructed, or reconstructed after January 13, 1995, there shall be at least one toilet, one hand basin, and shower or bath for every four individuals. This section does not apply to correctional facilities or jails. Providers of sponsored residential home services shall certify that their sponsored residential homes comply with this section.

12VAC35-105-380. Lighting.

Each service location shall have adequate lighting in halls and bathrooms at night. Providers of sponsored residential home services shall certify that their sponsored residential homes comply with this section.

Article 4
Human Resources

12VAC35-105-390. Confidentiality and security of personnel records.

A. The provider shall maintain an organized system to manage and protect the confidentiality of personnel files and records.

B. Physical and data security controls shall exist for personnel records maintained in electronic databases.

C. Providers shall comply with requirements of the Americans with Disabilities Act and the Virginians with Disabilities Act regarding retention of employee health-related information in a file separate from personnel files.

12VAC35-105-400. Criminal registry checks.

A. Providers shall comply with the background check requirements for direct care positions outlined in §§ 37.2-416, 37.2-506, and 37.2-607 of the Code of Virginia for individuals hired after July 1, 1999.

B. Prior to a new employee beginning his duties, the provider shall obtain the employee's written consent and personal information necessary to obtain a search of the registry of founded complaints of child abuse and neglect maintained by the Virginia Department of Social Services.

C. The provider shall develop a written policy for criminal history and registry checks for all employees, contractors, students, and volunteers. The policy shall require at a minimum a disclosure statement from the employee, contractor, student, or volunteer stating whether the person has ever been convicted of or is the subject of pending charges for any offense and shall address what actions the provider will take should it be discovered that an employee, student, contractor, or volunteer has a founded case of abuse or neglect or both, or a conviction or pending criminal charge.

D. The provider shall submit all information required by the department to complete the background and registry checks for all employees and for contractors, students, and volunteers if required by the provider's policy.

E. The provider shall maintain the following documentation:

1. The disclosure statement; and
2. Documentation that the provider submitted all information required by the department to complete the background and registry checks, memoranda from the department transmitting the results to the provider, and the results from the Child Protective Registry check.

12VAC35-105-410. Job description.

A. Each employee or contractor shall have a written job description that includes:

1. Job title;
2. Duties and responsibilities required of the position;
3. Job title of the immediate supervisor; and
4. Minimum knowledge, skills, and abilities, experience or professional qualifications required for entry level as specified in 12VAC35-105-420.

B. Employees or contractors shall have access to their current job description. The provider shall have written documentation of the mechanism used to advise employees or contractors of changes to their job responsibilities.

12VAC35-105-420. Qualifications of employees or contractors.

A. Any person who assumes the responsibilities of any position as an employee or a contractor shall meet the minimum qualifications of that position as determined by job descriptions.

B. Employees and contractors shall comply, as required, with the regulations of the Department of Health Professions. The provider shall design, implement, and document the process used to verify professional credentials.

C. Supervisors shall have experience in working with individuals being served and in providing the services outlined in the service description.

D. Job descriptions shall include minimum knowledge, skills and abilities, professional qualifications and experience appropriate to the duties and responsibilities required of the position.

E. All staff shall demonstrate a working knowledge of the policies and procedures that are applicable to his specific job or position.

12VAC35-105-430. Employee or contractor personnel records.

A. Employee or contractor personnel records, whether hard-copy or electronic, shall include:

1. Individual identifying information;
2. Education and training history;
3. Employment history;

4. Results of any provider credentialing process including methods of verification of applicable professional licenses or certificates;
5. Results of reasonable efforts to secure job-related references and reasonable verification of employment history;
6. Results of the required criminal background checks and searches of the registry of founded complaints of child abuse and neglect;
7. Results of performance evaluations;
8. A record of disciplinary action taken by the provider, if any;
9. A record of adverse action by any licensing and oversight bodies or organizations, if any; and
10. A record of participation in employee development activities, including orientation.

B. Each employee or contractor personnel record shall be retained in its entirety for a minimum of three years after the employee's or contractor's termination of employment.

12VAC35-105-440. Orientation of new employees, contractors, volunteers, and students.

New employees, contractors, volunteers, and students shall be oriented commensurate with their function or job-specific responsibilities within 15 business days. The provider shall document that the orientation covers each of the following policies, procedures, and practices:

1. Objectives and philosophy of the provider;
2. Practices of confidentiality including access, duplication, and dissemination of any portion of an individual's record;
3. Practices that assure an individual's rights including orientation to human rights regulations;
4. Applicable personnel policies;
5. Emergency preparedness procedures;
6. Person-centeredness;
7. Infection control practices and measures; and
8. Other policies and procedures that apply to specific positions and specific duties and responsibilities.

12VAC35-105-450. Employee training and development.

The provider shall provide training and development opportunities for employees to enable them to support the individuals served and to carry out the responsibilities of their jobs. The provider shall develop a training policy that addresses the frequency of retraining on medication administration, behavior intervention, emergency preparedness, and infection control, to include flu epidemics. Employee participation in training and development opportunities shall be documented and accessible to the department.

12VAC35-105-460. Emergency medical or first aid training.

There shall be at least one employee or contractor on duty at each location who holds a current certificate (i) issued by the American Red Cross, the American Heart Association, or comparable authority in standard first aid and cardiopulmonary resuscitation (CPR) or (ii) as an emergency medical technician. A licensed medical professional who holds a current professional license shall be deemed to hold a current certificate in first aid, but not in CPR.

12VAC35-105-470. Notification of policy changes.

All employees or contractors shall be kept informed of policy changes that affect performance of duties. The provider shall have written documentation of the process used to advise employees or contractors of policy changes.

12VAC35-105-480. Employee or contractor performance evaluation.

- A. The provider shall implement a written policy for evaluating employee and contractor performance.
- B. Employee development needs and plans shall be a part of the performance evaluation.
- C. The provider shall evaluate employee and contractor performance at least annually.

12VAC35-105-490. Written grievance policy.

The provider shall implement a written grievance policy and shall inform employees of grievance procedures. The provider shall have documentation of the process used to advise employees of grievance procedures.

12VAC35-105-500. Students and volunteers.

A. The provider shall implement a written policy that clearly defines and communicates the requirements for the use and responsibilities of students and volunteers including selection and supervision.

B. The provider shall not rely on students or volunteers for the provision of direct care services. The provider staffing plan shall not include volunteers or students.

12VAC35-105-510. Tuberculosis screening.

A. Each new employee, contractor, student, or volunteer who will have direct contact with individuals receiving services shall obtain a statement of certification by a qualified licensed practitioner indicating the absence of tuberculosis in a communicable form within 30 days of employment or initial contact with individuals receiving services. The employee shall submit a copy of the original screening to the provider. A statement of certification shall not be required for a new employee who has separated from service with another licensed provider with a break in service of six months or less or who is currently working for another licensed provider.

B. All employees, contractors, students, or volunteers in substance abuse co-occurring outpatient or residential treatment services shall be certified as tuberculosis free on an annual basis by a qualified licensed practitioner.

C. Any employee, contractor, student, or volunteer who comes in contact with a known case of active tuberculosis disease or who develops symptoms of active tuberculosis disease (including, but not limited to fever, chills, hemoptysis, cough, fatigue, night sweats, weight loss, or anorexia) of three weeks duration shall be screened as determined appropriate for continued contact with employees, contractors, students, volunteers, or individuals receiving services based on consultation with the local health department.

D. An employee, contractor, student, or volunteer suspected of having active tuberculosis shall not be permitted to return to work or have contact with employees, contractors, students, volunteers, or individuals receiving services until a physician has determined that the person is free of active tuberculosis.

Article 5
Health and Safety Management

12VAC35-105-520. Risk management.

A. The provider shall designate a person responsible for risk management.

B. The provider shall implement a written plan to identify, monitor, reduce, and minimize risks associated with personal injury, infectious disease, property damage or loss, and other sources of potential liability.

C. The provider shall conduct and document that a safety inspection has been performed at least annually of each service location owned, rented, or leased by the provider. Recommendations for safety improvement shall be documented and implemented by the provider.

D. The provider shall document serious injuries to employees, contractors, students, volunteers, and visitors. Documentation shall be kept on file for three years. The provider shall evaluate injuries at least annually. Recommendations for improvement shall be documented and implemented by the provider.

12VAC35-105-530. Emergency preparedness and response plan.

A. The provider shall develop a written emergency preparedness and response plan for all of its services and locations that describes its approach to emergencies throughout the organization or community. This plan shall include an analysis of potential emergencies that could disrupt the normal course of service delivery including emergencies that would require expanded or extended care over a prolonged period of time. The plan shall address:

1. Specific procedures describing mitigation, preparedness, response, and recovery strategies, actions, and responsibilities for each emergency.
2. Documentation of coordination with the local emergency authorities to determine local disaster risks and community-wide plans to address different disasters and emergency situations.
3. The process for notifying local and state authorities of the emergency and a process for contacting staff when emergency response measures are initiated.

4. Written emergency management policies outlining specific responsibilities for provision of administrative direction and management of response activities, coordination of logistics during the emergency, communications, life safety of employees, contractors, students, volunteers, visitors, and individuals receiving services, property protection, community outreach, and recovery and restoration.
 5. Written emergency response procedures for initiating the response and recovery phase of the plan including a description of how, when, and by whom the phases will be activated. This includes assessing the situation; protecting individuals receiving services, employees, contractors, students, volunteers, visitors, equipment, and vital records; and restoring services. Emergency procedures shall address:
 - a. Warning and notifying individuals receiving services;
 - b. Communicating with employees, contractors, and community responders;
 - c. Designating alternative roles and responsibilities of staff during emergencies including to whom they will report in the provider's organization command structure and when activated in the community's command structure;
 - d. Providing emergency access to secure areas and opening locked doors;
 - e. Conducting evacuations to emergency shelters or alternative sites and accounting for all individuals receiving services;
 - f. Relocating individuals receiving residential or inpatient services, if necessary;
 - g. Notifying family members or authorized representatives;
 - h. Alerting emergency personnel and sounding alarms;
 - i. Locating and shutting off utilities when necessary; and
 - j. Maintaining a 24 hour telephone answering capability to respond to emergencies for individuals receiving services.
 6. Processes for managing the following under emergency conditions:
 - a. Activities related to the provision of care, treatment, and services including scheduling, modifying, or discontinuing services; controlling information about individuals receiving services; providing medication; and transportation services;
 - b. Logistics related to critical supplies such as pharmaceuticals, food, linen, and water;
 - c. Security including access, crowd control, and traffic control; and
 - d. Back-up communication systems in the event of electronic or power failure.
 7. Specific processes and protocols for evacuation of the provider's building or premises when the environment cannot support adequate care, treatment, and services.
 8. Supporting documents that would be needed in an emergency, including emergency call lists, building and site maps necessary to shut off utilities, designated escape routes, and list of major resources such as local emergency shelters.
 9. Schedule for testing the implementation of the plan and conducting emergency preparedness drills.
- B. The provider shall implement annual emergency preparedness and response training for all employees, contractors, students, and volunteers. This training shall also be provided as part of orientation for new employees and cover responsibilities for:
1. Alerting emergency personnel and sounding alarms;
 2. Implementing evacuation procedures, including evacuation of individuals with special needs (i.e., deaf, blind, nonambulatory);
 3. Using, maintaining, and operating emergency equipment;
 4. Accessing emergency medical information for individuals receiving services; and
 5. Utilizing community support services.
- C. The provider shall review the emergency preparedness plan annually and make necessary revisions. Such revisions shall be communicated to employees, contractors, students, volunteers, and individuals receiving services

and incorporated into training for employees, contractors, students, and volunteers and into the orientation of individuals to services.

D. In the event of a disaster, fire, emergency or any other condition that may jeopardize the health, safety, or welfare of individuals, the provider shall take appropriate action to protect the health, safety, and welfare of individuals receiving services and take appropriate actions to remedy the conditions as soon as possible.

E. Employees, contractors, students, and volunteers shall be knowledgeable in and prepared to implement the emergency preparedness plan in the event of an emergency. The plan shall include a policy regarding regularly scheduled emergency preparedness training for all employees, contractors, students, and volunteers.

F. In the event of a disaster, fire, emergency, or any other condition that may jeopardize the health, safety, or welfare of individuals, the provider should first respond and stabilize the disaster or emergency. After the disaster or emergency is stabilized, the provider should report the disaster or emergency to the department, but no later than 24 hours after the incident occurs.

G. Providers of residential services shall have at all times a three-day supply of emergency food and water for all residents and staff. Emergency food supplies should include foods that do not require cooking. Water supplies shall include one gallon of water per person per day.

H. This section does not apply to home and noncenter-based services.

12VAC35-105-540. Access to telephone in emergencies; emergency telephone numbers.

A. Telephones shall be accessible for emergency purposes.

B. Instructions for contacting emergency services and telephone numbers shall be prominently posted near the telephone including how to contact provider medical personnel if appropriate.

C. This section does not apply to home and noncenter-based services and correctional facilities.

12VAC35-105-550. First aid kit accessible.

A. A well-stocked first aid kit shall be maintained and readily accessible for minor injuries and medical emergencies at each service location and to employees or contractors providing in-home services or traveling with individuals. The minimum requirements of a well-stocked first aid kit that shall be maintained include a thermometer, bandages, saline solution, band-aids, sterile gauze, tweezers, instant ice-pack, adhesive tape, first-aid cream, and antiseptic soap.

B. A cardiopulmonary resuscitation (CPR) face guard or mask shall be readily accessible.

12VAC35-105-560. Operable flashlights or battery lanterns.

Operable flashlights or battery lanterns shall be readily accessible to employees and contractors in services that operate between dusk and dawn to use in emergencies. This section does not apply to home and noncenter-based services.

Part IV
Services and Supports

Article 1
Service Description and Staffing

12VAC35-105-570. Mission statement.

The provider shall develop a written mission statement that clearly identifies its philosophy, purpose, and goals.

12VAC35-105-580. Service description requirements.

A. The provider shall develop, implement, review, and revise its descriptions of services offered according to the provider's mission and shall make service descriptions available for public review.

B. The provider shall outline how each service offers a structured program of individualized interventions and care designed to meet the individuals' physical and emotional needs; provide protection, guidance and supervision; and meet the objectives of any required individualized services plan.

C. The provider shall prepare a written description of each service it offers. Elements of each service description shall include:

1. Service goals;

2. A description of care, treatment, training, or other supports provided;
3. Characteristics and needs of individuals to be served;
4. Contract services, if any;
5. Eligibility requirements and admission, continued stay, and exclusion criteria;
6. Service termination and discharge or transition criteria; and
7. Type and role of employees or contractors.

D. The provider shall revise the written service description whenever the operation of the service changes.

E. The provider shall not implement services that are inconsistent with its most current service description.

F. The provider shall admit only those individuals whose service needs are consistent with the service description, for whom services are available, and for which staffing levels and types meet the needs of the individuals served.

G. The provider shall provide for the physical separation of children and adults in residential and inpatient services and shall provide separate group programming for adults and children, except in the case of family services. The provider shall provide for the safety of children accompanying parents receiving services. Older adolescents transitioning from school to adult activities may participate in mental retardation (intellectual disability) day support services with adults.

H. The service description for substance abuse treatment services shall address the timely and appropriate treatment of pregnant women with substance abuse (substance use disorders).

I. If the provider plans to serve individuals as of a result of a temporary detention order to a service, prior to admitting those individuals to that service, the provider shall submit a written plan for adequate staffing and security measures to ensure the individual can be served safely within the service to the department for approval. If the plan is approved, the department will add a stipulation to the license authorizing the provider to serve individuals who are under temporary detention orders.

12VAC35-105-590. Provider staffing plan.

A. The provider shall implement a written staffing plan that includes the types, roles, and numbers of employees and contractors that are required to provide the service. This staffing plan shall reflect the:

1. Needs of the individuals served;
2. Types of services offered;
3. The service description; and
4. Number of people to be served at a given time.

B. The provider shall develop a written transition staffing plan for new services, added locations, and changes in capacity.

C. The provider shall meet the following staffing requirements related to supervision.

1. The provider shall describe how employees, volunteers, contractors, and student interns will be supervised in the staffing plan and how that supervision will be documented.
2. Supervision of employees, volunteers, contractors, and student interns shall be provided by persons who have experience in working with individuals receiving services and in providing the services outlined in the service description.
3. Supervision shall be appropriate to the services provided and the needs of the individual. Supervision shall be documented.
4. Supervision shall include responsibility for approving assessments and individualized services plans, as appropriate. This responsibility may be delegated to an employee or contractor who meets the qualification for supervision as defined in this section.
5. Supervision of mental health, substance abuse, or co-occurring services that are of an acute or clinical nature such as outpatient, inpatient, intensive in-home, or day treatment shall be provided by a licensed mental health professional or a mental health professional who is license-eligible and registered with a board of the Department of Health Professions.

6. Supervision of mental health, substance abuse, or co-occurring services that are of a supportive or maintenance nature, such as psychosocial rehabilitation, mental health supports shall be provided by a QMHP-A. An individual who is QMHP-E may not provide this type of supervision.

7. Supervision of mental retardation (intellectual disability) services shall be provided by a person with at least one year of documented experience working directly with individuals who have mental retardation (intellectual disability) or other developmental disabilities and holds at least a bachelor's degree in a human services field such as sociology, social work, special education, rehabilitation counseling, nursing, or psychology. Experience may be substituted for the education requirement.

8. Supervision of individual and family developmental disabilities support (IFDDS) services shall be provided by a person possessing at least one year of documented experience working directly with individuals who have developmental disabilities and is one of the following: a doctor of medicine or osteopathy licensed in Virginia; a registered nurse licensed in Virginia; or a person holding at least a bachelor's degree in a human services field such as sociology, social work, special education, rehabilitation counseling, or psychology. Experience may be substituted for the education requirement.

9. Supervision of brain injury services shall be provided at a minimum by a clinician in the health professions field who is trained and experienced in providing brain injury services to individuals who have a brain injury diagnosis including: (i) a doctor of medicine or osteopathy licensed in Virginia; (ii) a psychiatrist who is a doctor of medicine or osteopathy specializing in psychiatry and licensed in Virginia; (iii) a psychologist who has a master's degree in psychology from a college or university with at least one year of clinical experience; (iv) a social worker who has a bachelor's degree in human services or a related field (social work, psychology, psychiatric evaluation, sociology, counseling, vocational rehabilitation, human services counseling, or other degree deemed equivalent to those described) from an accredited college or university with at least two years of clinical experience providing direct services to individuals with a diagnosis of brain injury; (v) a Certified Brain Injury Specialist; (vi) a registered nurse licensed in Virginia with at least one year of clinical experience; or (vii) any other licensed rehabilitation professional with one year of clinical experience.

D. The provider shall employ or contract with persons with appropriate training, as necessary, to meet the specialized needs of and to ensure the safety of individuals being served in residential services with medical or nursing needs; speech, language, or hearing problems; or other needs where specialized training is necessary.

E. Providers of brain injury services shall employ or contract with a neuropsychologist or licensed clinical psychologist specializing in brain injury to assist, as appropriate, with initial assessments, development of individualized services plans, crises, staff training, and service design.

F. Direct care staff who provide brain injury services shall have at least a high school diploma and two years of experience working with individuals with disabilities or shall have successfully completed an approved training curriculum on brain injuries within six months of employment.

12VAC35-105-600. Nutrition.

A. A provider preparing and serving food shall:

1. Implement a written plan for the provision of food services, which ensures access to nourishing, well-balanced, varied, and healthy meals;
2. Make reasonable efforts to prepare meals that consider the cultural background, personal preferences, and food habits and that meet the dietary needs of the individuals served; and
3. Assist individuals who require assistance feeding themselves in a manner that effectively addresses any deficits.

B. Providers of residential and inpatient services shall implement a policy to monitor each individual's food consumption and nutrition for:

1. Warning signs of changes in physical or mental status related to nutrition; and
2. Compliance with any needs determined by the individualized services plan or prescribed by a physician, nutritionist, or health care professional.

12VAC35-105-610. Community participation.

Individuals receiving residential and day support services shall be afforded opportunities to participate in community activities that are based on their personal interests or preferences. The provider shall have written documentation that such opportunities were made available to individuals served.

12VAC35-105-620. Monitoring and evaluating service quality.

The provider shall implement written policies and procedures to monitor and evaluate service quality and effectiveness on a systematic and ongoing basis. Input from individuals receiving services and their authorized representatives, if applicable, about services used and satisfaction level of participation in the direction of service planning shall be part of the provider's quality assurance system. The provider shall implement improvements, when indicated.

Article 2

Screening, Admission, Assessment, Service Planning, and Orientation

12VAC35-105-630. (Repealed.)

12VAC35-105-640. (Repealed.)

12VAC35-105-645. Initial contacts, screening, admission, assessment, service planning, orientation, and discharge.

A. The provider shall implement policies and procedures for initial contacts and screening, admissions, and referral of individuals to other services and designate staff to perform these activities.

B. The provider shall maintain written documentation of an individual's initial contact and screening prior to his admission including the:

1. Date of contact;
2. Name, age, and gender of the individual;
3. Address and telephone number of the individual, if applicable;
4. Reason why the individual is requesting services; and
5. Disposition of the individual including his referral to other services for further assessment, placement on a waiting list for service, or admission to the service.

C. The provider shall assist individuals who are not admitted to identify other appropriate services.

D. The provider shall retain documentation of the individual's initial contacts and screening for six months. Documentation shall be included in the individual's record if the individual is admitted to the service.

12VAC35-105-650. Assessment policy.

A. The provider shall implement a written assessment policy. The policy shall define how assessments will be conducted and documented.

B. The provider shall actively involve the individual and authorized representative, if applicable, in the preparation of initial and comprehensive assessments and in subsequent reassessments. In these assessments and reassessments, the provider shall consider the individual's needs, strengths, goals, preferences, and abilities within the individual's cultural context.

C. The assessment policy shall designate employees or contractors who are responsible for conducting assessments. These employees or contractors shall have experience in working with the needs of individuals who are being assessed, the assessment tool or tools being utilized, and the provision of services that the individuals may require.

D. Assessment is an ongoing activity. The provider shall make reasonable attempts to obtain previous assessments or relevant history.

E. An assessment shall be initiated prior to or at admission to the service. With the participation of the individual and the individual's authorized representative, if applicable, the provider shall complete an initial assessment detailed enough to determine whether the individual qualifies for admission and to initiate an ISP for those individuals who are admitted to the service. This assessment shall assess immediate service, health, and safety needs, and at a minimum include the individual's:

1. Diagnosis;
2. Presenting needs including the individual's stated needs, psychiatric needs, support needs, and the onset and duration of problems;
3. Current medical problems;

4. Current medications;
5. Current and past substance use or abuse, including co-occurring mental health and substance abuse disorders; and
6. At-risk behavior to self and others.

F. A comprehensive assessment shall update and finalize the initial assessment. The timing for completion of the comprehensive assessment shall be based upon the nature and scope of the service but shall occur no later than 30 days, after admission for providers of mental health and substance abuse services and 60 days after admission for providers of mental retardation (intellectual disability) and developmental disabilities services. It shall address:

1. Onset and duration of problems;
2. Social, behavioral, developmental, and family history and supports;
3. Cognitive functioning including strengths and weaknesses;
4. Employment, vocational, and educational background;
5. Previous interventions and outcomes;
6. Financial resources and benefits;
7. Health history and current medical care needs, to include:
 - a. Allergies;
 - b. Recent physical complaints and medical conditions;
 - c. Nutritional needs;
 - d. Chronic conditions;
 - e. Communicable diseases;
 - f. Restrictions on physical activities if any;
 - g. Past serious illnesses, serious injuries, and hospitalizations;
 - h. Serious illnesses and chronic conditions of the individual's parents, siblings, and significant others in the same household; and
 - i. Current and past substance use including alcohol, prescription and nonprescription medications, and illicit drugs.
8. Psychiatric and substance use issues including current mental health or substance use needs, presence of co-occurring disorders, history of substance use or abuse, and circumstances that increase the individual's risk for mental health or substance use issues;
9. History of abuse, neglect, sexual, or domestic violence, or trauma including psychological trauma;
10. Legal status including authorized representative, commitment, and representative payee status;
11. Relevant criminal charges or convictions and probation or parole status;
12. Daily living skills;
13. Housing arrangements;
14. Ability to access services including transportation needs; and
15. As applicable, and in all residential services, fall risk, communication methods or needs, and mobility and adaptive equipment needs.

G. Providers of short-term intensive services including inpatient and crisis stabilization services shall develop policies for completing comprehensive assessments within the time frames appropriate for those services.

H. Providers of non-intensive or short-term services shall meet the requirements for the initial assessment at a minimum. Non-intensive services are services provided in jails, nursing homes, or other locations when access to records and information is limited by the location and nature of the services. Short-term services typically are provided for less than 60 days.

I. Providers may utilize standardized state or federally sanctioned assessment tools that do not meet all the criteria of 12VAC35-105-650 as the initial or comprehensive assessment tools as long as the tools assess the individual's health and safety issues and substantially meet the requirements of this section.

J. Individuals who receive medication-only services shall be reassessed at least annually to determine whether there is a change in the need for additional services and the effectiveness of the medication.

12VAC35-105-660. Individualized services plan (ISP).

A. The provider shall actively involve the individual and authorized representative, as appropriate, in the development, review, and revision of a person-centered ISP. The individualized services planning process shall be consistent with laws protecting confidentiality, privacy, human rights of individuals receiving services, and rights of minors.

B. The provider shall develop an initial person-centered ISP for the first 60 days for mental retardation (intellectual disability) and developmental disabilities services or for the first 30 days for mental health and substance abuse services. This ISP shall be developed and implemented within 24 hours of admission to address immediate service, health, and safety needs and shall continue in effect until the ISP is developed or the individual is discharged, whichever comes first.

C. The provider shall implement a person-centered comprehensive ISP as soon as possible after admission based upon the nature and scope of services but no later than 30 days after admission for providers of mental health and substance abuse services and 60 days after admission for providers of mental retardation (intellectual disability) and developmental disabilities services.

12VAC35-105-665. ISP requirements.

A. The comprehensive ISP shall be based on the individual's needs, strengths, abilities, personal preferences, goals, and natural supports identified in the assessment. The ISP shall include:

1. Relevant and attainable goals, measurable objectives, and specific strategies for addressing each need;
2. Services and supports and frequency of services required to accomplish the goals including relevant psychological, mental health, substance abuse, behavioral, medical, rehabilitation, training, and nursing needs and supports;
3. The role of the individual and others in implementing the service plan;
4. A communication plan for individuals with communication barriers, including language barriers;
5. A behavioral support or treatment plan, if applicable;
6. A safety plan that addresses identified risks to the individual or to others, including a fall risk plan;
7. A crisis or relapse plan, if applicable;
8. Target dates for accomplishment of goals and objectives;
9. Identification of employees or contractors responsible for coordination and integration of services, including employees of other agencies; and
10. Recovery plans, if applicable.

B. The ISP shall be signed and dated at a minimum by the person responsible for implementing the plan and the individual receiving services or the authorized representative. If the signature of the individual receiving services or the authorized representative cannot be obtained, the provider shall document his attempt to obtain the necessary signature and the reason why he was unable to obtain it.

C. The provider shall designate a person who will be responsible for developing, implementing, reviewing, and revising each individual's ISP in collaboration with the individual or authorized representative, as appropriate.

D. Employees or contractors who are responsible for implementing the ISP shall demonstrate a working knowledge of the objectives and strategies contained in the individual's current ISP.

E. Providers of short-term intensive services such as inpatient and crisis stabilization services that are typically provided for less than 30 days shall implement a policy to develop an ISP within a timeframe consistent with the length of stay of individuals.

F. The ISP shall be consistent with the plan of care for individuals served by the IFDDS Waiver.

G. When a provider provides more than one service to an individual the provider may maintain a single ISP document that contains individualized objectives and strategies for each service provided.

H. Whenever possible the identified goals in the ISP shall be written in the words of the individual receiving services.

12VAC35-105-670. (Repealed.)

12VAC35-105-675. Reassessments and ISP reviews.

A. Reassessments shall be completed at least annually and when there is a need based on the medical, psychiatric, or behavioral status of the individual.

B. The provider shall update the ISP at least annually. The provider shall review the ISP at least every three months from the date of the implementation of the ISP or whenever there is a revised assessment based upon the individual's changing needs or goals. These reviews shall evaluate the individual's progress toward meeting the plan's goals and objectives and the continued relevance of the ISP's objectives and strategies. The provider shall update the goals, objectives, and strategies contained in the ISP, if indicated, and implement any updates made.

12VAC35-105-680. Progress notes or other documentation.

The provider shall use signed and dated progress notes or other documentation to document the services provided and the implementation of the goals and objectives contained in the ISP.

12VAC35-105-690. Orientation.

A. The provider shall implement a written policy regarding the orientation of individuals and their authorized representatives, if applicable to services.

B. As appropriate to the scope and level of services the policy shall require the provision to individuals and authorized representatives the following information:

1. The mission of the provider or service;
2. Service confidentiality practices and protections for individuals receiving services;
3. Human rights policies and protections and instructions on how to report violations;
4. Opportunities for participation in services and discharge planning;
5. Fire safety and emergency preparedness procedures, if applicable;
6. The provider's grievance procedure;
7. Service guidelines including criteria for admission to and discharge or transfer from services;
8. Hours and days of operation;
9. Availability of after-hours service; and
10. Any charges or fees due from the individual.

C. In addition, individuals receiving treatment services in a correctional facility shall receive an orientation to the facility's security restrictions.

D. The provider shall document that the individual and authorized representative, if applicable, received an orientation to services.

12VAC35-105-691. Transition of individuals among service

A. The provider shall implement written procedures that define the process for transitioning an individual between or among services operated by the provider. At a minimum the policy shall address:

1. The process by which the provider will assure continuity of services during and following transition;
2. The participation of the individual or his authorized representative, as applicable, in the decision to move and in the planning for transfer;
3. The process and timeframe for transferring the access to individual's record and ISP to the destination location;
4. The process and timeframe for completing the transfer summary ; and
5. The process and timeframe for transmitting or accessing, where applicable, discharge summaries to the destination service.

B. The transfer summary shall include at a minimum the following:

1. Reason for the individual's transfer;
2. Documentation of involvement by the individual or his authorized representative, as applicable, in the decision to and planning for the transfer;
3. Current psychiatric and known medical conditions or issues of the individual and the identity of the individual's health care providers;
4. Updated progress of the individual in meeting goals and objectives in his ISP;
5. Emergency medical information;
6. Dosages of all currently prescribed medications and over-the-counter medications used by the individual when prescribed by the provider or known by the case manager;
7. Transfer date; and
8. Signature of employee or contractor responsible for preparing the transfer summary.

C. The transfer summary may be documented in the individual's progress notes or in information easily accessible within an electronic health record.

12VAC35-105-693. Discharge.

A. The provider shall have written policies and procedures regarding the discharge or termination of individuals from the service. These policies and procedures shall include medical and clinical criteria for discharge.

B. Discharge instructions shall be provided in writing to the individual, his authorized representative, and the successor provider, as applicable. Discharge instructions shall include at a minimum medications and dosages; names, phone numbers, and addresses of any providers to whom the individual is referred; current medical issues or conditions; and the identity of the treating health care providers.

C. The provider shall make appropriate arrangements or referrals to all service providers identified in the discharge plan prior to the individual's scheduled discharge date.

D. The content of the discharge plan and the determination to discharge the individual shall be consistent with the ISP and the criteria for discharge.

E. The provider shall document in the individual's service record that the individual, his authorized representative, and his family members, as appropriate, have been involved in the discharge planning process.

F. A written discharge summary shall be completed within 30 days of discharge and shall include at a minimum the following:

1. Reason for the individual's admission to and discharge from the service;
2. Description of the individual's or authorized representative's participation in discharge planning;
3. The individual's current level of functioning or functioning limitations, if applicable;
4. Recommended procedures, activities, or referrals to assist the individual in maintaining or improving functioning and increased independence;
5. The status, location, and arrangements that have been made for future services;
6. Progress made by the individual in achieving goals and objectives identified in the ISP and summary of critical events during service provision;
7. Discharge date;
8. Discharge medications prescribed by the provider, if applicable;
9. Date the discharge summary was actually written or documented; and
10. Signature of the person who prepared the summary.

Article 3

Crisis Intervention and Emergencies

12VAC35-105-700. Written policies and procedures for crisis or emergency interventions; required elements.

A. The provider shall implement written policies and procedures for prompt intervention in the event of a crisis or a behavioral, medical, or psychiatric emergency that may occur during screening and referral, at admission, or during the period of service provision.

B. The policies and procedures shall include:

1. A definition of what constitutes a crisis or behavioral, medical, or psychiatric emergency;
2. Procedures for immediately accessing appropriate internal and external resources. This shall include a provision for obtaining physician and mental health clinical services if the provider's or service's on-call or back-up physician or mental health clinical services are not available at the time of the emergency;
3. Employee or contractor responsibilities; and
4. Location of emergency medical information for each individual receiving services, including any advance psychiatric or medical directive or crisis response plan developed by the individual, which shall be readily accessible to employees or contractors on duty in an emergency or crisis.

12VAC35-105-710. Documenting crisis intervention and emergency services.

A. The provider shall develop a method for documenting the provision of crisis intervention and emergency services. Documentation shall include the following:

1. Date and time;
2. Description of the nature of or circumstances surrounding the crisis or emergency;
3. Name of individual;
4. Description of precipitating factors;
5. Interventions or treatment provided;
6. Names of employees or contractors responding to or consulted during the crisis or emergency; and
7. Outcome.

B. If a crisis or emergency involves an individual who is admitted into service, documentation of the crisis intervention or provision of emergency services shall become part of his record.

Article 4

Medical Management

12VAC35-105-720. Health care policy.

A. The provider shall implement a policy, appropriate to the scope and level of service that addresses provision of adequate and appropriate medical care. This policy shall describe how:

1. Medical care needs will be assessed including circumstances that will prompt the decision to obtain a medical assessment.
2. Individualized services plans will address any medical care needs appropriate to the scope and level of service.
3. Identified medical care needs will be addressed.
4. The provider will manage medical care needs or respond to abnormal findings.
5. The provider will communicate medical assessments and diagnostic laboratory results to the individual and authorized representative, as appropriate.
6. The provider will keep accessible to staff and contractors on duty the names, addresses, and phone numbers of the individual's medical and dental providers.

7. The provider will ensure a means for facilitating and arranging, as appropriate, transportation to medical and dental appointments and medical tests, when services cannot be provided on site.

B. The provider shall implement written policies to identify any individuals who are at risk for falls and develop and implement a fall prevention and management plan and program for each at risk individual.

C. Providers of residential or inpatient services shall provide or arrange for the provision of appropriate medical care. Providers of other services shall define instances when they shall provide or arrange for appropriate medical and dental care and instances when they shall refer the individual to appropriate medical care.

D. The provider shall implement written infection control measures including the use of universal precautions.

E. The provider shall report outbreaks of infectious diseases to the Department of Health pursuant to § 32.1-37 of the Code of Virginia.

12VAC35-105-730. (Repealed.)

12VAC35-105-740. Physical examination for residential and inpatient services.

A. Providers of residential or inpatient services shall administer or obtain results of physical exams within 30 days of an individual's admission. The examination must have been conducted within one year of admission to the service. Providers of inpatient services shall administer physical exams within 24 hours of an individual's admission.

B. A physical examination shall include, at a minimum:

1. General physical condition (history and physical);
2. Evaluation for communicable diseases;
3. Recommendations for further diagnostic tests and treatment, if appropriate;
4. Other examinations that may be indicated; and
5. The date of examination and signature of a qualified practitioner.

C. Locations designated for physical examinations shall ensure individual privacy.

D. The provider shall review and follow-up with the results of the physical examination and of any follow-up diagnostic tests, treatments, or examinations in the individual's record.

12VAC35-105-750. Emergency medical information.

A. The provider shall maintain the following emergency medical information for each individual:

1. If available, the name, address, and telephone number of:
 - a. The individual's physician; and
 - b. The authorized representative or other person to be notified;
2. Medical insurance company name and policy or Medicaid, Medicare , or CHAMPUS number, if any;
3. Currently prescribed medications and over-the-counter medications used by the individual;
4. Medication and food allergies;
5. History of substance abuse;
6. Significant medical problems or conditions;
7. Significant ambulatory or sensory problems;
8. Significant communication problems; and
9. Advance directive, if one exists.

B. Current emergency medical information shall be readily available to employees or contractors wherever program services are provided.

12VAC35-105-760. Medical equipment.

The provider shall develop and implement a policy on maintenance and use of medical equipment, including personal medical equipment and devices.

Article 5
Medication Management Services

12VAC35-105-770. Medication management.

A. The provider shall implement written policies addressing:

1. The safe administration, handling, storage, and disposal of medications;
2. The use of medication orders;
3. The handling of packaged medications brought by individuals from home or other residences;
4. Employees or contractors who are authorized to administer medication and training required for administration of medication;
5. The use of professional samples; and
6. The window within which medications can be given in relation to the ordered or established time of administration.

B. Medications shall be administered only by persons who are authorized to do so by state law.

C. Medications shall be administered only to the individuals for whom the medications are prescribed and shall be administered as prescribed.

D. The provider shall maintain a daily log of all medicines received and refused by each individual. This log shall identify the employee or contractor who administered the medication, the name of the medication and dosage administered or refused, and the time the medication was administered or refused.

E. If the provider administers medications or supervises self-administration of medication in a service, a current medication order for all medications the individual receives shall be maintained on site.

F. The provider shall promptly dispose of discontinued drugs, outdated drugs, and drug containers with worn, illegible, or missing labels according to the applicable regulations of the Virginia Board of Pharmacy.

12VAC35-105-780. Medication errors and drug reactions.

In the event of a medication error or adverse drug reaction:

1. First aid shall be administered if indicated.
2. Employees or contractors shall promptly contact a poison control center, pharmacist, nurse or physician and shall take actions as directed.
3. The individual's physician shall be notified as soon as possible unless the situation is addressed in standing orders.
4. Actions taken by employees or contractors shall be documented.
5. The provider shall review medication errors at least quarterly as part of the quality assurance in 12VAC35-105-620.
6. Medication errors and adverse drug reactions shall be recorded in the individual's medication log.

12VAC35-105-790. Medication administration and storage or pharmacy operation.

A. A provider responsible for medication administration and medication storage or pharmacy operations shall comply with:

1. The Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia);
2. The Virginia Board of Pharmacy regulations;
3. The Virginia Board of Nursing regulations; and
4. Applicable federal laws and regulations relating to controlled substances.

B. A provider responsible for medication administration and storage or pharmacy operation shall provide in-service training to employees and consultation to individuals and authorized representatives on issues of basic pharmacology including medication side effects.

Article 6
Behavior Interventions

12VAC35-105-800. Policies and procedures on behavior interventions and supports.

A. The provider shall implement written policies and procedures that describe the use of behavior interventions, including seclusion, restraint, and time out. The policies and procedures shall:

1. Be consistent with applicable federal and state laws and regulations;
2. Emphasize positive approaches to behavior interventions;
3. List and define behavior interventions in the order of their relative degree of intrusiveness or restrictiveness and the conditions under which they may be used in each service for each individual;
4. Protect the safety and well-being of the individual at all times, including during fire and other emergencies;
5. Specify the mechanism for monitoring the use of behavior interventions; and
6. Specify the methods for documenting the use of behavior interventions.

B. Employees and contractors trained in behavior support interventions shall implement and monitor all behavior interventions.

C. Policies and procedures related to behavior interventions shall be available to individuals, their families, authorized representatives, and advocates. Notification of policies does not need to occur in correctional facilities.

D. Individuals receiving services shall not discipline, restrain, seclude, or implement behavior interventions on other individuals receiving services.

E. Injuries resulting from or occurring during the implementation of behavior interventions shall be recorded in the individual's services record and reported to the assigned human rights advocate and the employee or contractor responsible for the overall coordination of services.

12VAC35-105-810. Behavioral treatment plan.

A written behavioral treatment plan may be developed as part of the individualized services plan in response to behavioral needs identified through the assessment process. A behavioral treatment plan may include restrictions only if the plan has been developed according to procedures outlined in the human rights regulations. A behavioral treatment plan shall be developed, implemented, and monitored by employees or contractors trained in behavioral treatment.

12VAC35-105-820. Prohibited actions.

The following actions shall be prohibited:

1. Prohibition of contacts and visits with the individual's attorney, probation officer, placing agency representative, minister or chaplain;
2. Any action that is humiliating, degrading, or abusive;
3. Subjection to unsanitary living conditions;
4. Deprivation of opportunities for bathing or access to toilet facilities except as ordered by a licensed physician for a legitimate medical purpose and documented in the individual's record;
5. Deprivation of appropriate services and treatment;
6. Deprivation of health care;
7. Administration of laxatives, enemas, or emetics except as ordered by a physician or other professional acting within the scope of his license for a legitimate medical purpose and documented in the individual's record;
8. Applications of aversive stimuli except as permitted pursuant to other applicable state regulations;
9. Limitation on contacts with regulators, advocates or staff attorneys employed by the department or the Virginia Office for Protection and Advocacy.
10. Deprivation of drinking water or food necessary to meet an individual's daily nutritional needs except as ordered by a licensed physician for a legitimate medical purpose and documented in the individual's record;

11. Prohibition on contacts or visits with family or an authorized representative except as permitted by other applicable state regulations or by order of a court of competent jurisdiction;
12. Delay or withholding of incoming or outgoing mail except as permitted by other applicable state and federal regulations or by order of a court of competent jurisdiction; and
13. Deprivation of opportunities for sleep or rest except as ordered by a licensed physician for a legitimate medical purpose and documented in the individual's record.

12VAC35-105-830. Seclusion, restraint, and time out.

A. The use of seclusion, restraint, and time out shall comply with applicable federal and state laws and regulations and be consistent with the provider's policies and procedures.

B. Devices used for mechanical restraint shall be designed specifically for behavior management of human beings in clinical or therapeutic programs.

C. Application of time out, seclusion, or restraint shall be documented in the individual's record and include the following:

1. Physician's order for seclusion or mechanical restraint or chemical restraint;
2. Date and time;
3. Employees or contractors involved;
4. Circumstances and reasons for use including other behavior management techniques attempted;
5. Duration;
6. Type of technique used; and
7. Outcomes, including documentation of debriefing of the individual and staff involved following the incident.

12VAC35-105-840. Requirements for seclusion room.

A. The room used for seclusion shall meet the design requirements for buildings used for detention or seclusion of individuals.

B. The seclusion room shall be at least six feet wide and six feet long with a minimum ceiling height of eight feet.

C. The seclusion room shall be free of all protrusions, sharp corners, hardware, fixtures or other devices which may cause injury to the individual.

D. Windows in the seclusion room shall be so constructed as to minimize breakage and otherwise prevent the individual from harming himself.

E. Light fixtures and other electrical receptacles in the seclusion room shall be recessed or so constructed as to prevent the individual from harming himself. Light controls shall be located outside the seclusion room.

F. Doors to the seclusion room shall be at least 32 inches wide, shall open outward and shall contain observation view panels of transparent wire glass or its approved equivalent, not exceeding 120 square inches but of sufficient size for someone outside the door to see into all corners of the room.

G. The seclusion room shall contain only a mattress with a washable mattress covering designed to avoid damage by tearing.

H. The seclusion room shall maintain temperatures appropriate for the season.

I. All space in the seclusion room shall be visible through the locked door, either directly or by mirrors.

12VAC35-105-850. (Repealed.)

12VAC35-105-860. (Repealed.)

Part V
Records Management

12VAC35-105-870. Paper and electronic records management policy.

A. The provider shall implement a written records management policy that describes confidentiality, accessibility, security, and retention of paper and electronic records pertaining to individuals, including:

1. Access and limitation of access, duplication, or dissemination of individual information to persons who are authorized to access such information according to federal and state laws;
2. Storage, processing, and handling of active and closed records;
3. Storage, processing, and handling of electronic records;
4. Security measures that protect records from loss, unauthorized alteration, inadvertent or unauthorized access, disclosure of information, and transportation of records between service sites;
5. Strategies for service continuity and record recovery from interruptions that result from disasters or emergencies including contingency plans, electronic or manual back-up systems, and data retrieval systems;
6. Designation of the person responsible for records management; and
7. Disposition of records in the event that the service ceases operation. If the disposition of records involves a transfer to another provider, the provider shall have a written agreement with that provider.

B. The records management policy shall be consistent with applicable state and federal laws and regulations including:

1. Section 32.1-127.1:03 of the Code of Virginia;
2. 42 USC § 290dd;
3. 42 CFR Part 2; and
4. The Health Insurance Portability and Accountability Act (Public Law 104-191) and implementing regulations (45 CFR Parts 160, 162, and 164).

12VAC35-105-880. Documentation policy.

A. The provider shall define, by policy, all records it maintains that address an individual's care and treatment and what each record contains.

B. The provider shall define, by policy, and implement a system of documentation that supports appropriate service planning, coordination, and accountability. At a minimum this policy shall outline:

1. The location of the individual's record;
2. Methods of access by employees or contractors to the individual's record; and
3. Methods of updating the individual's record by employees or contractors including the frequency and format of updates.

C. Entries in the individual's record shall be current, dated, and authenticated by the persons making the entries. For paper records, errors shall be corrected by striking through and initialing the incorrect information. If records are electronic, the provider shall implement a written policy to include the identification of errors and corrections to the record.

12VAC35-105-890. Individual's service record.

A. There shall be a separate primary record for each individual admitted for service. A separate record shall be maintained for each family member who is receiving individual treatment.

B. All individuals admitted to the service shall have identifying information readily accessible in the individual's service record. Identifying information shall include the following:

1. Identification number unique for the individual;
2. Name of individual;
3. Current residence, if known;
4. Social security number;
5. Gender;
6. Marital status;
7. Date of birth;
8. Name of authorized representative, if applicable;

9. Name, address, and telephone number for emergency contact;
10. Adjudicated legal incompetency or legal incapacity, if applicable; and
11. Date of admission to service.

C. In addition an individual's service record shall contain, at a minimum:

1. Screening documentation;
2. Assessments;
3. Medical evaluation, as applicable to the service;
4. Individualized services plans and reviews;
5. Progress notes; and
6. A discharge summary, if applicable.

12VAC35-105-900. Record storage and security.

- A. When not in use, active and closed paper records shall be stored in a locked cabinet or room.
- B. Physical and data security controls shall exist to protect electronic records.

12VAC35-105-910. Retention of individual's service records.

The provider shall retain an individual's service record for the time period specified by state or federal requirements.

12VAC35-105-920. Review process for records.

The provider shall implement a review process to evaluate both current and closed records for completeness, accuracy, and timeliness of entries.

Part VI
Additional Requirements for Selected Services

Article 1
Medication Assisted Treatment (Opioid Treatment Services)

12VAC35-105-925. Standards for the evaluation of new licenses for providers of services to individuals with opioid addiction.

A. Applicants requesting an initial license to provide a service for the treatment of opioid addiction through the use of methadone or any other opioid treatment medication or controlled substance shall supply information to the department that demonstrates the appropriateness of the proposed service in accordance with this section.

B. The proposed site of the service shall comply with § 37.2-406 of the Code of Virginia and, with the exception of services that are proposed to be located in Planning District 8, shall not be located within one-half mile of a public or private licensed day care center or a public or private K-12 school.

C. In jurisdictions without zoning ordinances, the department shall request that the local governing body advise it as to whether the proposed site is suitable for and compatible with use as an office and the delivery of health care services. The department shall make this request when it notifies the local governing body of a pending application.

D. Applicants shall demonstrate that the building or space to be used to provide the proposed service is suitable for the treatment of opioid addiction by submitting documentation of the following:

1. The proposed site complies with the requirements of the local building regulatory entity;
2. The proposed site complies with local zoning laws or ordinances, including any required business licenses;
3. In the absence of local zoning ordinances, the proposed site is suitable for and compatible with use as offices and the delivery of health care services;
4. In jurisdictions where there are no parking ordinances, the proposed site has sufficient off-street parking to accommodate the needs of the individuals being served and prevent the disruption of traffic flow;

5. The proposed site can accommodate individuals during periods of inclement weather;
6. The proposed site complies with the Virginia Statewide Fire Prevention Code; and
7. The applicant has a written plan to ensure security for storage of methadone at the site, which complies with regulations of the Drug Enforcement Agency (DEA), and the Virginia Board of Pharmacy.

E. Applicants shall submit information to demonstrate that there are sufficient personnel available to meet the following staffing requirements and qualifications:

1. The program director shall be licensed or certified by the applicable Virginia health regulatory board or by a nationally recognized certification board or eligible for this license or certification with relevant training, experience, or both, in the treatment of individuals with opioid addiction;
2. The medical director shall be a board-certified addictionologist or have successfully completed or will complete within one year a course of study in opiate addiction that is approved by the department;
3. A minimum of one pharmacist;
4. Nurses;
5. Counselors shall be licensed or certified by the applicable Virginia health regulatory board or by a nationally recognized certification board or eligible for this license or certification; and
6. Personnel to provide support services.

F. Applicants shall submit a description for the proposed service that includes:

1. Proposed mission, philosophy, and goals of the provider;
2. Care, treatment, and services to be provided, including a comprehensive discussion of levels of care provided and alternative treatment strategies offered;
3. Proposed hours and days of operation;
4. Plans for on-site security; and
5. A diversion control plan for dispensed medications, including policies for use of drug screens.

G. Applicants shall, in addition to the requirements of 12VAC35-105-580 C 2, provide documentation of their capability to provide the following services and support directly or by arrangement with other specified providers when such services and supports are (i) requested by an individual being served or (ii) identified as an individual need, based on the assessment conducted in accordance with 12VAC35-105-60 B and included in the individualized services plan:

1. Psychological services;
2. Social services;
3. Vocational services;
4. Educational services; and
5. Employment services.

H. Applicants shall submit documentation of contact with community services boards or behavioral health authorities in their service areas to discuss their plans for operating in the area and to develop joint agreements, as appropriate.

I. Applicants shall provide policies and procedures that each individual served to be assessed every six months by the treatment team to determine if that individual is appropriate for safe and voluntary medically supervised withdrawal, alternative therapies including other medication assisted treatments, or continued federally approved pharmacotherapy treatment for opioid addiction.

J. Applicants shall submit policies and procedures describing services they will provide to individuals who wish to discontinue opioid treatment services.

K. Applicants shall provide assurances that the service will have a community liaison responsible for developing and maintaining cooperative relationships with community organizations, other service providers, local law enforcement, local government officials, and the community at large.

L. The department shall conduct announced and unannounced reviews and complaint investigations in collaboration with the Virginia Board of Pharmacy and DEA to determine compliance with the regulations.

12VAC35-105-930. Registration, certification or accreditation.

A. The opioid treatment service shall maintain current registration or certification with:

1. The federal Drug Enforcement Administration;
2. The federal Department of Health and Human Services; and
3. The Virginia Board of Pharmacy.

B. A provider of opioid treatment services shall maintain accreditation with an entity approved under federal regulations.

12VAC35-105-940. Criteria for involuntary termination from treatment.

A. The provider shall establish criteria for involuntary termination from treatment that describe the rights of the individual receiving services and the responsibilities and rights of the provider.

B. The provider shall establish a grievance procedure as part of the rights of the individual.

C. On admission, the individual shall be given a copy of the criteria and shall sign a statement acknowledging receipt of same. The signed acknowledgement shall be maintained in the individual's record.

D. Upon admission and annually all individuals shall sign an authorization for disclosure of information to allow programs access to the Virginia Prescription Monitoring System. Failure to comply shall be grounds for nonadmission to the program.

12VAC35-105-950. Service operation schedule.

A. The service's days of operation shall meet the needs of the individuals served. If the service dispenses or administers a medication requiring daily dosing, the service shall operate seven days a week, 12 months a year, except for official state holidays. Prior approval from the state methadone authority shall be required for additional closed days.

B. The service may close on Sundays if the following criteria are met:

1. The provider develops and implements policies and procedures that address recently inducted individuals receiving services, individuals not currently on a stable dose of medication, patients that present noncompliance treatment behaviors, and individuals who previously picked up take-home medications on Sundays, security of take-home medication doses, and health and safety of individuals receiving services.
2. The provider receives prior approval from the state methadone authority for Sunday closings.
3. Once approved, the provider shall notify individuals receiving services in writing at least 30 days in advance of their intent to close on Sundays. The notice shall address the risks to the individuals and the security of take-home medications. All individuals shall receive an orientation addressing take-home policies and procedures, and this orientation shall be documented in the individual's record prior to receiving take-home medications.
4. The provider shall establish procedures for emergency access to dosing information 24 hours a day, seven days a week. This information may be provided via an answering service, pager, or other electronic measures. Information needed includes the individual's last dosing time and date, and dose.

C. Medication dispensing hours shall include at least two hours each day of operation outside normal working hours, i.e., before 9 a.m. and after 5 p.m. The state methadone authority may approve an alternative schedule if that schedule meets the needs of the population served.

12VAC35-105-960. Physical examinations.

A. The individual shall have a complete physical examination prior to admission to the service unless the individual is transferring from another licensed opioid agonist service. The results of serology and other tests shall be available within 14 days of admission.

B. Physical exams of each individual shall be completed annually or more frequently if there is a change in the individual's physical or mental condition.

C. The provider shall maintain the report of the individual's physical examination in the individual's service record.

D. On admission, all individuals shall be offered testing for AIDS/HIV. The individual may sign a notice of refusal without prejudice.

E. The provider shall coordinate treatment services for individuals who are prescribed benzodiazepines and prescription narcotics with the treating physician. The coordination shall be the responsibility of the provider's physician and shall be documented.

12VAC35-105-970. Counseling sessions.

The provider shall conduct face-to-face counseling sessions (either individual or group) at least every two weeks for the first year of an individual's treatment and every month in the second year of the individual's treatment. After two years, the number of face-to-face counseling sessions that an individual receives shall be based on the individual's progress in treatment. The failure of an individual to participate in counseling sessions shall be addressed as part of the overall treatment process.

12VAC35-105-980. Drug screens.

A. The provider shall perform at least eight random drug screens during a 12-month period unless the conditions in subdivision B of this subsection apply;

B. Whenever an individual's drug screen indicates continued illicit drug use or when clinically and environmentally indicated, random drug screens shall be performed weekly.

C. Drug screens shall be analyzed for opiates, methadone (if ordered), benzodiazepines, and cocaine. In addition, drug screens for other drugs that have the potential for addiction shall be performed when clinically and environmentally indicated.

D. The provider shall implement a written policy on how the results of drug screens shall be used to direct treatment.

12VAC35-105-990. Take-home medication.

A. Prior to dispensing regularly scheduled take-home medication, the provider shall ensure the individual demonstrates a level of current lifestyle stability as evidenced by the following:

1. Regular clinic attendance, including dosing and participation in counseling or group sessions;
2. Absence of recent alcohol abuse and illicit drug use;
3. Absence of significant behavior problems;
4. Absence of recent criminal activities, charges, or convictions;
5. Stability of the individual's home environment and social relationships;
6. Length of time in treatment;
7. Ability to assure take-home medications are safely stored; and
8. Demonstrated rehabilitative benefits of take-home medications outweigh the risks of possible diversion.

B. The provider shall educate the individual on the safe transportation and storage of take-home medication.

12VAC35-105-1000. Preventing duplication of medication services.

To prevent duplication of opioid medication services to an individual, the provider shall implement a written policy and procedures for contacting every opioid treatment service within a 50-mile radius before admitting an individual.

12VAC35-105-1010. Guests.

A. The provider shall not dispense medication to any guest unless the guest has been receiving such medication services from another provider and documentation from that provider has been received prior to dispensing medication.

B. Guests may receive medication for up to 28 days. To continue receiving medication after 28 days, the guest must be admitted to the service. Individuals receiving guest medications as part of a residential treatment service may exceed the 28-day maximum time limit.

12VAC35-105-1020. Detoxification prior to involuntary discharge.

The provider shall give an individual who is being involuntarily discharged an opportunity to detoxify from opioid agonist medication not less than 10 days or not more than 30 days prior to his discharge from the service, unless the state methadone authority has granted an exception.

12VAC35-105-1030. Opioid agonist medication renewal.

Physician orders for opioid agonist medication shall be reevaluated and renewed at least every six months.

12VAC35-105-1040. Emergency preparedness plan.

The provider's emergency preparedness plan shall include provision for the continuation of opioid treatment in the event of an emergency or natural disaster.

12VAC35-105-1050. Security of opioid agonist medication supplies.

A. At a minimum, the provider shall secure opioid agonist medication supplies by restricting access to medication areas to medical or pharmacy personnel.

B. The provider shall reconcile the medication inventory monthly.

C. The provider shall keep inventory records, including the monthly reconciliation, for three years.

D. The provider shall maintain a current plan to control the diversion of medication to unprescribed or illegal uses.

Article 2

Medically Managed Withdrawal Services

12VAC35-105-1055. Description of level of care provided.

In the service description the provider shall describe the level of services and the medical management provided.

12VAC35-105-1060. Cooperative agreements with community agencies.

The provider shall establish cooperative agreements with other community agencies to accept referrals for treatment, including provisions for physician coverage if not provided on-site, and emergency medical care. The agreements shall clearly outline the responsibility of each party.

12VAC35-105-1070. Observation area.

The provider shall provide for designated areas for employees and contractors with unobstructed observation of individuals.

12VAC35-105-1080. Direct-care training for providers of detoxification services.

A. The provider shall document staff training in the areas of:

1. Management of withdrawal; and
2. First responder training.

B. Untrained employees or contractors shall not be solely responsible for the care of individuals.

12VAC35-105-1090. Minimum number of employees or contractors on duty.

In detoxification service locations, at least two employees or contractors shall be on duty at all times. If the location is within or contiguous to another service location, at least one employee or contractor shall be on duty at the location with trained backup employees or contractors immediately available. In other managed withdrawal settings the number of staff on duty shall be appropriate for the services offered and individuals served.

12VAC35-105-1100. Documentation.

Employees or contractors on each shift shall document services provided and significant events in the individual's record.

12VAC35-105-1110. Admission assessments.

During the admission process, providers of managed withdrawal services shall:

1. Identify individuals with a high-risk for medical complications or who may pose a danger to themselves or others;
2. Assess substances used and time of last use;
3. Determine time of last meal;
4. Administer a urine screen;

5. Analyze blood alcohol content or administer a breathalyzer; and
6. Record vital signs.

12VAC35-105-1120. Vital signs.

- A. Unless the individual refuses, the provider shall take vital signs:
 1. At admission and discharge;
 2. Every four hours for the first 24 hours and every eight hours thereafter; and
 3. As frequently as necessary, until signs and symptoms stabilize for individuals with a high-risk profile.
- B. The provider shall have procedures to address situations when an individual refuses to have vital signs taken.
- C. The provider shall document vital signs, all refusals and follow-up actions taken.

12VAC35-105-1130. Light snacks and fluids.

The provider shall offer light snacks and fluids to individuals who are not in danger of aspirating.

Article 3

Services in Department of Corrections Correctional Facilities

12VAC35-105-1140. Clinical and security coordination.

- A. The provider shall have formal and informal methods of resolving procedural and programmatic issues regarding individual care arising between the clinical and security employees or contractors.
- B. The provider shall demonstrate ongoing communication between clinical and security employees to ensure individual care.
- C. The provider shall provide cross-training for the clinical and security employees or contractors that includes:
 1. Mental health, mental retardation (intellectual disability), and substance abuse education;
 2. Use of clinical and security restraints; and
 3. Channels of communication.
- D. Employees or contractors shall receive periodic in-service training, and have knowledge of and be able to demonstrate the appropriate use of clinical and security restraint.
- E. Security and behavioral assessments shall be completed at the time of admission to determine service eligibility and at least weekly for the safety of individuals, other persons, employees, and visitors.
- F. Personal grooming and care services for individuals shall be a cooperative effort between the clinical and security employees or contractors.
- G. Clinical needs and security level shall be considered when arrangements are made regarding privacy for individual contact with family and attorneys.
- H. Living quarters shall be assigned on the basis of the individual's security level and clinical needs.
- I. An assessment of the individual's clinical condition and needs shall be made when disciplinary action or restrictions are required for infractions of security measures.
- J. Clinical services consistent with the individual's condition and plan of treatment shall be provided when security detention or isolation is imposed.

12VAC35-105-1150. Other requirements for correctional facilities.

- A. Group bathroom facilities shall be partitioned between toilets and urinals to provide privacy.
- B. If uniform clothing is required, the clothing shall be properly fitted, climatically suitable, durable, and presentable.
- C. Financial compensation for work performed shall be determined by the Department of Corrections. Personal housecleaning tasks may be assigned without compensation to the individual.
- D. The use of audio equipment, such as televisions, radios, and record players, shall not interfere with therapeutic activities.

E. Aftercare planning for individuals nearing the end of incarceration shall include a provision for continuing medication and follow-up services with area community services to facilitate successful reintegration into the community including specific appointment provided to the inmate no later than the day of release.

Article 4
Sponsored Residential Homes Services

12VAC35-105-1160. Sponsored residential home information.

Providers of sponsored residential home services shall maintain the following information:

1. Names and ages of residential sponsors;
2. Date of sponsored residential home agreement;
3. The maximum number of individuals that can be placed in the home at a given time;
4. Names and ages of all other individuals who are not receiving services but are residing in a sponsored residential home;
5. Address and telephone number of the sponsored residential home; and
6. Names of all staff employed in the home, including on-call and substitute staff.

12VAC35-105-1170. Sponsored residential home agreements.

A. The provider shall maintain a written agreement with residential home sponsors. Sponsors are persons who provide the home where the service is located and are directly responsible for the provision of services. The agreement shall include the:

1. Provider's responsibilities;
2. Sponsor's responsibilities;
3. Scope of services;
4. Supervision;
5. Compensation;
6. Training; and
7. Reporting requirements and procedures.

B. The agreement shall be available for inspection by the licensing specialist and shall include a provision for granting the right of entry to state licensing specialists or human rights advocates to conduct inspections.

12VAC35-105-1180. Sponsor qualification and approval process.

A. The provider shall evaluate and certify each sponsored residential home other than his own through face-to-face interviews, home inspections, and other information documenting compliance with this section. The provider shall submit the certification form to the department before individuals are placed in the home and ensure that the following requirements are met annually.

B. The provider shall certify and document that each sponsored residential home meets the criteria for physical environment and residential services in these regulations.

C. The provider 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:

1. The ability of the sponsor or any staff to communicate and understand individuals receiving services;
2. The ability of the sponsor or any staff to provide the care, treatment, training, or habilitation for individuals receiving services in the home;
3. The abilities of all members of the sponsored household to accept individuals with disabilities and their disability-related characteristics, especially the ability of children in the household to adjust to nonfamily members living with them;
4. 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; and

5. The education, qualifications, and experience of the sponsor or staff with the individuals served including Virginia Department of Motor Vehicles driving record, tuberculosis screening, first-aid and CPR certification, and completion of medication administration and behavior interventions training.

D. The provider shall obtain three job-related references, past licensing history, criminal background checks, and a search of the registry of founded complaints of child abuse and neglect maintained by the Department of Social Services for the sponsor and all staff.

E. The provider shall implement written policies for obtaining references, criminal background checks, and registry checks for all adults in the home who are neither staff nor individuals being served. The policy shall indicate what action the provider will take if the results indicate that a member of the sponsor family has been convicted of a barrier crime or fails to meet the requirements of this regulation should an ineligible result be received.

F. The sponsored residential home shall submit to the provider the results of a physical and mental health examination of family members when requested by the provider based on indications of a physical or mental health issue.

G. Sponsored residential homes shall not also operate as group homes or Department of Social Services approved homes or foster homes.

H. The provider shall submit the name, address, and certification of the sponsored residential home to the department prior to adding the home. The provider shall submit the name and address of the sponsored residential home to the department prior to closing the home. The provider shall submit a service modification when approving homes more than 100 miles from the previously approved homes.

12VAC35-105-1190. Sponsored residential home service policies.

A. The provider shall implement written policies to provide orientation and supportive services to the sponsored residential home staff specific to the needs of the individuals receiving services.

B. The provider shall implement a training plan for the sponsor staff consistent with the needs of the individuals receiving services.

C. The provider shall specify staffing arrangements in all sponsored residential homes, including on-call and substitute care arrangements.

D. The provider shall implement a written policy on managing, monitoring, and supervising sponsored residential homes. This policy shall address changes in supervision arrangements as the number of homes increase.

E. The provider shall conduct inspections of each sponsored residential home other than his own. Inspections shall be performed at least on a quarterly basis during the year with at least two being unannounced inspections.

F. On an on-going basis and at least annually, the provider shall review and document compliance by each sponsored residential home and sponsor with regulations related to sponsored residential homes.

G. The provider shall develop written policies for terminating a sponsored residential home.

H. The provider shall document that all residents or their authorized representatives are provided the opportunity to choose a new placement when the current placement ends. Prior to moving an individual to another placement the provider shall conduct and document a meeting to include the individual and his authorized representative, if applicable, case manager, the current sponsor, and a receiving placement staff, if possible.

12VAC35-105-1200. Supervision.

A. The provider shall have a supervisor for every 15 sponsored residential homes where individuals are residing.

B. A responsible adult shall be available to provide supervision to the individual as specified in the individualized service plan.

C. Any member of the sponsor family who transports individuals receiving services must have a valid driver's license and automobile liability insurance. The vehicle used to transport individuals receiving services shall have a valid registration and inspection sticker.

D. The sponsor shall inform the provider in advance of any anticipated additions or changes in the sponsored residential home or as soon as possible after an unexpected change occurs.

E. In addition to the current reporting requirements the sponsor shall report all hospitalizations of individuals being served to the provider and the individual's case manager within 24 hours.

12VAC35-105-1210. Sponsored residential home service records.

Providers of sponsored residential home services shall maintain the following records on each sponsored residential home:

1. Documentation of three references for the owner of the sponsor home;
2. Criminal background checks and results of the search of the registry of founded complaints of child abuse and neglect for all adult employees in the home;
3. Orientation and training provided by the provider to the sponsor and employees;
4. The log of provider inspections of the sponsored residential home including the date, the employee conducting the inspection, the purpose of the inspection, and a description of any significant events or findings; and
5. The daily log maintained by the sponsor of significant events related to individuals receiving services.

12VAC35-105-1220. Regulations pertaining to staff.

Providers shall certify and document compliance of sponsors with regulations pertaining to staff.

12VAC35-105-1230. Maximum number of beds or occupants in sponsored residential home.

The maximum number of individuals served in a sponsored residential home is two. The maximum number of occupants in a sponsored residential home is seven.

12VAC35-105-1235. Sponsored residential home services for children.

In addition, the following requirements shall be met for homes serving children:

1. The provider shall develop a service description based upon evidence-based practices or an accepted therapeutic model of mental health, developmental or substance abuse services, or brain injury care for children.
2. The provider shall use a treatment team model consisting of staff who provide intensive support and consultation to the sponsor parents.
3. Weekly team meetings and supervision shall be held with the sponsor parent or parents to review progress on each case, review the daily behavioral information collected, and adjust the child's individualized services plan.
4. The sponsor parent or parents shall keep a daily log of behavioral and other child specific information and be available for daily Monday through Friday contact from the provider.
5. The sponsor parent or parents shall receive 25 hours per year of in-service training pertaining to providing services for the child they serve in addition to the training otherwise required in these regulations. The sponsor parent or parents shall also participate in ongoing training at least once a quarter.
6. The provider is not considered a child placing agency. Children are placed with the provider by licensed child placing agencies, local departments of social services, or parents.
7. The sponsor parent or parents shall be at least 25 years old.
8. The sponsor parent or parents shall be able to provide care and supervision during nonschool hours.
9. The provider shall have access through directly providing it or developing agreements for 24-hour emergency mental health care for children served with serious emotional disturbances

Article 5

Case Management Services

12VAC35-105-1240. Service requirements for providers of case management services.

Providers of case management services shall document that the services below are performed consistent with the individual's assessment and ISP.

1. Enhancing community integration through increased opportunities for community access and involvement and creating opportunities to enhance community living skills to promote community adjustment including, to the maximum extent possible, the use of local community resources available to the general public;

2. Making collateral contacts with the individual's significant others with properly authorized releases to promote implementation of the individual's individualized services plan and his community adjustment;
3. Assessing needs and planning services to include developing a case management individualized services plan;
4. Linking the individual to those community supports that are most likely to promote the personal habilitative or rehabilitative and life goals of the individual as developed in the ISP;
5. Assisting the individual directly to locate, develop, or obtain needed services, resources, and appropriate public benefits;
6. Assuring the coordination of services and service planning within a provider agency, with other providers, and with other human service agencies and systems, such as local health and social services departments;
7. Monitoring service delivery through contacts with individuals receiving services and service providers and periodic site and home visits to assess the quality of care and satisfaction of the individual;
8. Providing follow up instruction, education, and counseling to guide the individual and develop a supportive relationship that promotes the ISP;
9. Advocating for individuals in response to their changing needs, based on changes in the individualized services plan;
10. Planning for transitions in the individual's life;
11. Knowing and monitoring the individual's health status, any medical conditions, and his medications and potential side effects, and assisting the individual in accessing primary care and other medical services, as needed; and
12. Understanding the capabilities of services to meet the individual's identified needs and preferences and to serve the individual without placing the individual, other participants, or staff at risk of serious harm.

12VAC35-105-1250. Qualifications of case management employees or contractors.

A. Employees or contractors providing case management services shall have knowledge of:

1. Services and systems available in the community including primary health care, support services, eligibility criteria and intake processes and generic community resources;
2. The nature of serious mental illness, mental retardation (intellectual disability), substance abuse (substance use disorders), or co-occurring disorders depending on the individuals served, including clinical and developmental issues;
3. Different types of assessments, including functional assessment, and their uses in service planning;
4. Treatment modalities and intervention techniques, such as behavior management, independent living skills training, supportive counseling, family education, crisis intervention, discharge planning, and service coordination;
5. Types of mental health, developmental, and substance abuse programs available in the locality;
6. The service planning process and major components of a service plan;
7. The use of medications in the care or treatment of the population served; and
8. All applicable federal and state laws and regulations and local ordinances.

B. Employees or contractors providing case management services shall have skills in:

1. Identifying and documenting an individual's need for resources, services, and other supports;
2. Using information from assessments, evaluations, observation, and interviews to develop service plans;
3. Identifying and documenting how resources, services, and natural supports such as family can be utilized to promote achievement of an individual's personal habilitative or rehabilitative and life goals; and
4. Coordinating the provision of services by diverse public and private providers.

C. Employees or contractors providing case management services shall have abilities to:

1. Work as team members, maintaining effective inter- and intra-agency working relationships;
2. Work independently performing position duties under general supervision; and

3. Engage in and sustain ongoing relationships with individuals receiving services.

12VAC35-105-1255. Case manager choice.

The provider shall implement a written policy describing how individuals are assigned case managers and how they can request a change of their assigned case manager.

Statutory Authority

Article 6

Community Gero-Psychiatric Residential Services

12VAC35-105-1260. Admission criteria.

An individual receiving community gero-psychiatric residential services shall have had a medical, psychiatric, and behavioral evaluation to determine that he cannot be appropriately cared for in a nursing home or other less intensive level of care but does not need inpatient care.

12VAC35-105-1270. Physical environment requirements of community gero-psychiatric residential services.

A. Providers shall be responsible for ensuring safe mobility and unimpeded access to programs or services by installing and maintaining ramps, handrails, grab bars, elevators, protective surfaces, and other assistive devices or accommodations as determined by periodic review of the needs of the individuals being served. Entries, doors, halls, and program areas, including bedrooms, must have adequate room to accommodate wheelchairs and allow for proper transfer of individuals. Single bedrooms shall have at least 100 square feet and multi-bed rooms shall have at least 80 square feet per individual.

B. Floors must have resilient, nonabrasive, and slip-resistant floor surfaces and floor coverings that promote mobility in areas used by individuals and promote maintenance of sanitary conditions.

C. Temperatures shall be maintained between 70°F and 80°F throughout resident areas.

D. Bathrooms, showers, and program areas must be accessible to individuals. There must be at least one bathing unit available by lift, door, or swivel-type tub.

E. Areas must be provided for quiet and for recreation.

F. Areas must be provided for charting, storing of administrative supplies, a utility room, employee hand washing, dirty linen, clean linen storage, clothes washing, and equipment storage.

12VAC35-105-1280. Monitoring.

Employees or contractors shall regularly monitor individuals in all areas of the residence to ensure safety.

12VAC35-105-1290. Service requirements for providers of gero-psychiatric residential services.

A. Providers shall provide mental health, nursing and rehabilitative services; medical and psychiatric services; and pharmaceutical services for each individual as specified in the ISP.

B. Providers shall provide crisis stabilization services.

C. Providers shall implement written policies and procedures that support an active program of mental health and behavioral management services directed toward assisting each individual to achieve outcomes consistent with the highest level of self-care, independence, and quality of life. Programming may be on-site or at another location in the community.

D. Providers shall implement written policies and procedures that respond to the nursing needs of each individual to achieve outcomes consistent with the highest level of self-care, independence, and quality of life. Providers shall be responsible for:

1. Providing each individual services to prevent clinically avoidable complications, including: skin care, dexterity and mobility, continence, hydration, and nutrition;
2. Giving each individual proper daily personal attention and care, including skin, nail, hair, and oral hygiene, in addition to any specific care ordered by the attending physician;
3. Dressing each individual in clean clothing and encouraging each individual to wear day clothing when out of bed;
4. Providing each individual tub or shower baths as often as needed, but not less than twice weekly or a sponge bath daily if the medical condition prohibits tub or shower baths;
5. Providing each individual appropriate pain management; and

6. Ensuring that each individual has his own personal utensils, grooming items, adaptive devices, and other personal belongings including those with sentimental value.

E. Providers shall integrate behavioral and mental health care and medical and nursing care in the ISP.

F. Providers shall have available nourishment between scheduled meals.

12VAC35-105-1300. Staffing requirements for community gero-psychiatric residential services.

A. Community gero-psychiatric residential services shall be under the direction of a:

1. Program director with experience in gero-psychiatric services;
2. Medical director; and
3. Director of clinical services who is a registered nurse with experience in gero-psychiatric services.

B. Providers shall provide qualified nursing supervisors, nurses, and certified nurse aides on all shifts, seven days per week, in sufficient number to meet the assessed nursing care and behavioral management needs determined by the ISPs.

C. Providers shall provide qualified staff for behavioral, psychosocial rehabilitation, rehabilitative, mental health, or recreational programming to meet the needs determined by the ISP. These services shall be under the direction of a registered nurse, licensed psychologist, licensed clinical social worker, or licensed therapist.

12VAC35-105-1310. Interdisciplinary services planning team.

A. At a minimum, a registered nurse, a licensed psychologist, a licensed social worker, a therapist (recreational, occupational or physical therapist), a pharmacist, and a psychiatrist shall participate in the development and review of the ISP. Other employees or contractors as appropriate shall be included.

B. The interdisciplinary services planning team shall meet to develop the ISP and review it quarterly. Members of the team shall be available for consultation on an as needed basis.

C. The interdisciplinary services planning team shall review the medications prescribed at least quarterly and consult with the primary care physician as needed.

D. The interdisciplinary services planning team shall integrate medical care plans prescribed by the primary care physician into the ISP and consult with the primary care physician as needed.

12VAC35-105-1320. Employee or contractor qualifications and training.

A. A nurse aide may be employed only if he is certified by the Board of Nursing. During the initial 120 days of employment, a nurse aide may be employed if he is enrolled full-time in a nurse aide education program approved by the Virginia Board of Nursing or has completed a nurse aide education program or competency testing.

B. All nursing employees or contractors, including certified nursing assistants, must have additional competency-based training in providing mental health services to geriatric individuals, including behavior management.

12VAC35-105-1330. Medical director.

Providers of community gero-psychiatric residential services shall employ or have a written agreement with one or more psychiatrists with training and experience in gero-psychiatric services to serve as medical director. The duties of the medical director shall include :

1. Responsibility for overall medical and psychiatric care;
2. Advising the program director and the director of clinical services on medical and psychiatric issues, including the criteria for residents to be admitted, transferred , or discharged;
3. Advising on the development, execution, and coordination of policies and procedures that have a direct effect upon the quality of medical, nursing, and psychiatric care delivered to individuals; and
4. Acting as liaison and consulting with the administrator and the primary care physician on matters regarding medical, nursing, and psychiatric care policies and procedures.

12VAC35-105-1340. Physician services and medical care.

A. Each individual in a community gero-psychiatric residential service shall be under the care of a primary care physician. Nurse practitioners and physician assistants licensed to practice in Virginia may provide care in accordance with their practice agreements. Prior to, or at the time of admission, each individual, his authorized representative, or the entity responsible for his care shall designate a primary care physician.

B. The primary care physician shall conduct a physical examination at the time of admission or within 72 hours of admission into a community gero-psychiatric residential service. The primary care physician shall develop, in coordination with the interdisciplinary services planning team, a medical care plan of treatment for an individual.

C. All physicians or other prescribers shall review all medication orders at least every 60 days or whenever there is a change in medication.

D. The provider shall have a signed agreement with a local general hospital describing back-up and emergency medical care plans.

12VAC35-105-1350. Pharmacy services for providers of community gero-psychiatric residential services.

A. The provider shall make provision for 24-hour emergency pharmacy services.

B. The provider shall have a written agreement with a qualified pharmacist to provide consultation on all aspects of the provision of pharmacy services and for regular visits, at least monthly.

C. A pharmacist licensed by the Virginia Board of Pharmacy shall review each individual's medication regimen. Any irregularities identified by the pharmacist shall be reported to the physician and the director of clinical services, and their response documented.

Article 7

Intensive Community Treatment and Program of Assertive Community Treatment Services

12VAC35-105-1360. Admission and discharge criteria.

A. Individuals must meet the following admission criteria:

1. Diagnosis of a severe and persistent mental illness, predominantly schizophrenia, other psychotic disorder, or bipolar disorder that seriously impairs functioning in the community. Individuals with a sole diagnosis of substance addiction or abuse or mental retardation (intellectual disability) are not eligible for services.

2. Significant challenges to community integration without intensive community support including persistent or recurrent difficulty with one or more of the following:

- a. Performing practical daily living tasks;
- b. Maintaining employment at a self-sustaining level or consistently carrying out homemaker roles; or
- c. Maintaining a safe living situation.

3. High service needs indicated due to one or more of the following:

- a. Residence in a state hospital or other psychiatric hospital but clinically assessed to be able to live in a more independent situation if intensive services were provided or anticipated to require extended hospitalization, if more intensive services are not available;
- b. Multiple admissions to or at least one recent long-term stay (30 days or more) in a state hospital or other acute psychiatric hospital inpatient setting within the past two years; or a recent history of more than four interventions by psychiatric emergency services per year;
- c. Persistent or very recurrent severe major symptoms (e.g., affective, psychotic, suicidal);
- d. Co-occurring substance addiction or abuse of significant duration (e.g., greater than six months);
- e. High risk or a recent history (within the past six months) of criminal justice involvement (e.g., arrest or incarceration);
- f. Ongoing difficulty meeting basic survival needs or residing in substandard housing, homeless, or at imminent risk of becoming homeless; or
- g. Inability to consistently participate in traditional office-based services.

B. Individuals receiving PACT or ICT services should not be discharged for failure to comply with treatment plans or other expectations of the provider, except in certain circumstances as outlined. Individuals must meet at least one of the following criteria to be discharged:

- 1. Change in the individual's residence to a location out of the service area;
- 2. Death of the individual;

3. Incarceration of the individual for a period to exceed a year or long term hospitalization (more than one year); however, the provider is expected to prioritize these individuals for PACT or ICT services upon their anticipated return to the community if the individual wishes to return to services and the service level is appropriate to his needs;
4. Choice of the individual with the provider responsible for revising the ISP to meet any concerns of the individual leading to the choice of discharge; or
5. Significant sustained recovery by the individual in all major role areas with minimal team contact and support for at least two years as determined by both the individual and ICT or PACT team.

12VAC35-105-1370. Treatment team and staffing plan.

A. Services are delivered by interdisciplinary teams.

1. PACT and ICT teams shall include the following positions:

- a. Team Leader - one full time QMHP-Adult with at least three years experience in the provision of mental health services to adults with serious mental illness. The team leader shall oversee all aspects of team operations and shall routinely provide direct services to individuals in the community.
- b. Nurses - PACT and ICT nurses shall be full-time employees or contractors with the following minimum qualifications: A registered nurse (RN) shall have one year of experience in the provision of mental health services to adults with serious mental illness. A licensed practical nurse (LPN) shall have three years of experience in the provision of mental health services to adults with serious mental illness. ICT teams shall have at least one qualified full-time nurse. PACT teams shall have at least three qualified full-time nurses at least one of whom shall be a qualified RN.
- c. One full-time vocational specialist and one full-time substance abuse specialist. These staff members shall provide direct services to individuals in their area of specialty and provide leadership to other team members to also assist individuals with their self identified employment or substance abuse recovery goals.
- d. Peer specialists - one or more full-time equivalent QPPMH or QMHP-Adult who is or has been a recipient of mental health services for severe and persistent mental illness. The peer specialist shall be a fully integrated team member who provides peer support directly to individuals and provides leadership to other team members in understanding and supporting individuals' recovery goals.
- e. Program assistant - one full-time person with skills and abilities in medical records management shall operate and coordinate the management information system, maintain accounts and budget records for individual and program expenditures, and provide receptionist activities.
- f. Psychiatrist - one physician who is board certified in psychiatry or who is board eligible in psychiatry and is licensed to practice medicine in Virginia. An equivalent ratio to 20 minutes (.008 FTE) of psychiatric time for each individual served must be maintained. The psychiatrist shall be a fully integrated team member who attends team meetings and actively participates in developing and implementing each individual ISP.

2. QMHP-Adult and mental health professional standards:

- a. At least 80% of the clinical employees or contractors, not including the program assistant or psychiatrist, shall meet QMHP-Adult standards and shall be qualified to provide the services described in 12VAC35-105-1410.
- b. Mental health professionals - At least half of the clinical employees or contractors, not including the team leader or nurses and including the peer specialist if that person holds such a degree, shall hold a master's degree in a human service field.

3. Staffing capacity:

- a. An ICT team shall have at least five full-time equivalent clinical employees or contractors. A PACT team shall have at least 10 full-time equivalent clinical employees or contractors.
- b. ICT and PACT teams shall include a minimum number of employees (counting contractors but not counting the psychiatrist and program assistant) to maintain an employee to individual ratio of at least 1:10.
- c. ICT teams may serve no more than 80 individuals. PACT teams may serve no more than 120 individuals.

d. A transition plan shall be required of PACT teams that will allow for "start-up" when newly forming teams are not in full compliance with the PACT model relative to staffing patterns and individuals receiving services capacity.

B. ICT and PACT teams shall meet daily Monday through Friday or at least four days per week to review and plan routine services and to address or prevent emergency and crisis situations.

C. ICT teams shall operate a minimum of 8 hours per day, 5 days per week and shall provide services on a case-by-case basis in the evenings and on weekends. PACT teams shall be available to individuals 24 hours per day and shall operate a minimum of 12 hours each weekday and 8 hours each weekend day and each holiday.

D. The ICT or PACT team shall make crisis services directly available 24 hours a day but may arrange coverage through another crisis services provider if the team coordinates with the crisis services provider daily. The PACT team shall operate an after-hours on-call system and be available to individuals by telephone or in person.

12VAC35-105-1380. Contacts.

A. The ICT and PACT team shall have the capacity to provide multiple contacts per week to individuals experiencing severe symptoms or significant problems in daily living, for an aggregate average of three contacts per individual per week.

B. Each individual receiving ICT or PACT services shall be seen face-to-face by an employee or contractor; or the employee or contractor should attempt to make contact as specified in the ISP.

12VAC35-105-1390. ICT and PACT service daily operation and progress notes.

A. ICT teams and PACT teams shall conduct daily organizational meetings Monday through Friday at a regularly scheduled time to review the status of all individuals and the outcome of the most recent employee or contractor contact, assign daily and weekly tasks to employees and contractors, revise treatment plans as needed, plan for emergency and crisis situations, and to add service contacts that are identified as needed.

B. A daily log that provides a roster of individuals served in the ICT or PACT services program and documentation of services provided and contacts made with them shall be maintained and utilized in the daily team meeting. There shall also be at least a weekly individual progress note documenting services provided in accordance with the ISP or attempts to engage the individual in services.

12VAC35-105-1400. ICT and PACT assessment.

The provider shall solicit the individual's own assessment of his needs, strengths, goals, preferences, and abilities to identify the need for recovery oriented treatment, rehabilitation, and support services and the status of his environmental supports within the individual's cultural context. With the participation of the individual, the provider shall assess:

1. Psychiatric history, mental status and diagnosis, including the content of an advance directive;
2. Medical, dental, and other health needs;
3. Extent and effect of drug or alcohol use;
4. Education and employment, including current daily structured use of time, school or work status, interests and preferences, and supports and barriers to educational and employment performance;
5. Social development and functioning, including childhood and family history, religious beliefs, leisure interests, and social skills;
6. Housing and daily living skills, including the support needed to obtain and maintain decent, affordable housing integrated into the broader community; the current ability to meet basic needs such as personal hygiene, food preparation, housekeeping, shopping, money management, and the use of public transportation and other community based resources;
7. Family and social network, including the current scope and strength of an individual's network of family, peers, friends, and co-workers, and their understanding and expectations of the team's services;
8. Finances and benefits, including the management of income, the need for and eligibility for benefits, and the limitations and restrictions of those benefits; and
9. Legal and criminal justice involvement, including guardianship, commitment, representative payee status, and experience as either a victim or an accused person.

12VAC35-105-1410. Service requirements.

Providers shall document that the following services are provided consistent with the individual's assessment and ISP.

1. Ongoing assessment to ascertain the needs, strengths, and preferences of the individual;
2. Case management;
3. Nursing;
4. Support for wellness self-management, including the development and implementation of individual recovery plans, symptom assessment, and recovery education;
5. Psychopharmacological treatment, administration, and monitoring;
6. Substance abuse assessment and treatment for individuals with a co-occurring diagnosis of mental illness and substance abuse;
7. Individual supportive therapy;
8. Skills training in activities of daily living, social skills, interpersonal relationships, and leisure time;
9. Supportive in-home services;
10. Work-related services to help find and maintain employment;
11. Support for resuming education;
12. Support, education, consultation, and skill-teaching to family members and significant others;
13. Collaboration with families and assistance to individuals with children;
14. Direct support to help individuals secure and maintain decent, affordable housing that is integrated into the broader community and to obtain legal and advocacy services, financial support, money-management services, medical and dental services, transportation, and natural supports in the community; and
15. Mobile crisis assessment, interventions to prevent or resolve potential crises, and admission to and discharge from psychiatric hospitals.

FORMS (12VAC35-105)

Initial Provider Application For Licensing (rev.1/10).

Renewal Provider Application For Licensing (rev. 2/09).

Service Modification - Provider Request, DMH 966E 1140 (rev. 1/09).

DOCUMENTS INCORPORATED BY REFERENCE (12VAC35-105) (Repealed.)

Statutory Authority

§ 37.2-203 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 28, Issue 5, eff. December 2, 2011