Underlined = new language.

DEPARTMENT OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

12VAC35-106 - General Provisions Chapter

CHAPTER 106

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

Table of Contents

12VAC35-106-350. Disciplinary actions.
12VAC35-106-360. License availability.
12VAC35-106-370. Appropriate name.
12VAC35-106-380. Regular business hours.
12VAC35-106-390. Office and service locations.
12VAC35-106-400. Fee schedule.
12VAC35-106-410. Deceptive of false advertising.
12VAC35-106-420. Cessation of services.
12VAC35-106-430. Transition of individuals between services operated by the same provider.
12VAC35-106-440. Involuntary commitment and mandatory outpatient treatment orders
12VAC35-106-450. Emergency transfers.
12VAC35-106-460. Discharge.
12VAC35-106-470. Involuntary termination of treatment.
12VAC35-106-480. Policies.
12VAC35-106-490. Emergency medical information.
12VAC35-106-500. Documenting interventions that occur during a crisis or emergency.
12VAC35-106-510. Service description requirements.
12VAC35-106-520. Medication management.
12VAC35-106-530. Restrictive behavioral interventions and supports.
12VAC35-106-540. Behavior treatment plan.
12VAC35-106-550. Fundraising
12VAC35-106-560. Privacy.
12VAC35-106-570. Transportation.
12VAC35-106-580. Reporting to the department.
12VAC35-106-590. Risk management
12VAC35-106-600. Monitoring and evaluating service quality.
12VAC35-106-610. Individual records.
12VAC35-106-620. Onboarding of individuals.
12VAC35-106-630. Human rights
12VAC35-106-640. Prohibited actions.
12VAC35-106-650. Choice of provider.
12VAC35-106-660. Least restrictive treatment.
12VAC35-106-670. Personal necessities.
12VAC35-106-680. Animals.
12VAC35-106-690. Weapons.
12VAC35-106-700. Computers and Internet Access.
12VAC35-106-710. Access to communication systems in emergencies; emergency telephone numbers.
12VAC35-106-720. First aid Kit accessible.
12VAC35-106-730. Operable flashlights or battery lanterns.

Article 1. Scope of the Chapter

12VAC35-106-10. 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.

C. The provisions of this chapter shall apply to every provider licensed by the Department of Behavioral Health and Developmental Services. Additional requirements related to specific services also apply. Refer to the following service-specific chapters regarding those requirements:

12VAC35-107. Residential Chapter

12VAC35-108. Home Non-Center Based Chapter

12VAC35-109. Center Based Chapter

12VAC35-110. Case Management Chapter

12VAC35-111. Crisis Chapter.

12VAC35-106-20. Definitions.

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

"Abuse" as defined by § 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 an individual receiving care or treatment for mental illness, developmental disabilities, or substance abuse. 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 individual;

4. Misuse or misappropriation of the individual's assets, goods, or property;

5. Use of excessive force when placing an individual in physical or mechanical restraint;

6. Use of physical or mechanical restraints on an individual that is not in compliance with federal and state laws, regulations, and policies, professional accepted standards of practice, or his individualized services plan; and

7. Use of more restrictive or intensive services or denial of services to punish an individual or that is not consistent with his individualized services plan.

“Adverse action” means sanctions imposed on the provider pursuant to § 37.2-419 of the Code of Virginia, denial, suspension, or revocation of a provider’s license or issuance of a provisional license due to noncompliance with regulatory requirements.

"Assertive community treatment service" or "ACT" means a self-contained interdisciplinary community-based team of medical, behavioral health, and rehabilitation professionals who use a team approach to meet the needs of an individual with severe and persistent mental illness. ACT teams:

1. Provide person-centered services addressing the breadth of an individual's needs, helping him achieve his personal goals;

2. Serve as the primary provider of all the services that an individual receiving ACT services needs;
3. Maintain a high frequency and intensity of community-based contacts;
4. Maintain a very low individual-to-staff ratio;
5. Offer varying levels of care for all individuals receiving ACT services, and appropriately adjust service levels according to individuals' needs over time;
6. Assist individuals in advancing towards personal goals with a focus on enhancing community integration and regaining valued roles (such as worker, family member, resident, spouse, tenant, or friend);
7. Carry out planned assertive engagement techniques including rapport-building strategies, facilitating meeting basic needs, and motivational interviewing techniques;
8. Monitor the individual's mental status and provide needed supports in a manner consistent with the individual's level of need and functioning;
9. Deliver all services according to a recovery-based philosophy of care; and
10. Promote self-determination, respect for the individual receiving ACT as an individual in his or her own right, and engage peers in promoting recovery and regaining meaningful roles and relationships in the community.

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

"Admission date" means the date at which an individual's services begin.

"Application closure" means an applicant can no longer pursue the current application to obtain a DBHDS license. A new application is necessary in order to pursue a DBHDS license after an application closure. An application closure is not a denial of an application.

"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 practices utilized by a provider to help an individual receiving services to achieve a positive outcome and to address challenging behavior in an individualized and safe manner. Behavior intervention practices shall be utilized in accordance with the individualized services plan; the provider's written policies and procedures governing safety (crisis prevention and intervention); and service expectations. The plan shall utilize the least restrictive treatment possible, and shall be based upon practices that are effective, therapeutic, and informed by evidence.

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

1. Improved behavioral functioning and effectiveness through the development of new or currently underutilized skills; and

2. Reduction of challenging behaviors.

"Brain injury" as defined by § 37.2-403 of the Code of Virginia 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.

"Case management service" means services that can include assistance to individuals and their family members in accessing needed services that are responsive to the individual's needs

and preferences. Case management services include: identifying potential users of the service; assessing needs and planning services using a person-centered approach; 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 and revising the service plan as indicated; discharge planning; and monitoring and advocating for individuals in response to their changing needs. "Case management service" does not include assistance in which the only function *is* maintaining service waiting lists or periodically contacting or tracking individuals to determine potential future service needs. The terms “support coordination” and “care coordination” are used in certain communities to identify providers of targeted case management services.

“Change of ownership” means any transaction that results in a change in control of a licensed provider. Change of ownership includes:

1. A transfer of a majority interest in the ownership of the program;

2. A change in the majority interest of the ownership of the parent company of any licensed provider;

3. A division of one licensed provider into two or more providers;

4. In the case of a for-profit corporation, transfer of a majority of any class of the stock thereof, the merger of the sponsor’s corporation into another corporation, or the consolidation of the sponsor’s organization with one or more other corporations, resulting in a new corporate body;

5. In the case of a partnership, adding or withdrawing any partners from the partnership or transfer of a majority of the partnership interest;

6. In the case of a trust, change of the trustee or a majority of trustees;

7. In the case of a not-for-profit corporation, such changes in the corporate membership or trustees as the department determines to constitute a shift in control of the service; or

8. In the case of a limited liability company filing of articles of amendment with the State Corporation Commission (SCC) due to a change in the majority of members, a majority of mangers listed in the articles of organization, or a majority of the organizers of the limited liability company.

"Clinically managed high-intensity residential care" or “Level of care 3.5” means a substance use treatment program that offers 24-hour supportive treatment of individuals with significant psychological and social problems by credentialed addiction treatment professionals in an interdisciplinary treatment approach. A clinically managed high-intensity residential care program provides treatment to individuals who present with significant challenges, such as physical, sexual, or emotional trauma; past criminal or antisocial behaviors, with a risk of continued criminal behavior; an extensive history of treatment; inadequate anger management skills; extreme impulsivity; and antisocial value system.

"Clinically managed low-intensity residential care" or “Level of care 3.1” means providing an ongoing therapeutic environment for individuals requiring some structured support in which treatment is directed toward applying recovery skills; preventing relapse; improving emotional functioning; promoting personal responsibility; reintegrating the individual into work, education, and family environments; and strengthening and developing adaptive skills that may not have been achieved or have been diminished during the individual's active addiction. A clinically managed low-intensity residential care program also provides treatment for individuals suffering from chronic, long-term alcoholism or drug addiction and affords an extended period of time to establish sound recovery and a solid support system.

"Clinically managed population specific high-intensity residential services" [or "Level of care 3.3"] means a substance use treatment program that provides a structured recovery environment in combination with high-intensity clinical services provided in a manner to meet the functional limitations of individuals. The functional limitations of individuals who are placed within this level of care are primarily cognitive and can be either temporary or permanent.

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

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

"Contracted employee" or "contractor" means a person that enters into an agreement with a provider to provide specialized services for a specified period of time.

"Corrective action plan" means the provider's pledged plan of action in response to cited areas of noncompliance documented by the regulatory authority. The corrective action plan shall include signed and dated descriptions of the corrective actions the provider will take to correct the deficient practice and address systemic changes including processes, policies, procedures, and protocols to ensure compliance with the regulation in the future and to help minimize the possibility of systemic deficiencies.

"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.

"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" means structured programs of training, assistance, and specialized supervision in the acquisition, retention, or improvement of self-help, socialization, and adaptive skills for adults with a developmental disability provided to groups or individuals in nonresidential community-based settings. Day support services shall focus on enabling the individual to attain or maintain his highest potential level of functioning. Day support services shall offer 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.

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

"Developmental disability" as defined by § 37.2-100 of the Code of Virginia means a severe, chronic disability of an individual that (i) is attributable to a mental or physical impairment, or a combination of mental and physical impairments, other than a sole diagnosis of mental illness; (ii) is manifested before the individual reaches 22 years of age; (iii) is likely to continue indefinitely; (iv) results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and (v) reflects the individual's need for a combination and sequence of special interdisciplinary or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually

planned and coordinated. An individual from birth to age nine years, inclusive, who has a substantial developmental delay or specific congenital or acquired condition may be considered to have a developmental disability without meeting three or more of the criteria described in clauses (i) through (v) of this definition if the individual, without services and supports, has a high probability of meeting those criteria later in life.

"Direct care position" as defined by §37.2-416 of the Code of Virginia means any position that includes responsibility for (i) treatment, case management, health, safety, development, or well-being of an individual receiving services or (ii) immediately supervising a person in a position with this responsibility.

"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.

"Emergency services (crisis intervention)" means unscheduled and sometimes scheduled crisis intervention, 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 shall provide immediate mental health care in the most appropriate and least restrictive environment available to include the home or community to assist individuals who are experiencing acute psychiatric dysfunction requiring immediate clinical attention or experiencing crisis events originating from behavioral or mental health support needs. Emergency services shall include assessment, short-term counseling designed to stabilize the individual and care coordination. Emergency services also may include walk-ins, home visits, office visits, jail interventions, and preadmission screening activities associated with the judicial process or telephone contacts.

“Full license” as defined by § 37.2-403 of the Code of Virginia means a license issued in accordance with the requirements of § 37.2-404 to a provider who demonstrates full compliance with the regulations of the Board governing licensure of providers.

"Group home" 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.

“Historical records” means closed records for individuals the provider is no longer serving but must retain. Historical records shall also mean past service records of individuals the provider is continuing to serve if the provider has served the individual for over three years. In these instances, the provider shall ensure that the latest copy of the individual’s record and ISP are on-site; however, the rest of the individual’s record may be stored as a historical record.

"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.

"Individual" or "individual receiving services" as defined by § 37.2-100 of the Code of Virginia means a current direct recipient of public or private mental health, developmental, or substance abuse treatment, rehabilitation, or habilitation services and includes the terms "consumer," "patient," "resident," "recipient," or "client." When the term is used in this chapter, 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.

"Informed choice" means a decision made after considering options based on adequate and accurate information and knowledge. These options are developed through collaboration with the individual and his authorized representative, as applicable, and the provider with the intent of empowering the individual and his authorized representative to make decisions that will lead to positive service outcomes.

"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. An assessment is not a service.

"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.

"Intensive in-home service" means family preservation interventions for children and adolescents who have or are at-risk of serious emotional disturbance. 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 shall include 24-hour per day emergency response, which shall be delivered, as needed; crisis treatment; individual and family counseling; life, parenting, and communication skills; and case management and coordination with other services.

"Intermediate care facility/individuals with intellectual disability" or "ICF/IID" means a facility or distinct part of a facility certified by the Virginia Department of Health as meeting the federal certification regulations for an intermediate care facility for individuals with intellectual disability and persons with related conditions and that addresses the total needs of the residents, which include physical, intellectual, social, emotional, and habilitation providing active treatment as defined in 42 CFR 435.1010 and 42 CFR 483.440.

"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.

“Licensing report” means the report the department issues that notes whether there is noncompliance with any applicable regulation during an initial or ongoing review, inspection, or investigation. The licensing report shall describe the noncompliance and request the provider to submit a corrective action plan for each violation cited.

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

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

"Medically managed intensive inpatient service" or “Level of care 4.0” means an organized service delivered in an inpatient setting, including an acute care general hospital, psychiatric unit in a general hospital, or a freestanding psychiatric hospital. This service is appropriate for individuals whose acute biomedical and emotional, behavioral, and cognitive problems are so severe that they require primary medical and nursing care. Services at this level of care are managed by a physician who is responsible for diagnosis, treatment, and treatment plan decisions in collaboration with the individual.

"Medically monitored intensive inpatient treatment" or “Level of care 3.7” means a substance use treatment program that provides 24-hour care in a facility under the supervision of medical personnel. The care provided shall include directed evaluation, observation, medical monitoring, and addiction treatment in an inpatient setting. The care provided may include the use of medication to address the effects of substance use. This service is appropriate for an individual whose subacute biomedical, emotional, behavioral, or cognitive problems are so severe that they require inpatient treatment but who does not need the full resources of an acute care general hospital or a medically managed intensive inpatient treatment program.

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

"Medication administration" means the legally permitted 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, as enumerated by § 54.1-3408 of the Code of Virginia.

"Medication assisted opioid treatment (Opioid treatment service)" means an intervention of administering or dispensing of medications such as methadone, buprenorphine, or naltrexone approved by the federal Food and Drug Administration for the purpose of treating opioid use disorder.

"Mental health skill building" or "MHSS" means goal-directed training and supports used to enable restoration of an individual to the highest level of baseline functioning and achieve and maintain community stability and independence in the most appropriate least restrictive environment. MHSS services shall provide face to face activities, instruction, interventions, and goal-directed trainings that are designed to restore functioning that are defined in the ISP. MHSS shall include goal-directed training in the following areas: (i) functional skills and appropriate behavior related to the individual’s health and safety, instrumental activities of daily living, and use of community resources; (ii) assistance with medication management; and (iii) monitoring health, nutrition, and physical condition with goals towards self-monitoring and self-regulation of all of these activities.

“Mental health intensive outpatient service” means a structured program of skilled treatment focused on maintaining and improving functional abilities through a time-limited, interdisciplinary approach. This service is provided weekly over a period of time for individuals requiring more intensive services than an outpatient service can provide, and may include individual, family or group counseling or psychotherapy; skill development and psychoeducational activities; certified peer support services; medication management; and psychological assessment or testing.

"Mental health 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. Mental health 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. Mental health outpatient service specifically includes:

1. Mental health 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. Mental health 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. Mental health 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.

"Mental health 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 provided through a minimum of 20 hours per week of skilled treatment services focused on individuals who require intensive, highly coordinated, structured, and inter-disciplinary ambulatory treatment within a stable environment that is of greater intensity than intensive outpatient, but of lesser intensity than inpatient.

"Mental illness" as defined by § 37.2-100 of the Code of Virginia 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.

"Missing" means a circumstance in which an individual is not physically present when and where he should be and his absence cannot be accounted for or explained by his supervision needs or pattern of behavior.

"Neglect" as defined by § 37.2-100 of the Code of Virginia means failure by *a person*, 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 *an* individual receiving care or treatment for mental illness, developmental disabilities, or substance abuse.

"Office of Human Rights" means the Department of Behavioral Health and Developmental Services Office of Human Rights.

"Organizational license" means the general license authorizing the provider to provide services within the Commonwealth. The organizational license is tied to the provider organization as a whole, not to a particular service.

"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.

"Provider" as defined by § 37.2-403 of the Code of Virginia 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, developmental disabilities, or substance abuse or (ii) residential services for persons with brain injury. The person, entity, or organization shall include a hospital as defined in § 32.1-123, 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 § 54.1-3501, 54.1-3601, or 54.1-3701.

"Psychosocial rehabilitation" 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.

"Quality improvement plan" means a detailed work plan developed by a provider that defines steps the provider will take to review the quality of services it provides and to manage initiatives to improve quality. It consists of systematic and continuous actions that lead to measurable improvement in the services, supports, and health status of the individuals receiving services.

"Regional education assessment crisis services habilitation" or "REACH" means the statewide crisis system of care that is designed to meet the crisis support needs of individuals who have a developmental disability and are experiencing crisis events originating from behavioral or mental health support needs which put them at risk for homelessness, incarceration, hospitalization, or danger to self or others.

"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" or "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 homes, supervised living, residential crisis stabilization, community gero-psychiatric residential,–ICF/IID, sponsored residential homes, medical detoxification, neurobehavioral services, and substance abuse residential treatment for women and children.

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

"Respite care" means providing for a short-term, time limited period of care of an individual for the purpose of providing relief to the individual's unpaid family, guardian, or regular care giver. Persons providing respite care are recruited, trained, and supervised by a licensed provider. Respite service is provided in the individual's home or place of residence, in the community, or a licensed respite facility, such as a group 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.

"Restraints for behavioral purposes" means using a physical hold, medication, or a mechanical device to control behavior or involuntary 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.

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

"Risk management" means an integrated system-wide program to ensure the safety of individuals, employees, visitors, and others through identification, mitigation, early detection, monitoring, evaluation, and control of risks.

"Root cause analysis" means a method of problem solving designed to identify the underlying causes of a problem. The focus of a root cause analysis is on systems, processes, and outcomes that require change to reduce the risk of harm.

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

"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 incident" means any event or circumstance that causes or could cause harm to the health, safety, or well-being of an individual. The term "serious incident" includes death and serious injury. "Level I serious incident" means a serious incident that occurs or originates during the provision of a service or on the premises of the provider and does not meet the definition of a Level II or Level III serious incident. "Level I serious incidents" do not result in significant harm to individuals, but may include events that result in minor injuries that do not require medical attention or events that have the potential to cause serious injury, even when no injury occurs. "Level II serious incident" means a serious incident that occurs or originates during the provision of a service or on the premises of the provider that results in a significant harm or threat to the health and safety of an individual that does not meet the definition of a Level III serious incident. "Level II serious incident" includes a significant harm or threat to the health or safety of others caused by an individual. "Level II serious incidents" include:

1. A serious injury;

2. An individual who is or was missing;

3. An emergency room visit;

4. An unplanned psychiatric or unplanned medical hospital admission of an individual receiving services other than licensed emergency services except that a psychiatric admission in accordance with an individual's wellness plan shall not constitute an unplanned admission for the purposes of this chapter;

5. Choking incidents that require direct physical intervention by another person;

6. Ingestion of any hazardous material; or

7. A diagnosis of:

a. A decubitus ulcer or an increase in severity of level of previously diagnosed decubitus ulcer;

b. A bowel obstruction; or

c. Aspiration pneumonia.

"Level III serious incident" means a serious incident whether or not the incident occurs while in the provision of a service or on the provider's premises and results in:

1. Any death of an individual;

2. A sexual assault of an individual; or

3. A suicide attempt by an individual admitted for services, other than licensed emergency services, that results in a hospital admission.

"Serious injury" means any injury resulting in bodily *hurt*, damage, harm, or loss that requires medical attention by a licensed physician, doctor of osteopathic medicine, physician assistant, or nurse practitioner.

"Service" as defined by § 37.2-403 of the Code of Virginia means

1. Planned individualized interventions intended to reduce or ameliorate mental illness, developmental disabilities, or substance abuse through care, treatment, training, habilitation, or other supports that are delivered by a provider to persons with mental illness, developmental disabilities, or substance abuse. Services include outpatient services, intensive in-home services, opioid treatment services, inpatient psychiatric hospitalization, community gero-psychiatric 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, special school, halfway house, in-home services, crisis stabilization, and other residential services; and

2. Planned individualized interventions intended to reduce or ameliorate the effects of brain injury through care, treatment, or other supports provided in residential services for persons with brain injury.

"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" or “Board” as defined by § 37.2-100 of the Code of Virginia 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.

"Substance abuse (substance use disorders)" as defined by § 37.2-100 of the Code of Virginia 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" or “Level of care 2.1” means structured treatment provided to individuals who require more intensive services than is normally provided in an outpatient service but do not require inpatient services. Treatment consists primarily of counseling and education about addiction-related and mental health challenges delivered a minimum of 9 to 19 hours of services per week for adults or 6 to 19 hours of services per week for children and adolescents. Within this level of care an individual's needs for psychiatric and medical services are generally addressed through consultation and referrals.

"Substance abuse outpatient service" or “Level of care 1.0” means a center based substance abuse treatment delivered to individuals for fewer than nine hours of service per week for adults or fewer than six hours per week for adolescents on an individual, group, or family basis. Substance abuse 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. Substance abuse outpatient service includes substance abuse services or an office practice that provides professionally directed aftercare, individual, and other addiction services

to individuals according to a predetermined regular schedule of fewer than 9 contact hours a week. Substance abuse outpatient service also includes:

1. Substance abuse 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. Substance abuse 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. Substance abuse 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.

"Substance abuse partial hospitalization services" or “Level of care 2.5” means a short-term, nonresidential substance use treatment program provided for a minimum of 20 hours a week that uses multidisciplinary staff and is provided for individuals who require a more intensive treatment experience than intensive outpatient treatment but who do not require residential treatment. This level of care is designed to offer highly structured intensive treatment to those individuals whose condition is sufficiently stable so as not to require 24-hour-per-day monitoring and care, but whose illness has progressed so as to require consistent near-daily treatment intervention.

"Substantial compliance" means compliance clearly and obviously exists with most of the regulations as a whole, even while there may be noncompliance with one or more regulations that represent minimal risk.

“Succession plan” means a written statement prepared and signed by the license holder which identifies a new license holder in the event of the current license holder’s death or incapacitation.

"Suicide attempt" means a non-fatal, self-directed, potentially injurious behavior with an intent to die as a result of the behavior regardless of whether it results in injury.

"Supervised living residential" means the provision of 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. Staff is available on a 24-hour basis and able to respond in a timely manner. 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" (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.

"Systemic deficiency" means violations of regulations documented by the department that demonstrate multiple or repeat defects in the operation of one or more services. The department shall consider the severity of infractions, the provider’s service size, the number of provider locations, the provider’s service type, and the number of individuals the provider serves when determining systemic deficiency.

"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~~ through 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 shall include: evaluation; medication education and management; opportunities to learn and use daily living skills and to enhance social and interpersonal skills; and counseling. Counseling may be individual, group, or family counseling as appropriate to the individual's needs.

"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.

"Written," "writing," and "in writing" include any representation of words, letters, symbols, numbers, or figures, whether (i) printed or inscribed on a tangible medium or (ii) stored in an electronic or other medium and retrievable in a perceivable form and whether an electronic signature authorized by Chapter 42.1 (§ 59.1-479 et seq.) of Title 59.1 is or is not affixed.

Article 2. Licensing Requirements

12VAC35-106-30. Licenses.

A. Licenses are issued to providers who offer services to individuals who have mental illness, a developmental disability, or substance abuse (substance use disorders) 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. Residential/Inpatient services:

a. Clinically managed high-intensity residential services or Level of Care 3.5;

b. Clinically managed high-intensity residential services or Level of Care 3.5 for children and adolescents;

c. Clinically managed low-intensity residential services or Level of Care 3.1;

d. Clinically managed low-intensity residential services or Level of Care 3.1 for children and adolescents;

e. Clinically managed population-specific high-intensity residential services or Level of Care 3.3;

f. Community gero-psychiatric residential services;

g. Group home;

h. Group home for children and adolescents;

i. ICF/IDD;

j. ICF/IDD for children and adolescents;

k. Inpatient;

l. Medically managed intensive inpatient service or Level of Care 4.0;

m. Medically monitored intensive inpatient service or Level of Care 3.7;

n. Psychiatric residential treatment facility for children and adolescents;

o. QRTP-PRTF

p. QRTP-GH

g. Respite residential;
r. Respite residential for children and adolescents;
s. Sponsored residential home; and
t. Supervised living.

2. Center-based Services:
a. Center-based day support services;
b. Center-based therapeutic day treatment for children and adolescents;
c. Center-based respite service
d. Medication assisted opioid treatment programs;
e. Mental health intensive outpatient service:
f. Mental health outpatient service;
g. Mental health partial hospitalization;
h. Psychosocial rehabilitation service;
i. Substance abuse intensive outpatient or Level of Care 2.1;
j. Substance abuse outpatient of Level of Care 1.0; and
k. Substance abuse partial hospitalization or Level of Care 2.5.

3. Home/Non-center based services
a. Assertive community treatment service (ACT);
b. Home/Non-center based respite care service;
c. Intensive in-home service;
d. Mental health skill building;
e. Non-center based day support service;
f. Supportive in-home service; and
g. School based therapeutic day treatment for children and adolescents.

4. Crisis
a. 23 Hour Crisis stabilization;
b. Community-based crisis stabilization;
c. Mobile crisis.
d. REACH; and
e. Residential crisis stabilization units.

5. Case management.

C. A license addendum shall:
1. List the provider's legal, assumed, or fictitious name under which the provider is doing business in the Commonwealth;
2. Describe the services licensed, the disabilities of individuals who may be served, the age range 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.; and

3. For residential and inpatient services, the license identifies the number of individuals each residential location may serve at a given time.

12VAC35-106-40. Applications.

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. Documentation of funds or a line of credit in the name of the applicant or owner sufficient to cover at least 90 days of operating expenses if the provider is a corporation, an unincorporated organization or association, a sole proprietor, or a partnership. Such funds may include:

i) Personal or business savings accounts;

ii) Personal or business checking accounts;

iii) A home equity line of credit, which demonstrates the total amount of credit and the amount currently available;

iv) A bank line of credit which demonstrates the total amount of credit and the amount currently available; or

v) A credit card with an available balance.

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 statement of (i) the legal name of the applicant and, if the applicant is an association, partnership, limited liability company, or corporation, the names and addresses of its officers, agents, sponsors, partners, shareholders, or members; and (ii) the legal name under which the applicant, any entity that operates group homes that is affiliated with or under common ownership or control with the applicant, and any entity that operates group homes and that is affiliated with or under common ownership or control with any officer, agent, sponsor, partner, shareholder or member of the applicant to which a license to operate a service has been issued in any other state, together with a list of the states in which such licenses have been issued and the dates for which such licenses were issued;

5. A statement of any previous revocation, suspension, or sanction comparable to those set forth in § 37.2-419 against any license to operate a service issued to the applicant or any entity affiliated with the applicant in any other state, including the dates and descriptions of such disciplinary actions or sanctions;

B. Providers shall submit an application listing each service to be provided. Providers submitting an initial application shall be licensed for only one service. Providers shall submit the following items for each service:

1. A succession plan, except that community service boards are not required to submit a succession plan;

2. A staffing plan;

3. Employee credentials and job descriptions containing all the elements outlined in 12VAC35-106-280 A;

4. A service description containing all the elements outlined in 12VAC35-106-510 C; and

5. The policies required by 12VAC35-106-190, 12VAC35-106-240, 12VAC35-106-270, 12VAC35,-106-300, 12VAC35-106-310, 12VAC35-106-320, 12VAC35-106-330, 12VAC35-106-340, 12VAC35-106-350, 12VAC35-106-430, 12VAC35-106-450, 12VAC35-106-460, 12VAC35-106-470, 12VAC35-106-480, 12VAC35-106-500, 12VAC35-106-520, 12VAC35-106-530, 12VAC35-106-560, 12VAC35-106-570, 12VAC35-106-580, 12VAC35-106-590, 12VAC35-106-600, 12VAC35-106-610, 12VAC35-106-630, and 12VAC35-106-720, and any policies required by the department's service-specific licensing chapters.

6. For residential and inpatient services, the number of individuals each residential location may serve at a given time.

7. Any additional documentation the department requests to determine compliance with these regulations, including all service-specific requirements required by the department's corresponding service-specific licensing chapters.

C. In no event may an applicant reapply for a license after the commissioner has refused or revoked a license until a period of six months has elapsed from the effective date of that action, unless the commissioner in his sole discretion believes that there has been such a change in the conditions causing refusal of the prior application or revocation of the license as to justify considering the new application.

D. The department shall screen an application and accompanying documentation for completeness according to the date and time the application is received. An application will be considered complete when all required documents are received by the department.

1. If the department determines an application is incomplete, it shall notify the applicant that the application is not complete in writing. The notification shall specify the additional documentation required to complete the application.

2. If the application is incomplete, the applicant shall have 45 business days from the receipt of the notification to submit the required documentation. Applications that are not acted on within 45 business days shall be closed. The department shall notify the applicant in writing that the current application is closed and that a new application may be submitted.

3. The department shall not consider any application until it determines the application to be complete with all required documentation.

E. Any applicant who does not respond to application deficiencies or who does not schedule an onsite visit with a licensing specialist within timeframes prescribed by the department will have the application closed from further action. The department shall notify the applicant in writing of the application closure and that a new application may be submitted.

12VAC35-106-50. License types.

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

1. A conditional license may be issued to a provider to operate a new service 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 provider holding a conditional license for a service shall demonstrate progress toward compliance.

c. 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.

d. A conditional license and any renewals shall not exceed 12 successive months for all conditional licenses and renewals combined.

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

f. Once a provider holds a full organizational license, the provider may have more than one service or location on a conditional license.

g. A group home 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 all applicable regulations, including this chapter and Human Rights Regulations (12VAC35-115) or this chapter, has violations of human rights or licensing regulations that pose a threat to the health or safety of individuals receiving services, 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 provider holding a provisional license for a service shall demonstrate progress toward compliance.

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

e. A provisional license shall be prominently displayed by the provider in a format determined by the commissioner at the site of the affected service and shall indicate the violations of licensing standards to be corrected and the expiration date of the license.

f. The commissioner, as authorized by Section 37.2-415 of the Code of Virginia, may issue a provisional license to a provider that has previously been fully licensed at any time a provider shows an inability to comply with licensing regulations.

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

a. A full license may be granted to a provider for service of one year or three successive years.

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 full compliance with all applicable 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 receiving services, 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.

e. The commissioner may issue an annual license to a provider that has previously had a triennial license at any time based on a change in the provider's compliance with these regulations and other applicable statutes and regulations.

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 conditional license issued when there is a change in ownership.

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

E. 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 services license shall be effective for six additional months if the renewed license is not issued before the date of expiration.

F. No provider shall be issued multiple licenses for the same service.

12VAC35-106-60. Inspection requirements.

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.

D. 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.

E. The provider shall cooperate fully with inspections and investigations and shall provide all information requested by the department.

F. Any records or information expected to be onsite and requested by department staff to conduct the onsite review shall be available to department staff within two hours of the request for such information. Considerations shall be made for historical records. At the time of the request for historical records, the provider shall notify department staff of the location of the records and an estimated period of time that will be required to obtain the records. Service records of individuals the provider continues to serve for over three years may be stored as a historical record; however, the provider shall ensure that the latest copy of the individual's record and ISP are on-site.

12VAC35-106-70. Renewals.

A. 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. A completed application for renewal of a license shall be submitted at least 30 days prior to the expiration of the current license. Failure to submit a completed renewal application prior to the expiration of the current license shall result in the closure of the license pursuant to 12VAC35-106-70 F.

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

E. 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.

F. Failure to submit a completed renewal application prior to the expiration of the provider's current license shall result in the closure of the license. The department shall notify the provider in writing that the current license is closed and that any future interest in licensure will require the submission of an initial application.

12VAC35-106-80. Changes to licenses and notifications to the department.

A. A provider shall submit a written modification application and all attachments required by this chapter at least 30 calendar days in advance of a proposed modification to its license. Changes to the following characteristics require a modification application:

1. The provider's legal, assumed, or fictitious name;

2. Characteristics of individuals served (disability, age, or gender);

3. The services offered, including adding a new service;

4. Modification to service descriptions;

5. Modification to the organizational or administrative structure of leadership of the provider;

6. The locations where services are provided, including expanding into new regions or acquiring a location;

7. Office locations;

8. Existing stipulations; or

9. The maximum number of individuals served under the provider license, including bed capacity for residential or inpatient services.

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

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

D. The acquiring provider shall provide a change of ownership application at least 45 calendar days in advance of any change of ownership.

1. Any change of ownership applicant shall provide:

a. A change of ownership application including a clear service description;

b. A cover letter explaining the change of ownership;

c. Evidence of the upcoming sale or transfer;

d. Documentation of authority to conduct business in the Commonwealth of Virginia from the SCC;

e. A current organizational chart;

f. Position descriptions;

g. Evidence of financial resources to cover at least 90 days of operating expenses;

h. A proposed staffing plan;

i. A proposed working budget;

j. Certificate of occupancy;

k. Building floor plan(s);

l. The program's current health inspection;

m. The program's current fire inspection;

n. All operating policies and procedures; and

o. The existing license number, if applicable.

2. The department shall screen a change of ownership application and accompanying documentation for completeness according to the date and time the change of ownership application is received. A change of ownership application will be considered complete when all required documents are by the department.

3. The department shall evaluate the suitability of the applicant including the following factors. A negative determination with respect to any one of the factors constitutes an adequate ground for deeming an application unsuitable to establish or maintain a license from the department. The factors are:

a. Past performance as a provider of a service licensed by the department, including:

(1) History of compliance with this chapter;

(2) Ability to provide services;

(3) History of response to corrective action plans under this chapter;

(4) History of failure to provide services to any individual when licensed or approved to provide such service; and

(5) History of abuse or neglect of individuals.

b. Whether the applicant's financial resources are sufficient to provide services for which the applicant seeks a license.

c. Whether the applicant is in compliance with all applicable laws of the Commonwealth and whether the applicant has appropriate insurance coverage.

d. The record of compliance for health care facilities in the Commonwealth or other states including any limitations on, suspension or revocation of, or refusal to grant or renew a health care license or certification for Medicaid or Medicare to the applicant.

e. The adequacy of the applicant's legal capacity to operate as demonstrated by documents such as articles of incorporation and corporate bylaws.

f. Any attempt to obtain a license or approval by fraud, misrepresentation, or the submission of false information.

g. Capacity to meet the requirements for licensure or approval.

h. Such other information as the department may require.

3. The applicant begins with a conditional license under new ownership.

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

1. Organizational or administrative structure of leadership, including the name of the provider;

2. Contact information, including changes to the provider's telephone number, email address, or to add or subtract a primary contact to a licensed service;

3. The provider's normal business hours;

4. Geographic location of the provider or its services;

5. Service description as defined in these regulations;

6. Significant changes to the staffing plan, position descriptions, or employee or contractor qualifications;

7. Bed capacity for services providing residential or inpatient services; or

8. Any changes that cause a provider to be unable to provide a service.

F. 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.

G. 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.

12VAC35-106-90. Variances.

A. The commissioner or his designee 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.

B. A provider shall submit a request for such variance in writing to the commissioner.

1. A variance request shall only be granted to licensed providers.

2. The request shall demonstrate that complying with the regulation would be a hardship unique to the provider, that the hardship is not purely financial in nature, and that the variance will not jeopardize the health, safety, or welfare of individuals.

3. The department may limit the length of time a variance will be effective.

C. The provider shall not implement a variance until it has been approved in writing by the commissioner.

12VAC35-106-100. 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, telephone interviews, or other information that comes to the attention of the department.

12VAC35-106-110. Compliance.

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

1. This chapter;

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. The Health Insurance Portability and Accountability Act (HIPAA);

d. For home and community-based services waiver settings subject to this chapter, 42 CFR 441.301(c)(1) through (4);

e. Occupational Safety and Health Administration regulations;

f. The Virginia Health Records Privacy Act;

g. The 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);

h. The Regulations to Ensure the Protection of Subjects in Human Research (12VAC35-180);

i. Virginia Department of Health regulations;

j. Virginia Department of Health Professions (DHP) regulations;

k. Virginia Department of Medical Assistance Services regulations;

l. Uniform Statewide Building Code; and

m. 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 and procedures. All required policies shall be in writing.

B. The department shall determine the level of compliance with each regulation and note such compliance within the licensing report 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.

5. "Systemic noncompliance" (SN) means the provider has had violations of the regulations documented by the department that demonstrate multiple or repeat deficiencies in the operation of one or more services.

C. The provider, including its employees, contractors, student interns, and volunteers, shall comply with all applicable regulations.

D. Providers shall not deviate significantly from the program or services for which a license was issued without obtaining prior written approval from the department. A provider shall obtain approval by submitting a modification application as required by 12VAC35-106-80 A.

12VAC35-106-120. Corrective action plan.

A. If there is noncompliance with any applicable regulation during an initial or ongoing review, inspection, 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 a written corrective action plan for each violation cited.

C. The corrective action plan shall include a:

1. Detailed description of the corrective actions to be taken, including systemic actions, 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 oversight of the implementation of the pledged corrective action.

D. The provider shall submit a corrective action plan to the department within 15 business days of the issuance of the licensing report. One extension may be granted by the department when requested prior to the due date, but an extension 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. The provider has an additional 10 business days to submit a revised corrective action plan after receiving a notice that the department has not approved the revised corrective action plan. If the submitted revised corrective action plan is still not approved, the department shall offer the provider regulatory technical assistance prior to the resubmission of the third revised corrective action plan. If the third submission of the corrective action plan is not approved, the department shall incorporate the corrective action plan into the dispute process in 12VAC35-106-120 F.

F. When the provider disagrees with a citation of a violation *or* the disapproval of a revised corrective action plan, the provider shall initially discuss this disagreement with the licensing specialist. If the disagreement is not resolved, the provider may ask for a meeting with the licensing specialist's supervisor, in consultation with the DBHDS Office of Licensing Director or designee, to challenge a finding of noncompliance. The determination of the licensing director or the designee is final.

G. The provider shall implement their written corrective action plan for each violation cited by the date of the completion identified in the plan.

H. The provider shall monitor implementation and effectiveness of approved corrective actions as part of its quality improvement program required by 12VAC35-106-600. If the provider determines that an approved corrective action was fully implemented, but did not prevent the recurrence of a regulatory violation or correct any systemic deficiencies, the provider shall:

1. Continue implementing the corrective action plan and put into place additional measures to prevent the recurrence of the cited violation and address identified systemic deficiencies; or

2. Submit a revised corrective action plan to the department for approval.

12VAC35-106-130. 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 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.

12VAC35-106-140. Denial, revocation, or suspension of a license.

A. An application for a license, license renewal, or modification 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. The provider or applicant refuses to admit a representative of the department who displays 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).

12VAC35-106-150. 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.

12VAC35-106-160. Consent agreements.

A. A consent agreement may be entered into when the provider and the department seek to facilitate the provider's operation in accordance with applicable regulations without the need to enter into further adverse action. In no case may a proposed consent agreement be submitted after an informal conference.

B. An acceptable consent agreement shall contain the following specific elements:

1. Dates of key actions, and the names of the parties;

2. The assertion that all violations have been corrected or will be corrected by a time specified in the proposed agreement;

3. A description in detail of the case-specific systemic solution proposed that addresses the causes of the history of violations, including the methods the provider has in place to prevent violations and to monitor results;

4. A stipulation by the provider to the validity of the violations enumerated in the specified correspondence and waiver of right to hearing under the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia) solely with respect to those violations.

5. The duration of the consent agreement, including the information that the period begins when the commissioner or his designee signs it;

6. A statement that when the commissioner or his designee signs the agreement, signifying final acceptance, the commissioner or his designee is also agreeing to rescind the outstanding adverse action and that the provider is agreeing to withdraw all appeals to that action;

7. A statement directing the provider to review all pertinent state and federal regulations and contractual agents to determine any restrictions on reimbursement that may be imposed by other state agencies or payor sources as required by § 37.2-415 of the Code of Virginia; and

8. A statement outlining conditions for termination of the final agreement for cause, and the nature of the provider's appeal rights should termination occur.

12VAC35-106-170. Informal hearings.

A. Any provider appeal of a decision by the department pursuant to 12VAC35-106-130, 12VAC35-106-140, or 12VAC35-106-150 shall result in an informal hearing pursuant to the requirements of the Virginia Administrative Process Act, § 2.2-4019, unless the named party and the agency consent to waive such an informal hearing and go directly to a formal hearing. Requests for an appeal shall be in writing to the DBHDS Office of Licensing Director.

B. The provider appealing the decision ("the appellant") shall have the following rights to:

1. Reasonable notice of the informal hearing, which shall include contact information consisting of the name, telephone number, and government email address of the person designated by the department to answer questions or otherwise assist a named party;

2. Appear in person or by counsel or other qualified representative before the department or its subordinates, or before a hearing officer for the informal presentation of factual data, argument, or proof in connection with the appellant's case;

3. Have notice of any contrary fact basis or information in the possession of the department that can be relied upon in making an adverse decision against the appellant; and

4. Be informed briefly and generally in writing of the factual or procedural basis for an adverse decision against the appellant.

C. The commissioner or his designee shall appoint an individual who has training to serve as the presiding officer at the informal hearing. The staff member shall not be a staff member of the Office of Licensing or the Office of Human Rights.

D. The presiding officer shall be authorized to make decisions regarding the conduct of the informal hearing, to regulate the procedure at the informal hearing, to review all information presented, and to recommend a case decision to the commissioner.

E. The commissioner is not bound by the recommended decision of the presiding officer. The commissioner may review all relevant information in issuing a case decision. Any such case decision shall include factual findings, conclusions as to the violation of statutes or regulations, and, when appropriate, the recommended action against the provider's license.

F. If a provider is dissatisfied with the commissioner's decision under this section, a formal administrative hearing may be requested pursuant to §2.2-4020 of the Virginia Administrative Process Act, to be conducted by a hearing officer appointed from a list maintained by the Supreme Court of Virginia.

Article 3. Administration.

12VAC35-106-180. Governance.

A. The provider shall have a full-time employee, such as an executive director or administrator, 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. The owner or operator of the provider may serve as the full-time employee. The full-time employee shall have the following duties and responsibilities either directly or through delegation:

1. Oversight of programs, goals, budgets, operational reviews, and licensure status;

2. Documenting the committee or person who is responsible for audit and finance; and

3. Maintaining records documenting action taken in accordance with this subsection.

B. The provider shall submit the following information to the department:

1. The names and professional contact of all owners, officers, directors, and financial investors whether they are individuals, general or limited partnerships, corporate bodies, or subdivisions of other bodies, and anyone else that meets the definition of provider; the provider shall notify the department of any changes to this information at the same time the provider notifies the SCC;

2. A certificate from the SCC; and

3. A disclosure of ownership or financial interest in the service, program, or agency held by current employees, including the nature of such interest and the financial benefits received by the employee. The disclosure shall also state if no benefits are received.

12VAC35-106-190. Organizational structure.

A. The provider shall maintain and make available to any employee or client an organizational chart or a written policy that describes the organizational structure including lines of authority, responsibility, communication, and staff assignment.

B. Each provider shall establish a system of business management and staffing to ensure that the provider maintains complete and accurate audits, accounts, books, and records, including required financial, personnel, and client records.

12VAC35-106-200. Executive director or administrator.

A. The executive director or administrator shall have the following responsibilities, either directly or through delegation:

1. Responsibility for compliance with these regulations and other applicable regulations, and applicable laws;

2. Responsibility for all personnel;

3. Responsibility for overseeing the service operation in its entirety, including the structured program of care and its implementation; and

4. Responsibility for the provider's financial integrity, with the exception of community service boards.

B. An executive director or administrator shall have at least:

1. A master's degree in social work, psychology, counseling, rehabilitation counseling, special education, nursing, or administration.

2. A baccalaureate degree in administration or a human service field including social work, psychology, counseling, rehabilitation counseling, special education, and nursing; or

3. Four years professional experience working with disability populations and in administration and supervision;

C. Any executive director or administrator shall submit to the provider the following to demonstrate compliance with the qualifications required:

1. Primary source verification of the education requirements; or

2. Documentation of prior relevant experience.

The information in C 1-2 shall be maintained in the full-time executive director or administrator's personnel record.

12VAC35-106-210. Finances.

A. There shall be a system of financial recordkeeping that shows a separation of the provider's accounts from all other accounts.

B. The provider shall keep individual accounts separate. Providers shall not comingle funds of multiple individuals receiving services.

C. 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.

D. The provider shall notify the department in writing when its line of credit or other funds have been cancelled or significantly reduced at any time during the licensing period.

12VAC35-106-220. Liabilities and insurance.

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.

Article 4. Personnel.

12VAC35-106-230. Confidentiality of 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.

D. Providers shall comply with the requirements of § 19.2-389 of the Code of Virginia regarding dissemination of employee criminal history record information, including holding evidence of criminal history record check within an employee's or personnel record separate and in a manner to ensure the information is only disseminated to those persons permitted by law to receive it.

12VAC35-106-240. Criminal background and registry searches.

A. Providers shall comply with the requirements for obtaining criminal history background *checks as* outlined in §§ 37.2-416, 37.2-506, and 37.2-607 of the Code of Virginia.

1. The documentation necessary to conduct the criminal history background check shall be submitted no later than the first date of employment. Providers shall not employ persons that have been convicted of any of the barrier crimes listed in §19.2-392.02 of the Code of Virginia, except as otherwise provided by the Code of Virginia including § 37.2-416 C and D. Providers shall not employ persons with founded complaints of abuse or neglect within the registry that is maintained by the Department of Social Services (DSS) pursuant to § 63.2-1515.

a. EXCEPTION: Facilities using temporary agencies for the provision of contracted staff shall request a letter from the agency containing the following information:

1) The name of the contractor;
2) The date of employment; and

3) A statement verifying that the national criminal history record information as required by § 37.2-416 of the Code of Virginia was obtained within 30 days of employment, is on file at the temporary agency, and does not contain barrier crimes.
4) This letter shall have the same maintenance and retention requirements of a criminal history record report.

2. No person shall be permitted to work in a position that involves direct contact with an individual until an original criminal history background check and registry check is received by the provider, unless such person works under the direct supervision of another employee for whom a criminal history background check and registry check was completed in accordance with this section.

3. The provider shall take an immediate action in the event a person has a barrier crime returned on the criminal history background check. For all other persons for whom a criminal history background check or a registry check is returned the provider shall take action within 5 business days. The documentation of such action shall be placed within the person's personnel record. The documentation shall note either continued employment or termination due to the results of the criminal history background check or registry check.

B. The provider shall develop a written policy for criminal history background checks and registry checks searches. The policy shall require at a minimum:

1. The provider place a disclosure statement within the person's personnel record 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 *a person* has a founded case of abuse or neglect or both, or a conviction or pending criminal charge.

2. During the course of employment, all persons shall report any conviction of a barrier crime listed in § 19.2-392.02 of the Code of Virginia or any founded complaints of abuse or neglect within the registry that is maintained by DSS pursuant to § 63.2-1515.

3. The provider shall hold criminal history record information in a manner consistent with § 19.2-389 of the Code of Virginia, including holding the information within the person's personnel record separate and in a manner to ensure the information is only disseminated to those individuals permitted by law to receive it.

4. The provider shall have a policy related to action the provider will take in regard to criminal history background information that does not rise to the level of a barrier crime. This policy shall be appropriate for the population served by the provider and the expected duties of the employees.

5. The provider shall have a policy related to criminal background checks and registry checks in relation to students and volunteers.

C. The provider shall submit all information required by the department to complete the criminal history background checks and registry searches.

D. The provider shall maintain the following documentation:

1. The disclosure statement from the applicant stating whether he has ever been convicted of or is the subject of pending charges for any offense; and

2. Documentation that the provider submitted all information required by the department to complete the criminal history background checks and registry searches, memoranda from the department transmitting the results to the provider, if applicable, and the results from the Child Protective Registry search.

12VAC35-106-250. Personnel records.

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

1. Individual identifying information;

2. Verified education history if specific education is a requirement within the employee's job description or a legal requirement;

3. Employment history including dates and places of employment, job title, job description, and if applicable, population served;

4. Evidence of reasonable efforts to verify employment history;

5. Results of any provider credentialing process including methods of verification of applicable professional licenses or certificates;

6. Three references which support the character, ability, and fitness for employment;

7. Results of the required criminal background checks and searches of the registry of founded complaints of child abuse and neglect; results shall be placed within a file in accordance with 12VAC35-106-230 D immediately upon receipt by the provider in the event an employee has a barrier crime returned on the criminal history background check. For all other employees for whom a criminal history background check or a registry check is returned the provider shall take action within 5 business days.

8. Evidence of a valid driver's license and driving record by a Department of Motor Vehicles for employees transporting individuals;

9. Results of performance evaluations;

10. A record of disciplinary action taken by the provider, if any;

11. A record of adverse action by any licensing and oversight bodies or organizations, if any;

12. A record of participation in employee development activities, including required orientation, training, and the results of employee's knowledge and competency testing enumerated within 12VAC35-106-300;

13. Record of Human Rights training as required under 12VAC35-106-300 B 1 e; and

14. An annual disclosure statement from the employee stating whether he has ever been convicted of or is the subject of pending charges for any barrier crime offense listed within § 19.2-392.02.

B. The provider shall maintain the employee's statement of certification by a qualified licensed practitioner indicating the absence of tuberculosis in a communicable form as required by 12VAC35-106-260 A in a separate file in accordance with 12VAC35-106-230 C.

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

D. In addition to the elements required within subpart A, contractor records, whether hard-copy or electronic, shall include:

1. The up-to-date contract agreement governing the agency's relationship with the contracted staff person that includes a designated start and end date;

2. A record of participation in employee development activities, including the required orientation, training, and the results of any knowledge or competency testing enumerated within 12VAC35-106-300. Contracted employees shall have evidence of orientation and training within their files that occurs within the term of their current contract agreements.

3. Record of the Human Rights regulation training as required under 12VAC35-106-300 B 1 e.

12VAC35-106-260. 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 prior to 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 DBHDS licensed provider.

B. 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.

C. 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.

12VAC35-106-270. 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 to supplant direct care positions. The provider staffing plan shall not include volunteers or students. Students or volunteers may provide direct care services when the student or volunteer is being supervised by a provider employee or contractor. However, students and volunteers may never be relied upon to fill staffing needs or requirements.

C. The provider shall conduct a criminal background and a check of registry that is maintained by DSS pursuant to Code of Virginia § 63.2-1515 for all students and volunteers. The provider shall follow the written policy for criminal history background checks and registry searches required by 12VAC35-106-240 B regarding the results obtained.

D. The provider shall maintain the student's or volunteer's statement of certification by a qualified licensed practitioner indicating the absence of tuberculosis in a communicable form as required by 12VAC-106-260 A.

12VAC35-106-280. 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 12VAC35-106-290.

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.

12VAC35-106-290. Qualifications of Employees.

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 DHP. The provider shall design, implement, and document the process used to verify professional credentials and to identify any adverse action taken by DHP.

C. Supervisors shall have education, training, and experience ~~in~~ working with individuals being served, including diagnosis and age, 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 and the population served.

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

F. Additional service-specific licensing chapters may contain additional qualification requirements.

12VAC35-106-300. Employee training.

A. The provider shall provide training and development opportunities for employees and contractors to enable them to support the individuals *receiving services* and to carry out their job responsibilities. The provider shall develop a training policy that addresses the frequency of retraining. The training policy shall address initial and annual knowledge or competency testing, and any knowledge or competency testing that may be necessary due to appropriate implementation of the provider's risk management program required by 12VAC35-106-590 or the provider's quality improvement program required by 12VAC35-106-600. Employee and contractor participation in training and development opportunities and the results of knowledge and competency testing shall be documented within the personnel files and shall be accessible to the department.

B. New employees, contractors, volunteers, and students shall be oriented and trained as appropriate according to their function or job-specific responsibilities that shall include:

1. Required initial training: Within 15 business days following an employee or contractor's start date, each employee or contractor responsible for supervision of individuals receiving services shall receive basic orientation and training regarding:

a. The provider's behavior intervention policies and procedures regarding least restrictive interventions, timeout, and physical restraint;

b. Emergency preparedness and response training, including emergency medical drills;

c. Objectives and philosophy of the provider;

d. Practices of confidentiality including access, duplication, and dissemination of any portion of an individual's record;

e. Practices that assure an individual's rights including training regarding the Human Rights Regulations (12VAC35-115);

f. Applicable personnel policies, including the grievance policy;

g. Person-centeredness;

h. Infection control practices and measures;

i. Other policies and procedures that apply to specific positions and specific duties and responsibilities; and

j. Serious incident reporting, including when, how, and under what circumstances a serious incident report must be submitted and the consequences of failing to report a serious incident to the department in accordance with this chapter.

2. First aid and medication administration: Within 30 business days following an employee or contractor's start date, each employee or contractor shall receive training regarding:

a. Cardiopulmonary resuscitation (CPR) and first aid training issued by the American Red Cross, the American Heart Association, or a comparable authority in standard first aid and CPR. The training shall have a certification process that shall include a hands-on, in-person demonstration of CPR competency. A valid certification from a previous employer or other source shall meet this requirement. Employees certified as an emergency medical technician shall be deemed as having fulfilled this requirement;

b. Medication administration including basic pharmacology and medication side effects.

3. New employees, contractors, volunteers and students shall not work alone until completing all orientation and training required under 12VAC35-106-300 B 1-2 and demonstrating knowledge or competency, as appropriate. All new employees, contractors, volunteers, and students shall complete all orientation and training required under 12VAC35-106-300 B 1-2 and demonstrate knowledge or competency, as appropriate, prior to carrying out job responsibilities without supervision. Documentation of knowledge or competency, as appropriate, shall be kept in the employee or contractor's personnel file.

C. All employees and contractors shall complete an annual training that shall include:

1. Retraining of all the elements required within 12VAC35-106-300 B 1-2, except for CPR training that will occur on a biennial basis; and

2. Any additional training that may be required due to appropriate implementation of a corrective action plan required by 12VAC35-106-120, the provider's risk management program required by 12VAC35-106-590, or the provider's quality improvement program required by 12VAC35-106-600.

12VAC35-106-310. 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 receiving services;

2. Types of services offered;

3. Service description;

4. Number of individuals to receive services at a given time; and

5. Adequate number of staff required to safely evacuate all individuals during an emergency.

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

C. The provider shall have a written staffing policy which shall include 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 developmental services shall be provided by a person with at least one year of documented experience working directly with individuals who have 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.

6. 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. 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.

E. Staff in direct care positions providing 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.

12VAC35-106-320. Notification of policy changes.

A. 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.

B. The provider shall notify the department of any substantive changes to policies required by this regulatory chapter prior to implementation of the change.

12VAC35-106-330. 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 and document the employee or contractor's performance within the employee's or contractor's personnel file.

12VAC35-106-340. Grievances.

A. 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 during the orientation period.

B. The provider shall hold grievance information within an employee's personnel record in a confidential manner to ensure the information shall only be disseminated to those individuals permitted by law to receive it.

12VAC35-106-350. Disciplinary actions.

A. The provider shall maintain policies and procedures governing employee discipline. Such policies shall include:

1. The circumstances under which discipline will be administered;

2. The range of penalties permitted;

3. Procedures for employee and contractor appeals of discipline;

4. Documentation of disciplinary actions and results of appeals; and

5. A list of types of individuals who may access documentation of disciplinary actions.

B. Policies for employee and contractor behavior that are subject to discipline shall include penalties for:

1. Abuse, mistreatment, neglect, or exploitation of individuals;

2. Violation of rights of individuals;

3. Violation of confidentiality rules; and

4. Violation of the provider's policies.

C. In lieu of the minimum requirements contained in this section, providers may develop a policy regarding employee discipline in accordance with the rules and regulations of the supervising personnel authority when a provider is subject to (i) rules and regulations of the Virginia Department of Human Resources Management or (ii) the rules and regulations of a local government personnel office.

Article 5. Operational Practices.

12VAC35-106-360. License availability.

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

12VAC35-106-370. Appropriate name.

A. Providers shall submit to the department the legal, assumed, or fictitious name under which the provider is doing business in the Commonwealth. Providers shall also submit any other Virginia corporate names of the provider, if different from the legal, assumed, or fictitious name under which the provider is doing business. The submission with the department of the provider's legal, assumed, or fictitious name shall occur:

1. During the application process required by 12VAC35-106-40; or

2. During any modification application or change of ownership process that occurs as required by 12VAC35-106-80.

B. Any change to the provider's legal, assumed, or fictitious name under which the provider is doing business in the Commonwealth that does not coincide with an initial application or a change of ownership shall require a modification application as required by 12VAC35-106-80.

C. The department shall list licensed providers on the department's website.

12VAC35-106-380. Regular business hours.

A. The provider shall establish regular business hours for each of the provider's offices where individual or personnel records are kept. The provider shall publish, post, and make available the provider's business hours in a manner accessible to individuals receiving services.

B. Some portion of the provider's regular business hours shall include state business hours to ensure that the department has the ability to conduct unannounced inspections and investigations as required by 12VAC35-106-60. The business hours shall also include enough time for the department to conduct unannounced inspections and investigations.

C. The provider shall submit the regular business hours to the department.

12VAC35-106-390. Office and service locations.

A. Offices shall have sufficient and appropriate space for storage of records of individuals receiving services, and employee and contractor personnel records. The office shall have sufficient and appropriate space for authorized personnel, such as individuals receiving services and department personnel conducting onsite reviews, to have access to the records within the office.

B. The provider shall submit all office locations to the department:

1. During the application process required by 12VAC35-106-40; or

2. During any modification application or change of ownership process that occurs as required by 12VAC35-106-80.

C. The addition or closure of either an office or service location that does not coincide with an initial application or a change of ownership shall require a modification application as required by 12VAC35-106-80.

12VAC35-106-400. Fee schedule.

A. If the provider charges for services, the written schedule of rates and charges shall be provided to the individual or his authorized representative upon admission.

B. The provider's fee schedule shall be available to the individual and if applicable, his authorized representative upon request. The provider shall publish, post in a manner accessible to individuals receiving services, and make available the fee schedule.

C. The provider shall ensure the published fee schedule is up to date.

12VAC35-106-410. Deceptive or false advertising.

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

B. The provider's name and service names shall not imply the provider is offering services for which it is not licensed. The provider's name and service names shall comply with 12VAC35-106-370.

C. A provider cannot utilize a name registered with the department by another provider.

12VAC35-106-420. Cessation of services.

A. A provider shall notify the department in writing of its intent to cease operation of any or all licensed services at least 30 business days prior to the cessation of any service. The provider

shall continue to maintain substantial compliance with all applicable regulations as it ceases any or all of its services.

B. All individuals receiving services and their authorized representatives shall be notified of the provider's intent to cease services in writing at least 30 business days prior to the cessation of any service. This written notification shall also be documented in each individual's record as a progress note. 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 or transferred. The written notification shall include information regarding the individual's transition to a new provider, discharge planning, and notes regarding the individual's continuity of care.

C. No part of this section shall apply to a provider discontinuing services for a specific individual. Involuntary termination of treatment shall be governed by 12VAC35-106-470 of this chapter. Regular discharge of a specific individual is governed by 12VAC35-106-460.

12VAC35-106-430. Transition of individuals between services operated by the same provider.

A. The provider shall implement a written policy that defines the process for transitioning an individual between services operated by the same provider. At a minimum, the policy shall address:

1. The process by which the provider will ensure 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 the individual's record and ISP to the destination location. The timeframe shall be prior to or at the transition date;

4. The process and timeframe for completing the transition summary. The timeframe shall be prior to or at the transition date; and

5. The process and timeframe for transmitting a transition summary to the destination service. The timeframe shall be prior to or at the transition date.

B. The transition summary shall include:

1. Reason for the individual's transition;

2. Documentation of informed choice by the individual or his authorized representative, as applicable, in the decision to and planning for the transition;

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;

7. Transition date; and

8. Signature of employee or contractor responsible for preparing the transition summary.

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

D. This section does not apply to those transfers that qualify as emergency transfers.

12VAC35-106-450. Emergency transfers.

A. The provider shall implement a written policy that defines the process for transitioning or discharging an individual who experiences an emergency or crisis that the provider is not equipped to serve. At a minimum, the policy shall address:

1. The process the provider will follow during the emergency or crisis while the individual is still within the provider's care;

2. The process the provider will follow to transfer or discharge the individual to the new provider; and

3. The process and timeframe for transferring the access to the individual's record and ISP, including the individual's discharge summary as required by 12VAC35-106-460 F.

B. All providers shall develop a method for documenting the provision of interventions that occur during a crisis or emergency. Documentation shall comply with 12VAC35-106-500. This documentation shall occur prior to transition of documentation required under this section.

12VAC35-106-460. Discharge.

A. Crisis providers are not subject to the provisions of this section but shall follow the discharge planning provisions of the Crisis chapter listed within xxx-xxx-xxx.

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 and documentation of informed choice by the individual or his authorized representative, as applicable, in the decision to discharge and planning for the discharge;

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.

12VAC35-106-470. Involuntary termination of treatment.

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

B. The provider shall establish a complaint procedure as part of the rights of the individual. The complaint procedure shall comply with 12VAC35-106-600 G.

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. The provider shall provide appropriate discharge planning for all individuals who are involuntarily terminated under this section. The standards for appropriate discharge planning shall be governed by 12VAC35-106-460 and shall include notification of the individual's case manager.

12VAC35-106-480. Policies.

Each provider shall have written policies and procedures consistent with and implemented in accordance with the requirements of this chapter, the service-specific licensing chapter under which the provider is operating, department administrative guidelines, and applicable laws. All policies required under this chapter shall be in writing, and available to staff, individuals, and department inspectors, and shall at a minimum address:

1. A succession plan except that community service boards and government agencies are not required to have a succession plan.

2. Handling funds of individuals receiving services, including providing for separate accounting of individual funds. The policy shall include:

a. Handling of any individual's own cash and petty cash.

b. Documented financial controls to minimize the risk of theft or embezzlement of funds of individuals receiving services.

c. Purchase of a surety bond to provide assurance for the security of all funds of individuals receiving services deposited with the provider.

3. The provider shall develop and implement written policies and procedures to minimize the risk of theft or embezzlement of provider funds. The policies and procedures that address the day-to-day handling of facility funds shall include:

a. Handling of deposits and petty cash; and

b. Writing of checks.

4. 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. The policies and procedures shall include:

a. A definition of what constitutes a crisis or behavioral, medical, or psychiatric emergency;

b. 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;

c. Employee or contractor responsibilities; and

d. 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.

5. Maintenance and use of medical equipment, including personal medical equipment and devices.

6. A policy addressing the provisions required by 12VAC35-106-520 regarding medication management.

7. The use of behavior interventions, including seclusion, restraint, and time out. The policies and procedures shall: include the provisions required by 12VAC35-106-530;

8. Organizational structure;

9. Emergency transfers;

10. Discharge;

11. Criminal history background checks and registry searches;

12. Staffing policy;

13. Employee and contractor training;

14. Evaluation of employee and contractor performance;

15. The use and responsibilities of students and volunteers;

16. Grievance procedures;

17. Disciplinary actions;

18. A records management policy that describes confidentiality, accessibility, security, and retention of paper and electronic records pertaining to individuals receiving services and personnel records;

19. Records review process;

20. Onboarding of individuals receiving services;

21. Quality improvement program sufficient to identify, monitor, and evaluate clinical and service quality and effectiveness on a systemic and ongoing basis;

22. Root cause analysis;

23. Serious incident reporting;

24. Risk management;

25. Transitioning individuals between or among services operated by the provider;

26. Involuntary termination of treatment;

27. Privacy, social media, photography, and audio or audio-video recordings of individuals;

28. The use and possession of weapons on the premises; and

29. Transportation.

12VAC35-106-490. Emergency medical information.

A. The provider shall maintain the following emergency medical information on a completed face sheet and updated for each individual when changes occur:

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 in the case of an emergency;

2. Medical insurance company name and policy or Medicaid, Medicare, or Tricare 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 disorders;

6. Significant medical problems or conditions and a list of medical protocols for those problems or conditions. Detailed medical protocols shall be maintained separately and in a manner easily accessible to emergency personnel;

7. Significant ambulatory or sensory problems;

8. Significant communication problems;

9. For individuals who are pregnant, the expected date of delivery and the name of the hospital to provide delivery services to the individual; and

10. Advance directive, if one exists.

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

12VAC35-106-500. Documenting interventions that occur during a crisis or emergency.

A. All providers shall develop a method for documenting the provision of interventions that occur during a crisis or emergency. 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. Documentation of the interventions that occurred during a crisis or emergency shall become part of ~~his~~ the individual's record within one business day.

12VAC35-106-510. Service description requirements.

A. The provider shall develop, implement, review, and revise its descriptions of services offered according to the provider's mission. The provider shall publish, post, in a manner accessible to individuals receiving services, and make available to individuals, and if applicable, their authorized representatives, service descriptions. The provider shall make the 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 ISP.

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, skills acquisition, or other supports provided;

3. Characteristics and needs of individuals to receive services;

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 only admit and continue to treat 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 receiving services. The provider shall monitor and assess individuals consistent with reassessment and ISP reviews as required by the department's service-specific licensing chapters. The provider shall transfer or discharge individuals who develop service needs outside of the provider's service description.

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.

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 receive services safely within the service to the department for approval. If the plan is approved, the department shall add a stipulation to the license authorizing the provider to serve individuals who are under temporary detention orders.

J. Refer to service-specific chapters regarding additional requirements related to service-specific descriptions that also apply.

12VAC35-106-520. 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.

G. The department's service-specific licensing regulations may have additional requirements regarding medication management.

12VAC35-106-530. Restrictive behavioral interventions and supports.

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

1. Be consistent with applicable federal and state laws and regulations, including 12VAC35-115-105;

2. Emphasize positive approaches to behavioral interventions;

3. Ensure seclusion is only utilized within an inpatient hospital and only in an emergency.

4. List and define behavioral 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;

5. Protect the safety and well-being of the individual at all times, including during fire and other emergencies;

6. Specify the mechanism for monitoring the use of behavioral interventions; and

7. Specify the methods for documenting the use of behavioral interventions.

B. Only employees and contractors trained in behavioral support interventions shall implement these restrictive procedures as per the provider's written policies and procedures. Monitoring of the implementation of the restrictive interventions shall be in accordance with provider policy in addition to state and federal regulations.

C. Policies and procedures related to restrictive 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 seclusion or restraint shall be reported to the department as provided in 12VAC35-115-230 C.

F. The department's service-specific licensing regulations may have additional requirements regarding behavioral interventions and supports.

12VAC35-106-540. 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.

12VAC35-106-550. Fundraising.

The provider shall not use individuals in its fundraising activities without written permission of the individual and, if applicable, the individual's authorized representative.

12VAC35-106-560. Privacy.

Each provider shall have written policies and procedures regarding privacy, social media, photography, and audio or audio-video recordings of individuals that shall ensure and provide:

1. The written consent of the individual and, if applicable, the individual's authorized representative shall be obtained before the individual is photographed or recorded for publicity purposes, including publicity that occurs on social media.

2. No photographing or recording by the provider shall take place without the individual and, if applicable, the individual's authorized representative being informed.

3. All photographs or recordings shall be used in a manner that respects the dignity and confidentiality of the individual.

4. The dignity and privacy of individuals shall be protected during open houses. Open houses are events that open the service location to visitors that are not residents, family members, authorized representatives, staff, or representatives from the state.

12VAC35-106-570. Transportation.

A. Transportation provided for or used by individuals shall comply with local, state, and federal laws relating to:

1. Vehicle safety and maintenance;

2. Licensure of vehicles;

3. Licensure of drivers; and

4. Passenger safety, including requiring individuals receiving services to wear appropriate seat belts or restraints for the vehicle in which they are being transported.

B. Only authorized employees or contractors shall transport individuals served. The provider shall conduct a check of employees' or contractors' driving records who are authorized to transport individuals served. The provider shall not permit an employee or contractor to transport individuals if they have a conviction for driving or operating a vehicle under the influence or reckless driving within the past two years.

1. The provider shall verify each employee or contractor driving record at the time of employment. The provider shall develop and implement a transportation policy as required by 12VAC35-106-570 C that shall set out the method for determining a random sample of current authorized employees or contractors driving records to be conducted annually. The random sample shall be no less than 10% of authorized employees or contractors. Documentation of the most recent check of the driving record of the employee or contractor shall be placed within the personnel record.

2. During the course of employment, employees and contractors authorized to transport individuals served shall report any conviction of driving or operating a vehicle under the influence or reckless driving.

C. There shall be written policy for transportation of individuals appropriate to the population served. The written policy for transportation shall:

1. Require insurance for transportation provided;

2. Include standards for an acceptable driving record for any employees or contractors transporting individuals and enforcement methods for those standards;

3. Address appropriate supervision standards for the population served during transportation. These standards will account for behavioral issues of the individuals being transported;

4. Require all vehicles are heated and cooled appropriately; and

5. Include provisions to ensure that in case of an emergency, any employees or contractors with a conviction for operating or driving a vehicle under the influence or reckless driving within the past two years who are employed for reasons other than transportation are not utilized to transport individuals. Documentation of the most recent check of the employee or contractor driving record shall be placed within the personnel record.

D. The provider shall develop and implement written protocols for use and maintenance of vehicles and power equipment.

Article 6. Risk Management and Quality Improvement.

12VAC35-106-580. Reporting to the department.

A. For the purpose of this section the following terms shall have the following definitions:

"Level I serious incident" means a serious incident that occurs or originates during the provision of a service or on the premises of the provider and does not meet the definition of a Level II or Level III serious incident. "Level I serious incidents" do not result in significant harm to individuals, but may include events that result in minor injuries that do not require medical attention or events that have the potential to cause serious injury, even when no injury occurs.

"Level II serious incident" means a serious incident that occurs or originates during the provision of a service or on the premises of the provider that results in a significant harm or threat to the health and safety of an individual that does not meet the definition of a Level III serious incident. "Level II serious incident" includes a significant harm or threat to the health or safety of others caused by an individual. "Level II serious incidents" include:

1. A serious injury;

2. An individual who is or was missing;

3. An emergency room visit;

4. An unplanned psychiatric or unplanned medical hospital admission of an individual receiving services other than licensed emergency services except that a psychiatric admission in accordance with the individual's wellness plan shall not constitute an unplanned admission for the purposes of this chapter;

5. Choking incidents that require direct physical intervention by another person;

6. Ingestion of any hazardous material; or

7. A diagnosis of:

a. A decubitus ulcer or an increase in severity of level of previously diagnosed decubitus ulcer;

b. A bowel obstruction; or

c. Aspiration pneumonia.

"Level III serious incident" means a serious incident whether or not the incident occurs while in the provision of a service or on the provider's premises and results in:

1. Any death of an individual;

2. A sexual assault of an individual; or

3. A suicide attempt by an individual admitted for services, other than licensed emergency services, that results in a hospital admission.

"Missing" means a circumstance in which an individual is not physically present when and where he should be and his absence cannot be accounted for or explained by his supervision needs or pattern of behavior.

"Suicide attempt" means a non-fatal, self-directed, potentially injurious behavior with an intent to die as a result of the behavior regardless of whether it results in injury.

B. The provider shall collect, maintain, and review at least quarterly all serious incidents, including Level I serious incidents, as part of the quality improvement program in accordance with 12VAC35-106-600 to include an analysis of trends, potential systemic issues or causes, indicated remediation, and documentation of steps taken to mitigate the potential for future incidents.

C. The provider shall collect, maintain, and report or make available to the Office of Licensing the following information:

1. Each allegation of abuse or neglect shall be reported to the department as provided in 12VAC35-115-230 A. Each allegation of abuse or neglect that meets the definition of Level II or Level III serious incident shall also be reported to the Office of Licensing as a part of the provider's serious incident reporting.

2. Level II and Level III serious incidents shall be reported using the department's web-based reporting application and by telephone or email to anyone designated by the individual to receive such notice and to the individual's authorized representative within 24 hours of discovery. Reported information shall include the information specified by the department as required in its web-based reporting application, but at least the following: the date, place, and circumstances of the serious incident. For serious injuries and deaths, the reported information shall also include the nature of the individual's injuries or circumstances of the death and any treatment received. For all other Level II and Level III serious incidents, the reported information shall also include the consequences that resulted from the serious incident. 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. Instances of seclusion or restraint shall be reported to the department as provided in 12VAC35-115-230 C 4. Serious injury sustained during instances of seclusion or restraint shall also be reported to the Office of Licensing as a part of the provider's serious incident reporting.

D. A root cause analysis shall be conducted by the provider within 30 calendar days of discovery of Level II serious incidents and any Level III serious incidents that occur during the provision of a service or on the provider's premises.

1. The root cause analysis shall include at least the following information:

(a) a detailed description of what happened;

(b) an analysis of why it happened, including identification of all identifiable underlying causes of the incident that were under the control of the provider; and

(c) identified solutions to mitigate its reoccurrence and future risk of harm when applicable.

2. The provider shall develop and implement a root cause analysis policy for determining when a more detailed root cause analysis, including convening a team, collecting and analyzing data, mapping processes, and charting causal factors, should be conducted. At a minimum, the policy shall require for the provider to conduct a more detailed root cause analysis when:

(a) A threshold number, as specified in the provider's policy based on the provider's size, number of locations, service type, number of individuals served, and the unique needs of the

individuals served by the provider, of similar Level II serious incidents occur to the same individual or at the same location within a six-month period;

(b) Two or more of the same Level III serious incidents occur to the same individual or at the same location within a six-month period;

(c) A threshold number, as specified in the provider's policy based on the provider's size, number of locations, service type, number of individuals served, and the unique needs of the individuals served by the provider, of similar Level II or Level III serious incidents occur across all of the provider's locations within a six-month period; or

(d) A death that occurs during the provision of a service or on the provider's premises as a result of an acute medical event that was not expected in advance or based on a person's known medical condition.

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

F. 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.

G. 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.

H. Applicants and providers shall not submit any misleading or false information to the department. The commissioner may invoke the sanctions listed within 12VAC35-106-130 if any applicant or provider submits misleading or false information to the department in relation to this section.

I. The provider shall develop and implement a serious incident management policy, which shall be consistent with this section and which shall describe the processes by which the provider will document, analyze, and report to the department information related to serious incidents.

12VAC35-106-590. Risk management.

A. The provider shall designate a person responsible for the risk management function who has completed department approved training which shall include training related to risk management understanding of individual risk screening, conducting investigations, root cause analysis, and the use of data to identify risk patterns and trends.

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

C. The provider shall conduct systemic risk assessment reviews at least annually to identify and respond to practices, situations, and policies that could result in the risk of harm to individuals receiving services. The risk assessment review shall address at least the following:

1. The environment of care;

2. Clinical assessment or reassessment processes;

3. Staff competence through testing and adequacy of staffing;

4. Use of high risk procedures, including seclusion and restraint; and

5. A review of serious incidents.

D. The systemic risk assessment process shall incorporate uniform risk triggers and thresholds as defined by the department.

E. 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.

F. The provider shall document serious injuries to employees, contractors, students, volunteers, and visitors that occur during the provision of a service or on the provider's property. Documentation shall be kept on file for three years. The provider shall evaluate *serious* injuries at least annually. Recommendations for improvement shall be documented and implemented by the provider.

12VAC35-106-600. Monitoring and evaluating service quality.

A. The provider shall develop and implement written policies and procedures for a quality improvement program sufficient to identify, monitor, and evaluate clinical and service quality and effectiveness on a systematic and ongoing basis.

B. The quality improvement program shall utilize standard quality improvement tools including root cause analysis and shall include a quality improvement plan.

C. The quality improvement plan shall:

1. Be reviewed and updated at least annually;

2. Define measurable goals and objectives;

3. Includes and report on statewide performance measures, if applicable, as required by DBHDS;

4. Monitor implementation and effectiveness of approved corrective action plans pursuant to 12VAC35-106-120; and

5. Include ongoing monitoring and evaluation of progress toward meeting established goals and objectives. The provider's policies and procedures shall include the criteria the provider will use to establish measurable goals and objectives.

D. The provider's policies and procedures shall include the criteria the provider will use to:

1. Establish measurable goals and objectives;

2. Update the provider's quality improvement plan and

3. Submit revised corrective action plans to the department for approval or continue implementing the corrective action plan and put into place additional measures to prevent the recurrence of the cited violation and address identified systemic deficiencies when reviews determine that a corrective action was fully implemented but did not prevent the recurrence of the cited regulatory violation or correct a systemic deficiency pursuant to 12VAC35-106-120.

E. 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 improvement plan. The provider shall implement improvements, when indicated.

F. Each provider shall have complaint handling procedures that comply with 12VAC35-115-175. No part of this section shall replace or modify the requirements of handling human rights complaints.

G. Each provider shall establish and maintain a licensing complaint handling policy for all other complaints under this chapter, as defined within 12VAC35-106-20. The policy shall specify:

1. A system for logging receipt, investigation, and resolution of licensing complaints;

2. Format of the written record of the findings of each licensing complaint investigated; and

3. Designated staff responsible for licensing complaint resolution. This designation shall be documented in the staff person's personnel file.

H. The provider shall designate staff responsible for licensing complaint resolution.

I. In addition to the information required by 12VAC35-115-40, the provider shall also provide each individual receiving services and, if applicable, his authorized representative, with the name, mailing address, and telephone number of the:

1. Provider's complaint contact person; and

2. The contact for the DBHDS Office of Licensing,

J. The provider shall maintain documentation of all licensing complaints received and the status of each licensing complaint from date of receipt through its final resolution. Records of licensing complaints shall be maintained for no less than three years.

Article 7. Responsibilities to Individuals.

12VAC35-106-610. Individual records.

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 including fire damage or water damage, unauthorized alteration, inadvertent or unauthorized access, disclosure of information, and transportation of records between service sites;

5. Strategies for service continuity and record retention or recovery in the event of a disaster or emergency 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. The policy shall ensure:

a. Notice to individuals receiving services and their authorized representatives of where all individual records will be located;

b. If the disposition of records involves a transfer to another provider, the provider shall have a written agreement with that provider;

c. If the disposition of records involves storage of records, the continued confidentiality, accessibility, and security of the records; and

d. If the disposition of records involves storage of records, protection from loss, including fire damage or water damage.

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).

C. The provider shall define, by policy, all records it maintains that address an individual's care and treatment and what each record contains. The policy shall address how the provider documents elements of the individual's record that the individual refuses or cannot provide. The policy shall at a minimum require that each individual record contain:

1. An identification number unique to the individual;
2. The name of the individual;
3. Current residence if known;
4. Sex and gender;
5. Marital status;
6. Date of birth;
7. Name of authorized representative, if applicable;
8. Name, address, and telephone number for the individual's emergency contact;
9. Adjudicated legal competency or legal capacity, if applicable;
10. Date of admission to service;
11. Screening documentation;
12. Assessments;
13. Medical evaluations, as applicable to the service;
14. Individualized service plans and reviews;
15. Progress notes; and
16. A discharge summary, if applicable.

D. 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.

E. 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.

F. Physical controls shall exist to protect active and closed paper records when not in use.

G. Physical and data security controls shall exist to protect electronic records.

H. The provider shall retain an individual's service record for the time period specified by state or federal requirements. The Health Insurance Portability and Accountability Act (HIPAA) privacy regulations, 45 C.F.R. §164.530(j)(2), and § 54.1-2910.4of the Code of Virginia require that an individual's service record be retained for a minimum of six years from when the record was created.

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

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

12VAC35-106-620. Onboarding of individuals.

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

B. As appropriate to the scope and level of services, the policy shall require the provision of the following information to individuals and authorized representatives prior to or on the admission date of each service:

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 complaint policy as required in 12VAC35-105-590 C;

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 to the provisions within 12VAC35-106-620 B, individuals receiving treatment services in a correctional facility shall receive an onboarding to the facility's security restrictions.

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

12VAC35-106-630. Human rights.

The provider including all employees, contractors, students, and volunteers shall comply with the Regulations to Assure Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Behavioral Health and Developmental Services (12VAC35-115).

12VAC35-106-640. 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 state approved protection and advocacy organization.

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;

13. Use of restraints that places the individual's body in a prone (face down) position;

14. Standing order for the use of seclusion or restraint for behavioral purposes; and

15. 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.

12VAC35-106-650. Choice of Provider.

Each individual has a right to participate meaningfully in decisions regarding all aspects of services affecting him including the choice of health care providers. Individuals have the right to change providers without fear of coercion, retaliation, or the imposition of requirements that have no reasonable role in the orderly and timely transfer of care.

12VAC35-106-660. Least restrictive treatment.

Each individual shall receive treatment and services in accordance with 12VAC35-115-100 A 2.

Article 8. Physical Environment Standards.

12VAC35-106-670. Personal necessities.

A. In service locations where appropriate, an adequate supply of personal necessities shall be available to individuals receiving services at all times for purposes of personal hygiene and grooming.

B. In service locations where appropriate, clean, individual washcloths and towels shall be in good repair and available once each week and more often if needed.

C. In service locations where appropriate, when individuals are incontinent or not able to use the toilet independently:

1. Provision shall be made for sponging, diapering, or other similar care on a nonabsorbent changing surface that shall be cleaned and disinfected after each use.

2. A covered diaper pail, or its equivalent, with leakproof disposable liners shall be used to dispose of diapers. If both cloth and disposable diapers are used, there shall be a diaper pail for each.

3. Adapter seats and toilet chairs shall be cleaned immediately after each use with appropriate cleaning materials.

4. Staff shall thoroughly wash their hands with warm soapy water immediately after assisting an individual or themselves with toileting.

5. Appropriate privacy, confidentiality, and dignity shall be maintained for residents during toileting and diapering.

12VAC35-106-680. Animals.

A. Animals maintained on the premises shall be tested, inoculated, and licensed as required by law.

B. The service location shall not keep, feed or provide water to stray domestic animals.

C. Pets shall be provided with clean quarters and adequate food and water and, if appropriate, access to the outdoors.

D. The provider shall ensure that any individual's rights, and medical needs are not compromised by the presence of an animal.

E. Providers shall ensure the rights of individuals receiving services who have service animals are protected.

1. Individuals have a right to utilize their service animal within any facility to assist with performing tasks, unless the service animal is not under control, not housebroken, or its presence is fundamentally altering programs or services provided by the provider or poses a direct threat to the health or safety of others.

2. Individuals with service animals cannot be required to comply requirements not applicable to other persons.

3. Allergies and fear of dogs are not valid reasons for denying access or refusing service to an individual with a service animal.

12VAC35-106-690. 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.

12VAC35-106-700. Computers and Internet Access.

All licensed service locations shall have access to appropriate technology, including computer and internet access, to comply with the regulatory requirements contained within this chapter and the service-specific chapters, including serious incident reporting into the department's web-based reporting application as required by 12VAC35-106-580.

Article 9. Emergency Preparedness.

12VAC35-106-710. Access to communication systems in emergencies; emergency telephone numbers.

A. The provider shall have redundant communication systems with the ability to provide a means of communication during commercial power failure.

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

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

12VAC35-106-720. 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.

12VAC35-106-730. 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.