12 VAC 35-105 Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation and Substance Abuse Services

PART I.
GENERAL PROVISIONS.

Article 1.

12 VAC 35-105-10. Authority and applicability.

A. Section 37.1-179.1 of the Code of Virginia authorizes the commissioner to license providers subject to rules and regulations promulgated by the State Mental Health, Mental Retardation and Substance Abuse Services Board.

B. No provider shall establish, maintain, conduct or operate any service for persons with mental illness or mental retardation or persons with substance addiction or abuse without first receiving a license from the commissioner.

Article 2.

Definitions.

12 VAC 35-105-20. Definitions.

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

"Abuse" (§ 37.1-1 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 receiving services 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 services. Examples of abuse include, but are not limited to, the following:

1. Rape, sexual assault, or other criminal sexual behavior;

2. Assault or battery;

3. Use of language that demeans, threatens, intimidates or humiliates the person;

4. Misuse or misappropriation of the person’s assets, goods or property;

5. Use of excessive force when placing a person in physical or mechanical restraint;

6. Use of physical or mechanical restraints on a person that is not in compliance with federal and state laws, regulations, and policies, professional accepted standards of practice or the person’s individual service plan;

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

"Admission" means the process of acceptance into a service that includes orientation to service goals, rules and requirements, and assignment to appropriate employees.

"Behavior management" means those principles and methods employed by a provider to help an individual receiving services to achieve a positive outcome and to address and correct inappropriate behavior in a constructive and safe manner. Behavior management principles and methods must be employed in accordance with the individualized service plan and written policies and procedures governing service expectations, treatment goals, safety and security.

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"Behavioral [treatment] or positive behavior support [~~treatment~~] program" means any set of documented procedures that are an integral part of the interdisciplinary treatment plan and are developed on the basis of a systemic data collection such as a functional assessment for the purpose of assisting an individual receiving services to achieve any or all of the following: (i) improved behavioral functioning and effectiveness; (ii) alleviation of the symptoms of psychopathology; or (iii) reduction of serious behaviors. A behavioral treatment program can also be referred to as a behavioral treatment plan or behavioral support plan.

"Care" or "treatment" means a set of individually planned interventions, training, habilitation, or supports that help an individual obtain or maintain an optimal level of functioning, reduce the effects of disability or discomfort, or ameliorate symptoms, undesirable changes or conditions specific to physical, mental, behavioral, cognitive, or social functioning.

"Case management service" means assisting individuals and their families to access services and supports that are essential to meeting their basic needs identified in their individualized service plan, which include not only accessing needed mental health, mental retardation and substance abuse services, but also any medical, nutritional, social, educational, vocational and employment, housing, economic assistance, transportation, leisure and recreational, legal, and advocacy services and supports that the individual needs to function in a community setting. Maintaining waiting lists for services, case management tracking and periodically contacting individuals for the purpose of determining the potential need for services shall be considered screening and referral and not admission into licensed case management.

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"Clubhouse service" means the provision of recovery-oriented psychosocial rehabilitation services in a nonresidential setting on a regular basis not less than two hours per day, five days per week, in which clubhouse members and employees work together in the development and implementation of structured activities involved in the day-to-day operation of the clubhouse facilities and in other social and employment opportunities through skills training, peer support, vocational rehabilitation, and community resource development. [~~Clubhouse services provided under the Individual and Family Developmental Disabilities Support (IFDDS) Waiver are provided not less than three days per week.~~]

"Commissioner" means the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services or his authorized agent.

"Community gero-psychiatric residential services" means 24-hour nonacute care in conjunction with treatment in a setting that provides less intensive services than a hospital, but more intensive mental health services than a nursing home or group home. Individuals with mental illness, behavioral problems, and concomitant health problems (usually age 65 and older), appropriately treated in a geriatric setting, are provided intense supervision, psychiatric care, behavioral treatment planning, nursing, and other health related services. An Interdisciplinary Services Team assesses the individual and develops the services plan.

"Community intermediate care facility/mental retardation (ICF/MR)" means a service licensed by the Department of Mental Health, Mental Retardation, and Substance Abuse Services in which care is provided to individuals who have mental retardation who are not in need of nursing care, but who need more intensive training and supervision than may be available in an assisted living

facility or group home. Such facilities must comply with Title XIX of the Social Security Act standards, provide health or rehabilitative services, and provide active treatment to individuals receiving services toward the achievement of a more independent level of functioning or an improved quality of life.

"Complaint" means an allegation brought to the attention of the department that a licensed provider violated these regulations.

“Consumer service plan [or CSP]” [~~(CSP)~~] means [~~a comprehensive and regularly updated written plan of action to meet the needs and preferences of an individual with a developmental disability or other related conditions. This plan is developed by the support coordinator for an individual served through the IFDDS Waiver~~ that document addressing all needs of recipients of home and community-based care developmental disability services (IFDDS Waiver), in all life areas. Supporting documentation developed by service providers is to be incorporated in the CSP by the support coordinator. Factors to be considered when these plans are developed may include, but are not limited to, recipient ages, level of functioning, and preferences].

"Corrective action plan" means the provider’s pledged corrective action in response to noncompliances documented by the regulatory authority. A corrective action plan must be completed within a specified time.

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

"Corporal punishment" means punishment administered through the intentional inflicting of pain or discomfort to the body (i) through actions such as, but not limited to, striking or hitting with any part of the body or with an implement; (ii) through pinching, pulling or shaking; or (iii) through any similar action that normally inflicts pain or discomfort.

"Crisis" means a situation in which an individual presents an immediate danger to self or others or is at risk of serious mental or physical health deterioration.

“Crisis stabilization” means direct, intensive intervention to individuals who are experiencing serious psychiatric or behavioral problems, or both, that jeopardize their current community living situation. This service shall include temporary intensive services and supports that avert emergency psychiatric hospitalization or institutional placement or prevent out-of-home placement. This service shall be designed to stabilize recipients and strengthen the current living situations so that individuals can be maintained in the community during and beyond the crisis period.

"Day support service" means the provision of individualized planned activities, supports, training, supervision, and transportation to individuals with mental retardation [~~or developmental disabilities~~] or related conditions to improve functioning or maintain an optimal level of functioning. Services may enhance the following skills: self-care and hygiene, eating, toileting, task learning, community resource utilization, environmental and behavioral skills, social, medication management, and transportation. Services provide opportunities for peer interaction and community integration. Services may be provided in a facility (center based) or provided out in the community (noncenter based). Services are provided for two or more consecutive hours

per day. The term "day support service" does not include services in which the primary function is to provide extended sheltered or competitive employment, supported or transitional employment services, general education services, general recreational services, or outpatient services licensed pursuant to this chapter.

"Day treatment services" means the provision of coordinated, intensive, comprehensive, and multidisciplinary treatment to individuals through a combination of diagnostic, medical, psychiatric, case management, psychosocial rehabilitation, prevocational and educational services. Services are provided for two or more consecutive hours per day.

"Department" means the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services.

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

~~1. It is attributable to cerebral palsy, epilepsy or any other condition, other than mental illness, that is found to be closely related to mental retardation because this condition results in impairment of general intellectual functioning or adaptive behavior similar to behavior of persons with mental retardation, and requires treatment or services similar to those required for these persons.~~

~~2. It is manifested before the person reaches age 22.~~

~~3. It is likely to continue indefinitely.~~

~~4. It results in substantial functional limitations in three or more of the following areas of major life activity:~~

~~a. Self-care;~~

~~b. Understanding and use of language;~~

~~c. Learning;~~

~~d. Mobility;~~

~~e. Self-direction; or~~

~~f. Capacity for independent living.]~~

"Discharge" means the process by which the individual's active involvement with a provider is terminated by the provider.

"Discharge plan" means the written plan that establishes the criteria for an individual’s discharge from a service and coordinates planning for aftercare services.

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

"Emergency service" means mental health, mental retardation or substance abuse services available 24 hours a day and seven days per week that provide crisis intervention, stabilization, and referral assistance over the telephone or face-to-face for individuals seeking services for

themselves or others. Emergency services may include walk-ins, home visits, jail interventions, pre-admission screenings, and other activities designed to stabilize an individual within the setting most appropriate to the individual's current condition.

"Group home residential service" means a congregate residential service providing 24-hour supervision in a community-based, home-like dwelling. These services are provided for individuals needing assistance, counseling, and training in activities of daily living or whose service plan identifies the need for the specific type of supervision or counseling available in this setting.

"Home and noncenter based" means that a service is provided in the home or other noncenter-based setting. This includes but is not limited to noncenter-based day support, supportive in-home, and intensive in-home services.

<u>“IFFDS Waiver” means the Individual and Family Developmental Disabilities Support Waiver.</u>

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

"Individualized services plan" or "ISP," means a comprehensive and regularly updated written plan of action to meet the needs and preferences of an individual.

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

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

1. Assumes responsibility for directly providing needed treatment, rehabilitation, and support services to identified individuals with severe and persistent mental illnesses;
2. Minimally refers individuals to outside service providers;
3. Provides services on a long-term care basis with continuity of caregivers over time;
4. Delivers 75 percent or more of the services outside program offices;
5. Emphasizes outreach, relationship building, and individualization of services.

The individuals to be served by ICT are individuals who have severe symptoms and impairments not effectively remedied by available treatments or who, because of reasons related to their mental illness, resist or avoid involvement with mental health services.

"Intensive in-home service" means family preservation interventions for children and adolescents who have or are at-risk of serious emotional disturbance, including such individuals who also have a diagnosis of mental retardation. Services are usually time limited and are 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. These

services include crisis treatment; individual and family counseling; life, parenting, and communication skills; case management activities and coordination with other services; and emergency response.

"Intensive outpatient service" means treatment provided in a concentrated manner (involving multiple outpatient visits per week) over a period of time for individuals requiring stabilization. These services usually include multiple group therapy sessions during the week, individual and family therapy, individual monitoring, and case management.

"Investigation" means a detailed inquiry or systematic examination of the operations of a provider or its services regarding a 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.

“Instrumental activities of daily living ([I]ADL)” means social tasks (e.g., meal preparation, shopping, housekeeping, laundry, and money management). An individual’s degree of independence in performing these activities is part of determining appropriate level of care and services.

"Legally authorized representative" means a person permitted by law to give informed consent for disclosure of information and give informed consent to treatment, including medical treatment, and participation in human research for an individual who lacks the mental capacity to make these decisions.

“Licensed Mental Health Professional” (LMHP) means a physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, licensed substance abuse treatment practitioner, or certification as a psychiatric clinical nurse specialist.

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

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

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

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

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

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

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

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

"Mental retardation" means substantial subaverage general intellectual functioning that originates during the development period and is associated with impairment in adaptive behavior. It exists concurrently with related limitations in two or more of the following applicable adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work.

“Mentally ill” means any person afflicted with mental disease to such an extent that for his own welfare or the welfare of others he requires care and treatment, or with mental disorder or functioning classifiable under the current edition of the Diagnostic and Statistical Manual of the American Psychiatric Association that affects the well-being or behavior of an individual.

"Neglect" means the failure by an individual or provider responsible for providing services to provide nourishment, treatment, care, goods, or services necessary to the health, safety or welfare of a person receiving care or treatment for mental illness, mental retardation or

substance abuse (§ 37.1-1 of the Code of Virginia). This definition of neglect also applies to individuals receiving in-home support, crisis stabilization, and day support under the IFDDS Waiver.

"Opioid treatment service" means an intervention strategy that combines treatment with the administering or dispensing of opioid agonist treatment medication. An individual-specific, physician-ordered dose of medication is administered or dispensed either for detoxification or maintenance treatment.

"Outpatient service" means a variety of treatment interventions generally provided to individuals, groups or families on an hourly schedule in a clinic or similar facility or in another location. Outpatient services include, but are not limited to, emergency services, crisis intervention services, diagnosis and evaluation, intake and screening, counseling, psychotherapy, behavior management, psychological testing and assessment, chemotherapy and medication management services, and jail based services. "Outpatient service" specifically includes:

1. Services operated by a community services board established pursuant to Chapter 10 (§ 37.1-194 et seq.) of Title 37.1 of the Code of Virginia;

2. Services funded wholly or in part, directly or indirectly, by a community services board established pursuant to Chapter 10 (§ 37.1-194 et seq.) of Title 37.1 of the Code of Virginia; or

3. Services that are owned, operated, or controlled by a corporation organized pursuant to the provisions of either Chapter 9 (§ 13.1-601 et seq.) or Chapter 10 (§ 13.1-801 et seq.) of Title 13.1 of the Code of Virginia.

"Partial hospitalization service" means the provision within a medically supervised setting of day treatment services that are time-limited active treatment interventions, 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.

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

1. Assumes responsibility for directly providing needed treatment, rehabilitation, and support services to identified individuals with severe and persistent mental illnesses;
2. Minimally refers individuals to outside service providers;
3. Provides services on a long-term care basis with continuity of caregivers over time;
4. Delivers 75 percent or more of the services outside program offices;
5. Emphasizes outreach, relationship building, and individualization of services.

The individuals to be served by PACT are individuals who have severe symptoms and impairments not effectively remedied by available treatments or who, because of reasons related to their mental illness, resist or avoid involvement with mental health services.

"Provider" means any person, entity or organization, excluding an agency of the federal government by whatever name or designation, that provides services to individuals with mental illness, mental retardation or substance addiction or abuse including the detoxification, treatment or rehabilitation of drug addicts through the use of the controlled drug methadone or other opioid replacements or provides in-home support, crisis stabilization, or day support under the IFDDS

Waiver. Such person, entity or organization shall include a hospital as defined in § 32.1-123 of the Code of Virginia, community services board as defined in § 37.1-194.1 of the Code of Virginia, behavioral health authority as defined in § 37.1-243 of the Code of Virginia, private provider, and any other similar or related person, entity or organization. It shall not include any individual practitioner who holds a license issued by a health regulatory board of the Department of Health Professions or who is exempt from licensing pursuant to §§ 54.1-2901, 54.1-3001, 54.1-3501, 54.1-3601 and 54.1-3701 of the Code of Virginia. It does not include any person providing uncompensated services to a family member.

"Psychosocial rehabilitation service" means care or treatment for individuals with long-term, severe psychiatric disabilities, which is designed to improve their quality of life by assisting them to assume responsibility over their lives and to function as actively and independently in society as possible, through the strengthening of individual skills and the development of environmental supports necessary to sustain community living. Psychosocial rehabilitation includes skills training, peer support, vocational rehabilitation, and community resource development oriented toward empowerment, recovery, and competency.

“Qualified Developmental Disabilities Professional (QDDP)” means an individual possessing at least one year of documented experience working directly with individuals who have [~~developmental disabilities or~~] related conditions and is one of the following: a doctor of medicine or osteopathy, a registered nurse, or an individual holding at least a bachelor’s degree in a human service field including, but not limited to, sociology, social work, special education, rehabilitation counseling, or psychology.

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"Qualified Mental Health Professional (QMHP)" means a clinician in the health professions who is trained and experienced in providing psychiatric or mental health services to individuals who have a psychiatric diagnosis; including a (i) physician: a doctor of medicine or osteopathy; (ii) psychiatrist: a doctor of medicine or osteopathy, specializing in psychiatry and licensed in Virginia; (iii) psychologist: an individual with a master's degree in psychology from a college or university with at least one year of clinical experience; (iv) social worker: an individual with at least a bachelor's degree in human services or related field (social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, human services counseling or other degree deemed equivalent to those described) from an accredited college and with at least one year of clinical experience providing direct services to persons with a diagnosis of mental illness; (v) Registered Psychiatric Rehabilitation Provider (RPRP) registered with the International Association of Psychosocial Rehabilitation Services (IAPSRS); or (vi) registered nurse licensed in the Commonwealth of Virginia with at least one year of clinical experience; or (vii) any other licensed mental health professional.

"Qualified Mental Retardation Professional (QMRP)" means an individual possessing at least one year of documented experience working directly with individuals who have mental retardation or other developmental disabilities and is one of the following: a doctor of medicine or osteopathy, a registered nurse, or holds at least a bachelor's degree in a human services field including, but not limited to, sociology, social work, special education, rehabilitation counseling, and psychology.

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

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

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

1. It is attributable to cerebral palsy, epilepsy or any other condition, other than mental illness, that is found to be closely related to mental retardation because this condition results in impairment of general intellectual functioning or adaptive behavior similar to behavior of persons with mental retardation, and requires treatment or services similar to those required for these persons.

2. It is manifested before the person reaches age 22.

3. It is likely to continue indefinitely.

4. It results in substantial functional limitations in three or more of the following areas of major life activity:

a. Self-care;

b. Understanding and use of language;

c. Learning;

d. Mobility;

e. Self-direction; or

f. Capacity for independent living.]

"Residential crisis stabilization service" means providing short-term, intensive treatment to individuals who require multidisciplinary treatment in order to stabilize acute psychiatric symptoms and prevent admission to a psychiatric inpatient unit.

"Residential service" means a category of service providing 24-hour care in conjunction with care and treatment or a training program in a setting other than a hospital. 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, but are not limited to: residential treatment, group homes, supervised living, residential crisis stabilization, community gero-psychiatric residential, community intermediate

care facility-MR, sponsored residential homes, medical and social detoxification, and substance abuse residential treatment for women and children.

"Residential treatment service" means providing an intensive and highly structured mental health or substance abuse treatment service in a residential setting, other than an inpatient service.

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

"Restraint" means the use of an approved mechanical device, physical intervention or hands-on hold, or pharmacologic agent to involuntarily prevent an individual receiving services from moving his body to engage in a behavior that places him or others at risk. This term includes restraints used for behavioral, medical, or protective purposes.

1. A restraint used for "behavioral" purposes means the use of an approved physical hold, a psychotropic medication, or a mechanical device that is used for the purpose of controlling behavior or involuntarily restricting the freedom of movement of the individual in an instance in which there is an imminent risk of an individual harming himself or others, including staff; when nonphysical interventions are not viable; and safety issues require an immediate response.

2. A restraint used for "medical" purposes means the use of an approved mechanical or physical hold to limit the mobility of the individual for medical, diagnostic, or surgical purposes

and the related post-procedure care processes, when the use of such a device is not a standard practice for the individual’s condition.

3. A restraint used for "protective" purposes means the use of a mechanical device to compensate for a physical deficit, when the individual does not have the option to remove the device. The device may limit an individual’s movement and prevent possible harm to the individual (e.g., bed rail or gerichair) or it may create a passive barrier to protect the individual (e.g., helmet).

4. A "mechanical restraint" means the use of an approved mechanical device that involuntarily restricts the freedom of movement or voluntary functioning of a limb or a portion of a person’s body as a means to control his physical activities, and the individual receiving services does not have the ability to remove the device.

5. A "pharmacological restraint" means a drug that is given involuntarily for the emergency control of behavior when it is not standard treatment for the individual’s medical or psychiatric condition.

6. A "physical restraint" (also referred to "manual hold") means the use of approved physical interventions or "hands-on" holds to prevent an individual from moving his body to engage in a behavior that places him or others at risk of physical harm. Physical restraint does not include the use of "hands-on" approaches that occur for extremely brief periods of time and never exceed more than a few seconds duration and are used for the following purposes: (i) to intervene in or redirect a potentially dangerous encounter in which the individual may

voluntarily move away from the situation or hands-on approach or (ii) to quickly de-escalate a dangerous situation that could cause harm to the individual or others.

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

"Screening" means the preliminary assessment of an individual's appropriateness for admission or readmission to a service.

"Seclusion" means the involuntary placement of an individual receiving services alone, in a locked room or secured area from which he is physically prevented from leaving.

"Serious injury" means any injury resulting in bodily hurt, damage, harm or loss that requires medical attention by a licensed physician.

"Service" or "services" means individually planned interventions intended to reduce or ameliorate mental illness, mental retardation or substance addiction or abuse through care and treatment, training, habilitation or other supports that are delivered by a provider to individuals with mental illness, mental retardation, or substance addiction or abuse. Service also means in-home support, day support, and crisis stabilization services provided to individuals under the IFDDS Waiver.

"Shall" means an obligation to act is imposed.

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

"Skills training" means systematic skill building through curriculum-based psychoeducational and cognitive-behavioral interventions. These interventions break down complex objectives for role

performance into simpler components, including basic cognitive skills such as attention, to facilitate learning and competency.

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

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

"State authority" means the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services. This is the agency designated by the Governor to exercise the responsibility and authority for governing the treatment of opiate addiction with an opioid drug.

"Substance abuse" means the use, without compelling medical reason, of alcohol and other drugs which results in psychological or physiological dependency or danger to self or others as a function of continued use in such a manner as to induce mental, emotional or physical impairment and cause socially dysfunctional or socially disordering behavior.

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

"Supervised living residential service" means the provision of significant direct supervision and community support services to individuals living in apartments or other residential settings. These services differ from supportive in-home service because the provider assumes

responsibility for management of the physical environment of the residence, and staff supervision and monitoring are daily and available on a 24-hour basis. Services are provided based on the needs of the individual in areas such as food preparation, house keeping, medication administration, personal hygiene, and budgeting.

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

"Time out" means assisting an individual to regain emotional control by removing the individual from his immediate environment to a different, open location until he is calm or the problem behavior has subsided.

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

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PART II.

LICENSING PROCESS.

12 VAC 35-105-30. Licenses.

A. Licenses are issued to providers who offer services to one or a combination of the ~~three~~ four disability groups: persons with mental illness, persons with mental retardation, and persons with substance addiction or abuse problems or persons with [~~developmental disabilities or~~] related conditions served under the IFDDS Waiver.

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

1. Case management;

2. Clubhouse;

3. Community gero-psychiatric residential;

4. Community intermediate care facility-MR;

[5. Crisis stabilization (residential and non-residential);]

[~~5~~ 6]. Day support;

[~~6~~ 7]. Day treatment;

[~~7~~8]. Group home residential;

[~~8~~9]. Inpatient psychiatric;

[~~9~~10]. Intensive Community Treatment (ICT);

[~~10~~11]. Intensive in-home;

[~~11~~12]. Intensive outpatient;

[~~12~~13]. Medical detoxification;

[~~13~~14]. Mental health community support;

[~~14~~15]. Opioid treatment;

[~~15~~16]. Outpatient;

[~~16~~17]. Partial hospitalization;

[~~17~~18]. Program of assertive community treatment (PACT);

[~~18~~19]. Psychosocial rehabilitation;

[~~19. Residential crisis stabilization;~~]

20. Residential treatment;

21. Respite;

22. Social detoxification;

23. Sponsored residential home;

24. Substance abuse residential treatment for women with children;

25. Supervised living; and

26. Supportive in-home.

C. A license addendum describes the services licensed, the population served, specific locations where services are provided or organized and the terms, and conditions for each service offered by a licensed provider. For residential and inpatient services, the license identifies the number of beds each location may serve.

12 VAC 35-105-40. Application requirements.

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

a. Funds or a line of credit sufficient to cover at least 90 days of operating expenses if the provider is a corporation, unincorporated organization or association, a sole proprietor or a partnership.

b. Appropriated revenue if the provider is a state or local government agency, board or commission.

3. Documentation of authority to conduct business in the Commonwealth of Virginia.

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

1. A staffing plan;

2. Employee credentials or job descriptions containing all the elements outlined in 12 VAC 35-105-410 A;

3. A service description containing all the elements outlined in 12 VAC 35-105-580 C;

4. Records management policy containing all the elements outlined in 12 VAC 35-105-390 and 12 VAC 35-105-870 A; and

5. A certificate of occupancy, floor plan (with dimensions), and any required inspections for all service locations.

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

12 VAC 35-105-50. Issuance of licenses.

A. The commissioner issues licenses.

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

1. A conditional license shall not exceed six months.

2. 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.

3. A provider or service holding a conditional license shall demonstrate progress toward compliance.

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

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

2. The term of a provisional license may not exceed six months.

3. 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.

4. A provider or service holding a provisional license shall demonstrate progress toward compliance.

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

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

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

2. 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 who have had no noncompliances or only violations that did not pose a threat to the health or safety of individuals being served during the previous license period. The commissioner may waive this limitation if the provider has demonstrated consistent compliance for more than a year or that sufficient provider oversight is in place.

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

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

E. The license may bear stipulations. Stipulations may be limitations on the provider or may impose additional requirements. Terms of any such stipulations on licenses issued to the provider shall be specified on the provider license.

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

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

H. No service may be issued a license with an expiration date after the expiration date of the provider license.

I. A license continues 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.

12 VAC 35-105 Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation and Substance Abuse Services

12 VAC 35-105-60. Modification.

A. Upon written request by the provider, the license may be modified during the term of the license with respect to the populations served (disability, age, and gender), the services offered, the locations where services are provided, stipulations and the maximum number of beds. Approval of such request shall be at the sole discretion of the commissioner.

B. A change requiring a modification of the license shall not be implemented prior to approval by the commissioner. The department may give approval to implement a modification pending the issuance of the modified license based on guidelines determined by the commissioner.

12 VAC 35-105-70. Onsite reviews.

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

B. The department shall conduct unannounced onsite reviews of licensed providers and each of its services 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.

12 VAC 35-105 Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation and Substance Abuse Services

12 VAC 35-105-80. Complaint investigations.

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

12 VAC 35-105-90. Compliance.

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

1. "Compliance" (C) means the provider is clearly in compliance with a regulation.

2. "Noncompliance" (NC) means the provider is clearly in noncompliance with 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 not required to demonstrate compliance with the provisions of a regulation at the time.

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

12 VAC 35-105-100. Sanctions.

A. The commissioner may invoke the sanctions enumerated in § 37.1-185.1 of the Code of Virginia upon receipt of information that a licensed provider is:

1. In violation of the provisions of §§ 37.1-84.1 and 37.1-179 through 37.1-189.1 of the Code of Virginia, these regulations, or the provisions of the Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers of Mental Health, Mental Retardation and Substance Abuse Services (12 VAC 35-115); and

2. Such violation adversely impacts 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.

12 VAC 35-105-110. Denial, revocation or suspension of a license.

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

1. The provider has violated any provisions of Chapter 8 (§ 37.1-179 et seq.) of Title 37.1 of the Code of Virginia or these licensing regulations;

2. The provider’s conduct or practices are detrimental to the welfare of any individual or in violation of human rights identified in § 37.1-84.1 of the Code of Virginia or the human rights regulations (12 VAC 35-115);

3. The provider permits, aids, or abets the commission of an illegal act;

4. The provider fails or refuses to submit reports or to make records available as requested by the department;

5. The provider refuses to admit a representative of the department to the premises; or

6. The provider fails to submit an adequate corrective action plan.

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.

12 VAC 35-105-120. Variances.

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

12 VAC 35-105-130. Confidentiality of records.

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

12 VAC 35-105 Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation and Substance Abuse Services

PART III.

ADMINISTRATIVE SERVICES.

Article 1.

Management and Administration.

12 VAC 35-105-140. License availability.

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

12 VAC 35-105-150. Compliance with applicable laws, regulations and policies.

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

1. These regulations;

2. Terms of the license;

3. All applicable federal, state or local laws, and regulations including but not limited to:

   a. Laws regarding employment practices including Equal Employment Opportunity Act;

   b. Americans with Disabilities Act;

   c. Occupational Safety and Health Administration regulations;

   d. Virginia Department of Health regulations;

   e. Laws or regulations of the Department of Health Professions;

   f. Uniform Statewide Building Code; and

   g. Uniform Statewide Fire Prevention Code.

4. Section 37.1-84.1 of the Code of Virginia on the human rights of individuals receiving services and related human rights regulations;

5. Section 37.1-197.1 of the Code of Virginia regarding prescreening and predischarge planning. Providers responsible for complying with § 37.1-197.1 are required to develop and implement policies and procedures that include:

a. Identification of employees or services responsible for prescreening and predischarge planning services for all disability groups; and

b. Completion of predischarge plans prior to an individual's discharge in consultation with the state facility which:

(1) Involve the individual or his legally authorized representative and reflect the individual's preferences to the greatest extent possible consistent with the individual's needs.

(2) Include the mental health, mental retardation, substance abuse, social, educational, medical, employment, housing, legal, advocacy, transportation, and other services that the individual will need upon discharge into the community and identify the public or private agencies or persons that have agreed to provide them.

6. The provider's own policies.

12 VAC 35-105-160. Reviews by the department; requests for information.

A. The provider shall permit representatives from the department to conduct reviews to:

1. Verify application information;

2. Assure compliance with this chapter; and

3. Investigate complaints.

B. The provider shall cooperate fully with inspections and provide all information requested to assist representatives from the department who conduct inspections.

C. The provider shall collect, maintain and report:

1. Each allegation of abuse or neglect to the assigned human rights advocate within 24 hours from the receipt of the initial allegation and the investigating authority shall provide a written report of the results of the investigation of abuse or neglect to the provider and the human rights advocate within 10 working days, unless an exemption has been granted, from the date the investigation began. The report shall include but not be limited to the following: whether abuse, neglect or exploitation occurred; type of abuse; and whether the act resulted in physical or psychological injury.

2. Deaths and serious injuries in writing to the department within 24 hours of discovery and by phone to the legally authorized representative as applicable within 24 hours to include but not be limited to the following: the date and place of death or serious injury; nature of injuries and treatment required; and circumstances of death or serious injury.

3. Each instance of seclusion or restraint that does not comply with the human rights regulations or approved variances, or that results in injury to an individual, shall be reported to the legally authorized representative and the assigned human rights advocate within 24 hours.

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

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

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

12 VAC 35-105-170. Corrective action plan.

A. If there is noncompliance with any of these regulations during an initial or ongoing review or investigation, the department shall issue a licensing report describing the noncompliance and requesting the provider to submit a corrective action plan.

B. The provider shall submit to the department and implement a written corrective action plan for each regulation found to be in noncompliance with these regulations identified on the licensing report.

C. The corrective action plan shall include a:

1. Description of the corrective actions to be taken;

2. Date of completion for each action; and

3. Signature of the person responsible for the service.

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

E. A corrective action plan shall be approved by the department. The provider has an additional 10 business days to submit a revised corrective action plan after receiving a notice that the plan submitted has not been approved.

F. The provider shall monitor implementation of pledged corrective action and include a plan for such monitoring in its quality assurance activities specified in 12 VAC 30-105-620.

12 VAC 35-105-180. Notification of changes.

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

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

2. Geographic location of the provider or its services;

3. Service description as defined in these regulations;

4. Significant changes in qualifications required for a position and/or qualifications of an individual occupying a position; or

5. Bed capacity for services providing residential or inpatient services.

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

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

D. A provider shall notify the department in writing of its intent to discontinue services thirty days prior to the cessation of services. The provider will continue to provide all services that are identified in every individual's Individualized Services Plan (ISP) after it has given official notice of its intent to cease operations and until each individual is appropriately discharged. The provider will further continue to maintain substantial compliance with all applicable regulations as it discontinues its services.

E. All individuals receiving services shall be notified of the provider's intent to cease services in writing thirty days prior to the cessation of services. This written notification will be documented in each individual's ISP. Also refer to Part V. Article 1. Record Management policy.

12 VAC 35-105-190. Operating authority, governing body and organizational structure.

A. The provider shall provide evidence of its operating authority.

1. A public organization shall provide documents describing the administrative framework of the governmental department of which it is a component.

2. All private organizations except sole proprietorships shall provide a certification from the State Corporation Commission.

B. The provider's governing body and organizational structure shall be clearly identified by providing an organizational chart.

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

12 VAC 35-105-200. Appointment of administrator.

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

12 VAC 35-105-210. Fiscal accountability.

A. The provider shall document financial resources to operate its services or facilities or shall have a line of credit sufficient to cover 90 days of operating expense, based on a working budget showing projected revenue and expenses.

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

1. An operating statement showing revenue and expenses for the fiscal year just ended.

2. A balance sheet showing assets and liabilities for the fiscal year just ended. At least once every three years, all financial records shall be audited by an independent Certified Public Accountant (CPA) or audited as otherwise provided by law. Providers operating as a part of a local government agency are excluded from providing a balance sheet; however, they shall provide a financial statement .

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

D. At a minimum, the person who has the authority and responsibility for the fiscal management of the provider shall be bonded or otherwise indemnified.

12 VAC 35-105-220. Indemnity coverage.

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

1. General liability;

2. Professional liability;

3. Vehicular liability; and

4. Property damage.

12 VAC 35-105-230. Written fee schedule.

If the provider charges for services, the written schedule of rates and charges shall be available upon request.

12 VAC 35-105 Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation and Substance Abuse Services

12 VAC 35-105-240. Policy on funds of individuals receiving services.

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

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

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

12 VAC 35-105-250. Deceptive or false advertising.

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

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

Article 2.

Physical Environment.

12 VAC 35-105-260. Building inspection and classification.

All locations shall be inspected and approved as required by the appropriate building regulatory entity. Approval shall be a Certificate of Use and Occupancy indicating the building is classified for its proposed licensed purpose. This section does not apply to correctional facilities or home

and noncenter-based services. Sponsored residential services shall certify compliance of sponsored residential homes with this regulation.

12 VAC 35-105-270. Building modifications.

A. Building plans and specifications for new construction of locations, change in use of existing locations, and any structural modifications or additions to existing locations where services are provided shall be submitted for review by the department to determine compliance with the licensing regulations. This section does not apply to correctional facilities, jails, or home and noncenter-based services.

B. An interim plan addressing safety and continued service delivery shall be required for new construction or for conversion, structural modifications or additions to existing buildings.

12 VAC 35-105-280. Physical environment.

A. The physical environment shall be appropriate to the population served and the services provided and be accessible to individuals with physical and sensory disabilities.

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

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

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

E. The physical environment shall be well ventilated. Temperatures shall be maintained between 65°F and 80°F.

F. Adequate hot and cold running water of a safe and appropriate temperature shall be available. Hot water accessible to individuals being served shall be maintained within a range of 100-120°F. If temperatures cannot be maintained within the specified range, the provider shall make provisions for protecting individuals from injury due to scalding.

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

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

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

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

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

12 VAC 35-105-290. Food service inspections.

Any location where the provider is responsible for preparing or serving food shall request inspection and approval by state or local health authorities regarding food service and general sanitation at the time of the original application and annually thereafter. Documentation of the

most recent three inspections and approval shall be kept on file. This does not apply to sponsored residential services.

12 VAC 35-105-300. Sewer and water inspections.

A. A location shall either be on public water and sewage systems or the location's water and sewage system shall be inspected and approved by state or local health authorities at the time of its original application and annually thereafter. Documentation of the three most recent inspections and approval shall be kept on file. Sponsored residential home services shall certify compliance of sponsored residential homes with this regulation.

B. A location that is not on a public water system shall have a water sample tested annually by an accredited, independent laboratory for the absence of chloroform. The water sample shall also be tested for lead or nitrates if recommended by the local health department. Documentation of the three most recent inspections shall be kept on file.

12 VAC 35-105-310. Weapons.

The facility shall have and implement a written policy governing the use and possession of firearms, pellet guns, air rifles and other weapons on the facility's premises. The policy shall provide that no firearms, pellet guns, air rifles and other weapons on the facility's premises 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 facility for the weapons' lawful and safe use.

12 VAC 35-105 Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation and Substance Abuse Services

12 VAC 35-105-320. Fire inspections.

The provider shall document at the time of its original application and annually thereafter that buildings and equipment in locations with more than eight beds are maintained in accordance with the Virginia Statewide Fire Prevention Code (13 VAC 5-51). This section does not apply to correctional facilities or home and noncenter-based or sponsored residential home services.

Article 3.

Physical Environment of Residential/Inpatient Service Locations.

12 VAC 35-105-330. Beds.

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

B. A community intermediate care facility for the mentally retarded may not have more than 20 beds at any one location. This applies to new applications for services after September 19, 2002.

12 VAC 35-105-340. Bedrooms.

A. Size of bedrooms.

1. Single occupancy bedrooms shall have no less than 80 square feet of floor space.

2. Multiple occupancy bedrooms shall have no less than 60 square feet of floor space per individual.

3. This subsection does not apply to community gero-psychiatric residential services.

B. No more than four individuals shall share a bedroom.

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

D. This section does not apply to correctional facilities and jails. Sponsored residential home services shall certify compliance of sponsored residential homes with this regulation.

12 VAC 35-105-350. Condition of beds.

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

12 VAC 35-105-360. Privacy.

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

B. Bathrooms not intended for individual use shall provide privacy for showers and toilets.

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

D. This section does not apply to correctional facilities and jails. Sponsored residential home services shall certify compliance of sponsored residential homes with this regulation.

12 VAC 35-105-370. Ratios of toilets, basins and showers or baths.

For all residential and inpatient locations established, constructed or reconstructed after January 13, 1995, there shall be at least one toilet, one hand basin, and shower or bath for every four

individuals. Sponsored residential home services shall certify compliance of sponsored residential homes with this regulation. This section does not apply to correctional facilities or jails.

12 VAC 35-105-380. Lighting.

Each location shall have adequate lighting in halls and bathrooms at night. Sponsored residential home services shall certify compliance of sponsored residential homes with this regulation.

Article 4.

Human Resources.

12 VAC 35-105-390. Confidentiality and security of personnel records.

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

B. Physical and data security controls shall exist for electronic records.

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

12 VAC 35-105-400. Criminal registry checks.

A. The provider shall develop a policy for the criminal history and registry checks for all employees, contractors, students and volunteers. The policy shall contain, at a minimum, a

disclosure statement concerning whether the person has ever been convicted of or is the subject of pending charges for any offense.

B. After July 1, 1999, providers shall comply with the background check requirements for direct care positions outlined in § 37.1-183.3 of the Code of Virginia.

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

D. Prior to a new employee beginning duties, the provider shall obtain the employee's written consent and personal information necessary to obtain a search of the registry of founded complaints of child abuse and neglect maintained by the Department of Social Services. Results of the search of the registry shall be maintained in the employee's personnel record.

E. The provider shall maintain the following documentation:

1. The disclosure statement; and

2. Documentation that the provider submitted all information required by the Department to complete the background and registry checks, and memoranda from the Department transmitting the results to the provider.

12 VAC 35-105-410. Job description.

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

1. Job title;

2. Duties and responsibilities required of the position;

3. Job title of the immediate supervisor; and

4. Minimum knowledge, skills, and abilities, experience or professional qualifications required for entry level as specified in 12 VAC 35-105-420.

B. Employees or contractors shall have access to their current job description. There shall be a mechanism for advising employees or contractors of changes to their job responsibilities.

12 VAC 35-105-420. Qualifications of employees or contractors.

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

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

C. Service directors shall have experience in working with the population served and in providing the services outlined in the service description.

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

12 VAC 35-105-430. Employee or contractor personnel records.

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

1. Identifying information;

2. Education and training history;

3. Employment history;

4. Results of the provider credentialing process including methods of verification of applicable professional licenses or certificates;

5. Results of reasonable efforts to secure job-related references and reasonable verification of employment history;

6. Results of criminal background checks and a search of the registry of founded complaints of child abuse and neglect, if any;

7. Results of performance evaluations;

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

9. A record of adverse action by any licensing bodies and organizations and state human rights regulations, if any; and

10. A record of participation in employee development activities, including orientation.

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

12 VAC 35-105-440. Orientation of new employees, contractors, volunteers, and students.

New employees, contractors, volunteers, and students shall be oriented commensurate with their function or job-specific responsibilities within 15 business days. Orientation to each of the following policies shall be documented. Orientation shall include:

1. Objectives and philosophy of the provider;

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

3. Practices that assure an individual's rights including orientation to human rights regulations;

4. Applicable personnel policies;

5. Emergency preparedness procedures;

6. Infection control practices and measures; and

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

12 VAC 35-105-450. Employee training and development.

The provider shall provide training and development opportunities for employees to enable them to perform the responsibilities of their job. The policy must address retraining on medication administration, behavior management, and emergency preparedness. Training and development shall be documented in the employee personnel records.

12 VAC 35-105-460. Emergency medical or first aid training.

There shall be at least one employee or contractor on duty at each location who holds a current certificate, issued by a recognized authority, in standard first aid and cardiopulmonary resuscitation, or emergency medical training. A nurse or physician who holds a current professional license shall be deemed to hold a current certificate in first aid, but not in CPR.

12 VAC 35-105 Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation and Substance Abuse Services

12 VAC 35-105-470. Notification of policy changes.

All employees or contractors shall be kept informed of policy changes that affect performance of duties.

12 VAC 35-105-480. Employee or contractor performance evaluation.

A. The provider shall develop and implement a policy for evaluating employee or contractor performance.

B. Employee development needs and plans shall be a part of the performance evaluation.

C. The provider shall evaluate employee or contractor performance at least annually.

12 VAC 35-105-490. Written grievance policy.

The provider shall have a written grievance policy and a mechanism to inform employees of grievance procedures.

12 VAC 35-105-500. Students and volunteers.

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

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

12 VAC 35-105 Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation and Substance Abuse Services

12 VAC 35-105-510. Tuberculosis screening.

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

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

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

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

12 VAC 35-105 Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation and Substance Abuse Services

Article 5.

Health and Safety Management.

12 VAC 35-105-520. Risk management.

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

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

C. As part of the plan, the provider shall conduct and document at least annually, its own safety inspections of all service locations owned, rented or leased. Recommendations for safety improvement shall be documented and implemented.

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

E. The risk management plan shall establish and implement policies to identify any populations at risk for falls and to develop a prevention/management program.

F. The provider shall develop, document and implement infection control measures, including the use of universal precautions.

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12 VAC 35-105-530. Emergency preparedness and response plan.

A. The provider shall develop a written emergency preparedness and response plan for all of a provider's services and locations. The plan shall address:

1. Documentation of contact with the local emergency coordinator to determine local disaster risks and community-wide plans to address different disasters and emergency situations.

2. Analysis of the provider's capabilities and potential hazards, including natural disasters, severe weather, fire, flooding, work place violence or terrorism, missing persons, severe injuries, or other emergencies that would disrupt the normal course of service delivery.

3. Written emergency management policies outlining specific responsibilities for provision of administrative direction and management of response activities, coordination of logistics during the emergency, communications, life safety of employees, contractors, students, volunteers, visitors and individuals receiving services, property protection, community outreach, and recovery and restoration.

4. Written emergency response procedures for assessing the situation; protecting individuals receiving services, employees, contractors, students, volunteers, visitors, equipment and vital records; and restoring services. Emergency procedures shall address:

a. Communicating with employees, contractors and community responders;

b. Warning and notification of individuals receiving services;

c. Providing emergency access to secure areas and opening locked doors;

d. Conducting evacuations to emergency shelters or alternative sites and accounting for all individuals receiving services;

e. Relocating individuals receiving residential or inpatient services, if necessary;

f. Notifying family members and legal guardians;

g. Alerting emergency personnel and sounding alarms;

h. How to locate and shut off utilities when necessary.

5. Supporting documents that would be needed in an emergency, including emergency call lists, building and site maps necessary to shut off utilities, designated escape routes, and list of major resources such as local emergency shelters.

6. Schedule for testing the implementation of the plan and conducting emergency preparedness drills.

B. The provider shall develop and implement periodic emergency preparedness and response training for all employees, contractors, students and volunteers. Training shall cover responsibilities for:

1. Alerting emergency personnel and sounding alarms;

2. Implementing evacuation procedures, including evacuation of individuals with special needs (i.e., deaf, blind, nonambulatory);

3. Using, maintaining, and operating emergency equipment;

4. Accessing emergency medical information for individuals receiving services; and

5. Utilizing community support services.

C. The provider shall review the emergency preparedness plan annually and make necessary revisions. Such revisions shall be communicated to employees, contractors, students and volunteers and incorporated into training for employees, contractors, students and volunteers and orientation of individuals to services.

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

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

F. In the event of a disaster, fire, emergency, or any other condition that may jeopardize the health, safety and welfare of individuals, the provider should first respond and stabilize the disaster/emergency. After the disaster/emergency is stabilized, the provider should report the disaster/emergency to the department, but no later than 72 hours after the incident occurs.

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

12 VAC 35-105-540. Access to telephone in emergencies; emergency telephone numbers.

A. Telephones shall be accessible for emergency purposes.

B. Current emergency telephone numbers and location of the nearest hospital, ambulance service, rescue squad and other trained medical personnel, poison control center, fire station and the police shall be prominently posted near the telephones.

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

12 VAC 35-105-550. First aid kit accessible.

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, antiseptic soap, an accessible, unexpired 30 cc bottle of Syrup of Ipecac (for use at the direction of the Poison Control Center or a physician), and activated charcoal (for use at the direction of the Poison Control Center or a physician).

12 VAC 35-105-560. Operable flashlights or battery lanterns.

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

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PART IV.

SERVICES AND SUPPORTS.

Article 1.

Service Description and Staffing.

12 VAC 35-105-570. Mission statement.

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

12 VAC 35-105-580. Service description requirements.

A. The provider shall develop, implement, review and revise its services according to the provider's mission and shall have that information available for public review.

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

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

1. Goals;

2. Care, treatment, training, habilitation, or other supports provided;

3. Characteristics and needs of the population served;

4. Contract services, if any;

5. Admission, continued stay and exclusion criteria;

6. Termination of treatment and discharge or transition criteria; and

7. Type and role of employees or contractors.

D. The provider shall revise a service description whenever the service description changes.

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

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

G. If the provider offers substance abuse treatment services, the service description shall address the timely and appropriate treatment of substance abusing pregnant women.

12 VAC 35-105-590. Provider staffing plan.

A. The provider shall design and implement a staffing plan including the type and role of employees and contractors that reflects the:

1. Needs of the population served;

2. Types of services offered;

3. The service description; and

4. The number of people served.

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

C. The following staffing requirements relate to supervision.

1. The provider shall describe how employees, volunteers, contractors and student interns are to be supervised in the staffing plan.

2. Supervision of employees, volunteers, contractors and student interns shall be provided by persons who have experience in working with the population served and in providing the services outlined in the service description. In addition, supervision of mental health services shall be performed by a QMHP and supervision of mental retardation services shall be performed by a QMRP or an employee or contractor with experience equivalent to the educational requirement. Supervision of IFDDS Waiver services shall be performed by a QDDP or an employee or contractor with [equivalent] experience [~~equivalent to the educational requirement~~].

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. This responsibility may be delegated to an employee or contractor who is a QMHP, ~~or~~ QMRP, or QDDP, or who has equivalent experience.

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

12 VAC 35-105-600. Nutrition.

A. A provider preparing and serving food shall:

1. Have a written plan for the provision of food services, which ensures access to nourishing, well-balanced, healthful meals;

2. Make reasonable efforts to prepare meals that consider cultural background, personal preferences, and food habits and that meet the dietary needs of the individuals served; and

3. Assist individuals who require assistance feeding themselves in a manner that effectively addresses any deficits.

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

1. Warning signs of changes in physical or mental status related to nutrition; and

2. Compliance with any needs determined by the individualized services plan or prescribed by a physician, nutritionist or health care professional.

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12 VAC 35-105-610. Community participation.

Opportunities shall be provided for individuals receiving services to participate in community activities. This regulation applies to residential, day support and day treatment services.

12 VAC 35-105-620. Monitoring and evaluating service quality.

The provider shall have a mechanism to monitor and evaluate service quality and effectiveness on a systematic and ongoing basis. The provider shall implement improvements, when indicated.

Article 2.

Screening, Admission, Assessment, Service Planning, and Orientation.

12 VAC 35-105-630. Policies on screening, admission and referrals.

A. The provider shall establish written criteria for admission that include:

1. A description of the population to be served;

2. A description of the types of services offered; and

3. Exclusion criteria.

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

C. The provider shall complete a preliminary assessment detailed enough to determine that the individual qualifies for admission and to develop a preliminary individualized services plan for

individuals admitted to services. Employee or contractors responsible for screening, admitting and referral shall have immediate access to written service descriptions and admission criteria.

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

E. The provider shall develop and implement procedures for screening, admitting, and referring individuals to services, to include staff who are designated to perform these activities.

12 VAC 35-105-640. Screening and referral services documentation and retention.

A. The provider shall maintain written documentation of each screening performed, including:

1. Date of initial contact;

2. Name, age, and gender of the individual;

3. Address and phone number, if applicable;

4. Presenting needs or situation to include psychiatric/medical problems, current medications and history of medical care;

5. Name of screening employee or contractor;

6. Method of screening;

7. Screening recommendation; and

8. Disposition of individual.

B. The provider shall retain documentation for each screening. For individuals not admitted, documentation shall be retained for six months. Documentation shall be included in the individual's record if the individual is admitted.

12 VAC 35-105-650. Assessment policy.

A. The provider shall document and implement an assessment policy. The policy shall define how assessments will be documented.

B. The provider shall conduct an assessment to identify an individual's physical, medical, behavioral, functional, and social strengths, preferences and needs, as applicable. The assessment shall address:

1. Onset/duration of problems;

2. Social/behavioral/developmental/family history;

3. Employment/vocation/educational background;

4. Previous interventions/outcomes;

5. Financial resources and benefits;

6. Health history and current medical care needs;

7. Legal status, including guardianship, commitment and representative payee status, and relevant criminal charges or convictions, probation or parole status;

8. Daily living skills;

9. Social/family supports;

10. Housing arrangements; and

11. Ability to access services.

C. The policy shall designate employees or contractors responsible for assessments. Employees or contractors responsible for assessments shall have experience in working with the population being assessed and with the assessment tool being utilized.

D. Frequency of assessments.

1. A preliminary assessment shall be done prior to admission;

2. The preliminary assessment shall be updated and finalized during the first 30 days of service prior to completing the individualized services plan. Longer term assessments may be included as part of the individualized services plan. The provider shall document the reason for assessments requiring more than 30 days.

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

E. The provider shall make reasonable attempts to obtain previous assessments.

12 VAC 35-105-660. Individualized services plan (ISP).

A. The provider shall develop a preliminary individualized services plan for the first 30 days. The preliminary individualized services plan shall be developed and implemented within 24 hours of admission and shall continue in effect until the individualized services plan is developed or the individual is discharged, whichever comes first.

B. The provider shall develop an individualized services plan for each individual as soon as possible after admission but no later than 30 days after admission. Providers of short-term services must develop and implement a policy to develop individualized services plans within a time frame consistent with the expected length of stay of individuals. Services requiring longer term assessments may include the completion of those as part of the individualized services plan as long as all appropriate services are incorporated into the individualized services plan based on the assessment completed within 30 days of admission and the individualized services plan is updated upon the completion of assessment.

C. The individualized services plan shall address:

1. The individual’s needs and preferences;

2. Relevant psychological, behavioral, medical, rehabilitation and nursing needs as indicated by the assessment;

3. Individualized strategies, including the intensity of services needed;

4. A communication plan for individuals with communication barriers, including language barriers; and

5. The behavior treatment plan, if applicable.

D. The provider shall comply with the human rights regulations in regard to participation in decision-making by the individual or the legally authorized representative in developing or revising the individualized service plan .

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E. The provider shall involve family members, guardian, or others, if appropriate, in developing, reviewing, or revising, at least annually, the individualized service plans consistent with laws protecting confidentiality, privacy, the human rights of individuals receiving services (see 12 VAC 35-115-60) and the rights of minors.

F. Employees or contractors responsible for implementation of an individualized services plan shall demonstrate a working knowledge of the plan's goals, objectives and strategies.

G. The provider shall designate a person who will develop and implement individualized

service plans .

H. The provider shall implement the individualized services plan and review it at least every three months or whenever there is a revised assessment. These reviews shall evaluate the individual's progress toward meeting the plan's objectives. The goals, objectives and strategies of the individualized services plan shall be updated, if indicated.

I. The individualized service plan shall be consistent with the CSP for individuals served by the IFDDS Waiver.

12 VAC 35-105-670. Individualized services plan requirements.

A. The individualized services plan shall include, at a minimum:

1. A summary or reference to the assessment;

2. Goals and measurable objectives for addressing each identified need;

3. The services and supports and frequency of service to accomplish the goals and objectives;

4. Target dates for accomplishment of goals and objectives;

5. Estimated duration of service plan;

6. Discharge plan, where applicable; and

7. The employees or contractors responsible for coordination and integration of services, including employees of other agencies.

B. The individualized services plan shall be signed and dated, at a minimum, by the person responsible for implementing the plan and the individual receiving services or the legally authorized representative. If unable to obtain the signature of the individual receiving services or the legally authorized representative, the provider shall document the reason.

12 VAC 35-105-680. Progress notes or other documentation.

The provider shall use signed and dated progress notes or other documentation to document the services provided, and the implementation and outcomes of individualized services plans.

12 VAC 35-105-690. Orientation.

A. The provider shall develop and implement a written policy regarding orientation of individuals and the legally authorized representative to services.

B. At a minimum, the policy shall require the provision to individuals and the legally authorized representative of the following information, as appropriate to the scope and level of services:

1. The mission of the provider;

2. Confidentiality practices for individuals receiving services;

3. Human rights and how to report violations;

4. Participation in treatment and discharge planning;

5. Fire safety and emergency preparedness procedures;

6. The grievance procedure;

7. Service guidelines;

8. Physical plant or building lay-out;

9. Hours and days of operation; and

10. Availability of after-hours service.

C. In addition, individuals receiving treatment services in correctional facilities will receive orientation to security restrictions.

D. The provider shall document that orientation has been provided to individuals and the legal guardian/authorized representative.

Article 3.

Crisis Intervention and Clinical Emergencies.

12 VAC 35-105-700. Written policies and procedures for a crisis or clinical emergency; required elements.

A. The provider shall develop and implement written policies and procedures for prompt intervention in the event of a crisis or clinical emergency that occurs during screening and

referral or during admission and service provision. A clinical emergency refers to either a medical or psychiatric emergency.

B. The policies and procedures shall include:

1. A definition of crisis and clinical emergency;

2. Procedures for stabilization and immediate access to appropriate internal and external resources including a provision for obtaining physician and mental health clinical services if on-call physician back up or mental health clinical services are not available;

3. Employee or contractor responsibilities; and

4. Location of emergency medical information for individuals receiving services, which shall be readily accessible in an emergency.

12 VAC 35-105-710. Documenting crisis intervention and clinical emergency services.

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

1. Date and time;

2. Nature of crisis or emergency;

3. Name of individual;

4. Precipitating factors;

5. Interventions/treatment provided;

6. Employees or contractors involved; and

7. Outcome.

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

Article 4.

Medical Management.

12 VAC 35-105-720. Health care policy.

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

1. Medical care needs will be assessed;

2. Individualized services plans address any medical care needs appropriate to the scope and level of service;

3. Identified medical care needs will be addressed;

4. The provider manages medical care needs or responds to abnormal findings;

5. The provider communicates medical assessments and diagnostic laboratory results to individuals and authorized representatives.

6. The provider keeps accessible to staff the names, addresses, phone numbers of medical and dental providers.

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

B. Providers of residential or inpatient services shall either provide or arrange for the provision of appropriate medical care. A provider of other services shall define instances when it shall provide or arrange for appropriate medical and dental care and instances when it shall refer the individual to appropriate medical care.

12 VAC 35-105-730. Medical information .

A. The provider shall develop and implement a medical evaluation or document its ability to obtain a medical evaluation that consists of, at a minimum, a health history and emergency medical information.

B. A health history shall include:

1. Allergies;

2. Recent physical complaints and medical conditions;

3. Chronic conditions;

4. Communicable diseases;

5. Handicaps or restriction on physical activities, if any;

6. Past serious illnesses, serious injuries and hospitalizations;

7. Serious illnesses and chronic conditions of the individual's parents, siblings and significant others in the same household;

8. Current and past drug usage including alcohol, prescription and nonprescription medications, and illicit drugs; and

9. Sexual health and reproductive history.

12 VAC 35-105-740. Physical examination.

A. The provider shall develop a policy on physical examinations in consultation with a qualified practitioner. Providers of residential services shall administer or obtain results of physical exams within 30 days of admission. Providers of inpatient services shall administer physical exams within 24 hours of admission.

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

1. General physical condition (history and physical);

2. Evaluation for communicable diseases;

3. Recommendations for further diagnostic tests and treatment, if appropriate;

4. Other examinations indicated, if appropriate; and

5. The date of examination and signature of a qualified practitioner.

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

12 VAC 35-105-750. Emergency medical information.

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

1. If available, the name, address, and telephone number of:

a. The individual's physician; and

b. A relative, legally authorized representative, or other person to be notified;

2. Medical insurance company name and policy or Medicaid, Medicare or CHAMPUS number, if any; and

3. Currently prescribed medications and over-the-counter medications used by the individual;

4. Medication and food allergies;

5. History of substance abuse;

6. Significant medical problems;

7. Significant communication problems; and

8. Advance directive, if one exists.

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

12 VAC 35-105-760. Medical equipment.

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

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Article 5.

Medication Management Services.

12 VAC 35-105-770. Medication management.

A. The provider shall develop and 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 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 time of administration.

B. Medications shall be administered only by persons authorized 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.

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.

12 VAC 35-105-780. Medication errors and drug reactions.

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

A. First aid shall be administered if indicated.

B. Employees or contractors shall promptly contact a poison control center, pharmacist, nurse or physician and shall take actions as directed.

C. The individual's physician shall be notified as soon as possible unless the situation is addressed in standing orders.

D. Actions taken by employees or contractors shall be documented.

E. The provider shall review all medication errors at least quarterly as part of the quality assurance in 12 VAC 35-105-620.

F. Medication errors and adverse drug reactions shall be recorded in the individual's medication log.

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12 VAC 35-105-790. Medication administration and storage or pharmacy operation.

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

1. The Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia);

2. The Virginia Board of Pharmacy regulations (18 VAC 110-20);

3. The Virginia Board of Nursing regulations and Medication Administration Curriculum (18 VAC 90-20-370 through 390; and

4. Applicable federal laws and regulations relating to controlled substances.

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

Article 6.

Behavior Management.

12 VAC 35-105-800. Policies and procedures on behavior management techniques.

A. The provider shall develop and implement written policies and procedures that describe the use of behavior management techniques, including, but not limited to, seclusion, restraint, and time out. The policies and procedures shall:

1. Be consistent with applicable federal and state laws and regulations;

2. Emphasize positive approaches to behavior management;

3. List and define behavior management techniques in the order of their relative degree of intrusiveness or restrictiveness and the conditions under which they may be used in each service for each individual;

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

5. Specify the mechanism for monitoring the use of behavior management techniques; and

6. Specify the methods for documenting the use of behavior management techniques.

B. The behavior management policies and procedures shall be developed, implemented, and monitored by employees or contractors trained in behavior management programming.

C. Policies and procedures related to behavior management shall be available to individuals, their families, guardians and advocates except that it does not apply to services provided in correctional facilities.

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

E. Injuries resulting from or occurring during the implementation of behavior management techniques shall be recorded in the clinical record and reported to the employee or contractor responsible for the overall coordination of services.

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12 VAC 35-105-810. Behavioral treatment plan.

A 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. Behavioral treatment shall be developed, implemented and monitored by employees or contractors trained in behavioral treatment.

12 VAC 35-105-820. Prohibited actions.

The following actions shall be prohibited:

1. Prohibition of contacts and visits with attorney, probation officer, placing agency representative, minister or chaplain;

2. Any action that is humiliating, degrading, or abusive;

3. Corporal punishment;

4. Subjection to unsanitary living conditions;

5. 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;

6. Deprivation of appropriate services and treatment;

7. Deprivation of health care;

8. 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;

9. Applications of aversive stimuli except as permitted pursuant to other applicable state regulations;

10. Limitation on contacts with regulators, advocates or staff attorneys employed by the department or the Department for the Rights of Virginians with Disabilities.

11. 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;

12. Prohibition on contacts and visits with family or legal guardian except as permitted by other applicable state regulations or by order of a court of competent jurisdiction;

13. Delay or withholding of incoming or outgoing mail except as permitted by other applicable state and federal regulations or by order of a court of competent jurisdiction; and

14. 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.

12 VAC 35-105-830. Seclusion, restraint, and time out.

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

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

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

1. Physician’s order;

2. Date and time;

3. Employees or contractors involved;

4. Circumstances and reasons for use, including but not limited to other behavior management techniques attempted;

5. Duration;

6. Type of technique used; and

7. Outcomes, including documentation of debriefing of the individual and staff involved following the incident.

12 VAC 35-105-840. Requirements for seclusion room.

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

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

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

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

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

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

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

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

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

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Article 7.

Continuity of Service and Discharge.

12 VAC 35-105-850. Transition of individuals among services.

A. The provider shall have written procedures to define the process for the transition of an individual among services of the provider. At a minimum, the policy will address:

1. Continuity of service;

2. Participation of the individual and his family;

3. Transfer of the individual's record;

4. Transfer summary; and

5. Where applicable, discharge and admission summaries.

B. The transfer summary will include at a minimum:

1. The originating service;

2. The destination service;

3. Reason for transfer;

4. Current psychiatric and medical condition of the individual;

5. Updated progress on meeting the goals and objectives of the ISP;

6. Medications and dosages in use;

7. Transfer date; and

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

12 VAC 35-105-860. Discharge.

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

B. Discharge instructions shall be provided, in writing, to the individual or his LAR or both. Discharge instructions shall include, at a minimum, medications and dosages, phone numbers and addresses of any providers to whom the individual is referred, current medical issues, conditions, and the identity of health care providers. This regulation applies to residential and inpatient services.

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

D. Discharge planning and discharge shall be consistent with the individualized services plan and the criteria for discharge.

E. The individual's, the individual's legally authorized representative and the individual's family's involvement in discharge planning shall be documented in the individual's service record.

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

1. Reason for admission and discharge;

2. Individual's participation in discharge planning;

3. Individual's level of functioning or functional limitations, if applicable;

4. Recommendations on procedures, activities, or referrals to assist the individual in maintaining or improving functioning and increased independence and the status, location and arrangements for future services that have been made;

5. Progress made achieving the goals and objectives identified in the individualized services plan and summary of critical events during service provision;

6. Discharge date;

7. Discharge medications, if applicable;

8. Date the discharge summary was actually written/documented; and

9. Signature of person who prepared summary.

PART V.

RECORDS MANAGEMENT.

12 VAC 35-105-870. Written records management policy.

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

1. Access, duplication and dissemination of information only to persons legally authorized 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 to protect records from loss, unauthorized alteration, inadvertent or unauthorized access, disclosure of information and transportation of records between service sites; physical and data security controls shall exist for electronic records;

5. Designation of person responsible for records management; and

6. Disposition of records in event the service ceases operation. If the disposition of records would involve a transfer to another provider, the provider shall have a written agreement with that provider.

B. The records management policy shall be consistent with 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. Health Insurance Portability and Accountability Act (Public Law 104-191, 42 USC § 300gg et seq.) and implementing regulations (42 CFR Part 146).

12 VAC 35-105-880. Documentation policy.

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

B. The provider shall define, by policy, a system of documentation which 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 frequency and format.

C. Entries in the individual's record shall be current, dated, and authenticated by the person making the entry. Errors shall be corrected by striking through and initialing. If records are electronic, the provider shall develop and implement a policy to identify corrections of the record.

12 VAC 35-105-890. Individual's service record.

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

B. All individuals admitted to the service shall have identifying information on the face sheet in the individual's service record. Identifying information on a standardized face sheet or sheets shall include the following:

1. Identification number unique for the individual;

2. Name of individual;

3. Current residence, if known;

4. Social security number;

5. Gender;

6. Marital status;

7. Date of birth;

8. Name of legal guardian or authorized representative, if applicable;

9. Name, address, and telephone number for emergency contact;

10. Adjudicated legal incompetency or legal incapacity, if applicable; and

11. Date of admission to service.

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

1. Screening documentation;

2. Assessments;

3. Medical evaluation, as applicable to the service;

4. Individualized services plans and reviews;

5. Progress notes; and

6. A discharge summary, if applicable.

12 VAC 35-105-900. Record storage and security.

A. When not in use, active and closed records shall be stored in a locked cabinet or room.

B. Physical and data security controls shall exist for electronic records.

12 VAC 35-105 Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation and Substance Abuse Services

12 VAC 35-105-910. Retention of individual’s service records.

A. An individual’s service records shall be kept for a minimum of three years after discharge or date of last contact unless otherwise specified by state or federal requirements.

B. Permanent information kept on each individual shall include:

1. Individual's name;

2. Social security number;

3. Date of individual's birth;

4. Dates of admission and discharge; and

5. Name and address of legal guardian, if any.

12 VAC 35-105-920. Review process for records.

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

PART VI.

ADDITIONAL REQUIREMENTS FOR SELECTED SERVICES.

Article 1.

Opioid Treatment Services.

12 VAC 35-105-930. Registration, certification or accreditation.

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

1. The Federal Drug Enforcement Administration;

2. The Federal Department of Health and Human Services; and

3. The Virginia Board of Pharmacy.

B. If required by federal regulations, a provider of opioid treatment services shall be required to maintain accreditation with an entity approved under federal regulations.

12 VAC 35-105-940. Criteria for involuntary termination from treatment.

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

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

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

12 VAC 35-105-950. Service operation schedule.

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

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

12 VAC 35-105-960. Physical examinations.

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

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

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

12 VAC 35-105-970. Counseling sessions.

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

12 VAC 35-105-980. Drug screens.

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

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

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

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

12 VAC 35-105-990. Take-home medication.

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

1. Regular clinic attendance;

2. Absence of recent alcohol abuse and other illicit drug use;

3. Absence of significant behavior problems; and

4. Absence of recent criminal activities, charges or convictions.

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

12 VAC 35-105 Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation and Substance Abuse Services

12 VAC 35-105-1000. Preventing duplication of medication services.

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

12 VAC 35-105-1010. Guests.

A. No medication shall be dispensed to any guest unless the guest has been receiving such medication services from another provider and documentation from such provider has been received prior to dispensing medication.

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

12 VAC 35-105-1020. Detoxification prior to involuntary discharge.

Individuals who are being involuntarily discharged shall be given an opportunity to detoxify from opioid agonist medication not less than 10 days or not more than 30 days prior to discharge from the service, unless the state authority has granted an exception.

12 VAC 35-105-1030. Opioid agonist medication renewal.

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

12 VAC 35-105 Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation and Substance Abuse Services

12 VAC 35-105-1040. Emergency preparedness plan.

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

12 VAC 35-105-1050. Security of opioid agonist medication supplies.

A. At a minimum, opioid agonist medication supplies shall be secured as follows:

1. Admittance to the medication area shall be restricted to medical or pharmacy personnel;

2. Medication inventory shall be reconciled monthly; and

3. Inventory records, including the monthly reconciliation, shall be kept for three years.

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

Article 2.

Social Detoxification Services.

12 VAC 35-105-1060 . Cooperative agreements with community agencies.

The provider shall establish cooperative agreements with other community agencies to accept referrals for treatment, including provisions for physician coverage and emergency medical care. The agreements shall clearly outline the responsibility of each party.

12 VAC 35-105-1070 . Observation area.

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

12 VAC 35-105 Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation and Substance Abuse Services

12 VAC 35-105-1080. Direct-care training for providers of detoxification services.

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

1. Management of withdrawal; and

2 . First responder training; or

3 . First aid and CPR training.

B. New employees or contractors shall be trained within 30 days of employment. Untrained employees or contractors shall not be solely responsible for the care of individuals.

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

In detoxification service locations, at least two employees or contractors shall be on duty at all times. If the location is within or contiguous to another service location, at least one employee or contractor shall be on duty at the location with trained backup employees or contractors immediately available.

12 VAC 35-105-1100. Documentation.

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

12 VAC 35-105-1110. Admission assessments.

During the admission process, providers of detoxification services shall:

1. Identify individuals with a high-risk for medical complications or who may pose a danger to themselves or others;

2. Assess substances used and time of last use;

3. Determine time of last meal;

4. Administer a urine screen;

6. Analyze blood alcohol content or administer a breathalyzer; and

7. Record vital signs.

12 VAC 35-105-1120. Vital signs.

A. Unless the individual refuses, the provider shall take vital signs:

1. At admission and discharge;

2. Every four hours for the first 24 hours and every eight hours thereafter; and

3. As frequently as necessary, until signs and symptoms stabilize for individuals with a high-risk profile.

B. The provider shall have procedures to address situations when an individual refuses to have vital signs taken.

C. The provider shall document vital signs, all refusals and follow-up actions taken.

12 VAC 35-105-1130. Light snacks and fluids.

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

12 VAC 35-105 Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation and Substance Abuse Services

Article 3.

Services in Department of Corrections Correctional Facilities.

12 VAC 35-105-1140. Clinical and security coordination.

A. The provider shall have formal and informal methods of resolving procedural and programmatic issues regarding individual care arising between the clinical and security employees or contractors.

B. The provider shall demonstrate ongoing communication between clinical and security employees to ensure individual care.

C. The provider shall provide cross-training for the clinical and security employees or contractors that includes:

1. Mental health, mental retardation, and substance abuse education;

2. Use of clinical and security restraints; and

3. Channels of communication.

D. Employees or contractors shall receive periodic in-service training, have knowledge of and be able to demonstrate the appropriate use of clinical and security restraint.

E. Security and behavioral assessments shall be completed at the time of admission to determine service eligibility and at least weekly for the safety of individuals, other persons, employees, and visitors.

F. Personal grooming and care services for individuals shall be a cooperative effort between the clinical and security employees or contractors.

G. Clinical needs and security level shall be considered when arrangements are made regarding privacy for individual contact with family and attorneys.

H. Living quarters shall be assigned on the basis of the individual's security level and clinical needs.

I. An assessment of the individual's clinical condition and needs shall be made when disciplinary action or restrictions are required for infractions of security measures.

J. Clinical services consistent with the individual's condition and plan of treatment shall be provided when security detention or isolation is imposed.

12 VAC 35-105-1150. Other requirements for correctional facilities.

A. Group bathroom facilities shall be partitioned between toilets and urinals to provide privacy.

B. If uniform clothing is required, the clothing shall be properly fitted, climatically suitable, durable, and presentable.

C. Financial compensation for work performed shall be determined by the Department of Corrections. Personal housecleaning tasks may be assigned without compensation to the individual.

D. The use of audio equipment, such as televisions, radios, and record players, shall not interfere with therapeutic activities.

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

Article 4.

Sponsored Residential Home Services.

12 VAC 35-105-1160. Sponsored residential home information.

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

1. Names and ages of residential sponsors;

2. Date of sponsored residential home agreement;

3. The maximum number of individuals that can be placed in the home;

4. Names and ages of all other individuals not receiving services, but residing in a sponsored residential home;

5. Address and telephone number of the sponsored residential home; and

6. All staff employed in the home, including on-call and substitute staff.

12 VAC 35-105-1170. Sponsored residential home agreements.

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

1. Be available for inspection by the licensing specialist; and

2. Include a provision for granting the right of entry to state licensing specialists or human rights advocates to investigate complaints.

12 VAC 35-105-1180. Sponsor qualification and approval process.

A. The provider shall evaluate sponsored residential homes other than his own through face-to-face interviews, home visits, and other information before individuals are placed in the home.

B. The provider shall certify that all sponsored residential homes meet the criteria for physical environment and residential services designated in these regulations.

C. The provider shall document the sponsored staff's ability to meet the needs of the individuals placed in the home by assessing and documenting:

1. The sponsored staff's ability to communicate and understand individuals receiving services;

2. The sponsored staff's ability to provide the care, treatment, training or habilitation for individual receiving services in the home;

3. The abilities of all members of the household to accept individuals with disabilities and their disability-related characteristics, especially the ability of children in the household to adjust to nonfamily members living with them; and

4. The financial capacity of the sponsor to meet the sponsor's own expenses for up to 90 days, independent of payments received for residents living in the home.

D. The provider shall obtain references, criminal background checks and a search of the registry of founded complaints of child abuse and neglect maintained by the Department of Social Services for all adults in the home who are staff. The provider must develop policies for obtaining references, background and registry checks for all adults in the home who are not staff and not the individuals being served.

E. Sponsored residential home members shall submit to the provider the results of a physical and mental health examination when requested by the provider based on indications of a physical or mental health problem.

F. Sponsored residential homes shall not also operate as group homes or department of social services approved foster homes.

12 VAC 35-105-1190. Sponsored residential home service policies.

A. The provider shall develop and implement policies to provide orientation and supportive services to sponsored staff specific to individual receiving services.

B. The provider shall develop and implement a training plan for the sponsored staff consistent with resident needs.

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

D. The provider shall develop and implement a policy on managing, monitoring and supervising sponsored residential homes.

E. The provider shall conduct at least semi-annual unannounced visits to sponsored residential homes other than his own.

F. On an on-going basis and at least annually, the provider shall review compliance of sponsored residential homes and sponsors with regulations related to sponsored residential homes.

G. The provider shall develop policies regarding termination of a sponsored residential home.

12 VAC 35-105-1200. Supervision.

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

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

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

12 VAC 35-105-1210. Sponsored residential home service records.

Providers of sponsored residential home services shall maintain records on each sponsored residential home, which shall include:

1. Documentation of references;

2. Criminal background checks and results of the search of the registry of founded complaints of child abuse and neglect on all adults who are staff in the home;

3. Orientation and training provided by the provider;

4. A log of provider visits to each sponsored residential home including the date, the staff person visiting, the purpose of the visit, and any significant events; and

5. The sponsor will maintain a daily log of significant events related to individuals receiving services.

12 VAC 35-105-1220. Regulations pertaining to employees.

Providers will certify compliance of sponsors with regulations pertaining to employees.

12 VAC 35-105-1230. Maximum number of beds or occupants in sponsored residential home.

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

Article 5.

Case Management Services.

12 VAC 35-105-1240. Service requirements for providers of case management services.

A. As part of the intake assessment, the provider of case management services shall identify individuals whose needs may be addressed through case management services.

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

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

2. Making collateral contacts with the individual's significant others with properly authorized releases to promote implementation of the individual's individualized services plan and his community adjustment;

3. Assessing needs and planning services to include developing a case management individualized services plan;

4. Linking the individual to those community supports that are likely to promote the personal habilitative/rehabilitative and life goals of the individual as developed in the individualized service plan (ISP);

5. Assisting the individual directly to locate, develop, or obtain needed services, resources, and appropriate public benefits;

6. Assuring the coordination of services and service planning within a provider agency, with other providers and with other human service agencies and systems, such as local health and social services departments;

7. Monitoring service delivery through contacts with individuals receiving services, service providers and periodic site and home visits to assess the quality of care and satisfaction of the individual;

8. Providing follow up instruction, education and counseling to guide the individual and develop a supportive relationship that promotes the individualized services plan;

9. Advocating for individuals in response to their changing needs, based on changes in the individualized services plan;

10. Developing a crisis plan for an individual that includes the individual's preferences regarding treatment in an emergency situation;

11. Planning for transitions in individual's lives; and

12. Knowing and monitoring the individual's health status, any medical conditions, and his medications and potential side effects, and assisting the individual in accessing primary care and other medical services, as needed.

12 VAC 35-105-1250. Qualifications of case management employees or contractors.

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

1. Services and systems available in the community including primary health care, support services, eligibility criteria and intake processes and generic community resources;

2. The nature of serious mental illness, mental retardation and/or substance abuse depending on the population served, including clinical and developmental issues;

3. Different types of assessments, including functional assessment, and their uses in service planning;

4. Treatment modalities and intervention techniques, such as behavior management, independent living skills training, supportive counseling, family education, crisis intervention, discharge planning and service coordination;

5. Types of mental health, mental retardation and substance abuse programs available in the locality;

6. The service planning process and major components of a service plan;

7. The use of medications in the care or treatment of the population served; and

8. All applicable federal and state laws, state regulations and local ordinances.

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

1. Identifying and documenting an individual’s need for resources, services, and other supports;

2. Using information from assessments, evaluations, observation, and interviews to develop service plans;

3. Identifying and documenting how resources, services and natural supports such as family can be utilized to promote achievement of an individual's personal habilitative/rehabilitative and life goals; and

4. Coordinating the provision of services by diverse public and private providers.

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

1. Work as team members, maintaining effective inter- and intra-agency working relationships;

2. Work independently performing position duties under general supervision; and

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

Article 6.

Community Gero-Psychiatric Residential Services.

12 VAC 35-105-1260. Admission criteria.

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

12 VAC 35-105-1270. Physical environment requirements of community gero-psychiatric residential services.

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

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

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

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

E. Areas must be provided for quiet and recreation.

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

12 VAC 35-105-1280. Monitoring.

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

12 VAC 35-105-1290. Service requirements for providers of gero-psychiatric residential services.

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

B. Providers shall provide crisis stabilization services.

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

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

1. Providing each individual services to prevent clinically avoidable complications, including but not limited to: skin care, dexterity and mobility, continence, hydration and nutrition;

2. Giving each individual proper daily personal attention and care, including skin, nail, hair and oral hygiene, in addition to any specific care ordered by the attending physician;

3. Dressing each individual in clean clothing and encouraging each individual to wear day clothing when out of bed;

4. Providing each individual tub or shower baths as often as needed, but not less than twice weekly, or a sponge bath daily if the medical condition prohibits tub or shower baths.

5. Providing each individual appropriate pain management; and

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

E. Providers shall integrate behavioral/mental health care and medical/nursing care in the individualized services plan.

F. Providers shall have available nourishment between scheduled meals.

12 VAC 35-105-1300. Staffing requirements for community gero-psychiatric residential services.

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

1. Program director with experience in gero-psychiatric services.

2. Medical director.

3. Director of clinical services who is a registered nurse with experience in gero-psychiatric services.

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

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

12 VAC 35-105-1310. Interdisciplinary services planning team.

A. At a minimum, a registered nurse, a licensed psychologist, a licensed social worker, a therapist (recreational, occupational or physical therapist), a pharmacist, and a psychiatrist shall

participate in the development and review of the individualized services plan. Other employees or contractors as appropriate shall be included.

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

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

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

12 VAC 35-105-1320. Employee or contractor qualifications and training.

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

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

12 VAC 35-105 Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation and Substance Abuse Services

12 VAC 35-105-1330. Medical director.

Providers of community gero-psychiatric community services shall employ or have a written agreement with one or more psychiatrists with training and experience in gero-psychiatric services to serve as medical director. The duties of the medical director shall include, but are not limited to:

1. Responsibility for the overall medical and psychiatric care;

2. Advising the program director and the director of clinical services on medical/psychiatric issues, including the criteria for residents to be admitted, transferred or discharged;

3. Advising on the development, execution and coordination of policies and procedures that have a direct effect upon the quality of medical, nursing and psychiatric care delivered to residents; and

4. Acting as liaison and consulting with the administrator and the primary care physician on matters regarding medical, nursing and psychiatric care policies and procedures.

12 VAC 35-105-1340. Physician services and medical care.

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

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

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

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

12 VAC 35-105-1350. Pharmacy services for providers of community gero-psychiatric residential services.

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

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

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

12 VAC 35-105 Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation and Substance Abuse Services

Article 7.

Intensive Community Treatment and Program of Assertive Community Treatment Services.

12 VAC 35-105-1360. Admission and discharge criteria.

A. Individuals must meet the following admission criteria:

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

2. Impairments on a continuing or intermittent basis without intensive community support to include one or more of the following:

a. Inability to consistently perform practical daily living tasks required for basic adult functioning in the community;

b. Persistent or recurrent failure to perform daily living tasks except with significant support of assistance by family, friends or relatives;

c. Inability to be consistently employed at a self-sustaining level or inability to consistently carry out homemaker roles; or

d. Inability to maintain a safe living situation.

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

a. Residence in a state mental health facility or other psychiatric hospital but clinically assessed to be able to live in a more independent situation if intensive services were

provided or anticipated to require extended hospitalization, if more intensive services are not available;

b. High user of state mental health facility or other acute psychiatric hospital inpatient services within the past two years or a frequent user of psychiatric emergency services (more than four times per year);

c. Intractable (i.e. persistent or very recurrent) severe major symptoms (e.g., affective, psychotic, suicidal);

d. Co-occurring substance addiction or abuse of significant duration (e.g., greater than six months);

e. High risk or a recent history (within the past six months) of criminal justice involvement (e.g., arrest and incarceration);

f. Unable to meet basic survival needs or residing in substandard housing, homeless, or at imminent risk of becoming homeless; or

g. Unable to consistently participate in traditional office-based services.

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

1. Moving out of the service area;

2. Death;

3. Incarceration for a period to exceed a year or hospitalization for more than one year;

4. Choice of the individual (the provider is responsible for revising the individualized services plan to meet any concerns of the individual leading to the choice of discharge); or

5. Demonstration by the individual of an ability to function in all major role areas with minimal team contact and support for at least two years as determined by both the individual and ICT or PACT Team.

12 VAC 35-105-1370 . Treatment team and staffing plan.

A. ICT and PACT Services are delivered by interdisciplinary teams.

1. The ICT team shall have employees or contractors, 80% of whom meet the qualifications of QMHP, who are qualified to provide the services described in 12 VAC 35-105-1360, including at least five full-time equivalent clinical employees or contractors on an ICT team and at least ten full-time equivalent clinical employees or contractors on a PACT team, a program assistant, and a full- or part-time psychiatrist. The team shall include the following positions:

a. Team Leader – one full time equivalent (FTE) QMHP with three years experience in the provision of mental health services to adults with serious mental illness.

b. Nurses – one or more FTE registered nurse with one year of experience or licensed practical nurse with three years of experience in the provision of mental health services to adults with serious mental illness.

c. Mental health professionals – two or more FTE QMHPs (half of whom shall hold a master’s degree), including a vocational specialist and a substance abuse specialist.

d. Peer specialists – one or more FTE QPPMH or QMHP who is or has been a recipient of mental health services for severe and persistent mental illness.

e. Program assistant – one person with skills and abilities in medical records management, operating and coordinating the management information system, maintaining accounts and budget records for individual and program expenditures, and providing receptionist activities.

f. Psychiatrist – one board certified or board eligible in psychiatry and licensed to practice medicine. An equivalent ratio to 20 minutes (.008 FTE) of psychiatric time for each individual served must be maintained.

2. In addition, a PACT team includes at least three FTE nurses (at least one of whom is an RN) and five or more mental health professionals.

B. ICT and PACT teams must include a minimum number of employees (counting contractors but not counting the psychiatrist and program assistant) to maintain an employee to individual ratio of at least 1:10. ICT teams may serve no more than 80 individuals. PACT teams may serve no more than 120 individuals. A transition plan will be required of PACT teams that will allow for “start-up” when teams are not in full compliance with the PACT model relative to staffing patterns and client capacity.

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

D. ICT teams shall operate a minimum of 8 hours per day, 5 days per week and shall provide services on a case-by-case basis in the evenings and on weekends. PACT teams shall be

available to individuals 24 hours per day and shall operate a minimum of 12 hours each weekday and 8 hours each weekend day and each holiday.

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

12 VAC 35-105-1380. Contacts.

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

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

12 VAC 35-105-1390. ICT and PACT service daily operation and progress notes.

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

B. A daily log that provides a roster of individuals served in the ICT or PACT services program and documentation of services provided and contacts made with them shall be maintained.

There shall also be at least a weekly individual note documenting progress or lack of progress toward goals and objectives as outlined in the Psychosocial Rehabilitation Services Plan.

12 VAC 35-105-1400 . ICT and PACT assessment.

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

1. Psychiatric history, mental status and diagnosis, including the content of an advance directive;

2. Medical, dental and other health needs;

3. Extent and effect of drug or alcohol use;

4. Education and employment including current daily structures use of time, school or work status, interests and preferences and the effect of psychiatric symptomatology on educational and employment performance;

5. Social development and functioning including childhood and family history, culture and religious beliefs leisure interests and social skills;

6. Housing and daily living skills, including the support needed to obtain and maintain decent, affordable housing integrated into the broader community; the current ability to meet basic needs such as personal hygiene, food preparation, housekeeping, shopping, money management and the use of public transportation and other community based resources;

7. Family and social network including the current scope and strength of a individual's network of family, peers, friends, and co-workers and their understanding and expectations of the team's services;

8. Finances and benefits including the management of income, the need for and eligibility for benefits and the limitations and restrictions of those benefits; and

9. Legal and criminal justice involvement including the guardianship, commitment, representative payee status and the experience as either victim or accused person.

12 VAC 35-105-1410. Service requirements.

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

1. Ongoing assessment to ascertain the needs, strengths and preferences of the individual;

2. Case management;

3. Nursing;

4. Symptom assessment and management;

5. Psychopharmacological treatment, administration and monitoring;

6. Substance abuse assessment and treatment for individuals with a dual diagnosis of mental illness and substance abuse;

7. Individual supportive therapy;

8. Skills training in activities of daily living, social skills, interpersonal relationships and leisure time;

9. Supportive in-home services;

10. Work-related services to help find and maintain employment;

11. Support for resuming education;

12. Support, education, consultation, and skill-teaching to family members and significant others;

13. Collaboration with families and assistance to individuals with children;

14. Direct support to help individuals obtain legal and advocacy services, financial support, money-management services, medical and dental services, transportation, and natural supports in the community;

15. Mobile crisis assessment, intervention and facilitation into and out of psychiatric hospitals.

12 VAC 35-105 Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation and Substance Abuse Services

I certify that this regulation is full, true, and correctly dated.

_____
James S. Reinhard, M. D.
Commissioner

Department of Mental Health, Mental Retardation and Substance Abuse Services

Date_____