

Virginia Department of Social Services
Division of Licensing Programs

**Performance Standardization
Guidance for Licensure**

Effective: August 1, 2011



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Performance Standardization Guidance for Licensure

Overview

Chapter 603 of the 2010 Acts of Assembly (Chapter 603) became effective on July 1, 2010 and requires:

That by November 1, 2010, the Department of Social Services shall, in consultation with key stakeholder groups, develop specific criteria by which the Department issues one-, two-, and three-year assisted living facility licenses. Such criteria shall be separately stated for each licensure period and shall be unambiguously communicated to all entities seeking initial and renewal licenses.

To meet the requirements of Chapter 603, the Performance Standardization Guidance for Licensure (a.k.a. licensure tool) was developed to increase consistency within and across licensing offices for issuing an initial (or conditional), 1-, 2-, and 3-year license to adult and children's programs. It also contains guidance for determining when an ultimate sanction, e.g., revocation, warrants consideration. Although the requirements of Chapter 603 pertain to assisted living facilities, the Division of Licensing Programs (Licensing) elected to apply this tool to all adult and children's programs as the issues surrounding the licensure decision-making process are not unique to assisted living facilities.

The Concept Underlying the Guidance and Licensure Tool

The concept is based on a type of standardized statistical procedure used for making comparisons between groups of individuals known as *norm-referenced testing*. The procedure uses units of measurements referred to as standard deviations which relate to the average or typical amount of difference or departure from the overall average or center for a population being observed or studied. For instance, when statisticians use a bell-shape curve to look at the variations in academic performances among high school students taking a standardized test, they will find that most students will fall in the center or demonstrate average academic performance. However, to the right of center, there will be students who excel above average or excel to a superior level of academic performance. On the other hand, to the left of center or average, there will be students who fall below or significantly below average. Therefore, students achieving a similar level of academic performance, above or below average, will be within a certain numerical range (i.e., standard deviation) or distance from those falling within the average range or center of the population of students.

In using this concept, the licensure tool equates:

- a conditional or initial license to a period of time up to 6 months to allow the licensee sufficient time to demonstrate at least substantial compliance;
- a provisional license with the failure to achieve average performance or referred to as being "unable to substantially comply with minimum standards" under

Licensing's former standard operating procedures for issuing a license;

- a 1-yr license with achieving average performance or formerly referred to as achieving "substantial compliance with all standards";
- a 2-yr license with above average performance or formerly referred to as "routinely complying with all standards and exceeding in some"; and
- a 3-yr license with superior performance or formerly referred to as "routinely exceeding minimum standards."

The compliance history of all regulated programs is stored in a database known as DOLPHIN, which stands for the **D**ivision **O**f **L**icensing **P**rograms **H**elp **I**nformation **N**etwork. Using the data reflecting each licensee's level of compliance with regulatory requirements achieved during the current licensure period, the level is measured against the performance achieved by all licensees operating within a particular program type, e.g., family day homes, assisted living facilities, children's residential facilities, etc. **Consequently, the level of performance achieved by each licensee, relative to the performance of his peer group/facility, determines the type of license each licensee is eligible to receive, i.e., an initial, provisional, 1-, 2-, or 3-year license.**

To assist licensing staff with determining the appropriate license type to issue, there are three important aspects of regulatory compliance, referred to as performance indicators, that they will monitor during the licensure period:

- (1) Performance Indicator 1- average number of non-compliances per inspection;
- (2) Performance Indicator 2- average risk score assessed from violations of key health and safety standards per inspection; and
- (3) Performance Indicator 3 - one or more negative events defined as receiving a sanction, being required by the licensing office to develop an intensive plan of correction (IPOC) within the previous 12 months of the license expiration date for one or more egregious non-compliances, and/or having an average risk rating score of 6 or higher at renewal (relevant only when considering the issuance of a 2- or 3-yr license).

Exception: The rule of using the average risk rating score of 6 or higher must not be applied if an inspection results in a single violation and that single violation was assessed a risk score of 6 or higher.

Instructions for Using the Guidance and Licensure Tool

While the information provided by this tool must be taken into consideration, there will be times when the data do not accurately reflect a licensee's performance. For instance, because this tool uses averaging as a method for comparing performances

between licensees, a licensee who has been inspected frequently due to complaints called in may result in having a low average number of violations and, therefore, could reflect a performance during the licensure period that looks better than a licensee who has not had any complaint investigations. Or a situation could arise where the only inspection conducted during the licensure period resulted in one violation that could have a risk rating of a B-2. The licensure tool could, as a consequence, recommend a provisional license based on the single risk rating. In both situations, and others that could come up, **professional judgment must be used to make the best licensure decision. At times, it will be appropriate to not accept the recommendation of the licensure tool. However, if the recommendation is not accepted, there must be clear and documented justification to support that decision.**

Sources of Data for Performance Indicators

The licensure tool utilizes data gathered from the three performance indicators described above. Performance indicators 1 and 2 are from DOLPHIN-generated reports. One report is the Risk Profile by Supervisor/Inspector, also referred to as the licensee's performance report card (see Appendix A, page 12) and the other is the Risk Profile by State referred to as the ruler (see Appendix B, page 13). The third performance indicator is a review of a facility's file for the occurrence of any negative events as described above. Only data on a licensee's performance obtained during the current licensure period is considered when determining the type of license to issue.

Performance Indicator Reports

The Risk Profile by Supervisor/Inspector Report (see Appendix A, p. 12) tracks the performance of a licensee based on inspections from the initial, renewal, and any subsequent inspection or complaint investigation conducted during the licensure period. If a facility is renewing a license, the report retrieves all inspections and complaint investigations conducted since the last renewal, (but not including data from the last renewal), up to and including the renewal inspection conducted to issue a new license. Once the license has been issued, the database erases the previous history and a new licensure history begins.

It is important to make every effort to issue the license before the expiration date of the license. If the expiration date is missed, the report aggregation process will default back to an earlier renewal inspection. This will result in two renewal inspections being listed on the Supervisor/Inspector report. Should this occur, data from the earlier renewal inspection will need to be removed and avg. non-compliances (performance indicator 1) and average risk rating (performance indicator 2) will need to be manually re-calculated.

This report provides:

- (1) The average number of standards violated for all inspections/complaint investigations per inspection; and

(2) The average risk score determined from all violations of key health and safety standards found from inspections/complaint investigations per inspection. Key health and safety standards are considered critical to the health, safety, and well-being of vulnerable adults and children being cared for in out-of-home settings. The Risk Profile by Supervisor/Inspector Report provides the licensing administrator and/or the inspector two options to retrieve performance data:

(1) The option to run a report on a specific facility from an inspector's caseload listed on the screen; or

(2) The option to run the entire caseload for each inspector, one at a time (for a particular administrator).

The Risk Profile by Supervisor/Inspector Report contains the following demographics:

(1) General demographics of facility:

- Facility Type;
- File number;
- Facility Name;
- Licensing Administrator's Identification Number;
- Licensing Inspector's Identification Number;
- Last License Issuance Date; and
- Last Category of License Issued.

(2) Number of inspections (or investigations) included in report;

(3) The renewal inspection used to issue a new license;

(4) Any inspections/complaint investigations done since but not including the last renewal inspection;

(5) Violation score (i.e., 0 for non-key standards, 2 to 18 for key standards) and the list of standard(s) violated, both key and non-key standards;

(6) Performance statistics, i.e., # of Non-Mets (NMs), Avg. Risk Score, Inspection Type; and

(7) Summary of statistics on performance indicators based on all inspections and complaint investigations:

Performance Indicator 1 = Avg. Non-Mets per inspection/investigation

Performance Indicator 2 = Avg. Risk Score for Key standards per inspection/investigation

The Risk Profile by Supervisor/Inspector Report is set up so that there is unrestricted access to data generated from each licensing office. Staff from each licensing office is encouraged to periodically view how other licensing staff evaluates the performance of facilities on their caseload.

The Risk Profile by State Report (see Appendix B, p. 13) is the ruler against which the performance of an individual licensee will be measured or compared. For the purpose of making good comparisons, and to ensure that a sufficient amount of data on the licensee's performance has been stored in the database for the fiscal year, **licensing staff must run the Risk Profile by State report using data from the fiscal year that immediately precedes the fiscal year that they are currently in. In other words, a full year of completed inspections would need to have been stored in the database before it can be used as the State ruler. Once the most recent or current fiscal year has ended, it is advisable to allow at least 15 days to elapse before running the State reports.** Allowing sufficient time to elapse will help ensure that data from all inspections generated during the concluded fiscal year have been stored in the database.

The Risk Profile by State Report contains the following information:

- (1) Each program type, e.g., ALFs, CDCs, FDHs, CRFs;
- (2) The top table of this report summarizes (1) Total Facilities (that had at least one inspection or complaint investigation) being reported for the selected program type, (2) Total Non-Mets, (3) Avg. Non-Mets and Avg. Risk Score, with their respective standard deviations;
- (3) The bottom table, i.e., "License Determination Table," contains the license categories (Provisional, 1-yr, 2-yr, and 3-yr) and enforcement sanctions (summary suspension, denial, and revocation) which are to be considered based on where the performance of a facility aligns between the standard deviations for Avg. NMs and Avg. Risk Score;
Note: A conditional or initial license is automatically up to 6 months and, therefore, not listed on the table.
- (4) The row underneath the license categories contains the standard deviations associated with the risk scores. This row is referenced as "The standard deviation table for Key-Violations"; and
- (5) The bottom row contains the standard deviations associated with non-mets. This row is referenced as "The standard deviation table for Non- Mets."

How to Interpret Results of Performance Indicators

Refer to the Risk Profile by Supervisor/Inspector report (Appendix A, pg.12)

Using the illustrated case on page 13, notice at the bottom of the report that the licensee received an avg. non-mets score of 5.0 (i.e., performance indicator 1) and an avg. risk score of 2.67 (i.e., performance indicator 2).

Now refer to the Risk Profile by State report (Appendix B, pg.13)

Locate the second table named, "License Determination Table." Using the avg. non-mets score of 5.0 and the avg. risk score of 2.67 from the Supervisor/Inspector report, locate on the License Determination Table of the State report where these respective values fall between the values that align with the license type, e.g. a 1-yr or 2-yr license. In this case, the licensee has an avg. non-met score of 5.0. This value falls in the range of 4.78 to 7.09 and, therefore, corresponds to a 1-yr license. With respect to the avg. risk score, it is observed that the facility has a score of 2.67. This value falls in the range of .98 to 3.2 and corresponds to a 2-yr license. To determine which license type to issue, i.e., 1-yr versus a 2-yr, see the licensure rules below.

Note: To understand where values begin and end each range for a particular license type, consider the following example using the Risk Profile by State report illustrated on page 13. For avg. non-mets, the range of values for a 1-yr license is from 4.78 to 7.08. The value 7.08 is left of the dividing line that separates a 1-yr and a provisional license which begins with 7.09. For avg. risk, the range of values for a 1-yr license is from 3.2 to 5.41. The value 5.41 is left of the dividing line that separates a 1-yr and a provisional license.

In General, using the Risk Profile by State report as the ruler for comparisons, as you move to the left of center or average, the values for performance indicators 1 and 2 get smaller. This means that the licensee had fewer violations and lower risk compared to those licensees to the right of him. However, as you move to the right of center, the values get larger. This means that the licensee had a higher number of violations and a higher level of risk compared to those to the left of him.

General Guidance for Issuing an Initial, Provisional, 1-, 2-, or 3-yr License

Initial License (Conditional)

(1) The initial license issued to a new facility must be a conditional license, which is granted for no more than 6 months, as stated in General Procedures (22 VAC 40-80-80). An extended license, i.e., a 2- or 3-year license, cannot be issued to a new facility.

(2) Except for child daycare centers, a facility or home can be issued only a 1-year license following the conditional licensure period. This is provided that

performance is equivalent to the level of performance required to receive at least a 1-year license based on the licensure tool. Child daycare centers that are eligible to receive a regular license are issued a 2-yr license.

(3) Following the conditional period, if the performance of the new facility falls below what is required to get at least a 1-year license, the application for continued licensure must be denied.

Renewals (Provisional, 1-,2-, or 3-year license)

(1) In accordance with the applicable provision of the Code of Virginia for each respective program type, a renewed license may be a provisional, 1-, 2-, or 3-year license. The decision regarding which type of license to issue must consider the facility’s performance profile during the current licensure period, as reflected by the Supervisor/Inspector report, which, again, is referred to as the licensee’s performance report card.

(2) For the following scenarios, use the State Report (Licensing Determination Table) below. *The table is for illustrative purposes only.* In an actual case, a table must be run from DOLPHIN at the time of the issuance of the license.

Note: Since child daycare centers (CDC’s) and short-term child daycare centers (ST-CDC’s) only have an initial, provisional and a 2-yr license option, if the level of performance achieved at renewal is not at least comparable to the performance level required by the License Determination Table to get a 2-yr license, a provisional or a denial must be considered.

State Report (Ruler)

License Determination Table (for illustration only)				
-2 3-yr License	-1 2-yr License	Average 1-yr License	+1 Provisional	+2 SummSuspen/Deny/Revoke
The Standard deviation table for Key Violations				
-1.24	.98	3.2	5.42	7.64
The Standard deviation table for Non-Mets				
.14	2.46	4.78	7.09	9.41

General Licensure Rule: Select the more favorable license type when performance indicators 1 and 2 align under the same or different license types provided that a negative event did not occur during the licensure period, i.e., (1) a sanction was not issued; (2) an IPOC was not required by the licensing office within 12 months of the license expiration date; and (3) an avg. risk rating score of 6 or higher was not found at renewal (relevant only when considering the issuance of an extended license, i.e., a 2- or 3-yr license.) If a negative event did occur during the licensure period, then issue no more than a 1-yr license.

license and an avg. risk score of 3.50 that corresponds with a 1-yr license. The two license types are separated by one license type, i.e., the 2-yr license. Issue a 3-yr license provided that a negative event did not occur during the licensure period.

Guidance for considering the issuance of an extended license when values under the licensure range for performance indicators 1 and 2 on the State report are negative

In some instances (see example below), the performance indicators on the State report will have negative values under the 2-yr license for the avg. non-mets and/or avg. risk scores. This means that from the point the values turn negative under the 2-yr license, all values under the 3-yr will be negative. Since it is impossible for a licensee to have a negative violation count or a negative risk rating score from an inspection, the following rule should be used when a 3-yr license is being considered?

Rule: In the event that one or both performance indicators align with negative values and a 3-yr license is being considered, the issuance of a 3-yr license may be appropriate provided that: (1) the avg. non-met and/or the avg. risk score are within the 2-yr license range (the closer the scores are to being 0, the better the justification is for issuing a 3-yr license) and (2) a negative event cannot have occurred during the current licensure period. Stronger support for issuing a 3-yr license is justified if the licensee had at least a 2-yr license for the previous licensure period.

State Report (Ruler)

License Determination Table (for illustration only)				
-2 3-yr License	-1 2-yr License	Average 1-yr License	+1 Provisional	+2 SummSuspen/Deny/Revoke
The Standard deviation table for Key Violations				
-3.64	-1.10	3.2	5.42	7.64
The Standard deviation table for Non-Mets				
-3.03	-1.46	4.78	7.09	9.41

Summary Data From Supervisor/Inspector Report
Avg. Non-Mets= 3.0 **Avg. Risk Score= 1.80**
 (Performance Indicator 1) (Performance Indicator 2)

The licensee has an avg.non met score of 3.0, which corresponds to a 2-yr license and an avg. risk score of 1.80, which corresponds to a 2-yr license. The values ending the 2-yr license range and all values for the 3-yr license range are negative. A 3-yr license may be considered provided the requirements under the guidance given above are met.

Consideration of an Ultimate Sanction (Summary Suspension, Denial, and Revocation)

As stated at the beginning of this guidance, an additional component of this tool

is that performance data can be obtained and may indicate the need to consider an ultimate sanction. An ultimate sanction must be considered when:

- (1) One performance indicator falls under a provisional and the other falls under the area of ultimate sanctions;
- (2) Both performance indicators fall under the areas of ultimate sanctions; and/or
- (3) One or more negative events occurred during the licensure period.

Communication of Results of Performance Indicators to Licensee

Chapter 603 became effective on July 1, 2010. It requires the Department of Social Services (Department) to ensure that:

Such criteria [for determining licensure] shall be separately stated for each licensure period and shall be unambiguously communicated to all entities seeking initial and renewal licenses.

To comply with this law, all licensees must receive a copy of the Supervisor/Inspector and the State reports used to determine the license type issued. However, this does not apply when a licensee is obtaining an initial license since an initial license is a conditional license, which is issued for up to 6 months. The reports can be either emailed, mailed, or hand delivered following the decision on the type of license issued.

Documentation and Retention of Licensure Decision

After considering all relevant information in determining what type of license or enforcement decision to recommend, the decision on licensure must be documented on or attached to the Supervisor/Inspector report for the particular licensee under consideration. Note: It is important to attach a copy of the State report used to determine the licensure category. It is critical that any licensure decision that is not supported by the licensure tool is well explained and documented. Additionally, when the licensure decision deviates from the recommendation of the licensure tool, written justification along with a copy of the reports must be provided to the licensee and to the Associate Director for Operations, DOLP.

The reports and the decision concerning licensure must be retained for the duration of the license, but should not be retained for more than three years.

The contact person for the licensure guidance and tool is:
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Appendix A

Virginia Department of Social Services Division of Licensing Programs Risk Profile Report for an Inspector by Facility (Program) Type			Page #1 08/17/2010 User admin	
Facility Type: FDH	File #: [REDACTED] Lic Id: [REDACTED]	Facility Name: [REDACTED]		
Supervisor Id: [REDACTED]	Inspector Id: [REDACTED]	Last License Issuance Date: 12/07/2009. Issued for 1 Year License		
Inspection Summary		Total Inspections: 2		
Inspection Number: 25672	Violation Score	Key and Non-Key Std	Avg. Risk	2.67
Date : 12/02/2009	2	1090-2-a	Std. Dev	1.49
	2	1300	Mode	2
	2	1350	Insp. Type	R
	2	1360-1-i	# of Non-Mets (Key & Non Key Standards)	6
	6	40-C-3-d		
	2	1809-A		
Inspection Number: 27039	Violation Score	Key and Non-Key Std	Avg. Risk	2.67
Date : 04/07/2010	2	430	Std. Dev	0.94
	0	960	Mode	2
	2	1300	Insp. Type	M
	4	40-C-3-d	# of Non-Mets (Key & Non Key Standards)	4
Avg. Mode 2	Avg. Non-Mets 5.0	Avg. Risk Score with Key Standards 2.67		

Note: This report has the inspections that are conducted only after the last issuance date of the license
The last renewal inspection conducted before the last issuance date is BLUE

Appendix B

FY:2010 [Start Dt: Jul-2010 End Dt: Jun-2010		Virginia Department of Social Services Division of Licensing Programs Aggregate Facility Risk Profile State Report for Facility Type: FDH				Page: 1 09/14/10 User: sal900	
Total # of Fac.	Total Non Mets	Avg. # of NM	Avg. Risk Score	Mode Count of Risk Scores	Std. Dev. Of NM's	Std. Dev. Of Risk Scores	
1935	13175	4.78	3.2	2 [# of Viol 7974]	2.32	2.22	
<p>Std. Dev. = Standard Deviation Risk Score is computed using Key Standards Violated. Non-Mets (NM) computed using Key Standards and Non-Key Standards Violated. Non-Key Standard is a Standard with score of 0</p>							

License Determination Table				
-2 3 Year License	-1 2 Year License	Average 1 Year License	1 Provisional License	2 Summ. Suspen. Deny Revoke
The standard deviation table for Key-Violations				
-1.24	.98	3.2	5.42	7.64
The standard deviation table for Non-Mets				
.14	2.46	4.78	7.09	9.41