

Jennifer Woolard, Chair
Tyren Frazier, Vice-Chair
Dana G. Schrad, Secretary
Michael N. Herring
David R. Hines
Scott Kizner
Robyn Diehl McDougle
Quwanisha Hines Roman
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COMMONWEALTH of VIRGINIA
Board of Juvenile Justice

BOARD MEETING

May 6, 2019

Main Street Centre, 600 East Main Street, 12th Floor, North Conference Room, Richmond, VA 23219

A G E N D A

9:30 a.m. Board Meeting

1. **CALL TO ORDER and INTRODUCTIONS**
2. **APPROVAL of January 8, 2019, MINUTES (Pages 3-27)**
3. **PUBLIC COMMENT**
4. **DIRECTOR'S CERTIFICATION ACTIONS (Pages 28-49)**
5. **OTHER BUSINESS**
 - A. **Consideration of Periodic Review Recommendations: Public Participation Guidelines (6VAC35-11); Regulation Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs (6VAC35-20); and Regulations Governing Juvenile Work and Educational Release Programs (6VAC35-190) – Kristen Peterson, DJJ Regulatory and Policy Coordinator (Pages 52-56)**
 - B. **Juvenile Correctional Center Variance Renewal (6VAC35-71-820(E)) – Kristen Peterson, DJJ Regulatory and Policy Coordinator (Pages 57-59)**
 - C. **Update on Establishment of Training Standards – James Towey, DJJ Legislative & Regulatory Affairs Manager**
 - D. **Review of the Regulation Governing Juvenile Group Homes and Halfway Houses (6VAC35-41) – Kristen Peterson, DJJ Regulatory and Policy Coordinator (Pages 60-142)**
 - E. **Revisit Proposed Amendments of Mechanical Restraint and Restraint Chair Provisions (6VAC35-101) – Kristen Peterson, DJJ Regulatory and Policy Coordinator (Pages 143-180)**
 - F. **Remarks on Juvenile Detention Center Regulation – Senator Adam P. Ebbin**
6. **DIRECTOR REMARKS AND BOARD COMMENTS**
7. **2019 MEETING DATES: June 19, 9:30 a.m., Main Street Centre (600 East Main Street, 12th Floor South Conference Room)**
8. **ADJOURNMENT**

GUIDELINES FOR PUBLIC COMMENT

1. The Board of Juvenile Justice is pleased to receive public comment at each of its regular meetings. In order to allow the Board sufficient time for its other business, the total time allotted to public comment will be limited to thirty (30) minutes at the beginning of the meeting with additional time allotted at the end of the meeting for individuals who have not had a chance to be heard. Speakers will be limited to 5 minutes each with shorter time frames provided at the Chair's discretion to accommodate large numbers of speakers.
2. Those wishing to speak to the Board are strongly encouraged to contact Wendy Hoffman at 804-588-3903 or wendy.hoffman@djj.virginia.gov three or more business days prior to the meeting. Persons not registered prior to the day of the Board meeting will speak after those who have pre-registered. Normally, speakers will be scheduled in the order that their requests are received. Where issues involving a variety of views are presented before the Board, the Board reserves the right to allocate the time available so as to insure that the Board hears from different points of view on any particular issue. Groups wishing to address a single subject are urged to designate a spokesperson. Speakers are urged to confine their comments to topics relevant to the Board's purview.
3. In order to make the limited time available most effective, speakers are urged to provide multiple written copies of their comments or other material amplifying their views. Please provide at least 15 written copies if you are able.

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COMMONWEALTH of VIRGINIA
Board of Juvenile Justice
DRAFT MEETING MINUTES

January 8, 2019

Main Street Centre, 600 East Main Street, 12th Floor, South Conference Room
Richmond, Virginia 23219

Board Members Present: Tyren Frazier, Scott Kizner, Quwanisha Roman, Dana Schrad, Robert "Tito" Vilchez, and Jennifer Woolard

Board Members Absent: Michael Herring, David Hines, and Robyn McDougle

Department of Juvenile Justice (Department) Staff Present: Ken Bailey, Andrew "Andy" K. Block, Jr., Valerie Boykin, Patrick Bridge, Carol Brown, John Colligan, Ken Davis, Wendy Hoffman, Joyce Holmon, Joanna Laws, Charisse Mullen (Attorney General's Office), Edward Petersen, Kristen Peterson, Deron Phipps, Lara Todd, James Towey, and Angela Valentine

Guests Present: Marilyn Brown (Chesterfield County Juvenile Detention Center), Kerry Chilton (disAbility Law Center of Virginia), Gina Mingee (Merrimac Center), Cathy Roessler (Blue Ridge Juvenile Detention Center), and Amy Woolard (Legal Aid Justice Center)

CALL TO ORDER

Chairperson Jennifer Woolard called the meeting to order at 9:34 a.m.

INTRODUCTIONS

Chairperson Woolard welcomed all who were present and asked for introductions.

APPROVAL of November 7, 2018, MINUTES

The minutes of the November 7, 2018, Board meeting were provided for approval. On motion duly made by Dana Schrad and seconded by Tyren Frazier, the Board approved the minutes as presented.

PUBLIC COMMENT PERIOD

Amy Woolard, Legal Aid Justice Center, provided public comment on the Board's contemplation of the use of the restraint chair. Ms. Woolard stated that the Legal Aid Justice Center recognizes and acknowledges the complex nature of crisis situations and takes the position that the Board should amend its regulations and policy to prohibit the use of the restraint chair in all facilities under its purview. The Legal Aid Justice Center appreciates and commends the Board for bringing experts to their last meeting and found the presentations by Michael Umpierre of Georgetown and Kelly Dedel from One in 37 to be the most compelling in helping them reach a position.

Ms. Woolard noted that because the chair is so rarely used in Virginia's juvenile detention centers and juvenile correctional center, and because several juvenile detention centers do not have the chair, eliminating its use is feasible. The potential harm to youth physically and in terms of trauma, both acute and ongoing, from the Legal Aid Justice Center's perspective suggest a prohibition on its use. Ms. Woolard reminded the Board of Kelly Dedel's observations, as noted at the previous meeting, that even when staff have good intentions or when regulations require stringent oversight, concerns still arose and procedures sometimes were not followed. Youth were often placed in the chair for too long, less restrictive measures were not used, staff were not engaged with youth, and sometimes it appeared the chair was used punitively.

Ms. Woolard remarked that eliminating the chair would further signal the Department's commitment to a trauma-informed practice focused on the need to address and reduce situations that might lead to consideration of the chair. Ms. Woolard commended the Board for hearing from outside experts, looking at the research, and taking the time to make a thoughtful decision.

Ms. Woolard added that, with respect to Option 4, which deals with the use of the spit guard and other implements, the Board should gather more information.

DIRECTOR'S CERTIFICATION ACTIONS

Ken Bailey, Certification Manager, Department

Included in the Board packet were the individual audit reports and a summary of the Director's certification actions completed on November 28 and December 6, 2018.

The audit for Chesapeake Juvenile Services and Postdispositional Program found four areas of non-compliance. The Chesapeake Juvenile Services and Postdispositional Program demonstrated compliance in all four areas following the monitoring visits, and the program was certified for three years.

The audit for the Lynchburg Youth Group Home found eleven deficiencies. The Lynchburg Youth Group Home combined two old facilities into one modern facility located next to their detention center. Issues arose with the new facility. The Lynchburg Youth Group Home demonstrated compliance in all areas following two subsequent monitoring visits, and the program was certified for three years.

The Andrew B. Ferrari Argus House is a group home that requested to modify its certification in order to better utilize the facility by dividing it into two wings: one for the general population (youth up to age 17) and the other for an independent transitional living program (youth through the age of 20). Director Block agreed to these program modifications, and the certificate was changed to reflect this request. The girl's group home in Falls Church recently requested and received approval for a similar change.

The initial audit for the new Summit Transitional Living Program in Chesterfield County reviewed the physical environment, policies and procedures, and forms. The facility is a transitional living program for male youth discharged from the Department and ranging from ages 17½ to 21. The Department found the program fully compliant with the regulations. The Certification Team will return in April for another phase of the audit, which will review program implementation, service planning, treatment effort, and medical care. The facility was given a conditional certification valid until June 7, 2019.

REQUEST AUTHORIZATION TO PROCEED WITH RECOMMENDATIONS TO AMEND SEVERAL REGULATORY CHAPTERS PURSUANT TO THE PERIODIC REVIEW PROCESS

Kristen Peterson, Regulatory and Policy Coordinator, Department

State agencies are required to conduct a periodic review of their regulations every four years to determine whether the regulations need to be amended, retained, or repealed. Of the agency's 12 regulatory chapters, five chapters are past due for conducting the periodic review, which has prompted the Department to embark on an aggressive effort to bring the Department into compliance with the statutory requirement set out in § 2.2-4007.1 of the *Code of Virginia*.

The periodic review process involves filing notice regarding a particular regulation through the Virginia Regulatory Town Hall and the Virginia Register of Regulations, which prompts a 21-day public comment period on the regulation. State agencies have 120 days from the close of public comment to complete a report that makes recommendations as to whether to amend, retain, or repeal the regulation. The Department filed notices for four of the regulatory chapters for which the reports will come due before the next Board meeting and is requesting the Board to approve the recommendations to amend these four regulatory chapters.

State agencies need to consider the following when conducting periodic reviews:

- ☞ The continued need for the rule and whether there are statutes in place requiring the regulation;
- ☞ The types of complaints received from the public regarding the regulation as it currently exists;
- ☞ The complexity of the regulation. The Governor's Executive Order regarding regulations requires regulations to be simple and easy to understand;
- ☞ The extent to which the regulation overlaps with federal or state laws; and
- ☞ The time that has passed since the agency last reviewed the regulation.

Ms. Peterson then highlighted the four chapters currently under periodic review.

Regulations Governing State Reimbursement (6VAC35-30)

The Department last reviewed this chapter in 2011. This chapter sets the regulatory framework for localities conducting construction or enlargement projects for which, under state code, they are entitled to obtain state reimbursement for 50% of the construction costs. For example, at a previous meeting, Prince William County presented the Board with a needs assessment for a proposed new facility.

Current law requires the Board to have regulations that establish criteria for evaluating state reimbursement requests; however, the reimbursement mechanism currently is frozen. A legislative moratorium prevents the Board from approving this reimbursement.

In its Periodic Review Report, the Department plans to recommend amending the regulation to address several concerns, including, for example, a concern that at least one existing provision may exceed the scope of the Board's authority by requiring localities that are not seeking reimbursement now or in the future to comply with every requirement in this chapter.

Minimum Standards for Virginia Delinquency Prevention (6VAC35-60)

The Department reviewed this chapter in 2011. These regulations set out the requirements for grant recipients pursuant to the Delinquency Prevention Act. The Director, under existing law, is required to develop programs and services for delinquency prevention and is authorized to provide grants to localities to develop these types of programs. Much like the state reimbursement regulation, grant funding has not been available for several years (since 2002). The Department cannot recommend repealing these regulations because an existing statute requires the Board to have these regulations in place.

The Department hopes to recommend in its report that this chapter be amended. A number of provisions in the regulation are outdated, and some of its provisions will be impacted by amendments to other regulations.

Regulations for Nonresidential Services (6VAC35-150)

These regulations govern the court service units as well as programs authorized by the Virginia Juvenile Community Crime Control Act (VJCCCA). There are a number of outdated provisions in this regulatory chapter, such as reference to the Department's Reception and Diagnostic Center, which closed in 2015. In addition, as part of the Periodic Review process, the disAbility Law Center of Virginia submitted comments asking the Department to review the provision related to restraints. Given these concerns, the Department hopes to recommend amending the regulation in the required report.

Regulations Governing Mental Health Service Transition Plans (6VAC35-180)

This regulation was last reviewed in 2008 and addresses the mental health programs developed for residents transitioning out of commitment to the Department. The disAbility Law Center of Virginia submitted public comment asking the Department to amend provisions related to who can be involved in case planning. Given these comments and the time that has passed since the last review, the Department would like to recommend amending the regulation in the required report.

Ms. Peterson clarified that the Department is not asking the Board to change the content of the regulations at this time. Rather, the Department seeks the Board's permission to proceed with making the recommendations to amend the four regulations in the report that must be submitted within 120 days.

Board Member Kizner asked whether the General Assembly's actions this session would affect any of these regulations.

Ms. Peterson responded that changes during the 2018 legislative session regarding truancy will necessitate changes to the court service unit regulation and that several bills introduced this session may impact juvenile justice.

The Department's Legislative Liaison James Towey noted one bill could potentially affect the Virginia Delinquency Prevention Act, which has not been funded since 2002. If that bill moves forward, presumably and hopefully, there will be funding attached. Bills are still being introduced, and some may impact the regulatory process.

Board Member Schrad noted her understanding of the Department's need to revise and update these regulations in case they are funded. The regulation is an empty vessel but cannot be omitted because of the potential for funding. Ms. Peterson answered that she was correct.

Director Block clarified that the Department is not asking the Board to make specific changes to the regulations. The Department is simply asking for authority to proceed with the regulatory process.

Ms. Peterson noted that if the Board approved the request, the Department would proceed with amending the four regulatory chapters by following the normal regulatory process. The Department would gather a group of internal and external stakeholders, conduct a review of the regulation, determine if the chapter should proceed with the standard regulatory process or a more expedited process, and then present the amendments to the Board.

On motion duly made by Dana Schrad and seconded by Tyren Frazier, the Board of Juvenile Justice granted the Department of Juvenile Justice permission to recommend in the report required as part of the periodic review process mandated by § 2.2-4007.1 of the *Code of Virginia* that the following regulatory chapters be amended: (i) Regulations Governing State Reimbursement of Local Juvenile Residential Facility Costs (6VAC35-30); (ii) Minimum Standards for Virginia Delinquency Prevention and Youth Development Act Grant Programs (6VAC35-60); (iii) Regulation for

Nonresidential Services (6VAC35-150); and (iv) Regulations Governing Mental Health Service Transition Plans for Incarcerated Juveniles (6VAC35-180).

REQUEST BOARD ACTION ON FOUR ALTERNATIVES FOR AMENDMENTS TO THE REGULATIONS GOVERNING JUVENILE SECURE DETENTION CENTERS (6VAC35-101) REGARDING MECHANICAL RESTRAINTS AND RESTRAINT CHAIRS

Kristen Peterson, Policy and Regulatory Coordinator, Department

Director Block introduced the mechanical restraint and restraint chair discussion.

At the September Board meeting, the Department discussed the litigation with Shenandoah Valley Juvenile Center and the subsequent investigative report. He reminded the Board that they adopted regulatory changes, currently in the fast track process, to help the Department address an oversight for youth at local detention centers involved in third party contracts, specifically with the Office of Refugee Resettlement. In addition, the Director noted concerns on the use of the restraint chair in Department-regulated facilities. He then summarized a presentation that was offered by a panel of experts at the November board meeting, providing a variety of perspectives on the use of the chair.

- ☞ Jason Houtz and Cathy Roessler, Virginia Juvenile Detention Association representatives, noted that some local juvenile detention centers have the chair, others do not, and some have the chair but do not use it. In their view, chair use is rare and necessary as a last resort to address youth whose behavior, often related to mental health issues, cannot be controlled. Many local juvenile detention centers believe that the chair is safer than a hands-on restraint for youth and staff.
- ☞ Dr. Jaime Bamford, Medical Director of the Commonwealth Center for Children and Adolescents, which is the only state-operated mental health facility for youth in crisis, explained that the Commonwealth Center began using the chair because staff believed the chair was less traumatic than the alternatives and safer given that youth do not have bodies on top of them during a chair restraint. During a chair restraint, staff can talk with the young person. Dr. Bamford explained the Center's frequent use of the chair, primarily for clinical and safety reasons.
- ☞ Michael Umpierre, the Center for Juvenile Justice Reform at Georgetown, gave a summary of the use of the mechanical restraint chair nationally and described the chair as being used infrequently around the country. Mr. Umpierre detailed the various professional standards regarding the chair. The Annie E. Casey Foundation discourages the use of fixed restraints like the chair, and the American Correctional Association permits it only under certain conditions. Mr. Umpierre stressed that there are better ways to work with youth and recommended that the Board prohibit the use of the chair in state and local facilities.
- ☞ Dr. Kelly Dedel, One in 37 Research, who often consults with the Justice Department or federal courts to help state and local facilities cited for overuse of the chair, observed that there could be trauma for youth restrained in chairs or in a physical restraint. While fewer staff are needed once the resident is restrained in the chair, there is a potential for misuse because the chair does not necessitate the same level of staff involvement as a multiple person

physical restraint once the resident is restrained. Dr. Dedel discussed conditions she thought should be in place if the Board permitted the use of the chair and offered that if the chair is used properly, it is not necessarily any more or less traumatic than a prolonged physical restraint.

Director Block acknowledged the difficult decision before the Board and the challenges for staff who must respond to troubled youth acting in extremely troubled ways. He noted that between choosing a prolonged physical restraint or the chair, there is no clear win. He then asked Ms. Peterson to present several regulatory options for the Board's consideration to address mechanical restraints.

Ms. Peterson detailed the options regarding mechanical restraints and the use of the restraint chair.

- ☞ **Option One** maintains all of the amendments to the regulation governing juvenile detention centers that were approved by the Board at the June 13, 2018, meeting.
- ☞ **Option Two** sets out additional parameters on the use of mechanical restraints, specifically the use of the restraint chair. Option Two incorporates some of the recommendations made by Dr. Dedel.
- ☞ **Option Three** imposes an absolute prohibition on the use of the restraint chair but retains many of the other provisions in Option Two.
- ☞ **Option Four** prohibits the use of the spit guard and similar protective devices used to prevent residents from spitting or biting staff and retains all other provisions in Option Two.

The Department convened a workgroup of internal and external stakeholders to craft the proposed language contained in these options that will address all the needs of the staff as well as the residents.

For purposes of efficiency, the Department thought it best to present the Board with proposed amendments to the mechanical restraint provisions in the Regulations Governing Juvenile Detention Centers. Depending upon the decision of the Board, those provisions will be incorporated into the juvenile correctional center regulation after that regulation completes the public comment period. The juvenile correctional center regulation is currently moving through the regulatory process and has been in the Governor's Office for 100 days.

OPTION 1 – AMENDMENTS APPROVED BY BOARD JUNE 2018

6VAC35-101-10 Definitions. The definition for mechanical restraint includes a reference to the mechanical restraint chair; thus, whenever mechanical restraints are referenced in the regulation, any restrictions that are applicable to mechanical restraints also will apply to the restraint chair under the approved provision. Option 1 does not address the use of spit guards or protective devices in the mechanical restraints definition or elsewhere in the regulation.

6VAC35-101-190 Required initial training; 6VAC35-101-200 Retraining requirements for employees. Sections 190 and 200 address training requirements for direct care staff authorized to use restraints (including mechanical restraints). Subsection C of Section 190 requires employees

authorized to restrain a resident to be trained in those techniques within 90 days of this authorization.

Subsection E of Section 200 requires staff who are approved to apply mechanical restraints to be retrained annually.

6VAC35-101-1130 Mechanical restraints. This section requires the facility administrator to approve written procedures related to mechanical restraints.

In Subdivision (A)(4), one of the requirements the detention centers added was to allow residents to be restrained to a hospital bed or wheelchair in an outside medical setting. This will protect staff in non-secure settings and ensure residents are not a flight risk.

Subsection B requires staff authorized to restrain residents to receive the mandated initial and annual training, which must address how to check the resident's circulation and check for injuries.

6VAC35-101-1140 Monitoring restrained residents. Under Subdivision (A)(2), staff must make a face-to-face check on the resident at least once every 15 minutes, and more often depending on the resident's behavior.

Subsection C provides that if the resident, while mechanically restrained, self-injures, staff must first do whatever is necessary to stabilize the situation, then must immediately consult with a qualified mental health professional and document that consultation. Staff must monitor the resident in accordance with the protocols in place.

6VAC35-101-1150 Restraints for medical and mental health purposes. This provision requires detention centers to have written procedures governing the use of restraints for mental health and medical purposes, and the written procedures must meet certain requirements.

OPTION 2 – NEW PARAMETERS ON MECHANICAL RESTRAINTS AND THE MECHANICAL RESTRAINT CHAIR

6VAC35-101-10. Definitions. A separate article established under Option Two addresses mechanical restraint chair use solely and details specific provisions related to its use.

The committee identified a weakness in the existing definition for mechanical restraints. The definition presents an all-inclusive list of items considered mechanical restraints. If facilities utilize a different restraint mechanism not named in the all-inclusive list, the facility would not need to comply with the mechanical restraint requirements for that particular restraint. Language was added to indicate that the list of items identified as mechanical restraints is not all-inclusive.

A new definition for mechanical restraint chair was added along with two definitions regarding mental health professionals. With respect to the use of the restraints and restraint chair, there is

often a requirement that mental health staff be consulted or provide approval prior to use. Mental health professionals are referenced in the existing regulation, but the language does not specify who is included in that reference. The committee added a definition for “qualified mental health professional” consistent with the definition in Title 54.1 of the *Code of Virginia*. Under the definition, a qualified mental health professional must be registered by the Board of Counseling and provide collaborative mental health services to adults and children. Most local juvenile detention centers do not have in-house mental health or behavioral services units like the Department’s. Local juvenile detention centers rely on their local community service boards to conduct medical assessments on their residents. Many individuals who conduct the medical assessments satisfy the requirements of the qualified mental health professional definition but are not mental health clinicians under the proposed definition. The individuals may not have a master’s degree in topics set out in the definition of mental health clinician. For that purpose, a definition was added for both qualified mental health professional and mental health clinician. Most staff in the Behavioral Services Unit at the Department must have a master’s degree in those subjects in order to work in the unit.

Additionally, the existing definition for mechanical restraint does not address spit guards, protective helmets, or other similar devices. The committee believed it did not make sense to include spit guards and protective devices in the definition of mechanical restraint because they do not restrict an individual’s movements. Rather, they protect or prevent the individual’s movement from impacting another person. For example, the youth can manipulate their mouths and tongue to express saliva, so their movement is not being restricted. Instead, the spit guard is intended to protect staff from being spit on. This equipment serves a protective function rather than an actual restraint function. The committee recommended adding a separate category of devices called protective devices under which these spit guards and protective helmets will fall. Devices are referred to as spit hoods and spit masks, but all of them serve the same purpose of covering the resident’s mouth and preventing him from spitting on or biting staff members.

6VAC35-101-80 Serious incident reports. Facilities are required to complete serious incident reports when certain incidents occur in their facility. For example, if there is a death, fire, or other emergency in local juvenile detention centers that warrants a serious incident report, the facility staff must complete a report and notify the Director of the Department within 24 hours of the incident’s occurrence. Under the existing regulation, use of the restraint chair does not constitute a serious incident. It was recommended to expand the list of serious incidents to include any instance in which a resident is placed in a restraint chair, no matter the purpose or duration, such that all such placements will trigger a requirement to complete a serious incident report and comply with all other provisions in Section 80.

6VAC35-101-190 Required initial training for employees and 6VAC35-101-200 Retraining requirements for employees. The committee expanded these sections to create an additional category for protective equipment and to require individuals authorized to use such equipment to be trained in that use. The language in Sections 190 and 200 was changed to reflect these expansions.

Article III – Mechanical Restraints and Protective Devices

6VAC35-101-1130 Mechanical restraints and protective devices. For simplification purposes, the regulation is divided into separate articles: 1) mechanical restraints and protective devices and 2) mechanical restraint chairs.

The current wording of the regulation allows for use of a mechanical restraint for any purpose other than punishment or sanction. The committee recommended additional restrictions on the use of mechanical restraints. Under the amendments, the facilities may use mechanical restraints for three purposes: 1) to control residents whose behavior poses an imminent risk to the safety of the resident, staff, or others; 2) for purposes of controlled movement, either from one area of the facility to another or to destinations outside the facility; or 3) to address emergency situations. The regulation provides a definition for an emergency and lists emergencies such as fires, natural disasters, hostage situations, etc. In those rare incidents, staff may use the mechanical restraint.

Subdivision B(1) speaks to the duration of mechanical restraint use. The mechanical restraint may be used only for as long as necessary to address any of the three situations identified in the above paragraph. For example, if a resident is placed in a restraint chair because his behavior poses an imminent risk to the safety of himself or others, he must be removed from the mechanical restraint as soon as the imminent risk is abated. If the resident is placed in a mechanical restraint for purposes of controlled movement, once the resident reaches his intended destination on or off campus, then the restraints must be removed. If the restraint is used for emergency situations, once the emergency is resolved or addressed, the restraints must be removed.

Subdivision (B)(2) requires that the facility administrator or designee be notified in emergency situations when mechanical restraints are used, but there is no requirement that either individual approve the use of the mechanical restraint.

Subdivision (B)(3) is language already in the regulation but has been expanded to include protective devices. The protective devices and mechanical restraints may not be used for punishment or as a sanction. This is consistent with federal constitutional provisions.

Subdivision (B)(5) speaks to who can order termination of the restraints. The existing regulation does not allow staff to voice a concern regarding the use of a particular restraint. Language was added that gives a mental health clinician, a qualified mental health professional, or another qualified licensed medical professional the authority to order termination of the restraint at any point upon determining the restraint poses a health risk to the resident.

Subdivision (B)(6) addresses documentation and requires each use of the mechanical restraint device or protective device, except during transport or a video court hearing proceeding, to be reported in the resident's case file or central logbook.

Subdivision (B)(7) is also in Option One. The detention center must have a system of accountability to determine where mechanical restraint equipment is at any given time.

Subdivision (B)(8) cross-references the earlier Sections 190 and 200. The training for staff authorized to apply restraints must cover how to check residents for signs of circulation and injuries. Health services staff raised a concern that it might be inappropriate for staff to check the resident for signs of circulation or injury if they are not health-trained. The amendments strike this requirement and instead require that any time a resident is mechanically restrained and staff conduct their fifteen-minute checks, a health-trained staff member should check the resident for signs of circulation.

Subsection B [*sic*] deals with continued use of a mechanical restraint on a resident after the imminent risk is abated. In situations when a resident is mechanically restrained, such as when a resident is extremely aggressive and de-escalates but still poses some level of threat either to others or to himself, the facility may believe continued restraint is necessary. Language was added to provide that in such situations, if the facility wishes to continue with the restraint, staff first must consult with a qualified mental health professional or mental health clinician.

Subsections C and D [*sic*] address protective devices. Subsection C permits the use of a protective device only in connection with a restraint. The idea behind this restriction is to ensure protected devices will be used sparingly and only in connection with a restraint.

Subsection D [*sic*] involves the use of spit guards and was added to address concerns of staff being spat on and communicable diseases that may be transmitted as a result. The committee recommended that if provisions are established permitting the use of spit guards, those spit guards should be used sparingly, and in a manner to ensure the protection of staff and residents. Language was added in Subsection D to restrict the use of spit guards to residents who have spit on staff previously or are threatening to spit on staff during the course of a current restraint. Detention centers would not be permitted to use spit guards as a preventive cure-all for all restrained residents.

Subdivision (D)(2)[*sic*] requires the spit guard or similar device be designed and applied in a manner that will not inhibit the resident's ability to see or breathe. The workgroup wanted to ensure that if there was any respiratory distress or other impediment to breathing, the spit guard may not be used. If the device is manufactured in a way that prevents the resident from breathing, this provision will prohibit the facility from using that type of device.

While the spit guard remains in place, staff must ensure the resident's reasonable comfort and access to water and meals as applicable. When the spit guard is in place, staff must employ constant one-on-one supervision with the resident to ensure the resident is not experiencing any respiratory distress. Additionally, if the resident is vomiting, unconscious, or in obvious need of medical attention, the facility would be prohibited from using the spit guard.

6VAC35-101-1140 Monitoring residents placed in mechanical restraints. The current regulation requires staff to conduct face-to-face checks every fifteen minutes on mechanically restrained

residents. During Dr. Dedel's presentation on the restraint chair, she indicated that engaging mechanically restrained residents can often contribute to de-escalation. Thus, the committee recommended adding language directing staff, when conducting fifteen-minute checks of mechanically-restrained residents, to attempt to verbally engage with the resident. These efforts may include, for example, explaining why the resident is being mechanically restrained and what steps are necessary for the mechanical restraint device to be removed.

The workgroup recommended adding language mandating that health-trained staff conduct their checks to monitor the resident's circulation and to ensure he is not sustaining injuries. This will be part of the required fifteen-minute checks.

Ms. Peterson also pointed out the definition in the regulation for health-trained staff, which is a staff member who has been trained by a licensed healthcare provider to provide certain services, and screenings and to respond to medical requests by residents.

The committee also added language to reflect a recommendation of the National Commission on Correctional Healthcare that if a resident is restrained for more than an hour, staff must permit the resident to exercise his limbs for a minimum of 10 minutes every two hours.

In the interest of time, Director Block asked the Board whether they wanted a detailed discussion of the remaining changes or a summary of key provisions. The Board was comfortable with a summary. Ms. Peterson continued with an abbreviated presentation.

ARTICLE IV – MECHANICAL RESTRAINT CHAIRS

This section addresses the use of the mechanical restraint chair for controlled movement, for other purposes, and generally.

This article is different from that of mechanical restraints in that the facility administrator must provide approval for the restraint chair to be used. Once the resident is placed in the restraint chair, staff must notify the health authority who makes a determination as to whether there are any contraindications or other reasons why the resident should not be in the restraint chair. The health authority can also determine if other accommodations should be made, and if the resident's mental health or medical condition is such that they require transfer out of the detention center and into a medical or mental health unit.

Several sections cover self-injurious residents and use the same language as the mechanical restraint provisions.

The documentation provision still requires documentation when a resident is placed in a mechanical restraint chair, documented in either the resident's case record or logbook, and providing all the information set out in number 8. Based on Dr. Dedel's advice regarding the usefulness of a "Monday Morning Quarterback session," the detention centers will be required to conduct a debriefing if they used the restraint chair in order to determine if things could have been done differently.

6VAC35-101-1155 Mechanical restraint chair use for controlled movement; conditions. In order to use the mechanical restraint chair for controlled movement, the resident's refusal to move from one area of the facility to another must pose a direct and immediate threat to the resident and others and interfere with required facility operations. For example, a resident has grown belligerent, placed himself in one of the classrooms, and refused to move while the class is trying to start. The use of the restraint chair must be the least restrictive intervention available to ensure the resident's safe movement.

6VAC35-101-1156 Mechanical restraint chair use for purposes other than controlled movement; conditions for use. In order to utilize the restraint chair for purposes other than controlled movement, the resident's behavior or actions must present a direct and immediate threat to the resident or others; less restrictive alternatives must be attempted first and must be unsuccessful in bringing the resident under control; and the resident may remain in the chair only for as long as necessary to abate the threat or help the resident regain self-control.

When the restraint chair is used for controlled movement or other purposes, once that purpose is accomplished, staff must make efforts to release the resident from the restraint. If the imminent risk was addressed but there are still threats, and staff want to continue use of the restraint chair, they must consult a qualified mental health professional or mental health clinician for approval for the continued restraint.

6VAC35-101-1157 Monitoring residents placed in a mechanical restraint chair. Subsection B adds a requirement that every use of the mechanical restraint chair be videotaped. If placement in the chair is for purposes of controlled movement, only the actual placement must be videotaped because logistically, it may be difficult to fully capture the actual transportation of the resident from one area of the facility to another. If a resident is restrained in the chair for purposes other than controlled movement, the entire restraint must be captured on video from the time the resident is placed in the restraint chair until they are removed.

6VAC35-101-1158 Department monitoring visits. This section adds a requirement that any use of the restraint chair, regardless of the duration or purpose of the use, will automatically trigger a monitoring visit by the Department's Certification Unit. Typically, under the existing regulation, the Certification Unit will conduct one monitoring visit annually, although they may conduct more if requested. This new provision will trigger a monitoring visit for every use of the restraint chair.

Most of the facilities would agree that the monitoring visit serves a dual capacity: (1) to determine whether the facility complies with the regulations; and (2) to provide an opportunity for education.

At the close of the presentation regarding Options 1 and 2 for amendments to the *Regulation Governing Juvenile Secure Detention Centers*, the Board discussed the proposed amendments.

Chairperson Woolard noted Subsection B on page 87 of the Board packet, which allows a youth to remain in a restraint or restraint chair even if the imminent risk to safety has abated if there are indications or threats that something else may occur. Chairperson Woolard raised concerns regarding the capacity to keep a youth in the restraint chair even though the reason they are put in the chair is resolved and asked for the rationale and justification for this provision.

Cathy Roessler (Superintendent, Blue Ridge Juvenile Detention Center) provided an example of a resident with an established history of following through on threats from jumping off his bunk, to banging his head, to assaulting staff or others. In these cases, the resident would be placed in the restraint chair with staff trying to obtain compliance from him during the process. Each sign of compliance with staff would eventually lead to the resident's release from the restraint. If the resident is continuing with the threats to others or himself and has an established history of following through, staff might wait until there is more compliance from the resident before they release him from the restraint. Youth who engage with staff face-to-face and begin to de-escalate and comply with staff could be released from the restraint limb by limb until the resident is fully released.

Chairperson Woolard asked about partial release from the chair.

Ms. Roessler described instances in which staff would release one arm to allow the resident to drink or eat and the resident then spits their food at staff or throws water in their face. Gaining more compliance from the resident is a sign the resident is gaining control.

Board Member Schrad said that there might be legal limitations to the word "imminent," which communicates a sense of immediate urgency. De-escalation still has to occur. After the imminent risk is removed, immediately and completely removing the resident from the chair might risk them escalating again.

Board Member Kizner asked if the resident would be placed back in the chair if he escalated greatly.

Ms. Roessler responded that typically, if staff are at the point of using the mechanical restraint chair, the resident already has escalated. Anytime you restrain an individual, this contributes to further escalation, which is why staff are in that situation in the first place.

Board Member Kizner asked whether staff is accelerating escalation by using the chair and then hoping the resident will de-escalate eventually.

Ms. Roessler answered this tends to depend upon the case and the resident. Some residents feel more secure if they are physically restrained and may calm down immediately once staff physically intervene. Other residents amp up even more because of the trauma they have experienced. Staff remain responsible for ensuring the resident and everyone around him remains uninjured.

Gina Mingee (Superintendent, Merrimac Center) noted her observations that some youth want to fight and hurt staff, but once they are in the restraint chair, they can no longer continue that behavior. It de-escalates them and they are incapable of fighting. Residents want to be released, and staff go through the gradual release process to gain their trust.

Chairperson Woolard read from Subsection B on page 87 of the Board packet, which provides in part, "the facility determines that continued use of the mechanical restraint is necessary to maintain security due to the resident's ongoing credible threat to injure himself or others". She asked why, if the issue involves personnel and staff safety, it is described as "maintaining security."

Ms. Roessler answered that all her staff respond to the situation when they decide to use mechanical restraints or the chair. Blue Ridge Juvenile Detention Center has four living units and residents primarily are out of their rooms and in the main living unit. When an emergency arises, staff ensure all residents are locked in their rooms and then respond to the emergency. Depending on levels of staffing, other issues such as intake and normal operations may be suspended while staff focuses on the restrained resident.

Chairperson Woolard read Subsection C on page 87 of the Board packet, which provides, "a detention center may not use a protective device unless such use is in connection with a restraint and shall remove the device *when the resident is released from the restraint.*" She asked whether this provision would prevent staff from removing the device before the resident is released from the restraint.

Ms. Peterson offered up the following proposed amendment, "and shall remove the device *on or before the resident is released from the restraint.*" Chairperson Woolard agreed with the language.

Chairperson Woolard asked for an explanation for the face-to-face conversation and constant supervision requirement with residents while in the chair and asked Ms. Peterson to elaborate on why checks are required only every fifteen-minutes for other kinds of restraints.

Ms. Peterson responded that there is a heightened need for additional scrutiny when the restraint chair is used, which explains the need for the constant one-on-one supervision.

Chairwoman Woolard asked to hear more about the exception in Subsection C on page 88 that requires consultation with the healthcare provider or qualified mental health professional or clinician when a resident is in restraints for more than two hours cumulatively in a 24-hour period with the exception of use in routine transportation of residents.

Ms. Peterson explained that this provision has been in existence for some time. When transporting residents, specifically off campus for long distances, these requirements may not always be feasible logistically.

Board Member Kizner asked about the decision process to move a resident from a mechanical restraint to the mechanical restraint chair.

Ms. Roessler provided an example where two residents are fighting and staff physically intervene. Staff first verbally direct the residents to stop and then intervene physically. At that point, both residents may be physically restrained. One resident might stop resisting, follow staff instructions, and leave the area. The other resident might continue to fight with staff, and handcuffs and leg irons might be used to restrict movement. The fight continues to escalate and the resident starts banging his head against the wall and is at risk of significant injury. Staff considers using the mechanical restraint chair. Staff would physically restrain the resident while in mechanical restraints to prevent him from hitting his head on the wall.

Board Member Schrad noted that even in this scenario, the attempt to protect the resident from a head injury could lead to a staff member breaking their hand.

Ms. Roessler added staff have been head-butted, bitten, spat on, and needed stitches due to their close proximity to the resident when performing a physical restraint.

Deputy Director for Residential Services Joyce Holmon added that many of the alternatives described in the discussion already have been tried before the resident is placed in the restraint chair in the juvenile correctional center. Ms. Holmon indicated that in her time with the Department, a resident has never gone from a standing position directly into the chair. The least restrictive measures are applied first, and if the resident's behavior escalates, something else needs to be done. Generally, by the time the chair is an option, staff have already been hurt.

Director Block reminded the Board that it rarely reaches this level, and when it does, often it is with extreme, troubled young people in an extreme situation. The Department has not used the restraint chair in three years. In large part, all other means are deployed first and usually are sufficient to address the problem.

Board Member Frazier asked if all the detention centers attending the meeting have the restraint chair. All three detention centers in attendance (Merrimac Center, Chesterfield County, and Blue Ridge) responded that they have a restraint chair; however, Chesterfield County does not use it.

Chairperson Woolard asked what facilities that do not have the chair do.

Ms. Marilyn Brown (Superintendent, Chesterfield County Detention Center) said when she came to the facility, (Chesterfield County) they did not use a restraint chair. Ms. Brown shared a story about a recent team restraint for a young female resident. The staff engaged in a physical team restraint for six or seven hours on this resident before finally transitioning to handcuffs. During this restraint, all other residents were locked down. Ms. Brown explained that her facility tries not to use any mechanical restraint, but the female resident continued to bang her head on the wall. Ms. Brown commented that she is still unsure where she stands on this issue because she is not sure the physical

restraint was the best approach for the female resident or staff. After the incident, several staff quit. Ms. Brown thought the chair may have been the better option, and understands her colleagues' use as an alternative to that situation. The female resident had nothing to be hopeful for and was bound and determined to hurt herself.

Chairperson Woolard remarked that the mental health professional can make a determination to terminate the use of the restraint chair if it is a health risk and asked whether health risk includes mental health risks. Ms. Peterson responded that was correct.

Chairperson Woolard pointed out page 91, Section 1156(A)(1), which provides, in part, "the resident's behavior or actions present a direct and immediate threat to the resident or others." Chairperson Woolard asked whether this means a personal safety threat. Ms. Peterson responded that the provision refers to a direct threat to the resident or other personnel and asked whether the Board wanted to add clarifying language to that effect. The Board agreed that clarifying language would be helpful.

Chairperson Woolard asked about subdivision (A)(3) of that section, which requires the resident to remain in the restraint chair only for as long as necessary to abate the threat or help the resident gain self-control as a condition for use of the restraint chair for purposes other than controlled movement. Chairperson Woolard asked the difference between "abat(ing) the threat and help(ing) the resident regain self-control."

Ms. Brown explained that the workgroup had many discussions on the reasons residents are placed in the chair. It could be because they threaten to injure themselves or others. Ms. Brown speculated that subdivision (A)(3) was trying to distinguish between the two situations. The resident is no longer actively trying to hurt himself verses the resident regaining self-control.

Ms. Peterson said the language, "help the resident gain self-control" was likely extraneous language. Ms. Roessler added that once the resident gains self-control, the threat is abated.

Chairperson Woolard and Board Member Schrad indicated their belief that the threat is the driving issue. Ms. Peterson suggested amending the language to read, "the resident remains in the restraint chair only as long as necessary to abate the threat to the resident or to others," and striking the extraneous language afterwards.

Chairperson Woolard read Section C, which provides, "the detention center shall be excused from the requirements in subsections A and B of this section when the restraint chair is requested by a resident for whom such voluntary use is part of an approved plan of care by a qualified mental health professional or mental health clinician." Chairperson Woolard asked whether qualified mental health professionals and clinicians are trained in how chair restraints work and if it is reasonable for the health professional to accede to a resident's request to be placed in the restraint chair. If so, she asked, what parameters would be in their treatment plan?

Ms. Peterson said a resident in one of the detention centers in the work group voluntarily requested placement in a restraint chair as a self-regulation tool, but that this is a rare occurrence. Facility staff are encouraged, if a resident voluntarily requests placement in the restraint chair, to allow that to take place. Ms. Peterson was not certain what that entails as far as their mental health plan and what is involved.

Ms. Roessler said she cannot speak specifically to the details of the treatment plan in terms of length of time and under what circumstances the chair can be requested since this happened in another facility. According to the Superintendent of that facility, the resident who voluntarily sat in the restraint chair was actively trying to calm herself during a situation and requested to sit in the chair. This helped her self-soothe, maintain her composure, and not escalate.

Deputy Director Holmon noted that the clinician from the Commonwealth Center referenced those occasions as well, where young people asked to be placed in the restraint chair.

Board Member Schrad asked if it was part of the resident's approved mental health treatment plan and whether it might be considered an extreme measure toward mental health treatment. She asked for ways to monitor and document this practice as part of the mental health plan?

Ms. Roessler responded that if a resident voluntarily requests to be placed in the chair, facilities would still need to follow the regulations except the reporting part since the treatment plan has been approved by a mental health clinician.

Director Block suggested adding the word "written" before "approved" in Subsection C to read, "written approved plan of care," to ensure this approach is documented and placed in the resident's file.

Board Member Schrad noted her concern that this could be a tool the mental health provider uses as an option without the resident necessarily requesting it, and her desire to ensure that this option would be used only when the resident initiates a request to be placed in the restraint chair as part of their treatment.

Ms. Mingee responded that typically, when a mental health treatment plan is written, the resident must sign the document and agree to the treatment plan, which includes interventions and objectives. Ms. Roessler also pointed out that Subsection C uses the word "voluntary".

Chairperson Woolard expressed concerns with how the resident gets out of the chair after voluntarily requesting placement. She asked, as an example, if the resident settles down and asked to be removed two minutes after having voluntarily been placed in the chair, whether the staff will release the resident?

Multiple people addressed this question affirmatively, explaining that the resident would be released because he voluntarily put himself in the chair. Ms. Roessler said it would be specific to each

resident, depending upon the circumstances. Board Member Schrad stated it would no longer be voluntary if the resident was held in the chair.

Ms. Brown shared a story of a resident in her detention center who moved back and forth to the Commonwealth Center, where voluntary use of the restraint chair is employed frequently as part of a resident's mental health plan. Because very few youth request placement in the chair at the Chesterfield Detention Center and because the resident kept asking to be placed in the chair, staff talked with the Commonwealth Center to see how it was used at that facility. Detention center staff had to tell the resident that it was not an available option, so what else could staff do to help?

Board Member Kizner noted his discomfort with a resident requesting placement in the chair, adding that if residents are telling staff they need to calm down, then it is the Board's challenge to find another alternative to help them calm down. Board Member Kizner asserted that voluntarily putting a resident in the same restraint chair used by residents who are completely out of control is not a healthy alternative.

Board Member Frazier agreed that the voluntary use of the restraint chair by residents should be prohibited.

Board Member Schrad indicated that such voluntary use seems inconsistent with the purpose of this particular section, which has more to do with necessary restraint of youth trying to be brought under control. It might be better to revisit and bring in mental health professionals to discuss.

Ms. Roessler acknowledged that voluntary restraint chair use is unusual. Detention centers receive residents with mental health issues, and the facility might not be fully equipped to deal with their issues. Staff tries to use what works for residents and accommodate the residents as much as possible with what is available.

Board Member Schrad sympathized but stated her belief that this issue might be better addressed in another regulatory area as these provisions pertain to restraint in the case of someone out of control and possibly harming himself or others.

Board Member Frazier said he would rather restrict the voluntary use of the chair. If a resident self-selects, it should not be an option.

Ms. Peterson noted that by deleting the provision, facilities would be prohibited from allowing residents to voluntarily be placed in the chair because of the parameters set out in Section 1156. The Board agreed.

This ended the question and answer period on Options 1 and 2 for amendments to the *Regulation Governing Juvenile Secure Detention Centers*. Ms. Peterson next reviewed Options 3 and 4.

OPTION 3, PROHIBITION ON RESTRAINT CHAIRS

Ms. Peterson explained that this option retains all the provisions that were part of Option 2 but removes all the provisions related to the mechanical restraint chair. Article 4 is removed in its entirety, and a section is added on page 99 of the Board packet, 6VAC35-101-1155, that prohibits staff from placing a resident in a mechanical restraint chair for *any purpose*.

OPTION 4, PROHIBITION ON SPIT GUARDS AND SIMILAR DEVICES

Ms. Peterson explained that this option retains all the language in Option Two, including the language allowing and limiting the use of the mechanical restraint chair. The only change in Option 4 is to the definition of protective device. Page 100 of the Board packet expressly excludes from the definition of protective device spit guards and similar devices. Protective devices are referenced elsewhere throughout the regulation, but the regulation adds a new Section 6VAC35-101-1159 (page 109) which prohibits the use of spit guards.

Board Member Schrad understood that this change would remove spit guards and similar devices from the definition of protective device and asked what other protective devices would be included?

Ms. Peterson said it is not an all-inclusive list. Protective helmets and other items used to protect staff or residents from injury placed on a resident or a portion of the resident's body would fall under the definition. Deputy Director Holmon added hand-mitts (anti-mutilation gloves).

Board Member Kizner asked if the use of spit guards and similar devices is dependent on the restraint chair.

Ms. Peterson answered that the workgroup added a provision allowing protective devices to be used only in connection with a restraint device, whether it be a mechanical restraint (handcuff) or the restraint chair. Protective devices must be used in connection with another restraint.

Board Member Frazier asked whether staff would be permitted to use spit guards if a physical restraint was performed.

Ms. Peterson responded that she does not believe the workgroup drew a distinction in the proposed regulation language and asked the detention centers if the facilities use protective devices with physical restraint as well. Ms. Roessler said yes, there have been situations when spit guards were used to protect staff.

Director Block advised the Board to put this issue into context, noting that the Department or the local detention centers are not looking to put hands on residents or to use restraints. The best way not to use restraints is to do good work with residents and to positively engage with them. The facilities represented at today's meeting have good programs with alternative discipline programs. None of this is reflective of things any of us want to or seek to do.

Chairperson Woolard asked if what the Board votes on today would apply to youth under the Office of Refugee Resettlement (ORR) custody. Director Block answered yes, and Ms. Peterson clarified that it would apply once the regulation takes effect.

BOARD DISCUSSION

Each of the Board members provided their perspective on the proposed options before the Board.

Chairperson Woolard noted that she felt conflicted about this issue and hopes these issues never happen, but facilities need to be prepared in case situations arise with the youth we serve. The people and experts involved in this discussion view the restraint chair as the last resort. It is difficult to regulate or pass laws on low base rate phenomena that do not happen often but have collateral consequences. Chairperson Woolard heard from facilities that use the chair under circumstances that can potentially be considered more safe or prevent injury in ways not using the chair might achieve. Chairperson Woolard also sees the other side and is influenced by the fact there are many institutions and associations that do not recommend the chair or do not use it and seem to move forward without it. Chairperson Woolard could not extract from presentations at the last meeting, if there are any characteristics of the facilities that do not have or do not use the chair that would differentiate them in some substantive way from facilities who do have and use the chair.

Board Member Schrad said she thought more tactically and through a process of elimination to arrive at her decision. Option 1 does not change anything and is not realistic. Options 3 and 4 seem to disregard detention centers that use the chair successfully in a limited fashion. The experience with grappling with the female resident for hours is more troubling than the use of the chair for a limited time. For Board Member Schrad, the only option that makes sense is Option 2.

Board Member Schrad provided what she termed a “crude corollary” of law enforcement and the use of force continuum. Law enforcement has policies that permit use of force in given situations with appropriate training. There are also policies to ensure that when force is used it is reviewed to ensure the force was within policy. There is no way to predict every possible scenario; every child, situation, and resource is unique. Board Member Schrad cannot advocate eliminating a resource, no matter how rarely it is used, if it has proven to be helpful in situations and is used in a limited fashion to protect the resident and staff. Board Member Schrad cannot see a reason to take that resource away. Board Member Schrad made the analogy that a police officer may never use his firearm in his career but cannot imagine taking the firearm away from law enforcement. Board Member Schrad apologized if the corollary was offensive. She does feel the chair is a resource and with proper training, policy, recordkeeping, and review of the heavy regulation in Option 2 would do a lot to limit the use of the chair because staff will need to justify the use.

Board Member Frazier agreed this is tougher than most decisions the Board has made during his term. Board Member Frazier indicated that he does not want to limit the resources available to the local juvenile detention centers, even if they gather dust. Board Member Frazier appreciates the workgroup making use of the chair tougher and seeking to impose more regulations and training for

its use. Additionally, he does not want to limit protective devices as they are important for the safety of the young people and staff. Therefore, Board Member Frazier is in favor of Option 2. The example of the young female resident in a physical restraint for six or seven hours helped Board Member Frazier consider staff and also the other residents behind locked doors for that amount of time, which contributes to what the residents are feeling, seeing, and hearing. Board Member Frazier acknowledged the challenges associated with the job, profession, department, and industries the Board regulates.

Board Member Kizner indicated that he is not supportive of Option 2. Board Member Kizner explained that his background is in working with children who have mental health issues. While he has no doubt the juvenile detention centers at the meeting are highly professional, he respectfully disagrees with his colleagues that we do not create trauma for children. He has known many incarcerated children who move on from their experiences personally and professionally while others do not. Board Member Kizner does not believe the Board is taking a tool away from staff. His focus is on the resident, so if other detention centers and communities are able to operate without the chair, then that should challenge the Board to figure out why all facilities are not able to do so. Board Member Kizner believes there are many potential complications with this policy, which might create an avenue for staff to have greater difficulty. Therefore, Board Member Kizner is in favor of Option 3.

Board Member Vilchez noted he is wearing two hats as a Board Member and as a court service unit employee who pays attention to prevention. He believes the mission at the Department is to rehabilitate rather than punish. Board Member Vilchez concurs with Director Block on the engagement of youth in more positive activities in the juvenile detention centers and juvenile correctional center. Board Member Vilchez thanked the public commenter earlier who noted that facilities have used the restraint chair infrequently and encouraged eliminating it. After researching the subject, Board Member Vilchez does not see the chair used nationally. These restraints are used at Guantanamo Bay; these are juveniles who have not committed heinous crimes. Board Member Vilchez concurs with Mr. Kizner and has his own experience working with youth. Board Member Vilchez does not like the idea of having these devices and restraints in Virginia's juvenile facilities and supports Option 3.

Board Member Roman said that before the meeting she supported Option 3; however, she became concerned after hearing about the long physical restraint of the young female resident. Board Member Roman shared that she has experienced physical restraint, and it was one of the most traumatic events to happen to her. At this point, Board Member Roman is unsure of which option to support. From personal experiences and hearing from representatives, it is a tough decision.

Chairperson Woolard said any decision will be difficult for staff and residents. There is little research to help the Board figure out the less traumatic option.

Board Member Schrad added to her comments. Option 2 is a huge regulatory change that puts more regulations in place and will be monitored very closely. This is also not the end of this discussion.

Board Member Schrad recommended requiring a report be submitted to the Board on the chair use and then, after a year, having the Board revisit the issue to determine whether the chair is still needed. Board Member Schrad shared her discomfort with taking away a resource and the transition the facilities would need to undergo if the chair was not an option. Board Member Schrad feels the Board needs to give this issue another chance under stricter regulations to see if it can still be helpful. She heard too many times the testimony from the detention centers on how the chair had been used successfully, limiting the period of trauma for the resident and giving staff the ability to intervene with that individual. Board Member Schrad shared her personal belief that she would prefer to be put in the chair than physically restrained. Board Member Schrad believes Option 2 lets the Board transition to a place of better regulation, training, and policy and reminded the Board of its ability to revisit the issue.

Chairperson Woolard speculated that the traumatic impact of either option is not known, and while six hours of physical restraint would be a challenge, there is no empirical data to help make a decision based on which is less traumatic or more helpful for the resident. Chairperson Woolard is challenged to think about continuing the use of the restraint chair when so many places are successful without it. Chairperson Woolard thinks Virginia has demonstrated itself as a leader in juvenile justice policy and practice, and the Department is leading different states and moving forward on child trauma informed care. In her mind, the use of the restraint chair is inconsistent with that initiative. Therefore, Chairperson Woolard supports Option 3. She believes that with the skill and expertise of the facility staff, they can be successful without the use of the restraint chair. She acknowledged that she does not work in a facility, but she does have incredible confidence and respect for the facility staff expertise in working with the youth served.

Chairperson Woolard noted that there are six Board members present and asked what will happen if there is a tied vote. Director Block answered that the status quo will remain in effect, but the Board could revisit the issue another time.

Board Member Schrad raised a concern that a third of the Board was not at the meeting. Chairperson Woolard responded that the Board needs to proceed with those in attendance.

A motion was made by Dana Schrad and seconded by Tyren Frazier to approve the proposed amendments to 6VAC35-101, *Regulation Governing Juvenile Secure Detention Centers*, related to the use of mechanical restraints in juvenile detention centers, as established under "Option 2" in the Board packet and as further amended at the January 8, 2019, Board meeting. Board members Dana Schrad, Tyren Frazier, and Quwanisha Roman voted in favor of the motion and Board members Jennifer Woolard, Scott Kizner, and Tito Vilchez voted to reject the motion. The motion failed.

A motion was made by Scott Kizner and seconded by Tito Vilchez to approve the proposed amendments to 6VAC35-101, *Regulation Governing Juvenile Secure Detention Centers*, related to the use of mechanical restraints in juvenile detention centers, as established under "Option 3" in the Board packet and as further amended at the January 8, 2019, Board meeting. Board members Jennifer

Woolard, Scott Kizner, and Tito Vilchez voted in favor of the motion and Board members Dana Schrad, Tyren Frazier, and Quwanisha Roman voted to reject the motion. The motion failed.

The Board had a conversation about the possibility of advancing Option 2 but striking all of the provisions related to the restraint chair and addressing the issue regarding restraint chairs in the future. This long discussion did not produce any new motions or changes to the vote.

Chairperson Woolard thanked the Board, the Department, and the local juvenile detention centers for their thoughtful contribution. Chairperson Woolard recommended revisiting the vote at the next meeting given that some Board members needed to leave and some not in attendance did not have the opportunity to convey their perspective.

DIRECTOR'S COMMENTS

Andrew K. Block, Jr. Director, Department

Director Block thanked the Board for their willingness to take on this difficult issue and make the best decision for our young people.

Director Block held six listening sessions around the Commonwealth late last year with court service unit staff and stakeholders. This was a chance for staff to interact with leadership and provide direct feedback. The court service units feel positive about the agency's direction with probation numbers being down, smaller caseloads, more diversion and prevention, and more thinking about keeping youth out of the juvenile justice system.

In December, the Department opened a new part of their continuum with a transitional living center, not quite a halfway house, to serve Chesterfield County. AMIkids selected the vendor, and the first new residents came in December 2018.

The Department received funding in the Governor's budget for planning a second new facility in central Virginia. This General Assembly session the Department may receive specificity on the location for this second facility.

The Department has advanced the following legislative bills as part of its package:

- (1) *Youth tried as adults*. Currently, a youth may be tried as an adult in one of three ways: 1) A youth at least 14 years old charged with murder or aggravated malicious wounding and automatically tried as an adult; 2) a youth at least 14 years old charged with any number of serious felonies, at the discretion of the prosecutor; and 3) a youth at least 14 years old transferred to circuit court by the prosecutor where the juvenile court judges can hold adversarial hearings to listen to both sides. Proposed legislation would increase the age for prosecutorial transfer or automatic transfer of youth from 14 years of age or older to 16 years of age or older. Youth charged with serious offenses who are 14 or 15 year olds could still be tried as adults, but a judge would make that decision rather than it being automatic or

prosecutorial. This would require judges to receive a transfer report from the Department in order to make a decision. Transfer reports include information on the youth's clinical status, mental health situation, and educational status. Senator Marsden is the patron for this bill.

- (2) *Social History Reports* – The bill would require the court to have a social history of a youth prior to that young person who has been adjudicated delinquent of a serious or violent felony receiving a sentence or disposition. Currently, plea deals are made and lengthy sentences are imposed without the court having the benefit of the social history report. Courts should receive as much information as possible before making these decisions, particularly in cases that are more serious.
- (3) *Training Standards* - A law passed in 2012 transferred authority over establishing training standards for the Department's Resident Specialists (previously called Juvenile Correctional Officers), to the Department of Criminal Justice Services (DCJS). DCJS oversees law enforcement and the Department of Corrections. Prior to that time, the Board had overseen this area, but the Department Director wanted the Department to be under their umbrella. The Board previously regulated the training successfully, and the Department believes the Board has more context to oversee this than DCJS. The Department is asking for a statutory change, which DCJS supports, to return this oversight to the Board.

BOARD COMMENTS

There were no Board comments.

NEXT MEETING

The next Board meeting is scheduled for April 17, 2019, at Main Street Centre, 600 East Main Street, Richmond.

ADJOURNMENT

Chairperson Woolard adjourned the meeting at 12:52 p.m.

SUMMARY
DEPARTMENT CERTIFICATION ACTIONS
January 28, 2019

Certified Blue Ridge Juvenile Detention Center and Post-dispositional Detention Program for three years with a letter of congratulations for 100% compliance.

Pursuant to 6VAC35-20-100C.1, if the certification audit finds the program or facility in 100% compliance with all regulatory requirements, the director or designee shall certify the facility for three years.

Certified Norfolk Juvenile Detention Home and Post-dispositional Detention Program until January 13, 2020. Certification Analyst is instructed to conduct monitoring visits every two months for six months to assess compliance with corrective action plan.

Pursuant to 6VAC35-20-100C.2, if the certification audit finds the program or facility in less than 100% compliance with all regulatory requirements and a subsequent status report, completed prior to the certification action, finds 100% compliance on all regulatory requirements, the director or designee shall certify the facility for a specific period of time, up to three years.

Certified Roanoke Valley Juvenile Detention Center until February 10, 2022.

Pursuant to 6VAC35-20-100C.2, if the certification audit finds the program or facility in less than 100% compliance with all regulatory requirements and a subsequent status report, completed prior to the certification action, finds 100% compliance on all regulatory requirements, the director or designee shall certify the facility for a specific period of time, up to three years.

Certified Tidewater Youth Services Apartment Living Program until January 21, 2022.

Pursuant to 6VAC35-20-100C.2, if the certification audit finds the program or facility in less than 100% compliance with all regulatory requirements and a subsequent status report, completed prior to the certification action, finds 100% compliance on all regulatory requirements, the director or designee shall certify the facility for a specific period of time, up to three years.

**CERTIFICATION AUDIT REPORT
TO THE
DEPARTMENT OF JUVENILE JUSTICE**

PROGRAM AUDITED:

Blue Ridge Juvenile Detention Center
195 Peregory Lane
Charlottesville, Virginia 22902
Phone # (434) 951-9340
Cathy Roessler, Superintendent
roesslerca@brjd.org

AUDIT DATES:

September 10-11, 2018

CERTIFICATION ANALYST:

Shelia L. Palmer

CURRENT TERM OF CERTIFICATION:

February 11, 2016 - February 10, 2019

REGULATIONS AUDITED:

6VAC35-101 Regulation Governing Juvenile Secure Detention Centers

PREVIOUS AUDIT FINDINGS September 22, 2016:

100% Compliance Rating

CURRENT AUDIT FINDINGS – September 11, 2018:

100% Compliance Rating

DEPARTMENT CERTIFICATION ACTION January 28, 2019: Certified Blue Ridge Juvenile Detention Center and Post-dispositional Detention Program for three years with a letter of congratulations for 100% compliance.

Pursuant to 6VAC35-20-100C.1, if the certification audit finds the program or facility in 100% compliance with all regulatory requirements, the director or designee shall certify the facility for three years.

TEAM MEMBERS:

Shelia L. Palmer, Team Leader
Clarice Booker, Central Office
Mark Lewis, Central Office
Leah Nelson, Central Office
John Adams, Central Office
Justin Ford, Prince William County JDC
Scott Journigan, Chesterfield JDC
Mary Roskam, Chesterfield JDC
Ralph Harmon, Richmond JDC

POPULATION SERVED:

Blue Ridge Juvenile Detention Center (BRJDC) is a 40-bed, single room facility. BRJDC is operated by the Blue Ridge Juvenile Detention Commission. The members of the Commission include the City of Charlottesville and the Counties of Albemarle, Culpeper, Fluvanna and Greene. In addition to a predispositional detention population of male and female residents, ages 10 through 17, the facility offer the following programs:

- **Post-Disposition Program:** A 90 or 180-day program which addresses life skills, victim empathy, anger management, character education, substance abuse counseling, reproductive health, and individual and/or family counseling.
- **Community Placement Program:** A program for males ages 14-20 who have been committed to the Department of Juvenile Justice. This program addresses many of the areas listed above with an emphasis on increasing educational competencies, increasing employment readiness, and reducing criminal behavior by helping residents improve their abilities in the areas of self- control, decision making and problem solving.
- **Central Admissions and Placement:** Residents who have been committed to DJJ may remain at or be transferred to Blue Ridge Juvenile Detention in order to participate in the intake, orientation, and evaluation process.
- **Detention Re-Entry:** DJJ residents who are 30 to 120 days from release may be transferred from a Juvenile Correctional Center to a local detention facility in close proximity to their home community, in order to aid in a successful transition post release.

PROGRAMS AND SERVICES PROVIDED:

In addition to all mandated services, BRJDC interacts with the community obtain services from the following organizations:

- Region Ten Community Services Board,
 - Charlottesville, Albemarle, Fluvanna, Culpeper and Greene Department of Social Services,
 - Juvenile Justice Advisory Committee,
 - Community Attention,
 - Music Resource Center,
 - Planned Parenthood,
 - Aids Services Group,
 - Sexual Assault Resource Agency,
 - Habitat for Humanity,
 - University of Virginia,
 - Virginia Commonwealth University,
 - Longwood University,
 - Front Porch Music,
 - Big Brothers/Big Sisters, and
 - Virginia Gang Investigators.
-

**CERTIFICATION AUDIT REPORT
TO THE
DEPARTMENT OF JUVENILE JUSTICE**

PROGRAM AUDITED:

Norfolk Juvenile Detention Home
1260 Security Lane
Norfolk, Virginia 23502
(757) 441-5667
John Bell, Jr., Interim Superintendent
John.bell@norfolk.gov

AUDIT DATES:

September 24-25, 2018

CERTIFICATION ANALYST:

Mark Ivey Lewis

CURRENT TERM OF CERTIFICATION:

January 14, 2018-January 13, 2019

REGULATIONS AUDITED:

6VAC35-101 Regulation Governing Juvenile Detention Centers

PREVIOUS AUDIT FINDINGS – July 31 – August 1, 2017:

6VAC35-101-200 (B). Retraining
6VAC35-101-310 (B). Personnel records
6VAC35-101-820 (A). Mental health screening. CRITICAL
6VAC35-101-980 (A). Health screening at admission. CRITICAL
6VAC35-101-1030 (B). Residents' health care records.
6VAC35-101-1060 (H). Medication. CRITICAL
6VAC35-101-1060 (J). Medication. CRITICAL
6VAC35-101-1060 (M). Medication. CRITICAL
6VAC35-101-1100 (B). Room confinement and isolation.
6VAC35-101-1100 (C). Room confinement and isolation.
6VAC35-101-1100 (H). Room confinement and isolation.

CURRENT AUDIT FINDINGS – September 25, 2018:

95.107% Compliance Rating
* Three repeated deficiency from previous audit.

6VAC35-101-155 (A). Employee tuberculosis screening and follow-up.
6VAC35-101-170 (A). Employee and volunteer background checks. CRITICAL
6VAC35-101-200 (C). Retraining
6VAC35-101-820 (A). Mental health screening. CRITICAL
*6VAC35-101-990 (A). Tuberculosis screening. CRITICAL
6VAC35-101-1060 (E). Medication. CRITICAL
*6VAC35-101-1060 (H). Medication. CRITICAL
*6VAC35-101-1060 (J). Medication. CRITICAL

DEPARTMENT CERTIFICATION ACTION January 28, 2019: Certified Norfolk Juvenile Detention Home and Post-dispositional Detention Program until January 13, 2020. Certification Analyst is instructed to conduct monitoring visits every two months for six months to assess compliance with corrective action plan.

Pursuant to 6VAC35-20-100C.2, if the certification audit finds the program or facility in less than

100% compliance with all regulatory requirements and a subsequent status report, completed prior to the certification action, finds 100% compliance on all regulatory requirements, the director or designee shall certify the facility for a specific period of time, up to three years.

TEAM MEMBERS:

Mark Ivey Lewis, Team Leader
Clarice Booker, Central Office
Deborah Hayes, Central Office
Jack Scott, Crater JDC
Lorenzo Case, Newport News JDC
Kristy Livsey, Merrimac JDC
Joseph Barton, Virginia Beach JDC
Tara Alexander, Chesapeake JDC
John Dowdy, Prince Williams JDC
Lisa Washington, Northern VA JDC
John Adams, Central Office

POPULATION SERVED:

The Norfolk Juvenile Detention Center is an 80-bed detention center which houses pre-disposition and post disposition male and female residents ages 10-20. The facility was constructed in 1996 on property adjoining the old detention home. The building is a one-story brick building with reinforced structures and brick-walled fence for added security allowing it to blend in with the surrounding neighborhood. The facility is located in close proximity to the Norfolk Technical Center and a major shopping center.

PROGRAMS AND SERVICES PROVIDED:

Post Dispositional

Post Disposition is a program that is an alternative to commitment to the Department of Juvenile Justice (DJJ). Local services are offered to all residents and families. These include Individual Counseling, Group Counseling, Family Meetings, Substance Abuse and Anger Management. This program is directly supervised by a detention center supervisor. The supervisor works in conjunction with the courts, social workers, probation officers and judges to ensure the success of the residents. Once the residents have completed the program, they may be transitioned to family members, group homes and/or other programs. Average daily population for 2017 was nine (9) residents.

Re-Entry Program

Norfolk Juvenile Detention Center Re-entry Program serves DJJ juvenile's ages 13 to 20. The length of stay can range from 30 – 120 days prior to their release from DJJ. The objective of the program is to allow the juvenile offenders to transition from a Juvenile Correction Center (JCC) to a local detention facility and obtain community resources such as education, employment, treatment services, and reconnect with their families.

Education Services

The Norfolk Public School System provides appropriate grade specific education for all residents. Classes begin at 0800 daily and end at approximately 1415. They include both academic and special education classes. Also included are Life Skills Enhancement and Character Education.

Community Services

- o Employment Counseling
- o Mental Health Services

- o Social Services
- o Recreational Programs

**CORRECTIVE ACTION PLAN
TO THE
DEPARTMENT OF JUVENILE JUSTICE**

FACILITY/PROGRAM: Norfolk Juvenile Detention Center
SUBMITTED BY: John L. Bell, Jr., Interim Superintendent
CERTIFICATION AUDIT DATES: September 24-25, 2018
CERTIFICATION ANALYST: Mark Ivey Lewis

Under Planned Corrective Action indicate; 1) The cause of the identified area of non-compliance. 2) The effect on the program. 3) Action taken/will be taken to correct the standard cited. 4) Action that will be taken to ensure that the problem does not recur.

6VAC35-101-155 (A). Employee tuberculosis screening and follow-up.

A. On or before the employee's start date at the facility and at least annually thereafter each employee shall submit the results of a tuberculosis screening assessment that is no older than 30 days. The documentation shall indicate the screening results as to whether there is an absence of tuberculosis in a communicable form.

Audit Finding:

Two of five new employee files reviewed had a tuberculosis screening assessment that was either older than 30 days or was not completed on or before the employee's start date.

Program Response

Cause:

Changes in personnel at Human Resources caused there to be a lack of clear communications on the expectations for new hires for the Norfolk Juvenile Detention Center.

Effect on Program:

The net result was that the facility brought on new hires who were not vetted in a timely manner per VA Department of Juvenile Justice (DJJ) regulations. Thus, it caused the program to be out of compliance with DJJ's regulations.

Planned Corrective Action:

Prior to the September 24-25, 2018 audit, the Norfolk Juvenile Detention Center (NJDC), administration held a meeting with the Norfolk Human Resources leadership to address this issue. Clear communications, expectations and DJJ requirements were reestablished regarding preliminary hiring requirements for all NJDC staff.

Moving forward, NJDC will personally verify that all required documentation is completed and is in hand before completion of the hiring process.

Completion Date:

This task has already been completed.

Person Responsible:

John Bell, Superintendent

Current Status on December 17, 2018: Compliant

Two of two new employee files reviewed had documentation that a tuberculosis screening assessment was either no older than 30 days or was completed on or before the employee's start date.

6VAC35-101-170 (A). Employee and volunteer background checks. CRITICAL

A. Except as provided in subsection B, all persons who (i) accept a position of employment at, (ii) volunteer on a regular basis and will be alone with a resident in the performance of their duties, or (iii) provide contractual services directly to a resident on a regular basis and will be alone with a resident in the performance of that person's duties shall undergo the following background checks in accordance with § 63.2-1726 of the Code of Virginia to ascertain whether there are criminal acts or other circumstances that would be detrimental to the safety of residents:

1. A reference check;
2. A criminal history record check;
3. Fingerprint checks with the VA State Police and Federal Bureau of Investigations (FBI);
4. A central registry check with Child Protective Services; and
5. A driving record check if applicable to the individual's job duties.

Audit Finding(s):

One of five new employee files reviewed did not have the date that the central registry check was completed.

Three of five new employee files reviewed did not have documentation of a driving record check.

Two of five new employee files reviewed did not have fingerprint results.

Program Response

Cause:

Changes in personnel at Human Resources caused there to be a lack of clear communications on the expectations for new hires for the Norfolk Juvenile Detention Center.

Effect on Program:

The net result was that the facility brought on new hires who were not vetted in a timely manner

per VA Department of Juvenile Justice regulations. This caused the program to be out of compliance with DJJ regulations.

Planned Corrective Action:

Prior to the September 24-25, 2018 audit, the Norfolk Juvenile Detention Center administration held a meeting with the Norfolk Human Resources leadership to address this issue. Clear communications, expectations and DJJ requirements were reestablished regarding preliminary hiring requirements for all Norfolk Juvenile Detention staff.

Moving forward, NJDC will personally verify that all required documentation has been completed and is in hand before completion of the hiring process.

Completion Date:

This task has already been completed.

Person Responsible:

John Bell, Superintendent, Jacqueline Conley-Smith and Tommie Clark, Assistant Superintendents

Current Status on December 17, 2018: Compliant

Two of two new employee files reviewed had all the required background information including fingerprint checks, central registry checks, and driving license checks.

6VAC35-101-200 (C). Retraining.

C. All direct care staff shall receive at least 40 hours of training annually that shall include training on the following:

- 1. Suicide prevention as provided for in 6VAC35-101-1020 (suicide prevention);**
- 2. Standard precautions as provided for in 6VAC35-101-1010 (infectious or communicable diseases);**
- 3. Maintaining appropriate professional relationships;**
- 4. Interaction among staff and residents;**
- 5. Residents' rights, including, but not limited to, the prohibited actions provided for in 6VAC35-101-650 (prohibited actions);**
- 6. Child abuse and neglect and mandatory reporting as provided for in 6VAC35-101-80 (serious incident reports) and 6VAC35-101-90 (suspected child abuse or neglect); and**
- 7. Behavior intervention procedures.**

Audit Finding(s):

Two of five direct care staff training records indicated staff had not received at least 40 hours of annual training for calendar year 2017.

Three of five direct care staff training records did not have documentation that they had received annual retraining on "standard precautions" in calendar year 2017.

Two of five direct care staff training records did not have documentation that they had received annual retraining on "maintaining appropriate professional relationships" and "interaction among staff and residents" in calendar year 2017.

Program Response

Cause:

The program did not adequately track the training progress of staff for all trainings. Some staff lacking required training were on light duty for extended periods of time (up to an entire calendar year) and were unable to take part in some required training.

Effect on Program:

The result was that some staff on extended light duty were not properly updated on their mandatory trainings as required. The program did not meet the VA Department of Juvenile Justice training regulations for these staff. This caused the program to be out of compliance with DJJ standards.

Planned Corrective Action:

A specific staff member has been identified to track compliance with all DJJ training requirements to ensure completion by all personnel. A system to track completion of required training has been implemented effective October 1, 2018.

Completion Date:

This tracking system was created on October 1, 2018.

Person Responsible:

Tommie Clark, Assistant Superintendent.

Current Status on December 17, 2018: Not Determined

No training records could be reviewed due to Norfolk Juvenile Detention Center annual training period not ending until December 31, 2018.

6VAC35-101-820 (A). Mental health screening. CRITICAL

A. Each resident shall undergo a mental health screening, as required by § 16.1-248.2 of the Code of Virginia, administered by trained staff, to ascertain the resident's suicide risk level and need for a mental health assessment. Such screening shall include the following:

1. A preliminary mental health screening, at the time of admission, consisting of a structured interview and observation as provided in facility procedures; and
2. The administration of an objective mental health screening instrument within 48 hours of admission.

Audit Finding:

Three of 14 medical files were missing portions of documentation from the objective mental "health screening instrument" (MAYSI) that was conducted at admissions.

Program Response

Cause:

Staff had not been consistently placing the completed MAYSI forms into the resident files.

Effect on Program:

Failure to ensure that completed, signed documentation was included in all resident files. Independent verification of completed files to include inclusion of MAYSI forms and other critical documents was hampered.

Planned Corrective Action:

Primary Intake staff have been retrained on how to successfully complete that portion of the Intake process. All Intake staff will be retrained by October 10, 2018. A team of staff tasked with conducting regular "audits" of files submitted each week has been established.

Completion Date:

October 10, 2018.

Person Responsible:

Tommie Clark, Assistant Superintendent

Current Status on December 17, 2018: Compliant

Ten of ten resident files reviewed included all portions of the mental "health screening instrument" (MAYSI) that was conducted at admission.

6VAC35-101-990 (A). Tuberculosis screening. CRITICAL

A. Within five days of admission to the facility each resident shall have had a screening assessment for tuberculosis. The screening assessment can be no older than 30 days.

Audit Finding:

Three of 14 tuberculosis-screening assessments reviewed either were missing the date of the screening or had the wrong date.

Program Response

Cause:

The cause of this discrepancy was lack of attention to detail and the lack of an adequate quality assurance assessment. For over two years, NJDC has functioned without fulltime permanent nursing staff. Reliance on staff from a temporary staffing agency contributed to this situation.

Effect on Program:

While this discrepancy caused the program to be out of compliance with DJJ standards, it had little effect on the overall operation of the program as the assessments were completed, however dated incorrectly.

Planned Corrective Action:

A fulltime permanent Registered Nurse has been hired and we anticipate hiring a fulltime License Practical Nurse within the next 30 to 60 days. An Assistant Superintendent has been assigned to be responsible for conducting regular quality assurance assessment of all medical files.

Completion Date:

October 1, 2018.

Person Responsible:

Jacqueline Conley-Smith, Assistant Superintendent,
Christie Thaxton, RN

Current Status on December 17, 2018: Compliant

Ten of ten medical files reviewed had a screening assessment for tuberculosis which were either completed within five days of admission to the facility or were no older than 30 days.

6VAC35-101-1060 (E). Medication. CRITICAL

E. A program of medication, including procedures regarding the use of over-the-counter medication pursuant to written or verbal orders issued by personnel authorized by law to give such orders, shall be initiated for a resident only when prescribed in writing by a person authorized by law to prescribe medication.

Audit Finding:

Two of six Medication Administration Records (MAR) had documentation that the residents were administered Tylenol 500mg (2 tablets) instead of Tylenol 325mg (2 tablets) as indicated in the facility standing orders.

Program Response

Cause:

An order for Tylenol was received and the mg amount was 500mg versus 325mg. We have since ordered and received the 325mg tablets and they are back in use.

Effect on Program:

Resident was provided 500mg Tylenol versus 325mg Tylenol.

Planned Corrective Action:

All 500mg Tylenol was removed from the clinic and will only be used when an order is written by the medical authority.

Completion Date:

On September 25, 2018, all 500 mg Tylenol was removed from the clinic. On October 2, 2018, NJDC RN Christie Thaxton received and placed in inventory 325mg Tylenol.

Person Responsible:

Jacqueline Conley-Smith, Assistant Superintendent,
Christie Thaxton, RN

Current Status on December 17, 2018: Compliant

One applicable medical file reviewed had documentation that the resident was administered the proper over the counter medication and dosage pursuant to a written order.

6VAC35-101-1060 (H). Medication. CRITICAL

H. In the event of a medication incident or an adverse drug reaction, first aid shall be

administered if indicated. Staff shall promptly contact a poison control center, pharmacist, nurse, or physician and shall take actions as directed. If the situation is not addressed in standing orders, the attending physician shall be notified as soon as possible and the actions taken by staff shall be documented. A medication incident shall mean an error made in administering a medication to a resident including the following: (i) a resident is given incorrect medication; (ii) medication is administered to the incorrect resident; (iii) an incorrect dosage is administered; (iv) medication is administered at a wrong time or not at all; and (v) the medication is administered through an improper method. A medication error does not include a resident's refusal of appropriately offered medication.

Audit Finding:

One of five medical files reviewed did not have documentation for the following medication incidents that occurred during the resident's detainment:

- Quetiapine (Seroquel) 300mg was administered twice instead of once each night from 8/16-21/18.
- Quetiapine 100mg was administered instead of the prescribed Quetiapine 300mg on 1/31/18.

Program Response

Cause:

Confusion by staff with respect to how the MAR form was completed.

Effect on Program:

While this discrepancy caused the program to be out of compliance with DJJ standards, it had little to no effect on the program. According to the staff who initialed the MAR and dispensed the medication, the resident was never given two 300mg doses of Seroquel during the prescribed time period.

Planned Corrective Action:

A fulltime permanent Registered Nurse has been hired and we anticipate hiring a full-time License Practical Nurse within the next 30 to 60 days. Until that time, an Assistant Superintendent will be responsible for conducting a regular quality assurance assessment of all medical files. The RN Supervisor will check all MARs for accuracy and correctness daily.

Completion Date:

October 1, 2018

Person Responsible:

Jacqueline Conley-Smith, Assistant Superintendent,
Christie Thaxton, RN

Current Status on December 17, 2018: Not Determined

No medication incident reports were available since Norfolk Juvenile Detention Center had no medication incidents since the last audit on September 25, 2018.

6VAC35-101-1060 (J). Medication. CRITICAL

J. Medication refusals shall be documented including action taken by staff. The facility shall follow procedures for managing such refusals which shall address:

- 1. Manner by which medication refusals are documented; and**
- 2. Physician follow-up, as appropriate.**

Audit Finding:

One of two medical files reviewed did not have refusal forms completed in accordance with the facility procedure for the dates of 9/1-7/18 and 9/12-13/18.

Program Response

Cause:

The Registered Nurse provided by a temporary staffing agency documented that she spoke with the legal guardian and the guardian agreed to retrieve medication from NJDC because the resident refused to take his prescribed medication. The legal guardian confirmed that the resident would not take his medication before confinement. Ultimately, the legal guardian never came to retrieve the medication. The medication should have been offered as prescribed and the refusal forms should have been prepared documenting the refusal the days the medication was still in our possession.

Effect on Program:

This discrepancy caused the program to be out of compliance with DJJ standards. It had little to no effect on the program.

Planned Corrective Action:

In all cases where we are in receipt of authorized medication, that medication will be dispensed as prescribed. Refusal forms will be documented in each instance where residents refuse to take prescribed medication.

Completion Date:

September 25, 2018.

Person Responsible:

Jacqueline Conley-Smith, Assistant Superintendent and
Christie Thaxton, RN

Current Status on December 17, 2018: Compliant

One applicable medical file reviewed had refusal forms completed in accordance with the facility procedure which included action taken by staff.

**CERTIFICATION AUDIT REPORT
TO THE
DEPARTMENT OF JUVENILE JUSTICE**

PROGRAM AUDITED:

Roanoke Valley Juvenile Detention Center
498 Coyner Springs Road
Roanoke, Virginia 24012
(540) 561-3840
Alan Hullette, Superintendent
ahullette@rvjdc.org

AUDIT DATES:

October 1-2, 2018

CERTIFICATION ANALYST:

Mark Ivey Lewis

CURRENT TERM OF CERTIFICATION:

February 11, 2016 – February 10, 2019

REGULATIONS AUDITED:

6VAC35-101 Regulation Governing Juvenile Detention Centers

PREVIOUS AUDIT FINDINGS October 5-6, 2015:

6VAC35-101-1060 (F) Medication
6VAC35-101-1060 (I) Medication CRITICAL

CURRENT AUDIT FINDINGS – October 1-2, 2018:

99.436% Compliance Rating
No repeated deficiencies from the previous audit.
6VAC35-101-1030 (B). Residents' health care records.
6VAC35-101-1060 (E). Medication. CRITICAL

DEPARTMENT CERTIFICATION ACTION January 28, 2019: Certified Roanoke Valley Juvenile Detention Center until February 10, 2022.

Pursuant to 6VAC35-20-100C.2, if the certification audit finds the program or facility in less than 100% compliance with all regulatory requirements and a subsequent status report, completed prior to the certification action, finds 100% compliance on all regulatory requirements, the director or designee shall certify the facility for a specific period of time, up to three years.

TEAM MEMBERS:

Mark Ivey Lewis, Team Leader
Clarice Booker, Central Office
Shelia Palmer, Central Office
Deborah Hayes, Central Office
John Adams, Central Office
Michelle Johnson, WW Moore Juvenile Detention Center
Neil Bramlette, Highland Juvenile Detention Center
Dee Wiggins, Chesterfield Juvenile Detention Center
Cindy Hauschildt, New River Valley Juvenile Detention Center
Spring Johnson, Piedmont Juvenile Detention Center

POPULATION SERVED:

Roanoke Valley Juvenile Detention Center is an 81-bed facility that houses juveniles between the age of 7 and 18. The juveniles come from both urban and rural environments and are from varied

socioeconomic backgrounds. The juveniles are typically behind in their academic studies and many suffer from medical, emotional, psychological and psychiatric conditions. The Roanoke Valley Juvenile Detention Center, which is operated by the Roanoke Valley Detention Center Commission, serves primarily the counties of Botetourt, Franklin, and Roanoke and the cities of Roanoke and Salem.

PROGRAMS AND SERVICES PROVIDED:

The Center, owned and operated by the City of Roanoke since the early 1920's, has experienced several transition periods that have helped shape its program today. In earlier years, the then called "Detention Home" primarily provided custodial care for children and youth that needed modest supervision and provided little security or public safety for area residents. Children were admitted to the program for minor delinquent acts or admitted due their need of supervision; e.g. truancy, runaways, petty theft, etc. Workers provided supervision and instruction in life skills, hygiene, tutoring, and the like, all without need of locked doors and sophisticated security.

Today, the Center is considered a technologically advanced facility that provides high levels of security in a very sterile appearing environment. The Center's program consists of diverse offerings designed to enhance or facilitate rehabilitative efforts of the residents. The daily schedule is regimented and strict. Childcare staff provide instruction as well as security. Less stable furnishings have been replaced by substantially more sound stainless steel and hard plastic.

The mission of the Roanoke Valley Juvenile Detention Center is to provide secure custody and care of juveniles in a safe healthy environment, giving supervision, guidance, and counseling while protecting the community and beginning the rehabilitative process by promoting personal responsibility, social accountability, and emotional growth."

Services provided include the following:

- Direct:
 - Mediation services provided by certified mediator
 - Education services provided by qualified teaching staff and administrator
 - Psycho-educational groups on independent living skills, substance abuse education, AIDS and sexually transmitted diseases, victim sensitivity, self-esteem, parenting, decision making, anger management, and more
 - Medical services are provided in house through a contracting physician and RVJDC's medical staff
 - Mental health screening is conducted by trained admissions staff and referrals are made based on need
 - Crisis intervention and counseling services
 - Video court
 - Violence prevention programs by specially trained staff
- Services accessed in the community:
 - Enrichment activities and programs—Various professional and community groups
 - Religious programs—Various local church groups
 - AIDS and sexually transmitted disease—Planned Parenthood
 - Parenting skills—Planned Parenthood
 - Dental Care—Virginia Department of Health
 - Medical Care—Carillion Healthcare.

**CORRECTIVE ACTION PLAN
TO THE
DEPARTMENT OF JUVENILE JUSTICE**

FACILITY/PROGRAM: Roanoke Valley Juvenile Detention Center
SUBMITTED BY: Alan Hullette, Superintendent
CERTIFICATION AUDIT DATES: October 1-2, 2018
CERTIFICATION ANALYST: Mark Ivey Lewis

Under Planned Corrective Action indicate; 1) The cause of the identified area of non-compliance. 2) The effect on the program. 3) Action that has been taken/will be taken to correct the standard cited. 4) Action that will be taken to ensure that the problem does not recur.

6VAC35-101-1030 (B). Residents' health care records.

B. Each physical examination report shall include:

- 1. Information necessary to determine the health and immunization needs of the resident, including:**
 - a. Immunizations administered at the time of the exam;**
 - b. Vision exam;**
 - c. Hearing exam;**
 - d. General physical condition, including documentation of apparent freedom from communicable disease, including tuberculosis;**
 - e. Allergies, chronic conditions, and handicaps, if any;**
 - f. Nutritional requirements, including special diets, if any;**
 - g. Restrictions on physical activities, if any; and**
 - h. Recommendations for further treatment, immunizations, and other examinations indicated.**
- 2. Date of the physical examination; and**
- 3. Signature of a licensed physician, the physician's designee, or an official of a local health department.**

Audit Finding:

Eleven of 15 physical examinations reviewed did not document the general physical condition and/or the apparent freedom from communicable disease, including tuberculosis.

Program Response

Cause:

Upon completion of the physical exam by Dr. Bertholf and checking all general physical conditions, if nothing was required, the "general physical condition" line was left blank.

Effect on Program:

No resident was exempt from the physical examination by Dr. Bertholf and all physical complaints were examined thoroughly. The lack of accurately filling out the form was a simple oversight by

our licensed physician since there were no pending physical concerns.

Planned Corrective Action:

All blanks on the physical examination form will be completed. This will be completed by our licensed physician, checked by his nurse and RVJDC's Medical Supervisor for accuracy.

Completion Date:

October 7, 2018

Person Responsible:

Bryan Henry, Program Administrator

Current Status on December 18, 2018: Compliant

Ten of ten applicable physical examinations reviewed had addressed the general physical condition, including documentation of apparent freedom from communicable disease and tuberculosis.

6VAC35-101-1060 (E). Medication. CRITICAL

E. A program of medication, including procedures regarding the use of over-the-counter medication pursuant to written or verbal orders issued by personnel authorized by law to give such orders, shall be initiated for a resident only when prescribed in writing by a person authorized by law to prescribe medication.

Audit Finding:

Seven of 10 Medication Administration Records (MAR) had documentation that residents were administered Ibuprofen 200mg (2 tablets) for headaches instead of Acetaminophen (Tylenol) 325mg as indicated in the facility standing orders.

One of 10 Medication Administration Records (MAR) had documentation that a resident was administered Miracle Cream for jock itch instead of Lamisil 1% as indicated in the facility standing orders.

Program Response

Cause:

In regard to the first finding; during medication agent training, the medication agents were trained that Ibuprofen was the best medicine to give for a headache so long as the recipient was not allergic. Regarding the second finding, the on-duty Medication Agent contacted our physician for direction regarding treatment for jock itch. The physician verbally ordered Miracle Cream for the resident's treatment. During the next clinic day, the physician failed to write the order for the issuance of Miracle Cream.

Effect on Program:

No resident suffered any adverse side effects related to receiving Ibuprofen instead of Acetaminophen. The resident receiving Miracle Cream did not suffer any adverse side effects due to the treatment.

Planned Corrective Action:

Effective immediately, the physician has written four addendums to our current standing orders

outlining the use of Ibuprofen and Acetaminophen specifically for the treatment of aches and pains, headaches, fever, and sprains or strains. Regarding the use of Miracle Cream the physician will make sure a written order is issued for its use.

Completion Date:

October 3, 2018

Person Responsible:

Bryan Henry, Program Administrator

Current Status on December 18, 2018: Compliant

Two of two applicable medical files reviewed had documentation that the resident was administered the proper over the counter medication and dosage pursuant to a written order.

**CERTIFICATION AUDIT REPORT
TO THE
DEPARTMENT OF JUVENILE JUSTICE**

PROGRAM AUDITED:

Tidewater Youth Services Apartment Living Program
714 20th Street
Virginia Beach, Virginia 23451
(757) 965-4551
William Wimbish, Director
Wwimbish@tyscommission.org

AUDIT DATES:

August 6, 2018

CERTIFICATION ANALYST:

Mark Ivey Lewis

CURRENT TERM OF CERTIFICATION:

July 20, 2016 – January 21, 2019

REGULATIONS AUDITED:

6VAC35-41 Regulation Governing Juvenile Group Homes and Halfway Houses

PREVIOUS AUDIT FINDINGS – May 9-10, 2016:

6VAC35-41-850 (B) – Daily log
6VAC35-41-870 (C) – Quarterly reports
6VAC35-41-970 (C) - Independent living programs curriculum and assessment
6VAC35-41-1280 (F) – Medication
6VAC35-41-1280 (H) – Medication CRITICAL

CURRENT AUDIT FINDINGS – August 6, 2018:

99.637% Compliance Rating
6VAC35-41-1210 (A). Tuberculosis screening. CRITICAL

DEPARTMENT CERTIFICATION ACTION January 28, 2019: Certified Tidewater Youth Services Apartment Living Program until January 21, 2022.

Pursuant to 6VAC35-20-100C.2, if the certification audit finds the program or facility in less than 100% compliance with all regulatory requirements and a subsequent status report, completed prior to the certification action, finds 100% compliance on all regulatory requirements, the director or designee shall certify the facility for a specific period of time, up to three years.

TEAM MEMBERS:

Mark Ivey Lewis, Team Leader
Clarice Booker, Central Office
Shelia Palmer, Central Office
Deborah Hayes, Central Office
Kristin Peterson, Central Office
Nina Joyner, Central Office
Delma Wilson-Baldwin, Chesapeake JDC
Michelle Justiniano, York County
John Adams, Central Office

POPULATION SERVED:

The Apartment Living Program is an eight-bed facility for males being released from Direct Care

placement or who are on parole supervision between the ages of 17.5 and 21. The program provides a supervised apartment setting 24 hours a day, individualized case planning, vocational training, a complete array of independent living training/experiences, support with educational opportunities, employment opportunities and family engagement.

The Apartment Living Program consists of five two-bedroom apartments at South Beach Villa Apartments located on 714 20th Street, Apt# 101(Staff Office), 712 20th Street, Apt #101, 102, 201, 202, VA Beach VA, 23451. Each apartment has two bedrooms, a living area, a dining area, and a kitchen and bathroom. Each apartment is fully furnished. Security cameras are located in hallways of the building as well as in the front and back of the building. The apartments are located in close proximity to public transportation, schools, libraries, police department, hospitals, etc.

PROGRAMS AND SERVICES PROVIDED:

The Apartment Living Program provides the following services to the residents:

Direct:

- Individual Counseling
 - Individualized Service Plans
 - Assessments
 - Independent Living Workshop Groups
 - Educational Placement Support
 - Vocational/Employment Placement Support
 - Money Management
 - 24-hour Supervision/Case Management
 - Aggression Replacement Training (ART)
 - Recreational Opportunities
 - Family Engagement/Involvement Groups (if applicable)
 - Comprehensive Discharge Planning
-
- Community:
 - Virginia Employment Commission
 - Workforce Development Sites (One-Stop)
 - Narcotic Anonymous/Alcoholic Anonymous Locations
 - Local Libraries
 - City Recreational Centers
 - Community Service Board (CSB)
 - Human Services
 - Virginia Beach Health Clinic
 - Adult Learning Center

**CORRECTIVE ACTION PLAN
TO THE
DEPARTMENT OF JUVENILE JUSTICE**

FACILITY/PROGRAM: Apartment Living Program
SUBMITTED BY: William Wimbish, Director
CERTIFICATION AUDIT DATES: August 6, 2018
CERTIFICATION ANALYST: Mark Ivey Lewis

Under Planned Corrective Action indicate; 1) The cause of the identified area of non-compliance. 2) The effect on the program. 3) Action that has been taken/will be taken to correct the standard cited. 4) Action that will be taken to ensure that the problem does not recur.

6VAC35-41-1210 (A). Tuberculosis screening. CRITICAL

A. Within seven days of placement each resident shall have had a screening assessment for tuberculosis. The screening assessment can be no older than 30 days.

Audit Finding:

Three of five screening assessments for tuberculosis were not completed within the required time frame:

- Resident 1 Admitted 9/8/17 Screening 1/12/17
- Resident 2 Admitted 1/23/17 Screening 10/25/16
- Resident 3 Admitted 1/24/18 Screening 6/29/17

Program Response

Cause:

All of the residents mentioned above entered ALP directly from direct care with evidence of negative Tuberculosis screening results. Staff was of the belief that another screening was not necessary since the residents transferred directly from one state-licensed facility to another.

Effect on Program:

ALP received a critical non-compliance of this regulation.

Planned Corrective Action:

ALP is currently in discussion with DJJ as to how to ensure the medical needs of the residents are met per our memorandum of agreement. In the meantime, residents will not be admitted until the appropriate information or documentation has been provided. New referrals will be denied admittance to the program if we are not provided with the necessary information or documentation. If ALP has the ability to ensure a screening/assessment for tuberculosis within seven days of placement that will be coordinated with the referral sources.

Completion Date:

8/30/2018

Person Responsible:

Director William Wimbish

Current Status on November 26, 2018: Compliant

Six of six medical records reviewed had a screening assessment for tuberculosis, which was completed within the required time frame.

**DEPARTMENT OF JUVENILE JUSTICE
REGULATORY UPDATE**

May 6, 2019

CURRENT ACTIONS:

6VAC35-71 Regulation Governing Juvenile Correctional Centers

Stage: Proposed (Standard Regulatory Process).

Status: This regulation became effective on January 1, 2014. This action involves a comprehensive review of the regulatory requirements. The Notice of Intended Regulatory Action (NOIRA) was published in the *Virginia Register* on October 3, 2016. At the NOIRA stage, no public comments were submitted. The Proposed regulation has been approved by the Department of Planning and Budget (DPB) and the Secretary of Public Safety and Homeland Security (SPSHS) as part of the Executive Branch review process. The regulation is currently under review by the Governor.

Next step: Once the Governor reviews and approves the Proposed Action and the Executive Branch review is complete, the Proposed regulation will be published in the *Virginia Register*, followed by a 60-day public comment period.

**6VAC35-101-45 Regulation Governing Juvenile Secure Detention Centers,
Contracts between juvenile detention centers and separate entities**

Stage: (Fast-Track Process).

Status: This is a new provision proposed for addition to the Regulation Governing Juvenile Secure Detention Centers, which became effective on January 1, 2014. This is a standalone action apart from the comprehensive review of the regulatory requirements in Chapter 101. The fast-track action has been certified by the Attorney General's Office and has undergone review by DPB and the SPSHS. The regulation is currently under Governor's office review.

Next step: Once the Governor reviews and approves the fast-track action, the Department will submit the action to the appropriate House and Senate committees and the Joint Commission on Administrative Rulemaking. Additionally, the Department will have 14 days to submit the action to the *Virginia Register*.

CHAPTERS UNDER PERIODIC REVIEW:

6VAC35-11 Public Participation Guidelines

Status: This regulation was last reviewed on June 26, 2015. Notice of a new Periodic Review was published in the *Virginia Register* on December 24, 2018, triggering a 30-day public comment period, which ended on January 22, 2019. The Periodic Review Report is due on May 22, 2019.

**6VAC35-20 Regulation Governing the Monitoring, Approval, and Certification of Juvenile Justice
Programs and Facilities**

Status: This regulation was last reviewed and updated effective September 25, 2013. Notice of a new Periodic Review was published in the *Virginia Register* on December 10, 2018,

triggering a 30-day public comment period, which ended on January 8, 2019. The Periodic Review Report is due on May 8, 2019.

6VAC35-30 Regulation Governing State Reimbursement of Local Juvenile Residential Facility Costs

Status: This regulation was last reviewed and updated effective July 1, 2011. Notice of a new Periodic Review was published in the *Virginia Register* on November 12, 2018, triggering a 30-day public comment period, which ended on December 12, 2018. The Periodic Review Report is due on April 11, 2019.

6VAC35-60 Minimum Standards for Virginia Delinquency Prevention and Youth Development Act Grant Programs

Status: This regulation was last reviewed and updated effective October 1, 2011. Notice of a new Periodic Review was published in the *Virginia Register* on November 12, 2018, triggering a 30-day public comment period, which ended on December 12, 2018. The Periodic Review Report is due on April 11, 2019.

6VAC35-190 Regulations Governing Juvenile Work and Educational Release Programs

Status: This regulation was last reviewed on June 26, 2015. Notice of a new Periodic Review was published in the *Virginia Register* on December 24, 2018, triggering a 30-day public comment period, which ended on January 22, 2019. The Periodic Review Report is due on May 22, 2019.

CHAPTERS WITH COMPLETED PERIODIC REVIEW REPORTS:

6VAC35-150 Regulation for Nonresidential Services

Status: This regulation became effective July 1, 2011. Notice of the Periodic Review was published in the *Virginia Register* on October 29, 2018, triggering a 30-day public comment period, which ended on November 28, 2018. The Periodic Review Report containing a recommendation to amend the regulation was published on the Virginia Regulatory Town Hall on March 27, 2019.

6VAC35-180 Regulations Governing Mental Health Services Transition Plans for Incarcerated Juveniles

Status: This regulation became effective January 1, 2008. Notice of the Periodic Review was published in the *Virginia Register* on October 29, 2018, triggering a 30-day public comment period, which ended on November 28, 2018. The Periodic Review Report, containing a recommendation to amend the regulation, was posted on the Virginia Regulatory Town Hall on March 27, 2019.



COMMONWEALTH OF VIRGINIA
Department of Juvenile Justice

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TO: State Board of Juvenile Justice

FROM: Virginia Department of Juvenile Justice

SUBJECT: Request Authorization to Proceed with Recommendations to Amend Several Regulatory Chapters Pursuant to the Periodic Review Process; Request Authorization to Amend 6VAC35-11 Pursuant to the Fast-Track Process

DATE May 6, 2019

I. SUMMARY OF ACTION REQUESTED

The Department of Juvenile Justice (the department) respectfully requests authorization from the State Board of Juvenile Justice (the board) to proceed with completing the reports mandated as part of the periodic review process pursuant to § 2.2-4007.1 of the Code of Virginia. The reports will include a general recommendation to amend several regulatory chapters currently under the periodic review process. The regulatory chapters include:

- Regulation Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs and Facilities (6VAC35-20);
- Regulations Governing Juvenile Work and Educational Release Programs (6VAC35-190); and
- Public Participation Guidelines (6VAC35-11).

Consistent with the recommendations that the department proposes to include in its Periodic Review Report, the department also respectfully requests authorization from the board to proceed with amending the Public Participation Guidelines captioned above to reflect the changes described in this memorandum. The department proposes to amend this chapter through the fast-track regulatory process, as described in Code of Virginia § 2.2-4012.1.

II. BACKGROUND

Pursuant to Code of Virginia § 2.2-4007.1, state agencies must conduct a periodic review of their regulations every four years to determine whether the regulatory provisions included under each chapter should be retained, amended, or repealed. Before an agency may begin its periodic review process, the agency must publish notice of the regulatory review in the Virginia Register of Regulations and post notice of the review on the Town Hall. The agency must allow for a minimum 21-day public comment period, after which, the agency has 120 days to post a report on its findings as to whether to retain, repeal, or amend the regulation chapter.

As part of the regulatory review, state agencies must consider the following:

- The continued need for the rule;

- The nature of complaints or comments received from the general public regarding the regulation;
- The complexity of the regulation;
- The extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and
- The length of time since the agency last evaluated the regulation or the extent to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

Currently, the four-year deadline for review either has lapsed or is approaching for several of the department's existing regulatory chapters. The department's recommendations for retaining, amending, or repealing the chapter will come due for three regulations before the board's next meeting in June. The department is seeking the board's approval to proceed with completing the report and including a recommendation to amend each regulatory chapter, as discussed below. In addition, the department is requesting the board's authorization to proceed with one amendment to the Public Participation Guidelines (6VAC35-11) through the fast-track regulatory process.

III. RECOMMENDATIONS AND RATIONALE

Regulation Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs and Facilities (6VAC35-20):

Recommendation: Amend

Report due date: May 8, 2019

This chapter, last reviewed and updated in 2013, establishes the process by which the department and the board monitor compliance with the regulatory provisions applicable to locally and state-operated residential facilities, court service units, and nonresidential programs and services in the department's juvenile justice system. Among its provisions, it sets out a process for measuring compliance with regulations and determining whether and for what duration an applicable facility, court service unit, or program should be certified. Although there is no statutory mandate specifically requiring the board to issue regulations governing the regulatory process, the department believes that having such a regulation in place is essential for protecting the safety of juveniles residing in these facilities, under the jurisdiction of these court service units, or participating in these programs. These regulations are essential to ensure that facilities, programs, and services are operating within the confines of other board regulations. The regulations have been in place since 1992. For these reasons, the department cannot recommend repealing this chapter.

Nor does the department recommend retaining the chapter as currently written. The existing regulations contain provisions that are impacted by other board-issued regulations currently under review, which likely will require updating to reflect these changes. Retaining the regulations as is would fail to account for these changes. Furthermore, it incorporates provisions that may violate the Virginia Code Commission's 2016 regulations governing the development of regulations. Therefore, the department recommends amending the regulation.

The department did not receive any public comments regarding this regulation.

Regulations Governing Juvenile Work and Educational Release Programs (6VAC35-190)

Recommendation: Amend

Report due date: May 22, 2019

This chapter establishes rules for work release, educational release, and rehabilitation release programs for juveniles committed to the department. The regulations and governing statutes seek to provide committed residents with job training opportunities with the goal of preparing the resident for successful transition to the community.

The regulation establishes eligibility criteria and conditions necessary for participation in work release, educational release, and rehabilitation release programs. Additionally, the regulations address the disbursement of earnings, present options for furloughs, and provide a process for removing residents from these programs.

There are several statutes that authorize, and in some cases require, the board to promulgate regulations applicable to work release programs. Code of Virginia § 66-25.1 authorizes the director or his designee to contract with public or private entities for the operation of a work program focusing primarily on training for DJJ-committed youth. Under this statute, the board must promulgate regulations governing the form and review process for these agreements. § 66-25.1:3 of the Code of Virginia gives the director the authority to establish work release programs subject to such rules and regulations as the board may prescribe. Additionally, the statute requires the director to make deductions from wages earned in juvenile work release programs based on a statutorily-established order of priority and in accordance with regulations promulgated by the board. § 66-25.1:4 authorizes the director, subject to rules and regulations prescribed by the board, to allow DJJ-committed youth participating in work release programs furloughs for home and family visits for up to three days. These regulations supplement the statute and are necessary to ensure the safety and protection of committed juveniles and the general public while such juveniles are participating in these programs. Therefore, the department cannot recommend repealing these provisions.

The department last reviewed this regulation on June 26, 2015 and recommended that the regulation be retained as it existed. At the time, the department had just begun implementing the Community Treatment Model (CTM) and was in the process of amending its Length of Stay (LOS) Guidelines. In its documentation supporting the retention of the regulation as is, the department acknowledged the possibility that these operational and procedural changes might necessitate additional amendments to the Work Release Regulations at a future date. Since that time, the department fully implemented the CTM in its juvenile correctional centers and adopted significant changes to the board's LOS guidelines. As the department predicted in 2015, these changes render obsolete certain terminology and concepts referenced in this chapter.

A number of changes to other regulatory chapters also impact this regulation. For example, the regulation contains cross references to other chapters that have since been repealed. Additionally, it incorporates provisions that may violate the Code Commission's 2016 regulations governing the development of regulations. The department believes that amending this chapter is the most effective means of resolving these concerns.

The department did not receive any public comments regarding this regulation.

IV. ACTIONS FOLLOWING BOARD APPROVAL OF RECOMMENDATIONS IN PART III

Contingent upon the board's approval of the recommendations contained in Part III of this memorandum, the department will complete a separate report that contains recommendations to amend Chapters 20 and 190 of the board's regulations. The department is not making any recommendations as to the content of these amendments at this time. Recommendations regarding proposed amendments will be made to the board according to the department's existing process for regulatory actions. Once the department has included a recommendation in a periodic review to amend a regulation chapter, there is no deadline specified for amending the regulation.

V. PERIODIC REVIEW RECOMMENDATION FOR PUBLIC PARTICIPATION GUIDELINES, RATIONALE, AND REQUEST TO ADVANCE AS FAST-TRACK REGULATORY ACTION

Periodic Review Report – Recommendation Public Participation Guidelines (6VAC35-11)

Recommendation: Amend

Report due date: May 22, 2019

This chapter provides specific rules the department must follow to facilitate and ensure public involvement in the regulatory process. The regulation sets out methods for identifying, notifying, and seeking input from interested parties, rules for using standing or ad hoc advisory panels, and measures to consult with groups wishing to be involved in the development or amendment of a regulation. These regulations are mandatory in accordance with § 2.2-4007.02 of the Code of Virginia, which requires all non-exempt agencies to promulgate public participation guidelines. Therefore, the department cannot recommend repealing these provisions.

The department last reviewed and updated this regulation on June 26, 2015 and recommended retaining the regulation as it existed at that time. In its 2015 review, the department failed to consider legislation enacted in 2012 (2012 Acts of Assembly, Chapter 795) that allows interested parties to be accompanied and represented by counsel or other representatives. The Department of Planning and Budget ("DPB") has recommended that all state agencies include this provision in their Public Participation Guidelines. Furthermore, in the Model Guidelines state agencies may use to develop these regulations, DPB has included a provision to this effect.

The department received no public complaints or comments regarding this chapter.

Proposal – Fast Track Action

The department recommends amending the regulation to incorporate the provision enacted by the General Assembly in 2012. With the exception of this omission, this chapter very closely mirrors DPB's Model Public Participation Guidelines and does not require additional amendment. Therefore, it is not necessary to convene stakeholders to conduct a more comprehensive review of the regulation. To accelerate the process, the department is proposing to submit this regulatory action through the fast-track regulatory process authorized in § 2.2-4012.1 of the Code of Virginia, which allows for an expedited regulatory process for the submission of proposed regulations anticipated to be noncontroversial. The "fast-track" process allows state agencies to circumvent the initial stage of the standard regulatory process and compresses the timeframes for executive level review of the regulatory package.

Specifically, the department is recommending the following amendment (highlighted in yellow) to subsection A of Section 50 of this chapter for advancement through the fast track process.

6VAC35-11-50. Public comment.

A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to (i) submit data, views, and arguments, either orally or in writing, to the agency, and (ii) be accompanied by and represented by counsel or other representative. Such opportunity to comment shall include an online public comment forum on the Town Hall.

1. To any requesting person, the agency shall provide copies of the statement of basis, purpose, substance, and issues, the economic impact analysis of the proposed or fast-track regulatory action; and the agency's response to public comments received.

2. The agency may begin crafting a regulatory action prior to or during any opportunities it provides to the public to submit comments...



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MEMORANDUM

TO: State Board of Juvenile Justice

FROM: Virginia Department of Juvenile Justice

SUBJECT: Request Extension of Variance Applicable to Juvenile Correctional Centers Re: Active Supervision (6VAC35-71-810)

DATE May 6, 2019

I. SUMMARY OF ACTION REQUESTED

The Department of Juvenile Justice (the department) respectfully requests the State Board of Juvenile Justice (board) to approve an extension of the variance submitted on behalf of the juvenile correctional centers (JCC) and originally approved by the board on June 11, 2014, pursuant to 6VAC35-20-92 (Variance request). The JCC seeks this extension of the variance to the noncritical regulatory requirement in subsection E of 6VAC35-71-820 (Staff supervision of residents) of the Regulation Governing Juvenile Correctional Centers. This provision addresses the active supervision requirement for residents in the department's JCCs.

II. BACKGROUND

On June 11, 2014, the board granted the juvenile correctional centers a variance to the regulatory requirements contained in **subsection E of 6VAC35-71-820**. That subsection provides:

“There shall be at least one trained **direct care staff** on duty and actively supervising residents at all times that one or more residents are present.”

For purposes of this requirement, “direct care staff” is defined in 6VAC35-71-10 as “the staff whose **primary job responsibilities** are for (i) maintaining the safety, care, and well-being of residents; (ii) implementing the structured program of care and the behavior management program; and (iii) maintaining the security of the facility. These provisions prohibited employees who did not qualify as direct care staff, including employees responsible for the direct supervision of residents such as teachers, rehabilitation counselors, and therapists, from being alone with residents outside the active supervision of direct care staff. Direct supervision is defined in 6VAC35-71-10, as “the act of working with residents who are not in the presence of direct care staff. Staff members who provide direct supervision are responsible for maintaining the safety, care, and well-being of the residents in addition to providing services or performing the primary responsibilities of that position.”

For these purposes, the department had operationalized “active supervision” to mean that direct care staff must have sight and sound supervision at a minimum of every 15 minutes.

When read together, these provisions prohibited non-security staff from being alone with residents unless they were observed periodically through the sight and sound supervision of a direct care staff. This created an impediment to the implementation and administration of the Community Treatment Model (CTM) in the juvenile correctional centers. If a therapist wanted to conduct a group session with residents on a unit and direct care staff was not available to actively supervise these sessions, for example, the group sessions could not be conducted.

The approved variance resolves these issues by allowing qualifying employees who provide direct supervision of residents essentially to “stand in the shoes” of direct care staff for purposes of complying with the supervision requirements in subsection E of 6VAC35-71-820. To guarantee the safety of the direct supervision employees and residents in these scenarios, the variance is only applicable if such employees comply with the following additional requirements:

- The staff completes the 120 hours¹ of training required by 6VAC35-71-160 (Required initial training) and the retraining requirements provided for in 6VAC35-71-170;
- The staff completes the department’s approved training for non-security staff on safety and security prior to being alone with residents outside the active supervision of direct care staff. The training must include training on the supervision and control of residents, verbal de-escalation techniques, age-appropriate defensive tactics, and crisis intervention;
- During any period where the resident is not actively supervised by direct care staff, the employee responsible for direct supervision has the ability to immediately communicate with direct care staff by two-way radio or other means; and
- The employee responsible for direct supervision checks in with a direct care staff member before and after being alone with any residents.

The board granted this variance to the JCCs in operation at that time for a period of five years or “until 6VAC35-71 is amended, whichever occurs first.” While the board approved proposed amendments to 6VAC35-71 in November 2017 that incorporate the provisions of this variance, the amendments are currently undergoing executive level review in the Proposed stage of the standard regulatory process.

III. PROPOSED VARIANCE

The proposed extension would continue to allow staff responsible for the direct supervision of residents to be responsible for “actively supervising residents,” as provided in the language below:

...E. There shall be at least one trained direct care staff on duty and one direct care staff or one staff responsible for the direct supervision of residents actively supervising residents at all times that one or more residents are present. Staff responsible for the direct supervision of residents who wish to exercise this option shall ensure that the following conditions are satisfied:

¹Pursuant to a separate variance issued in November 2014, employees responsible for the direct supervision of residents are required to complete 40 hours of initial training prior to working with residents and the remaining 80 hours before the close of their first year of employment. This variance is scheduled to expire in November 2019, but its provisions also were incorporated into the proposed regulatory action approved by the board in November 2017.

- The employee completes the 120 hours of training required by 6VAC35-71-160 (Required initial training) and the retraining requirements provided for in 6VAC35-71-170 (Retraining);
- The employee completes the department's approved training for employees who do not satisfy the definition of direct care staff, which shall include training on the supervision and control of residents, verbal de-escalation techniques, age-appropriate defensive tactics, and crisis intervention.
- During any period where the resident is not actively supervised by direct care staff, the employee has the ability to immediately communicate with direct care staff; and
- The employee checks in with direct care staff before and after meeting with any residents.

IV. RATIONALE

By acceding to the department's request to incorporate the substance of the variance into the proposed amendments to 6VAC35-71, the board already has demonstrated its approval of the provisions in this variance. This variance has been in place for five years and has remained an effective tool for administering the CTM and ensuring that important activities and services are not interrupted when direct care staff are not immediately available.

VI. DURATION OF VARIANCE

The department requests that the variance be granted and remain in effect for an additional five years or until 6VAC35-71 is amended, whichever occurs first.



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TO: State Board of Juvenile Justice

FROM: Virginia Department of Juvenile Justice

SUBJECT: Request Authorization to Submit Amendments to the Regulation Governing Juvenile Group Homes and Halfway Houses (6VAC35-41) to the Proposed Stage of the Regulatory Process

DATE May 6, 2019

I. SUMMARY OF ACTION REQUESTED

The Department of Juvenile Justice (the department) respectfully requests the State Board of Juvenile Justice (board) to authorize the submission of amendments to the Regulation Governing Juvenile Group Homes and Halfway Houses (6VAC35-41) to the Proposed stage of the regulatory process pursuant to the Administrative Process Act set forth in § 2.2-4000 et seq. of the Code of Virginia. The proposed amendments are intended to impact the 15 juvenile group homes and other nonsecure juvenile residential facilities (facilities) funded in part by the Virginia Juvenile Community Crime Control Act (VJCCCA) pursuant to Code of Virginia § 16.1-309.2 et seq.

II. BACKGROUND OF THE REVIEWS

Pursuant to § 16.1-309.9 of the Code of Virginia, the board is required to “develop, promulgate, and approve standards for the development, implementation, operation, and evaluation of the community-based programs, services, and facilities” authorized by the VJCCCA. The statute’s authority extends to the promulgation of standards governing structured residential programs and residential services for juveniles alleged delinquent, in need of services, or in need of supervision in accordance with § 16.1-309.3 of the Code of Virginia. Moreover, § 66-10 of the Code of Virginia, authorizes the board to “promulgate such regulations as may be necessary to carry out the provisions of this title and other laws of the Commonwealth.” This includes the authority to promulgate regulations governing the operation of juvenile group homes and other nonsecure juvenile residential facilities.

In June 2016, the Board authorized the submission of a Notice of Intended Regulatory Action (NOIRA) to initiate the regulatory process for a comprehensive review of this regulation. The NOIRA completed Executive Branch review in October 2016, and the notification was published in the *Virginia Register* on October 31, 2016. The public comment period, which ended on November 30, 2016, yielded no public comments.

To complete the comprehensive review and revisions to this regulation, the department convened a committee consisting of representatives from various juvenile group homes and shelter care facilities across the Commonwealth as well as representatives from the department's Policy and Planning Unit. The committee conducted an extensive review of the regulation and proposed amendments to streamline the regulation, clarify ambiguous provisions, incorporate existing variances, and impose new requirements aimed at enhancing safety and security and improving the level of services available to juveniles placed in nonsecure juvenile residential facilities.

III. DEFINITION CHANGES

The committee recommends the following substantive and format changes to Section 10 of the regulation, which defines terms used frequently throughout the regulation:

- *Rearrange definitions* – In order to comply with the Virginia Register of Regulations' Style Manual, move the following definitions embedded in other sections of this regulation into Section 10 (definitions): aversive stimuli (§ 560—*minor style edits*); behavior management (§ 1290—*minor style edits*); emergency admission (§ 780); health care record (§ 1150—*minor style edits*); health care services (§ 1150—*minor style edits*); health-trained personnel (§ 1150); human research (§ 140); independent living program (§ 960); legal mail (§ 570—*minor style edits*); medication incident (§ 1280); physical restraint (§1320); rest day (§ 920) timeout (§ 1310); volunteer or intern (§ 270—*minor style edits*); vulnerable population (§ 565); and weapon (§ 540—*minor style edits*). Substantive changes are being proposed to definitions as summarized below:
 - Emergency admission: Amend to remove the exclusions for self-admission to shelter care facilities or court-ordered placements.
 - Health-trained personnel: Amend to replace reference to “sick call,” a term not defined or used elsewhere in the regulation, with “outside medical visits.”
 - Human research: Amend to mirror revised Chapter 170, Regulation Governing Minimum Standards for Juvenile Information Requests from and Research Involving Human Subjects.
 - Independent living program: Amend to reflect the current practice, as authorized by the certification regulations, that the director approve these programs for operation.
 - Medication incident: Amend to exclude explicitly from this definition a facility's failure to administer medication due to repeated unsuccessful attempts to obtain medication.
 - Vulnerable population: Move the list of examples of factors that may indicate a resident is “vulnerable” to Section 565, which addresses vulnerable populations in detail.
- *Add definitions*—In order to provide additional clarity, add definitions for the following terms that are used regularly throughout this chapter but are not defined:
 - Contractor: Restrict the definition to individuals with legal agreements with nonsecure juvenile residential facilities who work with the resident more than twice per month and will be alone with the resident in performing their duties.
 - Grievance: Add a definition covering communications by residents to report wrongs or other causes for complaint.
 - Legally authorized representative: Add a definition that mirrors the definition for “legally authorized representative” contained in Code of Virginia § 32.1-162.16.
 - Planned admission: Replace the term “routine admission” with this term.

- Tuberculosis risk assessment: Add a definition to explain the assessment used to determine whether a person requires a tuberculosis screening. See Sections 165 and 1210.
 - Tuberculosis screening: Add a definition to describe the various tests used to determine whether tuberculosis bacteria are present in an individual’s body. See Sections 165 and 1210.
 - Wilderness program: Add a definition that distinguishes between formal residential programs offered through experiential wilderness expeditions and programs that occasionally take residents on such activities.
- *Amend definitions*—In order to provide additional clarity, make minor substantive revisions to the following definitions:
 - Facility administrator: Amend to include as part of the definition, an individual designated by the facility administrator to carry out the responsibilities included in this definition. All references to facility administrator throughout this regulation include his or her designee.
 - Group home: Amend to replace the regulatory authority with the director as the individual authorized to approve group home capacity and to remove the qualifier that certain group homes must house residents in transition from a DJJ commitment.
 - Juvenile residential facility: Amend to clarify that these are nonsecure facilities, and add independent living programs to the list of facilities that fall under this definition.
 - Routine admission: Replace this term with “planned admission.”

All other definitions are retained or subject to minor, nonsubstantive amendments.

V. SUMMARY OF SUBSTANTIVE RECOMMENDATIONS – HIGH IMPORTANCE

The subcommittee identified the following proposed revisions that are expected to have or may be perceived as having a significant impact on residents, staff, or facility operations.

Section 210 – Required retraining: This provision establishes annual and periodic training requirements for staff and contractors in nonsecure juvenile residential facilities. Under this section, direct care and direct supervision staff, excluding behavioral health or health care service contractors, must receive at least 40 hours of training annually, including training in: (i) suicide prevention; (ii) child abuse and neglect; (iii) mandatory reporting; (iv) resident’s rights; (v) standard precautions; and (vi) behavior intervention procedures. Ensuring that staff meet the 40-hour requirement can be challenging for many juvenile residential facilities, and the requirement is inconsistent with regulations for similar facilities regulated by the Departments of Social Services (DSS) and Behavioral Health and Developmental Services (DBHDS). Those regulations require staff to obtain training in each of the topics specified above as well as 15 hours of training in other topics. Finally, this section requires staff who administer medication to train annually on the administration of medication but does not specify the content of the annual refresher training.

Proposal:

- Remove the specific 40-hour annual training requirement, instead requiring that staff receive training in the topics currently specified in this provision as well as 15 hours of additional training in other topics identified by the facility. This is consistent with the provisions governing comparable facilities regulated by DSS and DBHDS and will help group homes and other juvenile residential nonsecure facilities ensure that training remains relevant and useful to all staff for whom such training is required.

- Specify that the annual refresher training applicable to staff who administer medication must include a review of the medication provisions outlined in Section 1280 (Medication).

Section 510 – Searches of residents: The existing section allows juvenile residential facilities to utilize various methods to search residents, including pat down and frisk searches, strip searches, and visual body cavity searches. Generally, facilities may conduct pat down and frisk searches provided the person conducting the search is the same sex as the resident being searched. Strip searches and visual cavity searches are permissible under the existing regulation by court order if conducted by law enforcement personnel in their official capacity or if the facility seeks permission from the board. The existing regulation prohibits manual and instrumental vaginal or anal cavity searches.

Proposal:

- Expand the prohibition against searches to include strip searches and visual body cavity searches, in addition to the existing prohibition on manual and instrumental searches of such cavities. The population of residents placed in nonsecure residential facilities generally is not the subject of such searches, and orders of these types are not issued by the court. The committee asserts that these searches should never be conducted by group home personnel. This change is consistent with comparable DSS regulations, which also prohibit strip searches and body cavity searches.
- Clarify that the personnel authorized to conduct searches must be trained properly.

Section 550 - Transportation:

Under this section, facilities are responsible for having or making routine and emergency offsite transportation available to residents. Facilities must have written safety rules for such transportation and for the use and maintenance of vehicles, as well as procedures that address how licensure will be verified for staff responsible for transporting residents. Although law enforcement officers, social workers, family members, and other individuals not employed by the juvenile residential facility also may be responsible for transporting residents, the existing regulation is silent as to the transportation rules applicable to these outside parties.

During the 2018 Virginia General Assembly Session, Delegate Cliff Hayes introduced legislation (HB 1230) that would have required the Board to promulgate regulations regarding transportation requirements for department-regulated facilities and programs. Specifically, the bill would have mandated that these regulations address a suicide watch instrument. A substitute bill would have required these entities to convey written information concerning the resident's mental and medical condition to individuals handling the transport of residents. Although the bill ultimately failed, the committee reviewing the JDC regulations proposed language that will require such facilities to convey written information to the transporting party regarding the resident's mental health and medical condition, including any recent suicidal attempts or ideations. Group homes and other nonsecure facilities have a broader category of individuals who may be responsible for transporting residents. By the nature of their work with residents, many of these workers are privy to the residents' current mental health state and medical condition. In an effort to be responsive to the objectives of the legislation without imposing needless, cumbersome regulatory provisions on nonsecure facilities, the committee recommends additional language similar to the language proposed for the JDC regulations.

Proposal:

- Add a requirement in Section 550 applicable when: (i) someone other than the nonsecure facility assumes custody of the resident for transportation purposes and (ii) the facility has flagged the resident for

monitoring due to recent suicide attempts, suicidal ideation, or special medical needs. Under these conditions, the facility will be required to provide the transporting party with a department-approved form containing pertinent information known to the facility regarding the need for additional monitoring, provided the information reasonably could be necessary for the resident's safe transportation and supervision. Additionally, the facility will need to advise the transporter that the information must remain confidential in accordance with applicable laws, rules, and regulations.

- In order to address emergencies, add a provision that excuses facilities from these requirements if an emergency renders completion of the form impracticable or infeasible.

Section 900—Resident visitation at the homes of staff: This section prohibits residents from visiting employees' homes without written permission from the resident's parent or legal guardian, if applicable; the facility administrator; and the placing agency.

Proposal: Remove these exceptions and impose an absolute prohibition against residents visiting employees' homes in order to avoid any impropriety and ensure the safety of the resident.

Section 920—Staff supervision of residents: The existing regulation requires at least one trained direct care staff on duty and actively supervising residents whenever residents are present. Because of the nature of independent living programs, residents often leave the facility for jobs, training, or other programs to promote the resident's independence. If a resident, while off campus, encounters an emergency that necessitates staff assistance and only one staff member is onsite at the facility, the requirements of this section become problematic. To address this concern, in January 2016, the Board issued a variance to the Tidewater Youth Services Commission, which operates an apartment-style independent living program. The variance allows for a direct care staff who is alone, on duty, and actively supervising residents in the facility, to leave the facility in such situations to attend to a resident offsite. The variance is applicable only in emergencies. Staff must notify their supervisors before leaving the facility, and their time away from the facility may not exceed one hour.

Proposal:

- Amend the staff supervision requirements for independent living facilities to incorporate the requirements of the variance. Require the facility to ensure that residents who remain at the facility have an emergency telephone number or other means of immediate communication with a staff member, and mandate that the facility establish written procedures to implement this exception.

Section 930—Staffing pattern; Section 1005—Staffing in independent living programs: Currently, these sections require juvenile residential facilities to have at least one direct care staff member awake, on duty, and responsible for the supervision of every 10 residents both on the premises and at off-campus, facility-sponsored events during resident waking hours. Independent living programs must have one direct care staff member awake, on duty, and responsible for supervising every 15 residents on the premises or participating in off-campus, facility-sponsored activities. The current provision also requires one direct care staff member awake and on duty for every thirty residents on each floor where residents are sleeping.

Although the Prison Rape Elimination Act (PREA) requires juvenile facilities to maintain minimum security staff ratios of 1:8 during resident waking hours and 1:16 during resident sleeping hours, this provision is applicable to secure facilities. As provided in the PREA final rule, a secure facility is one that typically does not allow its residents to leave the facility without supervision. Group homes and other facilities that allow residents to go out into the community for treatment or correctional objectives, such as educational or employment programs, typically are not considered secure facilities; therefore, these facilities are not subject to the staffing ratio

requirements set out in PREA. Nevertheless, the committee asserts that PREA's staffing ratios provide a safe and reasonable benchmark for ensuring the safety of residents in nonsecure juvenile facilities both on campus and while off campus participating in facility-sponsored events. However, because independent living programs promote self-reliance, PREA's 1:8 staffing ratio requirement is not necessary in these environments.

Furthermore, the committee asserts that the provision requiring one staff for every 30 residents on each floor where residents are sleeping is not in keeping with the structure of the facilities covered by this chapter. The committee also believes that the mandate of one staff for every 15 residents in independent living programs is arbitrary.

Proposal:

- Amend the required staffing ratio during resident waking hours for juvenile residential facilities, both on and off campus, to comply with PREA's 1:8 requirement.
- Expand the provision to allow the facility administrator discretion to modify the staff-to-resident ratios for off-campus, facility-sponsored events, based on the participants, the event, and other factors, provided there is never fewer than one staff member for every eight residents.
- Strike the 1:30 ratio requirement for each floor where residents are sleeping.
- Add a new Section 1005 allowing staff-to-resident ratios of 1:16 in independent living programs rather than the current 1:15 mandate and incorporating the requirements of the variance.
- Strike the 1:15 staff-to-resident ratio mandate for independent living facilities, and add a general exception from each of the provisions of this section for independent living programs. Such programs are subject to the staffing requirements in Section 1005 (Staffing in independent living programs).

Section 935—Periodic monitoring of residents:

Unlike the existing regulations applicable to juvenile correctional and juvenile detention centers, this chapter does not require staff to conduct periodic checks of residents in the facility, likely because of the population of residents in such nonsecure facilities and because these facilities may not place residents behind locked doors or in secure areas where they are not free to leave. To address this omission, the committee recommends adding a requirement that staff conduct periodic checks on residents in the facility at least once every 30 minutes. Although 15-minute checks may be required in juvenile correctional and detention centers by virtue of proposed regulatory amendments to those chapters, the committee asserts that such checks need not be conducted as frequently in group home settings due to the different population of residents. These checks are not necessary in an independent living environment where residents are preparing for independence and often live alone as part of the program's requirements.

Proposal: Add a new Section 935 requiring staff to conduct and document periodic checks of each resident in the facility at least every 30 minutes or more often, depending upon the circumstances. Exempt independent living programs from these requirements.

Section 1220—Medical examinations and treatment: Every resident in a juvenile residential facility must have a physical exam no earlier than 90 days prior to admission and no later than seven days following admission. If a resident has transferred from another state-licensed facility at which he received a physical within the preceding 12 months, he is not subject to this requirement. Residents accepted as emergency admissions have 30 days from their admission date to have their physicals completed. As currently drafted, these requirements do not apply to residents in shelter care facilities. The current regulation does not delineate a timeframe for residents in shelter care facilities to receive a physical.

Proposal:

- Specify that the requirement to receive a physical no later than seven days after admission applies to residents accepted as planned admissions.
- Change the exception for emergency admissions to allow the physical to be completed within 90 rather than 30 days following admission.

Section 1270. Hospitalization and other outside medical treatment of residents. Under the existing regulation, when residents of nonsecure facilities require transportation to outside medical facilities, a parent or legal guardian, a law-enforcement officer, or a staff member must accompany the resident to the hospital and stay with him through the admission process. This provision is problematic since the board does not have the authority to regulate law-enforcement officers, parents, or legal guardians. Also, there may be situations in which a resident is being transported by an ambulance, the resident's parent is en route to the medical facility, and deploying group home staff would make coverage inadequate at the facility.

This section also requires facilities to transport residents to these outside medical facilities safely. Although the safety of residents remains a priority with group home staff, this regulatory provision is vague and provides no additional guidance.

Proposal:

- Strike as vague the requirement that residents be transported safely.
- Add language directing facilities to ensure that one of the three individuals identified above accompanies and stays with the resident during admission. Allow for an exception if sending a staff member would result in inadequate coverage at the group home, and require the facility to deploy a staff member to the medical facility as soon as reasonably possible in those exceptional situations.
- Add language requiring the provider to convey written information to any law-enforcement officer conducting the transport in accordance with the amended Section 550.

VI. SUMMARY OF SUBSTANTIVE RECOMMENDATIONS – MODERATE IMPACT

The subcommittee identified the following proposed revisions expected to have a moderate impact on residents, staff, or facility operations.

Section 165—Employee tuberculosis screening and follow-up: On or before beginning work at juvenile residential facilities, employees must provide documentation of the screening results showing whether communicable tuberculosis is present in their bodies. Employees also must submit annually documentation of freedom from communicable tuberculosis. Employees must undergo a subsequent tuberculosis screening or evaluation if they either come into contact with a known case of infectious tuberculosis or develop chronic respiratory symptoms that persist for three weeks or longer. The current language does not distinguish between tuberculosis screenings and assessments and is not reflective of the current process mandated by the Virginia Department of Health (VDH). By VDH guidelines, only certain medical professionals are qualified to evaluate results of the tuberculosis risk assessment. The current regulation does not specify which individuals may conduct such assessments.

Proposal:

- Add definitions in Section 10 to distinguish between tuberculosis risk assessments (questionnaire) and the tuberculosis screening (skin test, chest x-ray, or blood test).
- Mandate that by his first day of work (and annually thereafter) an employee must provide documentation of a completed tuberculosis risk assessment no older than 30 days and containing, at a minimum, the elements on the VDH's current assessment form.
- Add a provision allowing any health-trained professional in a juvenile residential facility to administer the assessment but limiting the authority to interpret the results to physicians, physician assistants, nurse practitioners, or registered nurses.
- Clarify that a tuberculosis screening is required whenever the results of the initial or annual risk assessment indicate a screening is necessary.
- Strike the requirement to receive a risk assessment or screening for employees who are exposed to infectious tuberculosis or develop chronic respiratory symptoms. Instead, require these employees to consult their local health department or other medical professional for additional screenings.

Section 1210—Tuberculosis screening: This section speaks to tuberculosis screening requirements for residents. Currently, residents must receive a **screening assessment** for tuberculosis within seven days of **placement** at a juvenile residential facility, and such assessment can be no older than 30 days. Residents also must receive screening assessments annually. The reference to screening assessment is confusing in that it combines two terms with different meanings. Furthermore, requiring the assessment to take place within seven days of placement is problematic because a resident's placement date may not be the same as his arrival date. Finally, this provision does not provide guidance for when a screening indicates the resident has tuberculosis in a communicable form.

Proposal:

- Amend the language to require the resident to receive an initial tuberculosis risk assessment as well as an annual risk assessment as newly defined in Section 10. Require the initial assessment to take place within seven days of arrival at the facility rather than placement.
- Require each assessment to be documented by a medical professional or on a form that includes the elements on VDH's current assessment form.
- Add language allowing a health-trained professional to administer the assessment but permitting only physicians, physician assistants, nurse practitioners, and registered nurses to interpret the results. If the results indicate a screening is necessary, the facility must refer the resident to the local health department or a medical professional for additional screening.
- Add language mandating that the facility observe the requirements in Section 1230 for any resident determined to have tuberculosis in a communicable form. Section 1230 prevents the facility from admitting a resident unless a licensed physician certifies that the facility is capable of caring for the resident without jeopardizing others in the facility and knows what treatment and procedures are necessary to protect residents and staff.
- Add new subsections F and G that mirror the requirements in Section 165 (employee tuberculosis) with respect to reporting active cases of tuberculosis to the local health department and retaining documentation of the assessment and screening results confidentially.

Section 180 – Employee and volunteer background checks: The existing regulation requires individuals who accept employment, volunteer regularly and will be alone with a resident, or contract to provide services to residents regularly and will be alone with residents in juvenile residential facilities to undergo a host of background checks, including fingerprint checks with the Virginia State Police and Federal Bureau of Investigation. Under the regulation, **employees** who have been hired pending the results of the fingerprint checks

may not be alone with residents and may work only with residents who are under the direct supervision of staff who have passed all their background checks.

Proposal:

- In order to omit duplicative provisions, strike references to volunteers in the catchline and text of this provision. Background check requirements for volunteers and interns are provided for in Section 290.
- Restrict employees hired under the fingerprint exception from **working directly with residents** until all background checks, including the fingerprint checks, have been completed successfully. This amendment is more restrictive than the existing provision.
- Add language prohibiting nonsecure residential facilities from hiring persons convicted of the barrier crimes set out in § 19.2-392.02 of the *Code of Virginia*, subject to the restrictions in § 63.2-1726. The barrier crimes listed in this section are numerous and include such offenses as murder, manslaughter, and abduction.

Section 290—Background checks for volunteers or interns: This section imposes upon individuals who volunteer regularly or are interns and will be alone with a resident in the provision of their services an obligation to comply with the same background requirements as employees pursuant to Section 180.

Proposal: Add the same prohibition that is applicable to employees for persons convicted of the barrier crimes set out in § 19.2-392.02, subject to the restrictions in § 63.2-1726.

Section 310—Personnel records:

Proposal:

- Replace references to “contractual service providers” with “contractor,” in this section. This is consistent with the new definition for contractor added to Section 10, defined as an individual who: (i) has entered into a legal agreement to provide services, (ii) will work with the resident more than twice per month, and (iii) will be alone with the resident in providing these services.
- Strike the requirement that every employee’s record contain annual performance evaluations. The committee asserts that these requirements are unnecessary in the context of a regulation. This is consistent with similar proposed amendments to the JDC regulations.
- Amend to include **interns** in the provision authorizing some personnel records to be limited to documentation of background check compliance, in addition to the current volunteers and contractors.
- Add a new provision requiring personnel records to be maintained in a secure location and kept confidential. This is similar to the protection afforded to residents’ records.

Section 360—Equipment and systems inspections and maintenance:

Proposal: Amend to require the facility administrator to identify **critical** safety, emergency, and communications equipment and systems that periodically must be inspected, tested, and maintained by designated staff. Require the facility administrator to develop written procedures outlining the applicable items and the parameters of the process. The existing regulation requires **all** safety, emergency, and communications equipment and systems to undergo these inspections and tests. This change is consistent with a similar change to the JDC regulation.

Section 440—Smoking prohibition: The existing regulation prohibits smoking in living areas and areas where residents participate in programming.

Proposal: Expand the prohibition to apply to contractors, volunteers, and interns and impose an overall prohibition against the use, possession, purchase, or distribution of tobacco or nicotine vapor products by residents or any of these other individuals in any areas of the facility or its premises. Examples of tobacco and nicotine vapor products are derived from *Code of Virginia* § 18.2-371.2. This restriction is more expansive than the JDC regulation, which limits the use of such products (by individuals other than residents) to areas where residents may see or smell the product.

Section 490—Emergency and evacuation procedures: This section requires providers to establish a written emergency preparedness and response plan in preparation for emergency events. The plan must include, among other information, written emergency response procedures regarding the provision of a planned, personalized means of egress for residents who use wheelchairs, crutches, canes, or other mechanical devices for assistance in walking. The committee asserts that this language is too narrow. Rather than having a plan that addresses only residents who require assistance in walking, the committee asserts the plan should be broad enough to capture all individuals that might be in the facility and require special accommodations.

Proposal: Amend this section to require for inclusion in the written emergency response procedures language addressing evacuation of individuals with disabilities or who require special accommodations.

Section 565—Vulnerable population: This provision currently requires nonsecure residential facilities to implement a procedure to assess whether a resident is a member of a vulnerable population. The provision does not specify a deadline for carrying out the assessment. Additionally, the section includes a definition for “vulnerable population” that lists several characteristics indicative of a “vulnerable” resident for these purposes (i.e., one who is susceptible to attack or harm). Under PREA, a resident’s views with respect to his safety must be considered in conducting this assessment.

Proposal:

- Add language clarifying that the vulnerable population assessment must occur immediately upon a resident’s admission. This will ensure that there is no delay in conducting the assessment that could expose a vulnerable resident to undue harm.
- Move the definition of vulnerable population to Section 10 (definitions), striking from the definition the enumerated characteristics that may indicate a resident is vulnerable for these purposes.
- Add language to this section indicating that the characteristics originally outlined as part of the definition (e.g., height and size, sexual orientation, etc.) are factors that **may be considered** in determining whether a resident is “vulnerable” for these purposes.
- Incorporate the PREA provision requiring consideration of the resident’s views regarding his safety in making the vulnerable population determination.

Section 570—Residents’ mail: Under this section, facilities may open and inspect nonlegal mail for contraband, and, when based on legitimate facility interests of security, may read, censor, or reject nonlegal mail. Staff are prohibited from reading mail addressed to parents, immediate family members, legal guardians, guardians ad litem, counsel, courts, officials of the committing authority, public officials, or grievance administrators without permission from the court or if the facility administrator agrees there is a reasonable belief that facility security is threatened. It is not clear whether these provisions extend to electronic mail, or are limited to postal mail.

Facilities may hold cash, stamps and other specified items for the resident. Facilities must forward first-class letters and packages for transferred or released residents, though the regulation does not indicate how facilities should determine the forwarding address.

Proposal:

- Add language to clarify that these provisions apply to electronic mail.
- Mandate that the facility specify in written procedures other items that may be held for the resident.
- Require first-class letters and packages for released or transferred residents to be forwarded to the resident's last known address or forwarding address or returned to sender.

Section 590 – Visitation: This section currently requires nonsecure facilities to make available to parents, if appropriate, legal guardians, the resident, and other interested parties important to the resident copies of its written visitation procedures at admission. If parents or legal guardians are not part of the admission process and have not received a copy of the procedures, the facility must mail them a copy by the close of the next business day after admission.

Proposal:

- Rearrange language by making the qualifier “if appropriate” apply to the parents, as well as the legal guardians.
- Strike the mandate to provide the visitation procedures to “other interested persons important to the resident.” The committee asserts that this mandate is impractical, unnecessarily burdensome, and vague.

Section 680—Recreation: This section addresses a juvenile residential facility's recreational program and lists the requirements for these programs. Juvenile residential facilities must develop written procedures to ensure the safety of residents participating in recreational activities. Among other information, the written procedures must provide safeguards for water-related activities. Additionally, the procedures must require a certified lifeguard to supervise all swimming activities.

Due to their continuous, ongoing participation in wilderness and adventure activities, this chapter imposes a number of very specific requirements on wilderness programs. Arguably, these requirements should not apply to facilities whose participation in these activities is sporadic or rare. There are, however, several requirements currently imposed on wilderness programs that also should be applicable to facilities that occasionally participate in these activities. Measures such as ensuring that staffing numbers do not fall below the ratios required in the facility, that residents have proper clothing and safety gear for the activities in question, and that first aid kits are easily accessible are good practices aimed at ensuring the safety of residents when occasionally participating in wilderness or adventure activities.

Proposal:

- Expressly exempt wilderness programs from the requirements of this section and add a cross reference to the wilderness program provisions.
- Insert the provision originally contained in the space utilization section (Section 450) requiring programs to have appropriate recreational materials for indoor and outdoor use.
- Require residents participating in recreational activities to have appropriate clothing and safety gear suitable for the activity;

- Direct the provider to attempt to determine residents' swimming ability by consulting the residents' parents or legal guardians.
- Require the facility to ensure the following for overnight recreational activities: (i) the facility's supervision plan meets the 1:8 staff to resident ratio requirements; (ii) the facility's emergency, safety, and communication plan addresses resident accountability, prompt evacuation, and emergency numbers for services; and (iii) equipment needed for the activity is certified, if required, operable, and age and body-size appropriate. These requirements are align with the duties imposed on wilderness programs.
- Require facilities participating in overnight trips to ensure that telephones and first aid kits are accessible; separate bed, bunks, cots, or sleeping bags are available for reach resident and staff member; and bedding is clean, dry, and in good condition.

Section 970—Independent living programs: curriculum and assessment: Independent living programs must use board-approved materials and curricula to teach independent living skills and must assess the resident's life skills within 14 days of his placement using a department-approved independent living assessment tool. The assessment must measure the resident's life skills based on various areas including the resident's personal appearance, health and sexuality, and legal skills. The department's certification unit determines whether the provider has properly assessed each of the areas identified but does not look at an independent living assessment tool. These skills must be included as part of the goals, objectives, and strategies in the resident's individual service plan. The committee asserts that while these skills are important, it is not necessary to include all such skills in the resident's individual service plan.

Proposal:

- Replace the board with the facility administrator as the entity responsible for approving materials and curricula used to teach independent living skills.
- Require independent living programs to have written descriptions of the curricula and methods used to teach living skills. Originally, this requirement was contained in Section 960 but is more appropriate to this section.
- Remove as unnecessary the requirement that the provider use an independent living assessment tool to assess the resident's life skills.
- Expand the personal appearance skill to include hygiene, and replace health and sexuality skills with a requirement to assess the resident's overall physical and mental health. Replace legal skills with legal matters. The ability to manage one's personal hygiene, physical and mental health, and applicable legal issues are marks of successful independent living.
- Remove the requirement that the individual service plan include goals, objectives and strategies addressing each of the skills identified in this section.

Section 980—Employee training in independent living programs: This section requires staff in independent living programs to be trained on various topics within 14 days of employment. Among the topics, staff must receive training on applying the independent living assessment tool.

Proposal

- Clarify that the training must be completed before the expiration of the staff's 14th work day.
- Remove the independent living assessment as a required topic for training as that tool will no longer be required (*see Section 970 summary and proposal above*).

Section 1070—Trip or activity coordination for wilderness programs: This section outlines the duties of the trip coordinator, the employee designated by the wilderness program to organize wilderness and adventure trips for wilderness programs. As currently drafted, these requirements are applicable to wilderness programs and facilities that take residents on wilderness or adventure activities. Among his responsibilities, the trip coordinator or his designee must classify residents according to their swimming ability as either swimmer or nonswimmer. Although this section imposes a number of requirements to ensure that aquatic activities are conducted safely, this section does not require lifeguard supervision for aquatic activities.

Proposal:

- Amend the catchline by striking references to adventure activities as they are absorbed in the definition for wilderness programs.
- Remove the reference to facilities that take residents on wilderness or adventure activities.
- Remove the specific requirement that the trip coordinator classify participants in aquatic activities as swimmers or nonswimmers, in favor of a general requirement for classification according to their swimming ability. This will allow the trip coordinator discretion to establish different categories, as appropriate.
- Add a requirement that the trip coordinator ensure aquatic activity is supervised by a certified lifeguard.

Section 1080—Requirements of family-oriented group home systems: Family-oriented group homes are private homes regulated by the department that allow juvenile placements by a lawful placing agency. These programs were established to allow the department to fund family-oriented facilities. Due to their small, family-style nature, many of the regulatory requirements imposed in this chapter are infeasible, impractical, or ineffective in the context of these facilities. As an example, the mandate established in Section 41 that juvenile residential facilities have written job descriptions for each position within the facility would be meaningless in a family-oriented group home environment where there may be no actual positions. In keeping with this line of thought, the current regulation requires family-oriented group homes to have written procedures for notifying parents, the placing agency, and the department of any serious incident. The facility is not subject to the serious incident report requirements in Section 90 and may establish its own written procedures regarding how soon to notify affected entities of the incident and the types of incidents that warrant a serious incident report.

This section provides that family-oriented group homes must ensure the secure control of any firearms and ammunition in the home. The committee asserts that this requirement is vague and does not go far enough in ensuring that juvenile residents do not have access to firearms and ammunition.

Finally, family-oriented group homes must prepare a treatment plan for each resident within a specified time period.

Proposal:

- Strike the language allowing family-oriented group homes to follow their own written procedures in notifying applicable parties of serious incidents. New language in Section 1110 of this chapter will subject family-oriented group homes to the incident reporting requirements in Section 90.
- Amend the firearms and ammunition provision by requiring the facility to ensure these items are secured to prevent unauthorized juvenile access.
- Replace reference to the “treatment plan” with the “individual service plan” to utilize the proper terminology, as defined in Section 10.

Section 1100—Requirements of family group homes: Among the requirements, family-oriented group homes must have operative smoke alarms and separate beds for each resident and must provide residents with clean clothing and personal hygiene items.

Proposal:

- Direct the facility to conduct inspections of the smoke alarms (and document such inspections) at least monthly;
- Add a requirement that the facility equip each bed with a mattress, pillow, blankets, bed linens, and, if necessary, a waterproof mattress cover and that the facility use bleach or another EPA-approved sanitizing agent to wash these linens. This mirrors the requirements applicable to other juvenile residential facilities in Section 610 (personal necessities and hygiene).
- Specify that the clothing and shoes provided must be clean, size appropriate, and in good repair.

Section 1110 – Other applicable regulations: Although juvenile residential facilities are not subject to every provision in this chapter, under Section 1110, they must satisfy employee and volunteer background check, orientation, training, and retraining requirements set out in Sections 180 through 200 of this chapter. Although the committee agreed that regulations for family-oriented group homes should be minimal, the committee identified several additional provisions necessary to ensure residents are protected from unconstitutional acts, given opportunities for meaningful interaction with family members, enrolled in school, and afforded privacy while bathing, dressing, or toileting.

Proposal: Expand the list of regulatory provisions to which family-oriented group homes are subject to include prohibited actions (Section 560), vulnerable population (Section 565), residents’ mail (Section 570), telephone calls (Section 580), visitation (Section 590), contact with attorneys (Section 600), showers (Section 620), residents’ privacy (Section 640), school enrollment and study time (Section 660), religion (Section 670), residents’ funds (Section 690), and fundraising (Section 700).

Section 1260—First aid kits: Juvenile residential facilities are required to keep a well-stocked first aid kit and an inventory of its contents. The kit must be readily accessible to address minor and serious medical injuries.

Proposal: Modify the provision to require that a kit be maintained in each facility vehicle used to transport residents in addition to being maintained in the facility.

Section 1300—Behavior support: Facilities must have behavior support plans for residents who need supports beyond those provided as part of the behavior management program. Currently, staff must review and be prepared to implement the support plan before they may work alone with an assigned resident.

Proposal: Strike the language restricting staff's ability to work alone with residents until after they have reviewed and are prepared to implement the support plan. Such a restriction is more appropriate in the context of a safety plan than a behavior support plan.

Section 1310—Timeout: Group homes may use timeouts to address inappropriate resident behavior by moving a resident away from a source of reinforcement for a specified time period or until the behavior subsides. Under the existing regulation, the conditions and duration of timeout depend on the resident's chronological and developmental level. The existing language also requires staff to check on the resident in timeout at 15-minute intervals or more often, based on the nature of the resident's disability, condition, and behavior. The committee questions the necessity of basing the conditions and duration of timeouts or the frequency of staff checks on a resident's chronological or developmental level. Furthermore, the committee asserts that the existing provision does not address what staff must monitor during the periodic checks.

Proposal:

- Move the definition of timeout to Section 10 (definitions).
- Remove the provision requiring the conditions and duration of timeout to depend on a resident's chronological and developmental level.
- Add language requiring staff to evaluate and document whether a resident is prepared to be released from timeout during the 15-minute checks.

Section 900—Work and employment: Juvenile residential facilities often assign residents chores or work assignments. In some instances, the facilities may reward residents monetarily for successful completion of these chores. This section requires such chores to accord with the resident's health, age, ability, and individual service plan. Employment or work assignments outside the facility must be approved by the facility administrator, and the parent or legal guardian must consent, as appropriate and applicable. The committee asserts this requirement could be problematic if the parent or legal guardian's motives conflict with the child's best interest and also suggests that the referring agency should have input on these issues.

Proposal:

- Amend the language to require chores to accord with a resident's developmental level rather than his age. The resident's age is inconsequential if a developmental disability renders him incapable of performing an assigned chore.
- Remove the requirement that these internal chores and work assignments accord with a resident's individual service plan. Facilities may use chores as behavior management tools or for other purposes, and this requirement reduces the facility's flexibility when assigning chores in the facility.
- Remove the requirement that a parent or guardian consent to the assignment and rate of pay, instead requiring collaboration between the facility administrator, the referring agency, and the parent or legal guardian in approving the assignment and pay rate.

Section 1280—Medication: Under the existing regulation, if a medication incident or adverse drug reaction occurs, staff must contact a poison control center, pharmacist, nurse, or physician and take whatever actions are instructed. This section defines "medication incident" as "an error in administering medication" and provides a list of five specific examples that constitute a medical incident. Under the regulation, a resident's refusal of properly offered medication does not constitute a medication incident for these purposes. As set out in subsection F, facilities must administer medications in accordance with the prescriber's instructions consistent with the

Virginia Drug Control Act. Finally, when disposing or storing unused, expired, or discontinued medications, the facility must ensure their practices accord with applicable laws and regulations.

Proposal:

- Replace the erroneous statutory citation in subsection F with the proper citation, § 54.1-3408.
- Move the definition of “medication incident” to Section 10, and add language clarifying that medication incidents do not include the facility’s inability to administer medication due to repeated unsuccessful attempts to obtain the medication.
- Add language requiring the disposal and storage of unused, expired, and discontinued medical implements to accord with applicable laws and regulations.

VII. SUMMARY OF CONTENT CHANGES – MINOR IMPACT

Section 20—Applicability: Amend this section to align with the amendments proposed as part of this action.

Section 40—Certification:

Proposal:

- Amend the provision requiring facilities to comply with the certification regulations (6VAC35-20) to reflect the proper title for that chapter.
- Strike the mandate requiring a facility to ensure that areas of noncompliance do not directly and immediately endanger residents. This language is unclear and may encourage noncompliance with these regulatory provisions.

Section 50—Age of residents: Facilities may admit residents only according to the age limitations approved by the board. Residents may not remain in the facility beyond this certified age unless they are completing a program in their individual service plan or if a discharge plan is established. These exceptions do not apply to shelter care programs, and the committee could not establish a compelling rationale for this exclusion.

Proposal:

- Require the director, and not the board, to set the age limitations for these facilities. 6VAC35-20-75 gives the director the authority to approve a facility’s request to amend its age limitations.
- Strike the exclusion for shelter care programs.

Section 60: Relationship to the regulatory authority:

Proposal: Require that reports and information demonstrating compliance with the regulatory requirements be submitted in accordance with the Certification Regulations (6VAC35-20) to the audit team leader rather than the regulatory authority.

Section 80 – Variances and waivers:

Proposal:

- Clarify that the board may issue variances solely for **noncritical** regulatory requirements, and explain the director’s authority to issue waivers to noncritical regulatory requirements pending board action on a variance request as authorized in the Certification Regulations.
- Amend the reference to the certification regulations to reflect the proper title.

Section 90—Serious incident reports: Under the existing provision, juvenile residential facilities must report serious incidents to the placing agency, the parent or legal guardian or both, and the director or his designee, all within 24 hours of the incident. In addition to this requirement, the facility must prepare and submit a written report of these incidents to the director or his designee. The report must provide a brief description of the incident and include other information such as the date and time and the name of the person who made the report to the placing agency and the parent or legal guardian. The provision does not require facilities to identify the mechanism by which the information was communicated (e.g., via email, fax, verbal notification).

Proposal: Add a requirement in subdivision D(5) that the report include the manner in which the information was communicated to the placing agency and either the parent or legal guardian.

Section 100 – Suspected child abuse or neglect:

Proposal: Amend to clarify that suspicions of child abuse or neglect may be reported to the state Department of Social Services’ toll-free child abuse and neglect hotline in addition to the local department of social services, consistent with § 63.2-1509 of the *Code of Virginia*.

Section 105—Reporting criminal activity: The existing regulation requires staff to report all known criminal activity by residents or staff to the facility administrator who, in turn, must notify the appropriate persons or agencies (e.g., law enforcement, child protective services, the department, and the director if the criminal offense is related to health and safety or human rights of residents), in accordance with written procedures. Additionally, this section requires the facility to assist and cooperate with the investigation of such complaints and allegations, as necessary.

Proposal:

- Clarify that staff must report to the facility administrator all criminal acts suspected to have been committed at the facility or facility-sponsored events by other staff or residents. Staff does not need to validate the act before making the report.
- Strike the provision requiring the facility administrator to report offenses relating to health and human safety or human rights to the director or his designee. The facility will continue to report all criminal offenses to the department, as required in the current regulation, and department staff can determine which offenses should be routed to the director.

Section 110—Grievance procedure: Facilities must have written procedures giving residents access to a process for reporting grievances. The written procedure must be written in clear and simple language and be posted in an area accessible to residents and their parents or legal guardians.

Proposal: Add language requiring the written procedures to include the definition for grievance proposed in Section 10. Having a clear definition in the written procedures, which are posted for easy resident access, will educate residents on what types of complaints may be grieved.

Section 120 – Responsibilities of the provider or governing authority: The existing regulation requires the provider to identify the entity that serves as the governing authority and holds the certificate for the facility. Additionally, it mandates that the provider develop and implement a written decision-making plan that provides for an employee to assume temporary responsibility for facility operations. Though not explicit in the regulation, the implication is that this person would assume the role in the absence of the facility administrator.

Proposal:

- Clarify that the governing authority must be identified **in writing**. This is consistent with the current requirement set out in the department's compliance manual.
- Add language clarifying that the plan is applicable in the facility administrator's absence.

Section 140—Participation of residents in human research: Currently, the regulation requires all providers to have procedures approved by their governing authorities establishing the requirements for human research in nonsecure residential facilities.

Proposal:

- Amend to require providers allowing human research on residents in their facilities to comply with the regulations set out in Chapter 170, Regulation Governing Minimum Standards for Juvenile Information Requests from and Research Involving Human Subjects within the Department of Juvenile Justice.
- Add a provision prohibiting the testing of medicines or drugs for implementation or research purposes. This is consistent with new language proposed in the JDC and already contained in the JCC regulations.
- Move the definition for human research to Section 10 of this chapter, and amend the definition to reflect recent amendments to Chapter 170, which took effect in December 2016.

Section 145 – Operational procedures:

Proposal: Amend to clarify that the facility's current operational procedures must be **readily** accessible to all staff. This is consistent with similar language in the JDC regulations.

Section 160 – Qualifications: Subsection A of this current section requires nonsecure facilities that are not subject to local governing rule to comply with the Virginia Department of Human Resource Management's (DHRM's) minimum entry-level qualifications. Currently, DHRM has no policies addressing minimum entry-level qualifications.

Additionally, as outlined in subsection C, nonsecure facilities must document contractual agreements or staff expertise to provide various specified categories of services that will be used to assist residents, consistent with the facility's program description.

Proposal:

- Strike portion of subsection A requiring compliance with DHRM qualifications as obsolete.
- Amend the language in subsection C to clarify that the documentation must verify each contractor's or employee's expertise to provide whatever services are needed to assist the resident.

Section 190 – Required initial orientation

Proposal: Remove population control as a topic on which employees must be oriented before the end of their seventh work day at the facility. Population control does not apply in nonsecure juvenile residential facilities.

Sections 200, 210 – Required initial training, required retraining

Proposal:

- 200 - Remove as unnecessary the current requirement in 200(D) that training be required by and provided in accordance with the provider's training plan. Demanding that staff in these facilities satisfy the training mandates outlined in this section is essential to ensure facility safety and security and effective

programming in these facilities; however, facilities do not need a training plan to accomplish this objective.

- 210 – Remove the current requirement in 210(F) that retraining accord with the provider’s training plan for the reasons specified above.

Section 300—Orientation and training for volunteers or interns: Juvenile residential facilities must provide volunteers and interns with a basic orientation on several topics including security and population control.

Proposal: Remove population control from this list as population control does not apply in a group home/juvenile residential facility setting.

Section 450—Space utilization: This section requires facilities to have an indoor recreation area with appropriate recreation materials.

Proposal: Move the indoor and outdoor recreation area requirement to Section 680, which addresses recreation.

Section 470—Animals on the premises:

Proposal: Remove the mandate that animals on the premises be housed a reasonable distance from sleeping and living areas. This amendment seeks to accommodate any potential animal training programs that may be developed in the facilities in the future. The JCC and JDC committees proposed similar regulatory amendments.

Section 560 – Prohibited actions: This provision lists a number of acts against residents that are prohibited in nonsecure juvenile residential facilities. Among these, facilities may not apply aversive stimuli except as authorized by applicable state regulations, nor may they place residents alone in locked rooms or secured areas where the resident is prevented from leaving. The language suggests that such facilities may place residents in locked rooms if they are not alone, which is counter to the intent of the current provision.

Proposal

- Strike the definition for aversive stimuli as this definition was moved to Section 10 (definitions).
- Remove the “alone” qualifier to clarify that confining residents in locked is prohibited regardless of how many other individuals are in the room at the time.

Section 610—Personal necessities and hygiene: This section addresses the personal necessities that facilities must provide residents at admission (e.g., washcloths and towels, bed linens) and requires these necessities to be laundered/changed at least once every seven days or more often, if necessary, and laundered using bleach or another EPA-approved cleaner. Although not relevant to personal necessities, according to this section, table linens also must be laundered using bleach or other EPA-approved cleaners.

Proposal: Strike the reference to table linens as unnecessary and irrelevant to this section. The committee asserts that it is not necessary to address by regulation the method for cleaning furnishings and table linens.

Section 620 – Showers: The existing regulation requires facilities to give residents the opportunity to shower daily unless the Governor has declared a state of emergency due to drought or the locality has issued water restrictions. In either case, the facility must consult with local health officials before determining appropriate restrictions. Any alternate scheduling must consider cases of medical necessity related to health concerns.

Proposal: Replace the specific exceptions to the daily shower requirement with a more general exception that excuses facilities from meeting this requirement in **any documented emergency situation** including, for example, natural disasters, major disturbances, fires, or other emergencies that might justify noncompliance with the existing shower provisions. Because the requirement to consult with local health officials and to develop an alternate schedule that considers cases of medical necessity seem to be specifically related to the existing exceptions for official states of emergency and water restrictions, the committee also recommends striking these requirements.

Section 630 – Clothing; Section 810—Discharge procedures.

Proposal: Move the existing requirement in subsection D of Section 630 that requires facilities to allow residents to take personal clothing when released from the facility to Section 830 governing discharge procedures.

Section 650 – Nutrition: This section requires facilities to provide residents with three nutritionally balanced meals daily and an evening snack, allow for special diets in certain circumstances, retain menus of meals for at least six months, and ensure that no more than 15 hours pass between the evening meal and breakfast the next day, among other requirements. Based on the current applicability section, the rules applicable to juvenile residential facilities in general apply to independent living programs; therefore, Section 650’s nutrition provisions are applicable to independent living programs. Many of these requirements are problematic when applied to independent living programs, where residents often work late hours and may obtain meals outside the facility. Given this unpredictable environment and these varied schedules, often it is not feasible to require the documentation or retention of menus of meals served nor to ensure that the time between dinner and the next morning’s breakfast does not exceed 15 hours. In 2016, the Board issued a variance to the Tidewater Youth Services Commission Apartment Living Program relieving them of the regulatory requirement to retain menus for meals served and from having to ensure that no more than 15 hours pass between the evening meal and breakfast the next morning.

Proposal:

- Replace the six-month mandate with a more general mandate that menus be kept on file in accordance with applicable federal requirements. This change is consistent with similar amendments proposed for the JCC and JDC regulations. The amendment will prevent the department from having to update the regulation in the event that federal requirements are amended.
- Exempt from the provisions of this section all independent living programs in accordance with the variance issued in 2016, and require such programs to comply with the provisions of Section 1000.

Section 1000—Nutrition procedure in independent living programs: This section requires independent living programs to implement written procedures ensuring that residents are receiving adequate nutrition in accordance with various provisions in the general nutrition section. Independent living programs must: (i) daily provide residents with at least three nutritionally balanced meals and an evening snack; (ii) make available to residents special diets or alternative dietary schedules when prescribed by a physician or when necessary to observe established religious dietary practices; and (iii) retain menus of actual meals served on file for 6 months.

Proposal: Strike the requirement to retain menus of actual meals served in accordance with the variance granted in 2016.

Section 690 – Residents’ funds: The existing regulation requires the facility to use a resident’s funds for his benefit, for court-ordered payments, or to pay restitution.

Proposal: Add language to clarify that a resident’s funds means a resident’s **personal** funds and not the facility’s programming funds. This is consistent with an interpretation provided in the department’s Compliance Manual.

Section 700 –Fundraising: This section prohibits the provider from using residents in fundraising without the written permission of the legal guardian and the consent of residents. The provision does not appear to require **written** consent from residents.

Proposal: Amend to clarify that the provider must obtain written permission from the parent or legal guardian, as appropriate and applicable, **and** the resident. The qualifying language, “as appropriate and applicable,” indicates that parents or legal guardians need only provide written permission for residents under the age of 18.

Section 730 – Application for admission: Currently, juvenile residential facility providers must develop the applications used to admit residents into their facilities. The existing provision contains a misleading statement indicating that these providers also are responsible for completing the resident’s application for admission into the facility. In practice, the entity making the referral has this responsibility.

Proposal: Replace the provider with the referral source as the entity responsible for completing the application, and add language requiring the provider to ensure that the admitted resident’s application is placed in his case record.

Section 750 – Written placement agreement: Under this provision, prior to a routine admission, every resident’s case record must contain a completed placement agreement signed by a facility representative, the legal guardian, or the placing agency. The provision expressly exempts placements pursuant to a court order and self-admissions into shelter care facilities. The provision defines routine admissions as resident admissions following evaluation of an application and execution of a written placement agreement.

Proposal:

- Replace the reference to “routine admissions” here and elsewhere throughout this chapter with “planned admissions.” This amendment is more reflective of the actual process and draws a clearer distinction between the emergency admission process and other admissions.
- Move the definition of “planned admission” to Section 10.
- Remove the exception for self-admissions into shelter care facilities as these types of admissions are not relevant to this chapter. The department does not regulate or certify self-admission facilities.

Section 780 – Emergency admissions: This section sets out the requirements for providers that accept emergency admissions and defines emergency admission as the unplanned or unexpected admission of a resident in need of immediate care, excluding self-admittance to a shelter care facility.

Proposal:

- Amend the definition of “emergency admission” to remove any reference to self-admissions to shelter care facilities as the department neither regulates nor certifies these facilities.
- Move the definition of “emergency admission” to Section 10.

Section 890—Community relationships: As part of its efforts to involve residents in community activities and utilize community resources, providers must develop and implement department-approved written procedures for promoting positive relationships with the community.

Proposal: Remove the mandate that the department approve these procedures as the department is not responsible for approving procedures for locally or regionally operated facilities.

Section 1010—Requirements for wilderness programs: Juvenile residential facilities may operate wilderness programs for residents at least nine years of age who have challenges with functioning at home, in school, or in the community. The purpose of these programs is to teach residents structure, problem solving, and decision-making in a non-punitive environment through experiential wilderness expeditions or other adventure-centered excursions. Section 1010 sets out the initial requirements for establishing a wilderness program and indicates that the provider must have board approval before operating such a program. Pursuant to the director's certification authority as provided in 6VAC35-20-75, however, it is the director, not the board, that should be designated authority to approve these programs. Section 1010 also requires wilderness programs to have an experience curriculum. Finally, this section references primitive camping programs, wilderness work programs, and wilderness work camp programs, all of which may fall under a more general category for wilderness programs.

Proposal:

- Replace the board with the director as the position authorized to approve wilderness programs.
- Create a separate, generalized category for wilderness programs under which wilderness work programs, wilderness work camp programs, and primitive camping programs all will fall. Add a definition for wilderness programs in Section 10.
- Replace the specific requirement to have an experience curriculum with a more generalized requirement to have a written curriculum. This amendment will give wilderness programs the flexibility to determine how to operate their programs and what information to include in their curricula.

Section 1020 – Wilderness programs or adventure activities:

This section sets out the provisions that must be incorporated into a wilderness program's procedures. The section applies to all wilderness programs and to providers that occasionally take residents on wilderness or adventure activities. Many of the requirements in this and various other sections that comprise Part IX (Wilderness Programs and Adventure Activities) clearly target wilderness programs and should not be applied to facilities that only occasionally take residents on wilderness or adventure activities. Among the requirements, the procedures must include staffing ratios and a supervision plan appropriate for each activity.

Proposal:

- Amend the catchline to strike references to adventure activities as they are absorbed into the definition for wilderness programs. Because subsection B of this section addresses training requirements for wilderness programs, amend the catchline to include training.
- Remove all references to providers that take residents on wilderness or adventure activities.
- Mandate that the ratio and supervision plan must satisfy the staffing pattern requirements in this chapter.

Section 1030—Initial physical for wilderness programs or adventure activities: This section sets out the requirements for the physical forms necessary for wilderness campsite programs and providers that take residents on wilderness or adventure activities. The committee asserts that whatever additional information is necessary to demonstrate that a resident is physically capable of participating in wilderness activities on a daily basis is unwarranted for residents whose participation in these activities is infrequent.

Proposal:

- Replace reference to wilderness campsite programs with wilderness programs as the former can be absorbed into the general definition for wilderness programs.

- Remove the reference to providers that take residents on adventure activities as this provision should not apply to infrequent wilderness or adventure activities.
- Remove the reference to adventure activities in the catchline.

Section 1040—Physical environment of wilderness programs or adventure activities: The existing regulation, among other mandates, requires wilderness programs to have adequate personal storage areas for each resident and a telephone or other means of communication in areas where residents sleep or participate in programs. The committee asserts that the requirement for storage is vague and unnecessary. The committee further asserts it should be sufficient for telephones or other means of communication to be accessible in areas where residents sleep or participate in programs rather than required.

Proposal:

- Strike the requirement that each resident have adequate personal storage area.
- Mandate that a telephone be accessible rather than required in areas where residents sleep or participate in programs.
- Remove all references to wilderness campsite programs.

Section 1050—Sleeping areas of wilderness programs: The current regulation provides rules regarding the sleeping areas in wilderness programs. Among these rules, wilderness programs must make a separate bed, cot, or bunk available to each resident. This provision does not contemplate primitive camping in which residents may use sleeping bags. The regulation expressly authorizes staff of the same sex to share a sleeping area with the residents. In this context, it is not clear how much of a given space comprises a sleeping area, particularly in primitive camping environments where staff and residents may have tents set up in close proximity.

Proposal:

- Expand the provision to allow staff to make separate sleeping bags available for residents.
- Clarify that staff must be of the same sex as a resident or residents in order to share a tent or sleeping room. This sets clear boundaries and eliminates the need to determine how expansive a sleeping area must be.

Section 1060—Personal necessities in wilderness programs or adventure activities: The existing provision requires the facility to provide each resident with an adequate supply of clean clothing suitable for outdoor living. Additionally, each resident must receive sturdy, water-resistant, outdoor footwear.

Proposal: Amend the provision to impose a broader requirement that both clothing and footwear be sturdy and suitable for the planned activity. This is preferable to a requirement for water-resistant footwear or to clothing suitable for outdoor living as such items may not be required depending upon the program's activities and living arrangements.

Section 1170—Health care procedures: As part of a facility's required health care procedures, certain written information on each resident must be readily accessible to staff to respond to medical emergencies. Under subsection C of this Section, respite care facilities must update this information each time they admit a resident into the facility.

Proposal: Delete subsection C. The department does not certify respite care facilities.

Section 1190—Consent to and refusal of health care services: This section requires the facility to obtain informed consent for health care from the resident, parent, guardian, or legal custodian as required by law. Informed consent is defined as the knowing and voluntary agreement, without undue inducement or force, fraud, deceit, duress, or other form of constraint or coercion of a person capable of exercising free choice.

Proposal:

- Because the regulation makes reference to “informed consent” only once throughout the chapter, remove the reference to and definition for informed consent provided in this section and require the facility to obtain consent in accordance with all the requirements contained in that definition.
- Cite the specific statute (*Code of Virginia* § 54.1-2969) that gives the facility administrator the authority to consent in the absence of the parent or legal guardian.

Section 1200—Health screening at admission: As a measure to prevent the spread of illnesses, all residents admitted to a juvenile residential facility must undergo a preliminary health screening. As drafted, this section prohibits the facility from admitting residents who pose a health or safety threat into the facility’s general population and requires the facility to ensure these residents still receive comparable services. The term “general population” is not relevant to a nonsecure juvenile residential facility. Furthermore, the phrase “shall not be admitted” suggests that the facility may turn away or refuse for admission into the facility individuals who pose a health or safety threat.

Proposal:

- Amend the language to require that the facility separate from all other residents individuals who are identified as posing a health or safety threat until they are no longer a risk.

Section 1010—Infectious or communicable diseases: Under this section, detention centers are prohibited from housing residents with a communicable disease in the general population unless a licensed physician certifies that the facility has the capability and knowledge needed to care for the resident without jeopardizing residents and staff.

VIII. SUMMARY OF REPEALED AND REORGANIZED SECTIONS

The department recommends repealing the following obsolete or unnecessary sections:

Section 30—Previous regulations terminated: This section references the standards that were repealed during the 2013 regulatory review.

Section 270—Definition of volunteers or interns: This section consists solely of a definition for volunteers or interns. As all definitions were moved to Section 10, this section is unnecessary.

Section 800—Placement of residents outside the facility: The language contained in this section was included in a previous version of the regulations that was repealed as part of the 2013 regulatory review. As a matter of practice, group homes and other nonsecure residential facilities do not make outside placements; therefore, this provision is unnecessary.

Section 910—Additional assignments of direct care: This section prohibits direct care staff, when assuming nondirect care responsibilities, from allowing those responsibilities to interfere with their direct care duties. The

committee recommends removing this provision as it is unnecessary to regulate staff assumption of nondirect care responsibilities.

Section 950—Work and employment: This section addresses chores and work assignments within the facility and employment outside the facility. It is currently the only provision contained in Part VII of the regulation. The committee recommends moving this provision to a new section under Part VI, Article 2, which addresses programs and services.

Section 960—Independent living programs: Subsection A provides an express definition of independent living programs, and Subsection B requires these programs to have a written description of the curricula and methods used to teach living skills. The committee recommends moving the definition to Section 10 (definitions) and moving the provisions addressing the curricula in independent living programs to Section 970, which governs the required curricula for independent living programs, making this section unnecessary.

Sections 1120-1140 (Part XI)—Definitions of respite care; admission and discharge from respite care; updating health records in respite care: Each of these sections addresses respite care facilities. The department does not certify respite care facilities. Accordingly, the committee recommends repealing each of these sections.

Section 1150—Definitions applicable to health services: This section provides definitions for the terms, “health authority,” “health care record,” “health care services,” and “health-trained personnel. “Health authority” is not used elsewhere in the regulation; therefore, it is not necessary to define this term. The terms, “health care record,” “health care services” and “health-trained personnel” were moved to Section 10 (definitions).

IX. LIST OF STYLE AND CLARIFICATION EDITS

Various provisions in the regulation refer to “written or automated” records, reports, and similar documents. The definition of “written” provided in Section 10 contemplates documents in electronic format; therefore, there is no need to include a reference to such “automated” items when they are included as “written” items. References to “automated” are stricken from the following sections:

- Section 310 – Personnel records
- Section 330 – Maintenance of residents’ records

Numerous references to health records in this chapter have been replaced with “health care records” to reflect the term as defined in Section 10 of the regulation. Amendments of this nature were made to the following provisions:

- Section 310 – Personnel records
- Section 330 – Maintenance of residents’ records
- Section 1250 – Residents’ health care records

Some sections use the terms “sleeping room,” “sleeping area,” and “sleeping quarter” interchangeably to refer to rooms in which residents sleep. The department’s compliance manual indicates that “sleeping areas” and “sleeping rooms” generally are synonymous terms. Though not expressly referenced in the compliance manual, the context in which “sleeping quarters” is used in this chapter suggests that the term has the same meaning as sleeping areas and rooms.

While the regulation generally uses these three terms interchangeably, there are a few exceptions where the text clearly intends to convey an area rather than a room, such as in the context of a campsite or when referencing

sleeping areas for pets. Therefore, for purposes of consistency and clarity, the committee recommends replacing references to “sleeping quarters” and “sleeping areas” with “sleeping rooms” within this chapter, except where the context suggests otherwise. Revisions are made to the following sections, (including in catchlines that use these terms):

- Section 10 – Definitions (*definition for living unit*)
- Section 380 - Lighting
- Section 410—Sleeping rooms

A few sections erroneously refer to “staff records” rather than personnel records. In so doing, these records are not subject to the personnel record requirements set out in Section 310 of this chapter. For purposes of consistency and clarity, the committee recommends replacing “staff records” with “personnel records” in the following sections:

- Section 980 – Employee training in independent living programs
- Section 1070—Trip or activity coordination for wilderness or adventure activities

Additionally, the regulation contains many provisions that impose duties on, require information to be conveyed to, or otherwise involve legal guardians but do not include parents. The committee suggests amending the following sections so that parents are included in the requirements in addition to legal guardians:

- Section 10—Definitions (*definition of juvenile residential facility*)
- Section 680—Recreation
- Section 700—Fundraising
- Section 750—Written placement agreement
- Section 780—Emergency admissions
- Section 810 –Discharge procedures
- Section 870—Quarterly reports
- Section 1170 – Health care procedures
- Section 1290 – Behavior management

In addition, the department recommends a number of minor changes for purposes of style, to add additional clarification, or to eliminate duplicative language. Changes are made to the following sections:

- Section 70—Relationship with the department
- Section 220—Written personnel procedures
- Section 250—Notification of change in driver’s license status
- Section 260—Physical or mental health of personnel
- Section 280—Selection and duties of volunteers or interns
- Section 330—Maintenance of residents’ records
- Section 370—Heating and cooling systems and ventilation
- Section 390—Plumbing and water supply; temperature
- Section 400—Toilet facilities
- Section 460—Maintenance of the buildings and grounds
- Section 520—Telephone access and emergency numbers

- Section 600—Contact with attorneys, courts, and law enforcement
- Section 660—School enrollment and study time
- Section 710—Placement pursuant to a court order
- Section 720—Readmission to a shelter care program
- Section 740—Admission procedures
- Section 760--Admission
- Section 770 –Orientation to facility rules and disciplinary procedures
- Section 790—Resident transfer between residential facilities located in Virginia and operated by the same governing authority
- Section 820—Discharge documentation
- Section 840 – Structured programming
- Section 850—Daily log
- Section 860—Individual service plan
- Section 870—Quarterly reports
- Section 880—Therapy
- Section 990—Medication management in independent living programs
- Section 1090—Examination by physician
- Section 1160—Provision of health care services
- Section 1180—Health-trained personnel
- Section 1230—Infectious or communicable diseases
- Section 1240—Suicide prevention
- Section 1250—Residents' health care records
- Section 1290—Behavior management
- Section 1320—Physical restraint

X. LIST OF RETAINED SECTIONS

The committee is not recommending changes to any of the following sections:

- Section 130—Insurance
- Section 150—Job descriptions
- Section 170—Physical examination
- Section 230—Code of ethics
- Section 340—Face sheet
- Section 350—Buildings and inspections
- Section 420—Furnishings
- Section 430—Disposal of garbage and management of hazardous materials
- Section 480—Fire prevention plan
- Section 500—Contraband
- Section 530—Internet access
- Section 580—Telephone calls
- Section 640—Residents' privacy
- Section 670—Religion
- Section 940—Outside personnel working in the facility

- Section 1330—Chemical agents

6VAC35-41

CHAPTER 41

REGULATION GOVERNING JUVENILE GROUP HOMES ~~AND HALFWAY HOUSES~~ OTHER NONSECURE JUVENILE RESIDENTIAL FACILITIES

Part I

General Provisions

6VAC35-41-10. Definitions.

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

"Annual" means within 13 months of the previous event or occurrence.

"Aversive stimuli" means physical forces, such as sound, electricity, heat, cold, light, water, or noise, or substances, such as hot pepper, pepper sauce, or pepper spray, measurable in duration and intensity, that when applied to a resident are noxious or painful to the resident.

"Behavior management" means the principles and methods employed to help a resident achieve positive behavior and to address and correct a resident's inappropriate behavior in a constructive and safe manner in accordance with written procedures governing program expectations, treatment goals, and residents' and employees' safety and security.

"Board" means the Board of Juvenile Justice.

"Case record" ~~or "record"~~ means written ~~or electronic~~ information ~~relating to one~~ regarding a resident and the resident's family, if applicable. This information includes ~~, but is not limited to,~~ social, medical, psychiatric, and psychological records; reports; demographic information; agreements; all correspondence relating to care of the resident; service plans with periodic revisions; aftercare plans and discharge summary; and any other information related to the resident.

"Contraband" means ~~any~~ an item possessed by or accessible to a resident or found within a facility or on its premises ~~that:~~ (i) ~~that~~ is prohibited by statute, regulation, or facility procedure, (ii) ~~that~~ is not acquired through approved channels or in prescribed amounts, or (iii) ~~that~~ may jeopardize the safety and security of the facility or individual residents.

Contractor means an individual who: (i) has entered into a legal agreement with a juvenile residential facility to provide services directly to a resident, (ii) will work with the resident more than twice per month, and (iii) in the provision of the contractual services, will be alone with the resident.

"Department" ~~or "DJJ"~~ means the Department of Juvenile Justice.

"Direct care staff" means the staff whose primary job responsibilities are (i) maintaining the safety, care, and well-being of residents and (ii) implementing the structured program of care and behavior management program.

"Direct supervision" means ~~that the act of the~~ staff ~~may working~~ with residents while not in the presence of direct care staff. Staff members who provide direct supervision are responsible for maintaining the safety, care, and well-being of the residents in addition to providing services or performing the primary responsibilities of that position.

"Director" means the ~~Director~~ director of the ~~department~~ Department of Juvenile Justice.

"Emergency" means a sudden, generally unexpected occurrence or set of circumstances demanding immediate action such as a fire, chemical release, loss of utilities, natural disaster, ~~taking of hostages~~ hostage situation, major disturbances, escape, ~~and or~~ bomb threats. Emergency does not include regularly scheduled employee time off or other situations that reasonably could be ~~reasonably~~ anticipated.

"Emergency admission" means the unplanned or unexpected admission of a resident in need of immediate care.

"Facility administrator" means the individual who ~~has the responsibility~~ is responsible for the on-site management and operation of the facility on a regular basis or his designee.

"Family-oriented group home" means a private home in which residents ~~may~~ reside upon placement by a lawful placing agency.

"Grievance" means a written communication developed by a resident to report a real or imagined wrong or other cause for complaint or protest, particularly involving a claim of unfair treatment.

"Group home" means a juvenile residential facility that is a community-based, ~~home-like single dwelling, or its acceptable equivalent~~, other than the private home of the operator, ~~and that~~ does not exceed the capacity approved by the ~~regulatory authority~~ director. For the purpose of this chapter, a group home includes a halfway house, a shelter care facility, or an independent living facility. ~~that houses residents in transition from a commitment to the department.~~

"Health care record" means the complete record of medical screening and examination information and ongoing records of medical and ancillary service delivery including all findings, diagnoses, treatments, dispositions, prescriptions, and their administration.

"Health care services" means preventative and therapeutic actions taken for the physical and mental well-being of a resident. Health care services include medical, dental, orthodontic, mental health, family planning, obstetrical, gynecological, health education, and other ancillary services.

"Health-trained personnel" means an individual who is trained by a licensed health care provider to perform specific duties such as administering health care screenings, reviewing screening forms for necessary follow-up care, preparing residents and records for outside medical visits, and assisting in the implementation of certain medical orders.

"Human research" means a systematic investigation, including research development, testing, and evaluation, utilizing human subjects that is designed to develop or contribute to generalized knowledge. Human research shall not be deemed to include research exempt from federal research regulation pursuant to 45 CFR 46.101(b).

"Independent living program" means a competency-based program specifically approved by the director to provide residents with the opportunity to develop the skills necessary to become independent decision makers and self-sufficient adults; and to live successfully on their own following completion of the program.

"Individual service plan" ~~or "service plan"~~ means a written plan of action developed, revised as necessary, and reviewed at specified intervals to meet the needs of a resident. The individual service plan specifies (i) measurable short-term and long-term goals and (ii) the objectives, strategies, and time frames for reaching the goals.

"Juvenile residential facility" or "facility" means a publicly or privately ~~operated nonoperated non-secure facility residential program or placement that is required to be certified and where that provides~~ 24-hour per day care ~~is provided~~ to residents who are separated from their parents or legal guardians ~~and that is required to be certified~~. As used in this regulation, the term includes, ~~but is not necessarily limited to,~~ group homes, family-oriented group homes, and independent living programs and halfway houses and excludes juvenile correctional centers and juvenile detention centers.

"Legally authorized representative" means, in the following specified order of priority, (i) the parent or parents having custody of a minor; (ii) the legal guardian of a minor; (iii) the spouse of a minor, except where a suit for

divorce has been filed and the divorce decree is not yet final; or (iv) a person or judicial or other body authorized by law or regulation to provide consent on behalf of a minor, including an attorney in fact appointed under a durable power of attorney, provided the power grants the individual the authority to make such a decision.

“Legal mail” means written material that is sent to or received from a designated class of correspondents, as defined in written procedures, which shall include any court, legal counsel, administrator of the grievance system, or administrator of the department, facility, provider, or governing authority.

"Living unit" means the space in which a particular group of residents ~~in~~under the care of a juvenile residential facility resides. A living unit contains sleeping ~~areas~~rooms, bath and toilet facilities, and a living room or its equivalent for use by the residents of the living unit. Depending upon its design, a building may contain one living unit or several separate living units.

“Medication incident” means an error made in administering a medication to a resident including the following: (i) a resident is given incorrect medication; (ii) medication is administered to an incorrect resident; (iii) an incorrect dosage is administered; (iv) medication is administered at a wrong time or not at all; and (v) the medication is administered through an improper method. A medication error ~~does~~shall not include: (i) a resident’s refusal of appropriately offered medication; and (ii) a facility’s failure to administer medication due to repeated, unsuccessful attempts to obtain such medication.

"On duty" means the period of time an employee is responsible for the direct care or -direct supervision of one or more residents.

"Parent" or "legal guardian" means (i) a biological or adoptive parent who has legal custody of an individual, including either parent if custody is shared under a joint decree or agreement; (ii) a biological or adoptive parent with whom the individual-resident regularly resides; (iii) a person judicially appointed as a legal guardian of a resident; or (iv) a person who exercises the rights and responsibilities of legal custody by delegation from a biological or adoptive parent, upon provisional adoption, or otherwise by operation of law.

“Physical restraint” means the application of behavior intervention techniques involving a physical intervention to prevent an individual from moving all or part of that individual's body.

"Placement" means the provision of assistance an activity by any person -~~that provides assistance~~ to a placing agency, parent, or legal guardian in locating and effecting the movement of a resident to a juvenile residential facility.

"Placing agency" means (i) ~~any-a~~ person, group, court, court service unit, or agency licensed or authorized by law to place residents in a juvenile residential facility or (ii) a local board of social services authorized to place residents in a juvenile residential facility.

“Planned admission” means the admission of a resident following evaluation of an application for admission and execution of a written placement agreement.

"Premises" means the tracts of land on which any part of a facility is located and any buildings on such tracts of land.

"Provider" means the person, corporation, partnership, association, locality, commission, or public agency to whom a license or certificate to operate a juvenile residential facility is issued and who is legally responsible for compliance with the regulatory and statutory requirements relating to the facility.

"Regulatory authority" means the board or the department, as-if designated by the board.

"Resident" means an individual who is legally placed in, formally placed in, or admitted to a juvenile residential facility for supervision, care, training, or treatment on a 24-hour per day basis.

“Rest day” means a period of not less than 24 consecutive hours during which a staff person has no responsibility to perform duties related to supervision in a juvenile residential facility.

“Rules of conduct” means a listing list of a facility's rules or regulations that is maintained to inform residents and others of: (i) the behavioral expectations of the behavior management program, about (ii) behaviors that are not permitted, and about (iii) the sanctions that may be applied when impermissible behaviors occur.

“Shelter care facility” means a nonsecure facility or an emergency shelter specifically approved to provide a range of services, as needed, on an individual basis not to exceed 90 days.

“Timeout” means a systematic behavior management technique program component designed to reduce or eliminate inappropriate or problematic behavior by having a staff require a resident to move to a specific location that is away from a source of reinforcement for a specific period of time or until the problem behavior has subsided.

“Tuberculosis risk assessment” means an assessment involving a series of questions designed to determine whether a person requires a tuberculosis screening.

“Tuberculosis screening” means the administration of a tuberculin skin test, chest x-ray, or interferon gamma release assay (IGRA) blood test to determine whether tuberculosis bacteria are present in the individual's body.

“Volunteer or intern” means an individual or group who voluntarily provides goods and services without competitive compensation.

“Vulnerable population” means a resident or group of residents who have been assessed as reasonably likely to be exposed to the possibility of being attacked or harmed, either physically or emotionally.

“Weapon” means, but is not limited to: (i) a pistol, revolver, or other weapon intended to propel a missile of any kind by action of an explosion; (ii) any dirk, bowie knife, (except a pocket knife having a folding metal blade of less than three inches), switchblade knife, ballistic knife, machete, straight razor, slingshot, spring stick, metal knucks, or blackjack; (iii) ~~nunchucks~~ nunchucks or other flailing instrument with two or more rigid parts that swing freely; and (iv) throwing star or oriental dart.

“Wilderness program” means a residential program that provides treatment and services to residents primarily through experiential wilderness expeditions.

“Written” means the required information is communicated in writing. ~~Such writing may be available~~ in either hard copy or ~~in~~ electronic form.

6VAC35-41-20. Applicability.

This chapter applies to group homes, ~~halfway houses, shelter care,~~ and other applicable juvenile residential facilities regulated by the board as authorized by statute. Parts I (6VAC35-41-10 et seq.) through VI (6VAC35-41-710 et seq.), ~~XII~~ (6VAC35-41-1150 et seq.), and ~~XIII~~ (6VAC35-41-1290 et seq.) of this chapter apply to all juvenile residential facilities, with the exception of family-oriented group homes, governed by this regulation unless specifically excluded. Parts VII (6VAC35-41-~~950960~~) through ~~XI-IX~~ (6VAC35-41-~~1120-1080~~) et seq.) of this chapter apply only to the specific programs or facilities as indicated.

6VAC35-41-30. Previous regulations terminated. (Repealed)

~~This chapter replaces the Standards for the Interim Regulation of Children's Residential Facilities (6VAC35-51) and the Standards for Juvenile Residential Facilities (6VAC35-140) for the regulation of all juvenile residential facilities as defined herein. The Standards for the Interim Regulation of Children's Residential Facilities and the Standards for Juvenile Residential Facilities remain in effect for juvenile detention facilities and juvenile correctional centers, regulated by the board, until such time as the board adopts new regulations related thereto.~~

6VAC35-41-40. Certification.

A. The provider shall comply with the provisions of the Regulations Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs and Facilities (6VAC35-20). The provider shall:

1. Demonstrate compliance with this chapter, other applicable regulations issued by the board, and applicable statutes and regulations; and
2. Implement approved plans of action to correct findings of noncompliance; ~~and~~
- ~~3. Ensure no noncompliance may pose any immediate and direct danger to residents.~~

B. The provider shall maintain the documentation necessary to demonstrate compliance with this chapter for a minimum of three years.

C. The current certificate shall be posted at all times in each facility in a place conspicuous to the public.

6VAC35-41-50. Age of residents.

A. Facilities shall admit residents only in compliance with the age limitations approved by the Board director in establishing the facility's certification capacity, except as provided in subsection B of this section.

B. ~~A facility shall not admit a resident who is above the age approved for certification.~~ A resident may remain in the facility above the certified age ~~of certified capacity only~~ (i) to allow the resident to complete a program identified in the resident's individual service plan and (ii) if a discharge plan has been established. ~~This subsection does not apply to shelter care programs.~~

6VAC35-41-60. Relationship to the regulatory authority.

A. All reports and information ~~as~~ the regulatory authority may require to establish compliance with this chapter and other applicable regulations and statutes shall be submitted to or made available to the regulatory authority audit team leader.

B. A written report of any contemplated changes in operation that would affect the terms of the certificate or the continuing eligibility for certification shall be submitted to the regulatory authority. A change may not be implemented prior to approval by the regulatory authority.

6VAC35-41-70. Relationship with the department.

A. The director or his designee shall be notified within five working days of any significant change in administrative structure or newly hired facility administrator.

B. Any of the following that may be related to the health, safety, or human rights of residents shall be reported to the director or designee within 10 days: (i) lawsuits against the facility or its governing authority and (ii) settlements with the facility or its governing authority.

6VAC35-41-80. Variances and waivers.

A. ~~A facility administrator may request board~~ Board action ~~may be requested by the facility administrator~~ to relieve a facility from having to meet or develop a plan of action for the requirements of a specific section or subsection of this regulation, provided the section or subsection is a noncritical regulatory requirement. The variance request may be granted either permanently or for a determined period of time, as provided in the Regulations Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs and Facilities (6VAC35-20).

B. ~~Any such~~ A variance may not be implemented prior to approval ~~of~~ by the board.

C. When the facility administrator has submitted a variance request to the director or his designee concerning a noncritical regulatory requirement, and board action has been requested formally by the director or his designee, the director may, but is not required to, grant a waiver temporarily excusing the facility from meeting the

requirements of a specific section or subsection of this regulation. The waiver shall be subject to the requirements in 6VAC35-20-93 (waivers).

6VAC35-41-90. Serious incident reports.

A. The following events shall be reported within 24 hours to: (i) the placing agency, (ii) the parent or legal guardian, or both, as applicable and appropriate, and (iii) the director or his designee:

1. Any A serious incident, accident, illness, or injury to the resident;
2. Any An overnight absence from the facility without permission;
3. Any A runaway;
4. Any A fire, hostage situation, or emergency situation, or natural disaster that jeopardizes may jeopardize the health, safety, and welfare of the residents; and
5. Any A suspected case of child abuse or neglect at the facility, on a facility event or excursion, or involving facility staff as provided in 6VAC35-41-100 (suspected child abuse or neglect).

The provider may extend the 24-hour reporting requirement may be extended when the emergency situation or natural disaster has made such communication impossible, such as when modes (e.g., modes of communication are not functioning). In such these cases, notice shall be provided as soon as feasible thereafter.

B. The provider shall notify the director or his designee within 24 hours of any events detailed in subsection A of this section and all other situations required by the regulatory authority of which the facility has been notified.

C. Any iIncidents involving the death of a resident shall be reported to the individuals specified in subsections A and B of this section without undue delay. If an incident involving the death of a resident occurs at the facility, the facility shall notify the parents or legal guardians, as appropriate and applicable, of all residents in the facility provided such the notice does not violate any confidentiality requirements or jeopardize any law-enforcement or child protective services investigation or the prosecution of any criminal cases related to the incident.

D. The facility shall (i) prepare and maintain a written report of the events listed in subsections A and B of this section and (ii) submit a copy of the written report to the director or designee. The report shall contain the following information:

1. The date and time the incident occurred;
2. A brief description of the incident;
3. The action taken as a result of the incident;
4. The name of the person who completed the report;
5. The name or identifying information of the person who, in accordance with subsection A, made the report ~~to~~ notified the placing agency and ~~to~~ either the parent or legal guardian, as appropriate and applicable, and the manner in which the information was communicated; and
6. The name of or identifying information provided by the person to whom the report was made, including any law enforcement or child protective services personnel.

E. The resident's record shall contain a written reference (i) that an incident occurred and (ii) of all applicable reporting.

F. In addition to the requirements of this section, any serious incident involving an allegation of child abuse or neglect at the facility, at a facility-sponsored event, or involving facility staff shall be governed by 6VAC35-41-100 (suspected child abuse or neglect).

6VAC35-41-100. Suspected child abuse or neglect.

A. When there is a reason to suspect that a child is an abused or neglected child, the matter shall be reported immediately to the local department of social services or to the state Department of Social Services' toll-free child abuse and neglect hotline as required by § 63.2-1509 of the Code of Virginia and in accordance with ~~the~~ written procedures.

B. Written procedures shall be distributed to all staff members and ~~shall~~ at a minimum, shall provide for the following:

1. Handling accusations against staff;
2. Reporting and documenting suspected cases of child abuse and neglect;
3. Cooperating during any-an investigation; and
4. Measures to be taken to ensure the safety of the resident and the staff.

C. ~~Any case~~ Cases of suspected child abuse or neglect against a resident shall be reported and documented as required in 6VAC35-41-90 (serious incident reports). The resident's case record shall contain a written reference that a report was made.

6VAC35-41-105. Reporting criminal activity.

A. Staff shall be required to report to the facility administrator, all known criminal activity suspected to have occurred at the facility or at a facility-sponsored activity by residents or staff, including ~~but not limited to any~~ physical abuse, sexual abuse, or sexual harassment, ~~to the facility administrator for appropriate action.~~

B. The facility administrator, in accordance with written procedures, shall notify the appropriate persons or agencies, including law enforcement, child protective services, if applicable and appropriate, and the department ~~as appropriate and applicable~~, of suspected criminal violations by residents or staff.

~~Suspected criminal violations relating to the health and safety or human rights of residents shall be reported to the director or designee.~~

C. The facility shall assist and cooperate with the investigation of any such complaints and allegations as necessary subject to restrictions in federal or state law.

6VAC35-41-110. Grievance procedure.

A. Written procedure shall provide-require that residents are oriented to and have continuing access to a grievance procedure that provides for:

1. Resident participation in the grievance process with assistance from staff upon request;
2. Investigation of the grievance by an objective employee who is not the subject of the grievance;
3. Documented, timely responses to all grievances with the reasons for the decision, in accordance with facility procedures;
4. At least one level of appeal;
5. Administrative review of grievances;
6. Protection from retaliation or threat of retaliation for filing a grievance; and

7. ~~Hearing of an Action~~ within eight hours on grievances that poses an immediate risk of hardship or harm to a resident. ~~emergency grievance~~

B. ~~Each resident~~Residents shall be oriented to the grievance procedure in an age ~~or~~ and developmentally appropriate manner.

C. The grievance procedure shall ~~be~~ (i) be written in clear and simple language; (ii) provide the express definition of "grievance" set out in Section 10 of this regulation; and (iii) be posted in an area easily accessible to residents and their parents and legal guardians.

D. Staff shall assist and work cooperatively with other employees in facilitating the grievance process.

Part II

Administrative and Personnel

Article 1

General Provisions

6VAC35-41-120. Responsibilities of the provider or governing authority.

A. The provider shall ~~clearly~~ identify clearly and in writing, the corporation, association, partnership, individual, or public agency that is the holder of the certificate and that serves as the facility's (governing authority). Any change in the identity or corporate status of the governing authority or provider shall be reported to the director or his designee.

B. The governing authority shall appoint a facility administrator to whom it delegates the authority and responsibility for administrative direction of the facility.

C. A written decision-making plan shall be developed and implemented and shall provide for a staff person with the qualifications of a facility administrator to be designated to assume the temporary responsibility for the operation of the facility in the absence of the facility administrator. ~~Each~~ The plan shall include an organizational chart.

D. The provider shall have a written statement of its (i) purpose, (ii) population served, and (iii) available services for each facility subject to this regulation.

E. Written procedures shall be developed and implemented to monitor and evaluate quality assurance in each facility. Improvements shall be implemented when indicated.

6VAC35-41-130. Insurance.

A. Documentation of the following insurance coverage shall be maintained:

1. Liability insurance covering the premises and the facility's operations, including all employees and volunteers, if applicable.

2. Insurance necessary to comply with Virginia's minimum insurance requirements for all vehicles used to transport residents.

B. Staff who use personal vehicles for official business, including transporting residents, shall be informed of the requirements to provide and document insurance coverage for such purposes.

6VAC35-41-140. Participation of residents in human research.

A. ~~The provider shall have procedures, approved by its governing authority, to govern the review, approval, and monitoring of human research. Human research means any systematic investigation, including research development, testing, and evaluating, involving human subjects, including but not limited to a resident or his parents, guardians, or family members, that is designed to develop or contribute to generalized knowledge. Human research does not include statistical analysis of information readily available on the subject that does not~~

~~contain any identifying information or research exempted by federal research regulations pursuant to 45 CFR 46.101(b). Providers who wish to allow residents to be used in human research shall comply with the provisions of 6VAC35-170, (Regulation Governing Minimum Standards for Juvenile Information Requests from and Research Involving Human Subjects within the Department of Juvenile Justice), and in accordance with Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 of the Code of Virginia. The testing of medicines or drugs for experimentation or research is prohibited.~~

B. Information on residents shall be maintained as provided in 6VAC35-41-330 (maintenance of records), and all records and information related to the human research shall be kept confidential in accordance with § 16.1-300 of the Code of Virginia, 6VAC35-170, and other applicable laws and regulations.

C. The provider may require periodic progress reports of any research project and a formal final report of all completed research projects.

6VAC35-41-145. Operational procedures.

Current operational procedures shall be readily accessible to all staff.

Article 2 Hiring

6VAC35-41-150. Job descriptions.

A. There shall be a written job description for each position that includes, at a minimum, the:

1. Job title or position;
2. Duties and responsibilities of the incumbent;
3. Job title or identification of the immediate supervisor; and
4. Minimum education, experience, knowledge, skills, and abilities required for entry-level performance of the job.

B. A copy of the job description shall be given to each person assigned to a position prior to assuming that position's duties.

6VAC35-41-160. Qualifications.

~~A. Facilities not subject to rules and regulations of the governing authority or a local government personnel office shall follow the minimum entry-level qualifications of the Virginia Department of Human Resource Management.~~

A. Facilities subject to (i) the rules and regulations of a governing authority or (ii) the rules and regulations of a local government personnel office shall develop written minimum entry-level qualifications in accordance with the rules and regulations of the supervising personnel authority.

B. When services or consultations are obtained on a contractual basis, they shall be provided by professionally qualified personnel.

C. Each facility shall provide documentation ~~of that verifies contractual agreements or staff every contractor's or employee's~~ expertise to provide ~~educational services, counseling services, psychological services, medical services, or any other the~~ services needed to ~~serve assist~~ the residents ~~in accordance with the facility's program description as defined by the facility's criteria of admission, required by 6VAC35-41-730 B (application for admission).~~

6VAC35-41-165. Employee tuberculosis screening assessment and follow-up.

A. A. On or before ~~the an~~ employee's start date at the facility, ~~each the~~ employee shall have received a tuberculosis risk assessment, as evidenced by completion of an assessment form containing, at a minimum, the

~~elements found on the current assessment form published by the Virginia Department of Health. submit evidence of freedom from tuberculosis in a communicable form that is no older than 30 days. The documentation risk assessment shall indicate the screening results as to whether there is an absence of tuberculosis in a communicable form be no older than 30 days. The risk assessment may be administered by health-trained personnel in a juvenile residential facility provided the results of the assessment are interpreted by a physician, physician assistant, nurse practitioner, or registered nurse.~~

~~B. In addition to the initial tuberculosis risk assessment required in subsection A, e~~Each employee shall submit evidence of an annual ~~evaluation risk assessment indicating the individual's risk of being exposed to of freedom from tuberculosis in a communicable form.~~

~~C. Employees shall undergo a subsequent tuberculosis screening if indicated based on the results of the initial or annual risk assessment.~~

~~C. Employees shall undergo a subsequent tuberculosis screening or evaluation, as applicable, in the following circumstances:~~

~~D. If an employee comes into contact with a known case of infectious tuberculosis or develops chronic respiratory symptoms of three weeks' duration, the employee shall consult his local health department or other medical professional for additional screening.~~

~~1. The employee comes into contact with a known case of infectious tuberculosis; or~~

~~2. The employee develops chronic respiratory symptoms of three weeks duration.~~

~~DE. Employees suspected of having tuberculosis in a communicable form shall not be permitted to return to work or have contact with staff or residents until a physician has determined that the individual does not have tuberculosis in a communicable form.~~

~~EF. Any active case of tuberculosis developed contracted by an employee or a resident shall be reported to the local health department in accordance with the requirements of the Commonwealth of Virginia State Board of Health Regulations for Disease Reporting and Control (12VAC5-90).~~

~~FG. Documentation of any the screening results shall be retained in a manner that maintains the confidentiality of information.~~

~~GH. The detection, diagnosis, prophylaxis, and treatment of pulmonary tuberculosis shall be performed consistent with the current requirements of the Virginia Department of Health's Division of Tuberculosis Prevention and Control and the federal Department of Health and Human Services Centers for Disease Control and Prevention.~~

6VAC35-41-170. Physical examination.

When the qualifications for a position require a given set of physical abilities, all persons selected for such positions shall be examined by a physician at the time of employment to ensure that they have the level of medical health or physical ability required to perform assigned duties. Persons hired into positions that require a given set of physical abilities may be reexamined annually in accordance with written procedures.

6VAC35-41-180. Employee and volunteer background checks.

A. Except as provided in subsection B of this section, all persons who (i) accept a position of employment at, ~~(ii) volunteer on a regular basis and will be alone with a resident in the performance of their duties,~~ or ~~(iii) provide contractual services directly to a resident on a regular basis and will be alone with a resident in the performance of their duties in a juvenile residential facility shall undergo the following background checks, in accordance with § 63.2-1726 of the Code of Virginia, to ascertain whether there are criminal acts or other circumstances that would be detrimental to the safety of residents in the facility:~~

1. A reference check;

2. A criminal history check;
3. A fingerprint check with the Virginia State Police and Federal Bureau of Investigation (FBI);
4. A central registry check with Child Protective Services; and
5. A driving record check if applicable to the individual's job duties.

B. To minimize vacancy time when the fingerprint checks required by subdivision A 3 of this section have been requested, employees may be hired, pending the results of the fingerprint checks, provided:

1. All of the other applicable components of subsection A of this section have been completed;
2. The applicant is given written notice that continued employment is contingent on the fingerprint check results as required by subdivision A 3 of this section; and
3. Employees hired under this exception shall not be allowed to ~~work with residents only when under the direct supervision of staff whose background checks have been completed,~~ **be alone work directly** with residents ~~and may work with residents only when under the direct supervision of staff whose background checks have been completed,~~ until such time as all background checks are completed.

C. Documentation of compliance with this section shall be retained in the individual's personnel record as provided in 6VAC35-41-310 (personnel records).

D. Written procedures shall provide for the supervision of nonemployee persons who are not subject to the provisions of subsection A of this section and who have contact with residents.

E. No juvenile residential facility regulated by the department shall hire for employment or contract services or allow a person to volunteer who has been convicted of any barrier crimes listed in § 19.2-392.02 of the Code of Virginia, subject to the exceptions permitted under § 63.2-1726 of the Code of Virginia.

Article 3

Employee Orientation and Training

6VAC35-41-190. Required initial orientation.

A. Before the expiration of the employee's seventh work day at the facility, each employee shall be provided with a basic orientation on the following:

1. The facility;
2. The population served;
3. The basic objectives of the program;
4. The facility's organizational structure;
5. Security; ~~population control;~~
- 6.** Emergency preparedness and evacuation procedures in accordance with 6VAC35-41-490 (emergency and evacuation procedures);
- 7.** The practices of confidentiality;
- 8.** The residents' rights; and
- 9.** The basic requirements of and competencies necessary to perform in the position.

B. Prior to working with residents while not under the direct supervision of staff who have completed all applicable orientations and training, each direct care staff shall receive a basic orientation on the following:

1. The facility's program philosophy and services;
2. The facility's behavior management program;
3. The facility's behavior intervention procedures and techniques, including the use of least restrictive interventions and physical restraint;
4. The residents' rules of conduct and responsibilities;
5. The residents' disciplinary and grievance procedures;
6. Child abuse and neglect and mandatory reporting;
7. Standard precautions; and
8. Documentation requirements as applicable to the position's duties.

C. Volunteers shall be oriented in accordance with 6VAC35-41-300 (orientation and training for volunteers or interns).

6VAC35-41-200. Required initial training.

A. Each full-time and part-time employee and relief staff shall complete initial, comprehensive training that is specific to the individual's occupational class, is based on the needs of the population served, and ensures that the individual has the competencies to perform in the position.

1. Direct care staff shall receive at least 40 hours of training, inclusive of all training required by this section, in their first year of employment.
2. Contractors shall receive training required to perform their position responsibilities in a juvenile residential facility.

B. Within 30 days following the employee's start date at the facility or before the employee is responsible for the direct supervision of a resident, all direct care staff and staff who provide direct supervision of the residents while delivering services, with the exception of workers employed by contract to provide behavioral health or health care services, shall complete training in the following areas:

1. Emergency preparedness and response;
2. First aid and cardiopulmonary resuscitation unless the individual is currently certified, with certification required as applicable to their duties;
3. The facility's behavior management program;
4. The residents' rules of conduct and the rationale for the rules;
5. The facility's behavior intervention procedures, with physical and mechanical restraint training required as applicable to their duties;
6. Child abuse and neglect;
7. Mandatory reporting;
8. Maintaining appropriate professional relationships;
9. Interaction among staff and residents;
10. Suicide prevention;
11. Residents' rights, including but not limited to the prohibited actions provided for in 6VAC35-41-560 (prohibited actions);

12. Standard precautions; and

13. Procedures applicable to the employees' position and consistent with their work profiles.

C. Employees who administer medication shall have completed successfully, prior to such administration, ~~successfully completed~~ a medication training program approved by the Board of Nursing or be licensed/certified by the Commonwealth of Virginia to administer medication.

~~D. Training shall be required by and provided as appropriate to the individual's job duties and in accordance with the provider's training plan.~~

E. When an individual is employed by contract to provide services for which licensure by a professional organization is required, documentation of current licensure shall constitute compliance with this section.

F. Volunteers and interns shall be trained in accordance with 6VAC35-41-300 (orientation and training for volunteers or interns).

6VAC35-41-210. Required retraining.

A. Each employee, relief staff, and contractor shall complete retraining that is specific to the individual's occupational class and the position's job description and addresses any professional development needs.

B. All staff shall complete an annual training refresher on the facility's emergency preparedness and response plan and procedures.

C. All direct care staff and staff who provide direct supervision of the residents while delivering services, with the exception of workers who are employed by contract to provide behavioral health or health care services, shall complete at least 40 hours of annual refresher training annually that shall include training in the following areas:

1. Suicide prevention;

2. Child abuse and neglect;

3. Mandatory reporting;

4. Residents' rights, including but not limited to the prohibited actions provided for in 6VAC35-41-560 (prohibited actions);

5. Standard precautions; and

6. Behavior intervention procedures.

D. Staff ~~required by their whose positions require position to have~~ certification in cardiopulmonary resuscitation and first aid shall receive training sufficient to maintain current certifications.

E. Employees who administer medication shall complete an annual refresher training on the administration of medication. The refresher training shall include, at a minimum, a review of the components required in 6VAC35-101-1280.

F. Retraining shall (i) be required and provided as appropriate to the individual's job duties, (ii) and address any needs identified by the individual and the supervisor, if applicable. In addition to the training hours required in subsection B, facilities shall ensure that staff receive at least 15 hours of additional training. , and (iii) be in accordance with the provider's training plan.

G. When an individual is employed by contract to provide services for which licensure by a professional organization is required, documentation of current licensure shall constitute compliance with this section.

H. Staff who have not timely completed required retraining shall not be allowed to have direct care responsibilities pending completion of the retraining requirements.

**Article 4
Personnel**

6VAC35-41-220. Written personnel procedures.

The provider shall have and implement provider-approved written personnel procedures and make these readily accessible to each staff member.

6VAC35-41-230. Code of ethics.

A written code of ethics shall be available to all employees.

6VAC35-41-240. (Reserved.)

6VAC35-41-250. Notification of change in driver's license status.

Staff whose job responsibilities may involve transporting residents shall (i) maintain a valid driver's license and (ii) report to the facility administrator or designee any change in their driver's license status including ~~but not limited to~~ suspensions, restrictions, and revocations.

6VAC35-41-260. Physical or mental health of personnel.

When an individual poses a ~~direct threat~~ significant risk of substantial harm to the health and safety of a resident, others at the facility, or the public or is unable to perform essential job-related functions, that individual shall be removed immediately from all duties involved in the direct care or direct supervision of residents. The facility may require a medical or mental health evaluation to determine the individual's fitness for duty prior to returning to duties involving the direct care or direct supervision of residents. The results of any medical information or documentation of any disability-related inquiries shall be maintained separately from the employee's personnel records maintained in accordance with 6VAC35-41-310 (personnel records).

~~For the purpose of this section a direct threat means a significant risk of substantial harm.~~

**Article 5
Volunteers**

~~6VAC35-41-270. Definition of volunteers or interns. (Repealed)~~

~~For the purpose of this chapter, volunteer or intern means any individual or group who of their own free will provides goods and services without competitive compensation.~~

6VAC35-41-280. Selection and duties of volunteers or interns.

A. ~~Any A~~ facility that uses volunteers or interns shall develop and implement written procedures governing their selection and use. ~~Such The~~ procedures shall provide for the objective evaluation of persons and organizations in the community who wish to associate with the residents.

B. Volunteers and interns shall have qualifications appropriate for the services provided.

C. The responsibilities of interns and individuals who volunteer on a regular basis shall be clearly defined in writing.

D. Volunteers and interns shall ~~neither~~ be responsible neither for the duties of direct care staff nor for the direct supervision of ~~the~~ residents.

6VAC35-41-290. Background checks for volunteers or interns.

A. ~~Any An~~ individual who (i) volunteers on a regular basis or is an intern and (ii) will be alone with a resident in the performance of that position's duties shall be subject to the background check requirements provided for applicable to employees in 6VAC35-41-180 A (employee ~~and volunteer~~ background checks).

B. Documentation of compliance with the background check requirements shall be maintained for each intern and each volunteer for whom a background check is required. Such records shall be kept in accordance with 6VAC35-41-310 (personnel records).

C. A facility that uses volunteers or interns shall have procedures for supervising volunteers or interns, on whom background checks are not required or whose background checks have not been completed and, who have contact with residents.

D. No juvenile residential facility regulated by the department shall allow a person to volunteer on a regular basis and be alone with a resident in the performance of that position's duties if the person has been convicted of a barrier crime listed in §19.2-392.02 of the Code of Virginia, subject to the exceptions permitted under § 63.2-1726 of the Code of Virginia.

6VAC35-41-300. Orientation and training for volunteers or interns.

A. Volunteers and interns shall be provided with a basic orientation on the following:

1. The facility;
2. The population served;
3. The basic objectives of the facility;
4. The facility's organizational structure;
5. Security; ~~population control;~~
6. Emergency, emergency preparedness, and evacuation procedures;
6. The practices of confidentiality;
7. The residents' rights, including ~~but not limited to~~ the prohibited actions provided for in 6VAC35-41-560 (prohibited actions); and
8. The basic requirements of and competencies necessary to perform their duties and responsibilities.

B. Volunteers and interns shall be trained within 30 days from their start date at the facility in the following:

- ~~1. Any procedures that are applicable to their duties and responsibilities; and~~
2. Their duties and responsibilities in the event of a facility evacuation; and
2. Procedures that are applicable to their duties and responsibilities.

Article 6 Records

6VAC35-41-310. Personnel records.

A. Separate up-to-date written ~~or automated~~ personnel records shall be maintained on each (i) employee, ~~and~~ (ii) volunteer or intern, and (iii) contractual service provider/contractor on whom a background check is required.

B. The records of each employee shall include:

1. A completed employment application form or other written material providing the individual's name, address, phone number, and social security number or other unique identifier;
2. Educational background and employment history;

3. Documentation of required reference check;

~~4. Annual performance evaluations;~~

5. Date of employment for each position held and date of separation;

6. Documentation of compliance with requirements of Virginia law regarding child protective services and criminal history background investigations;

7. Documentation of the verification of any educational requirements and of professional certification or licensure if required by the position;

8. Documentation of all training required by this chapter and any other training received by individual staff; and

9. A current job description.

C. If applicable, health care records, including reports of any required health examinations, shall be maintained separately from the other records required by this section.

D. The personnel records of volunteers or interns and ~~contractual service providers~~contractors may be limited to documentation of compliance with the background checks as required by 6VAC35-41-180 (employee and volunteer background checks).

E. The personnel records required in subsection A of this section shall be maintained in a secure location and shall remain confidential from unauthorized access.

6VAC35-41-320. (Reserved.)

6VAC35-41-330. Maintenance of resident's records.

A. A separate written ~~or automated~~ case record shall be maintained for each resident that shall include all correspondence and documents received by the facility relating to the care of that resident and documentation of all case management services provided.

B. A separate health care record ~~may shall~~ be ~~kept maintained~~ on each resident. The resident's active health care records shall be readily accessible in case of emergency and shall be made available to authorized staff consistent with applicable state and federal statutes and regulations.

C. Each case record and health care record shall be kept (i) up to date, (ii) in a uniform manner, and (iii) confidential from unauthorized access.

D. Written procedures shall provide for the management of all written records, ~~written and automated~~, and shall describe confidentiality, accessibility, security, and retention of records pertaining to residents, including:

1. Access, duplication, dissemination, and acquisition of information only to persons legally authorized according to federal and state laws;

2. For facilities using automated records shall address procedures that include, the manner in which such records will be: (i) protected from unauthorized access, including unauthorized Internet access; (ii) protected from loss; (iii) protected from unauthorized alteration; and (iv) backed up.:

~~a. How records are protected from unauthorized access;~~

~~b. How records are protected from unauthorized Internet access;~~

~~c. How records are protected from loss;~~

~~d. How records are protected from unauthorized alteration; and~~

e. How records are backed up;

3. Security measures to protect records (i) from loss, unauthorized alteration, inadvertent or unauthorized access, or disclosure of information; and (ii) during transportation of records between service sites;
4. Designation of person responsible for records management; and
5. Disposition of records **in the event if** the facility ceases to operate.

E. Written procedure shall specify what information is available to the resident.

F. Active and closed written records shall be kept in secure locations or compartments that are accessible to authorized staff and shall be protected from unauthorized access, fire, and flood.

G. All case records shall be retained as governed by The Library of Virginia.

6VAC35-41-340. Face sheet.

A. At the time of admission each resident's record shall include, at a minimum, a completed face sheet that contains the following:

1. The resident's full name, last known residence, birth date, sex, race, unique numerical identifier, and admission date; and

2. Names, addresses, and telephone numbers of the resident's placing agency, emergency contacts, **parents or legal guardians, and parents,** as applicable and appropriate.

B. Upon discharge, the date of and reason for discharge, names and addresses of persons to whom the resident was discharged, and forwarding address of the resident, if known, shall be recorded on the face sheet.

C. Information shall be updated when changes occur.

Part III

Physical Environment

6VAC35-41-350. Buildings and inspections.

A. All newly constructed buildings, major renovations to buildings, and temporary structures shall be inspected and approved by the local building official. Approval shall be documented by a certificate of occupancy.

B. A current copy of the facility's annual inspection by fire prevention authorities indicating that all buildings and equipment are maintained in accordance with the Virginia Statewide Fire Prevention Code (13VAC5-51) shall be maintained. If the fire prevention authorities have failed to timely inspect the facility's buildings and equipment, documentation of the facility's request to schedule the annual inspection as well as documentation of any necessary follow-up with fire prevention authorities shall be maintained.

C. The facility shall maintain a current copy of its annual inspection and approval, in accordance with state and local inspection laws, regulations, and ordinances, of the following:

1. General sanitation;
2. Sewage disposal system;
3. Water supply;
4. Food service operations; and
5. Swimming pools, if applicable.

6VAC35-41-360. Equipment and systems inspections and maintenance.

A. ~~All safety,~~ Safety, emergency, and communications equipment and systems, as identified by the facility administrator, shall be inspected, tested, and maintained by designated staff in accordance with the manufacturer's recommendations or instruction manuals or, absent such requirements, in accordance with a schedule that is approved by the facility administrator. Testing of such equipment and systems shall be conducted, at ~~a minimum, be conducted least~~ quarterly. The facility administrator shall develop written procedures for the development, maintenance, and review of safety, emergency, and communications equipment and systems that the facility administrator identifies as critical, as well as the testing intervals for such equipment and systems.

B. Whenever safety, emergency, and communications equipment or ~~a systemsystems is-are found-determined to be~~ defective, corrective action shall be taken to rectify the situation and to repair, remove, or replace the defective equipment or systems.

6VAC35-41-370. Heating and cooling systems and ventilation.

A. Heat shall be distributed in all rooms occupied by the residents such that a temperature no less than 68°F is maintained, unless otherwise mandated by state or federal authorities.

B. Air conditioning or mechanical ventilating systems, such as electric fans, shall be provided in all rooms occupied by residents when the temperature in those rooms exceeds 80°F unless otherwise mandated by state or federal authorities.

6VAC35-41-380. Lighting.

A. Sleeping rooms and activity areas in the facility shall provide natural lighting.

B. All areas within buildings shall be lighted for safety, and the lighting shall be sufficient for the activities being performed.

C. There shall be night lighting sufficient to observe residents.

D. Each facility shall have a plan for providing alternative lighting in case of emergencies.

E. Outside entrances and parking areas shall be lighted.

6VAC35-41-390. Plumbing and water supply; temperature.

A. Plumbing shall be maintained in operational condition, as designed.

B. An adequate supply of hot and cold running water shall be available at all times.

C. Precautions shall be taken to prevent scalding from running water. ~~Water-Hot water~~ temperatures ~~should~~ shall be maintained at 100°F to 120°F.

6VAC35-41-400. Toilet facilities.

A. There shall be at least one bathtub or bathtub alternative in each facility.

B. There shall be at least one toilet, one hand basin, and one shower or tub for every eight residents for facilities certified before July 1, 1981.

C. There shall be one toilet, one hand basin, and one shower or tub for every four residents in any building constructed or structurally modified after July 1, 1981. Facilities certified after December 28, 2007, shall comply with the one-to-four ratio.

D. The maximum number of staff members on duty in the living unit shall be counted in determining the required number of toilets and hand basins ~~when-if~~ a separate bathroom is not provided for staff.

E. There shall be at least one mirror securely fastened to the wall at a height appropriate for use in each room where hand basins are located.

F. ~~If a facility has a bathroom~~When bathrooms are that is not designated for individual use:

1. ~~Each toilet~~Toilets shall be enclosed for privacy, and

2. Bathtubs and showers shall provide visual privacy for bathing by-through the use of enclosures, curtains, or other appropriate means.

G. Windows in bathrooms and dressing areas shall provide for privacy.

6VAC35-41-410. Sleeping ~~areas~~rooms.

A. Males and females shall have separate sleeping ~~areas~~rooms.

B. No more than four residents shall share a ~~bedroom or~~ sleeping ~~area~~room.

C. Beds shall be at least three feet apart at the head, foot, and sides; and ~~double-decker~~bunk beds shall be at least five feet apart at the head, foot, and sides.

D. Sleeping ~~quarters~~rooms in facilities established, constructed, or structurally modified after July 1, 1981, shall have:

1. At least 80 square feet of floor area in a bedroom accommodating one person;

2. At least 60 square feet of floor area per person in rooms accommodating two or more persons; and

3. Ceilings with a primary height at least 7-1/2 feet in height exclusive of protrusions, duct work, or dormers.

E. Mattresses shall be fire retardant as evidenced by documentation from the manufacturer except in buildings equipped with an automated sprinkler system as required by the Virginia Uniform Statewide Building Code (13VAC5-63).

F. Each resident shall be assigned drawer ~~space~~ and closet space; or ~~their~~ equivalent storage space; for storage of clothing and personal belongings. The ~~that is~~storage space shall be accessible ~~to~~from the sleeping ~~area~~room. ~~for storage of clothing and personal belongings.~~

G. Windows in sleeping ~~areas~~rooms and dressing areas shall ~~provide~~allow for privacy.

H. ~~Every sleeping~~Sleeping area~~rooms~~ shall have a door that may be closed for privacy or quiet and that may be opened ~~and this door shall be~~ readily ~~opened~~ in case of a fire or other emergency.

6VAC35-41-420. Furnishings.

All furnishings and equipment shall be safe, clean, and suitable to the ages and number of residents.

6VAC35-41-430. Disposal of garbage and management of hazardous materials.

A. Provision shall be made for the collection and legal disposal of all garbage and waste materials.

B. All flammable, toxic, medical, and caustic materials within the facility shall be stored, used, and disposed of in appropriate receptacles and in accordance with federal, state, and local requirements.

6VAC35-41-440. Smoking prohibitions.

~~Smoking shall be prohibited in living areas and in areas where residents participate in programs.~~

Residents shall be prohibited from using, possessing, purchasing, or distributing any tobacco product or nicotine vapor products. Tobacco products, including cigarettes, cigars, smokeless tobacco, pipe tobacco, bidis, and wrappings and vapor products, such as electronic cigarettes, electronic cigars, electronic cigarillo, electronic pipes or similar products or devices shall not be used by staff, contractors, volunteers, interns or visitors in any areas of the facility or its premises.

6VAC35-41-450. Space utilization.

A. Each facility shall provide ~~for~~ the following:

1. A living room;
2. An indoor recreation area ~~with appropriate recreation materials;~~
3. An outdoor recreation area;
4. A dining area; where meals are served; that is equipped with tables and benches or chairs;
5. A visitation area that permits informal communication between residents and visitors, including the opportunity for physical contact in accordance with written procedures;
6. Kitchen facilities and equipment for the preparation and service of meals with any walk-in refrigerators or freezers equipped to permit emergency exits;
7. Space and equipment for laundry, if laundry is ~~done-washed~~ at the facility;
8. Space for the storage of items such as first aid equipment, household supplies, recreational equipment, luggage, out-of-season clothing, and other materials; and
9. Space for administrative activities including, as appropriate to the program, confidential conversations and the storage of records and materials.

B. Spaces or areas may be ~~interchangeably~~ utilized for multiple purposes but shall be in functional condition for the designated purposes.

6VAC35-41-460. Maintenance of the buildings and grounds.

A. The interior and exterior of all buildings and grounds shall be safe, maintained, and reasonably free of clutter and rubbish. This ~~includes, but is not limited to, requirement applies to all areas of the facility and to items within the facility, including:~~ (i) required locks, mechanical devices, indoor and outdoor equipment, and furnishings; and (ii) all areas where residents, staff, and visitors ~~may~~ reasonably may be expected to have access.

B. All buildings shall be reasonably free of stale, musty, or foul odors.

C. Buildings shall be kept reasonably free of flies, roaches, rats, and other vermin.

6VAC35-41-470. Animals on the premises.

A. Animals maintained on the premises shall be: ~~housed at a reasonable distance from sleeping, living, eating, and food preparation areas, as well as a safe distance from water supplies.~~

1. Housed a reasonable distance from eating and food preparation areas, as well as a safe distance from water supplies;

2. Tested, inoculated, and licensed as required by law; and

3. Provided with clean sleeping areas and adequate food and water.

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

~~B.~~ The premises shall be kept reasonably free of stray domestic animals.

~~D. Pets shall be provided with clean sleeping areas and adequate food and water.~~

Part IV
Safety and Security

6VAC35-41-480. Fire prevention plan.

Each facility shall develop a fire prevention plan that provides for an adequate fire protection service.

6VAC35-41-490. Emergency and evacuation procedures.

A. The provider shall develop a written emergency preparedness and response plan for each facility. The plan shall address:

1. Documentation of contact with the local emergency coordinator to determine (i) local disaster risks, (ii) communitywide plans to address different disasters and emergency situations, and (iii) assistance, if any, that the local emergency management office will provide to the facility in an emergency;
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 procedures 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, interns, volunteers, visitors and residents; property protection; community outreach; and recovery and restoration;
4. Written emergency response procedures for assessing the situation; protecting residents, employees, contractors, interns, 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~~notifying residents;
 - c. Providing emergency access to secure areas and opening locked doors;
 - d. Conducting evacuations to emergency shelters or alternative sites and accounting for all residents;
 - e. Relocating residents, if necessary;
 - f. Notifying parents and legal guardians, as applicable and appropriate;
 - g. Alerting emergency personnel and sounding alarms;
 - h. Locating and shutting off utilities when necessary; and
 - i. Providing for a ~~planned, personalized~~ means of effective egress evacuation for residents individuals with disabilities or who require special accommodations, such as vision-impaired, hearing-impaired, or nonambulatory individuals who use wheelchairs, crutches, canes, or other mechanical devices for assistance in walking.
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 lists of major resources such as local emergency shelters; and
6. Schedule for testing the implementation of the plan and conducting emergency preparedness drills.

B. The provider shall develop emergency preparedness and response training for all employees to ensure they are prepared to implement the emergency preparedness plan in the event of an emergency. ~~Such~~The training shall include the employees' responsibilities for:

1. Alerting emergency personnel and sounding alarms;
2. Implementing evacuation procedures, including evacuation of residents with special needs or who require special accommodations (i.e., deaf, blind, nonambulatory);
3. Using, maintaining, and operating emergency equipment;
4. Accessing emergency information for residents including medical information; and
5. Utilizing community support services.

C. Contractors, **and** volunteers, and interns shall be oriented in their responsibilities in implementing the emergency preparedness plan in the event of an emergency.

D. The provider shall review and document the review of the emergency preparedness plan annually and make necessary revisions. ~~Such~~ The revisions shall be communicated to employees, contractors, interns, and volunteers and incorporated into training for employees, contractors, interns, and volunteers and orientation of residents to services.

E. ~~In the event of~~ if a disaster, fire, emergency, or ~~any~~ other condition that may jeopardize the health, safety, and welfare of residents occurs, the provider shall take appropriate action to protect the health, safety, and welfare of the residents and to remedy the conditions as soon as possible. The provider first shall respond and stabilize the disaster or emergency. After the disaster or emergency is stabilized, the provider shall report the disaster or emergency in accordance with 6VAC35-41-90 (serious incident reports).

~~F. In the event of a disaster, fire, emergency, or any other condition that may jeopardize the health, safety, and welfare of residents, the provider should first respond and stabilize the disaster or emergency. After the disaster or emergency is stabilized, the provider shall report the disaster or emergency in accordance with 6VAC35-41-90 (serious incident reports).~~

G. Floor plans showing primary and secondary means of emergency exiting shall be posted on each floor in locations where they ~~can be seen~~ are easily visible by staff and residents.

H. The responsibilities of the residents in implementing the emergency procedures shall be communicated to all residents within seven days following admission or a substantive change in the procedures.

I. The facility shall conduct at ~~At~~ least one evacuation drill ~~(the simulation of in which its emergency and evacuation procedures are simulated the facility's emergency procedures) shall be conducted~~ each month in each building occupied by residents. During any three consecutive calendar months, at least one evacuation drill shall be conducted during each shift.

J. Evacuation drills shall include, at a minimum:

1. Sounding of emergency alarms;
2. Practice in evacuating buildings;
3. Practice in alerting emergency authorities;
4. Simulated use of emergency equipment; and
5. Practice in accessing resident emergency information.

K. A record shall be maintained for each evacuation drill and shall include the following:

1. Buildings in which the drill was conducted;
2. Date and time of the drill;
3. Amount of time taken to evacuate the buildings;

4. Specific problems encountered;

5. Staff tasks completed including:

a. Head count, and

b. Practice in notifying emergency authorities; and

6. The name of the staff members responsible for conducting and documenting the drill and preparing the record.

L. The facility shall assign one staff member who shall ensure that all requirements regarding the emergency preparedness and response plan and the evacuation drill program are met.

6VAC35-41-500. Contraband.

Written procedure shall provide for the control, detection, and disposition of contraband.

6VAC35-41-510. Searches of residents.

A. Each facility that conducts searches shall have procedures that provide that all searches shall be subject to the following:

1. Searches of residents' persons shall be conducted only for the purposes of maintaining facility security and controlling contraband and only in a manner that protects while protecting the dignity of the resident;

2. Searches are shall be conducted only by personnel who are properly trained and authorized to conduct such searches; and.

3. The resident shall not be touched any more than is necessary to conduct the search.

B. Facilities that do not conduct searches of residents shall have a procedure prohibiting them.

C. PatdownPat down and frisk searches shall be conducted by personnel of the same sex as the resident being searched, except in emergencies.

~~D. Strip searches and visual inspections of the vagina and anal cavity areas shall only be permitted (i) if ordered by a court; (ii) if conducted by law enforcement personnel acting in his official capacity; or (iii) if the facility obtains the approval of the regulatory authority to conduct such searches. A facility that conducts such searches shall have a procedure that provides that the searches shall be subject to the following:~~

~~1. The search shall be performed by personnel of the same sex as the resident being searched;~~

~~2. The search shall be conducted in an area that ensures privacy; and~~

~~3. Any witness to the search shall be of the same sex as the resident.~~

~~ED. Strip searches, visual searches, and manual~~Manual and or instrumental searches of the anal cavity or vagina shall be prohibited ~~unless court ordered~~.

6VAC35-41-520. Telephone access and emergency numbers.

A. There shall be at least one continuously operable, nonpay telephone accessible to staff in each building in which residents sleep or participate in programs.

B. There shall be an emergency telephone number where a staff person may be ~~immediately~~ contacted immediately, 24 hours a day and seven days per week.

C. An emergency telephone number shall be provided to residents and the adults responsible for their care when a resident is away from the facility and not under the supervision of direct care staff or law-enforcement officials.

6VAC35-41-530. Internet access.

Facilities that allow resident access to the Internet shall have procedures governing such usage.

6VAC35-41-540. Weapons.

~~A. The possession, use, and storage of weapons in facilities or on the premises where residents are reasonably expected to have access are prohibited except when specifically authorized by statutes or regulations or provided in subsection B of this section.~~ A. The possession, use, and storage of weapons in facilities or on the premises where residents are reasonably expected to have access are prohibited except when specifically authorized by statutes or regulations or provided for in subsection B of this section.

~~B. For the purpose of this section, weapons shall include but will not be limited to (i) any pistol, revolver, or other weapon intended to propel a missile of any kind by action of an explosion; (ii) any dirk, bowie knife, except a pocket knife having a folding metal blade of less than three inches, switchblade knife, ballistic knife, machete, straight razor, slingshot, spring stick, metal knucks, or blackjack; (iii) nunchucks or other flailing instrument with two or more rigid parts that swing freely; and (iv) throwing star or oriental dart.~~

~~B.~~ Weapons shall be permitted if they are in the possession of a licensed security personnel or law-enforcement officer while in the course of his duties.

6VAC35-41-550. Transportation.

~~A. It shall be the~~ The facility shall be responsible responsibility of the facility ~~to for have having~~ transportation available or ~~to make making~~ the necessary arrangements for routine and emergency transportation.

B. There shall be written safety rules for transportation of residents and, if applicable, for the use and maintenance of vehicles.

~~C. If a person or entity other than the juvenile residential facility assumes custody of the resident for purposes of transportation; and the facility has flagged the resident for additional monitoring due to: (i) a recent suicide attempt; (ii) recent suicidal ideations; or (iii) special medical needs, the facility shall:~~

1. Provide the person or entity responsible for transporting the resident, except the resident's parent or guardian, with a department-approved form that identifies any pertinent information known to the juvenile residential facility concerning the need for the additional monitoring, provided the information reasonably could be considered necessary for the resident's safe transportation and supervision, and

2. Notify the transporting party that such information must remain confidential in accordance with applicable laws, rules, and regulations regarding confidentiality of juvenile records.

~~D. The facility shall be excused from meeting the requirements of subsection C if an emergency renders completion of the form impracticable or infeasible.~~

~~E.~~ The facility shall have a procedure for the verification of appropriate licensure for staff whose duties involve transporting residents.

Part V

Residents' Rights

6VAC35-41-560. Prohibited actions.

The following actions are prohibited:

1. Discrimination in violation of the Constitution of the United States, the Constitution of the Commonwealth of Virginia, and state and federal statutes and regulations.

2. Deprivation of drinking water or food necessary to meet a resident's daily nutritional needs, except as ordered by a licensed physician for a legitimate medical purpose and documented in the resident's record;
3. Denial of contacts and visits with the resident's attorney, a probation officer, the department, the regulatory authority, a supervising agency representative, or representatives of other agencies or groups as required by applicable statutes or regulations;
4. Bans on contacts and visits with family or legal guardians, except as permitted by other applicable state regulations or by order of a court of competent jurisdiction;
5. ~~Any action that is~~ Actions that are humiliating, degrading, or abusive, including ~~but not limited to~~ physical abuse, sexual abuse, and sexual harassment;
6. Corporal punishment, which is administered through the intentional inflicting infliction of pain or discomfort to the body through actions such as, ~~but not limited to~~ (i) striking or hitting with any part of the body or with an implement; (ii) pinching, pulling, or shaking; or (iii) any-similar actions that normally inflicts pain or discomfort;
7. Subjection to unsanitary living conditions;
8. Denial 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 resident's record;
9. Denial of health care;
10. Deprivation of appropriate services and treatment;
11. Application of aversive stimuli, except as permitted pursuant to other applicable state regulations.
Aversive stimuli means any physical forces (e.g., sound, electricity, heat, cold, light, water, or noise) or substances (e.g., hot pepper, pepper sauce, or pepper spray) measurable in duration and intensity that when applied to a resident are noxious or painful to the individual;
12. Administration of laxatives, enemas, or emetics, except as ordered by a licensed physician or poison control center for a legitimate medical purpose and documented in the resident's record;
13. Deprivation of opportunities for sleep or rest, except as ordered by a licensed physician for a legitimate medical purpose and documented in the resident's record;
14. Placement of a resident alone in a locked room or a secured area where the resident is prevented from leaving;
15. Use of mechanical restraints, such as (e.g., handcuffs, waist chains, leg irons, disposable plastic cuffs, leather restraints, ~~or and a~~ restraint chairs);
16. Use of pharmacological restraints; and
17. Other constitutionally prohibited actions.

-6VAC35-41-565. Vulnerable population.

A. Immediately upon a resident's admission, the facility shall implement a procedure for assessing determining whether a resident is a member of a vulnerable population. Factors including the resident's height and size, English proficiency, sexual orientation, history of being bullied, or history of self-injurious behavior may be considered in determining whether a resident is a member of a vulnerable population. The resident's own views with respect to his or her safety shall be taken into consideration.

B. If the assessment facility determines a resident is a member of a vulnerable population, the facility shall implement any identified additional precautions such as heightened need for supervision, additional safety

precautions, or separation from certain other residents. The facility shall consider on a case-by-case basis whether a placement would ensure the resident's health and safety and whether the placement would present management or security problems.

~~C. For the purposes of this section, vulnerable population means a resident or group of residents who have been assessed to be reasonably likely to be exposed to the possibility of being attacked or harmed, either physically or emotionally (e.g., very young residents; residents who are small in stature; residents who have limited English proficiency; residents who are gay, lesbian, bi-sexual, transgender, or intersex; residents with a history of being bullied or of self injurious behavior).~~

6VAC35-41-570. Residents' mail.

A. A resident's incoming or outgoing mail may be delayed or withheld only in accordance with this section or as permitted by other applicable regulations or by order of a court.

B. In accordance with written procedures, staff may open and inspect residents' incoming and outgoing nonlegal mail, including electronic nonlegal mail for contraband. When based on legitimate facility interests of order and security, nonlegal mail, including electronic nonlegal mail may be read, censored, or rejected. In accordance with written procedures, the resident shall be notified, as appropriate, when incoming or outgoing letters, including electronic letters, are withheld in part or in full or redacted.

C. In the presence of the resident recipient and in accordance with written procedures, staff may open to inspect for contraband, but shall not read, legal mail.

~~Legal mail shall mean any written material that is sent to or received from a designated class of correspondents, as defined in procedures, which shall include any court, legal counsel, administrators of the grievance system, or administrators of the department, facility, provider, or governing authority.~~

D. Staff shall not read mail, including electronic mail, addressed to parents, immediate family members, legal guardians, guardians ad litem, counsel, courts, officials of the committing authority, public officials, or grievance administrators unless permission has been obtained from a court or the facility administrator has determined that there is a reasonable belief that the security of a facility is threatened. When so authorized, staff may read such mail only in the presence of a witness and in accordance with written procedures.

E. Except as otherwise provided, incoming and outgoing letters shall be held for no more than 24 hours and packages for no more than 48 hours, excluding weekends and holidays.

F. Cash, stamps, and other items specified items in written procedures may be held for the resident.

G. Upon request, each resident shall be given postage and writing materials for all legal correspondence mail and at least two other letters per week.

H. Residents shall be permitted to correspond at their own expense with any person or organization, provided such the correspondence does not pose a threat to facility order and security and is not being used to violate or to conspire to violate the law.

I. First class letters and packages received for residents who have been transferred or released shall be forwarded to the resident's last known address or forwarding address or returned to sender.

J. Written procedure governing correspondence of residents shall be made available to all staff and residents, and shall be reviewed annually, and updated as needed.

6VAC35-41-580. Telephone calls.

Residents shall be permitted reasonable access to a telephone in accordance with procedures that take into account the need for facility security and order, resident behavior, and program objectives.

6VAC35-41-590. Visitation.

A. Residents shall be ~~permitted-given to~~ reasonable visiting privileges, consistent with written procedures, that take into account (i) the need for security and order, (ii) the behavior of individual residents and visitors, (iii) the importance of helping the resident maintain strong family and community ties, and (iv) the welfare of the resident, ~~and (v) whenever.~~ Whenever possible, the facility shall provide flexible visiting hours.

B. Copies of the written visitation procedures shall be made available to the parents or legal guardians, when appropriate, legal guardians, and the resident, ~~and other interested persons important to the resident~~ no later than the time of admission. ~~except that w~~When parents or legal guardians do not participate in the admission process, however, visitation procedures shall be mailed to them, either electronically or via first class mail, ~~to them~~ by the close of the next business day after admission, unless a copy has already been provided to the individual.

6VAC35-41-600. Contact with attorneys, courts, and law enforcement.

A. Residents shall have uncensored, confidential contact with their legal representative in writing, as provided ~~for~~subject to the exceptions provided in 6VAC35-41-570 (residents' mail), by telephone, or in person.

B. Residents shall not be denied access to the courts.

C. Residents shall not be required to submit to questioning by law enforcement, though they may do so voluntarily.

1. Residents' consent shall be obtained prior to any contact with law enforcement.

2. No employee may coerce a resident's decision to consent to have contact with law enforcement.

3. Each facility shall have procedures for establishing a resident's consent to ~~any such contact~~questioning by law enforcement and for documenting the resident's decision. The procedures may ~~provide for~~require (i) notification of the parent or legal guardian, as appropriate and applicable, prior to the commencement of questioning; and (ii) opportunity, at the resident's request, to confer with an attorney, parent or guardian, or other person in ~~making the decision~~deciding whether to consent to questioning.

6VAC35-41-610. Personal necessities and hygiene.

A. At admission, each resident shall be provided the following:

1. An adequate supply of personal necessities for hygiene and grooming;

2. A separate bed equipped with a mattress, a pillow, blankets, bed linens, and, if needed, a waterproof mattress cover; and

3. Individual washcloths and towels.

B. At the time of issuance, all items shall be clean and in good repair.

C. Personal necessities shall be replenished as needed.

D. The washcloths, towels, and bed linens shall be cleaned or changed, at a minimum, once every seven days and more often, if needed. Bleach or another sanitizing agent approved by the federal Environmental Protection Agency to destroy bacteria shall be used in the laundering of ~~such bed~~ linens ~~and table linens~~.

E. Staff shall promote good personal hygiene of residents by monitoring and supervising hygiene practices each day and by providing instruction when needed.

6VAC35-41-620. Showers.

Residents shall have the opportunity to shower daily, except when ~~a declaration of a state of~~ here is a documented emergency situation, due to drought conditions has been issued by the Governor or water restrictions have been issued by the locality. ~~Under these exceptional circumstances showers shall be restricted~~

~~as determined by the facility administrator after consultation with local health officials. The alternate schedule implemented under these exceptional circumstances shall account for cases of medical necessity related to health concerns and shall be in effect only until such time as the water restrictions are lifted.~~

6VAC35-41-630. Clothing.

- A. Provision shall be made for each resident to have an adequate supply of clean and size-appropriate clothing and shoes for indoor and outdoor wear.
- B. Clothes and shoes shall be similar in style to those generally worn by individuals of the same age in the community who are engaged in similar activities.
- C. Residents shall have the opportunity to participate in the selection of their clothing.

~~D. Residents shall be allowed to take personal clothing when leaving the facility.~~

6VAC35-41-640. Residents' privacy.

Residents shall be provided privacy while bathing, dressing, or conducting toileting activities. This section does not apply to medical personnel performing medical procedures or to staff providing assistance to residents whose physical or mental disabilities dictate the need for assistance with these activities as justified in the resident's record.

6VAC35-41-650. Nutrition.

- A. Each resident, except as provided in subsection B of this section, shall be provided a daily diet that (i) consists of at least three nutritionally balanced meals and an evening snack, (ii) includes an adequate variety and quantity of food for the age of the resident, and (iii) meets any applicable federal nutritional requirements.
- B. Special diets or alternative dietary schedules, as applicable, shall be provided in the following circumstances: (i) when prescribed by a physician or (ii) when necessary to observe the established religious dietary practices of the resident. In such circumstances, the meals shall meet **any** applicable federal nutritional requirements.
- C. Menus of actual meals served shall be kept on file in accordance with applicable federal requirements~~for at least six months.~~
- D. Staff who eat in the presence of the residents shall be served the same meals as the residents unless a special diet has been prescribed by a physician for the staff or residents or the staff or residents are observing established religious dietary practices.
- E. There shall not be more than 15 hours between the evening meal and breakfast the following day, except when the facility administrator approves an extension of time between meals on weekends and holidays. When an extension is granted on a weekend or holiday, there shall never be more than 17 hours between the evening meal and breakfast.
- F. Providers shall ~~assure~~ **ensure** that food is available to residents who for documented medical or religious reasons need to eat breakfast before the 15 or 17 hours have expired.

G. The provisions of this section shall not apply to independent living programs. Independent living programs shall be subject to the provisions applicable to nutrition in 6VAC35-41-1000 (nutrition procedure in independent living programs).

6VAC35-41-660. School enrollment and study time.

- A. The facility shall make all reasonable efforts to enroll each resident of compulsory school attendance age in an appropriate educational program within five school business days after admission and in accordance with § 22.1-254 of the Code of Virginia and Regulations Governing the Reenrollment of Students Committed to the Department of Juvenile Justice (8VAC20-660), if applicable. Documentation of the enrollment and any attempt to enroll the resident shall be maintained in the resident's record.

B. ~~Each provider~~Providers shall develop and implement written procedures to ensure that each resident has adequate study time.

6VAC35-41-670. Religion.

A. Residents shall not be required or coerced to participate in or be unreasonably denied participation in religious activities.

B. The provider's procedures on religious participation shall be available to residents and any individual or agency considering placement of an individual in the facility.

6VAC35-41-680. Recreation.

A. The provider shall have a written description of its recreation program that describes activities that are consistent with the facility's total program and with the ages, developmental levels, interests, and needs of the residents, ~~that includes:~~ The recreationalrecreation program shall include:

1. Opportunities for individual and group activities, both structured and unstructured;
2. Use of available community recreational resources and facilities;
3. Scheduling of activities so that they do not conflict with meals, religious services, educational programs, or other regular events; and
4. Regularly scheduled indoor and outdoor recreational activities that are structured to develop skills and pro-social attitudes.

5. Appropriate recreational materials for indoor and outdoor use.

B. The provider shall ~~develop and implement written procedures to ensure~~protect the safety of residents participating in recreational activities ~~that include~~by ensuring that:

1. ~~How activities~~Activities are ~~will be~~ directed and supervised by individuals knowledgeable in the safeguards required for the activities;
2. ~~How residents~~Residents are assessed for suitability ~~for an activity and the supervision~~ and appropriately supervised~~provided; and~~
3. ~~How safeguards~~Safeguards for water-related activities ~~will be~~are provided, including ensuring that a certified life guard supervises all swimming activities; and that the provider attempts to determine the resident's swimming ability by consulting his parent or legal guardian;
4. All participants are equipped and clothed appropriately and wearing any safety gear appropriate for the activity in which the resident is engaging;

C. For ~~all~~ overnight recreational trips away from the facility, the provider shall document trip planning to include:

1. A supervision plan for the entire duration of the activity including awake and sleeping hours that, at a minimum, meets the specific staffing ratio requirements set out in 6VAC35-41-930 (staffing pattern);
2. A plan for safekeeping and distribution of medication;
3. An overall emergency, safety, and communication plan for the activity including resident accountability, prompt evacuation, and identification of emergency numbers ~~of-for~~ facility ~~administration~~administrators and outside emergency services;
4. Staff training and experience requirements for each activity;
5. Resident preparation for each activity;

6. A plan to ensure that ~~all the necessary~~ equipment and gear that will be used in connection with the specified for the activity is certified, if required, in good repair, in operable condition, and age, body-size, and otherwise appropriate for the activity;
7. A trip schedule giving addresses and phone numbers of locations to be visited and how the location was chosen and evaluated;
8. A plan to evaluate residents' physical health throughout the activity and to ensure that the activity is conducted within the boundaries of the resident's capabilities, dignity, and respect for self-determination;
9. A plan to ensure that a certified life guard supervises all swimming activities in which residents participate; and
10. Documentation of any variations from trip plans and reason for the variation.

D. For overnight recreational trips away from the facility, the facility administrator shall ensure that:

1. A telephone is located in each area where residents sleep or participate in programs;
2. First-aid kits are accessible at all times and contain supplies that are appropriate for the activity;
3. A separate bed, bunk, or cot, or sleeping bag is available for each resident and staff member attending the overnight trip; and
4. Bedding is clean, dry, sanitary, and in good repair.

E. The facility shall obtain written permission from each resident's parent or legal guardian for All-all overnight out-of-state or out-of-country recreational trips ~~require written permission from each resident's legal guardian~~. Documentation of the written permission shall be kept maintained in the resident's case record.

F. The provisions of this section shall not apply to wilderness programs. Wilderness programs shall be subject to the provisions of sections 1010 through 1070 of this chapter.

6VAC35-41-690. Residents' funds.

- A. The provider shall implement written procedures for safekeeping and for recordkeeping of ~~any~~ money that belongs or is provided to residents, including allowances, if applicable.
- B. A resident's personal funds, including any allowance or earnings, shall be used for the resident's benefit, for payments ordered by a court, or to pay restitution for damaged property or personal injury as determined by disciplinary procedures.

6VAC35-41-700. Fundraising.

The provider shall not use residents in its fundraising activities without the written permission of both the parent or legal guardian, as appropriate and applicable, and the ~~consent of~~ residents.

Part VI

Program Operation

Article 1

Admission, Transfer, and Discharge

6VAC35-41-710. Placement pursuant to a court order.

A. When a resident is placed in a facility pursuant to a court order, the following regulatory requirements shall ~~be met by maintaining a copy of a court order in the resident's case record~~ not apply:

1. 6VAC35-41-730 (application for admission).

2. 6VAC35-41-740 (admission procedures).
3. 6VAC35-41-750 (written placement agreement).
4. 6VAC35-41-780 (emergency admissions).
5. 6VAC35-41-810 (discharge procedures).

B. The facility shall maintain a copy of the court order in the resident's case records instead of the documentation required by the regulatory sections enumerated in subsection A.

6VAC35-41-720. Readmission to a shelter care program.

A. When a resident is readmitted to a shelter care facility within 30 days from discharge, the following **regulatory** requirements shall not apply:

1. 6VAC35-41-730 (application for admission).
2. 6VAC35-41-740 (admission procedures).

B. When a resident is readmitted to a shelter care facility within 30 days from discharge, the facility shall:

1. Review and update all information on the face sheet as provided in 6VAC35-41-340 (face sheet);
2. Complete a health screening in accordance with 6VAC35-41-1200 (health screening at admission);
3. Complete **the** required admission and orientation process as provided in 6VAC35-41-760 (admission); and
4. Update in the case record any other information regarding the resident that has changed since discharge.

6VAC35-41-730. Application for admission.

A. Except for placements pursuant to a court order or resulting from a transfer between residential facilities located in Virginia and operated by the same governing authority, all admissions shall be based on evaluation of an application for admission.

B. Providers shall develop **and fully complete, an application for admission and ensure that the referral source has fully completed the application** prior to **a resident's** acceptance for care, ~~an application for admission that is designed to compile. The provider shall ensure that the completed application for each admitted resident is placed in the resident's case record.~~

C. The application for admission shall consist of information necessary to determine:

1. The educational needs of the prospective resident;
2. The mental health, emotional, and psychological needs of the prospective resident;
3. The physical health needs, including the immunization needs, of the prospective resident;
4. The protection needs of the prospective resident;
5. The suitability of the prospective resident's admission;
6. The behavior support needs of the prospective resident; and
7. Information necessary to develop a service plan and a behavior support plan.

CD. Each facility Providers shall develop and implement written procedures to assess each prospective resident as part of the application process to ensure that:

1. The needs of the prospective resident can be addressed by the facility's services;
2. The facility's staff are trained to meet the prospective resident's needs; and

3. The admission of the prospective resident would not pose any significant risk to (i) the prospective resident or (ii) the facility's residents or staff.

6VAC35-41-740. Admission procedures.

A. Except for placements pursuant to a court order, the facility shall admit only those residents who are determined to be compatible with the services provided through the facility.

B. The facility's written criteria for admission shall include the following:

1. A description of the population to be served;
2. A description of the types of services offered;
3. Intake and admission procedures;
4. Exclusion criteria ~~to that define~~ identify those behaviors or problems for which that the facility ~~does not have~~ lacks the experienced or trained staff ~~with experience or training necessary~~ to manage the behaviors; and
5. Description of how educational services will be provided to the population being served.

6VAC35-41-750. Written placement agreement.

~~A. A.~~ Except for placements pursuant to a court order ~~or when a resident admits himself to a shelter care facility~~, each resident's case record shall contain, prior to a routine planned admission, a completed placement agreement signed by a facility representative and the parent or legal guardian, or placing agency.

~~Routine admission means the admittance of a resident following evaluation of an application for admission and execution of a written placement agreement.~~

B. The written placement agreements shall:

1. Authorize the resident's placement;
2. Address acquisition of and consent for any medical treatment needed by the resident;
- ~~3. Address the rights and responsibilities of each party involved;~~
- ~~4.~~ 3. Address financial responsibility for the placement;
- ~~5.~~ 4. Address visitation with the resident; ~~and~~
- ~~6.~~ 5. Address the education plan for the resident and the responsibilities of all parties regarding the plan; and.
- ~~6.~~ 6. Address the rights and all other responsibilities of each party involved.

6VAC35-41-760. Admission.

A. Written procedure governing the admission and orientation of residents to the facility shall provide for:

1. Verification of legal authority for placement;
2. Search of the resident and the resident's possessions, including inventory and storage or disposition of property, as appropriate;
3. Health screening;
4. Notification of parents and legal guardians, as applicable and appropriate, including of (i) the resident's admission, (ii) information on visitation, and (iii) general information, including how the resident's parent or legal guardian may request information and register concerns and complaints with the facility. The facility shall ask the parent or legal guardian ~~regarding~~ whether the resident has any immediate medical concerns or conditions;

5. Interview with the resident to answer questions and obtain information;
6. Explanation to the resident of program services and schedules;
7. An orientation on the residents' rights, including ~~but not limited to~~ the prohibited actions provided for in 6VAC35-41-560 (prohibited actions); and
8. Assignment of the resident to a housing unit or room.

B. When a resident is readmitted to a shelter care facility within 30 days from discharge, the facility shall administer all searches and screenings, provide all notifications, and update all the information required in subsection A of this section.

6VAC35-41-770. Orientation to facility rules and disciplinary procedures.

A. During the orientation to the facility, residents shall be given written information describing facility rules, the sanctions for rule violations, and the facility's disciplinary process. ~~These~~ The written information shall be explained to the resident and documented by the dated signature of resident and staff.

B. Where a language or literacy problem exists that can lead to a resident misunderstanding the facility rules and regulations, staff or a qualified person under the supervision of staff shall assist the resident.

6VAC35-41-780. Emergency admissions.

Providers accepting emergency admissions, ~~which are the unplanned or unexpected admission of a resident in need of immediate care excluding self admittance to a shelter care facility or a court ordered placement,~~ shall:

1. Develop and implement written procedures governing such admissions that shall ~~include procedures to require~~ the provider to make and document prompt efforts to obtain (i) a written placement agreement signed by the parent or legal guardian or (ii) the ~~order of a court order~~;
2. Place in each resident's record the ~~order of a court order~~, a written request ~~for care~~ or documentation of an oral request for care, and justification ~~of for~~ why the resident is ~~to be being~~ admitted on an emergency basis; and
3. Except ~~for~~ placements pursuant to court orders, ~~clearly~~ document clearly in the written assessment information gathered for the emergency admission that the individual meets the facility's criteria for admission.

6VAC35-41-790. Resident transfer between residential facilities located in Virginia and operated by the same governing authority.

A. Except for transfers pursuant to a court order, when a resident is transferred from one facility to another facility operated by the same provider or governing authority, the sending facility shall provide the receiving facility, at the time of transfer, a written summary of (i) the resident's progress while at the sending facility; (ii) the justification for the transfer; (iii) the resident's current strengths and needs; and (iv) any medical needs, medications, and restrictions and, if necessary, instructions for meeting these needs.

B. Except for transfers pursuant to a court order, when a resident is transferred from one facility to another facility operated by the same provider or governing authority, the receiving facility shall document at the time of transfer:

1. Preparation measures accomplished through sharing information with the resident, the family, and the placing agency about the receiving facility, the staff, the population served, activities, and criteria for admission;
2. Notification to the family, ~~if as applicable and~~ appropriate, the resident, the placement agency, and the legal guardian; and
3. Receipt of the written summary from the sending facility required by subsection A of this section.

~~6VAC35-41-800. Placement of residents outside the facility. (Repealed.)~~

~~A resident shall not be placed outside the facility prior to the facility obtaining a placing agency license from the Department of Social Services, except as permitted by statute or by order of a court of competent jurisdiction.~~

6VAC35-41-810. Discharge procedures.

A. The provider shall have written criteria for discharge that shall include:

1. Criteria for a resident's completing the program that are consistent with the facility's programs and services;
2. Conditions under which a resident may be discharged before completing the program; and
3. Procedures for assisting placing agencies in placing the residents, should the facility cease operation.

B. The provider's criteria for discharge shall be accessible to prospective residents, parents or legal guardians, and placing agencies.

C. Residents under the age of 18 shall be discharged only to the parent or legal guardian, legally authorized representative, or foster parent with the written authorization of a representative of the legal guardian. Residents ~~over the age of 17~~ 18 years or older or who have been emancipated may assume responsibility for their own discharge.

D. As appropriate and applicable, information concerning current medications, need for continuing therapeutic interventions, educational status, and other items important to the resident's continuing care shall be provided to the parent or legal guardian or legally authorized representative, ~~as appropriate.~~

E. Residents shall be permitted to take personal clothing when discharged from the facility.

6VAC35-41-820. Discharge documentation.

A. Except for residents discharged pursuant to a court order, the case record of a discharged resident shall contain the following:

1. Documentation that discharge planning occurred prior to the planned discharge date;
2. Documentation that discussions with the parent or legal guardian, placing agency, and resident regarding discharge planning occurred prior to the planned discharge date;
3. A written discharge plan developed prior to the planned discharge date; and
4. As soon as possible, but no later than 30 days after discharge, a comprehensive discharge summary, which also shall be placed in the resident's record and sent to the placing agency. The discharge summary shall review the following:
 - a. ~~Services~~ The services provided to the resident;
 - b. The resident's progress toward meeting service plan objectives;
 - c. The resident's continuing needs and recommendations, if any, for further services and care;
 - d. ~~Reasons~~ The reasons for discharge and names of persons to whom the resident was discharged;
 - e. ~~Dates~~ The dates of admission and discharge; and
 - f. ~~Date~~ The date the discharge summary was prepared and the signature of the person preparing who prepared it.

B. When a resident is discharged pursuant to a court order, the case record shall contain a copy of the court order.

Article 2

Programs and Services

6VAC35-41-830. (Reserved.)

6VAC35-41-840. Structured programming.

A. Each facility shall implement a comprehensive, planned, and structured daily routine, ~~including appropriate supervision~~ designed to:

1. Meet the residents' physical and emotional needs;
2. Provide protection, guidance, and appropriate supervision;
3. Ensure the delivery of program services; and
4. Meet the objectives of any individual service plan, if applicable.

B. Each facility shall have goals, objectives, and strategies consistent with the facility's mission and program objectives utilized when working with all residents until the residents' ~~individualized individual~~ service plans are developed. These goals, objectives, and strategies shall be provided to the residents in writing during orientation to the facility.

C. Residents shall be allowed to participate in the facility's programs, as applicable, upon admission.

6VAC35-41-850. Daily log.

A. A daily communication log shall be, ~~in accordance with facility procedures~~, maintained, in accordance with facility procedures, to inform staff of significant happenings or problems experienced by residents.

B. The date and time of the entry and the identity of the individual making each entry shall be recorded.

C. If the facility records log book-type information on a computer, all entries shall post the date, time, and identity of the person making an entry. The computer program shall prevent previous entries from being overwritten.

6VAC35-41-860. Individual service plan.

A. An individual service plan shall be developed and placed in the resident's record within 30 days following admission and implemented immediately thereafter. The initial individual service plan shall be distributed to the resident; the resident's family, legal guardian, or legally authorized representative; the placing agency; and appropriate facility staff.

B. Individual service plans shall describe in measurable terms the:

1. Strengths and needs of the resident;
2. Resident's current level of functioning;
3. Goals, objectives, and strategies established for the resident including a behavior support plan, if appropriate;
4. Projected family involvement;
5. Projected date for accomplishing each objective; and
6. Status of the projected discharge plan and estimated length of stay except that this requirement shall not apply to a facility that discharges only upon receipt of the order of a court of competent jurisdiction.

C. Each individual service plan shall include the date it was developed and the signature of the person who developed it.

D. The individual service plan shall be reviewed within 60 days of the development of the plan and within each 90-day period thereafter. The individual service plan shall be revised as necessary. Any changes to the plan shall be made in writing. All participants shall receive copies of the revised plan.

E. The resident and facility staff shall participate in the development of the individual service plan.

F. The (i) supervising agency and (ii) resident's parents, legal guardian, or legally authorized representative, if appropriate and applicable, shall be given the opportunity to participate in the development of the resident's individual service plan.

G. Copies of the individual service plan shall be provided to the (i) resident; (ii) parents or legal guardians, as appropriate and applicable, and (iii) the placing agency.

6VAC35-41-870. Quarterly reports.

A. Except when a resident is placed in a shelter care program, the resident's progress toward meeting his individual service plan goals shall be reviewed and a progress report shall be prepared within 60 days of the development of the plan and within each 90-day period thereafter. The progress report and shall review the status of the following:

1. The resident'sResident's progress toward meeting the plan's objectives;
2. The family'sFamily's involvement;
3. The Continuingcontinuing needs of the resident;
4. Resident'sThe resident's progress towards discharge; and
5. The statusStatus of discharge planning.

B. Each quarterly progress report shall include the date it was developed and the signature of the person who developed it.

C. All quarterly progress reports shall be distributed to the resident; the resident's familyparent, legal guardian, or legally authorized representative; the placing agency; and appropriate facility staff.

6VAC35-41-880. Therapy.

Therapy, if provided, shall be provided by an individual who is (i) licensed as a therapist by the Department of Health Professions or (ii) ~~who is licensure eligible~~ eligible for licensure and working under the supervision of a licensed therapist unless exempted from these requirements under the Code of Virginia.

6VAC35-41-890. Community relationships.

A. A facility shall provide opportunities ~~Opportunities shall be provided~~ for the residents to participate in activities and to utilize resources in the community.

B. In addition to the requirements of 6VAC35-41-290 (background checks for volunteers or interns), written procedures shall govern how the facility will determine if participation in ~~such~~ community activities or programs would be in the residents' best interest.

C. ~~Each~~A facility shall have a staff community liaison who shall be responsible for facilitating cooperative relationships with neighbors, the school system, local law enforcement, local government officials, and the community at large.

D. ~~Each provider~~Providers shall develop and implement written procedures for promoting positive relationships with the neighbors ~~that shall be approved by the department~~.

6VAC35-41-900. Resident visitation at the homes of staff.

Residents ~~shall be prohibited from visiting~~ visitation at the homes of staff, ~~is prohibited unless the resident obtains written permission from the following parties before the visitation occurs: from the (i) the resident's parent or legal guardian, as applicable and appropriate, (ii) the facility administrator, and (iii) the placing agency is obtained before the visitation occurs. The written permission shall be kept in the resident's record.~~

6VAC35-41-905. Work and employment.

A. Paid and unpaid work assignments, including chores, that are assigned by or carried out at the facility shall be in accordance with the developmental level, health, and ability. Assignment of chores that are paid or unpaid work assignments shall be in accordance with the age, health, ability, and service plan of the resident.

B. Chores shall not interfere with school programs, study periods, meals, or sleep.

C. Work assignments or employment outside the facility, including reasonable rates of pay, shall be approved by the facility administrator, upon collaboration with the referring agency and the parent or legal guardian, with the knowledge and consent of the parent or legal guardian, as appropriate and applicable.

D. In both work assignments and employment, the facility administrator shall evaluate the appropriateness of the work and the fairness of the pay.

Article 3 Supervision

6VAC35-41-910. ~~Additional assignments of direct care staff. (Repealed)~~

~~If direct care staff assume nondirect care responsibilities, such responsibilities shall not interfere with the staff's direct care duties.~~

6VAC35-41-920

6VAC35-41-920. Staff supervision of residents.

A. No member of the direct care staff shall be on duty and responsible for the direct care of residents more than six consecutive days without a rest day, except in an emergency.

~~For the purpose of this section, a rest day shall mean a period of not less than 24 consecutive hours during which a staff person has no responsibility to perform duties related to the operation of the facility.~~

B. Direct care staff shall have an average of at least two rest days per week in any four-week period.

C. Direct care staff shall not be on duty more than 16 consecutive hours, except in an emergency.

D. Except as provided in subsection G, there shall be at least one ~~trained~~ direct care staff member who has satisfied the training requirements -in 6VAC35-41-200 (required initial training) and, if applicable, 6VAC35-41-210 (required retraining). on duty and actively supervising residents at all times that one or more residents are present.

E. Whenever residents are being supervised by staff, there shall be at least one staff person present with a current basic certification in standard first aid and a current certificate in cardiopulmonary resuscitation issued by a recognized authority.

F. The provider shall develop and implement written procedures that address staff supervision of residents including contingency plans for resident illnesses, emergencies, and off-campus activities, ~~and resident preferences~~. These procedures shall be based on the:

1. Needs of the population served;
2. Types of services offered;

3. Qualifications of staff on duty; and
4. Number of residents served.

G. Notwithstanding the requirements in subsection D, the trained direct care staff member who is present, on duty, and actively supervising residents in an independent living program shall be authorized, in emergency situations, to leave the facility for no longer than one hour to attend to a resident who is away from the facility and is in need of immediate assistance. Facilities that elect to exercise this option must observe the following rules:

1. The direct care staff must provide notice to the facility administrator or other supervisor before leaving the facility;
2. Residents who remain at the facility shall be provided with an emergency telephone number or other means of immediately communicating with a staff member.
3. The facility shall have written procedures governing this exception.

6VAC35-41-930. Staffing pattern.

A. During the hours that residents are scheduled to be awake, there shall be at least one direct care staff member awake, on duty, and responsible for supervision of every ~~10~~ eight residents, or portion thereof, on the premises, ~~or participating in off-campus, facility-sponsored activities, except that independent living programs shall have at least one direct care staff member awake, on duty, and responsible for supervision of every 15 residents on the premises or participating in off-campus, facility-sponsored activities.~~

B. During the hours that residents are scheduled to sleep, there shall be no ~~less~~ fewer than one direct care staff member on duty and responsible for supervision of every 16 residents, or portion thereof, on the premises.

C. There shall be at least one direct care staff member on duty and responsible for the supervision of residents in each building where residents are sleeping. ~~This requirement does not apply to approved independent living programs.~~

D. The facility administrator shall have the discretion to determine the appropriate staffing ratios when residents are participating in off-campus, facility-sponsored activities or events, after taking into account the residents who are participating, the nature of the event, and any other factors important in establishing the appropriate ratio. There shall never be fewer than one direct care staff member present for every eight residents or portion thereof while attending off-campus, facility-sponsored activities.

~~D. On each floor where residents are sleeping, there shall be at least one direct care staff member awake and on duty for every 30 residents or portion thereof.~~

E. The provisions of this section shall not apply to independent living programs. Staffing for independent living programs shall be provided in accordance with 6VAC35-41-1005 (staffing in independent living programs).

6VAC35-41-935. Periodic monitoring of residents

A. Whenever residents are present in the facility, staff shall conduct periodic checks of each resident in the facility at least once every 30 minutes and more often if justified by the circumstances. Each check shall be documented in accordance with written procedures.

B. This provision shall not apply to independent living programs.

6VAC35-41-940. Outside personnel working in the facility.

A. Facility staff shall monitor all situations in which outside personnel perform any kind of work in the immediate presence of residents in the facility.

B. Adult inmates shall not work in the immediate presence of any resident and shall be monitored in a way that there shall be no direct contact between or interaction among adult inmates and residents.

Part VII

Work Programs

6VAC35-41-950. ~~Work and employment(Repealed).~~

~~A. Assignment of chores that are paid or unpaid work assignments shall be in accordance with the age, health, ability, and service plan of the resident.~~

~~B. Chores shall not interfere with school programs, study periods, meals, or sleep.~~

~~C. Work assignments or employment outside the facility, including reasonable rates of pay, shall be approved by the facility administrator with the knowledge and consent of the parent or legal guardian, as appropriate and applicable.~~

~~D. In both work assignments and employment the facility administrator shall evaluate the appropriateness of the work and the fairness of the pay.~~

Part ~~VIII~~VII

Independent Living Programs

6VAC35-41-960. ~~Independent living programs(Repealed).~~

~~A. Independent living programs shall be a competency-based programs, specifically approved by the board to provide the opportunity for the residents to develop the skills necessary to become independent decision makers, to become self-sufficient adults, and to live successfully on their own following completion of the program.~~

~~B. Independent living programs shall have a written description of the curriculum and methods used to teach living skills, which shall include finding and keeping a job, managing personal finances, household budgeting, hygiene, nutrition, and other life skills.~~

6VAC35-41-970. Independent living programs; ~~curriculum-curricula~~ and assessment.

A. ~~Each~~ An independent living program ~~must shall~~ demonstrate that it is using a structured program that incorporates using materials and ~~curriculum-curricula~~ approved by the ~~board~~ facility administrator is being used to teach independent living skills. The ~~curriculum-curricula must shall~~ include information regarding each of the areas listed in subsection ~~B-C~~ of this section.

B. An independent living program shall have a written description of the curricula and methods used to teach living skills.

BC. Within 14 days of placement, the provider must complete an assessment, including strengths and needs, of the resident's life living skills using an independent living assessment tool approved by the department. ~~The assessment must covering~~ the following areas:

1. Money management and consumer awareness;
2. Food management;
3. Hygiene and pPersonal appearance;

4. Social skills;
5. ~~Physical and mental health~~~~Health and sexuality~~;
6. Housekeeping;
7. Transportation;
8. Educational planning and career planning;
9. Job seeking skills;
10. Job maintenance skills;
11. Emergency and safety skills;
12. Knowledge of community resources;
13. Interpersonal skills and social relationships;
14. Legal ~~skills~~~~matters~~;
15. Leisure activities; and
16. Housing.

D. The independent living program shall document each resident's progress towards developing independent living skills.

~~C. The resident's individualized individual service plan shall include, in addition to the requirements found set out in 6VAC35-41-860 (individual service plan), goals, objectives, and strategies addressing each of the areas listed in subsection B of this section, as applicable.~~

16VAC35-41-980. Employee training in independent living programs.

~~Each~~~~An~~ independent living program shall develop and implement procedures ~~to train~~~~that require training of~~ all direct care staff ~~before the expiration of the staff's 14th work day~~~~within 14 days of employment~~ on the content of the independent living ~~curriculum~~~~curricula~~, the use of the independent living materials, ~~the application of the assessment tool~~, and the documentation methods used. Documentation of the training shall be ~~kept~~~~maintained~~ in the employee's ~~staff~~~~personnel~~ record.

6VAC35-41-990. Medication management in independent living programs.

If ~~the independent living program allows~~ residents age 18 years or older ~~are~~ to share in the responsibility for ~~administering~~ their own medication with the provider, the independent living program shall develop and implement written procedures that include:

1. ~~Training for the resident~~~~Resident training~~ in self administration and recognition of side effects;
2. ~~The method~~~~Method~~ for storage and safekeeping of medication.
3. ~~The method~~~~Method~~ for obtaining approval for the resident to ~~self-administer~~~~self-administer~~ medication from a person authorized by law to prescribe medication; and
4. ~~The method~~~~Method~~ for documenting the administration of medication.

6VAC35-41-1000. Nutrition procedure in independent living programs.

~~Each~~~~independent~~~~Independent~~ living programs shall develop and implement written procedures that ensure that each resident is receiving adequate nutrition as required in 6VAC35-41-650 A, ~~and~~ ~~B~~, ~~and~~ ~~C~~ (nutrition).

6VAC35-41-1005. Staffing in independent living programs.

During all hours, regardless of whether residents are scheduled to be awake or asleep, an independent living program shall have at least one direct care staff member awake, on duty, and responsible for supervision of every 16 residents on the premises; however, in accordance with subsection G of 6VAC35-41-920 (staff supervision of residents), the direct care staff member shall be authorized in emergency situations to leave the facility for no longer than one hour to attend to a resident who is away from the facility and is in need of immediate assistance.

Part **IXVIII**

Wilderness Programs ~~and Adventure Activities~~

6VAC35-41-1010. Wilderness Requirements for wilderness programs.

A. The provider ~~must~~ shall obtain approval by the ~~board director prior to~~ before operating a ~~primitive camping wilderness~~ program .

B. ~~Any A~~ wilderness program must meet the following conditions: (i) maintain a nonpunitive environment; (ii) have ~~an a experience written~~ curriculum; and (iii) accept residents only nine years of age or older who cannot presently function at home, in school, or in the community.

C. ~~Any A~~ wilderness ~~work~~ program ~~or wilderness work camp program~~ shall have a written program description covering:

- ~~Its~~ The program's intended resident population;
- How work assignments, education, vocational training, and treatment will be interrelated;
- The length of the program;
- The type and duration of treatment and supervision to be provided upon release or discharge; and
- The program's behavioral expectations, incentives, and sanctions.

6VAC35-41-1020. Procedures for wilderness ~~Wilderness programs or adventure activities;~~ training

A. All wilderness programs ~~and providers that take residents on wilderness or adventure activities~~ shall develop and implement written procedures that include:

1. Staff and resident training and experience requirements for each activity;

~~2. Resident training and experience requirements for each activity;~~

~~32.~~ Specific staff to resident ratio and supervision plan that is appropriate for each activity, including sleeping arrangements and supervision during night ~~time~~ hours; At a minimum, t~~The ratio and supervision plan~~ shall meet the requirements set out in 6VAC35-41-930 (staffing pattern);

~~43.~~ Plans to evaluate and document each participant's physical health throughout the activity;

~~54.~~ Preparation and planning needed for each activity and time frames;

~~65.~~ Arrangement, maintenance, and inspection of activity areas;

~~76.~~ A plan to ensure that any equipment and gear that is to be used in connection with a specified wilderness or adventure activity is appropriate to the activity, certified if required, in good repair, in operable condition, and age and body size appropriate;

~~87.~~ Plans to ensure that all ropes and paraphernalia used in connection with rope rock climbing, rappelling, high and low ropes courses, or other adventure activities in which ropes are used are approved annually by an

appropriate certifying organization and have been inspected by staff responsible for supervising the adventure activity before engaging residents in the activity;

~~98.~~ Plans to ensure that all participants are appropriately equipped, clothed, and wearing safety gear, such as a helmet, goggles, safety belt, life jacket, or a flotation device, that is appropriate to the ~~adventure~~ activity in which the resident is engaged;

~~109.~~ Plans for food and water supplies and management of these resources;

~~110.~~ Plans for the safekeeping and distribution of medication;

~~121.~~ Guidelines to ensure that ~~resident~~ participation ~~is conducted~~ ~~falls~~ within the boundaries of the resident's capabilities, dignity, and respect for self-determination;

~~132.~~ Overall emergency, safety, and communication plans for each activity including rescue procedures, frequency of drills, resident accountability, prompt evacuation, and notification of outside emergency services; and

~~1413.~~ Review of trip plans by the trip coordinator.

B. Direct care ~~workers~~ ~~staff~~ hired by wilderness ~~campsite~~ programs ~~and providers that take residents on wilderness or adventure activities~~ shall be trained in a wilderness first aid course.

6VAC35-41-1030. Initial physical for ~~wilderness programs~~ wilderness programs or adventure activities. Initial physical forms used by wilderness ~~campsite~~ programs ~~and providers that take residents on wilderness or adventure activities~~ shall include:

1. A statement notifying the doctor of the types of activities the resident will be participating in; and
2. A statement signed by the doctor stating that the individual's health does not prevent him from participating in the described activities.

6VAC35-41-1040. Physical environment of wilderness programs ~~or adventure activities~~.

~~A. Each resident shall have adequate personal storage area.~~

~~BA. If combustion-type heating devices, campfires, or other sources of combustion are present, fire Fire extinguishers of a 2A 10BC rating shall be maintained or available within ~~so that it is never necessary to travel more than 75 feet to a fire extinguisher from~~ of the combustion-type heating devices, campfires, or other source of combustion.~~

~~CB. Artificial lighting shall be provided in a safe manner.~~

~~DC. All areas of the campsite shall be lighted for safety when occupied by residents.~~

~~ED. A telephone or other means of communication is required shall be accessible at in each area where residents sleep or participate in programs.~~

F. First aid kits used by wilderness ~~campsite~~ programs ~~and providers that take residents on adventure activities~~ shall be appropriate for the activity ~~appropriate~~ and ~~shall be~~ accessible at all times.

6VAC35-41-1050. Sleeping areas of wilderness programs ~~or adventure activities~~.

A. If a wilderness programs requires outdoor, off-campus, or alternative overnight sleeping arrangements, the following provisions shall apply:

A1. ~~In lieu~~ Instead of or in addition to dormitories, cabins, or barracks for housing residents, primitive campsites may be used.

~~B2.~~ Sleeping areas Areas in which residents sleep shall be protected by screening or other means to prevent admittance of flies and mosquitoes.

~~C3.~~ A separate bed, bunk, ~~or cot,~~ or sleeping bag, if applicable, shall be made available for each person.

~~D4.~~ A mattress cover shall be provided for each mattress, as applicable.

~~E5.~~ Bedding, if used, shall be clean, dry, sanitary, and in good repair.

~~F6.~~ Bedding, if used, shall be adequate to ensure protection and comfort in cold weather.

~~G7.~~ Sleeping bags, if used, shall be fiberfill and rated for 0°F.

~~H8.~~ Linens shall be changed as often as required for cleanliness and sanitation but not less frequently than once every seven days a week.

~~I9.~~ Staff ~~of~~ must be of the same sex as a resident or residents may in order to share a tent or sleeping area room with the residents.

6VAC35-41-1060. Personal necessities in wilderness programs ~~or adventure activities.~~

~~A. Each resident~~ Residents participating in wilderness programs shall be provided with an adequate supply of clean clothing and footwear -that is sturdy, suitable for the activity planned, and ~~-suitable for outdoor living and~~ is appropriate to the geographic location and season.

~~B. Sturdy, water resistant, outdoor footwear shall be provided for each resident.~~

6VAC35-41-1070. Trip or activity coordination for wilderness programs ~~or adventure activities.~~

~~A. All wilderness~~ Wilderness programs ~~and facilities that take residents on wilderness or adventure activities~~ must designate one staff person to be the trip coordinator who will be responsible for all facility wilderness or adventure trips.

1. ~~This person~~ The trip coordinator must have experience in and knowledge regarding wilderness activities and be trained in a wilderness first aid course. The ~~individual trip coordinator also~~ must also have at least one year experience at the facility and be familiar with the facility procedures, staff, and residents.

2. Documentation regarding this knowledge and experience shall be ~~found~~ placed in the individual's ~~staff~~ personnel record.

3. The trip coordinator ~~will~~ shall review all trip plans and procedures and ~~will~~ ensure that staff and residents meet the requirements as outlined in the facility's procedure regarding each wilderness or adventure activity ~~to take place during~~ planned as part of the trip.

~~4. The trip coordinator will review all trip plans and procedures and will ensure that staff and residents meet the requirements as outlined in the facility's procedure regarding each wilderness or adventure activity to take place during the trip.~~

B. The trip coordinator shall conduct a post-~~trip~~ debriefing within 72 hours of the group's return to base to evaluate individual and group goals as well as the trip as a whole.

C. The trip coordinator ~~will~~ shall be responsible for: (i) writing a summary of the debriefing session; and (ii) ~~and shall be responsible for~~ ensuring that procedures are updated to reflect improvements needed.

D. A trip folder ~~will~~ shall be developed for each wilderness or adventure activity conducted away from the facility and shall include:

1. Medical release forms including pertinent medical information on the trip participants;
2. Phone numbers for administrative staff and emergency personnel;

3. Daily trip logs;
4. Incident reports;
5. ~~A swimming~~ Swimming-proficiency list if the trip is near water;
6. Daily logs;
- ~~76.~~ Maps of area covered by the trip; and
- ~~87.~~ Daily plans.

E. ~~The provider shall ensure that before~~Before allowing participants to engaging in any aquatic activity, ~~each resident shall be classified by~~ the trip coordinator or his designee shall develop a list that classifies residents according to swimming ability ~~in one of two classifications: swimmer and nonswimmer. This~~ The list shall be placed in the trip folder as required in subsection D of this section, and the resident's classification shall be documented in the resident's case record and in the trip folder.

F. The ~~provider~~ trip coordinator shall ensure that lifesaving equipment is provided for all aquatic activities and is placed so that it is immediately available in case of an emergency. At a minimum, the equipment shall include:

1. A whistle or other audible signal device; and
2. A lifesaving throwing device.

G. The trip coordinator shall ensure that all aquatic activity is supervised by a certified lifeguard.

Part IX

Family-Oriented Group Homes

6VAC35-41-1080. Requirements of family-oriented group home systems.

Family-oriented group home systems shall have written procedures for:

1. Setting the number of residents to be housed in each home and room of the home and prohibiting individuals less than 18 years of age from sharing sleeping rooms with and individuals older than 17 who are 18 years of age or older from sharing sleeping rooms without specific approval from the facility administrator;
2. Providing supervision of and guidance for the family-oriented group home parents and relief staff;
3. Admitting and orienting residents;
4. Preparing an ~~treatment plan~~ individual service plan for each resident within 30 days of admission or 72 hours in the case of a shelter care facility, and reviewing the plan quarterly;
5. Providing appropriate programs and services from intake through release;
6. Providing residents with spending money;
7. Managing resident records and releasing information;
8. Providing medical and dental care to residents;
- ~~9. Notifying parents and guardians, as appropriate and applicable, the placing agency, and the department of any serious incident as specified in written procedures;~~
10. Making a program supervisor or designated staff person available to residents and house parents 24 hours a day; and

11. Ensuring ~~the that~~ firearms and ammunition are maintained secured in a manner so as to prevent unauthorized access by juvenile residents secure control of any firearms and ammunition in the home.

6VAC35-41-1090. Examination by physician.

Each resident admitted to a family-oriented group home shall have a physical examination including tuberculosis screening within 30 days of admission unless the resident was examined within six months prior to admission to the program.

6VAC35-41-1100. Requirements of family-oriented group homes.

Each family-oriented group home shall have:

1. A fire extinguisher, inspected annually;

2. Smoke alarm devices in working condition according to inspections conducted at least monthly and documented by facility staff;

3. Alternative methods of escape from second story;

~~4. Modern sanitation facilities;~~

~~5. Freedom from physical hazards;~~

~~6. A written emergency plan that is communicated to all new residents at orientation;~~

~~7. An up-to-date listing of medical and other emergency resources in the community;~~

~~8. A separate bed for each resident equipped with a mattress, pillow, blankets, bed linens, and if needed, a waterproof mattress cover. The , with clean sheets and blankets and linens and sheets shall be cleaned at least weekly once every seven days and more often, if needed. Bleach or another sanitizing agent approved by the federal Environmental Protection Agency to destroy bacteria shall be used in the laundering of bed linens;~~

~~9. A bedroom that is well illuminated and ventilated; is in reasonably good repair; is not a hallway, unfinished basement or attic; and provides conditions allows for privacy;~~

~~10. A place to store residents' clothing and personal items;~~

~~11. Modern, sanitarySanitary toilet and bath facilities that are adequate for the number of residents;~~

~~12. A safe and clean place for indoor and outdoor recreation;~~

~~13. Adequate furniture;~~

~~14. Adequate laundry facilities or laundry services;~~

~~15. A clean and pleasant dining area;~~

~~16. Adequate and nutritionally balanced meals; and~~

~~17. Daily provision of clean size-appropriate clothing and shoes for indoor and outdoor wear and articles necessary for maintaining proper personal hygiene. All such items shall be clean and in good repair.~~

6VAC35-41-1110. Other applicable regulations.

In addition to the requirements listed in 6VAC35-41-1080 through 6VAC35-41-1100, eachEach family-oriented group home also shall ~~also~~ be subject to and comply with the requirements of the following provisions of this chapter:

1. 6VAC35-41-90 (serious incident reports);

~~2. 6VAC35-41-180 (employee and volunteer background checks);~~

- ~~23. 6VAC35-41-190 (required initial orientation);~~
- ~~34. 6VAC35-41-200 (required initial training); and~~
- ~~45. 6VAC35-41-210 (required retraining);~~
- ~~6. 6VAC35-41-560 (prohibited actions);~~
- ~~7. 6VAC35-41-565 (vulnerable population);~~
- ~~8. 6VAC35-41-570 (residents' mail);~~
- ~~9. 6VAC35-41-580 (telephone calls);~~
- ~~10. 6VAC35-41-590 (visitation);~~
- ~~11. 6VAC35-41-600 (contact with attorneys, courts, and law enforcement);~~
- ~~11. 6VAC35-41-620 (showers);~~
- ~~12. 6VAC35-41-640 (residents' privacy);~~
- ~~13. 6VAC35-41-660 (school enrollment and study time);~~
- ~~14. 6VAC35-41-670 (religion);~~
- ~~15. 6VAC35-41-690 (residents' funds); and~~
- ~~16. 6VAC35-41-700 (fundraising).~~

Part XI

Respite Care

~~6VAC35-41-1120. Definition of respite care. (Repealed)~~

~~Respite care facility shall mean a facility that is specifically approved to provide short-term, periodic residential care to residents accepted into its program in order to give the parents or legal guardians temporary relief from responsibility for their direct care.~~

~~6VAC35-41-1130. Admission and discharge from respite care. (Repealed)~~

~~A. Acceptance of an individual as eligible for respite care by a respite care facility is considered admission to the facility. Each individual period of respite care is not considered a separate admission.~~

~~B. A respite care facility shall discharge a resident when the legal guardian no longer intends to use the facility's services.~~

~~6VAC35-41-1140. Updating health records in respite care. (Repealed)~~

~~Respite care facilities shall update the information required by 6VAC35-41-1170 B (health care procedures) at the time of each stay at the facility.~~

Part XII

Health Care Services

6VAC35-41-1150. Definitions applicable to health care services. (Repealed)

~~"Health authority" means the individual, government authority, or health care contractor responsible for organizing, planning, and monitoring the timely provision of appropriate health care services, including arrangements for all levels of health care and the ensuring of quality and accessibility of all health services, consistent with applicable statutes and regulations, prevailing community standards, and medical ethics.~~

~~"Health care record" means the complete record of medical screening and examination information and ongoing records of medical and ancillary service delivery including, but not limited to, all findings, diagnoses, treatments, dispositions, prescriptions, and their administration.~~

~~"Health care services" means those actions, preventative and therapeutic, taken for the physical and mental well-being of a resident. Health care services include medical, dental, orthodontic, mental health, family planning, obstetrical, gynecological, health education, and other ancillary services.~~

~~"Health trained personnel" means an individual who is trained by a licensed health care provider to perform specific duties such as administering health care screenings, reviewing screening forms for necessary follow-up care, preparing residents and records for sick call, and assisting in the implementation of certain medical orders.~~

6VAC35-41-1160. Provision of health care services.

~~Treatment by nursing~~ Nursing personnel shall ~~be performed~~ provide treatment pursuant to the laws and regulations governing the practice of nursing within the Commonwealth. Other health-trained personnel shall provide care within their level of training and certification.

6VAC35-41-1170. Health care procedures.

A. The provider shall have and implement written procedures for promptly:

1. Arranging for the provision of medical and dental services for health problems identified at admission;
2. Arranging for the provision of routine ongoing and follow-up medical and dental services after admission;
3. Arranging for emergency medical and mental health care services, as appropriate and applicable, for each resident as provided by statute or by ~~the~~ agreement with the resident's parent or legal guardian;
4. Arranging for emergency medical and mental health care services, as appropriate and applicable, for any resident experiencing or showing signs of suicidal or homicidal thoughts, symptoms of mood or thought disorders, or other mental health problems; and
5. Ensuring that the required information in subsection B of this section is accessible and up to date.

B. The following written information concerning each resident shall be readily accessible to staff who may have to respond to a medical or dental emergency:

1. Name, address, and telephone number of the physician and dentist to be notified;
2. Name, address, and telephone number of a relative or other person to be notified;
3. Medical insurance company name and policy number or Medicaid number;
4. Information concerning:
 - a. Use of medication;
 - b. All allergies, including medication allergies;
 - c. Substance abuse and use;

d. Significant past and present medical problems; and

5. Written permission for emergency medical care, dental care, and obtaining immunizations or a procedure and contacts for obtaining consent.

~~C. Facilities approved to provide respite care shall update the information required by subsection B of this section at the time of each stay at the facility.~~

6VAC35-41-1180. Health-trained personnel.

A. Health-trained personnel shall provide care as appropriate to their level of training and certification and shall not administer health care services for which they are not qualified or specifically trained.

B. The facility shall retain documentation of the training received by health-trained personnel necessary to perform any designated health care services. Documentation of applicable, current licensure or certification shall constitute compliance with this section.

6VAC35-41-1190. Consent to and refusal of health care services.

~~A. The knowing and voluntary agreement, without undue inducement or any element of force, fraud, deceit, duress, or other form of constraint or coercion, of a person who is capable of exercising free choice (informed consent) to health care shall be obtained from the resident, parent, guardian, or legal custodian as required by law. Consent to health care services shall be provided in accordance with § 54.1-2969 of the Code of Virginia. The juvenile residential facility shall obtain consent from the resident or parent or legal custodian as required by law before providing health care services to a resident. The consent shall be knowing and voluntary, without undue inducement or any element of force, fraud, deceit, duress, or other form of constraint or coercion.~~

B. The resident, parent, guardian, or legal custodian, as applicable, shall be advised by an appropriately trained medical professional of (i) the material facts regarding the nature, consequences, and risks of the proposed treatment, examination, or procedure and (ii) the alternatives to it.

C. Residents may refuse in writing medical treatment and care. This subsection does not apply to medication refusals that are governed by 6VAC35-41-1280 (medication).

D. When health care is rendered against the resident's will, it shall be in accordance with applicable laws and regulations.

6VAC35-41-1200. Health screening at admission.

The juvenile residential facility shall require that:

1. To prevent newly arrived residents who pose a health or safety threat to themselves or others from being admitted ~~to the general population jeopardizing the health of other residents~~, all residents shall immediately upon admission shall undergo a preliminary health screening consisting of a structured interview and observation by health care personnel or health trained ~~staff personnel as defined in 6VAC35-41-10 (definitions)~~. As necessary to maintain confidentiality, all or a portion of the interview shall be conducted with the resident ~~without outside~~ the presence of the parent or guardian.

2. Residents admitted to the facility who are identified during the screening required in subsection A as posing a health or safety threat to themselves or others shall ~~not be admitted to the~~ be separated from all other residents in the facility's general population but provision shall be made for them to receive comparable services until they are no longer a risk. During the period of separation, provision shall be made for the residents to receive comparable services.

3. Immediate health care is provided to residents who need it.

6VAC35-41-1210. Tuberculosis screening.

A. Within seven days of placement arrival at a facility, each resident shall have had a screening-risk assessment for tuberculosis as evidenced by documentation by a medical professional or the completion of an assessment

form containing, at a minimum, the elements found on the current assessment form published by the Virginia Department of Health. The screening-risk assessment shall be no older than 30 days. The risk assessment may be administered by health-trained personnel; however, results of the assessment shall be interpreted by a physician, physician assistant, nurse practitioner, or registered nurse.

B. In addition to the initial risk assessment required in subsection A, a screening-risk assessment for tuberculosis shall be completed annually on each resident as evidenced by documentation by a medical professional or the completion of a form containing, at a minimum, the elements of the assessment form published by the Virginia Department of Health.

C. If the physician, physician assistant, nurse practitioner, or registered nurse, having interpreted the results of the risk assessment, determines a tuberculosis screening is necessary, the facility shall refer the resident to the local health department or a medical professional for additional screening.

D. The facility's assessment and screening practices shall be performed consistent with any current recommendations of the Virginia Department of Health, Division of Tuberculosis Prevention and Control and the federal Department of Health and Human Services Centers for Disease Control and Prevention for the detection, diagnosis, prophylaxis, and treatment of pulmonary tuberculosis.

E. For any residents determined to have tuberculosis in a communicable form, the facility shall observe the requirements in 6VAC35-41-1230 (infectious or communicable diseases).

F. Any active case of tuberculosis contracted by a resident shall be reported to the local health department in accordance with the requirements of the Commonwealth of Virginia State Board of Health Regulations for Disease Reporting and Control (12VAC5-90).

G. The provider shall retain documentation of the assessment and screening results in a manner that maintains the confidentiality of information.

6VAC35-41-1220. Medical examinations and treatment.

A. ~~Except for residents placed in a shelter care facility, e~~Each resident accepted-who has been accepted into a juvenile residential facility as a planned admission for care shall have a physical examination performed by or under the direction of a licensed physician no earlier than 90 days prior to admission to the facility or no later than seven days following admission, except (i) the report of an examination within the preceding 12 months shall be acceptable if a resident transfers from one facility licensed or certified by a state agency to another, and (ii) a physical examination shall be conducted within 30 days following an emergency admission if a report of physical examination is not available. Each resident placed in a facility pursuant to an emergency admission process shall have a physical within 90 days following the emergency admission.

B. Each resident shall have an annual physical examination by or under the direction of a licensed physician and an annual dental examination by a licensed dentist.

6VAC35-41-1230. Infectious or communicable diseases.

A. A resident with a communicable disease shall not be admitted unless a licensed physician certifies that:

1. The facility is capable of providing care to the resident without jeopardizing residents and staff; and
2. The facility is aware of the required treatment for the resident and the procedures to protect residents and staff.

The requirements of this subsection shall not apply to shelter care facilities.

B. The facility shall implement written procedures approved by a medical professional that:

1. Address staff (i) interactions with residents with infectious, communicable, or contagious medical conditions; and (ii) use of standard precautions;

2. Require staff training in standard precautions, initially and annually thereafter in accordance with 6VAC35-41-200 (required initial training) and 6VAC35-41-210 (required retraining); and

3. Require staff to follow procedures for dealing with residents who have infectious or communicable diseases.

6VAC35-41-1240. Suicide prevention.

Written procedure shall provide (i) for a suicide prevention and intervention program, developed in consultation with a qualified medical or mental health professional, and (ii) for all direct care staff to be trained in the implementation of the program in accordance with 6VAC35-41-200 (required initial training) and 6VAC35-41-210 (required retraining).

6VAC35-41-1250. Residents' health care records.

A. Each resident's health care record shall include written documentation of (i) the initial physical examination, (ii) an annual physical examination by or under the direction of a licensed physician including any recommendation for follow-up care, and (iii) documentation of the provision of follow-up medical care recommended by the physician or as indicated by the needs of the resident.

B. The resident's active health care records shall be (i) ~~shall be~~ kept confidential and inaccessible from unauthorized persons, (ii) ~~shall be~~ readily accessible in case of emergency, and (iii) ~~shall be~~ made available to authorized staff consistent with applicable state and federal statutes and regulations.

C. ~~Each~~The physical examination report shall include:

1. Information necessary to determine the health and immunization needs of the resident, including:

a. Immunizations administered at the time of the exam;

b. Vision exam;

c. Hearing exam; _____

d. General physical condition including documentation of apparent freedom from communicable disease, including tuberculosis;

e. Allergies, chronic conditions, and ~~handieaps~~disabilities, if any;

f. Nutritional requirements including special diets, if any;

g. Restrictions on physical activities, if any; and

h. Recommendations for further treatment, immunizations, and other examinations indicated;

2. Date of the physical examination; and

3. Signature of a licensed physician, the physician's designee, or an official of a local health department.

D. ~~Each~~A resident's health care record shall include written documentation of (i) an annual examination by a licensed dentist and (ii) documentation of follow-up dental care recommended by the dentist or as indicated by the needs of the resident. This requirement does not apply to shelter care facilities ~~and respite care facilities~~.

E. Each resident's health care record shall include notations of health and dental complaints and injuries and shall summarize symptoms and treatment given.

F. Each resident's health care record shall include or document the facility's efforts to obtain treatment summaries of ongoing psychiatric or other mental health treatment and reports, if applicable.

6VAC35-41-1260. First aid kits.

A. A well-stocked first aid kit shall be maintained within the facility, as well as in facility vehicles used to transport residents, together, with an inventory of its contents, and readily accessible for dealing with minor injuries and medical emergencies.

B. First aid kits ~~should~~ shall be monitored in accordance with ~~established facility~~ written procedures to ensure kits are maintained, stocked, and ready for use.

6VAC35-41-1270. Hospitalization and other outside medical treatment of residents.

A. When a resident needs hospital care or other medical treatment outside the facility:

~~1. The resident shall be transported safely; and~~

~~2.1. The facility shall ensure that A-a~~ parent or legal guardian, a staff member, or a law-enforcement officer, as appropriate, ~~shall accompany~~ accompanies the resident and, at a minimum, stay at least during admission ~~remains with the resident until he is admitted. If sending a staff member would result in inadequate coverage at the juvenile residential facility, the provider shall deploy a staff member to the hospital or outside medical facility as soon as reasonably possible.~~

~~2. If a law enforcement officer conducts the transport, the provider shall comply with the provisions of subsection C of 6VAC35-41-550 (transportation), unless exempted under subsection D of that section.~~

B. If a parent or legal guardian does not accompany the resident to the hospital or other medical treatment outside the facility, the facility shall inform the parent or legal guardian ~~shall be informed~~ that the resident was taken outside the facility for medical attention as soon as is practicable.

6VAC35-41-1280. Medication.

A. All medication shall be properly labeled consistent with the requirements of the Virginia Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia). Medication prescribed for individual use shall be so labeled.

B. All medication shall be securely locked, unless otherwise ordered by a physician on an individual basis for keep-on-person or equivalent use.

C. All staff responsible for medication administration who do not hold a license issued by the Virginia Department of Health Professions authorizing the administration of medications shall have successfully completed a medication training program approved by the Board of Nursing or be licensed by the Commonwealth of Virginia to administer medications before they ~~can~~ may administer medication. All staff who administer medication shall complete an annual refresher medication training.

D. Staff authorized to administer medication shall be informed of any known side effects of the medication and the symptoms of the effects.

E. A program of medication, ~~including procedures regarding the use of over-the-counter medication pursuant to written or verbal orders signed by personnel authorized by law to give such orders,~~ shall be initiated for a resident only when prescribed in writing by a person authorized by law to prescribe medication. This includes over-the-counter medication administered pursuant to a written or verbal order that is issued by personnel authorized by law to give such orders.

F. All medications shall be administered in accordance with the physician's or other prescriber's instructions and consistent with the requirements of § ~~54.2-2408~~ 54.1-3408 of the Code of Virginia and the Virginia Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia).

G. A medication administration record shall be maintained ~~of that identifies~~ all medicines received by each resident and ~~shall that~~ includes:

1. ~~The date~~ Date the medication was prescribed or most recently refilled;

2. ~~The drug~~ **Drug** name;
3. ~~The schedule~~ **Schedule** for administration;
4. ~~The strength~~ **Strength**;
5. ~~The route~~ **Route**;
6. ~~The identity~~ **Identity** of the individual who administered the medication; and
7. ~~The Dates~~ **dates on which** the medication was discontinued or changed.

H. ~~In the event of~~ If a medication incident or ~~an~~ adverse drug reaction **occurs**, first aid shall be administered if indicated. Staff shall promptly contact a poison control center, pharmacist, nurse, or physician and shall take actions as directed. If the situation is not addressed in standing orders, the attending physician shall be notified as soon as possible and the actions taken by staff shall be documented.

~~A medical incident shall mean an error made in administering a medication to a resident including the following: (i) a resident is given incorrect medication; (ii) medication is administered to an incorrect resident; (iii) an incorrect dosage is administered; (iv) medication is administered at a wrong time or not at all; and (v) the medication is administered through an improper method. A medication error does not include a resident's refusal of appropriately offered medication.~~

I. Written procedures shall ~~provide for~~ **require** (i) the documentation of medication incidents, (ii) the review of medication incidents and reactions and ~~making implementation of any~~ necessary improvements, (iii) the storage of controlled substances, and (iv) the distribution of medication off campus. The procedures ~~must be~~ **shall be** approved by a health care professional. Documentation of this approval shall be retained.

J. Medication refusals shall be documented including action taken by staff. The facility shall follow procedures for managing such refusals that shall address:

1. ~~The manner~~ **Manner** by which medication refusals are documented, and
2. Physician follow-up, as appropriate.

K. Disposal and storage of unused, expired, and discontinued medications ~~and medical implements~~ shall be in accordance with applicable laws and regulations.

L. The telephone number of a regional poison control center and other emergency numbers shall be posted on or next to each nonpay telephone that has access to an outside line in each building in which residents sleep or participate in programs.

M. Syringes and other medical implements used for injecting or cutting skin shall be locked and inventoried in accordance with facility procedures.

Part XIII

Behavior Support and Management

6VAC35-41-1290. Behavior management.

A. Each facility shall implement a behavior management program.

~~Behavior management shall mean those principles and methods employed to help a resident achieve positive behavior and to address and correct a resident's inappropriate behavior in a constructive and safe manner in accordance with written procedures governing program expectations, treatment goals, and residents' and employees' safety and security.~~

B. Written procedures governing this program shall provide the following:

1. A description of the rules of conduct and behavioral expectations for the resident;
2. Orientation of residents as provided in 6VAC35-41-770 (orientation to facility rules and disciplinary procedures);
3. A description of a system of privileges and sanctions that is used and available for use.
4. Specification of the staff members who may authorize the use of privileges and sanctions; and
5. Documentation requirements when sanctions are imposed.

C. Written information concerning the procedures of the provider's behavior management program shall be provided ~~prior to~~before admission to prospective residents, parents or legal guardians, and placing agencies. For court-ordered and emergency admissions, this information shall be provided according to the following timeline:

1. Residents shall receive the information within 12 hours following admission;
2. Placing agencies shall receive the information within 72 hours following the resident's admission; and
3. Legal Parents or legal guardians shall receive the information within 72 hours following the resident's admission.

D. When substantive revisions are made to procedures governing the provider's behavior management of resident behavior program, written information concerning the revisions shall be provided before implementation to:

1. Residents ~~prior to implementation~~; and
2. Parents or legal ~~Legal~~ guardians and placing agencies ~~prior to implementation~~.

E. The facility administrator or designee shall review the behavior management program and procedures at least annually to determine appropriateness for the population served.

F. Any time residents are present, staff who have completed required trainings in behavior management ~~must~~ shall be present ~~who have completed all trainings in behavior management~~.

6VAC35-41-1300. Behavior support.

A. ~~Each A~~ facility shall have ~~a procedure~~written procedures regarding governing behavior support plans for use with residents who need supports in addition to those provided in the facility's behavior management program. The procedures shall that addresses~~address~~ the circumstances under which ~~such the~~ plans shall be utilized.

B. The behavior support~~Such~~ plans shall support the resident's self-management of his ~~own~~ behavior and shall include:

1. Identification of positive and problem behavior;
2. Identification of triggers for behaviors;
3. Identification of successful intervention strategies for problem behavior;
4. Techniques for managing anger and anxiety; and
5. Identification of interventions that may escalate inappropriate behaviors.

BC. Individualized behavior support plans shall be developed in consultation with the:

1. Resident;
2. Legal guardian, if applicable;

3. Resident's parents, if applicable;
4. Program director;
5. Placing agency staff; and
6. Other applicable individuals.

~~GD. Prior to working alone with an assigned resident, Each each~~ staff members shall review and be prepared to implement the assigned resident's~~the resident's~~ behavior support plan.

6VAC35-41-1310. Timeout.

A. A facility may use timeout ~~a systematic behavior management technique program component designed to reduce or eliminate inappropriate or problematic behavior by having a staff require a resident to move to a specific location that is away from a source of reinforcement for a specific period of time or until the problem behavior has subsided (timeout)~~ under the following conditions:

1. The provider shall develop and implement written procedures governing the conditions under which a resident may be placed in timeout and the maximum period of timeout.

~~2. The conditions and maximum period of timeout shall be based on the resident's chronological and developmental level.~~

~~3~~2. The area in which a resident is placed shall not be locked nor the door secured in a manner that prevents the resident from opening it.

~~4~~3. A resident in timeout shall be able to communicate with staff.

~~5~~4. Staff shall ~~check on~~monitor the resident in the timeout area at least every 15 minutes and more often depending on the ~~nature of the resident's disability, condition, and behavior~~circumstances. During each check on the resident, staff shall evaluate and document whether a resident is prepared to be released from timeout.

~~B. Use of timeout and staff checks on the residents shall be documented.~~

6VAC35-41-1320. Physical restraint.

A. Physical restraint shall be used as a last resort only after less restrictive interventions have failed or to control residents whose behavior poses a risk to the safety of the resident, ~~others~~staff, or ~~the public~~others.

1. Staff shall use the least force deemed ~~reasonable to be~~reasonably necessary to eliminate the risk or to maintain security and order and shall never use physical restraint as punishment or with the intent to inflict injury.

~~2. Staff may physically restrain a resident only after less restrictive behavior interventions have failed or when failure to restrain would result in harm to the resident or others.~~

~~3~~2. Physical restraint shall be implemented, monitored, and discontinued only by staff who have been trained in the proper and safe use of restraint.

~~4. Physical restraint shall mean the application of behavior intervention techniques involving a physical intervention to prevent an individual from moving all or part of that individual's body.~~

B. Written procedures governing the use of physical restraint shall include:

1. The staff position ~~who responsible for writing~~will write the report and the timeframe for completing the report;

2. The staff position ~~who will review~~responsible for reviewing the report and timeframe for reviewing the report; and

3. Methods to be followed should physical restraint, less intrusive interventions, or measures permitted by other applicable state regulations prove unsuccessful in calming and moderating the resident's behavior.

C. ~~All-Each application of~~ physical restraints shall be reviewed and evaluated in order to ~~plan for~~provide continued staff development ~~for and~~ performance improvement.

D. Each application of physical restraint shall be fully documented in the resident's record including:

1. ~~The date~~Date and time of the incident;
2. ~~The staff~~Staff involved in the restraint;
3. ~~The justification~~Justification for the restraint;
4. Less restrictive behavior interventions that were unsuccessfully attempted prior to using physical restraint;
5. ~~The duration~~Duration of the restraint;
6. ~~A Description~~description of method or methods of physical restraint techniques used;
7. ~~The signature~~Signature of the person completing the report and date; and
8. ~~The reviewer's~~Reviewer's signature and date.

6VAC35-41-1330. Chemical agents.

Staff are prohibited from using pepper spray and other chemical agents to manage resident behavior.

~~DOCUMENTS INCORPORATED BY REFERENCE (6VAC35-41)~~

~~Compliance Manual—Group Homes and Halfway Houses, effective January 1, 2014, Virginia Department of Juvenile Justice~~



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TO: State Board of Juvenile Justice

FROM: Virginia Department of Juvenile Justice

SUBJECT: Request Board Consideration of Three Alternatives for Amendments to the Regulation Governing Juvenile Secure Detention Centers (6VAC35-101) Regarding Mechanical Restraints and Restraint Chairs

DATE May 6, 2019

I. SUMMARY OF ACTION REQUESTED

The Department of Juvenile Justice (the department) respectfully requests the State Board of Juvenile Justice (the board) to consider three separate options for proposed amendments to the Regulation Governing Juvenile Secure Detention Centers (6VAC35-101) to address the use of restraint chairs and other mechanical restraints in these facilities. The department presents the following three options for proposed amendments in accordance with the board's directive at the November 7, 2018, meeting:

- Option 1 - Amend the above-named chapter to impose additional parameters on the use of restraint chairs, mechanical restraints, and "protective devices" in detention centers;
- Option 2 - Amend the above-named chapter to impose an absolute prohibition on the use of mechanical restraint chairs in juvenile secure detention centers; and
- Option 3 - Amend the above-named chapter to impose an absolute prohibition on the use of spit guards and similar devices on residents in juvenile secure detention centers.

The department convened a committee consisting of representatives from secure juvenile detention centers, juvenile correctional centers, and internal department staff primarily to develop provisions for Option 1. This memorandum provides a description and summary of each option.

I. OPTION 1 - NEW RESTRICTIONS ON MECHANICAL RESTRAINTS AND RESTRAINT CHAIRS

Definitions (Section 10): The proposal amends the board-approved definition of mechanical restraints and adds six new terms, as follows:

- *Mechanical restraints and restraint chairs* - Although the board-approved amendments provide a definition for mechanical restraints, the committee has identified several potential enhancements to this definition. First, the list of permissible mechanical restraints in the definition is all-inclusive. To the extent these items evolve in the near future or new items are developed that are safer or less restrictive, facilities will not be subject to the restrictions imposed on other restraints if they implement use of the new items in their facilities. Similarly, the all-inclusive list does not contain restraining belts and straps or anti-mutilation gloves, items that are not used in most juvenile detention centers currently but may be implemented in the future. Finally, although mechanical restraint chairs are included under the current definition, the committee recommends separating them so that a new section can be established that will impose greater restrictions on their use.
- *Mental health clinician and qualified mental health professional:* Qualified mental health professionals (QMHPs) are responsible for assessing a resident's mental health condition and determining whether the application of restraints on residents in secure facilities is appropriate. Under the Code of Virginia, §54.1-3500, a QMHP is professionally qualified and registered by the Board of Counseling to provide collaborative mental health services for adults or children. This definition is sufficient to encompass the community service board providers that are responsible for conducting mental health assessments for residents in secure juvenile detention centers. The definition does not cover every correctional center employee authorized to conduct these assessments. To address this issue, the committee recommends adding a definition for mental health clinicians that includes individuals with a master's degree or higher in psychology, counseling, or social work with an emphasis on mental health treatment. Where reference to mental health professionals is made under this option, the proposal includes mental health clinicians, as well as QMHPs.
- *Protective device:* The board-approved definition for mechanical restraints in the detention center regulation does not include spit guards or helmets, though detention centers currently use both items. The committee agreed that these items do not meet the definition of mechanical restraints because neither device restricts a resident's freedom of movement or voluntary bodily functioning. Rather, they serve a protective function and prevent the resident's bodily movement from harming the resident or staff. The proposal adds a separate definition for protective devices, under which spit guards and protective helmets will be classified. Under the proposal, many of the restrictions imposed on mechanical restraints also apply to protective devices.
- *Spit guard or similar device:* The proposal adds a definition for spit guard to clarify that these devices are placed over a resident's mouth for safety purposes to prevent the resident from spitting on or biting staff or others.

Serious incident reports Sections 80, 1153(7)): The existing regulation requires facilities to report specified incidents, such as resident deaths, accidents, or illnesses, to the director or his designee, either the parent or legal guardian, and the applicable court service unit within 24 hours of the event. The committee recommends expanding the list of events subject to serious incident reporting to include any placement of a resident in a mechanical restraint chair, regardless of the purpose or duration of the use. This will ensure the department is aware of each application of the restraint chair and can monitor and advise facilities that are using the chair.

Training and retraining (Sections 190, 200, 1130): The committee recommends amending the training and retraining provisions to require staff authorized to apply the mechanical restraint chair to receive training specifically on restraint chairs. This is a conforming amendment as the current regulation requires training on mechanical restraints in general.

Additionally, subdivision (B)(8) of Section 1130 requires staff authorized to use mechanical restraints to obtain training on such use, including how to check the resident's circulation and to check for injuries. The committee asserts that health-trained staff are best equipped to conduct these checks and proposes striking this subject as a required topic for training. Note the new language in Section 1140 requiring a health-trained staff to conduct these checks at 15-minute intervals during the restraint.

Mechanical restraints and protective equipment (Section 1130): Currently, facilities must follow approved written procedures regarding mechanical restraint use. The existing regulation sets out parameters for these written procedures but omits several important areas. First, the only express restriction regarding the purpose of mechanical restraint use is that facilities may not use these items as a punishment or sanction. Second, the current regulation does not require a mental health professional's involvement or intervention in the restraint process until after the resident has been restrained for two hours cumulatively or exhibits self-injurious behavior. This could be problematic, particularly if a resident is in a mental health crisis, and the symptoms are not manifested through self-injury. Third, the regulation does not address how or by whose authority mechanical restraints may be terminated.

In order to address the first concern, the proposal adds language (*subsection A*) that permits mechanical restraint use only: (i) to control residents whose behavior imminently threatens the safety of the resident or others; (ii) for controlled movement within or outside the facility; and (iii) to address emergencies. This gives secure juvenile facilities in Virginia clear guidance as to when it is appropriate to utilize mechanical restraints and prevents excessive or arbitrary use of these devices. Another new provision requires staff to release the resident from the restraint once the risk is abated, the resident reaches his destination onsite or returns from an offsite location, or the emergency is resolved.

With regard to the second concern, the proposal adds a provision (*subsection C*) requiring staff to notify a mental health clinician or QMHP whenever a mechanical restraint is used to control a resident whose behavior threatens safety if staff believes continued use is necessary to maintain security after the risk is abated. Under the proposal, the continued restraint would be due to the resident's ongoing credible threat to injure himself or others after the initial risk is abated.

As to the third issue, the proposal adds new language (*subdivision B(5)*) authorizing a mental health clinician, QMHP, or qualifying licensed medical professional to order termination of the restraint if he determines it poses a health risk to the resident. This is consistent with current practices across facilities and ensures that provisions are in place to prevent the facility from continuing a restraint once the proper medical authorities determine it is unsafe.

Because the proposal excludes protective devices from the mechanical restraints definition, the committee proposes adding language making each provision in this section applicable to protective devices. In order to ensure that these devices are used sparingly, the committee also proposes new language (*subsection D*) authorizing the use of protective devices only in connection with the use of a restraint. Once staff releases the resident from the restraint, they must remove the protective device.

Finally, the use of spit guards or similar devices that prevent residents from biting or spitting have been a topic of discussion in juvenile justice. These items can be harmful to the resident if applied carelessly or if staff are not properly supervising residents wearing them. Facilities must balance these concerns against the duty to protect staff from communicable diseases or other injury resulting from being spit on or bitten. The committee recommends adding new provisions (*subsection E*) that deter excessive, negligent, or unsafe use of such devices. The proposal prohibits staff from using a spit guard on residents who have not previously or currently spit on or bitten a staff member. Additionally, facilities may not use spit guards that inhibit the resident's ability to see or breathe, nor may they apply spit guards in a manner that will prevent the resident from seeing or breathing. While the guard is in place, staff must provide for the resident's comfort and ensure access to water and meals. Staff must employ constant supervision to ensure residents are not exhibiting signs of respiratory distress, which would necessitate immediate removal of the guard. Finally, the proposal prohibits staff from using a spit guard on unconscious, vomiting, or other residents in need of medical attention.

Monitoring residents placed in mechanical restraints (Section 1140): The existing regulation requires staff to conduct periodic checks on mechanically-restrained residents at 15-minute intervals but does not prescribe the level of staff and resident interaction during these checks. The proposal (*subdivision A(2)*) directs staff to attempt to engage verbally with the resident during these checks and provides examples of permissible approaches.

The department's health services unit recommends new language requiring health-trained personnel to check the residents for injuries and signs of circulation as part of the periodic checks (*subdivision A(2)*). The board-approved regulation defines "health-trained personnel" as individuals trained by a licensed health care provider to administer health screenings, review screening forms for follow-up care, respond to medical concerns, help implement medical orders, and perform other duties. Health-trained personnel are best equipped to assess a resident's medical condition.

Additionally, this provision addresses residents who self-injure while mechanically restrained (*subsection D*). Among other requirements, staff must monitor the resident according to established protocols that comply with the regulation addressing restraints for medical and mental health purposes (discussed below). Because the proposal recommends repealing that section, the reference to that section also must be stricken.

Restraints for medical and mental health purposes (Section 1150): This section requires facilities to follow written procedures that address the authorization, duration, and other restrictions on applying restraints for medical and mental health purposes. The changes proposed under this option render this section unnecessary. The proposal repeals this section.

Written procedures regarding mechanical restraints and protective devices (Section 1145): Several sections in this article require the facility to have written procedures specific to certain sections or requirements and not to others. In order to avoid confusion, the proposal removes all individual requirements for written procedures contained in this article and replaces these provisions with a new section that requires detention centers that use mechanical restraints to have written procedures that reflect the requirements of this article.

Mechanical restraint chair; general provisions (Section 1153): Apart from the restrictions on mechanical restraints in general, the current regulations do not restrict restraint chair use. The committee has proposed new provisions that seek to limit restraint chair use, ensure proper approvals are obtained prior to use, involve

medical and mental health staff to assess whether the restraint chair is safe for the resident in question, and ensure that the department has the proper information to monitor these incidents. These provisions will apply regardless of the purpose or duration of the restraint chair use. To avoid repetition, this summary does not address the restraint chair provisions that mirror the mechanical restraint and protective device provisions.

The proposal requires approval from the facility administrator or his designee before staff may place a resident in the chair (*subdivision A(3)*) and directs staff, immediately upon such placement, to notify the facility's designated health authority, who will assess whether the resident's condition necessitates transfer to a medical or mental health unit for emergency treatment (*subdivision A(4)*). If a resident volunteers to be placed in the chair as a means of self-regulation and such use is part of an approved plan of care by a QMHP or mental health clinician, the health authority notification requirement would not apply (*subdivision A(4)*).

The proposal grants the same individuals authority to terminate the restraint due to a health risk to the resident as the provisions for other mechanical restraints, except that the health authority will also have termination authority (*subdivision A(5)*).

The proposal requires the facility to document the restraint chair use in the resident's case file or a central logbook. The documentation must include most of the elements required to document physical restraints under Section 1190, except that staff must have documentation demonstrating that the applicable required approvals were obtained and must explain why, for controlled movement, the chair is the least restrictive intervention (*subdivision A(8)*).

Finally, the proposal requires staff to conduct a debriefing after releasing the resident from the chair (*subdivision A(9)*). This will ensure that all facilities that use the chair are assessing their practices to determine what areas require improvement.

Mechanical restraint chair use for controlled movement (Section 1155): In addition to the general provisions, the committee recommends new sections to address restraint chair use for controlled movement of residents from one area of the facility to another. Under the proposal, the chair may be used for controlled movement only if: 1) the resident's refusal to move to another area directly and immediately threatens the resident or others or interferes with required facility operations; and 2) use of the chair is the least restrictive intervention available to ensure the resident's safe movement. The proposal requires staff to remove the resident from the restraint chair immediately upon reaching the intended destination and requires consultation with a clinician or QMHP if the facility believes continued restraint is necessary due to the resident's ongoing credible threat to injure himself or others (*subsection B*).

Mechanical restraint chair use for purposes other than controlled movement (Section 1156): The committee also has proposed a new section to address use of the mechanical restraint chair for purposes other than controlled movement. In order to utilize the restraint chair for these purposes: 1) the resident's actions must directly threaten himself or others; 2) less restrictive alternatives must have been attempted but failed to abate the threat or control the resident; and 3) the resident is removed from the chair once the threat is abated or the resident gains self-control (*subsection A*). If staff believes continued restraint is necessary after the threat is abated due to the resident's ongoing credible threat to injure himself or others, staff must consult a clinician or QMHP to approve the continued restraint (*subsection B*). These provisions do not apply for residents who request placement in the chair in accordance with an approved plan by a QMHP or clinician (*subsection C*). These parameters will help facilities reduce the use of the restraint chair and limit the time residents are restrained.

Finally, this provision requires one-on-one constant supervision while residents are in the chair, and staff must ensure the resident is reasonably comfortable and can access water, meals, and toilet, as applicable (*subsection D*). Constant supervision will guarantee that staff is aware of the resident's condition and whether it is safe to release the resident from the restraint.

Monitoring residents in the restraint chair (Section 1157): These amendments are applicable to all residents in restraint chairs, regardless of the purpose of the restraint. The proposal requires staff to allow residents restrained in the chair longer than one hour to exercise each limb for a minimum of ten minutes every two hours (*subsection A*). This is consistent with the National Commission on Correctional Health Care's Standards for Health Services in Juvenile Detention and Confinement Facilities. Additionally, under the proposal, the facility must have a video record of staff placing the resident in the chair when such use is for controlled movement and for the entire restraint period when residents are placed in the chair for purposes other than controlled movement (*subsection B*). This will enable the department to assess whether facilities are complying with each of the requirements of this chapter.

Department monitoring visits (Section 1158): The proposal requires every use of the mechanical restraint chair to be subject to a department monitoring visit to assess compliance with this chapter.

Written procedures regarding mechanical restraint chairs (Section 1159): Finally, the proposal requires all detention centers utilizing restraint chairs to develop and implement written procedures consistent with the requirements in Sections 1153 through 1159. This eliminates the need to have separate sections within this article that require written procedures and gives detention centers clear direction on the information that must be contained in their written procedures regarding restraint chairs.

The table below summarizes the major differences and similarities between the requirements applicable to mechanical restraints, the restraint chair, and protective devices under Option 1.

	Mechanical Restraint Requirement	Restraint Chair Requirement	Protective Device Requirement
<i>Necessary purpose for use</i>	(i) To control residents whose behavior poses imminent risk; (ii) Controlled movement; (iii) Emergency situations	<i>For controlled movement</i> – (i) Resident’s refusal to move to another area poses a direct and immediate threat to resident or others or interferes with facility operations; (ii) Use is least restrictive intervention available for safe movement. <i>For other purposes</i> – (i) Resident’s actions are direct threat to himself or others; (ii) Less restrictive alternatives were attempted but did not abate the threat; (iii) Resident remains in chair only as long as necessary to abate the threat or help him gain self-control.	i) To control residents whose behavior poses an imminent risk; (ii) Controlled movement; (iii) Emergency situations
<i>Permissible to use punitively</i>	No	No	No
<i>Facility administrator involvement</i>	Must be notified immediately upon using in emergencies	Must provide approval before resident placed in chair.	Must be notified immediately upon using in emergencies
<i>Authority to order termination</i>	Mental health clinician, QMHP, other qualifying licensed medical professional	Health authority, mental health clinician, QMHP, other qualifying licensed medical professional	Mental health clinician, QMHP, other qualifying licensed medical professional
<i>Training</i>	Staff authorized to use must receive initial and annual training.	Staff authorized to use must receive initial and annual training.	Staff authorized to use must receive initial and annual training.
<i>Mental health professional/medical health professional involvement</i>	Must notify QMHP or mental health clinician or medical professional before continuing use after initial threat abated.	Must notify health authority immediately upon placing resident in restraint chair to advise whether resident needs mental health or medical health unit.	May be used only in connection with other restraint. Requirements for applicable restraint must be observed.
<i>Level of supervision necessary while restraint employed</i>	Face-to-face checks at 15-minute intervals, including verbal engagement with resident and checks for signs of circulation and for injuries by health-trained staff.	<i>For controlled movement:</i> Unspecified. Staff conducts the transport of the resident, who must be removed from chair upon arrival at destination. <i>For other purposes:</i> Constant one-on-one supervision until release.	<i>Spit guard</i> – Constant one-on-one supervision until removed. <i>Protective helmet</i> – Unspecified. May use only in connection with other restraint. Requirement for applicable restraint must be observed.
<i>Response to SIB while restrained</i>	Stabilize threat, contact QMHP or mental health clinician, and monitor resident according to protocols.	Stabilize threat, consult with clinician or QMHP and obtain approval for continued use.	Unspecified. May use only in connection with other restraint. Requirement for applicable restraint must be observed.

<i>Documentation requirements for use</i>	Document in case file or in a central log book except when restraint used to transport a resident or during video court hearing proceedings.	Document in case file or central log book – date, time, staff involved, justification, less restrictive interventions attempted, duration, documenter’s signature, evidence of approvals.	Document in case file or in a central log book except when device used to transport a resident or during video court hearing proceedings.
<i>Debriefing required after</i>	No	Yes	No
<i>Video of restraint required</i>	No	Yes—only placement for controlled movement and entire restraint period for all other uses of chair.	No
<i>Restraint a serious incident?</i>	No	Yes	No
<i>Subsequent monitoring visit required</i>	No – DJJ has general authority upon request per certification regulations.	Yes—every chair use will trigger monitoring visit.	No—DJJ has general authority upon request per certification regulations.
<i>Rules for extended use</i>	-If restrained for more than one hour, must allow resident to exercise each limb for a minimum of 10 minutes every two hours. -If restrained for more than 2 hours cumulatively in 24-hour period (except routine transportation) must consult with health care provider and QMHP or mental health clinician.	-If restrained for more than one hour, must allow residents to exercise each limb for a minimum of 10 minutes every two hours. -If continued restraint necessary after threat abated or destination reached, staff must consult with mental health clinician or QMHP for approval of continued restraint.	Unspecified. May use only in connection with other restraint. Requirement for applicable restraint must be observed.

III. OPTION 2 – PROHIBITION ON RESTRAINT CHAIR USE

Option 2 adds a new section that expressly prohibits staff from using mechanical restraint chairs, thus eliminating the need for the five provisions addressing the mechanical restraint chair set out in Article IV under Option 1. All other amendments proposed in Option 1 are included under this option.

IV. OPTION 3 – PROHIBITION ON SPIT GUARDS OR SIMILAR DEVICES

Option 3 adds a new section that expressly prohibits staff from requiring residents to wear spit guards or similar devices intended to prevent the resident from spitting on or biting staff. This option excludes spit guards from the definition of protective devices and removes all the provisions imposing restrictions on spit guards that were contained in Option 1. All other provisions regarding mechanical restraints and restraint chairs set out under Option 1 are incorporated into this option.

V. RECOMMENDATION AND REGULATORY PROCESS

The department has submitted these options pursuant to the board’s November 7 directive and is not recommending any one option at this time. The board may elect to make additional amendments to any of the options presented. Regardless of which option the board ultimately approves, any amendments will be incorporated into the comprehensive regulatory package already approved for advancement to the proposed stage of the regulatory process.

**REGULATIONS GOVERNING JUVENILE DETENTION CENTERS (6VAC35-101)
PROPOSED AMENDMENTS - MECHANICAL RESTRAINTS**

**OPTION 1 – NEW PARAMETERS ON MECHANICAL RESTRAINTS AND THE
MECHANICAL RESTRAINT CHAIR**

6VAC35-101-10. Definitions.

“Mechanical restraint” means an approved mechanical device that involuntarily restricts the freedom of movement or voluntary functioning of a limb or portion of an individual’s body as a means of controlling his physical activities when the individual being restricted does not have the ability to remove the device. For purposes of this chapter, mechanical restraints shall include flex cuffs, handcuffs, leather restraints, leg irons, restraining belts and straps, waist chains, and anti-mutilation gloves. For purposes of this chapter, mechanical restraints shall not include mechanical restraint chairs.

“Mechanical restraint chair” means an approved chair used to restrict the freedom of movement or voluntary functioning of a portion of an individual’s body as a means of controlling his physical activities while the individual is seated and either stationary or being transported.

“Mental health clinician” means a person with a master’s degree or higher in psychology, counseling, or social work with an emphasis on mental health treatment who is employed in the practice of treating mental disorders.

“Protective device” means an approved device placed on a portion of a resident’s body to protect the resident or staff from injury. For purposes of this chapter, protective device shall include spit guards or similar devices and protective helmets.

“Qualified mental health professional” means a person who by education and experience is professionally qualified and registered by the Board of Counseling to provide collaborative mental health services for adults or children.

“Spit guard or similar device” means a protective device placed over a resident’s mouth for purposes of safety in order to prevent the resident from spitting on or biting staff or others.

Regulation Governing Juvenile Secure Detention Centers
Option 1 –New Parameters on Mechanical Restraints

6VAC35-101-80. Serious incident reports.

A. The following events shall be reported, ~~in accordance with department procedures,~~ within 24 hours to (i) the applicable court service unit; (ii) either the parent or legal guardian, as appropriate and applicable; and (iii) the director or his designee:

1. ~~Any A~~ serious incident, accident, illness, or injury to the resident;
2. The death of a resident;
3. ~~Any A~~ suspected case of child abuse or neglect at the detention center, on a detention center-sponsored event or excursion, or involving detention center staff as provided in 6VAC35-101-90 (suspected child abuse and neglect);
4. ~~Any A~~ disaster, fire, emergency, or other condition that may jeopardize the health, safety, and welfare of residents; ~~and~~
5. ~~Any A resident's~~ absence from the detention center without permission; ~~and~~
6. Placement of a resident in a mechanical restraint chair, regardless of the duration or purpose of the restraint.

B. The detention center shall notify the director or his designee within 24 hours of ~~any events detailed in subsection A of this section and all any~~ other ~~situations event~~ required by the regulatory authority of which the facility has been notified.

C. If an incident involving the death of a resident occurs at the facility, the facility shall notify the parents or legal guardians, as appropriate and applicable, of all residents in the facility provided such notice does not violate any confidentiality requirements or jeopardize any law-enforcement or child protective services investigation or the prosecution of any criminal cases related to the incident.

D. The facility shall (i) prepare and maintain a written report of the events listed in subsections A and B of this section and (ii) submit a copy of the written report to the director or his designee.

The report shall contain the following information:

1. The date and time the incident occurred;
2. A brief description of the incident;
3. The action taken as a result of the incident;
4. The name of the person who completed the report;
5. The name or identifying information of the person who made the report to the applicable court service unit, the director, and ~~to~~ either the parent or legal guardian, as appropriate and applicable, and the date and time on which the report was made; and
6. The name or identifying information of the person to whom the report was made, including any law-enforcement or child protective service personnel.

Regulation Governing Juvenile Secure Detention Centers
Option 1 –New Parameters on Mechanical Restraints

~~E. The resident's record shall contain a written reference (i) that an incident occurred and (ii) of all applicable reporting.~~

~~FE.~~ In addition to the requirements of this section, ~~any~~ serious ~~incident incidents~~ involving an allegation of child abuse or neglect at the detention center, at a detention-center sponsored event, or involving detention center staff shall be governed by 6VAC35-101-90 (suspected child abuse or neglect).

6VAC35-101-190. Required initial training for employees.

A. ~~Each f~~Full-time and part-time employees and relief staff shall complete initial, comprehensive training that is specific to the individual's occupational class, is based on the needs of the population served, and ensures that the individual has the competencies to perform the position's duties. Direct care staff shall receive at least 40 hours of training, inclusive of all training required by this section, in their first year of employment.

~~1. Direct care staff shall receive at least 40 hours of training, inclusive of all training required by this section, in their first year of employment.~~

~~2. Contractors shall receive training required to perform their position responsibilities in a detention center.~~

B. Within 30 days following the employee's start date at the facility or before the employee is responsible for the direct care or direct supervision of a resident, all direct care staff and staff who provide direct supervision of the residents shall complete training in the following areas:

1. Emergency preparedness and response as provided for in 6VAC35-101-510 (emergency and evacuation procedures);

2. The facility's behavior management program as provided for in 6VAC35-101-1070 (behavior management);

3. The residents' rules of conduct and the rationale for the rules;

4. The facility's behavior intervention procedures, ~~with including~~ physical and mechanical restraint training, protective device training, and mechanical restraint chair training, required as applicable to their duties and as required by subsection ~~D-C~~ of this section, and room restriction and disciplinary room restriction as provided for in 6VAC35-101-1100 (room restriction) and 6VAC35-101-1105 (disciplinary room restriction);

5. Child abuse and neglect and mandatory reporting as provided for in 6VAC35-101-80 (serious incident reports) and 6VAC35-101-90 (suspected child abuse or neglect);

6. Maintaining appropriate professional boundaries and relationships;

7. Appropriate interaction~~Interaction~~ among staff and residents;

8. Suicide prevention as provided for in 6VAC35-101-1020 (suicide prevention);

Regulation Governing Juvenile Secure Detention Centers
Option 1 –New Parameters on Mechanical Restraints

9. Residents' rights, including ~~but not limited to~~ prohibited actions provided for in 6VAC35-101-650 (prohibited actions);
10. Standard precautions as provided for in 6VAC35-101-1010 (infectious or communicable diseases); and
11. Procedures applicable to the employee's position and consistent with their work profiles.

C. Employees who are authorized by the facility administrator to restrain a resident, as provided for in 6VAC35-101-1090 (physical restraint), ~~and~~ 6VAC35-101-1130 (mechanical restraints and protective devices), and 6VAC35-101-1153 (mechanical restraint chair; general provisions), shall be trained in the facility's approved restraint techniques within 90 days of such authorization and ~~prior to~~before applying any restraint techniques.

D. Employees who administer medication shall, prior to such administration, as provided for in 6VAC35-101-1060 (medication), and in accordance with the provisions of § 54.1-3408 of the Code of Virginia, either (i) have successfully completed a medication management training program approved by the Board of Nursing or (ii) be ~~licensed~~certified by the Commonwealth of Virginia to administer medication.

~~E. When an individual is employed by contract to provide services for which licensure by a professional organization is required, documentation of current licensure shall constitute compliance with this section.~~

~~F. Volunteers and interns shall be trained in accordance with 6VAC35-101-300 (volunteer and intern orientation and training).~~

~~GE.~~ Employees who perform the duties required in 6VAC35-101-800 (admission and orientation) shall be trained in the requirements contained therein.

6VAC35-101-200. Retraining requirements for employees.

A. Each full-time and part-time employee and relief staff shall complete retraining that is specific to the individual's occupational class, the position's job description, and addresses any professional development needs.

B. All full-time and part-time employees and relief staff shall complete an annual training refresher on the facility's emergency preparedness and response plan and procedures as provided for in 6VAC35-101-~~480~~520 (emergency and evacuation procedures).

Regulation Governing Juvenile Secure Detention Centers
Option 1 –New Parameters on Mechanical Restraints

C. All direct care staff shall receive at least 40 hours of training annually that shall include training on the following:

1. Suicide prevention as provided for in 6VAC35-101-1020 (suicide prevention);
2. Standard precautions as provided for in 6VAC35-101-1010 (infectious or communicable diseases);
3. Maintaining appropriate professional relationships;
4. ~~Appropriate interaction~~**Interaction** among staff and residents;
5. Residents' rights, including ~~but not limited to~~ the prohibited actions provided for in 6VAC35-101-650 (prohibited actions);
6. Child abuse and neglect and mandatory reporting as provided for in 6VAC35-101-80 (serious incident reports) and 6VAC35-101-90 (suspected child abuse or neglect); and
7. Behavior intervention procedures, including room restriction and disciplinary room restriction as provided for in 6VAC35-101-1100 (room restriction) and 6VAC35-101-1105 (disciplinary room restriction).

D. All staff approved to apply physical restraints, as provided for in 6VAC35-101-1090 (physical restraint) shall be trained as needed to maintain the applicable current certification.

E. All staff approved to apply mechanical restraints or protective devices or to utilize the mechanical restraint chair shall be retrained annually, as required by 6VAC35-101-1130 (mechanical restraints and protective devices) and 6VAC35-101-1153 (mechanical restraint chair; general provisions).

F. Employees who administer medication, as provided for in 6VAC35-101-1060 (medication), shall complete an annual refresher training, which shall, at a minimum, include a review of the components required in 6VAC35-101-1060 (medication).

~~G. When an individual is employed by contract to provide services for which licensure by a professional organization is required, documentation of current licensure shall constitute compliance with this section.~~

~~HG.~~ Staff who have not timely completed required retraining shall not be allowed to have direct care responsibilities pending completion of the required retraining~~retraining requirements~~.

Article III – Mechanical Restraints and Protective Devices

6VAC35-101-1130. Mechanical restraints and protective devices.

A. Mechanical restraints and protective devices may be used for the following purposes, subject to the restrictions enumerated in this section: (i) to control residents whose behavior poses an imminent risk to the safety of the resident, staff, or others; (ii) for purposes of controlled movement, either from one area of the facility to another or to a destination outside the facility; or (iii) to address emergency situations.

B. A detention center that uses mechanical restraints or protective devices shall observe the following general requirements:

1. Mechanical restraints and protective devices shall be used only for as long as necessary to address the purposes established in subsection A. Once the imminent risk to safety has been abated, the resident has reached his intended destination within the facility or has returned to the facility from a destination offsite, or the emergency situation has been resolved, the mechanical restraint or protective device must be removed.

~~A. Written procedure shall govern the use of mechanical restraints. Such procedures shall be approved by the department and shall specify:~~

~~1. The conditions under which handcuffs, waist chains, leg irons, disposable plastic cuffs, leather restraints, and a mobile restraint chair may be used;~~

~~2. That~~The facility administrator or his designee shall be notified immediately upon using mechanical restraints or protective devices in an emergency situation;

~~3. That~~The facility shall not use mechanical restraints or protective devices shall never be applied as a punishment or a sanction;

~~4. That residents~~Residents shall not be restrained to a fixed object or restrained in an unnatural position. ~~For purposes of this section, securing a resident to a hospital bed or wheelchair may be permitted in an outside medical setting upon written approval by the facility administrator and in accordance with written procedures;~~

5. A mental health clinician, qualified mental health professional, or other qualifying licensed medical professional may order termination of a mechanical restraint or protective device at any time upon determining that use of the item poses a health risk.

Regulation Governing Juvenile Secure Detention Centers
Option 1 –New Parameters on Mechanical Restraints

~~56. That each~~Each use of a mechanical restraints~~restraint or protective device~~, except when used to transport a resident or during video court hearing proceedings, shall be recorded in the resident's case file or in a central log book; ~~and~~

~~67. That a~~A ~~written system of accountability is~~shall be in place to ensure~~record of~~ routine and emergency distribution of mechanical restraints and equipment~~protective devices; and be maintained.~~

~~B8. Written procedure shall provide that (i) all~~All staff who are authorized to use ~~restraints~~mechanical restraints or protective devices shall receive training in such use in accordance with 6VAC35-101-190 (required initial training for employees) and 6VAC35-101-200 (retraining requirements for employees), including how to check the resident's circulation and how to check for injuries; and ~~(ii) only trained staff shall use~~ mechanical restraints or protective devices.

C. A detention center that uses a mechanical restraint to control a resident whose behavior poses a safety risk in accordance with subdivision (A)(i) of this section shall notify a health care provider and a mental health clinician or qualified mental health professional before continuing to use the restraint, and, if applicable, the accompanying protective device, if the imminent risk has been abated, but the facility determines that continued use of the mechanical restraint is necessary to maintain security due to the resident's ongoing credible threat to injure himself or others. This may include instances in which the resident verbally expresses the intent to continue the actions that required the restraint.

D. A detention center may not use a protective device unless the use is in connection with a restraint and shall remove the device when the resident is released from the restraint.

E. In addition to the requirements enumerated in subsections A through C of this section, a detention center that uses a spit guard or similar device to control resident behavior shall observe the following requirements:

1. The spit guard or similar device may be used only on a resident who previously has bitten or spit on a staff member during the course of a restraint or who, in the course of a current restraint, threatens to spit on or bite or actually spits on or bites a staff member;
2. The spit guard or similar device must be designed and applied in a manner that will not inhibit the resident's ability to see or to breathe;
3. While the spit guard or similar device remains in place, staff shall provide for the resident's reasonable comfort and ensure the resident's access to water and meals, as applicable;
4. Staff must employ constant supervision of the resident while the spit guard or similar device remains in place to observe whether the resident exhibits signs of respiratory distress. If any sign

Regulation Governing Juvenile Secure Detention Centers
Option 1 –New Parameters on Mechanical Restraints

of respiratory distress is observed, staff shall remove the spit guard or similar device immediately; and

5. Staff may not use a spit guard or similar device on a resident who is unconscious, vomiting, or in obvious need of medical attention.

6VAC35-101-1140. Monitoring ~~restrained~~ residents placed in mechanical restraints.

A. Written procedures shall provide that ~~when if~~ a resident is placed in a mechanical restraintsrestraint, staff shall:

1. Provide for the resident's reasonable comfort and ensure the resident's access to water, meals, and toilet; and

2. Make a direct personal face-to-face check on the resident at least every 15 minutes and more often if the resident's behavior warrants. Staff shall attempt to engage verbally with the resident during each periodic check. These efforts may include explaining the reasons for which the resident is being restrained or the steps necessary to be released from the restraint; or otherwise attempting to deescalate the resident. ~~Such~~ During each checkscheck, a health-trained staff shall include monitoringmonitor the resident's resident for signs of circulation and for injuries-in accordance with the procedure provided for in 6VAC35-101-1130 B.

B. If a resident remains in a mechanical restraint for a period that exceeds one hour, the resident shall be permitted to exercise each of his limbs for a minimum of 10 minutes every two hours to prevent blood clots.

BC. When a resident is placed in mechanical restraints for more than two hours cumulatively in a 24-hour period, with the exception of use in routine transportation of residents, staff shall immediately consult with a health care provider and a qualified mental health professional or mental health clinician. This consultation shall be documented.

CD. If the resident, after being placed in mechanical restraints, exhibits self-injurious behavior, staff shall: (i) staff shalltake appropriate action to ensure the threat or harm is stabilized; (ii) immediately consult with and document that they have consulted with a qualified mental health professional or mental health clinician immediately thereafter and document the consultation; and (iii) monitor the resident shall be monitored in accordance with established protocols, including constant supervision, if appropriate. ~~Any such protocols shall be in compliance with the procedures required by 6VAC35-101-1150 (restraints for medical and mental health purposes).~~

6VAC35-101-1145. Written procedures regarding mechanical restraints and protective devices

A detention center that uses mechanical restraints or protective devices shall develop and implement written procedures approved by the facility administrator that reflect the requirements established in this article.

6VAC35-101-1150. Restraints for medical and mental health purposes. (Repealed.)

~~Written procedure shall govern the use of restraints for medical and mental health purposes. Written procedure shall identify the authorization needed; when, where, and how restraints may be used; for how long; and what type of restraint may be used.~~

Article IV – Mechanical Restraint Chairs

6VAC35-101-1153. Mechanical restraint chair; general provisions.

A detention center that utilizes a mechanical restraint chair shall observe the following requirements, regardless of whether the chair is used for purposes of controlled movement in accordance with 6VAC35-101-1155 (mechanical restraint chair use for controlled movement; conditions) or for other purposes in accordance with 6VAC35-101-1156 (mechanical restraint chair used for purposes other than controlled movement; conditions for use):

1. The restraint chair shall never be applied as punishment or as a sanction;
2. All staff authorized to use the restraint chair shall receive training in such use in accordance with 6VAC35-101-190 (required initial training for employees) and 6VAC35-101-200 (retraining requirements for employees);
3. The facility administrator or his designee shall provide approval before a resident may be placed in the restraint chair;
4. Staff shall notify the health authority, designated in accordance with 6VAC35-101-930, immediately upon placing the resident in the restraint chair to assess the resident's medical and mental health condition, to ascertain whether the restraint is contraindicated based on the resident's physical condition or behavior or whether other accommodations are necessary, and to advise whether, on the basis of serious danger to self or others, the resident should be in a medical or mental health unit for emergency involuntary treatment. The requirements of this subdivision shall not apply when the restraint chair is requested by a resident for whom such voluntary use is part of an approved plan of care by a mental health clinician or qualified mental health professional in accordance with subsection C of 6VAC35-101-1156 (mechanical restraint chair use for purposes other than controlled movement; conditions for use).

Regulation Governing Juvenile Secure Detention Centers
Option 1 –New Parameters on Mechanical Restraints

5. If a resident, after being placed in the mechanical restraint chair, exhibits self-injurious behavior, staff shall (i) take appropriate action to ensure the threat or harm is stabilized; and (ii) consult a mental health clinician or qualified mental health professional immediately thereafter and obtain approval for continued use of the restraint chair.

6. The health authority, a mental health clinician, a qualified mental health professional, or other qualifying licensed medical professional may order termination of restraint chair use at any time upon determining that use of the chair poses a health risk.

7. Each use of the restraint chair shall constitute a serious incident, to which the provisions of 6VAC35-101-80 (serious incident reports) shall apply;

8. Each use of the restraint chair shall be documented in the resident's case file or in a central logbook. The documentation shall include:

a. Date and time of the incident;

b. Staff involved in the incident;

c. Justification for the restraint;

d. Less restrictive interventions that were attempted or an explanation of why the restraint chair is the least restrictive intervention available to ensure the resident's safe movement;

e. Duration of the restraint;

f. Signature of the person documenting the incident and date;

g. Indication that all applicable approvals required in this article have been obtained; and

h. Reviewer's signature and date.

9. Detention center staff shall conduct a debriefing of the restraint after releasing the resident from the chair.

6VAC35-101-1155. Mechanical restraint chair use for controlled movement; conditions.

A. A detention center shall be authorized to use a mechanical restraint chair for purposes of controlled movement of a resident from one area of the facility to another, provided the following conditions, in addition to the requirements enumerated in 6VAC35-101-1155 (mechanical restraint chair; general provisions) are satisfied:

1. The resident's refusal to move from one area of the facility to another poses a direct and immediate threat to the resident or others or interferes with required facility operations; and

2. Use of the restraint chair is the least restrictive intervention available to ensure the resident's safe movement.

B. When the facility utilizes the restraint chair in accordance with this section, staff shall remove the resident from the chair immediately upon reaching the intended destination. If staff, upon reaching the intended destination, determine that continued restraint is necessary due to the resident's ongoing credible threat to injure himself or others, staff shall consult with a mental

Regulation Governing Juvenile Secure Detention Centers
Option 1 –New Parameters on Mechanical Restraints

health clinician or qualified mental health professional for approval of the continued restraint. The ongoing threat may include instances in which the resident verbally expresses the intent to continue the actions that required the restraint.

6VA35-101-1156. Mechanical restraint chair use for purposes other than controlled movement; conditions for use.

A. A detention center shall be authorized to use a mechanical restraint chair for purposes other than controlled movement provided the following conditions are satisfied:

1. The resident's behavior or actions present a direct and immediate threat to the resident or others;

2. Less restrictive alternatives were attempted but were unsuccessful in bringing the resident under control or abating the threat;

3. The resident remains in the restraint chair only for as long as necessary to abate the threat or help the resident gain self-control.

B. Once the direct threat is abated, if staff determines that continued restraint is necessary to maintain security due to the resident's ongoing credible threat to injure himself or others, staff shall consult a mental health clinician or qualified mental health professional for approval of the continued restraint. The ongoing threat may include instances in which the resident verbally expresses the intent to continue the actions that required the restraint

C. The detention center shall be excused from the requirements in subsections A and B of this section when the restraint chair is requested by a resident for whom such voluntary use is part of an approved plan of care by a qualified mental health professional or mental health clinician.

D. Whenever a resident is placed in a restraint chair for purposes other than controlled movement, staff shall observe the following monitoring requirements:

1. Employ constant, one-on-one supervision until the resident is released from the chair. Staff shall attempt to engage verbally with the resident during the one-on-one supervision. These efforts may include explaining the reasons for which the resident is being restrained or the steps necessary to be released from the restraint; or otherwise attempting to deescalate the resident.

2. Ensure that a health-trained staff monitors the resident for signs of circulation and for injuries at least once every 15 minutes in accordance with written procedures; and

3. Ensure that the resident is reasonably comfortable and has access to water, meals, and toilet.

6VAC35-101-1157. Monitoring residents placed in a mechanical restraint chair.

A. If a resident remains in the restraint chair for a period that exceeds one hour, the resident shall be permitted to exercise each of his limbs for a minimum of 10 minutes every two hours to prevent blood clots.

B. A detention center shall ensure that a video record of the following is captured and retained for a minimum of three years in accordance with 6VAC35-101-40 (certification):

1. The placement of a resident in a restraint chair when a resident is restrained for purposes of controlled movement; and

2. The entire restraint, from the time the resident is placed in the restraint chair until his release, when a resident is restrained in the chair for purposes other than controlled movement. The detention center may satisfy this requirement by positioning the restraint chair within direct view of an existing security camera.

6VAC35-101-1158. Department monitoring visits.

If a detention center uses a mechanical restraint chair to restrain a resident, regardless of the duration or purpose of the use, the detention center shall be subject to a monitoring visit conducted by the department pursuant to the authority provided in 6VAC35-20-60 (monitoring of programs and facilities). The purpose of the monitoring visit shall be to assess the detention center's compliance with the provisions of this article.

6VAC35-101-1159. Written procedures regarding mechanical restraint chairs.

A detention center that uses a mechanical restraint chair to restrain a resident shall develop and implement written procedures approved by the facility administrator that reflect the requirements established in this article.

OPTION 2 – PROHIBITION ON RESTRAINT CHAIRS

6VAC35-101-10. Definitions.

“Mechanical restraint” means an approved mechanical device that involuntarily restricts the freedom of movement or voluntary functioning of a limb or portion of an individual’s body as a means of controlling his physical activities when the individual being restricted does not have the ability to remove the device. For purposes of this chapter, mechanical restraints shall include flex cuffs, handcuffs, leather restraints, leg irons, restraining belts and straps, waist chains, and anti-mutilation gloves. For purposes of this chapter, mechanical restraints shall not include mechanical restraint chairs.

“Mechanical restraint chair” means a chair used to restrict the freedom of movement or voluntary functioning of a portion of an individual’s body as a means of controlling his physical activities while the individual is seated and either stationary or being transported.

“Mental health clinician” means a person with a master’s degree or higher in psychology, counseling, or social work with an emphasis on mental health treatment who is employed in the practice of treating mental disorders.

“Protective device” means an approved device placed on a portion of a resident’s body to protect the resident or staff from injury. For purposes of this chapter, protective device shall include spit guards or similar devices and protective helmets.

“Qualified mental health professional” means a person who by education and experience is professionally qualified and registered by the Board of Counseling to provide collaborative mental health services for adults or children.

“Spit guard or similar device” means a protective device placed over a resident’s mouth for purposes of safety and security in order to prevent the resident from spitting on or biting staff or others.

6VAC35-101-190. Required initial training for employees.

A. ~~Each~~ Full-time and part-time employees and relief staff shall complete initial, comprehensive training that is specific to the individual's occupational class, is based on the needs of the population served, and ensures that the individual has the competencies to perform the position's duties. Direct care staff shall receive at least 40 hours of training, inclusive of all training required by this section, in their first year of employment.

Regulation Governing Juvenile Secure Detention Centers
Option 2— Prohibition on Restraint Chairs

~~1. Direct care staff shall receive at least 40 hours of training, inclusive of all training required by this section, in their first year of employment.~~

~~2. Contractors shall receive training required to perform their position responsibilities in a detention center.~~

B. Within 30 days following the employee's start date at the facility or before the employee is responsible for the direct care or direct supervision of a resident, all direct care staff and staff who provide direct supervision of the residents shall complete training in the following areas:

1. Emergency preparedness and response as provided for in 6VAC35-101-510 (emergency and evacuation procedures);

2. The facility's behavior management program as provided for in 6VAC35-101-1070 (behavior management);

3. The residents' rules of conduct and the rationale for the rules;

4. The facility's behavior intervention procedures, with including physical and mechanical restraint and protective devices training required as applicable to their duties and as required by subsection D-C of this section, and room restriction and disciplinary room restriction as provided for in 6VAC35-101-1100 (room restriction) and 6VAC35-101-1105 (disciplinary room restriction);

5. Child abuse and neglect and mandatory reporting as provided for in 6VAC35-101-80 (serious incident reports) and 6VAC35-101-90 (suspected child abuse or neglect);

6. Maintaining appropriate professional boundaries and relationships;

7. Appropriate interaction~~Interaction~~ among staff and residents;

8. Suicide prevention as provided for in 6VAC35-101-1020 (suicide prevention);

9. Residents' rights, including ~~but not limited to~~ prohibited actions provided for in 6VAC35-101-650 (prohibited actions);

10. Standard precautions as provided for in 6VAC35-101-1010 (infectious or communicable diseases); and

11. Procedures applicable to the employees' position and consistent with their work profiles.

C. Employees who are authorized by the facility administrator to restrain a resident, as provided for in 6VAC35-101-1090 (physical restraint) and 6VAC35-101-1130 (mechanical restraints), shall be trained in the facility's approved restraint techniques within 90 days of such authorization and prior to before applying any restraint techniques.

D. Employees who administer medication shall, prior to such administration, as provided for in 6VAC35-101-1060 (medication), and in accordance with the provisions of § 54.1-3408 of the Code of Virginia, either (i) have successfully completed a medication management training program approved by the Board of Nursing or (ii) be licensed-certified by the Commonwealth of Virginia to administer medication.

Regulation Governing Juvenile Secure Detention Centers
Option 2– Prohibition on Restraint Chairs

~~E. When an individual is employed by contract to provide services for which licensure by a professional organization is required, documentation of current licensure shall constitute compliance with this section.~~

~~F. Volunteers and interns shall be trained in accordance with 6VAC35-101-300 (volunteer and intern orientation and training).~~

GE. Employees who perform the duties required in 6VAC35-101-800 (admission and orientation) shall be trained in the requirements contained therein.

6VAC35-101-200. Retraining requirements for employees.

A. Each full-time and part-time employee and relief staff shall complete retraining that is specific to the individual's occupational class, the position's job description, and addresses any professional development needs.

B. All full-time and part-time employees and relief staff shall complete an annual training refresher on the facility's emergency preparedness and response plan and procedures as provided for in 6VAC35-101-~~480~~ 520 (emergency and evacuation procedures).

C. All direct care staff shall receive at least 40 hours of training annually that shall include training on the following:

1. Suicide prevention as provided for in 6VAC35-101-1020 (suicide prevention);
2. Standard precautions as provided for in 6VAC35-101-1010 (infectious or communicable diseases);
3. Maintaining appropriate professional relationships;
4. ~~Appropriate interaction~~ Interaction among staff and residents;
5. Residents' rights, including ~~but not limited to~~ the prohibited actions provided for in 6VAC35-101-650 (prohibited actions);
6. Child abuse and neglect and mandatory reporting as provided for in 6VAC35-101-80 (serious incident reports) and 6VAC35-101-90 (suspected child abuse or neglect); and
7. Behavior intervention procedures, including room restriction and disciplinary room restriction as provided in 6VAC35-101-1100 (room restriction) and 6VAC35-101-1105 (disciplinary room restriction).

D. All staff approved to apply physical restraints, as provided for in 6VAC35-101-1090 (physical restraint), shall be trained as needed to maintain the applicable current certification.

Regulation Governing Juvenile Secure Detention Centers
Option 2– Prohibition on Restraint Chairs

E. All staff approved to apply mechanical restraints or protective devices shall be retrained annually, as required by 6VAC35-101-1130 (mechanical restraints).

F. Employees who administer medication, as provided for in 6VAC35-101-1060 (medication), shall complete an annual refresher training, which shall, at a minimum, include a review of the components required in 6VAC35-101-1060 (medication).

~~G. When an individual is employed by contract to provide services for which licensure by a professional organization is required, documentation of current licensure shall constitute compliance with this section.~~

~~G. Staff who have not timely completed required retraining shall not be allowed to have direct care responsibilities pending completion of the retraining requirements required retraining.~~

6VAC35-101-1130. Mechanical restraints and protective devices.

A. Mechanical restraints and protective devices may be used for the following purposes, subject to the restrictions enumerated in this section: (i) to control residents whose behavior poses an imminent risk to the safety of the resident, staff, or others; (ii) for purposes of controlled movement, either from one area of the facility to another or to a destination outside the facility; or (iii) to address emergency situations.

~~A. Written procedure shall govern the use of mechanical restraints. Such procedures shall be approved by the department and shall specify:~~

~~1. The conditions under which handcuffs, waist chains, leg irons, disposable plastic cuffs, leather restraints, and a mobile restraint chair may be used;~~

B. A detention center that uses mechanical restraints or protective devices shall observe the following general requirements:

1. Mechanical restraints and protective devices shall be used only for as long as necessary to address the purposes established in subsection A. Once the imminent risk to safety has been abated, the resident has reached his intended destination within the facility or has returned to the facility from a destination offsite, or the emergency situation has been resolved, the mechanical restraint or protective device must be removed.

2. ~~That the~~The facility administrator or his designee shall be notified immediately upon using mechanical restraints or protective devices in an emergency situation;

Regulation Governing Juvenile Secure Detention Centers
Option 2— Prohibition on Restraint Chairs

3. ~~That~~The facility shall not use mechanical restraints shall never be applied as or protective devices as a punishment or a sanction;

4. ~~That r~~Residents shall not be restrained to a fixed object or restrained in an unnatural position. For purposes of this section, securing a resident to a hospital bed or wheelchair may be permitted in an outside medical setting upon written approval by the facility administrator and in accordance with written procedures;

5. A mental health clinician, qualified mental health professional, or other qualifying licensed medical professional may order termination of a mechanical restraint or protective device at any time upon determining that the item poses a health risk.

56. ~~That each~~Each use of a mechanical restraintsrestraint or protective device, except when used to transport a resident or during video court hearing proceedings, shall be recorded in the resident's case file or in a central log book; and

67. ~~That a~~A written system of accountability isshall be in place to ensurerecord of routine and emergency distribution of mechanical restraint equipmentrestraints and protective devicesbe maintained.; and

8. ~~Written procedure shall provide that (i) all~~All staff who are authorized to use restraints mechanical restraints or protective devices shall receive training in such use in accordance with 6VAC35-101-190 (required initial training for employees) and 6VAC35-101-200 (retraining requirements for employees); ~~including how to check the resident's circulation and how to check for injuries;~~ and (ii) only trained staff shall use mechanical restraints or protective devices.

B. A detention center that uses a mechanical restraint to control a resident whose behavior poses a safety risk in accordance with subdivision (A)(i) of this section shall notify a health care provider and a mental health clinician or qualified mental health professional before continuing to use the restraint and, if applicable, the accompanying protective device, if the imminent risk has been abated; but the facility determines that continued use of the mechanical restraint is necessary to maintain security due to the resident's ongoing credible threat to injure himself or others. This may include instances in which the resident verbally expresses the intent to continue the actions that required the restraint.

C. A detention center may not use a protective device unless such use is in connection with a restraint and shall remove the device when the resident is released from the restraint.

Regulation Governing Juvenile Secure Detention Centers
Option 2– Prohibition on Restraint Chairs

D. In addition to the requirements enumerated in subsections A through C of this section, a detention center that uses a spit guard or similar device to control resident behavior shall observe the following requirements:

1. The spit guard or similar device may be used only on a resident who previously has bitten or spit on a staff member in the course of a restraint or who, in the course of a current restraint, threatens to spit on or bite or actually spits on or bites a staff member;

2. The spit guard or similar device must be designed and applied in a manner that will not inhibit the resident's ability to see or to breathe;

3. While the spit guard or similar device remains in place, staff shall provide for the resident's reasonable comfort and ensure the resident's access to water and meals, as applicable;

4. Staff must employ constant supervision of the resident while the spit guard or similar device remains in place to observe whether the resident exhibits signs of respiratory distress. If any sign of respiratory distress is observed, staff shall remove the spit guard or similar device immediately; and

5. Staff may not use a spit guard or similar device on a resident who is unconscious, vomiting, or in obvious need of medical attention.

6VAC35-101-1140. Monitoring ~~restrained~~ residents placed in mechanical restraints.

A. Written procedure shall provide that ~~when if~~ a resident is placed in a mechanical restraintsrestraint, staff shall:

1. Provide for the resident's reasonable comfort and ensure the resident's access to water, meals, and toilet; and

2. Make a direct personal face-to-face check on the resident at least every 15 minutes and more often if the resident's behavior warrants. ~~Such Staff shall attempt to engage verbally with the resident during each periodic check. These efforts may include explaining the reasons for which the resident is being restrained or the steps necessary to be released from the restraint; or otherwise attempting to deescalate the resident. During each check echecks shall include monitoring, a health-trained staff member shall monitor the resident's resident for signs of circulation and for injuries. in accordance with the procedure provided for in 6VAC35-101-1130~~
B.

Regulation Governing Juvenile Secure Detention Centers
Option 2— Prohibition on Restraint Chairs

B. If a resident remains in a mechanical restraint for a period that exceeds one hour, the resident shall be permitted to exercise each of his limbs for a minimum of 10 minutes every two hours to prevent blood clots.

BC. When a resident is placed in mechanical restraints for more than two hours cumulatively in a 24-hour period, with the exception of use in routine transportation of residents, staff shall immediately consult with a health care provider and a qualified mental health professional or mental health clinician. This consultation shall be documented.

CD. If the resident, after being placed in mechanical restraints, exhibits self-injurious behavior, staff shall: (i) ~~staff shall take appropriate action to ensure the threat or harm is stabilized;~~ (ii) ~~immediately~~ consult with ~~and document that they have consulted with~~ a mental health clinician or qualified mental health professional immediately thereafter and document the consultation; and (iii) monitor the resident ~~shall be monitored~~ in accordance with established protocols, including constant supervision, if appropriate. ~~Any such protocols shall be in compliance with the procedures required by 6VAC35-101-1150 (restraints for medical and mental health purposes).~~

6VAC35-101-1145. Written procedures regarding mechanical restraints and protective devices

A detention center that uses mechanical restraints or protective devices shall develop and implement written procedures approved by the facility administrator that reflect the requirements established in this article.

6VAC35-101-1150. ~~Restraints for medical and mental health purposes. (Repealed.)~~

~~Written procedure shall govern the use of restraints for medical and mental health purposes. Written procedure shall identify the authorization needed; when, where, and how restraints may be used; for how long; and what type of restraint may be used.~~

6VAC35-101-1155. Use of mechanical restraint chairs prohibited.

Staff shall be prohibited from placing a resident in a mechanical restraint chair for any purpose.

OPTION 3 – PROHIBITION ON SPIT GUARDS AND SIMILAR DEVICES

6VAC35-101-10. Definitions.

“Mechanical restraint” means an approved mechanical device that involuntarily restricts the freedom of movement or voluntary functioning of a limb or portion of an individual’s body as a means of controlling his physical activities when the individual being restricted does not have the ability to remove the device. For purposes of this chapter, mechanical restraints shall include flex cuffs, handcuffs, leather restraints, leg irons, restraining belts and straps, waist chains, and anti-mutilation gloves. For purposes of this chapter, mechanical restraints shall not include mechanical restraint chairs.

“Mechanical restraint chair” means an approved chair used to restrict the freedom of movement or voluntary functioning of a portion of an individual’s body as a means of controlling his physical activities while the individual is seated and either stationary or being transported.

“Mental health clinician” means a person with a master’s degree or higher in psychology, counseling, or social work with an emphasis on mental health treatment who is employed in the practice of treating mental disorders.

“Protective device” means an approved device placed on a portion of a resident’s body to protect the resident or staff from injury. For purposes of this chapter, protective device shall not include spit guards or similar devices.

“Qualified mental health professional” means a person who by education and experience is professionally qualified and registered by the Board of Counseling to provide collaborative mental health services for adults or children.

“Spit guard or similar device” means a device placed over a resident’s mouth for purposes of safety in order to prevent the resident from spitting on or biting staff or others.

6VAC35-101-190. Required initial training for employees.

A. ~~Each ff~~Full-time and part-time employees and relief staff shall complete initial, comprehensive training that is specific to the individual's occupational class, is based on the needs of the population served, and ensures that the individual has the competencies to perform the position's duties. Direct care staff shall receive at least 40 hours of training, inclusive of all training required by this section, in their first year of employment.

1. Direct care staff shall receive at least 40 hours of training, inclusive of all training required by this section, in their first year of employment.

Regulation Governing Juvenile Secure Detention Centers
Option 3— Prohibition on Spit Guards and Similar Devices

~~2. Contractors shall receive training required to perform their position responsibilities in a detention center.~~

B. Within 30 days following the employee's start date at the facility or before the employee is responsible for the ~~direct care or~~ direct supervision of a resident, all direct care staff and staff who provide direct supervision of the residents shall complete training in the following areas:

1. Emergency preparedness and response as provided for in 6VAC35-101-510 (emergency and evacuation procedures);
2. The facility's behavior management program as provided for in 6VAC35-101-1070 (behavior management);
3. The residents' rules of conduct and the rationale for the rules;
4. The facility's behavior intervention procedures, ~~with including~~ physical and mechanical restraint training ~~and protective device training~~, required as applicable to their duties and as required by subsection ~~D-C~~ of this section, and room restriction and disciplinary room restriction, as provided for in 6VAC35-101-1100 (room restriction) and 6VAC35-101-1105 (disciplinary room restriction);
5. Child abuse and neglect and mandatory reporting, as provided for in 6VAC35-101-80 (serious incident reports) and 6VAC35-101-90 (suspected child abuse or neglect);
6. Maintaining appropriate professional boundaries and relationships;
7. Appropriate interaction~~Interaction~~ among staff and residents;
8. Suicide prevention as provided for in 6VAC35-101-1020 (suicide prevention);
9. Residents' rights, including ~~but not limited to~~ prohibited actions provided for in 6VAC35-101-650 (prohibited actions);
10. Standard precautions as provided for in 6VAC35-101-1010 (infectious or communicable diseases); and
11. Procedures applicable to the employees's position and consistent with their work profiles.

Regulation Governing Juvenile Secure Detention Centers
Option 3– Prohibition on Spit Guards and Similar Devices

C. Employees who are authorized by the facility administrator to restrain a resident, as provided for in 6VAC35-101-1090 (physical restraint) and 6VAC35-101-1130 (mechanical restraints), shall be trained in the facility's approved restraint techniques within 90 days of such authorization and ~~prior to~~before applying any restraint techniques.

D. Employees who administer medication shall, prior to such administration, as provided for in 6VAC35-101-1060 (medication), and in accordance with the provisions of § 54.1-3408 of the Code of Virginia, either (i) have successfully completed a medication management training program approved by the Board of Nursing or (ii) be licensed-certified by the Commonwealth of Virginia to administer medication.

~~E. When an individual is employed by contract to provide services for which licensure by a professional organization is required, documentation of current licensure shall constitute compliance with this section.~~

~~F. Volunteers and interns shall be trained in accordance with 6VAC35-101-300 (volunteer and intern orientation and training).~~

GE. Employees who perform the duties required in 6VAC35-101-800 (admission and orientation) shall be trained in the requirements contained therein.

6VAC35-101-200. Retraining requirements for employees.

A. Each full-time and part-time employee and relief staff shall complete retraining that is specific to the individual's occupational class, the position's job description, and addresses any professional development needs.

B. All full-time and part-time employees and relief staff shall complete an annual training refresher on the facility's emergency preparedness and response plan and procedures, as provided for in 6VAC35-101-~~480~~520 (emergency and evacuation procedures).

C. All direct care staff shall receive at least 40 hours of training annually that shall include training on the following:

1. Suicide prevention, as provided for in 6VAC35-101-1020 (suicide prevention);
2. Standard precautions, as provided for in 6VAC35-101-1010 (infectious or communicable diseases);

Regulation Governing Juvenile Secure Detention Centers
Option 3– Prohibition on Spit Guards and Similar Devices

3. Maintaining appropriate professional relationships;
4. ~~Appropriate interaction~~**Interaction** among staff and residents;
5. Residents' rights, including ~~but not limited to~~ the prohibited actions provided for in 6VAC35-101-650 (prohibited actions);
6. Child abuse and neglect and mandatory reporting, as provided for in 6VAC35-101-80 (serious incident reports) and 6VAC35-101-90 (suspected child abuse or neglect); and
7. Behavior intervention procedures, including room restriction and disciplinary room restriction, as provided for in 6VAC35-101-1100 (room restriction) and 6VAC35-101-1105 (disciplinary room restriction).

D. All staff approved to apply physical restraints, as provided for in 6VAC35-101-1090 (physical restraint), shall be trained as needed to maintain the applicable current certification.

E. All staff approved to apply mechanical restraints or protective devices shall be retrained annually, as required by 6VAC35-101-1130 (mechanical restraints).

F. Employees who administer medication, as provided for in 6VAC35-101-1060 (medication), shall complete an annual refresher training, which shall, at a minimum, include a review of the components required in 6VAC35-101-1060 (medication).

~~G. When an individual is employed by contract to provide services for which licensure by a professional organization is required, documentation of current licensure shall constitute compliance with this section.~~

G. Staff who have not timely completed required retraining shall not be allowed to have direct care responsibilities pending completion of the required retraining ~~requirements~~.

6VAC35-101-1130. Mechanical restraints and protective devices.

A. Mechanical restraints and protective devices may be used for the following purposes subject to the restrictions enumerated in this section: (i) to control residents whose behavior poses an imminent risk to the safety of the resident, staff, or others; (ii) for purposes of controlled movement, either from one area of the facility to another or to a destination outside the facility; and (iii) to address emergency situations.

Regulation Governing Juvenile Secure Detention Centers
Option 3– Prohibition on Spit Guards and Similar Devices

~~A. Written procedure shall govern the use of mechanical restraints. Such procedures shall be approved by the department and shall specify:~~

~~1. The conditions under which handcuffs, waist chains, leg irons, disposable plastic cuffs, leather restraints, and a mobile restraint chair may be used;~~

B. A detention center that uses mechanical restraints or protective devices shall observe the following general requirements:

1. Mechanical restraints and protective devices shall be used only for as long as necessary to address the purposes established in subsection A. Once the imminent risk to safety has been abated, the resident has reached his intended destination within the facility or has returned to the facility from a destination offsite, or the emergency situation has been resolved, the mechanical restraint or protective device shall be removed.

2. ~~That the~~The facility administrator or his designee shall be notified immediately upon using mechanical restraints or protective devices in an emergency situation;

3. ~~That~~The facility shall not use mechanical restraints shall never be applied as or protective devices as a punishment or a sanction;

4. ~~That residents~~Residents shall not be restrained to a fixed object or restrained in an unnatural position. For purposes of this section, securing a resident to a hospital bed or wheelchair may be permitted in an outside medical setting upon written approval by the facility administrator and in accordance with written procedures, as specified in Section 1150;

5. A mental health clinician, qualified mental health professional, or other qualifying licensed medical professional may order termination of a mechanical restraint or protective device at any time upon determining that the item poses a health risk.

56. ~~That each~~Each use of a mechanical ~~restraints~~restraint or protective device, except when used to transport a resident or during video court hearing proceedings, shall be recorded in the resident's case file or in a central log book; and

67. ~~That a~~A written system of accountability is shall be in place to ensure ~~record of~~ routine and emergency distribution of ~~mechanical restraint equipment~~restraints and protective devices ~~be~~ maintained.

8. ~~Written procedure shall provide that (i) all~~All staff who are authorized to use mechanical restraints or protective devices shall receive training in such use in accordance with 6VAC35-

Regulation Governing Juvenile Secure Detention Centers
Option 3– Prohibition on Spit Guards and Similar Devices

101-190 (required initial training for employees) and 6VAC35-101-200 (retraining requirements for employees), including how to check the resident's circulation and how to check for injuries; and ~~(ii)~~ only trained staff shall use restraints or protective devices.

CB. A detention center that uses a mechanical restraint to control a resident whose behavior poses a safety risk in accordance with subdivision (A)(i) of this section shall notify a health care provider and a mental health clinician or qualified mental health professional before continuing to use the restraint and, if applicable, the accompanying protective device, if the imminent risk has been abated; but the facility determines that continued use of the mechanical restraint is necessary to maintain security due to the resident's ongoing credible threat to injure himself or others. This may include instances in which the resident verbally expresses the intent to continue the actions that required the restraint.

DC. A detention center may not use a protective device unless such use is in connection with a restraint and shall remove the device when the resident is released from the restraint.

6VAC35-101-1140. Monitoring ~~restrained~~ residents placed in mechanical restraints.

A. Written procedure shall provide that ~~when-if~~ a resident is placed in mechanical restraints, staff shall:

1. Provide for the resident's reasonable comfort and ensure the resident's access to water, meals, and toilet; and
2. Make a ~~direct personal face-to-face~~ check on the resident at least every 15 minutes and more often if the resident's behavior warrants. Staff shall attempt to engage verbally with the resident during each periodic check. These efforts may include explaining the reasons for which the resident is being restrained or the steps necessary to be released from the restraint; or otherwise attempting to deescalate the resident. Such ~~During each check checks shall include monitoring, a health-trained staff member shall monitor~~ the resident's ~~resident~~ for signs of circulation and for injuries. ~~in accordance with the procedure provided for in 6VAC35-101-1130 B.~~

B. If a resident remains in a mechanical restraint for a period that exceeds one hour, the resident shall be permitted to exercise each of his limbs for a minimum of 10 minutes every two hours to prevent blood clots.

BC. When a resident is placed in mechanical restraints for more than two hours cumulatively in a 24-hour period, with the exception of use in routine transportation of residents, staff shall

Regulation Governing Juvenile Secure Detention Centers
Option 3– Prohibition on Spit Guards and Similar Devices

immediately consult with a health care provider and a qualified mental health professional or mental health clinician. This consultation shall be documented.

~~ED. If the resident, after being placed in mechanical restraints, exhibits self-injurious behavior, staff shall: (i) staff shall take appropriate action to ensure the threat or harm is stabilized; (ii) immediately consult with and document that they have consulted with a mental health clinician or qualified mental health professional immediately thereafter and document the consultation; and (iii) monitor the resident shall be monitored in accordance with established protocols, including constant supervision, if appropriate. Any such protocols shall be in compliance with the procedures required by 6VAC35-101-1150 (restraints for medical and mental health purposes).~~

6VAC35-101-1145. Written procedures regarding mechanical restraints and protective devices.

A detention center that uses mechanical restraints or protective devices shall develop and implement written procedures approved by the facility administrator that reflect the requirements established in this article.

6VAC35-101-1150. Restraints for medical and mental health purposes. (Repealed.)

~~Written procedure shall govern the use of restraints for medical and mental health purposes. Written procedure shall identify the authorization needed; when, where, and how restraints may be used; for how long; and what type of restraint may be used.~~

Article IV – Mechanical Restraint Chairs

6VAC35-101-1153. Mechanical restraint chair; general provisions.

A detention center that utilizes a mechanical restraint chair shall observe the following requirements, regardless of whether the chair is used for purposes of controlled movement in accordance with 6VAC35-101-1154 (mechanical restraint chair use for controlled movement; conditions) or for other purposes in accordance with 6VAC35-101-1155 (mechanical restraint chair used for purposes other than controlled movement; conditions for use):

1. The restraint chair shall never be applied as punishment or as a sanction;
2. All staff authorized to use the restraint chair shall receive training in such use in accordance with 6VAC35-101-190 (required initial training for employees) and 6VAC35-101-200 (retraining requirements for employees);

Regulation Governing Juvenile Secure Detention Centers
Option 3– Prohibition on Spit Guards and Similar Devices

3. The facility administrator or his designee shall provide approval before a resident may be placed in the restraint chair;

4. Staff shall notify the health authority, designated in accordance with 6VAC35-101-930, immediately upon placing the resident in the restraint chair to assess the resident's medical and mental health condition, to ascertain whether the restraint is contraindicated based on the resident's physical condition or behavior or whether other accommodations are necessary, and to advise whether, on the basis of serious danger to self or others, the resident should be in a medical or mental health unit for emergency involuntary treatment. The requirements of this subdivision shall not apply when the restraint chair is requested by a resident for whom such voluntary use is part of an approved plan of care by a mental health clinician or qualified mental health professional in accordance with subsection C of 6VAC35-101-1155 (mechanical restraint chair use for purposes other than controlled movement; conditions for use).

5. If the resident, after being placed in the mechanical restraint chair, exhibits self-injurious behavior, staff shall (i) take appropriate action to ensure the threat or harm is stabilized; (ii) consult a mental health clinician or qualified mental health professional immediately thereafter and obtain approval for continued use of the restraint chair.

6. The health authority, a mental health clinician, a qualified mental health professional, or other qualifying licensed medical professional may order termination of restraint chair use at any time upon determining that use of the chair poses a health risk.

7. Each use of the restraint chair shall constitute a serious incident, to which the provisions of 6VAC35-101-80 (serious incident reports) shall apply;

8. Each use of the restraint chair shall be documented in the resident's case file or in a central logbook. The documentation shall include:

a. Date and time of the incident;

b. Staff involved in the incident;

c. Justification for the restraint;

d. Less restrictive interventions that were attempted or an explanation of why the restraint chair is the least restrictive intervention available to ensure the resident's safe movement;

e. Duration of the restraint;

f. Signature of the person documenting the incident and date;

g. Indication that all applicable approvals required in this article have been obtained; and

h. Reviewer's signature and date.

9. That detention center staff shall conduct a debriefing of the restraint after releasing the resident from the chair.

6VAC35-101-1154. Mechanical restraint chair use for controlled movement; conditions.

A. A detention center shall be authorized to use a mechanical restraint chair for purposes of controlled movement of a resident from one area of the facility to another, provided the following conditions are satisfied:

1. The resident's refusal to move from one area of the facility to another poses a direct and immediate threat to the resident or others or interferes with required facility operations; and
2. Use of the restraint chair is the least restrictive intervention available to ensure the resident's safe movement.

B. When the facility utilizes the restraint chair in accordance with this section, staff shall remove the resident from the chair immediately upon reaching the intended destination. If staff, upon reaching the intended destination, determine that continued restraint is necessary, staff shall consult with a mental health clinician for approval of the continued restraint.

6VA35-101-1155. Mechanical restraint chair use for purposes other than controlled movement; conditions for use.

A. A detention center shall be authorized to use a mechanical restraint chair for purposes other than controlled movement provided the following conditions are satisfied:

1. The resident's behavior or actions present a direct and immediate threat to the resident or others;
2. Less restrictive alternatives were attempted but were unsuccessful in bringing the resident under control or abating the threat;
3. The resident remains in the restraint chair only for as long as necessary to abate the threat or help the resident gain self-control.

B. Once the direct threat is abated, if staff determines that continued restraint is necessary to maintain security due to the resident's ongoing credible threat to injure himself or others, staff shall consult a mental health clinician or qualified mental health professional for approval of the continued restraint. The ongoing threat may include instances in which the resident verbally expresses the intent to continue the actions that required the restraint

C. The detention center shall be excused from the requirements in subsections A and B of this section when the restraint chair is requested by a resident for whom such voluntary use is part of an approved plan of care by a qualified mental health professional or mental health clinician.

D. Whenever a resident is placed in a restraint chair for purposes other than controlled movement, staff shall observe the following monitoring requirements:

Regulation Governing Juvenile Secure Detention Centers
Option 3– Prohibition on Spit Guards and Similar Devices

1. Employ constant, one-on-one supervision until the resident is released from the chair. Staff shall attempt to engage verbally with the resident during the one-on-one supervision. These efforts may include explaining the reasons for which the resident is being restrained or the steps necessary to be released from the restraint; or otherwise attempting to deescalate the resident;

2. Ensure that a health-trained staff monitors the resident for signs of circulation and for injuries at least once every 15 minutes in accordance with written procedures; and

3. Ensure that the resident is reasonably comfortable and has access to water, meals, and toilet

6VAC35-101-1156. Monitoring residents placed in a mechanical restraint chair.

A. If a resident remains in the restraint chair for a period that exceeds one hour, the resident shall be permitted to exercise each of his limbs for a minimum of 10 minutes every two hours to prevent blood clots.

B. A detention center shall ensure that a video record of the following is captured and retained for a minimum of three years in accordance with 6VAC35-101-40 (certification):

1. The placement of a resident in a restraint chair when a resident is restrained for purposes of controlled movement; and

2. The entire restraint, from the time the resident is placed in the restraint chair until his release, when a resident is restrained in the chair for purposes other than controlled movement. The detention center may satisfy this requirement by positioning the restraint chair within direct view of an existing security camera.

6VAC35-101-1157. Department monitoring visits.

If a detention center uses a mechanical restraint chair to restrain a resident, regardless of the duration or purpose of the use, the detention center shall be subject to a monitoring visit conducted by the department pursuant to the authority provided in 6VAC35-20-60 (monitoring of programs and facilities). The purpose of the monitoring visit shall be to assess the detention center's compliance with the provisions of this article.

6VAC35-101-1158. Written procedures regarding mechanical restraint chairs.

A detention center that uses a mechanical restraint chair to restrain a resident shall develop and implement written procedures approved by the facility administrator that reflect the requirements established in this article.

Regulation Governing Juvenile Secure Detention Centers
Option 3– Prohibition on Spit Guards and Similar Devices

6VAC35-101-1159. Use of spit guards and similar devices prohibited.

Staff shall be prohibited from requiring a resident to wear a spit guard or similar device for any period of time.