12 VAC 35-45 Regulations for Providers of Mental Health, Mental Retardation and Substance Abuse Residential Services for Children

12 VAC 35-45-10. Definitions.

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

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

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

"Counseling" means certain formal treatment interventions such as individual, family, and group modalities, which provide for support and problem solving. Such interventions take place between provider staff and the resident, families, or groups and are aimed at enhancing appropriate psychosocial functioning or personal sense of well-being.

"Crisis" means any acute emotional disturbance in which a resident presents an immediate danger to self or others or is at risk of serious mental or physical health deterioration caused by acute mental distress, behavioral or situational factors, or acute substance abuse related problems.

"Crisis intervention" means those activities aimed at the rapid management of a crisis.

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

"Medication" means prescribed and over-the-counter drugs.

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

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

"On-site" means services that are delivered by the provider and are an integrated part of the overall service delivery system.

"Residential treatment program" means 24-hour, supervised, medically necessary, out-of-home programs designed to provide necessary support and address mental health, behavioral, substance abuse, or training needs of a child or adolescent in order to prevent or minimize the need for more intensive inpatient treatment. Services must include, but shall not be limited to, assessment and evaluation, medical treatment (including medication), individual and group counseling, and family therapy necessary to treat the child. Active treatment shall be required. The service must provide active treatment or training beginning at admission and it must be related to the resident’s principle diagnosis and admitting symptoms. These services do not include interventions and activities designed only to meet the supportive nonmental health

special needs, including but not limited to personal care, habilitation or academic educational needs of the resident.

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

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

2. A restraint used for "medical" purposes means the use of an approved mechanical or physical hold to limit the mobility of the resident for medical, diagnostic, or surgical purposes and the related post-procedure care processes when the use of such a device is not a standard practice for the resident’s condition.

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

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

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

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

a. To intervene in or redirect a potentially dangerous encounter in which the resident may voluntarily move away from the situation or hands-on approach; or

b. To quickly de-escalate a dangerous situation that could cause harm to the resident or others.

[“Serious incident” means:

1. Any accident or injury requiring treatment by a physician;

2. Any illness that requires hospitalization;

3. Any overnight absence from the facility without permission;

4. Any runaway;

5. Any event that effects, or potentially may effect the health, safety or welfare of any resident being served by the provider.]

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

"Service" or "services" means individually planned interventions intended to reduce or ameliorate mental illness, mental retardation or substance addiction or abuse through care and treatment, training, habilitation or other supports that are delivered by a provider to residents with mental illness, mental retardation, or substance addiction or abuse.

"Social skill training" means activities aimed at developing and maintaining interpersonal skills.

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

12 VAC 35-45-20. Allowable variance.

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

12 VAC 35-45-30. Rights.

Each provider shall guarantee resident rights as outlined in § 37.1-84.1 of the Code of Virginia and in the Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers of Mental Health, Mental Retardation and Substance Abuse Services (12 VAC 35-115).

12 VAC 35-45-40. Audio and visual recordings.

Each provider shall have written policies and procedures regarding the photographing and audio or audio-video recordings of residents that shall ensure and provide that:

1. The written consent of the resident or the resident's legal guardian shall be obtained before the resident is photographed or recorded for research or provider publicity purposes.

2. No photographing or recording by provider staff shall take place without the resident or the resident's family or legal guardian being informed.

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

12 VAC 35-45-50. Compliance with applicable laws, regulations, and policies.

The provider, including employees, contract service providers, students, and volunteers shall comply with:

1. The applicable regulations for licensed services, including, but not limited to, the Standards for Interdepartmental Regulation of Children's Residential Facilities (22 VAC 42-10), and

Department of Medical Assistance Services' Regulations, Amount, Duration and Scope of Selected Services, 12 VAC 30-130-860;

2. The terms of the license;

3. Other applicable federal, state or local laws and regulations; and

4. The provider's own policies.

12 VAC 35-45-60. Written plans of correction for noncompliance.

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

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

C. The corrective action plan shall include a:

1. Description of the corrective actions to be taken;

2. Date of completion for each action; and

3. Signature of the person responsible for the service.

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

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

F. The provider shall monitor implementation of pledged corrective action and include such reviews in the annual review of program objectives as specified in 22 VAC 42-10-110 D.

12 VAC 35-45-70. Service description; required elements.

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

B. Each provider shall have a written service description that accurately describes its structured program of care and treatment consistent with the treatment, habilitation, or training needs of the residential population it serves. Service description elements shall include:

1. The mental health, substance abuse or mental retardation population it intends to serve;

2. The mental health, substance abuse or mental retardation interventions it will provide;

3. Provider goals;

4. Services provided; and

5. Contract services, if any.

12 VAC 35-45-80. Minimum service requirements.

A. At the time of the admission of any resident, the provider shall identify in writing, the staff member responsible for providing the social services outlined in the Standards for Interdepartmental Regulation of Children's Residential Facilities (22 VAC 42-10).

B. The provider shall have and implement written policies and procedures that address the provision of:

1. Psychiatric care;

2. Family therapy; and

3. Staffing appropriate to the needs and behaviors of the residents served.

C. The provider shall have and implement written policies and procedures for the on-site provision of a structured program of care or treatment of residents with mental illness, mental retardation, or substance abuse. The provision, intensity, and frequency of mental health, mental retardation, or substance abuse interventions shall be based on the assessed needs of the resident. These interventions, applicable to the population served, shall include, but are not limited to:

1. Individual counseling;

2. Group counseling;

3. Training in decision making, family and interpersonal skills, problem solving, self-care, social, and independent living skills;

4. Training in functional skills;

5. Assistance with activities of daily living (ADL's);

6. Social skills training in therapeutic recreational activities, e.g., anger management, leisure skills education and development, and community integration;

7. Providing positive behavior supports;

8. Physical, occupational and/or speech therapy; and

9. Substance abuse education and counseling.

D. Each provider shall have formal arrangements for the evaluation, assessment, and treatment of the mental health needs of the resident.

12 VAC 35-45-90. Admission applications.

In addition to the requirements of the Standards for Interdepartmental Regulation of Children's Residential Facilities (22 VAC 42-10), the provider will complete an assessment of each resident that addresses:

1. Family history and relationships;

2. Social and development history;

3. Current behavioral functioning and social competence;

4. History of previous treatment for mental health, mental retardation, substance abuse, and behavior problems; and

5. Medication and drug use profile, which shall include:

a. History of prescription, nonprescription, and illicit drugs that were taken over the six months prior to admission;

b. Drug allergies, unusual and other adverse drug reactions; and

c. Ineffective medications.

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12 VAC 35-45-100. Least restrictive programming.

Each resident shall be placed in the least restrictive level of programming appropriate to individual functioning and available services.

12 VAC 35-45-110. Documentation policy.

A. The provider shall define, by policy, a system of documentation, which supports appropriate service planning, and methods of updating a resident's record by employees or contractors. Such system shall include the frequency and format for documentation.

B. Entries in a resident's record shall be current, dated and authenticated by the person making the entry. Errors shall be corrected by striking through and initialing. If records are electronic, the provider shall develop and implement a policy and procedure to identify how corrections to the record will be made.

12 VAC 35-45-120. Record reviews.

Complete, written policies and procedures for record reviews shall be developed and implemented that shall evaluate records for completeness, accuracy, and timeliness of documentation. Such policies shall include provisions for ongoing review to determine whether records contain all required service documentation, and release of information documents required by the provider.

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12 VAC 35-45-130. Medication administration.

A. The provider shall develop and implement written policies and procedures regarding the delivery and administration of prescription and nonprescription medications used by residents. At a minimum these policies will address:

1. Identification of the staff member responsible for routinely communicating to the prescribing physician:

a. The effectiveness of prescribed medications; and

b. Any adverse reactions, or any suspected side effects.

2. Storage of controlled substances;

3. Documentation of medication errors and drug reactions;

4. Documentation of any medications prescribed and administered following admission that at a minimum shall include:

a. The date prescribed;

b. Drug product name;

c. Dosage;

e. Strength;

f. Route;

g. Schedule and time administered; and

h. Dates medication discontinued or changed.

B. The use of medications shall be consistent with the Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers of Mental Health, Mental Retardation and Substance Abuse Services (12 VAC 115-35).

12 VAC 35-45-140. Medication error reviews.

The provider shall keep a log of all medication errors and review it at least quarterly. Such quarterly reviews shall be used to plan for continued staff development needs, as applicable.

12 VAC 35-45-150. Written policies and procedures for a crisis or clinical emergency.

The provider shall develop and implement written policies and procedures for a crisis or clinical emergency that shall include:

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

2. Employee or contractor responsibilities.

12 VAC 35-45-160. Documenting crisis intervention and clinical emergency services.

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

1. Date and time;

2. Nature of crisis or emergency;

3. Name of resident;

4. Precipitating factors;

5. Interventions/treatment provided;

6. Employees or contractors involved;

7. Outcome; and

8. Any required follow-up.

B. If a crisis or clinical emergency involves a resident who receives medical or mental health services, the crisis intervention documentation shall become part of his record.

C. There shall be written policies and procedures for referring to or receiving residents from:

1. Hospitals;

2. Law-enforcement officials;

3. Physicians;

4. Clergy;

5. Schools;

6. Mental health facilities;

7. Court services;

8. Private outpatient providers; and

9. Support groups or others, as applicable.

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12 VAC 35-45-170. Behavior management.

Each provider shall develop and implement written policies and procedures concerning behavior management that are directed toward maximizing the growth and development of the resident. These policies and procedures shall:

1. Emphasize positive approaches;

2. Define and list techniques that are used and are available for use in the order of their relative degree of intrusiveness or restrictiveness;

3. Specify the staff members who may authorize the use of each technique;

4. Specify the processes for implementing such policies and procedures;

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

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

12 VAC 35-45-180. Time out.

Each provider shall develop and implement written policies and procedures regarding the use and application of time out. The policy shall, at a minimum:

1. Comply with the Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers of Mental Health, Mental Retardation and Substance Abuse Services (12 VAC 35-115);

2. Specify how staff will be trained in the use and application of time out; and

3. Require developmentally appropriate time limits in the application of time out.

12 VAC 35-45-190. Seclusion rooms requirements.

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

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

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

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

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

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

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

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

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

12 VAC 35-45-200. Emergency reporting.

A. Any serious incident, [as defined by these regulations,] [~~accident, serious injury~~ unexplained absence] or death of a resident [~~; any overnight absence from the facility without permission; any runaway; and any other unexplained absence~~] shall be reported to the Office of Licensing within 24 hours. Such reports shall include:

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 of the person who made the report to the placing agency, guardian, or other applicable authorities; and

6. The name of the person to whom the report was made.

B. In the case of a serious injury or death, the report shall be made on forms approved by the department.

I certify that this regulation is full, true, and correctly dated.

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James S. Reinhard, M. D.
Commissioner

Department of Mental Health, Mental Retardation and Substance Abuse Services

Date_____