

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

12VAC35-105-10. Authority and applicability.

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

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

12VAC35-105-20. Definitions.

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

"Abuse" (37.1-1 of the Code of Virginia) means any act or failure to act, by an employee or other person responsible for the care of an individual receiving services that was performed or was failed to be performed knowingly, recklessly, or intentionally, and that caused or might have caused physical or psychological harm, injury, or death to an individual receiving services. Examples of abuse include, but are not limited to, the following:

1. Rape, sexual assault, or other criminal sexual behavior;
2. Assault or battery;

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3. Use of language that demeans, threatens, intimidates or humiliates the person;
4. Misuse or misappropriation of the person's assets, goods or property;
5. Use of excessive force when placing a person in physical or mechanical restraint;
6. Use of physical or mechanical restraints on a person that is not in compliance with federal and state laws, regulations, and policies, professional accepted standards of practice or the person's individual service plan;
7. Use of more restrictive or intensive services or denial of services to punish the person or that is not consistent with his individual service plan.

“Activities of daily living” (ADLs) mean personal care activities and include bathing, dressing, transferring, toileting, grooming, hygiene, feeding, and eating[.] An individual's degree of independence in performing these activities is part of determining the appropriate level of care and services.

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

"Behavior management" means those principles and methods employed by a provider to help an individual receiving services to achieve a positive outcome and to address and correct inappropriate behavior in a constructive and safe manner. Behavior management principles and methods must be employed in accordance with the individualized service

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plan and written policies and procedures governing service expectations, treatment goals, safety and security.

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

“Brain injury” means any injury to the brain that occurs after birth, but before age 65, that is acquired through traumatic or non-traumatic insults. Non-traumatic insults may include, but are not limited to, anoxia, hypoxia, aneurysm, toxic exposure, encephalopathy, surgical interventions, tumor, and stroke. Brain injury does not include hereditary, congenital, or degenerative brain disorders, or injuries induced by birth trauma.

“Brain Injury Waiver” means a Virginia Medicaid home and community-based waiver for persons with brain injury approved by the Centers for Medicare and Medicaid Services.

"Care" or "treatment" means a set of individually planned interventions, training, habilitation, or supports that help an individual obtain or maintain an optimal level of

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functioning, reduce the effects of disability or discomfort, or ameliorate symptoms, undesirable changes or conditions specific to physical, mental, behavioral, cognitive, or social functioning.

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

"Clubhouse service" means the provision of recovery-oriented psychosocial rehabilitation services in a nonresidential setting on a regular basis not less than two hours per day, five days per week, in which clubhouse members and employees work together in the development and implementation of structured activities involved in the day-to-day operation of the clubhouse facilities and in other social and employment opportunities through skills training, peer support, vocational rehabilitation, and community resource development.

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

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

"Community intermediate care facility/mental retardation (ICF/MR)" means a service licensed by the Department of Mental Health, Mental Retardation, and Substance Abuse Services in which care is provided to individuals who have mental retardation or a developmental disability due to brain injury, who are not in need of nursing care, but who need more intensive training and supervision than may be available in an assisted living facility or group home. Such facilities must comply with Title XIX of the Social Security Act standards, provide health or rehabilitative services, and provide active treatment to individuals receiving services toward the achievement of a more independent level of functioning or an improved quality of life.

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

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"Consumer service plan" or "CSP" means that document addressing all needs of recipients of home and community-based care developmental disability services (IFDDS Waiver), in all life areas. Supporting documentation developed by service providers is to be incorporated in the CSP by the support coordinator. Factors to be considered when these plans are developed may include, but are not limited to, recipient ages, level of functioning, and preferences.

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

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

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

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

"Crisis stabilization" means direct, intensive intervention to individuals who are experiencing serious psychiatric or behavioral problems, or both, that jeopardize their current community living situation. This service shall include temporary intensive

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services and supports that avert emergency psychiatric hospitalization or institutional placement or prevent out-of-home placement. This service shall be designed to stabilize recipients and strengthen the current living situations so that individuals can be maintained in the community during and beyond the crisis period.

"Day support service" means the provision of individualized planned activities, supports, training, supervision, and transportation to individuals with mental retardation or related conditions, or brain injury, to improve functioning or maintain an optimal level of functioning. Services may enhance the following skills: self-care and hygiene, eating, toileting, task learning, community resource utilization, environmental and behavioral skills, social, medication management, and transportation. Services provide opportunities for peer interaction and community integration. Services may be provided in a facility (center based) or provided out in the community (noncenter based). Services are provided for two or more consecutive hours per day. The term "day support service" does not include services in which the primary function is to provide extended sheltered or competitive employment, supported or transitional employment services, general education services, general recreational services, or outpatient services licensed pursuant to this chapter.

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

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

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

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

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

"Emergency service" means mental health, mental retardation or substance abuse services available 24 hours a day and seven days per week that provide crisis intervention, stabilization, and referral assistance over the telephone or face-to-face for individuals seeking services for themselves or others. Emergency services may include walk-ins, home visits, jail interventions, pre-admission screenings, and other activities designed to stabilize an individual within the setting most appropriate to the individual's current condition.

"Group home residential service" means a congregate residential service providing 24-hour supervision in a community-based, home-like dwelling. These services are provided for individuals needing assistance, counseling, and training in activities of daily living or

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whose service plan identifies the need for the specific type of supervision or counseling available in this setting.

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

"IFDDS Waiver" means the Individual and Family Developmental Disabilities Support Waiver.

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

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

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

"Instrumental activities of daily living" or ~~(IADL)~~ "IADLs" means ~~social tasks (e.g., meal preparation, shopping, housekeeping, laundry, and money management)~~ meal

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preparation, housekeeping, laundry, and managing money. ~~An individual's~~ A person's

degree of independence in performing these activities is part of determining appropriate level of care and services.

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

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

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

"Intensive in-home service" means family preservation interventions for children and adolescents who have or are at-risk of serious emotional disturbance, including such individuals who also have a diagnosis of mental retardation. Services are usually time limited provided typically in the residence of an individual who is at risk of being moved

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to out-of-home placement or who is being transitioned back home from an out-of-home placement. These services include crisis treatment; individual and family counseling; life, parenting, and communication skills; case management activities and coordination with other services; and emergency response.

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

"Investigation" means a detailed inquiry or systematic examination of the operations of a provider or its services regarding a violation of regulations or law. An investigation may be undertaken as a result of a complaint, an incident report or other information that comes to the attention of the department.

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

"Licensed mental health professional (LMHP)" means a physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, licensed substance abuse treatment practitioner, or certification as a psychiatric clinical nurse specialist.

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

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

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

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

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

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

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

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

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

"Mentally ill" means any person afflicted with mental disease to such an extent that for his own welfare or the welfare of others he requires care and treatment, or with mental disorder or functioning classifiable under the diagnostic criteria from the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association, Fourth Edition, 1994, that affects the well-being or behavior of an individual.

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

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retardation or substance abuse ('37.1-1 of the Code of Virginia). This definition of neglect also applies to individuals receiving in-home support, crisis stabilization, and day support under the IFDDS or Brain Injury Waiver and individuals receiving residential brain injury services.

"Neurobehavioral services" means the assessment, evaluation, and treatment of cognitive, perceptual, behavioral, and other impairments caused by brain injury, which affect an individual's ability to function successfully in the community.

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

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

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

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2. Services funded wholly or in part, directly or indirectly, by a community services

board established pursuant to Chapter 10 ('37.1-194 et seq.) of Title 37.1 of the Code of Virginia; or

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

"Partial hospitalization service" means the provision within a medically supervised setting of day treatment services that are time-limited active treatment interventions, more intensive than outpatient services, designed to stabilize and ameliorate acute symptoms, and serve as an alternative to inpatient hospitalization or to reduce the length of a hospital stay.

"Program of Assertive Community Treatment (PACT) service" means a self-contained interdisciplinary team of at least 10 full-time equivalent clinical staff, a program assistant, and a full- or part-time psychiatrist that:

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

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5. Emphasizes outreach, relationship building, and individualization of services.

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

"Provider" means any person, entity or organization, excluding an agency of the federal government by whatever name or designation, that ~~provides~~ delivers (i) services to individuals persons with mental illness, mental retardation, or substance ~~addiction or abuse; including the detoxification, treatment or rehabilitation of drug addicts through the use of the controlled drug methadone or other opioid replacements or provides in-home support, crisis stabilization, or day support under~~ (ii) services to persons who receive day support, in-home support, or crisis stabilization services funded through the IFDDS Waiver; (iii) services to [individuals persons] under the Brain Injury Waiver; or (iv) residential services for persons with brain injury. ~~Such~~ The person, entity or organization shall include a hospital as defined in §32.1-123 of the Code of Virginia, community services board as defined in ~~'37.1-194.1 of the Code of Virginia,~~ behavioral health authority as defined in ~~'37.1-243 of the Code of Virginia,~~ private provider, and any other similar or related person, entity or organization. It shall not include any individual practitioner who holds a license issued by a health regulatory board of the Department of Health Professions or who is exempt from licensing pursuant to §§ 54.1-2901, 54.1-3001, 54.1-3501, 54.1-3601 and 54.1-3701 of the Code of Virginia. ~~It does not include any person providing uncompensated services to a family member.~~

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

Psychosocial rehabilitation includes skills training, peer support, vocational rehabilitation, and community resource development oriented toward empowerment, recovery, and competency.

"Qualified Brain Injury Professional (QBIP)" means a clinician in the health professions who is trained and experienced in providing brain injury services to individuals who have a brain injury diagnosis including a (i) physician: a doctor of medicine or osteopathy; (ii) psychiatrist: a doctor of medicine or osteopathy, specializing in psychiatry and licensed in Virginia; (iii) psychologist: a person with a master's degree in psychology from a college or university with at least one year of clinical experience; (iv) social worker: a person with at least a bachelor's degree in human services or related field (social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, human services counseling, or other degree deemed equivalent to those described) from an accredited college, with at least two years of clinical experience providing direct services to individuals with a diagnosis of brain injury; (v) Certified Brain Injury Specialist; (vi) registered nurse licensed in Virginia with at least one year of clinical experience; or (vii) any other licensed rehabilitation professional with one year of clinical experience.

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

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

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

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

"Qualified Paraprofessional in Brain Injury (QPPBI)" means an individual with at least a high school diploma and two years experience working with individuals with disabilities.

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

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

1. Attributable to cerebral palsy, epilepsy or any other condition, other than mental illness, that is found to be closely related to mental retardation because this condition results in impairment of general intellectual functioning or adaptive behavior similar to behavior of persons with mental retardation, and requires treatment or services similar to those required for these persons;
2. Manifested before the person reaches age 22;
3. Likely to continue indefinitely; and
4. Results in substantial functional limitations in three or more of the following areas of major life activity:
 - a. Self-care;
 - b. Understanding and use of language;
 - c. Learning;
 - d. Mobility;
 - e. Self-direction; or
 - f. Capacity for independent living.

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

"Residential service" means a category of service providing 24-hour care in conjunction with care and treatment or a training program in a setting other than a hospital.

Residential services provide a range of living arrangements from highly structured and intensively supervised to relatively independent requiring a modest amount of staff support and monitoring. Residential services include, but are not limited to: residential treatment, group homes, supervised living, residential crisis stabilization, community gero-psychiatric residential, community intermediate care facility-MR, sponsored residential homes, medical and social detoxification, neurobehavioral services, and substance abuse residential treatment for women and children.

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

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

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

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

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

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

4. A "mechanical restraint" means the use of an approved mechanical device that involuntarily restricts the freedom of movement or voluntary functioning of a limb or a

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portion of a person's body as a means to control his physical activities, and the individual receiving services does not have the ability to remove the device.

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

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

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

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

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

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"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~~ (i) planned individualized interventions intended to reduce or ameliorate mental illness, mental retardation or substance ~~addiction~~ ~~or~~ abuse through care, ~~and~~ treatment, training, habilitation, or other supports that are delivered by a provider to individuals with mental illness, mental retardation, or substance ~~addiction~~ or abuse. ~~Service also means in-home support, day support, and crisis stabilization services provided to individuals under the IFDDS Waiver.~~ Services include outpatient services, intensive in-home services, opioid treatment services, inpatient psychiatric hospitalization, community gero-psychiatric residential services, assertive community treatment and other clinical services; day support, day treatment, partial hospitalization, psychosocial rehabilitation, and habilitation services; case management services; and supportive residential, special school, halfway house, and other residential services; (ii) day support, in home support, and crisis stabilization services provided to individuals under the IFDDS Waiver; and (iii) planned individualized interventions intended to reduce or ameliorate the effects of brain injury through care, treatment, or other supports provided under the Brain Injury Waiver or in residential services for persons with brain injury.

"Shall" means an obligation to act is imposed.

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

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"Skills training" means systematic skill building through curriculum-based psychoeducational and cognitive-behavioral interventions. These interventions break down complex objectives for role performance into simpler components, including basic cognitive skills such as attention, to facilitate learning and competency.

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

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

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

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

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

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"Supervised living residential service" means the provision of significant direct supervision and community support services to individuals living in apartments or other residential settings. These services differ from supportive in-home service because the provider assumes responsibility for management of the physical environment of the residence, and staff supervision and monitoring are daily and available on a 24-hour basis. Services are provided based on the needs of the individual in areas such as food preparation, housekeeping, medication administration, personal hygiene, and budgeting.

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

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

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

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12VAC35-105-30. Licenses.

A. Licenses are issued to providers who offer services to one or a combination of the ~~four~~ following disability groups: persons with mental illness, persons with mental retardation, persons with substance addiction or abuse problems, ~~or~~ persons with related conditions served under the IFDDS Waiver or persons with brain injury served under the Brain Injury Waiver or in a residential service.

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

1. Case management;
2. Clubhouse;
3. Community gero-psychiatric residential;
4. Community intermediate care facility-MR;
5. Crisis stabilization (residential and nonresidential);
6. Day support;
7. Day treatment;
8. Group home residential;
9. Inpatient psychiatric;

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10. Intensive Community Treatment (ICT);
11. Intensive in-home;
12. Intensive outpatient;
13. Medical detoxification;
14. Mental health community support;
15. Opioid treatment;
16. Outpatient;
17. Partial hospitalization;
18. Program of assertive community treatment (PACT);
19. Psychosocial rehabilitation;
20. Residential treatment;
21. Respite;
22. Social detoxification;
23. Sponsored residential home;
24. Substance abuse residential treatment for women with children;

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25. Supervised living; and

26. Supportive in-home.

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

12VAC35-105-590. Provider staffing plan.

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

1. Needs of the population served;
2. Types of services offered;
3. The service description; and
4. The number of people served.

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

C. The following staffing requirements relate to supervision.

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

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

Supervision of Brain Injury Waiver services or residential services shall be performed by a QBIP or an employee or contractor with equivalent experience.

3. Supervision shall be appropriate to the services provided and the needs of the individual. Supervision shall be documented.

4. Supervision shall include responsibility for approving assessments and individualized services plans. This responsibility may be delegated to an employee or contractor who is a QMHP, QMRP, ~~or~~ QDDP, or QBIP or who has equivalent experience.

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

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E. The provider of brain injury services shall employ or contract with a neuropsychologist or licensed clinical psychologist specializing in brain injury to assist, as appropriate, with initial assessments, development of individualized services plans, crises, staff training, and service design.

F. Direct care staff in brain injury services shall meet the qualifications of a QPPBI and successfully complete an approved training curriculum on brain injuries within six months of employment.

12VAC35-105-660. Individualized services plan (ISP).

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

B. The provider shall develop an individualized services plan for each individual as soon as possible after admission but no later than 30 days after admission. Providers of short-term services must develop and implement a policy to develop individualized services plans within a time frame consistent with the expected length of stay of individuals.

Services requiring longer term assessments may include the completion of those as part of the individualized services plan as long as all appropriate services are incorporated into the individualized services plan based on the assessment completed within 30 days of admission and the individualized services plan is updated upon the completion of assessment.

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C. The individualized services plan shall address:

1. The individual's needs and preferences.
2. Relevant psychological, behavioral, medical, rehabilitation and nursing needs as indicated by the assessment;
3. Individualized strategies, including the intensity of services needed;
4. A communication plan for individuals with communication barriers, including language barriers; and
5. The behavior treatment plan, if applicable.

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

E. The provider shall involve family members, guardian, or others, if appropriate, in developing, reviewing, or revising, at least annually, the individualized service plans consistent with laws protecting confidentiality, privacy, the human rights of individuals receiving services (see 12VAC35-115-60) and the rights of minors.

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

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

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

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

J. In brain injury services, the individualized services plan shall be reassessed and revised more frequently than annually, consistent with the individual's course of recovery.

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

James S. Reinhard, M. D.
Commissioner

Department of Mental Health, Mental Retardation and
Substance Abuse Services

Date _____