COMMONWEALTH OF VIRGINIA

STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

REGULAR BOARD MEETING

AGENDA
December 2, 2008

Goochland Powhatan Community Services Board
(**Powhatan Office**)
3910 Old Buckingham Road
Powhatan, VA 23139
(804) 598-2200

(***Directions on Back Cover***)

STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

Tuesday, December 2, 2008
10:00 a.m.
Goochland Powhatan Community Services Board (Powhatan Office)

8:00 a.m. - Planning & Budget Committee Meeting (Goochland Powhatan CSB)
9:00 a.m. - Policy Development & Evaluation Committee Meeting (Goochland Powhatan CSB)

DRAFT AGENDA

Regular Session

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I.	10:00	Call to Order	Dan Karnes, Acting Chair/Vice Chair	
II.	10:05	Introductions		
III.	10:10	Approval of the December 2, 2008 Agenda		1-2
IV.	10:15	Approval of October 7, 2008 Minutes		3-14
V.	10:20	PUBLIC COMMENT *(3 minute limit per speaker)*		
VI.	10:30	Goochland Powhatan CSB Overview	Susan Berquist Goochland Powhatan CSB	
VII.	10:45	Report of the Policy Development and Evaluation Committee	Wendy Brown, Office of Planning and Development	
		o Adoption of Final Amended Regulations for Respite and Emergency Care Admissions to State Training Centers 12 VAC 35-200 et seq. for Promulgation		15-22
VIII.	11:00	Report of the Planning & Budget Committee o August 17, 2008 Minutes of the Planning & Budget Committee	Charline Davidson, Office of Planning and Development	23-24
IX.	11:15	Staff Updates o Legislative Update	RuthAnne Walker Office of Legislation & Public Relations	

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X.	11:30	Commissioner's Report	James S. Reinhard, M.D., Commissioner	
XI.	11:50	Executive Session –Pursuant to § 2.2-3711 (A) To discuss personnel matters	State MHMRSAS Board Members	
XII.	12:35	Licensing Regulations ○ Adoption of New Regulations 12 VAC 35-46-10 et seq., Regulations for Children's Residential Facilities, and Repeal and Replacement of Existing Regulations 12 VAC 35-45-10 et seq. To be submitted under the Fast-Track Regulatory Process	Leslie Anderson, Office of Licensing	26-159
		○ October 7, 2008 Minutes of the Licensing Regulations Work Session		160-61
XIII.	12:50	Board Liaison Reports	State MHMRSAS Board Members	
XIV.	1:05	Recognition of Service (Past Board members, L. Bartlett & V. Cochran)	State MHMRSAS Board Members	
XV.	1:15	Criminal Justice Diversion (*Informational*)	Victoria Cochran, J.D. State Coordinator for Criminal Justice & Mental Health Initiatives	
XVI.	1:35	Workforce/HPO Implementation ○ 2008-2014 Comprehensive State Plan (F) Human Resource Management & Development (Goal:34-35)	Susan Neal Office of Human Resource Development & Management	
XVII.	1:50	VACSB Update	VACSB Chair	
XVIII.	2:05	Review of the FY09 Work Plan	State MHMRSAS Board Members	
XIX.	2:20	Nominating Committee Selection	Acting Board Chair	
XX.	2:30	Other Business & Adjournment		

DRAFT

MINUTES

STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

October 7, 2008
Piedmont Geriatric Hospital
Burkeville, VA

Members Present: Daniel E. Karnes, Acting Chair/Vice Chair; Cheryl Ivey Green, Catherine M. Hudgins, Ruth G. Jarvis, Mary J. McQuown, Ananda K. Pandurangi, M.D. and Kathryn A. Smith

Staff:
Leslie Anderson, Director, Office of Licensing (via phone)
Jewel Crosby, Executive Secretary, State MHMRSAS Board
Charline Davidson, Director, Office of Planning & Development
Meghan McGuire, Communications Manager, Office of Legislation & Public Relations
James Reinhard, M.D., Commissioner, Office of the Commissioner
Teja Stokes, Assistant Commissioner for Special Projects, Office of the Commissioner
Ruth Anne Walker, Legislation Manager, Office of Legislation & Public Relations

Others:
Jim Ayers, Facility Administrator, Piedmont Geriatric Hospital (PGH)
Ray Gudum, Past Chair, VACSB
Jane Hickey, Senior Assistant Attorney General Chief, Office of the Attorney General
C. C. Murphy, Facility Director, Virginia Center for Behavioral Rehabilitation (VCBR)
John Pezzoli, Senior Inspector/Project Manager, Office of the Inspector General
Mark Vita, The North Highland Group

Call to Order: Daniel Karnes, Acting Chair, called the meeting to order at 11:05 a.m. and opened with introductions by those in attendance.

Agenda: *Upon a motion made by Mary McQuown and seconded by Cheryl Ivey Green, the board unanimously approved the revised October 7, 2008 agenda as presented. 7-Yes; 0-No.*

Minutes: *Upon a motion made by Kay Smith and seconded by Mary McQuown, the board unanimously approved the minutes from the August 19, 2008 meeting as written. 7-Yes; 0-No.*

Public Comments: There were no public comments.

Facility Overview: Mr. C.C. Murphy, Facility Director, Virginia Center for Behavioral Rehabilitation, (VCBR) thanked the State Board for taking the time to tour their facility. Mr. Murphy stated that VCBR staffing is just under 200 employees serving a current population of 114 and growing each month. He shared that VCBR would eventually employ under 400 employees as their population grows.

Mr. Jim Ayers, Facility Administrator, Piedmont Geriatric Hospital, (PGH) welcomed the State Board to PGH and gave an overview of the hospital. Mr. Ayers stated that PGH is licensed for 135 beds and currently operating 128. He stated that PGH is fully accredited as a hospital by the Joint Commission and CMS certified. Mr. Ayers stated that PGH currently serves individuals in the capitol region of the state and recently began accepting patients from Northern Virginia providing in-patient care. PGH currently employs 425 employees to support facility operations such as providing a full service food operation to PGH and VCBR, as well as a full laundry service, building and grounds services. The hospital admitted and discharged approximately 58 patients within the last year. PGH provides full in-patient psychiatric care with limited medical care. Mr. Ayers informed the board that an information packet was being prepared for them and available at the conclusion of their meeting. The board was also invited to tour the hospital after their meeting.

Staff Update: Dan Karnes shared a thank you card with the board from Wendy Brown, Policy Analyst, Office of Planning & Development. Ms. Brown expressed thanks to the board for their thoughts while she was out on medical leave.

Policy Development and Evaluation Committee: Charline Davidson reported on behalf of the Policy Development and Evaluation Committee. At their August 17, 2008 meeting, the committee reviewed three policies that completed field review for public comments. Ms. Davidson noted that the policies were updated reflecting terminology referring to population groups as "individuals with mental illness, intellectual disability and substance use disorders" and revising language referencing consumers to "individuals receiving services". Ms. Davidson upon the pleasure of the Policy Development and Evaluation Committee requested that the board adopt the three proposed policies as revised:

1021 – Core Services
4010 – Local Matching Requirements for Community Services Board and Behavioral Health Authorities
4018 – Community Services Performance Contracts

Dr. Pandurangi commented on the intent of the language in the **Policy 1021** (pg. 15 of the packet) regarding individuals seeking core services through CSBs. Dr. Pandurangi suggested that the policy include a clause stating that no one should be denied core services by CSBs. He shared concerns that individuals requesting services and not getting services for a variety of reasons. Members discussed whether this was possible for CSBs to assure access to services given the lack of funding availability. Dr. Pandurangi modified his suggestion to focus on access to emergency and case management services, which are mandated by statue. Board members recognized, however, that the mandate for case management services is subject to the availability of resources. Ms. Davidson said the intent of Policy 1021 was to identify and define the cores of services to be provided. She suggested that Dr. Pandurangi's concern might be more appropriately addressed in either a new policy or in an existing policy that is related to access to services. She recommended that the committee review these possibilities and bring a recommendation back to the board. The board agreed to defer action to ***Policy 1021*** until the December meeting.

*Upon recommendation from the Policy Development and Evaluation Committee, the board unanimously adopted **Policy 4010** – Local Matching Requirements for Community Services Board and Behavioral Health Authorities. 7-Yes; 0-No.*

*Upon recommendation from the Policy Development and Evaluation Committee, the board unanimously adopted **Policy 4018** Community Services Performance Contracts. 7-Yes; 0-No.*

Planning & Budget Committee: There was no report. Minutes from the August 17, 2008 of the Planning and Budget Committee will be adopted at the next scheduled meeting in December.

The board recessed for lunch at 11:45 a.m. and reconvened at 12:03 p.m.

Licensing: Leslie Anderson, Director, Office of Licensing, via phone, reviewed major proposed changes to the proposed licensing regulations. Ms. Anderson spoke to the goals of the regulatory revision process, updating the regulations' consistency with the Department's focus on recovery, self-determination, and person-centered planning and to strengthen provisions that allow the Department to deny applications and revoke licenses when standards are not met and to limit activities of providers with provisional licenses. Ms. Anderson detailed specific changes to the existing regulation. Using a handout distributed to the board, Ms. Anderson reviewed changes proposed revisions to the licensing regulations.

*Upon a motion made by Mary McQuown and seconded by Kay Smith, the board unanimously adopted the proposed amended Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation, and Substance Abuse. The Individual and Family Developmental Disabilities Support Waiver, and Residential Brain Injury Services, **12 VAC 35-105-10** et seq. for public comment in accordance with the requirements of the Virginia Administrative Process Act.*
It was moved that the Board would conduct at least one public hearing to consider comments on the proposed amended regulations. 7-Yes; 0-No.

Commissioners Report:

Dr. Reinhard updated the board on two critical areas, (1) the current budget reduction exercise to all state agencies requested by the Governor and (2) the organizational restructuring of central office. Dr. Reinhard reported that the Department's 5-10-15 reduction plan and impact were submitted through the Secretary of Health and Human Resources to be reviewed by the Governor in conjunction with the Department of Planning and Budget.

Dr. Reinhard stated that the Department realize that during the current economic time there is a lot of anxiety and concerns among staff around the impact of service reductions and projected layoffs; yet he continues to communicate as much information allowed while keeping staff abreast on information as he receives it. Dr. Reinhard stated that the current plan impacts a significant amount of money in light of previous reductions within the agency. He also provided details of the impact to staffing, CSBs, facilities and service cuts with board members.

A copy of the draft central office organizational chart was shared with the board. Dr. Reinhard shared that the elimination of an Assistant Commissioner position through the recent implementation and success of the regional teams, better aligns central office organizational structure and improves the way the Department does business. Preliminary results from North Highland group validated that the current organizational structure has kept central office from reaching its goal. Attempts in recent weeks focused on the development of the draft organizational chart with two main purposes (1) building regional teams among facilities and community divisions in central office, and (2) creating more of a balance in reporting affiliations by reducing the number of people reporting to the Chief Deputy Commissioner.

VACBS Report:

Ray Gudum, Past Chair, reported on behalf of the VACSB Board. Mr. Gudum stated that the VACSB Public Policy Conference held in Roanoke October 1-3 was well attended. He provided updated copies of the VACSB 2009-10 Budget Priorities and distributed to board members.

Organization Assessment Project Presentation:

Mark Vita, North Highland Project, presented an overview of the draft findings from the organizational assessment requested by the Office of the Secretary of Health and Human Resources. North Highland assessed the current organizational structure and operations and provided a need for improvements by examining the structure of agencies to see if they should be reorganized to streamline functions.

Board Liaison Reports:

Kathryn Smith reported that on September 18, she attended the Southside Behavioral Health Consortium meeting. The group voiced concerns centered around the budgetary crisis and requested that she relay their concerns to the State Board. The group felt that if they had more flexibility with funding and its use, it would make things a lot easier for them. The group specifically identified crisis stabilization as one of their concerns where on occasions, CSBs have had funds left over in crisis stabilization, however, restricted from using those funds in other areas.

Ms. Smith also attended a Recovery Expo in Southside VA. She reported that there were 25 vendors represented and the event was well attended.

Dr. Ananda Pandurangi reported that he gave a talk to F.A.C.E.S. (Family and Community Empowerment Services) a psycho-educational service for individuals and families. He shared information from a medical perspective as well as information on the State Board activities, current priorities and current Department issues. Dr. Pandurangi reported that there were 40-50 family members in attendance.

Ruth Jarvis reported that she had presented at an in-service training workshop at the Virginia Beach CSB. She provided information on parental involvement and found the session to be very interesting because participants openly discussed ideas with each other. She reported that in attendance, were parents of children with special needs who were in case management at that time at the Virginia Beach CSB. Ms. Jarvis mentioned the concerns addressing the enormous case management loads at the Tidewater area CSBs.

Catherine Hudgins reported that she attended a mental illness awareness month activity in her area. This was an on-going activity hosted by consumers and advocacy groups. She also visited the Brain Foundation, a non-profit group that was started to provide housing for consumers. Ms. Hudgins reported that group recently completed their third home purchase for 12 residents.

The meeting recessed for eight minutes at 1:30 p.m. and reconvened at 1:38 p.m.

Office of the Inspector General Presentation: John Pezzoli, Senior Inspector/Project Manager, summarized and highlighted findings from the Report of the Inspector General on Community Services Board Child and Adolescent Services.

Review of Board Priorities: Ruth Anne Walker, Legislation Manager, directed the board's attention to a draft workplan and corresponding timeline updated with the board's priorities as revised during the August 18 planning retreat. Ms. Walker reviewed the board's statutory responsibilities established in the Code of Virginia §37.2-203 as it relates to the framework for planning. She requested the adoption of the draft minutes from the August 18, 2008 retreat planning session and the proposed workplan as an attachment to those minutes. Ms. Walker distributed copies of the updated report of pending action of board regulations from Wendy Brown reflecting action through October 2008.

Review of Board Retreat Outcomes: Ms. Walker called the board member's attention to the draft FY09-10 Work Plan/Timeline developed from the outcomes and established priorities at the August retreat. The handout distributed to board members identified powers and duties, progress indicators, action needed and dates of future meetings with corresponding presentation on informational topic areas as well as prioritized issues from the Comprehensive State Plan. It was agreed by the board that review of the draft Comprehensive State Plan would move to November instead of September.

Jewel Crosby distributed copies of a draft letter to the Secretary of Health & Human Resources from the board requesting support to enter into interoperability partnership with other executive branch agencies. A second draft letter from the board invites executive branch agencies to attend State Board meetings and present information on major initiative related to their service system. The letters serve the purpose of the previously discussed draft interoperability policy.

Charline Davidson suggested modifying the letter to the Secretary of Health & Human Resources to include language that "the board requests support for the board's interest in entering into partnerships with other executive branch agencies". The Board agreed to retain the existing language in the letter to the Secretary of Health and Human Resources. In addition to the letter to the Secretary of Health & Human Resources, at the request made by Dan Karnes, a similar letter would be sent to other Secretariats such as Education and Public Safety requesting their support for the Board's interest in entering into partnerships with some of the boards in those secretariats.

Upon a motion made by Ruth Jarvis and seconded by Mary McQuown, the board unanimously approved the draft minutes of the August 18, 2008 board retreat and the <u>*FY09-10 Work Plan Timeline*</u> *as presented. 7-Yes; 0-No.*

Other Business & Adjournment: *A motion to adjourn the meeting was made by Cheryl Ivey Green and seconded by Mary McQuown. The meeting adjourned at 3:05 p.m.*

The next scheduled meeting of the State Board will take place on Tuesday, December 2, 2008 at the Goochland-Powhatan Community Services Board.

Respectfully submitted,

Daniel E. Karnes, Acting Chair/Vice Chair

Jewel C. Crosby, State MHMRSAS Board Secretary

BOARD WORKPLAN-TIMELINE FY09-10
(November 1, 2008)

Board Purview: Powers & Duties	Progress Indicator	Action Needed	Oct-08	Dec-08	Jan-09	Apr-09	Jun-09	Sep-09	Nov-09
A. Policy Development and Monitoring (Powers & Duties 1 & 4) – Policy Development and Evaluation Committee									
Goal 1: Follow an established 4-year schedule for the review of existing policies (ongoing, annual)	**Evaluation of the effectiveness of in implementing Board policies**	• Update 4 year schedule for policy review • Consider the impact or benefit on the uninsured, as applicable • Conduct field reviews • Revise policies as necessary						• Review schedule	
Goal 2: As identified by the Board, develop needed new policies (ongoing)	**Establishment of programmatic and fiscal policies**	• Identify areas for policy development • Develop proposed policies • Conduct field reviews							
B. Ensure the Development of Programs and Plans (Powers & Duties 2) - Planning and Budget Committee									
Goal 1: Review and comment on the draft of the Comprehensive State Plan (ongoing, every 2 years)	**Adoption of updated Comp Plan**	• Public hearing dates will be set in Fall 2009 • Comments from the hearings will be provided to the Board members by December 2009							(Dec 2009)
Goal 2: Ensure that the biennial updates to the Comprehensive State Plan reflect programmatic and fiscal policies adopted by the Board per Policy 1010 (SYS) 86-7 (ongoing, every 2 years)	■ **Comprehensive State Plan 2010- 2016:** • Reflects Board policies ■ **Draft Comp Plan is consistent with State Board policies**	• Review of the draft 2010-2016 Comp Plan for consistency with Board policies							• Planning and Budget Committee reviews draft Comp Plan
Goal 3: Monitor and receive periodic reports on the progress of implementation of goals and major initiatives contained in the Comprehensive State plan .. The Board shall monitor the implementation of goals and major initiatives *contained in the Comprehensive State Plan and shall identify areas where further policy and plans for program development are needed.* ***per Policy 1010 (SYS) 86-7 (ongoing, constant)***	■ **Review of progress implementing Comp Plan:** • Workforce and HPO Implementation • Children & Adolescent Services (OIG Report) • Intellectual Disability • Autism • Input on Substance Use Disorders • Effects of Mental Health Law Reform • Criminal Justice ■ **Review of Various Performance Measures**	• Presentations by staff on **Board priorities** addressed in the Comp Plan • Annual compilation of selected Agency Strategic Plan and Service Performance Measures • Development of monitoring plan for the 2010-2016 Comprehensive State Plan (Jan 2010)	**• Children & Adolescent Services (OIG Report)**	**• Criminal Justice Diversion** **• Workforce/ HPO Impltn**	**• Substance Use Disorder Services**	**• Intellectual Disabilities** **• Autism/DD**	**• Effects of Mental Health Law Reform**	• Performance Measure Review	(Jan 2010)

Board Purview: Powers & Duties	Progress Indicator	Action Needed	Oct-08	Dec-08	Jan-09	Apr-09	Jun-09	Sep-09	Nov-09
C. Review and Comment on All Budgets and Requests (Powers & Duties 3)									
Goal 1: Ensure that services and supports needs, critical issues, strategic responses, and resource requirements contained in the Comprehensive State Plan are reflected in the Department's budget proposals and operational priorities Per Policy 1010 (SYS) 86-7 (ongoing, constant)	■ **Comprehensive State Plan 2010- 2016:** • Identifies critical issues and resource requirements. ■ **Agency budget proposals reflect needs, issues, strategic responses, and resource requirements identified in Comp Plan**	• Presentation by the Commissioner on agency budget priorities	■	■	■			■	
Goal 2: Review and comment on all budgets and requests for appropriations for the Department prior to their submission to the Governor and on all applications for federal funds per § 37.2-203, Powers and duties of Board, #3 (ongoing, annual-budgets/constant-grants)	■ **Notification and Board review of DMHMRSAS grant applications**	• Feedback to the Commissioner on agency budget priorities • Grant Review Subcommittee provides input to agency priorities for seeking grants • Grant Review Subcommittee receives a 'heads up' when the Department is considering a grant opportunity • Grant Review Subcommittee reviews proposed grant applications • DMHMRSAS designates a central office grants coordination point of contact who will provide ongoing support to the Grant Review Subcommittee	■	• Staff update on internal processes					
D. Adopt Regulations (Powers & Duties 6)									
Goal: Develop a long range plan/schedule outlining the regulations that will be coming up for routine review (ongoing, constant)	**See matrix:** Recent Board Actions and, Status and Pending Action on Board Regulation	As part of the new standing agenda item for Workplan Review, receive updated document for quarterly review			■	■		■	■

BOARD WORKPLAN-TIMELINE FY09-10
(November 1, 2008)

Board Purview: Powers & Duties	Progress Indicator	Action Needed	Oct-08	Dec-08	Jan-09	Apr-09	Jun-09	Sep-09	Nov-09
E. Communication, Coordination & Collaboration (Powers & Duties 5,7,8,9 & Art.6 b)									
Goal 1: Focus Board member liaison responsibilities on developing relationships within and between regions and establishing clear and open lines of communication between the regions and the Board. (Intra-system/ongoing)	▪ **Broadened and increased contact with the public at board meetings** ▪ **Increased understanding of the Board and Department, as evidenced by feedback to members**	• Regional assignments, consistent with the Regional Planning Partnerships. • Members make regular contact with CSB and facility directors, and key constituents within their regions. In those contacts, ask to be added to mailing lists, to attend regional meetings, seek input concerning policy, regulatory and budget issues related to the duties of the Board prior to meetings, and provide information to region regarding same after, including via personal listserves within 10 days after meetings.	▪	▪	▪	▪	▪	▪	▪
Goal 2: Receive timely communication of status on key issues (Intra-system/ongoing)	▪ **Comment on budget requests** ▪ **Appropriate time to prepare for votes on policies and regulations**	• Workplan Review is a standing agenda item to assure timely presentations • Continue to provide written 'Staff Updates' to the Board from DMHMRSAS offices as needed and at least annually • Legislative updates • Special projects	▪ • North Highland	▪ • Leg/ Budget update	▪ • Leg/ Budget update	▪	▪	▪ ▪	▪

BOARD WORKPLAN-TIMELINE FY09-10
(November 1, 2008)

Board Purview: Powers & Duties	Progress Indicator	Action Needed	Oct-08	Dec-08	Jan-09	Apr-09	Jun-09	Sep-09	Nov-09
		Board Secretary coordinates scheduling in advance, with the preference being the Annual Planning Session						• Secretary attend	
Goal 3: ***Receive a formal update from the Governor's Office/Secretary of Health and Human Resources at least once a year. (Inter-system)***		Develop lines of communication between other agencies within the HHR Secretariat by: • Board mailings to key agency heads • Invitation to present at Board meetings		■ invite	■	■	■	■	■
Continue the Board's commitment to interagency communication and coordination. (Inter-system)	**Satisfaction with communication level; knowledge of other agency activity**	The Board will include statements defining their commitment to interagency communication and coordination in its Annual Executive Summary		■					
Actively participate on the System Leadership Council, the Mental Health Planning Council, the Prevention and Promotion Advisory Council, and the State Human Rights Committee and report to the councils and committee on policy, regulatory and budget issues related to the duties of the Board. (Inter-system)		Members will report at meetings		■	■	■	■	■	■
Goal 4 : Advise the Governor, Commissioner, and General Assembly on matters relating to mental health, mental retardation, and substance abuse per Power and Duty 5 (Inter-government ongoing, as needed)	**Satisfaction with system progress**	• The Board will provide support for the Governor's legislative initiatives as requested. • Continue to use the Annual Executive Summary as a formal way to communicate priorities.		■ ■	• Staff will set visits with legislators				
Goal 5 Broaden public education opportunities (general public/ongoing, constant)	**Broadened and increased contact with the public at board meetings** **More interaction with people receiving services**	Provide opportunities for consumers, allied professionals, and providers to share concerns	■	■	■	■	■	■	■

Board Purview: Powers & Duties	Progress Indicator	Action Needed	Oct-08	Dec-08	Jan-09	Apr-09	Jun-09	Sep-09	Nov-09
General Administrative									
Board Budget		Quarterly written report of expenditures		■		■		■	
Volunteer Luncheon		• Review and revise requirements for award winners • Notify CSBs and Facilities that the luncheon will switch to every other year • Investigate other funding support			■ ■	■			
Related Administrative Tasks *Public Education efforts (Goals E.1, 5)* *• Encouraging host /surrounding CSBs to invite consumers and allied professionals 2 wks before each meeting and, request meeting information be distributed to consumers of the host agency 2 wks prior* *• Ensure time allowed for public comment is appropriate for consumers* *• Agenda Items will reflect prioritiesand presented in a timely manner in advance of required Board action* *• Board staff will review presentations and documents in advance and indicate relation to set priorities (Goal B.3)* *• Notebook page: duties, how to: "Update" form, Agenda action')(Goal E.1)*		For every meeting One time	■	■ ■	■	■	■	■	■
Meeting Calendar Summary: **Green = Board Priority Blue = Informational Topic**			**• Children & Adolescent Services (OIG Report)** • North Highland	**• Criminal Justice Diversion** **• Wkforce/ HPO Impltn** • Legislative/ Budget update • Staff update on internal grant processes	**• Substance Use Disorder Services** **• Housing/MH Consumers** • Legislative/ Budget update (visits with legislators)	**• Intellectual Disabilities** **• Autism/DD** **• Wounded Warrior**	**• Effects of Mental Health Law Reform** **• Peer-provided Services (? confirm)**	• Secretary attend • Performance Measure Review	• Planning and Budget Committee reviews draft Comp Plan

Adoption of Final Revisions to Regulations for Respite and Emergency Care Admission to Mental Retardation Facilities

Regulations	***MR Respite Care and Emergency Admission Regulations:*** 12 VAC 35-200-10 et seq. Regulations for Respite and Emergency Care Admissions to State Training Centers (*New Title*)
Background	In May 2006 the Board completed its periodic review of these regulations and decided that revisions were needed to clarify provisions, update terminology, and change the statutory references to reflect the re-codification of Title 37.1 to 37.2. A notice of intended regulatory action (NOIRA) was published in February 2007 and Department staff drafted proposed revisions to the regulations. These revisions were adopted by the Board and distributed for the standard 60-day public comment period in August 2008. After the close of the public comment period the Department convened a staff advisory group to consider the comments and draft final revisions to the regulations for consideration by the Board. A summary of the public comments with responses, and final regulations with the revisions are attached.
Regulatory Process	After the Board adopts its final regulations they are forwarded for approval from Executive Branch, which includes the Secretary and the Governor. Once approved, the proposed regulations are published on the Virginia Regulatory Townhall website and in the Virginia Register for a 30-day public review period. The regulatory revisions become final following this review period.
Recommendation	The Department recommends that the Board adopt the final amended Regulations for Respite and Emergency Care Admissions to State Training Centers for promulgation.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency response
	<u>Definition of "mental retardation"</u>	
John Holland, M.D. Southern Virginia Training Center (SVTC) Mark Diorio, Northern Virginia Training Center (NVTC)	Suggest that it may be appropriate to use the term "intellectual disabilities" to replace "mental retardation (MR)."	Recent legislation passed by the Virginia General Assembly has scheduled eventual replacement of the term "intellectual disability" with "mental retardation" in the Code of Virginia. This change is not yet implemented pursuant to the legislation. Therefore, it is premature to make this change in this chapter of the Virginia Administrative Code. However, the agency has inserted the term "intellectual disability" in parenthesis following all use of the term "mental retardation" in these regulations. This is consistent with the intent of the legislation and should help to avoid confusion.
Heidi Lawyer, Virginia Board for People with Disabilities (VBPD)* **See note at the bottom of this table**	Suggests changing the definition of "mental retardation" in the regulations to the definition used by the American Association on Mental Retardation.	The definition of "mental retardation" in the regulations is the same definition used in the current Code of Virginia. No change.
	<u>Definitions of "emergency" and "respite care"</u>	
John Holland, M.D., SVTC	Questions the rationale for striking the statement in the current regulations that emergency and respite care admissions should not be used as a means of providing evaluation and program services. Asks whether this means that training centers cannot be compensated for providing such services.	The changes were intended to make these definitions more consistent with the meaning and intent of respite and emergency services, which is established by Code of Virginia. These revisions will have no impact on compensation for services nor is it intended to have any impact on the scope of services provided by training centers.
	Also questions whether there is a process for extending stays beyond 21 consecutive days established by this definition. The definition states that individuals may stay in the facility up to 75 days in a calendar year and a 21-day stay is usually not sufficient to provide evaluation	In Section 20.C the wording has been revised to state that the "...CSB shall develop **<u>an updated</u>** discharge plan..." for individuals who are receiving respite services when the individual is not being discharged at the agreed upon time. This provides a means for the CSB and facility to extend the length of stay if it is appropriate. There is no requirement that an

John Holland *(continued)*	services. Notes that community services boards (CSB) are required to develop a discharge plan when an individual is admitted for respite services.	individual leave the facility after 21 days if a extension is authorized under these regulations.
Jean Felts, Southwest Virginia Training Center (SWVTC) Mark Diorio, NVTC	Indicates that the definition of "respite care" does not conform to the commonly held understanding of this type of care which is to give short-term temporary relief to those who are caring for a family member. States that respite should only be available to provide short-term relief to parents or guardians who have individuals living in their homes. Training centers should provide respite to services to individuals residing is group homes.	The definition of "respite care" has been clarified to reflect the concept of short-term relief to primary caregivers that provide care individuals with MR (intellectual disability) in their homes, as described by the commenters. This is revision is also consistent with the definition that is currently used by the Department of Medical Assistance services for its MR waiver service program.
Julie Stanley, Director, Community Integration for People with Disabilities	Suggests that "respite care" should be replaced with "respite." (delete "care") throughout the regulations.	The term "respite care" is used in the Code of Virginia § 37.2-807 to describe the service that is subject to regulation by the Board. The suggested revision is not consistent with Code. No change.
	Definition of "case management community services board"	
L. William Yolton	Indicates that the reference to "case management community services board" is confusing. Proposes revising this definition to remove the words "citizens board." Opines that this citizen's member board is actually an advisory body and is not involved in performing the case management services.	The definition of "case management community services board" has been replaced with a definition of the term "community services board" for clarity. This definition now states that "Community services board" means a public body established pursuant to §37.2-100 of the Code of Virginia." Title 37.2 of the Code prescribes and defines the specific duties to be performed by a community services board.
	Definition of "facility"	
Julie Stanley, Director, Community Integration for People with Disabilities	Indicates that "facility" should be replaced with "training center" to be consistent with the proposed change to the title of these regulations. The term "facility" should also be replaced throughout the regulations.	The defintion of "facility" has been replaced with a definition of "training center" consistent with the new title of the regulations and Title 37.2 of the Code. (The meaning of "training center" is substantially the same as the meaning of facility.) The terminology change has been made throughout the regulations.

	Section 20 "Respite Care Admissions"	
Joseph Scislowicz Chesapeake Community Services Board	Requests that a statement be included in the regulations as to the availability of money or funding for respite services when the CSB finds that this service cannot be provided in the community.	It is beyond the scope of these regulations to address the availability of the necessary resources to provide respite services or other alternative services in the community. No change.
Jean Felts, SWVTC	Suggests that the regulations require applications for respite care (and emergency) admissions in training centers be submitted on a form that is specifically tailored for such admissions. Advises that a new form for this purpose is currently being developed by the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) and should expedite these admissions.	This form is currently in draft and is not yet finalized or available for use. Although this form is intended to expedite the admission process, it would be premature to require this form be used to request admissions under these regulations. No change.
Heidi Lawyer, VBPD	Suggests that DMHMRSAS develop a specialized form for emergency and respite admissions.	See above response.
	Suggests that Section 20 be divided into two sections. Section 20 should specifically address the process and and a new section should be created to specifically to address criteria or eligibilty for respite care admission.	Section 20 of the regulations is currently divided into three subsections. Subsection A describes the process, Subsection B provides the criteria for admission and Subsection C provides the conditions under which respite care is provided by facilities. The suggested re-organization does not appear to offer any significant improvement and could be confusing for users.
	Proposes several updates to the application for admission, including a current psychogical assessment rather than one performed within the past three years.	Updates have been made to the application, including requiring a psychological evaluation that reflects the individual's current functioning (20.A.4).
	Suggests that the regulations define a reasonable timeframe for decisionmaking on applications for respite care admissions and reduce the maximum length of stay for respite care from 75 to 60-days in a calendar year.	The regulations have been revised to require that decisions on applications be completed "by the end of the next working day following the receipt of a complete application package." The length of stay for respite admissions is prescribed by the Code of Virginia §37.2.807. The provision in the proposed regulations at Section 20.C.1.has been revised to reference this section of the Code rather than identify a specific number of days. This will provide flexibility should the Code be amended regarding the maximum length of stay.

Heidi Lawyer *(continued)*	Comments that no individual age 17 years or younger should be eligible for respite care admissions. (Same comment for emergency admission Section 30)	The regulations require in Section 20.B, as part of the eligibilty criteria for respite care, that individuals meet the criteria for regular admission to qualify for respite services in a facility. Therefore, individuals age 17 or younger may be admitted to facilities only when the appropriate resources are available to accommodate them. Only two facilities within the public system have the resources to admit children or adolescents. The agency believes there is no basis to prohibed such individuals from receiving respite care when they are otherwise eligible for this service.
	Believes that the application for respite care should serve as the source of current information rather than any information that may be on file pursuant to current regulation (Section 20.C.2.).	The agency agrees with this comment and has deleted this provision in the proposed regulations.
	Suggests addition of provisions requiring facilities to collect data and submit reports to the commissioner whenever persons admitted for respite services stay in a facility more than 21 consecutive days. Proposes that DMHMRSAS monitor and publish summary reports of this data and use such reports for planning improvements in the community system.	DMHMRSAS administration routinely reviews and collects data that is relevant to its facility admissions for various purposes. However, it is beyond the scope of these regulations to prescribe specific documentation and data collection requirements for DMHMRSAS. No change.
Mark Diorio, NVTC	States that respite care should only be available to individuals who have complex medical and behavioral needs. Proposes that physical and nutritional management assessments be included in the admission screening. Notes that children should not be housed on he same living units as adults.	The regulations require (Section 20.B) that individuals meet the facility's regular admission criteria. Therefore, the facility would not be required to admit an individual for respite care that would not otherwise meet the medical and behavioral criteria for regular admission. Similarly, the facility is not required to admit individuals unless it has the appropriate services and living accommodations. The standard application for facility admission (referenced in 20.A) requires physical and nutritional assessments that are identified by the commenter. No change.
	Suggests extending the timeframe for decisionmaking on respite care applications to 30 days (Section 20.B)	It is not appropriate to extend the deadline for decisionmaking on respite services given the circumstances that would necessitate such an admission. The timeframe in the proposed regulations is the next working day following the receipt of a completed application package and is considered reasonable. No change.

Mark Diorio *(continued)*	Suggests that requests for reconsideration of a decision to deny admission should be submitted to the facility director prior to being submitted to the commissioner.	This process is intended provide a means for individuals to appeal an adverse decision made by the facility director to a higher authority within the DMHMRSAS administration. Therefore, the formal request for reconsideration should not reasonably be filed with the with the facility director who made the disputed decision. However, there is nothing in these regulations that would prohibit an individual from communicating with the facility director about any adverse decision prior to filing a formal request for reconsideration with the commissioner. No change.
	Suggests that the deadline forwarding the application package to the commissioner be extended to three days.	The application package for a facility admission that is being appealed should be compiled and readily accessible. Therefore, the current 48-hour timeframe for forwarding this material is considered reasonable. No change.
John Holland, M.D., SVTC	Asks whether a application for regular admission may be taken while an individual has been admitted to the facility for respite or emergency services.	There is nothing in the regulations that would prohibit the initiation of an application for regular admission for an individual who is receiving respite or emergency care in the facility. In order to avoid confusion, the sentence in Section 20.C *"...No person who is admitted to a training center under the provisions of this section..."* has been eliminated and the word "standard" has been replaced with "voluntary. "
	Also asks how a facility would handle a situation when a CSB determines that the facility has the appropriate medical resources to meet the needs of an individual but at the time of admission the facility's medical personnel disagrees and finds it cannot meet the individual's needs.	This type of situation should be resolved on an individual basis with good communication between the facility and the CSB. The regulations establish an application process to promote this communication but give the authority to the facility director to decide whether an individual is eligible for admission based on specific conditions (Section 20.C). One condition for accepting an application is that the facility's health service personnel have determined that that the facility can meet the individual's health care needs. Decisionmaking must consistent with the conditions. No change.
	Section 30 "Emergency ~~Care~~ Admission"	
Blue Ridge Behavioral Healthcare	Questions the rationale for the reference to "respite care" in first paragraph in Section 30.A. Believes that it is inconsistent with the apparent intent of the Code to distinguish between respite and emergency admissions.	The agency agrees that this reference to "respite care" is somewhat confusing. The word "respite" has been stricken from this provision.

Blue Ridge Behavioral Healthcare *(continued)*	Indicates that the provision is misleading because it indicates that the CSB will assume the care for the individual (second paragraph in Section 30.A.) It is actually the facility that will assume responsibility for the individual under this provision.	The words "the facility" have been inserted to clarify this provision.
Mark Diorio, NVTC	Suggests extending the timeframe in Section 30.A. for receipt of the required information from 48-hours to 72-hours.	While the regulations provide for a minimal delay in receiving the required information for an emergency admission, every effort should be made to expedite the receipt of this information to assure the health and safety of the individual. The 48-hour delay is reasonable given the circumstances. (See comment of John Holland, M.D. that follows.) No change.
	Also proposes replacing the word "unit" in Section 30.B.4 to indicate that appropriate residential space is available.	The language in this criteria been revised to clarify that "...Space is available in a residential living area...."
John Holland, M.D., SVTC	Concerned that psychological and medical information may not be immediately available for an emergency admission. Recommends that psychological and medical information be exempted from the provision that allows a temporary delay in the receipt of case information by a facility for an individual seeking emergency services. (30.A. second paragraph)	Individuals may be accepted for emergency admission when they require immediate alternative arrangements to protect their health and safety and such arrangements are not available in the community (Section 30.B). In view of these circumstances, it is reasonable to permit a temporary, 48 hour delay for receipt of individual case information. No change.
	Disagrees with the provision that facilities may offer to try to obtain alternative services from another appropriate facility when they are unable to provide emergency services to an eligible individual. Suggests that it should be the role of DMHMRSAS staff to provide alternatives for the eligible individual.	This provision has been revised to state that facility may offer to try to obtain, **in consultation with department staff**, alternatives to an eligible individual. This is intended to promote staff collaboration to provide assistance to individuals in need of services.

Heidi Lawyer, VBPD	Suggests adding language throughout this section to require that efforts be made to explore community alternatives and require the CSB to refer persons to a Regional Community Support Center (RCSC) for consultation and assessment prior to making a request for an emergency admission.	RCSCs are not currently available in all Virginia communities and therefore it is not reasonable to require that all potential emergency admissions be referred to RCSCs. One criterion for an emergency facility admission is that alternative resources in the community have been explored and found to be unavailable (Section 30.B.3). This appears generally consistent with the suggested additional language. No change.
	Suggests adding requirements that DMHMRSAS facilities collect specific data, monitor, and submit to the commissioner quarterly reports of persons admitted for emergency services who remain in the facility more than 30 consecutive days or who reach the maximum of 90 days during a fiscal year. DMHMRSAS should publish and distribute summaries of such reports.	DMHMRSAS administration routinely reviews and collects data that is relevant to its facility admissions for various purposes. However, it is beyond the scope of these regulations to prescribe specific documentation and data collection requirements for the DMHMRSAS administration. No change.
Demetrios Peratsakis, Executive Directors Forum, Virginia Association of CSBs	Comments that several CSBs and regional partners expressed concern that the regulations require, in Section 30.C, that facility inform the CSB within 24 hours of receiving the request whether the individual is eligible for an emergency admission. Indicates that the CSB would not be informed if the request for emergency admission was made on a weekend or received late Friday afternoon. This coverage is something that regions are working toward but have not yet accomplished.	This provision is in the current regulations and is intended to expedite services for individuals who in need of immediate or emergency care. Given the circumstances, this timeframe is considered reasonable and efforts should continue to meet this requirement in all regions, statewide. No change.
John Dool, Hampton-Newport News CSB	Concerned that the language in Section 30.C. does not address the true nature of an emergency. The provision that calls for a response within 24-hours should be revised to require that the facility director provide an immediate response upon the receipt of the request for emergency admission.	See above response. The 24-hour timeframe appears is a realistic response time for determining eligiblity for an emergency admission. It allows time for facility personnel to make an expedited assessment of the documentation and make a informed decision on the request. No change.

***The comments and suggested revisions provided by the Virginia Board for People with Disabilities (VBPD) were submitted to the agency as part of its periodic review of the current regulations. These comments were considered and used by the agency to develop the proposed regulations that were distributed for public comment during 2008. The agency has reviewed and responded to these comments as part of the public comment stage of this regulatory process, pursuant to the request of VBPD.**

Project 635 - Proposed

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

Amend the regulation to update and clarify process and requirements

CHAPTER 200

REGULATIONS FOR RESPITE AND EMERGENCY CARE ADMISSION TO ~~MENTAL RETARDATION FACILITIES~~ STATE TRAINING CENTERS

12VAC35-200-10. Definitions.

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

~~"Applicant" means a person for whom respite care or emergency care services are sought.~~

"Authorized representative" means a person permitted by law or regulations to authorize the disclosure of information or consent to treatment and services, including medical treatment, or for the participation in human research on behalf of an individual who lacks the mental capacity to make these decisions.

[~~"Case management community services board~~] ~~(CSB)~~" [~~or "CSB" means a citizens board established pursuant to~~] ~~§ 37.1-195~~ [~~§ 37.2-501 of the Code of Virginia that serves the area in which an adult resides or in which a minor's parent, guardian or~~] ~~legally~~ [~~authorized representative resides.~~] ~~The case management CSB is responsible for case management, liaison with the facility when an individual is admitted to a state training center, and predischarge planning. If an individual, or the parents, guardian or legally authorized representative on behalf of an individual, chooses to reside in a~~

~~different locality after discharge from the facility, the community services board serving that locality becomes the case management CSB and works with the original case management CSB, the individual receiving services and the state facility to effect a smooth transition and discharge.~~ [~~For the purpose of these regulations, CSB also includes a behavioral health authority established pursuant to § 37.2-602 of the Code of Virginia.~~]

~~"Catastrophe" means an unexpected or imminent change in an individual's living situation or environment that poses a risk of serious physical or emotional harm to that individual.~~

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

["Community services board" or "CSB" means a public body established pursuant to §37.2-501 of the Code of Virginia. For the purpose of these regulations, CSB also includes a behavioral health authority established pursuant to §37.2-602 of the Code of Virginia.]

"Discharge plan" ~~or "predischarge plan"~~ means a written plan prepared by the [~~case management~~] CSB [providing case management,] in consultation with the [~~state facility~~ training center] pursuant to ~~§ 37.1-197.1~~ [~~§ 37.2-505~~ §§ 37.2-505 and 37.3-837] of the Code of Virginia. This plan is prepared when the individual is admitted to the [~~facility~~ training center] and documents the [~~planning for~~] services [~~after~~ to be provided upon] discharge.

"Emergency ~~care~~ admission" means the temporary [~~placement~~ acceptance] of an individual with mental retardation [(intellectual disability)] [~~in~~ into] a [~~facility~~ training center] when immediate care is necessary ~~due to a catastrophe~~ and no other

community alternatives are available. ~~The total number of days that emergency or respite care services, or both, are used shall not exceed 21 consecutive days or 75 days in a calendar year. This emergency care is not intended as a means of providing evaluation and program development services, nor is it intended to be used to obtain treatment of medical or behavioral problems.~~

[~~"Facility" means a state training center for individuals with mental retardation under the supervision and management of the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services.~~]

"~~Guardianship~~ Guardian" means:

1. For minors -- ~~An~~ an adult who is either appointed by the court as a legal guardian of ~~said~~ a minor or 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.

2. For adults -- a person appointed by the court who is responsible for the personal affairs of an incapacitated adult under the order of appointment. The responsibilities may include making decisions regarding the individual's support, care, health, safety, habilitation, education and therapeutic treatment. Refer to definition of "incapacitated person" at ~~§ 37.1-134.6~~ § 37.2-1000 of the Code of Virginia.

"Individual" means a person for whom respite or emergency services are sought.

"~~Least~~ Less restrictive setting" means the ~~treatment and conditions of treatment that, separately or in combination, are~~ service location that is no more intrusive or restrictive of freedom than reasonably necessary to achieve a substantial therapeutic benefit and protection from harm (to self and others) based on an individual's needs.

"Legally authorized representative" means a person permitted by law or regulations to give informed consent for disclosure of information and give informed consent to treatment including medical treatment on behalf of an individual who lacks the mental capacity to make these decisions.

"Mental retardation" [("intellectual disability")] means the substantial subaverage general intellectual functioning that originates during the developmental period and is associated with impairment in adaptive behavior a disability, originating before the age of 18 years, characterized concurrently by (i) significantly subaverage intellectual functioning as demonstrated by performance on a standardized measure of intellectual functioning, administered in conformity with accepted professional practice, that is at least two standard deviations below the mean; and (ii) significant limitations in adaptive behavior as expressed in conceptual, social, and practical adaptive skills.

"Respite care [care]" means the placement of an individual with mental retardation in a state facility when placement is solely for the purpose of providing [temporary care and support to an individual with mental retardation because of medical or other urgent conditions of the] caretaking [person providing care.] The total number of days that respite or emergency care services, or both, are used is not to exceed 21 consecutive days or 75 days in a calendar year. Respite care services are not intended as a means of providing evaluations and program development services, nor are they intended to be used to obtain treatment of medical or behavioral problems or both. [care provided to an individual with mental retardation (intellectual disability) on a short-term basis because of the emergency absence of or need to provide routine or periodic relief of the primary caregiver for the individual. Services are specifically designed to provide temporary, substitute care for that which is normally provided by the primary caregiver.]

["Training center means a facility operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services for the treatment, training, or habilitation of persons with mental retardation (intellectual disability).]

12VAC35-200-20. Respite ~~care~~ [care] admission.

A. Applications for respite ~~care~~ [care] in state facilities shall be processed through the [~~case management~~] CSB [providing case management]. A parent, guardian, or ~~legally~~ authorized representative seeking respite ~~care~~ [~~services~~ care] for an individual with mental retardation [(intellectual disability)] shall apply first to the CSB that serves the area where the ~~applicant~~ individual, or if a minor, his parent~~,~~ or guardian~~, or legally authorized representative~~ is currently residing. If the ~~case management~~ CSB determines that respite ~~care~~ [~~services~~] for the ~~applicant~~ individual [~~are~~ is] not available in the community, it shall forward an application to the [~~facility~~ training center] serving individuals with mental retardation [(intellectual disability)] from that geographic section of the state in which the ~~applicant~~ individual or his parent~~,~~ or guardian~~, or legally authorized representative~~ is currently residing.

The application shall include:

1. An application for services;

2. A medical history indicating the presence of any current medical problems as well as the presence of any known communicable disease. In all cases, the application shall include any currently prescribed medications as well as any known medication allergies;

3. A social history and current status;

4. A psychological evaluation that ~~has been performed in the past three years unless the facility director or designee determines that sufficient information as to~~

~~the applicant's abilities and needs is included in other reports received~~ reflects the individual's current functioning;

5. A current individualized education plan for school aged ~~applicants~~ individuals unless the [~~facility~~ training center] director or designee determines that sufficient information as to the ~~applicant's~~ individual's abilities and needs is included in other reports received;

6. A vocational assessment for ~~adult applicants~~ adults unless the [~~facility~~ training center] director or designee determines that sufficient information as to the ~~applicant's~~ individual's abilities and needs is included in other reports received;

7. A statement from the ~~case management~~ CSB that respite ~~care~~ [~~services~~ is not available in the community] for the ~~applicant~~ individual [~~are not available in the community~~]; ~~and~~

8. A statement from the ~~case management~~ CSB that the appropriate arrangements ~~will be~~ are being made to return the individual to the CSB within the time frame required under this regulation; and

9. A statement from the individual, a family member, or authorized representative specifically requesting services in the [~~facility~~ training center] .

B. Determination of eligibility for respite ~~care~~ services shall be based upon the following criteria:

1. The ~~applicant~~ individual has a ~~primary~~ diagnosis of mental retardation [(intellectual disability)] and ~~functions on a level that~~ meets the [~~facility's~~ training center's] regular admission criteria;

2. The ~~applicant's~~ individual's needs ~~for care and supervision~~ are such that, in the event of a need for temporary care, respite ~~care~~ [~~services~~] would not be available in a less restrictive setting; and

3. The [~~facility~~ training center] has appropriate resources to meet the ~~care and supervision~~ needs of the ~~applicant~~ individual.

~~Within a reasonable time of the receipt of the completed application~~ By the end of the next working day following receipt of a complete application package, the [~~facility~~ training center] director, or ~~his~~ designee, shall provide written notice of his decision to the ~~case management~~ CSB. This notice shall state the reasons for the decision.

If it is determined that the ~~applicant~~ individual is not eligible for respite ~~care~~, the person seeking respite ~~care~~ [~~services~~] may ask for reconsideration of the decision by submitting a written request for such reconsideration to the commissioner. Upon receipt of such request, the commissioner or designee shall notify the [~~facility~~ training center] director and the [~~facility~~ training center] director shall forward the application packet and related information to the commissioner or designee within 48 hours. The commissioner or designee shall ~~also~~ provide an opportunity for the person seeking respite ~~care~~ services to submit for consideration any additional information or reasons as to why the admission should be approved. The commissioner shall render a written decision on the request for reconsideration within 10 days of the receipt of such request and notify all involved parties. The commissioner's decision shall be binding.

C. Respite ~~care is~~ [care] shall be provided in state facilities under the following conditions:

1. The length of the respite ~~care~~ stay at the [~~facility~~ training center] shall not exceed ~~21 consecutive days or a total of 75 days in a calendar year~~ the limits [~~defined~~ established] in § 37.2-807 of the Code of Virginia;

~~2. Information on file at the facility is current;~~

~~3.~~ 2. Space and adequate staff coverage are available on a [~~unit~~ residential living area] with an appropriate peer group for the ~~applicant~~ individual and suitable resources to meet his ~~care and supervision~~ needs; and

~~4.~~ 3. [~~A physical examination performed by the facility's health service personnel at the time of the respite care admission has determined that the applicant's individual's health care needs can be met by the facility's resources during the scheduled respite care stay~~ The training center has resources to meet the individual's health care needs during the scheduled respite stay as determined by a physical examination performed by the training center's health service personnel at the time of the respite admission].

If for any reason a person admitted for respite ~~care~~ [~~services~~ care] is not discharged at the agreed upon time, the ~~case management~~ CSB shall develop ~~a~~ an updated discharge plan as provided in ~~§§ 37.1-98 and 37.1-197.1~~ §§ 37.2-505 and 37.2-837 of the Code of Virginia.

Respite ~~care~~ shall not be used as a mechanism to circumvent the [~~standard~~ voluntary] admissions procedures as provided in ~~§ 37.1-65.1~~ § 37.2-806 of the Code of Virginia. [~~No person who is admitted to a training center~~] ~~in response to~~ [~~under the provisions of this chapter shall, during the time of such respite~~] ~~care~~ [~~admission, be eligible for admission to any training center~~] ~~in response to § 37.1-65.1~~ [~~under § 37.2-806 of the Code of Virginia.~~]

12VAC35-200-30. Emergency ~~care~~ admission.

A. In the event of a ~~catastrophe~~ change in an individual's circumstances necessitating immediate, short-term care for an individual with mental retardation [(intellectual disability)], [~~emergency care admission may be requested by~~] a parent, guardian, or ~~legally~~ authorized representative [may request emergency care admission] by calling the ~~case management~~ CSB [serving the area where the individual, or in the case of a minor, his parent or guardian resides]. [~~If~~ Under these circumstances if] the ~~case management~~ CSB determines that [~~respite~~] ~~care~~ services for the ~~applicant~~ individual are not available in the community, it may request an emergency admission to the [~~facility~~ training center] serving that geographic area [~~in which the~~] ~~applicant~~ [~~individual, or in case of a minor, his parent, or guardian~~]~~, or legally authorized representative~~ [~~resides~~].

The ~~case management~~ CSB shall make every effort to obtain the same case information required for respite ~~care~~ admissions, as described in 12VAC35-200-20 A, before [~~assuming~~ the training center assumes] responsibility for the care of the individual in need of emergency services. However, if the information is not available, this requirement may temporarily be waived if, and only if, arrangements have been made for receipt of the required information within 48 hours of the emergency ~~care~~ admission.

B. Acceptance for emergency ~~care admissions~~ admission shall be based upon the following criteria:

1. A ~~catastrophe~~ change in the individual's circumstances has occurred requiring immediate alternate arrangements to protect the individual's health and safety;

2. The individual has a ~~primary~~ diagnosis of mental retardation and ~~functions on a level that~~ meets the [~~facility's~~ training center's] regular admissions criteria;

3. All other alternate care resources in the community have been explored and found to be unavailable;

4. Space is available on a [~~unit~~ residential living area] with appropriate resources to meet the individual's ~~care and supervision~~ needs;

5. The [~~facility's~~ training center's] health services personnel have determined that the individual's health care needs can be met by the [~~facility's~~ training center's] resources; and

6. The length of the emergency ~~care~~ stay at the facility [~~will~~ shall] not exceed ~~21 consecutive days or a total of 75 days in a calendar year~~ the limits [~~defined~~ established] in § 37.2-807 of the Code of Virginia.

C. Within 24 hours of receiving a request for emergency ~~care~~ admission, the [~~facility~~ training center] director, or ~~his~~ designee, [~~will~~ shall] inform the ~~case management~~ CSB whether the ~~applicant~~ individual is eligible for emergency ~~care~~ admission and whether the [~~facility~~ training center] is able to provide emergency ~~care~~ services.

If the [~~facility~~ training center] is able to provide emergency ~~care~~ services, arrangements shall be made to effect the admission as soon as possible.

If the [~~facility~~ training center] is unable to provide emergency ~~care~~ services to an eligible ~~applicant~~ individual, the facility director or designee shall provide written notice of this determination to the ~~case management~~ CSB and may offer [in consultation with department staff] to try to obtain emergency ~~care~~ services from another appropriate facility.

If for any reason a person admitted to a [~~facility~~ training center] for emergency ~~care~~ services is not discharged at the agreed upon time, the ~~case management~~ CSB shall develop a discharge plan as provided in ~~§§ 37.1-98 and 37.1-197.1~~ §§ 37.2-505 and 37.2-837 of the Code of Virginia.

Certification Statement:

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

____________________________________ (Signature of certifying official)

Name and title of certifying official:__________________________________

Name of agency:____

Date:________________________________

DRAFT MINUTES
STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD
PLANNING AND BUDGET COMMITTEE

August 17, 2008
Henrico, Virginia

Members Present: Daniel E. Karnes, Catherine M. Hudgins

Absent: Kathryn A. Smith, Cheryl Ivey Green

Staff Present: Charline Davidson, Office of Planning and Development
Linda Grasewicz, Office of Planning and Development
Jewel Crosby, State Board Secretary

Call to Order: The meeting was called to order at 3:13 p.m.

Planning and Budget Committee Meeting Minutes 6/3/2008

Committee members reviewed and approved the draft committee minutes.

Monitoring the Implementation of the Comprehensive State Plan 2008-2014

The focus of the Planning and Budget Committee meeting was on Board activities related to monitoring the implementation of the Comprehensive State Plan 2008-2014. In January, 2008, the Planning and Budget Committee reviewed strategic directions, goals, and potential monitoring priorities that could be used to monitor implementation of the plan. The Committee presented the following approaches for monitoring the implementation of the Comprehensive State Plan.

- Written quarterly reports on the implementation of the Governor's initiative, including service capacity development and performance expectations;
- An annual compilation of selected Agency Strategic Plan and Service Performance Measures; and
- Presentations to the State Board on selected topics addressed in the Comprehensive State Plan.

Performance Measures

With the fiscal year ending in June, information on the annual outcomes achieved by the Department is becoming available. Linda Grasewicz distributed and the results that have been achieved and the timeframe within which the Committee could expect all of the FY 2008 results to be finalized. Two measures, the proportion of people served in intensive community-based services per occupied state facility bed and number of people receiving crisis stabilization services, require information from CSB information systems that should be available in October. Information for a third measure, the percentage of consumers in state hospitals with recovery experiences, should be available in early September but that preliminary results from the Office of the Inspector General indicate that the state hospitals have made significant increases in this area.

Linda reported that the Department had already exceeded its FY 2010 target for two measures: number of CSBs providing integrated MH and SA assessment and services and percentage of direct care workers in training centers who have completed core College of Direct Support training modules, which increased from 11 to 15.

Finally, Linda said that the Department is progressing at a rate that should result in achieving the FY 2010 targets for two measures: number of people endorsed to provide Positive Behavioral Support consultation and number of unannounced licensing inspections and complaint investigations conducted.

Committee members were particularly interested in the measures related to workforce activities.

Charline Davidson advised the Committee that the Department is in the process of adding a productivity goal to its planning process. The Governor has asked every state agency to identify an internal process where service can be improved or greater efficiencies can realized. The Department has proposed establishing a productivity goal to reduce the labor costs of preparing and serving meals to individuals in state facilities. This productivity measure is currently under review by the Department of Planning and Budget and the Governor.

Recommended Presentations for the Upcoming Year

In preparation for the Board retreat and as a part of the Committee's review of the progress that has been achieved in implementing the Comprehensive State Plan, members also considered possible areas of focus for the Board during the upcoming year. Some possible focus areas that members identified for the upcoming year follow:

- OIG findings related to community Children and Adolescent services and state hospital recovery experiences
- Progress on implementing an Electronic Health Record
- Cultural competencies and workforce development
- Services for veterans
- Criminal justice diversion
- Workforce initiatives
- Intellectual disability services and initiatives such as Positive Behavioral Supports and College of Direct Support
- Community integration of MH and SA services

Adjourn: The Planning and Budget Committee meeting was adjourned at 4:05 p.m.

Adoption of Regulations to Replace Current Regulations for Licensing Children's Residential Facilities and Repeal the Existing Regulations

Regulations	Regulations for Providers of Mental Health, Mental Retardation, Substance Abuse, and Brain Injury Residential Services For Children, 12 VAC 35-45-10 et seq. *(repeal)* Regulations for Children's Residential Facilities 12 VAC 35-46-10 et seq. *(adopt /consolidate/replace)*
Background	Legislation from the 2008 Virginia General Assembly eliminates the interdepartmental regulation of children's residential facilities and requires the Departments of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS), Social Services, and Juvenile Justice to license the specific children's residential facilities for which they are now the primary licensing agency. The legislation requires each agency to adopt regulations to replace and restate the "Core" regulations, 22 VAC 42-10-10 et seq., which are the generic, interdepartmental standards that govern the wide range of children's facilities licensed by aforementioned state agencies. Each of these agencies must have replacement regulations in place by October 2009. The State MHMRSAS Board's existing regulations 12 VAC 35-45-10 et seq. are an addendum to the generic or "Core" standards and provide specific provisions for licensing residential treatment services for children with mental illness, mental retardation, substance use, or brain injury disorders. These current regulations are operationally called the "Mental Health Module" and cover a wide range of children's residential services. To comply with the 2008 legislation, DMHMRSAS staff has drafted replacement regulations, 12 VAC 35-46-10 et seq., that consolidate the relevant parts of the interdepartmental "Core" standards and the Board's "Mental Health Module" into a single set of regulations. When the Board adopts replacement regulations, the existing "Mental Health Module" and the interdepartmental "Core" regulations will be repealed.
Regulatory Process	This action is proposed for submission under the fast-track regulatory process. This process allows regulations to be implemented on an expedited basis if they are deemed to be non-controversial. Since the replacement regulations are not expected to have significant impact on the current licensing process or alter the requirements for providers that are governed by the current regulations, this action should qualify for this fast-track process. Under this process, the regulatory action is submitted for approval by the Executive Branch. If it is deemed appropriate for the fast-track process, the regulations will be published for 30-days for public review. If there is no objection to fast-track from the public or members of the General Assembly, the regulations may become effective following this publication.
Recommendation	The Department recommends that the Board adopt the proposed regulations 12 VAC 35-46-10 et seq. and replace and repeal existing regulations 12 VAC 35-45-10 et seq. under the fast-track process.

Project 1612 - none

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

Update and replace regulations for licensing children's residential facilities

CHAPTER 45 (Repealed.)

REGULATIONS FOR PROVIDERS OF MENTAL HEALTH, MENTAL RETARDATION, SUBSTANCE ABUSE, AND BRAIN INJURY RESIDENTIAL SERVICES FOR CHILDREN

~~12VAC35-45-10. Definitions.~~ (Repealed.)

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

~~"Brain injury" means any injury to the brain that occurs after birth, but before age 65, that is acquired through traumatic or nontraumatic insults. Nontraumatic insults may include, but are not limited to, anoxia, hypoxia, aneurysm, toxic exposure, encephalopathy, surgical intervention, 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 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, social, or cognitive 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.

"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.

"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, cognitive, 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, neurobehavioral services, 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; or~~

~~5. Any event that affects, or potentially may affect, 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. Service also means 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.~~

~~"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.~~

~~12VAC35-45-20. Allowable variance.~~ (Repealed.)

~~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.~~

~~12VAC35-45-25. Summary suspension.~~ (Repealed.)

~~A. In conjunction with any proceeding for revocation, denial, or other action, when conditions or practices exist that pose an immediate and substantial threat to the health, safety, and welfare of the residents, the commissioner may issue an order of summary suspension of the license to operate a residential facility for children when he believes the operation of the facility should be suspended during the pendency of such proceeding.~~

~~B. Prior to the issuance of an order of summary suspension, the department shall contact the Executive Secretary of the Supreme Court of Virginia to obtain the name of a~~

hearing officer. The department shall schedule the time, date, and location of the administrative hearing with the hearing officer.

C. The order of summary suspension shall take effect upon its issuance. It shall be delivered by personal service and certified mail, return receipt requested, to the address of record of the licensee as soon as practicable. The order shall set forth:

1. The time, date, and location of the hearing;

2. The procedures for the hearing;

3. The hearing and appeal rights; and

4. Facts and evidence that formed the basis for the order of summary suspension.

D. The hearing shall take place within three business days of the issuance of the order of summary suspension.

E. The department shall have the burden of proving in any summary suspension hearing that it had reasonable grounds to require the licensee to cease operations during the pendency of the concurrent revocation, denial, or other proceeding.

F. The administrative hearing officer shall provide written findings and conclusions, together with a recommendation as to whether the license should be summarily suspended, to the commissioner within five business days of the hearing.

G. The commissioner shall issue a final order of summary suspension or make a determination that the summary suspension is not warranted based on the facts presented and the recommendation of the hearing officer within seven business days of receiving the recommendation of the hearing officer.

H. The commissioner shall issue and serve on the residential facility for children or its designee by personal service or by certified mail, return receipt requested either:

~~1. A final order of summary suspension including (i) the basis for accepting or rejecting the hearing officer's recommendation and (ii) notice that the residential facility for children may appeal the commissioner's decision to the appropriate circuit court no later than 10 days following issuance of the order; or~~

~~2. Notification that the summary suspension is not warranted by the facts and circumstances presented and that the order of summary suspension is rescinded.~~

~~I. The licensee may appeal the commissioner's decision on the summary suspension to the appropriate circuit court no more than 10 days after issuance of the final order.~~

~~J. The outcome of concurrent revocation, denial, and other proceedings shall not be affected by the outcome of any hearing pertaining to the appropriateness of the order of summary suspension.~~

~~K. At the time of the issuance of the order of summary suspension, the department shall contact the appropriate agencies to inform them of the action and the need to develop relocation plans for residents, and ensure that parents and guardians are informed of the pending action.~~

~~12VAC35-45-30. Rights.~~ (Repealed.)

~~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 (12VAC35-115).~~

~~12VAC35-45-40. Audio and visual recordings.~~ (Repealed.)

~~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.~~

~~12VAC35-45-50. Compliance with applicable laws, regulations, and policies.~~ (Repealed.)

~~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 (22VAC42-10), and Department of Medical Assistance Services' Regulations, Amount, Duration and Scope of Selected Services, 12VAC30-130-860;~~

~~2. The terms of the license;~~

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

~~4. The provider's own policies.~~

~~12VAC35-45-60. Written plans of correction for noncompliance.~~ (Repealed.)

~~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 22VAC42-10-110 D.~~

~~12VAC35-45-70. Service description; required elements.~~ (Repealed.)

~~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, mental retardation, or brain injury population it intends to serve;~~

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

~~3. Provider goals;~~

~~4. Services provided; and~~

~~5. Contract services, if any.~~

~~12VAC35-45-80. Minimum service requirements.~~ (Repealed.)

~~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 (22VAC42-10).~~

~~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, substance abuse, or brain injury. The provision, intensity, and frequency of mental health, mental retardation, substance abuse, or brain injury~~

~~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 (ADLs);~~

~~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;~~

~~9. Substance abuse education and counseling; and~~

~~10. Neurobehavioral services for individuals with brain injury.~~

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

~~12VAC35-45-90. Admission applications.~~ (Repealed.)

~~In addition to the requirements of the Standards for Interdepartmental Regulation of Children's Residential Facilities (22VAC42-10), 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.~~

~~12VAC35-45-100. Least restrictive programming.~~ (Repealed.)

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

~~12VAC35-45-110. Documentation policy.~~ (Repealed.)

~~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.~~

~~12VAC35-45-120. Record reviews.~~ (Repealed.)

~~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.~~

~~12VAC35-45-130. Medication administration.~~ (Repealed.)

~~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 (12VAC35-115).~~

~~12VAC35-45-140. Medication error reviews.~~ (Repealed.)

~~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.~~

~~12VAC35-45-150. Written policies and procedures for a crisis or clinical emergency.~~ (Repealed.)

~~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.~~

~~12VAC35-45-160. Documenting crisis intervention and clinical emergency services.~~ (Repealed.)

~~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.

12VAC35-45-170. Behavior management. (Repealed.)

~~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.~~

~~12VAC35-45-180. Time out.~~ (Repealed.)

~~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 (12VAC35-115);~~

~~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.~~

~~12VAC35-45-190. Seclusion rooms requirements.~~ (Repealed.)

~~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.

12VAC35-45-200. Emergency reporting. (Repealed.)

A. Any serious incident, as defined by these regulations, unexplained absence or death of a resident 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.~~

~~12VAC35-45-210. Additional requirements for residential facilities for individuals with brain injury.~~ (Repealed.)

~~A. 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 service plans, crises, staff training, and service design.~~

~~B. Child care staff in brain injury residential services shall have two years experience working with children with disabilities.~~

~~C. A program director who holds a master's degree in psychology, is a nurse licensed in Virginia, is a rehabilitation professional licensed in Virginia, or is a certified brain injury specialist shall have at least one year of clinical experience working with individuals with brain injury. Program directors who hold a bachelor's degree in the field of institutional management, social work, education, or other allied discipline shall have a minimum of two years of experience working with individuals with brain injury.~~

CHAPTER 46

REGULATIONS FOR CHILDREN'S RESIDENTIAL FACILITIES.

12VAC35-46-10. Definitions.

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

"Allegation" means an accusation that a facility is operating without a license or receiving public funds for services it is not certified to provide.

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

"Applicable state regulation" means any regulation that the Department determines applies to the facility. The term includes, but is not necessarily limited to, regulations promulgated by the Departments of Education; Health; Housing and Community Development; or other state agencies.

"Applicant" means the person, corporation, partnership, association, or public agency that has applied for a license.

"Aversive stimuli" means the physical forces (e.g., sound, electricity, heat, cold, light, water, or noise) or substances (e.g., hot pepper sauce, or pepper spray) measurable in duration and intensity that when applied to a resident, are noxious or painful to the resident, but in no case shall the term "aversive stimuli" include striking or hitting the individual with any part of the body or with an implement or pinching, pulling, or shaking the resident.

"Behavior support" means those principles and methods employed by a provider to help a child achieve positive behavior and to address and correct a child's inappropriate behavior in a constructive and safe manner in accordance with written policies and procedures governing program expectations, treatment goals, child and staff safety and security, and the child's individualized service plan.

"Behavior support assessment" means identification of a resident's behavior triggers, sucessful intervention strategies, anger and anxiety management options for calming, techniques for self-management, and specific goals that address the targeted behaviors that lead to emergency safety interventions.

"Body cavity search" means any examination of a resident's rectal or vaginal cavities, except the performance of medical procedures by medical personnel.

"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.

~~"Case record" or "record" means up-to-date written or automated information relating to one resident. This information includes social data, agreements, all correspondence relating to care of the resident, service plans with periodic revisions, aftercare plans and discharge summary, and any other data related to the resident.~~

"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, undesireable changes or conditions specific to physical, mental, behavioral, or social functioning.

"Child" means any person legally defined as a child under state law. The term includes residents and other children coming into contact with the resident or facility (e.g., visitors). When the term is used, the requirement applies to every child at the facility regardless of whether the child has been admitted to the facility for care (e.g., staff/child ratios apply to all children present even though some may not be residents).

"Child-placing agency" means any person licensed to place children in foster homes or adoptive homes or a local board of social services authorized to place children in foster homes or adoptive homes.

"Children's residential facility" or "facility" means a publicly or privately operated facility, other than a private family home, where 24-hour per day care is provided to children separated from their legal guardians and is required to be licensed or certified by the Code of Virginia except:

1. Any facility licensed by the Department of Social Services as a child caring institution as of January 1, 1987, and that receives public funds; and

2. Acute-care private psychiatric hospitals serving children that are licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services under the Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation and Substance Abuse, the Individual and Family Developmental Disabilities Support Waiver, and Residential Brain Injury Services, 12 VAC 35-105-10 et seq.

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

"Complaint" means an accusation against a licensed facility regarding an alleged violation of regulations or law.

~~"Confined in postdispositional detention" means that a court has sentenced the juvenile to a detention home for a period exceeding 30 days as found in § 16.1-284.1.B of the Code of Virginia.~~

"Contraband" means any item prohibited by law or by the rules and regulations of the Department, or any item that conflicts with the program or safety and security of the facility or individual residents.

"Corporal punishment" means punishment administered through the intentional inflicting of pain and 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; or (ii) any similar action that normally inflicts pain or discomfort.

"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 resident families, or groups and are aimed at enhancing appropriate psychosocial functioning or personal sense of well-being.

"Corrective action plan" means the provider's pledged corrective action in response to cited areas of noncompliance documented by the ~~regulatory authority~~ department. A corrective action plan must be completed within a specified time.

"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.

"Day" means calendar day unless the context clearly indicates otherwise.

"Department" means the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS).

~~"Detention home" or "secure detention" means a local, regional or state, publicly or privately operated secure custody facility that houses juveniles who are ordered detained pursuant to the Code of Virginia. The term does not include juvenile correctional centers.~~

~~DJJ means the Department of Juvenile Justice~~

~~DMHMRSAS means the Department of Mental Health, Mental Retardation, and Substance Abuse Services.~~

"DOE" means the Department of Education.

~~"DSS" means the Department of Social Services.~~

"Emergency" means a sudden, generally unexpected occurrence or set of circumstances demanding immediate action. Emergency does not include regularly scheduled time off for permanent staff or other situations that should reasonably be anticipated.

"Emergency admission" means the sudden, unplanned, unexpected admittance of a child who needs immediate care or a court-ordered placement.

"Goal" means expected results or conditions that usually involve a long period of time and that are written in behavioral terms in a statement of relatively broad scope. Goals provide guidance in establishing specific short-term objectives directed toward the attainment of the goal.

"Good character and reputation" means findings have been established and knowledgeable and objective people agree that the individual maintains business or professional, family and community relationships that are characterized by honesty,

fairness, truthfulness, and dependability, and has a history or pattern of behavior that demonstrates that the individual is suitable and able to care for, supervise, and protect children. Relatives by blood or marriage, and persons who are not knowlegeable of the individual, such as recent acquaintances, shall not be considered objective references.

"Group home" means a children's residential facility that is a community-based, home-like single dwelling, or its acceptable equivalent, other than the private home of the operator, and serves up to 12.

"Health record" means the file maintained by the provider that contains personal health information.

"Human research" means any 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 include research exempt from federal research regulations pursuant to 45 CFR 46.101(b).

"Immediately" means directly without delay.

"Independent living program" means a competency-based program that is specifically approved by the department ~~regulatory authority~~ to provide the opportunity for the residents to develop the skills necessary to live successfully on their own following completion of the program.

"Individualized services plan" means a written plan of action developed and modified at intervals to meet the need of a specific resident. It specifies measurable short and long-term goals, objectives, strategies, and time frames for reaching the goals and the persons responsible for carrying out the plan.

~~"Interdepartmental standards" means the standards for residential care that are common to the departments and that must be met by a children's residential facility in order to qualify for a license or certificate.~~

~~"Juvenile correctional center" means a secure custody facility operated by, or under contract with, the Department of Juvenile Justice to house and treat persons committed to the department.~~

"Legal guardian" means the natural or adoptive parents or other person, agency, or institution that has legal custody of a child.

"License~~ or certificate~~" means a document verifying approval to operate a children's residential facility and that indicates the status of the facility regarding compliance with applicable state regulations.

"Live-in staff" means staff who are required to be on duty for a period of 24 consecutive hours or more during each work week.

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

"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 adminster medications.

"Medication error" means an error made in administering a medication to a resident including the following: (i) the wrong medication is given to the resident; (ii) the wrong

resident is given the medication; (iii) the wrong dosage is given to a resident; (iv) medication is given to a resident at the wrong time or not at all; and (v) the proper method is not used to give the medication to the resident. A medication error does not include a resident's refusal of offered medication.

"Mental retardation (intellectual disability)" means a disability originating before the age of 18 years characterized concurrently by (i) significantly subaverage intellectual functioning as demonstrated by performance on a standardized measure of intellectual functioning, administered in conformity with accepted professional practice, that is at least two standard deviations below the mean; and (ii) significant limitations in adaptive behavior as expressed in conceptual, social, and practical adaptive skills (Virginia Code §37.2-100). According to the American Association of Intellectual Disabilities (AAID) definition, these impairments should be assessed in the context of the individual's environment, considering cultural and linguistic diversity as well as differences in communication, and sensory motor, and behavioral factors. Within an individual, limitations often coexist with strengths. The purpose of describing limitations is to develop a profile of needed supports. With personalized supports over a sustained period, the functioning of an individual will improve. In some organizations, the term "intellectual disabilities" is used instead of "mental retardation."

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

"Objective" means expected short-term results or conditions that must be met in order to attain a goal. Objectives are stated in measurable, behavioral terms and have a specified time for achievement.

"On-duty" means that period of time during which a staff person is responsible for the supervision of one or more children.

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

"Parent" means a natural or adoptive parent or surrogate parent appointed pursuant to DOE's regulations governing special education programs for students with disabilities. "Parent" means either parent unless the facility has been provided documentation that there is a legally binding instrument, a state law or court order governing such matters as divorce, separation, or custody, that provides to the contrary.

"Pat down" means a thorough external body search of a clothed resident.

"Personal health information" means oral, written, or otherwise recorded information that is created or received by an entity relating to either an individual's physical or mental health or the provision of or payment for health care to an individual.

"Placement" means an activity by any person that provides assistance to a parent or legal guardian in locating and effecting the movement of a child to a foster home, adoptive home, or children's residential facility.

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

"Provider" means any person, entity or organization, excluding an agency of the federal government by whatever name or designation, that delivers (i) residential services to children with mental illness, mental retardation (intellectual disability), or substance abuse~~;~~, ~~(ii) services to persons who receive day support, in-home support, or crisis stabilization services funded through the IFDDS Waiver,~~ or (ii~~v~~) residential services for persons with brain injury. ~~The person, entity or organization shall include a hospital as~~

~~defined in §32.1-123 of the Code of Virginia, community services board, behavioral health authority, 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.~~

"Record" means up-to-date written or automated information relating to one resident. This information includes social data, agreements, all correspondence relating to the care of the resident, service plans with periodic revisions, aftercare plans and discharge summary, and any other data related to the resident. ~~"Regulatory authority or agency" means the department or state board that is responsible under the Code of Virginia for the licensure or certification of a children's residential facility.~~

"Resident" means a person admitted to a children's residential facility for supervision, care, training, or treatment on a 24-hour per day basis.

"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, cognitive, 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, neurobehavioral services, and family therapy necessary to treat the child. ~~Active treatment shall be required~~. The service ~~must~~ provides 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 non mental

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

"Respite care facility" means a facility that is specifically approved to provide short-term, periodic residential care to children accepted into its program in order to give the parents or legal guardians temporary relief from responsibility for their direct care.

"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 the facility.

"Restraint" means the use of a mechanical device, medication, physical intervention, or hands-on hold to prevent an individual from moving his body to engage in a behavior that places him or others at imminent risk. There are three kinds of restraints:

1. Mechanical restraint means the use of a mechanical device that cannot be removed by the individual to restrict the freedom of movement or functioning of a limb or a portion of an individual's body when that behavior places him or others at imminent risk.

2. Pharmacological restraint means the use of a medication that is administered involuntarily for the emergency control of an individual's behavior when that individual's behavior places him or others at imminent risk and the administered medication is not a standard treatment for the individual's medical or psychiatric condition.

3. Physical restraint, also referred to as manual hold, means the use of a physical intervention or hands-on hold to prevent an individual from moving his body when that individual's behavior places him or others at imminent risk.

"Routine admission" means the admittance of a child following evaluation of an application for admission and execution of a written placement agreement.

"Rules of conduct" means a listing of a facility's rules or regulations that is maintained to inform residents and others about behaviors that are not permitted and the consequences applied when the behaviors occur.

"Sanitizing agent" means any substance approved by the Environmental Protection Agency to destroy bacteria.

"Seclusion" means the involuntary placement of an individual alone, in an area secured by a door that is locked or held shut by a staff person by physically blocking the door, or by any other physical or verbal means so that the individual cannot leave it.

"Secure custody facility" means a detention home or a juvenile correctional center with physical barriers that regulate movement.

"Self-admission" means the admittance of a child who seeks admission to a temporary care facility as permitted by Virginia statutory law without completing the requirements for "routine admission."

"Serious incident" means:

1. Any accident or injury requiring medical attention by a physician;

2. Any illness that requires hospitalization;

3. Any overnight absence from the facility without permission;

4. Any runaway; or

5. Any event that affects, or potentially may affect, 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 (i) planned individualized interventions intended to reduce or ameliorate mental illness,

mental retardation (intellectual disability)) or substance abuse through care, treatment, training, habilitation, or other supports that are delivered by a provider to individuals with mental illness, mental retardation, or substance abuse. Services include residential services; including those for persons with brain injury.

"Severe weather" means extreme environment or climate conditions that pose a threat to the health, safety, or welfare of residents.

“Social Skills Training” means activities aimed at developing and maintaining interpersonal skills.

"Strategies" means a series of steps and methods used to meet goals and objectives.

"Strip search" means a visual inspection of the body of a resident when that resident's outer clothing or total clothing is removed and an inspection of the removed clothing. Strip searches are conducted for the detection of contraband.

"Structured program of care" means a comprehensive planned daily routine including appropriate supervision that meets the needs of each resident both individually and as a group.

"Student/intern" means an individual who simultaneously is affiliated with an educational institution and a residential facility. Every student/intern who is not an employee is either a volunteer or contractual service provider depending upon the relationship among the student/intern, educational institution, and facility.

“Substantial compliance” means that while there may be noncompliance with one or more regulations that represents minimal risk, compliance clearly and obviously exists with most of the regulations as a whole.

"Systemic deficiency" means violations documented by the department ~~regulatory authority~~ that demonstrate defects in the overall operation of the facility or one or more of its components.

"Target population" means individuals with a similar, specified characteristic or disability.

~~"Temporary care facility" means a facility or an emergency shelter specifically approved to provide a range of services, as needed, on an individual basis not to exceed 90 days, except that this term does not include secure detention facilities.~~

"Temporary contract worker" means an individual who is not a direct salaried employee of the provider but is employed by a third party and is not a consistently scheduled staff member.

"Therapy" means provision of direct diagnostic, preventive and treatment services where functioning is threatened or affected by social and psychological stress or health impairment.

"Time out" means the involuntary removal of a resident by a staff person from a source of reinforcement to a different open location for a specified period of time or until the problem behavior has subsided to discontinue or reduce the frequency of problematic behavior.

"Treatment" means individually planned, sound, and therapeutic interventions that are intended to improve or maintain functioning of an individual receiving services in those areas that show impairment as the result of mental disability, substance addiction, or physical impairment. In order to be considered sound and therapeutic, the treatment must conform to current acceptable professional practice.

"Variance" means temporary or permanent waiver of compliance with a regulation or portion of a regulation, or permission to meet the intent of the regulation by a method

other than that specified in the regulation, when the department ~~regulatory authority~~, in its sole discretion, determines: (i) enforcement will create an undue hardship and (ii) resident care will not be adversely affected.

"Volunteers" means any individual or group who of their own free will, and without any financial gain, provides goods and services to the program without compensation.

~~"Wilderness program" means a facility specifically approved to provide a primitive camping program with a nonpunitive environment and an experience curriculum for residents nine years of age and older who cannot presently function in home, school, or community. In lieu of or in addition to dormitories, cabins or barracks for housing residents, primitive campsites are used to integrate learning, mentoring, and group process with real living needs and problems for which the resident can develop a sense of social responsibility and self worth.~~

~~22VAC42-11-20. Interdepartmental Cooperation.~~

~~The Departments of Education; Juvenile Justice; Mental Health, Mental Retardation and Substance Abuse Services; and Social Services shall assist and cooperate with each other in the licensing and certification of children's residential facilities.~~

12VAC35-46-20. Service description and applications; required elements. In order to determine whether an applicant is subject to these regulations, the applicant shall submit a service description initially.

A. 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, mental retardation, or brain injury population it intends to serve;

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

3. Provider goals;

4. Services provided; and

5. Contract services, if any.

B. 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.

C. Initial applications.

1. A completed application includes, but is not limited to, an initial application form; proposed working budget for the year showing projected revenue and expenses for the first year of operation and a balance sheet showing assets and liabilities; evidence of financial resources or a line of credit sufficient to cover estimated operating expenses for 90 days unless the facility is operated by a state or local government agency, board, or commission; a service description~~,~~ a proposed staffing/supervision plan including the staff information sheet; copies of all job descriptions; evidence of the applicant's authority to conduct business in Virginia; a copy of the floor plan with dimensions of rooms; a certificate of occupancy; current health inspection; evidence of consultation with state or local fire prevention authorities; a list of board members, if applicable; three references for the applicant; and, if required by the department ~~regulatory authority~~, references for three officers of the board if applicable. This information shall be submitted to and approved by the department ~~lead regulatory~~ agency in order for the application to be considered complete.

2. All initial applications that are not complete within 12 months shall be closed.

3. Facilities operated by state or local government agencies, boards, and commissions shall submit evidence of sufficient funds to operate including a working budget showing appropriated revenue and projected expenses for the coming year.

4. Currently licensed providers shall demonstrate that they are operating in substantial compliance with applicable regulations before new facilities operated by the same provider will be licensed.

D. Renewal applications. A completed application for renewal of a facility's license ~~or certificate~~ shall be submitted within 30 days prior to the expiration of the current license.

12VAC35-46-30. The investigation.

The department shall arrange and conduct an on-site inspection of the facility and a thorough review of the services and an investigation of the character, reputation, status, and responsibility of the applicant.

12VAC35-46-40. Review of facilities.

A. Representatives of the department shall make announced and unannounced reviews during the effective dates of the license. The purpose of these reviews is to monitor compliance with applicable regulations.

B. Representatives of the department shall notify relevant local governments and placing and funding agencies, including the Office of Comprehensive Services, of multiple health and safety or human rights violations in children's residential facilities when such violations result in the lowering of the license to provisional status.

12VAC35-46-50. Posting of information.

A. Information concerning the application for initial licensure of children's residential facilities shall be posted to the department's website by locality.

B. An accurate listing of all licensed facilities including information on renewal, denial, or provisional licensure, and services shall be posted on the department's website by locality.

12VAC35-46-60. General requirements.

A. The provider shall demonstrate substantial compliance with these regulations to demonstrate that its program and physical plant provide reasonably safe and adequate care while approved plans of action to correct findings of noncompliance are being implemented and there are no noncompliances that pose an immediate and direct danger to residents.

B. Corporations sponsoring residential facilities for children shall maintain their corporate status in accordance with Virginia law.

C. The provider shall comply with the terms of its license.

D. A license is not transferable and automatically expires when there is a change of ownership or sponsorship.

E. The current license ~~or certificate~~ shall be posted at all times in a place conspicuous to the public.

F. A license shall not be issued to a facility when noncompliance poses an immediate danger to a resident's life, health, or safety.

G. Intermediate sanctions authorized by statute may be imposed at the discretion of the department.

H. Each provider shall self-report within 10 days, to the department , lawsuits against or settlements with residential facility operators relating to the health and safety or human rights of residents and any criminal charges against staff that may have been made relating to the health and safety or human rights of residents.

I. The provider shall comply with all other applicable federal, state, or local laws and regulations.

J. The provider's current policy and procedure manual shall be readily accessible to all staff.

K. Providers shall not engage in willful action or gross negligence that jeopardizes the care or protection of residents.

L. Providers shall not engage in conduct or practices that are in violation of statutes related to abuse or neglect of children.

M. Providers shall not deviate significantly from the program or services for which a license was issued without obtaining prior written approval from the department.

N. Providers shall not make false statements on the application for licensure or misrepresent facts in the application process.

12VAC35-46-70. Resident's rights.

Each provider shall guarantee resident rights as outlined in §37.2-400 of the Code of Virginia and in the Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded or Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services (12 VAC 35-115).

12VAC35-46-80. Written corrective action plans..

~~A. Facilities regulated by the Department of Juvenile Justice shall comply with the Board of Juvenile Justice's certification regulations governing corrective action plans.~~

A. If there is noncompliance with 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 department and implement a written corrective action plan for each regulation for which the provider is found to be in noncompliance.

C. The corrective action plan shall include a:

1. Description of each corrective action to be taken to correct the noncompliance and to prevent reoccurrence in the future and person responsible for implementation;

2. Date of completion for each action; and

3. Signature of the person responsible for oversight of the implementation of the pledged corrective action.

D. The provider shall submit the corrective action plan to the department ~~regulatory authority~~ 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 plan shall be required if the department determines that the violations pose a threat to the health, safety or welfare of residents.

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

12VAC35-46-90. Licenses.

~~A. The Board of Juvenile Justice shall issue a certificate to each facility regulated by the board indicating the facility's certification status when the facility is in compliance with these interdepartmental standards, other applicable regulations issued by the board, and applicable statutes. The certificate shall be effective for the period specified by the board unless it is revoked or surrendered sooner.~~

A. A conditional license shall be issued to a new provider that demonstrates compliance with administrative and policy requirements but has not demonstrated compliance with all of these regulations. A conditional license shall not exceed six months, but may be renewed, not to exceed 12 successive months for all conditional licenses and renewals combined.

B. A provisional license may be issued to a provider that has demonstrated an inability to maintain compliance with these regulations or other applicable regulations; has violations of licensing regulations that pose a threat to the health or safety of residents being served; or has two or more systemic deficiencies.

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

2. The term of a provisional license may not exceed six months unless allowed by the Code of Virginia.

3. A provisional license may be renewed; but a provisional license and any renewals shall not exceed 12 successive months for all provisional licenses and renewals combined;

C. An annual license:

1. Shall be issued when the provider applies for renewal while holding a conditional or provisional license or certificate and substantially meets or exceeds the requirements of these regulations and other regulations and statutes.

2. May be issued at any time if the provider has received one systemic deficiency.

3. May be renewed, but an annual license ~~or certificate~~ and any renewals thereof shall not exceed a period of 36 successive months for all annual licenses and renewals combined.

D. A triennial license shall be issued when the provider:

1. Applies for renewal while holding an annual or triennial license; and

2. Substantially meets or exceeds the requirements of these regulations and other applicable regulations and statutes.

E. The term of a facility's license may be modified at any time during the licensure period based on a change in the facility's compliance with these regulations and other applicable statutes and regulations.

12 VAC 35-46-100. Application Fees.

A. There shall be a $500 nonrefundable initial application fee. If the application is closed, denied, or withdrawn all subsequent initial applications shall require another $500 fee.

B. There shall be a $100 nonrefundable renewal application fee.

C. A renewal fee shall not be charged to providers directly following the issuance of a conditional license.

D. The application fee shall not apply to state or local government owned, operated, or contracted facilities.

E. Application fees shall be used for the development and delivery of training for providers and staff of children's residential facilities and regulators of these facilities.

12 VAC 35-110. Modification.

A. The conditions of a license may be modified during the term of the license with respect to the capacity, residents' age range, facility location, residents' gender, or changes in the services. Limited modifications may be approved during the conditional licensure period.

B. The provider shall submit a written report of any contemplated changes in operation that would affect the terms of the license or the continuing eligibility for licensure to the department.

C. A change shall not be implemented prior to approval by the department. The provider shall be notified in writing within 60 days following receipt of the request as to whether the modification is approved or a new license is required.

12 VAC 35-46-120. Denial.

A. An application for licensure ~~or certification~~ may be denied when the applicant:

1. Violates any provision of applicable laws or regulations made pursuant to such laws;

2. Has a founded disposition of child abuse or neglect after the appeal process has been completed;

3. Has been convicted of a crime listed in § 37.2-416 or 63.2-1726 of the Code of Virginia;

4. Has made false statements on the application or misrepresentation of facts in the application process;

5. Has not demonstrated good character and reputation as determined through references, background investigations, driving records, and other application materials;

6. Has a history of adverse licensing actions or sanctions;

7. Permits, aids or abets in the commission of an illegal act in services delivered by the provider; or

8. Engages in conduct or practices detrimental to the welfare of any individual receiving services from the provider

B. If denial of a license ~~or certificate~~ is recommended, the facility shall be notified in writing of the deficiencies, the proposed action, the right to appeal, and the appeal process.

12 VAC 35-46-130. Revocation.

A. A license ~~or certificate~~ may be revoked when the provider:

1. Violates any provision of applicable laws or regulations;

2. Engages in conduct or practices that are in violation of statutes related to abuse or neglect of children;

3. Deviates significantly from the program or services for which a license ~~or certificate~~ was issued without obtaining prior written approval from the department ~~regulatory authority~~ or fails to correct such deviations within the specified time; or

4. Engages in a willful action or gross negligence that jeopardizes the care or protection of residents.

B. If revocation of a license ~~or certificate~~ is recommended, the facility shall be notified in writing of the deficiencies, the proposed action, the right to appeal, and the appeal process.

12 VAC 35-46-140. Summary Suspension.

A. In conjunction with any proceeding for revocation, denial, or other action, when conditions or practices exist that pose an immediate and substantial threat to the health,

safety, and welfare of the residents, the Commissioner ~~lead regulatory authority agency head~~ may issue an order of summary suspension of the license ~~or certificate~~ to operate a children's residential facility when he believes the operation of the facility should be suspended during the pendency of such proceeding.

B. Prior to the issuance of an order of summary suspension, the department ~~regulatory authority~~ shall contact the Executive Secretary of the Supreme Court of Virginia to obtain the name of a hearing officer. The department ~~lead regulatory authority~~ shall schedule the time, date, and location of the administrative hearing with the hearing officer.

C. The order of summary suspension shall take effect upon its issuance. It shall be delivered by personal service and certified mail, return receipt requested, to the address of record of the facility as soon as practicable. The order shall set forth:

1. The time, date, and location of the hearing;

2. The procedures for the hearing;

3. The hearing and appeal rights; and

4. Facts and evidence that formed the basis for the order of summary suspension.

D. The hearing shall take place within three business days of the issuance of the order of summary suspension.

E. The department ~~regulatory authority~~ shall have the burden of proving in any summary suspension hearing that it had reasonable grounds to require the facility to cease operations during the pendency of the concurrent revocation, denial, or other proceeding.

F. The administrative hearing officer shall provide written findings and conclusions, together with a recommendation as to whether the license ~~or certificate~~ should be summarily suspended, to the Commissioner ~~lead regulatory agency head~~ within five business days of the hearing.

G. The Commissioner ~~lead regulatory agency head~~ shall issue a final order of summary suspension or make a determination that the summary suspension is not warranted based on the facts presented and the recommendation of the hearing officer within seven business days of receiving the recommendation of the hearing officer.

H. The Commissioner ~~lead regulatory agency head~~ shall issue and serve on the children's residential facility or its designee by personal service or by certified mail, return receipt requested, either:

1. A final order of summary suspension including (i) the basis for accepting or rejecting the hearing officer's recommendations and (ii) notice that the children's residential facility may appeal the Commissioner's ~~lead regulatory agency head~~ decision to the appropriate circuit court no later than 10 days following issuance of the order; or

2. Notification that the summary suspension is not warranted by the facts and circumstances presented and that the order of summary suspension is rescinded.

I. The facility may appeal the Commissioner's ~~lead regulatory agency head~~ decision on the summary suspension to the appropriate circuit court no more than 10 days after issuance of the final order.

J. The outcome of concurrent revocation, denial, and other proceedings shall not be affected by the outcome of any hearing pertaining to the appropriateness of the order of summary suspension.

K. At the time of the issuance of the order of summary suspension, the department ~~lead regulatory authority~~ shall contact the appropriate agencies to inform them of the action and the need to develop relocation plans for residents, and ensure that parents and guardians are informed of the pending action.

12 VAC 35-46-150. Variances.

A. Any request for a variance shallbe submitted in writing to the department and shall include a:

1. Justification why enforcement of the regulation would create an undue hardship;

2. How the facility can comply with the intent of the regulation; and

3. Justification why resident care would not be adversely affected if the variance was granted.

B. A variance shall not be implemented prior to approval of the department ~~regulatory authority.~~

12 VAC 35-46-160. Investigation of Complaints and Allegations.

The department~~s of Education; Juvenile Justice; Mental Health, Mental Retardation and Substance Abuse Services; and Social Services are~~ is responsible for complete and prompt investigation of all complaints and allegations made against providers ~~for which they have regulatory authority~~, and for notification of the appropriate persons or agencies when removal of residents may be necessary. Suspected criminal violations shall be reported to the appropriate law-enforcement authority.

PART II ADMINISTRATION

12 VAC 35-46-170. Governing Body.

A. The provider shall clearly identify the corporation, association, partnership, individual, or public agency that is the licensee.

B. The provider shall clearly identify any governing board, body, entity or person to whom it delegates the legal responsibilities and duties of the provider.

12 VAC 35-46-180. Responsibilities of the Provider.

A. The provider shall appoint a qualified chief administrative officer to whom it delegates, in writing, the authority and responsibility for administrative direction of the facility.

B. The provider shall develop and implement a written decision making plan that shall provide for a staff person with the qualifications of the chief administrative officer or program director to be designated to assume the temporary responsibility for the operation of the facility. Each plan shall include an organizational chart.

C. The provider shall develop a written statement of the objectives of the facility including a description of the target population and the programs to be offered.

D. The provider shall develop and implement written policies and procedures to monitor and evaluate service quality and effectiveness on a systematic and on-going basis. The provider shall implement improvements when indicated.

12 VAC 35-46-190. Fiscal Accountability.

A. Facilities operated by corporations, unincorporated organizations or associations, individuals, or partnerships shall prepare at the end of each fiscal year:

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

2. A working budget showing projected revenue and expenses for the next fiscal year that gives evidence that there are sufficient funds to operate; and

3. A balance sheet showing assets and liabilities for the fiscal year just ended.

B. There shall be a system of financial recordkeeping that shows a separation of the facility's accounts from all other records.

C. The provider shall develop and implement written policies and procedures that address the day-to-day handling of facility funds to include:

1. Handling of deposits;

2. Writing of checks; and

3. Handling of petty cash.

12 VAC 35-46-200. Insurance.

A. The provider shall maintain liability insurance covering the premises and the facility's operations.

B. The provider shall provide documentation that all vehicles used to transport residents are insured, including vehicles owned by staff.

C. The members of the governing body and staff who have been authorized to handle the facility's or residents' funds shall be bonded or otherwise indemnified against employee dishonesty.

12 VAC 35-46-210. Fund-Raising.

The provider shall not use residents in its fundraising activities without written permission of the legal guardian and the permission of residents 14 years or older.

12 VAC 35-46-220. Weapons.

The provider shall develop and implement written policies and procedures governing the possession and use of firearms, pellet guns, air guns, and other weapons on the facility's premises and during facility related activities. The policy shall provide that no firearms, pellet guns, air guns, or other weapons shall be permitted on the premises or at facility-sponsored activities unless the weapons are:

1. In the possession of licensed security personnel or law enforcement officers;

2. Kept securely under lock and key; or

3. Used by a resident with the legal guardian's permission under the supervision of a responsible adult in accord with policies and procedures developed by the facility for the weapons' lawful and safe use.

12 VAC 35-46-230. Relationship to Department ~~Regulatory Authority~~.

A. The provider shall submit or make available to the department ~~regulatory authority~~ such reports and information as the department ~~regulatory authority~~ may require to establish compliance with these ~~interdepartmental~~ regulations and other applicable regulations and statutes.

B. The governing body or its official representative shall notify the department ~~regulatory authority~~ within five working days of any change in administrative structure or newly hired chief administrative officer or program director .

12 VAC 35-46-240. Facilities Serving Person Over the Age of 17 Years.

Facilities that are approved to serve persons over the age of 17 years shall comply with these ~~interdepartmental~~ regulations for all occupants regardless of age, except when it is

determined by the department ~~regulatory authority~~ that housing, programs, services, and supervision for such persons are provided separately from those for the other residents.

12 VAC 35-46-250. Health Information.

A. Health information required by this section shall be maintained for each staff member and for each individual who resides in a building occupied by residents, including each person who is not a staff member or resident of the facility. Health information is to be handled, maintained and stored in a fashion that maintains confidentiality of the information at all times.

B. Tuberculosis evaluation.

1. At the time of hire or residency at the facility, each individual shall submit the results of a screening assessment documenting the absence of tuberculosis in a communicable form as evidenced by the completion of a form containing, at a minimum, the elements of a current screening form published by the Virginia Department of Health. The screening assessment shall be no older than 30 days.

2. Each individual shall annually submit the results of a screening assessment, documenting that the individual is free of tuberculosis in a communicable form as evidenced by the completion of a form containing, at a minimum, the elements of a current screening form published by the Virginia Department of Health.

12 VAC 35-46-260. Physical or Mental Health of Personnel.

A. The provider or the department ~~regulatory authority~~ may require a report of examination by a licensed physician or mental health professional when there are indications that an individual's physical, mental, or emotional health may jeopardize the care of residents.

B. An individual who is determined by a licensed physician or mental health professional to show an indication of a physical or mental condition that may jeopardize the safety of residents or that would prevent the performance of duties shall be removed immediately from contact with residents and food served to residents until the condition is cleared as evidenced by a signed statement from the physician or mental health professional.

12 VAC 35-46-270. Qualifications.

A. Regulations establishing minimum position qualifications shall be applicable to all providers. In lieu of the minimum position qualifications contained in this chapter, providers subject to (i) the rules and regulations of the Virginia Department of Human Resource Management or (ii) the rules and regulations of a local government personnel office may develop written minimum entry-level qualifications in accord with the rules and regulations of the supervising personnel authority.

B. A person who assumes or is designated to assume the responsibilities of a position or any combination of positions described in these regulations, after December 28, 2007 shall:

1. Meet the qualifications of the position or positions;

2. Fully comply with all applicable regulations for each function; and

3. Demonstrate a working knowledge of the policies and procedures that are applicable to his specific position or positions.

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

12 VAC 35-46-280. Job Descriptions.

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

1. Job title;

2. Duties and responsibilities of the incumbent;

3. Job title of the immediate supervisor;

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 at the time of employment or assignment.

12 VAC 35-46-290. Written Personnel Policies and Procedures.

A. The provider shall have and implement provider approved written personnel policies and make its written personnel policies readily accessible to each staff member.

B. The provider shall develop and implement written policies and procedures to assure that persons employed in or designated to assume the responsibilities of each position possess the education, experience, knowledge, skills, and abilities specified in the job description for the position.

12 VAC 35-46-300. Personnel Records.

A. Separate up-to-date written or automated personnel records shall be maintained for each employee, student/intern, volunteer, and contractual service provider for whom background investigations are required by Virginia statute. Content of personnel records of volunteers, students/interns and contractual service providers may be limited to documentation of compliance with requirements of Virginia laws regarding child protective services and criminal history background investigations.

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. Written references or notations of oral references;

4. Reports of required health examinations;

5. Annual performance evaluations;

6. Date of employment for each position held and separation;

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

8. Documentation of educational degrees and of professional certification or licensure;

9. Documentation of all training required by these regulations and any other training received by individual staff; and

10. A current job description.

C. Personnel records, including separate health records, shall be retained in their entirety for at least three years after separation from employment, contractual service, student/intern, or volunteer service.

12 VAC 35-46-310. Staff Development.

A. Required initial training:

1. Within seven days following their begin date, each staff member responsible for supervision of children shall receive basic orientation to the facility's behavior intervention policies, procedures and techniques regarding less restrictive interventions, timeout, and physical restraint.

2. Within 14 days following an individual's begin date, and before an individual is alone supervising children, the provider shall conduct emergency preparedness and response training that shall include:

a. Alerting emergency personnel and sounding alarms;

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

c. Using, maintaining, and operating emergency

equipment;

d. Accessing emergency information for residents including medical information; and

e. utilizing community support services.

3. Within 14 days following their begin date, new employees, employees transferring from other facilities operated by the same provider, relief staff, volunteers and students/interns shall be given orientation and training regarding:

a. The objectives of the facility;

b. Practices of confidentiality;

c. The decision making plan;

d. These Regulations ~~The Regulations for Interdepartmental Regulation of Children's Residential Facilities~~ including the prohibited actions as outlined in this regulation; and

e. Other policies and procedures that are applicable to their positions, duties and responsibilities.

4. Within 30 days following their begin date, all staff working with residents shall be enrolled in a standard first aid class and in a cardiopulmonary resuscitation class facilitated by the American Red Cross or other recognized authority, unless the individual is currently certified in first aid and cardiopulmonary resuscitation.

5. Within 30 days following their begin date, all staff working with residents shall be trained in child abuse and neglect, mandatory reporting, maintaining appropriate professional relationships and interaction among staff and residents, and suicide prevention.6. Within 30 days following their begin date, all staff shall be trained on the facility's policies and procedures regarding standard precautions.

7. Within 30 days following their begin date, all staff shall be trained on appropriate siting of children's residential facilities, good neighbor policies and community relations.

8. Before administering medication, all staff responsible for medication administration 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.

9. All staff shall be trained in any area of quality improvement as identified from the results of the quality improvement plan.

B. Required annual retraining:

1. All employees, contractors, students/interns, and volunteers shall complete an annual refresher emergency preparedness and response training that shall include:

a. Alerting emergency personnel and sounding alarms;

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

c. Using, maintaining, and operating emergency equipment;

d. Accessing emergency information for residents including medical information; and

e. Utilizing community support services.

2. All staff who administer medication shall complete annual refresher medication training.

3. All child care staff shall receive annual retraining on the provider's behavior supports ~~intervention~~ and timeout policies and procedures.

4. All staff working with residents shall receive annual retraining in child abuse and neglect, mandatory reporting, maintaining appropriate professional relationships and interaction among staff and residents, and suicide prevention.

5. All staff shall receive annual retraining on the provider's policies and procedures regarding standard precautions.

C. Each full-time staff person who works with residents shall complete an additional 15 hours of annual training applicable to their job duties.

D. Providers shall develop and implement written policies and procedures to ensure that part-time staff receive training applicable to their positions.

E. Training provided shall be comprehensive and based on the needs of the population served to ensure that staff have the competencies to perform their jobs.

12 VAC 35-46-320. Staff Supervision.

The provider shall develop and implement written policies and procedures regarding the supervision of employees, volunteers, contractors and students/interns. These policies and procedures shall include:

1. Type of supervision;

2. Frequency of supervision; and

3. How the supervision will be documented.

12 VAC 35-46-330. The Applicant.

As a condition of initial licensure and if appropriate, license renewal, each applicant shall:

A. Provide documentation that they have been trained on appropriate siting of children's residential facilities, good neighbor policies and community relations.

B. Be interviewed in person by the department ~~regulatory authority~~ to determine the qualifications of the owner or operator as set out in these regulations. Should the applicant not be qualified to perform the duties of the chief administrative officer, the applicant shall hire an individual with the qualifications, as set out in these regulations, to perform the duties of the chief administrative officer.

C. Provide evidence of having relevant prior experience.

12 VAC 35-46-340. The Chief Administrative Officer.

A. The chief administrative officer shall have the following responsibilities:

1. Responsibility for compliance with the these Regulations ~~for Interdepartmental Regulation of Children's Residential Facilities~~ and other applicable regulations;

2. Responsibility for all personnel;

3. Responsibility for overseeing the facility operation in its entirety, including the approval of the design of the structured program of care and its implementation; and

4. Responsibility for the facility's financial integrity.

B. A chief administrative officer appointed after December 28, 2007 shall have at least:

1. A master's degree in social work, psychology, counseling, nursing or administration and a combination of two years professional experience working with children and in administration and supervision;

2. A baccalaureate degree in social work, psychology, counseling, nursing or administration and three years of combined professional experience with children, and in administration and supervision;

3. A baccalaureate degree and a combination of four years professional experience in a children's residential facility and in administration and supervision; or

~~4. For a program whose lead regulatory agency is the Department of Education, a master's degree in education and a combination of two years of professional experience working with children and in administration and supervision or a baccalaureate degree in education and a combination of three years professional experience with children and in administration and supervision may be accepted.~~

C. Any applicant for the chief administrative officer position shall submit the following to demonstrate compliance with the qualifications required by this regulation for the chief administrative officer:

1. Official transcripts from the accredited college or university of attendance within 30 days of hire; and

2. Documentation of prior relevant experience.

12 VAC 35-46-350. Program Director.

A. The facility's program shall be directed by one or more qualified persons.

B. Persons directing programs shall be responsible for the development and implementation of the programs and services offered by the facility, including overseeing assessments, service planning, staff scheduling, and supervision.

C. Persons directing programs of a facility licensed ~~or certified~~ to care for 13 or more residents shall be full time, qualified staff members.

D. A person appointed after December 28, 2007 to direct programs shall have at least:

1. A master's degree in social work, psychology, counseling, or nursing and a combination of two years professional experience with children in a children's residential facility and in administration or supervision;

2. A baccalaureate degree in social work, psychology, counseling or nursing and a combination of three years professional experience with children in a children's residential facility and in administration or supervision;

3. A baccalaureate degree and a combination of four years of professional experience with children in a children's residential facility and in administration or supervision; or

4. A license or ~~certificate~~ issued by the Commonwealth of Virginia as a drug or alcoholism counselor/worker if the facility's purpose is to treat drug abuse or alcoholism.

~~5. For a program whose lead regulatory agency is the Department of Education, a master's degree in education and a combination of two years of professional experience with children, in a children's residential facility and in administration or supervision or a baccalaureate degree in education with an endorsement in at least one area of disability served by the program and a combination of three years professional experience working with children, in a children's residential facility and in administration or supervision.~~

E. For services providing brain injury services, a person appointed to direct programs shall have a master's degree in psychology, or be a nurse licensed in Virginia, a rehabilitation professional licensed in Virginia, or a Certified Brain Injury Specialist with ~~shall have~~ at least one year of clinical experience working with individuals with brain injury. Program directors who hold a bachelor's degree in the field of institutional management, social work, education, or other allied discipline shall have a minimum of two years of experience working with individuals with brain injury.

E. Any applicant for the program director position shall submit the following to demonstrate compliance with the qualifications required by this regulation for the program director:

1. Official transcripts from the accredited college or university of attendance within 30 days of hire; and

2. Documentation of prior relevant experience.

12 VAC 35-46-360. Case Manager.

A. Case managers shall have the responsibility forcoordination of all services offered to each resident. ~~and~~

B. Case managers shall have:

1. A master's degree in social work, psychology, or counseling;

2. A baccalaureate degree in social work or psychology with documented field work experience and must be supervised by the program director or other staff employed by the provider with the same qualifications as required by can't reference a reg that will be repealed; or

A baccalaureate degree and three years of professional experience working with children.

12 VAC 35-46-370. Child Care Supervisor.

A. Child care supervisors shall have responsibility for the:

1. Development of the daily living program within each child care unit; and

2. Orientation, training and supervision of direct care workers.

B. Child care supervisors shall have:

1. A baccalaureate degree in social work or psychology and two years of professional experience working with children, one year of which must have been in a residential facility for children;

2. A high school diploma or a General Education Development Certificate (G.E.D.) and a minimum of five years professional experience working with children with at least two years in a residential facility for children; or

3. A combination of education and experience working with children as approved by the department ~~regulatory authority~~.

12 VAC 35-46-380. Child Care Staff.

A. The child care worker shall have responsibility for guidance and supervision of the children to whom he is assigned including:

1. Overseeing physical care;

2. Development of acceptable habits and attitudes;

3. Management of resident behavior; and

4. Helping to meet the goals and objectives of any required individualized service plan.

B. A child care worker and a relief child care worker shall:

1. Have a baccalaureate degree in human services;

2. Have an associates degree and three months experience working with children; or

3. Be a high school graduate or have a General Education Development Certificate (G.E.D.) and have six months of experience working with children.

C. Child care staff with a high school diploma or G.E.D. with no experience working with children may not work alone, but may be employed as long as they are working directly with the chief administrative officer, program director, case manager, child care supervisor or a child care worker with one or more years of professional experience working with children. ~~This section does not apply to the juvenile correctional facilities where staff are trained in a comprehensive basic skills curriculum before beginning their child care duties.~~

D. Child care staff in brain injury residential services shall have two years experience working with children with disabilities.

E. An individual hired, promoted, demoted, or transferred to a child care worker's position after the effective date of these regulations shall be at least 21 years old, except as provided in 12 VAC 35-46-270.

F. The provider shall not be dependent on temporary contract workers to provide resident care.

12 VAC 35-46-390. Relief Staff.

Qualified relief staff shall be employed as necessary to meet the needs of the programs and services offered and to maintain a structured program of care in accordance with can't reference a reg that will be repealed.

12VAC35-46-395. Additional requirements for residential facilities for individuals with brain injury.

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

12 VAC 35-46-400. Volunteers and Students/Interns.

A. A facility that uses volunteers or students/interns shall develop and implement written policies and procedures governing their selection and use.

B. The facility shall not be dependent upon volunteers or students/interns to provide basic services.

C. Responsibilities of volunteers and students/interns shall be clearly defined in writing.

D. Volunteers and students/interns shall have qualifications appropriate to the services they render.

12 VAC 35-46-410. Support Functions.

A. Child care workers and other staff responsible for child care may assume the duties of nonchild care personnel only when these duties do not interfere with their child care responsibilities.

B. Residents shall not be solely responsible for support functions, including but not necessarily limited to, food service, maintenance of building and grounds, and housekeeping.

PART III RESIDENTIAL ENVIRONMENT

12 VAC 35-46-420. Buildings, Inspections and Building Plans.

A. All buildings and building related equipment shall be inspected and approved by the local building official. Approval shall be documented by a certificate of occupancy.

B. The facility shall document at the time of its original application evidence of consultation with state or local fire prevention authorities.

C. The facility shall document annually after the initial application that buildings and equipment are maintained in accordance with the Virginia Statewide Fire Prevention Code (13 VAC 5-51).

D. At the time of the original application and at least annually thereafter the buildings shall be inspected and approved by state or local health authorities, whose inspection and approval shall include:

1. General sanitation;

2. The sewage disposal system;

3. The water supply; and

4. Food service operations.

E. The buildings and physical environment shall provide adequate space and shall be of a design that is suitable to house the programs and services provided and meet specialized needs of the residents.

F. Building plans and specifications for new construction, change in use of existing buildings, and any structural modifications or additions to existing buildings shall be submitted to and approved by the department ~~lead regulatory agency~~ and by other appropriate regulatory authorities.

G. Swimming pools shall be inspected annually by the state or local health authorities or by a swimming pool business.

12 VAC 35-46-430. Heating Systems, Ventilation and Cooling Systems.

A. Heat shall be evenly 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. Natural or mechanical ventilation to the outside shall be provided in all rooms used by residents.

C. 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.

12 VAC 35-46-440. Lighting.

A. Artificial lighting shall be by electricity.

B. All areas within buildings shall be lighted for safety and the lighting shall be sufficient for the activities being performed.

C. Lighting in halls shall be adequate and shall be continuous at night.

D. Operable flashlights or battery-powered lanterns shall be available for each staff member on the premises between dusk and dawn to use in emergencies.

E. Outside entrances and parking areas shall be lighted for protection against injuries and intruders.

12 VAC 35-46-450. Plumbing.

A. Plumbing shall be maintained in good operational condition.

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 temperatures shall be maintained between 100°F and 120°F.

12 VAC 35-46-460. Toilet Facilities.

A. There shall be at least one toilet, one hand basin, and one shower or bathtub in each living unit.

B. There shall be at least one bathroom equipped with a bathtub in each facility.

C. There shall be at least one toilet, one hand basin, and one shower or tub for every eight residents for facilities licensed before July 1, 1981.

D. 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, except secure custody facilities. Facilities licensed after December 28, 2007 shall comply with the one-to-four ratio.

E. 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 a separate bathroom is not provided for staff.

12 VAC 35-46-470. Personal Necessities.

A. An adequate supply of personal necessities shall be available to the residents at all times for purposes of personal hygiene and grooming.

B. Clean, individual washcloths and towels shall be in good repair and available once each week and more often if needed.

C. When residents are incontinent or not toilet trained:

1. Provision shall be made for sponging, diapering or other similar care on a nonabsorbent changing surface that shall be cleaned with warm soapy water after each use.

2. A covered diaper pail, or its equivalent, with leak proof disposable liners shall be used to dispose of diapers. If both cloth and disposable diapers are used there shall be a diaper pail for each.

3. Adapter seats and toilet chairs shall be cleaned immediately after each use with appropriate cleaning materials.

4. Staff shall thoroughly wash their hands with warm soapy water immediately after assisting a child or themselves with toileting.

5. Appropriate privacy, confidentiality and dignity shall be maintained for residents during toileting and diapering.

12 VAC 35-46-480. Sleeping Areas.

A. When residents are four years of age or older, boys and girls shall have separate sleeping areas.

B. No more than four children shall share a bedroom or sleeping area. ~~except as provided by other applicable state regulations governing juvenile correctional centers.~~

C. Children who use wheelchairs, crutches, canes, or other mechanical devices for assistance in walking shall be provided with a planned, personalized means of effective egress for use in emergencies.

D. Beds shall be at least three feet apart at the head, foot, and sides and double-decker beds shall be at least five feet apart at the head, foot, and sides.

E. Sleeping quarters in facilities ~~licensed by DSS prior to July 1, 1981, and facilities~~ established, constructed or structurally modified after July 1, 1981, ~~except for primitive campsites,~~ 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 of at least 7-1/2 feet exclusive of protrusions, duct work, or dormers.

F. Each child shall have a separate, clean, comfortable bed equipped with a clean mattress, clean pillow, clean blankets, clean bed linens, and, if needed, a clean waterproof mattress cover.

G. Bed linens shall be changed at least every seven days and more often if needed.

H. 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.

I. Cribs shall be provided for residents under two years of age.

J. Each resident shall be assigned drawer space and closet space, or their equivalent, which is accessible to the sleeping area for storage of clothing and personal belongings except in secure custody facilities.

K. The environment of sleeping areas shall be conducive to sleep and rest.

12 VAC 35-46-490. Smoking Prohibition.

Smoking shall be prohibited in living areas and in areas where residents participate in programs.

12 VAC 35-46-500. Residents' Privacy.

A. When bathrooms are not designated for individual use, ~~except in secure custody facilities:~~

1. Each toilet shall be enclosed for privacy, and

2. Bathtubs and showers shall provide visual privacy for bathing by use of enclosures, curtains or other appropriate means.

B. Windows in bathrooms, sleeping areas, and dressing areas shall provide for privacy.

C. Every sleeping area shall have a door that may be closed for privacy or quiet and this door shall be readily opened in case of fire or other emergency. ~~In secure custody facilities, the door may be equipped with an observation window.~~

D. Residents shall be provided privacy from routine sight supervision by staff members of the opposite gender while bathing, dressing, or conducting toileting activities. This section does not apply to medical personnel performing medical procedures, to staff providing assistance to infants, 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.

~~E. Video and audio monitoring shall be permitted only with the approval of the lead regulatory agency and for facilities licensed by DMHMRSAS, the approval of the Office of Human Rights.~~

12 VAC 35-46-510. Audio and visual recordings.

Each provider shall have written policies and procedures regarding the photographing and audio or audio-video recordings of residents approved by the Office of Human Rights 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 35-46-520. Living Rooms and Indoor Recreation Space.

A. Each living unit, ~~except for secure custody~~, shall have a living room, or other area for informal use, relaxation and entertainment. The furnishings shall provide a comfortable, home like environment that is appropriate to the ages of the residents.

B. All facilities shall have indoor recreation space that contains indoor recreation materials appropriate to the ages and interests of the residents.

C. Facilities licensed ~~or certified~~ to care for 13 or more residents shall have indoor recreation space distinct from the living room. Recreation space is not required in every living unit.

12 VAC 35-46-530. Study Space.

A. Facilities serving a school-age population shall provide study space. Study space may be assigned in areas used interchangeably for other purposes.

B. Study space shall be well lighted, quiet, and equipped with tables or desks and chairs.

12 VAC 35-46-540. Kitchen and Dining Areas.

A. Meals shall be served in areas equipped with sturdy tables and benches or chairs that are size and age appropriate for the residents.

B. Adequate kitchen facilities and equipment shall be provided for preparation and serving of meals.

C. Walk-in refrigerators, freezers, and other enclosures shall be equipped to permit emergency exits.

12 VAC 35-46-550. Laundry Areas.

Appropriate space and equipment in good repair shall be provided if laundry is done at the facility.

12 VAC 35-46-560. Storage.

Space shall be provided for safe storage of items such as first-aid equipment, household supplies, recreational equipment, luggage, out-of-season clothing, and other materials.

12 VAC 35-46-570. Staff Quarters.

A. A separate, private bedroom shall be provided for staff and their families when a staff member is on duty for 24 consecutive hours or more.

B. A separate private bathroom shall be provided for staff and their families when there are more than four persons in the living unit and the staff person is on duty for 24 consecutive hours or more.

C. Staff and members of their families shall not share bedrooms with residents.

12 VAC 35-46-580. Office Space.

Space shall be provided for administrative activities including, as appropriate to the program, confidential conversations and provision for storage of records and materials.

12 VAC 35-46-590. Buildings and Grounds.

A. The facility's grounds shall be safe, properly maintained, and free of clutter and rubbish. The grounds include, but are not limited to, all areas where residents, staff, and visitors may reasonably be expected to have access, including roads, pavements, parking lots, open areas, stairways, railings, and potentially hazardous or dangerous areas.

B. The interior and exterior of all buildings shall be safe, properly maintained, clean and in good working order. This includes, but is not limited to, required locks, mechanical devices, indoor and outdoor equipment, and furnishings.

C. Outdoor recreation space shall be available and appropriately equipped for the residents' use.

12 VAC 35-46-600. Equipment and Furnishings.

A. All furnishings and equipment shall be safe, clean, and suitable to the ages and number of residents.

B. There shall be at least one continuously operable, nonpay telephone accessible to staff in each building in which children sleep or participate in programs.

12 VAC 35-46-610. Housekeeping and Maintenance.

A. All buildings shall be well ventilated and free of stale, musty, or foul odors.

B. Adequate provision shall be made for the collection and legal disposal of garbage and waste materials.

C. Buildings shall be kept free of flies, roaches, rats, and other vermin.

D. A sanitizing agent shall be used in the laundering of bed, bath, table, and kitchen linens.

12 VAC 35-46-620. Farm and Domestic Animals.

A. Horses and other animals maintained on the premises shall be quartered at a reasonable distance from sleeping, living, eating and food preparation areas, as well as a safe distance from water supplies.

B. Animals maintained on the premises shall be tested, inoculated and licensed as required by law.

C. The premises shall be kept free of stray domestic animals.

D. Pets shall be provided with clean quarters and adequate food and water.

PART IV PROGRAMS AND SERVICES

12 VAC 35-46-625 Minimum service requirements

A. 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, substance abuse, or brain injury. The provision, intensity, and frequency of mental health, mental retardation, substance abuse, or brain injury 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; and

10. Neurobehavioral services for individuals with brain injury.

B. Each provider shall have formal arrangements for the evaluation, assessment, and treatment of the mental health or brain injury needs of the resident.

C. 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.

12 VAC 35-46-630. Acceptance of Children.

Children shall be accepted only by court order or by written placement agreement with legal guardians. ~~This requirement does not apply to temporary care facilities when self-admission is made according to Virginia law.~~

12 VAC 35-46-640. Admission Procedures.

A. The facility shall have written criteria for admission that shall include:

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 define those behaviors or problems that the facility does not have the staff with experience or training to manage; and

5. Description of how educational services will be provided to the population being served.

B. The facility shall accept and serve only those children whose needs are compatible with the services provided through the facility unless a child's admission is ordered by a court of competent jurisdiction.

C. Acceptance of a child as eligible for respite care by a facility approved to provide residential respite care is considered admission to the facility. Each individual period of respite care is not considered a separate admission.

D. Each facility shall provide documentation showing proof of contractual agreements or staff expertise to provide educational services, counseling services,

psychological services, medical services, or any other services needed to serve the residents in accordance with the facility's program description as defined by the facility's criteria of admission.

12 VAC 35-46-650. Least restrictive programming.

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

12 VAC 35-46-660. Maintenance of Residents' Records.

A. A separate written or automated case record shall be maintained for each resident. In addition, all correspondence and documents received by the facility relating to the care of that resident shall be maintained as part of the case record. A separate health record may be kept on each resident.

B. Each ~~case~~ record ~~and health record~~ shall be kept up to date and in a uniform manner.

C. The provider shall develop and implement written policies and procedures for management of all records, written and automated, that shall describe confidentiality, accessibility, security, and retention of records pertaining to residents, including:

1. Access, duplication, dissemination, and acquiring of information only to persons legally authorized according to federal and state laws;

2. Facilities using automated records shall address procedures that include:

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 from loss, unauthorized alteration, inadvertent or unauthorized access, disclosure of information and transportation of records between service sites;

4. Designation of person responsible for records management; and

5. Disposition of records in the event the facility ceases to operate.

D. The policy shall specify what information is available to the resident.

E. Active and closed records shall be kept in areas that are accessible to authorized staff and protected from unauthorized access, fire, and flood.

1. When not in use written records shall be stored in a metal file cabinet or other metal compartment.

2. Facility staff shall assure the confidentiality of the residents' records by placing them in a locked cabinet or drawer or in a locked room when the staff member is not present.

F. Each resident's written ~~case and health~~ record shall be stored separately subsequent to the resident's discharge according to applicable statutes and regulations.

G. Written and automated records shall be retained in their entirety for a minimum of three years after the date of discharge unless otherwise specified by state or federal requirements.

H. The face sheet shall be retained permanently unless otherwise specified by state or federal requirements.

I. 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 35-46-670. 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.

12 VAC 35-46-680. Interstate Compact on the Placement of Children.

A. Documentation of the prior approval of the administrator of the Virginia Interstate Compact on the Placement of Children, Virginia Department of Social Services, shall be retained in the record of each resident admitted from outside Virginia. The requirements of this section shall not apply to a facility providing documentation that the administrator of the Virginia Interstate Compact has determined the facility is statutorily exempt from the compact's provisions.

B. Documentation that the provider has sent copies of all serious incident reports regarding any child placed through the Interstate Compact to the administrator of the Virginia Interstate Compact on the Placement of Children shall be kept in the resident's record.

C. No later than five days after a resident has been transferred to another facility operated by the same sponsor, the resident's record shall contain documentation that the administrator of the Virginia Interstate Compact on the Placement of Children was notified in writing of the resident's transfer.

D. No later than 10 days after discharge the resident's record shall contain documentation that the administrator of the Virginia Interstate Compact on the Placement of Children was notified in writing of the discharge.

E. The provider shall not discharge or send out-of-state youth in the custody of out-of-state social services agencies and courts to reside with a parent, relative, or other individual who lives in Virginia without the approval of the administrator of the Virginia Interstate Compact on the Placement of Children.

12 VAC 35-46-690. Participation of Residents in Human Research.

The provider shall:

A. Implement a written policy stating that residents will not be used as subjects of human research; or

B. Document approval, as required by the department ~~regulatory authorities~~, for each research project using residents as subjects of human research, unless such research is exempt from review.

12 VAC 35-46-700. Emergency and Self-Admissions.

Providers accepting emergency admissions shall:

1. Develop and implement written policies and procedures governing such admissions that shall include procedures to make and document prompt efforts to obtain (i) a written placement agreement signed by the legal guardian or (ii) the order of a court of competent jurisdiction;

2. Place in each resident's record the order of a court of competent jurisdiction, a written request for care, or documentation of an oral request for care; and justification of why the resident is to be admitted on an emergency basis; and

3 Clearly document in written assessment information gathered for the emergency admission that the individual meets the facility's criteria for admission.

12 VAC 35-46-710. Application for Admission.

A. Admission shall be based on evaluation of an application for admission. The requirements of this section do not apply to court-ordered placements or transfer of a resident between residential facilities located in Virginia and operated by the same sponsor.

B. Providers shall develop, and fully complete prior to acceptance for care, an ~~evaluation~~ application for admission that is designed to compile 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;

7. Family history and relationships;

8. Social and development history;

9. Current behavioral functioning and social competence;

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

11. 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 Ineffective medications; and

12. Information necessary to develop an individualized service plan and a behavior support plan.

C. The resident's record shall contain a completed assessment ~~application for~~ at the time of a routine admission or within 30 days after an emergency admission.

D. Each facility shall develop and implement written policies and 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.

12 VAC 35-46-720. Written Placement Agreement.

A. The facility, except a facility that accepts admission only upon receipt of the order of a court of competent jurisdiction, shall develop a written placement agreement that:

1. Authorizes the resident's placement;

2. Addresses acquisition of and consent for any medical treatment needed by the resident;

3. Addresses the rights and responsibilities of each party involved;

4. Addresses financial responsibility for the placement;

5. Addresses visitation with the resident; and

6. Addresses the education plan for the resident and the responsibilities of all parties.

B. Each resident's record shall contain, prior to a routine admission, a completed placement agreement signed by a facility representative and the parent, legal guardian or placing agency.

C. The record of each person admitted based on a court order shall contain a copy of the court order.

12 VAC 35-46-730. Face Sheet.

A. At the time of admission, each resident's record shall include a completed face sheet that contains (i) the resident's full name, last known residence, birth date, birthplace, gender, race, social security number or other unique identifier, religious preference, and admission date; and (ii) names, addresses, and telephone numbers of the resident's legal guardians, placing agency, emergency contacts and parents, if appropriate.

B. Information shall be updated when changes occur.

C. The face sheet for pregnant teens shall also include the expected date of delivery and the name of the hospital to provide delivery services to the resident.

D. The face sheet of residents who are transferred to facilities operated by the same sponsor shall indicate the address and dates of placement and transfer at each location.

E. At the time of discharge the following information shall be added to the face sheet:

1. Date of discharge;

2. Reason for discharge;

3. Names and addresses of persons to whom the resident was discharged; and

4. Forwarding address of the resident, if known.

12 VAC 35-46-740. Initial Objectives and Strategies.

Within three days following admission, individualized, measurable objectives and strategies for the first 30 days shall be developed, distributed to affected staff and the resident, and placed in the resident's record. The objectives and strategies shall be based on the reasons for admitting the resident. ~~The requirements of this section do not apply to secure detention facilities.~~

12 VAC 35-46-750. Individualized Service Plan/Quarterly Reports.

A. An individualized service plan shall be developed and placed in the resident's record within 30 days following admission and implemented immediately thereafter.

B. Individualized 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;

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. The initial individualized service plan shall be reviewed within 60 days of the initial plan and within each 90-day period thereafter and revised as necessary.

D. The provider shall develop and implement written policies and procedures to document progress of the resident towards meeting goals and objectives of the individualized service plan that shall include the:

1. Format;

2. Frequency; and

3. Person responsible.

E. There shall be a documented quarterly review of each resident's progress 60 days following the initial individualized service plan and within each 90-day period thereafter that shall report the:

1. Resident's progress toward meeting the plan's objectives;

2. Family's involvement;

3. Continuing needs of the resident;

4. Resident's progress towards discharge; and

5. Status of discharge planning.

F. Each plan and quarterly progress report shall include the date it was developed and the signature of the person who developed it.

G. Staff responsible for daily implementation of the resident's individualized service plan shall be able to describe the resident's behavior in terms of the objectives in the plan.

H. There shall be documentation showing the involvement of the following parties unless clearly inappropriate, in developing and updating the individualized service plan and in developing the quarterly progress report:

1. The resident;

2. The resident's family, if appropriate, and legal guardian;

3. The placing agency; and

4. Facility staff.

I. The initial individualized service plan, each update, and all quarterly progress reports shall be distributed to the resident; the resident's family if appropriate, legal guardian or authorized representative; the placing agency; and appropriate facility staff.

~~J. The requirements of this section do not apply to secure detention facilities except when a juvenile is confined in post-dispositional detention.~~

12 VAC 35-46-760. Resident Transfer Between Residential Facilities Located in Virginia and Operated by the Same Sponsor.

A. Except when transfer is ordered by a court of competent jurisdiction, the receiving provider shall document at the time of transfer:

1. Preparation through sharing information with the resident, the family if appropriate, the legal guardian and the placing agency about the facility, the staff, the population served, activities and criteria for admission;

2. Notification to the family, if appropriate; the resident, the placement agency and the legal guardian;

3. Receipt from the sending facility of a written summary of the resident's progress while at the facility, justification for the transfer, and the resident's current strengths and needs; and

4. Receipt of the resident's record.

B. The sending facility shall retain a copy of the face sheet and a written summary of the child's progress while at the facility and shall document the date of transfer and the name of the facility to which the resident has been transferred.

12 VAC 35-46-770. Discharge.

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, legal guardians, and placing agencies.

C. The record of each resident discharged upon receipt of the order of a court of competent jurisdiction shall contain a copy of the court order.

D. Residents shall be discharged only to the legal guardian or legally authorized representative.

E. A facility approved to provide residential respite care shall discharge a resident when the legal guardian no longer intends to use the facility's services.

F. 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 legal guardian or legally authorized representative, as appropriate.

G. Unless discharge is ordered by a court of competent jurisdiction, prior to the planned discharge date, each resident's record shall contain:

1. Documentation that discharge has been planned and discussed with the parent if appropriate, legal guardian, child-placing agency, and resident; and a written discharge plan.

H. Discharge summaries.

1. No later than 30 days after discharge, a comprehensive discharge summary shall be placed in the resident's record and sent to the persons or agency that made the placement. The discharge summary shall review:

a. Services provided to the resident;

b. The resident's progress toward meeting the individualized service plan objectives;

c. The resident's continuing needs and recommendations, if any, for further services and care;

d. Reasons for discharge and names of persons to whom resident was discharged;

e. Dates of admission and discharge; and

f. Date the discharge summary was prepared and the signature of the person preparing it.

2. In lieu of a comprehensive discharge summary, the record of each resident discharged upon receipt of the order of a court of competent jurisdiction shall contain a copy of the court order.

12 VAC 35-46-770. Placement of Residents Outside the Facility.

A resident shall not be placed outside the facility prior to the facility's obtaining a child-placing agency license from the Department of Social Services, except as permitted by statute or by order of a court of competent jurisdiction.

12 VAC 35-46-780. Case Management Services.

A. The program of the facility shall be designed to provide case management services. At the time of the admission of any resident, the provider shall identify in writing, the staff member responsible for providing ~~the social~~ case management services. ~~In secure detention this requirement applies only to residents confined in post dispositional detention~~ Case management services shall address:

1. Helping the resident and the parents or legal guardian to understand the effects on the resident of separation from the family and the effect of group living;

2. Assisting the resident and the family to maintain their relationships and prepare for the resident's future care;

3. Utilizing appropriate community resources to provide services and maintain contacts with such resources;

4. Helping the resident strengthen his capacity to function productively in interpersonal relationships;

5. Conferring with the child care staff to help them understand the resident's needs in order to promote adjustment to group living; and

6. Working with the resident and with the family or any placing agency that may be involved in planning for the resident's future and in preparing the resident for the return home or to another family, for independent living, or for other residential care.

B. The provision of case management services shall be documented in each resident's record.

12 VAC 35-46-790. Therapy.

Therapy, ~~if provided,~~ shall be provided by an individual (i) licensed to provide therapy or counseling ~~as a therapist~~ by the Department of Health Professions or (ii) who is licensure eligible and working under the supervision of a licensed therapist, unless exempted from these requirements under the Code of Virginia.

12 VAC 35-46-800. Structured Program of Care.

A. There shall be evidence of a structured program of care designed to:

1. Meet the residents' physical and emotional needs;

2. Provide protection, guidance, and supervision; and

3. Meet the objectives of any required individualized service plan.

B. There shall be evidence of a structured daily routine designed to ensure the delivery of program services.

C. A daily communication log shall be maintained to inform staff of significant happenings or problems experienced by residents.

D. Health and dental complaints and injuries shall be recorded and shall include the (i) resident's name, complaint, and affected area and (ii) time of the complaint.

E. The identity of the individual making each entry in the daily communication log shall be recorded.

F. Routines shall be planned to ensure that each resident receives the amount of sleep and rest appropriate for his age and physical condition.

G. Staff shall promote good personal hygiene of residents by monitoring and supervising hygiene practices each day and by providing instruction when needed.

H. The structured daily routine shall comply with any facility and locally imposed curfews.

12 VAC 35-46-810. Health Care Procedures.

A. The provider shall have and implement written procedures for promptly:

1. Providing or arranging for the provision of medical and dental services for health problems identified at admission;

2. Providing or arranging for the provision of routine ongoing and follow-up medical and dental services after admission;

3. Providing emergency services for each resident ;

4. Providing emergency services 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 parent, legal guardian 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; and

d. Significant past and present medical problems.

5. Written permission for emergency medical care, dental care, and obtaining immunizations or a procedure and contacts for obtaining consent; ~~and Subdivisions 3 and 5 of this subsection do not apply to secure detention facilities except when a resident is confined in postdispositional detention.~~

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.

12 VAC 35-46-820. 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 35-46-830. 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.

12 VAC 35-46-840. Medical Examinations and Treatment.

A. Each child accepted for care shall have a physical examination 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 child transfers from one residential 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.

B. Within seven days of placement, ~~except for secure detention~~, each resident shall have had a screening assessment for tuberculosis as evidenced by the completion of a screening form containing, at a minimum, the elements found on the current screening form published by the Virginia Department of Health. The screening assessment can be no older than 30 days. ~~Secure detention shall have completed the screening assessment on each resident within five days of placement.~~

C. A screening assessment for tuberculosis shall be completed annually on each resident as evidenced by the completion of a form containing, at a minimum, the elements of the screening form published by the Virginia Department of Health.

D. Each resident's health 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.

E. 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.

F. A child with a communicable disease shall not be admitted unless a licensed physician certifies that:

1. The facility is capable of providing care to the child without jeopardizing residents and staff; and the facility is aware of the required treatment for the child and the procedures to protect residents and staff.

~~The requirements of this subsection shall not apply to temporary shelters and secure detention facilities.~~

G. Each resident's health record shall include written documentation of (i) an annual examination by a licensed dentist and (ii) follow-up dental care recommended by the dentist or as indicated by the needs of the resident. This requirement does not apply to ~~secure detention facilities,~~ respite care facilities.

H. Each resident's health record shall include notations of health and dental complaints and injuries and shall summarize symptoms and treatment given.

I. Each resident's health 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~~. ~~This subsection does not apply to secure detention facilities except when a juvenile is confined in detention with a suspended commitment to the Department of Juvenile Justice.~~

J. The provider shall develop and implement written policies and procedures that include use of standard precautions and addresses communicable and contagious medical conditions. These policies and procedures shall be approved by a medical professional.

K. A well-stocked first-aid kit shall be maintained and readily accessible for minor injuries and medical emergencies.

12 VAC 35-46-850. Medication.

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.

B. All medication shall be securely locked and properly labeled.

C. All staff responsible for medication administration 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 administer medication.

D. Staff authorized to administer medication shall be informed of any known side effects of the medication and the symptoms of the side effects.

E. A program of medication, including over-the-counter medication, shall be initiated for a resident only when prescribed in writing by a person authorized by law to prescribe medication.

F. Medication prescribed by a person authorized by law shall be administered as prescribed.

G. A medication administration record shall be maintained of all medicines received by each resident and shall include:

1. Date the medication was prescribed;

2. Drug name;

3. Schedule for administration;

4. Strength;

5. Route;

6. Identity of the individual who administered the medication; and

7. Dates the medication was discontinued or changed.

H. In the event of a medication error 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.

I. Medication refusals shall be documented including action taken by staff.

J. The provider shall develop and implement written policies and procedures for documenting medication errors, reviewing medication errors and reactions and making any necessary improvements, the disposal of medication, the storage of controlled substances, and the distribution of medication off campus. The policy and procedures must be approved by a health care professional. The provider shall keep documentation of this approval.

K. 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 children sleep or participate in programs.

L. Syringes and other medical implements used for injecting or cutting skin shall be locked.

12 VAC 35-46-860. Nutrition.

A. Each resident 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 minimum nutritional requirements and the U.S. Dietary Guidelines.

B. Menus of actual meals served shall be kept on file for at least six months.

C. Special diets shall be provided when prescribed by a physician and the established religious dietary practices of the resident shall be observed.

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.

F. Providers shall assure that food is available to residents who need to eat breakfast before the 15 hours have expired.

G. Providers shall receive approval from the~~ir~~ department ~~regulatory authority~~ if they wish to extend the time between meals on weekends and holidays. There shall never be

more than 17 hours between the evening meal and breakfast the following day on weekends and holidays.

12 VAC 35-46-870. Staff Supervision of Residents.

A. No member of the child care staff shall be on duty more than six consecutive days without a rest day, except in an emergency or as approved by the department ~~lead regulatory agency~~ for live-in staff.

B. Child care staff shall have an average of at least two rest days per week in any four-week period. Rest days shall be in addition to vacation time and holidays.

C. Child care staff other than live-in staff shall not be on duty more than 16 consecutive hours, except in an emergency.

D. There shall be at least one trained child care worker, on duty and actively supervising residents at all times that one or more residents are present.

E. Whenever children are being supervised by staff there shall be at least one staff person present with a current basic certificate in standard first aid and a current certificate in cardiopulmonary resuscitation issued by the American Red Cross or other recognized authority.

F. Supervision policies.

1. The provider shall develop and implement written policies and procedures that address staff supervision of children including contingency plans for resident illnesses, emergencies, off-campus activities, and resident preferences. These policies and procedures shall be based on the:

a. Needs of the population served;

b. Types of services offered;

c. Qualifications of staff on duty; and

d. Number of residents served.

2. At all times the ratio of staff to residents shall be at least one staff to eight residents for facilities during the hours residents are awake, except when the department ~~lead regulatory agency~~ has approved or required a supervision plan with a different ratio based on the needs of the population served.

3. Providers requesting a ratio that allows a higher number of residents to be supervised by one staff person than was approved or required shall submit a justification to the department ~~lead regulatory agency~~ that shall include:

a. Why resident care will not be adversely affected; and

b. How residents' needs will be met on an individual as well as group basis.

4. Written policies and procedures governing supervision of residents and any justifications for a ratio deviation that allows a higher number of residents to be supervised by one staff than was approved or required, shall be reviewed and approved by the department ~~regulatory authority~~ prior to implementation.

5. The supervision policies or a summary of the policies shall be provided, upon request, to the placing agency or legal guardian prior to placement.

~~6. The Board of Juvenile Justice shall determine the supervision ratios for facilities regulated by the Department of Juvenile Justice.~~

12 VAC 35-46-880. Emergency Telephone Numbers.

A. There shall be an emergency telephone number where a staff person may be immediately contacted 24 hours a day.

B. Residents who are away from the facility and the adults responsible for their care during the absence shall be furnished with the emergency phone number.

12 VAC 35-46-890. Searches.

A. Strip searches and body cavity searches are prohibited except:

1. As permitted by other applicable state regulations; or

2. As ordered by a court of competent jurisdiction.

B. A provider that does not conduct pat downs shall have a written policy prohibiting them.

C. A provider that conducts pat downs shall develop and implement written policies and procedures governing them that shall provide that:

1. Pat downs shall be limited to instances where they are necessary to prohibit contraband;

2. Pat downs shall be conducted by personnel of the same gender as the resident being searched;

3. Pat downs shall be conducted only by personnel who are specifically authorized to conduct searches by the written policies and procedures; and

4. Pat downs shall be conducted in such a way as to protect the resident's dignity and in the presence of one or more witnesses.

12 VAC 35-46-900. Behavior Support.

A. Within 30 days of admission, the provider shall develop and implement a written behavior support plan that allows the resident to self-manage his own behaviors. Each individualized behavior support plan 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.

B. Individualized behavior support plans shall be developed in consultation with the:

1. Resident;

2. Legal guardian;

3. Resident's parents, if appropriate ;

4. Program director;

5. Placing agency staff; and

6. Other appropriate individuals.

C. Prior to working alone with an assigned resident, each staff member shall demonstrate knowledge and understanding of that resident's behavior support plan.

D. Each provider shall develop and implement written policies and procedures concerning behavior support plans and other behavioral interventions ~~management~~ that are directed toward maximizing the growth and development of the resident. In addition to addressing the previous requirements of this regulation, these policies and procedures shall:

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

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

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

4. Specify the mechanism for monitoring ~~and controlling~~ the use of behavior support ~~management~~ techniques; and

5. Specify the methods for documenting the use of behavior support ~~management~~ techniques.

~~This section shall not apply to secure detention and the Reception and Diagnostic Center.~~

12 VAC 35-46-910. Timeout.

A. The provider shall develop and implement written policies and procedures governing the conditions under which a resident may be placed in timeout and the maximum period of timeout. The conditions and maximum period of timeout shall be based on the resident's chronological and developmental level.

B. 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. ~~except that this subsection does not apply to secure custody facilities.~~

C. A resident in timeout shall be able to communicate with staff.

D. Staff shall check on 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.

E. Use of timeout and staff checks on the residents shall be documented.

12 VAC 35-46-920. Prohibitions.

The following actions are prohibited:

1. 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;

2. Limitation on contacts and visits with the resident's attorney, a probation officer, regulators, or placing agency representative;

3. 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;

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

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

6. Corporal punishment;

7. Subjection to unsanitary living conditions;

8. Deprivation of opportunities for bathing or access to toilet facilities, except as ordered by a licensed physician for a legitimate medical purpose and documented in the resident's record;

9. Deprivation of health care;

10. Deprivation of appropriate services and treatment;

11. Application of aversive stimuli, except as permitted pursuant to other applicable state regulations;

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; and

14. Limitation on contacts and visits with advocates employed by the Department of Mental Health, Mental Retardation and Substance Abuse Services or the Virginia Office for Protection and Advocacy.

12 VAC 35-46-930. Pharmacological or Mechanical Restraints.

A. Use of mechanical restraints is prohibited except as permitted by other applicable state regulations or as ordered by a court of competent jurisdiction.

B. Use of pharmacological restraints is prohibited.

12 VAC 35-46-940. Behavior Interventions.

A. The provider shall develop and implement written policies and procedures for behavioral interventions and for documenting and monitoring the management of resident behavior. Rules of conduct shall be included in the written policies and procedures. These policies and procedures shall:

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

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

3. Specify the processes for implementing such policies and

procedures.

B. Written information concerning the policies and procedures of the provider's behavioral support and intervention programs shall be provided prior to admission to prospective residents, legal guardians, and placing agencies. For court-ordered and emergency admissions, this information shall be provided to:

1. Residents within 12 hours following admission;

2. Placing agencies within 72 hours following the resident's admission; and

3. Legal guardians within 72 hours following the resident's admission. This requirement does not apply when a state psychiatric hospital is evaluating a child's treatment needs as provided by the Code of Virginia.

~~a. To secure detention facilities except when a juvenile is confined in postdispositional;~~

~~b. When a facility is providing temporary care of 30 days or less while conducting a diagnostic evaluation to identify the most appropriate long-term placement for a child who has been committed to the Department of Juvenile Justice; and~~

C. When substantive revisions are made to policies and procedures governing management of resident behavior, written information concerning the revisions shall be provided to:

1. Residents prior to implementation; and

2. Legal guardians and placing agencies prior to implementation except when a state psychiatric hospital is evaluating a child's treatment needs as provided by the Code of Virginia.

~~a. To secure detention facilities;~~

~~b. When a facility is providing temporary care of 30 days or less while conducting a diagnostic evaluation to identify the most appropriate long-term placement for a child who has been committed to the Department of Juvenile Justice; and Check~~

D. The provider shall develop and implement written policies and procedures governing use of physical restraint that shall include:

1. The staff position who will write the report and timeframe;

2. The staff position who will review the report and timeframe; 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.

E. All physical restraints shall be reviewed and evaluated to plan for continued staff development for performance improvement.

F. Use of physical restraint shall be limited to that which is minimally necessary to protect the resident or others.

G. Trained staff members may physically restrain a resident only after less restrictive interventions

H. Only trained staff members may manage resident behavior.

I. Each application of physical restraint shall be fully documented in the resident's record including:

1. Date;

2. Time;

3. Staff involved;

4. Justification for the restraint;

5. Less restrictive interventions that were unsuccessfully attempted prior to using physical restraint;

6. Duration;

7. Description of method or methods of physical restraint techniques used;

8. Signature of the person completing the report and date; and

9. Reviewer's signature and date.

J. Providers shall ensure that restraint may only be implemented, monitored, and discontinued by staff who have been trained in the proper and safe use of restraint, including hands-on techniques.

K. The provider shall review the facility's behavior intervention techniques and policies and procedures at least annually to determine appropriateness for the population served.

L. Anytime children are present staff shall be present who have completed all trainings in behavior intervention.

12 VAC 35-46-950. Seclusion.

Seclusion is allowed only as permitted by other applicable state regulations.

12 VAC 35-46-960. 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 35-46-970. Education.

A. Each resident of compulsory school attendance age shall be enrolled, as provided in the Code of Virginia, in an appropriate educational program within five school business days. Documentation of the enrollment shall be kept in the resident's record.

B. The provider shall ensure that educational guidance and counseling in selecting courses is provided for each resident and shall ensure that education is an integral part of the resident's total program.

C. Providers operating educational programs for children with disabilities shall operate those programs in compliance with applicable state and federal statutes and regulations.

D. When a child with a disability has been placed in a residential facility, the facility shall contact the division superintendent of the resident's home locality . Documentation of the contact with the resident's home school shall be kept in the resident's record.

E. A provider that has an academic or vocational program that is not certified or approved by the Department of Education shall document that teachers meet the qualifications to teach the same subjects in the public schools.

F. Each provider shall develop and implement written policies and procedures to ensure that each resident has adequate study time.

12 VAC 35-46-980. Religion.

A. The provider shall have and implement written policies regarding opportunities for residents to participate in religious activities.

B. The provider's policies on religious participation shall be available to residents and any individual or agency considering placement of a child in the facility.

C. Residents shall not be coerced to participate in religious activities.

12 VAC 35-46-990. 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:

1. Opportunities for individual and group activities;

2. Free time for residents to pursue personal interests that shall be in addition to a formal recreation program except this subdivision does not apply to secure custody facilities;

3. Use of available community recreational resources and facilities except this subdivision does not apply to secure custody facilities;

4. Scheduling of activities so that they do not conflict with meals, religious services, educational programs or other regular events; and

5. Regularly scheduled indoor and outdoor recreational activities that are structured to develop skills and attitudes.

B. The provider shall develop and implement written policies and procedures to ensure the safety of residents participating in recreational activities that include:

1. How activities will be directed and supervised by individuals knowledgeable in the safeguards required for the activities;

2. How residents are assessed for suitability for an activity and the supervision provided; and

3. How safeguards for water-related activities will be provided including ensuring that a certified life guard supervises all swimming activities.

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;

2. A plan for safekeeping and distribution of medication;

3. An overall emergency, safety, and communication plan for the activity including emergency numbers of facility administration;

4. Staff training and experience requirements for each activity;

5. Resident preparation for each activity;

6. A plan to ensure that all necessary equipment for the activity is in good repair and appropriate for the activity;

7. A trip schedule giving addresses and phone numbers of locations to be visited and how the location was chosen/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. 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 in the resident's record.

12 VAC 35-46-1000. Community Relationships.

A. Opportunities shall be provided for the residents to participate in activities and to utilize resources in the community.~~, except this subsection does not apply to secure custody facilities.~~

B. The provider shall develop and implement written policies and procedures for evaluating persons or organizations in the community who wish to associate with residents on the premises or take residents off the premises. The procedures shall cover how the facility will determine if participation in such community activities or programs would be in the residents' best interest.

C. Each 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 shall develop and implement written policies and procedures for promoting positive relationships with the neighbors that shall be approved by the department ~~regulatory authority~~.

12 VAC 35-46-1010. Clothing.

A. Provision shall be made for each resident to have an adequate supply of clean, comfortable, and well-fitting clothes and shoes for indoor and outdoor wear.

B. Clothes and shoes shall be similar in style to those generally worn by children of the same age in the community who are engaged in similar activities, except this requirement does not apply to secure custody facilities.

C. Residents shall have the opportunity to participate in the selection of their clothing, except this requirement does not apply to secure custody facilities.

D. Residents shall be allowed to take personal clothing when leaving the facility.

12 VAC 35-46-1020. Allowances and Spending Money.

A. The provider shall provide opportunities appropriate to the ages and developmental levels of the residents for learning the value and use of money.~~, except this requirement does not apply to secure detention facilities.~~

B. There shall be a written policy regarding allowances that shall be made available to legal guardians at the time of admission~~, except that this requirement does not apply to secure detention facilities~~.

C. The provider shall develop and implement written policies for safekeeping and for recordkeeping of any money that belongs to residents.

D. A resident's funds, including any allowance or earnings, shall be used for the resident's benefit.

12 VAC 35-46-1030. Work and Employment.

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 program director with the knowledge and consent of the legal guardian~~, except this requirement does not apply to secure detention facilities~~.

D. In both work assignments and employment, the program director shall evaluate the appropriateness of the work and the fairness of the pay.

12 VAC 35-46-1040. Visitation at the Facility and to the Resident's Home.

A. The provider shall have and implement written visitation policies and procedures that allow reasonable visiting privileges and flexible visiting hours, except as permitted by other applicable state regulations.

B. Copies of the written visitation policies and procedures shall be made available to the parents, when appropriate, legal guardians, the resident, and other interested persons important to the resident no later than the time of admission except that when parents or legal guardians do not participate in the admission process, visitation policies and procedures shall be mailed to them within 24 hours after admission.

~~C. In secure detention, except when a juvenile is confined in postdispositional detention, and temporary care facilities, written visitation policies and procedures shall be provided upon request to parents, legal guardians, residents, and other interested persons important to the residents.~~

12 VAC 35-46-1050. Resident Visitation at the Homes of Staff.

If a provider permits staff to take residents to the staff's home, the facility must receive written permission of the resident's legal guardian or placing agency before the visit occurs. The written permission shall be kept in the resident's record.

12 VAC 35-46-1060. Vehicles and Power Equipment.

A. Transportation provided for or used by children shall comply with local, state, and federal laws relating to:

1. Vehicle safety and maintenance;

2. Licensure of vehicles;

3. Licensure of drivers; and

4. Child passenger safety, including requiring children to wear appropriate seat belts or restraints for the vehicle in which they are being transported.

B. There shall be written safety rules for transportation of residents appropriate to the population served that shall include taking head counts at each stop.

C. The provider shall develop and implement written safety rules for use and maintenance of vehicles and power equipment.

12 VAC 35-46-1070. Serious Incident Reports.

A. Any serious incident, accident or injury to the resident; any overnight absence from the facility without permission; any runaway; and any other unexplained absence

shall be reported within 24 hours: (i) to the placing agency, (ii) to either the parent or legal guardian, or both as appropriate; and (iii) noted in the resident's record.

B. The provider shall document the following:

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 and to either the parent or legal guardian; and

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

C. The provider shall notify the department ~~regulatory authority~~ within 24 hours of any serious illness or injury, any death of a resident, and all other situations as required by the department ~~regulatory authority~~. 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 and to either the parent or legal guardian; and

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

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

12 VAC 35-46-1080. Suspected Child Abuse or Neglect.

A. Written policies and procedures related to child abuse and neglect shall be distributed to all staff members. These shall include procedures for:

1. Handling accusations against staff; and

2. Promptly referring, consistent with requirements of the Code of Virginia, suspected cases of child abuse and neglect to the local child protective services unit and for cooperating with the unit during any investigation.

B. Any case of suspected child abuse or neglect shall be reported to the local child protective services unit as required by the Code of Virginia.

C. Any case of suspected child abuse or neglect occurring at the facility, on a facility-sponsored event or excursion, or involving facility staff shall be reported immediately (i) to the Office of Human Rights ~~regulatory authority~~ and placing agency and (ii) to either the resident's parent or legal guardian, or both, as appropriate.

D. When a case of suspected child abuse or neglect is reported to child protective services, the resident's record shall include:

1. The date and time the suspected abuse or neglect occurred;

2. A description of the suspected abuse or neglect;

3. Action taken as a result of the suspected abuse or neglect; and

4. The name of the person to whom the report was made at the local child protective services unit.

12 VAC 35-46-1090. Grievance Procedures.

A. The provider shall develop and implement written policies and procedures governing the handling of grievances by residents. If not addressed by other applicable regulations, the policies and procedures shall:

1. Be written in clear and simple language;

2. Be communicated to the residents in an age or developmentally appropriate manner;

3. Be posted in an area easily accessible to residents and their parents and legal guardians;

4. Ensure that any grievance shall be investigated by an objective employee who is not the subject of the grievance; and

5. Require continuous monitoring by the provider of any grievance to assure there is no retaliation or threat of retaliation against the child.

B. All documentation regarding grievances shall be kept on file at the facility for three years unless other regulations require a longer retention period.

PART V DISASTER OR EMERGENCY PLANNING

The facility is required to have written procedures to follow in emergencies. It is also required that these plans be known by staff and, as appropriate, residents. It is advisable that the facility develop its emergency plans with the assistance of state or local public safety authorities.

12 VAC 35-46-1100. Emergency and Evacuation Procedures.

A. The provider shall develop a written emergency preparedness and response plan for all locations. 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 policies outlining specific responsibilities for provision of administrative direction and management of response activities, coordination of logistics during the emergency, communications, life safety of employees, contractors, students/intern, 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, students/interns, volunteers, visitors, equipment and vital records; and restoring services. Emergency response procedures shall address:

a. Communicating with employees, contractors and community responders;

b. Warning and notification of 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 family members if appropriate and legal guardians;

g. Alerting emergency personnel and sounding alarms; and

h. Locating and shutting off utilities when necessary;

5. Supporting documents that would be needed in an emergency, including emergency call lists, building and site maps necessary to shut off utilities, designated escape routes, and list of major resources such as local emergency shelters; 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, contractors, students/interns, and volunteers that shall include responsibilities for:

1. Alerting emergency personnel and sounding alarms;

2. Implementing evacuation procedures, including evacuation of residents with special needs (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. The provider shall document the review of the emergency preparedness plan annually and make necessary revisions. Such revisions shall be communicated to employees, contractors, students, and volunteers and incorporated into training for employees, contractors, students/interns and volunteers and orientation of residents to services.

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

E. Employees, contractors, students/interns, and volunteers shall be knowledgeable in and prepared to implement the emergency preparedness plan in the event of an emergency.

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/emergency. After the disaster/emergency is stabilized, the provider shall report the disaster/emergency and the conditions at the facility to the legal guardian and the placing agency as soon as possible and report the disaster/emergency to the department ~~regulatory authority~~ as soon as possible, but no later than 72 hours after the incident occurs.

G. Floor plans showing primary and secondary means of egress shall be posted on each floor in locations where they can easily be seen by staff and residents.

H. The procedures and responsibilities reflected in the emergency procedures shall be communicated to all residents within seven days following admission or a substantive change in the procedures.

I. At least one evacuation drill (the simulation of the facility's emergency procedures) shall be conducted each month in each building occupied by residents.

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 securing resident emergency information.

During any three consecutive calendar months, at least one evacuation drill shall be conducted during each shift.

L. 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 drill;

3. Amount of time 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.

M. The record for each evacuation drill shall be retained for three years after the drill, unless a longer retention period is required by applicable law or regulation.

N. 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.

PART VI SPECIAL PROGAMS

12 VAC 35-46-1110. Independent Living Programs.

A. Each independent living program must demonstrate that a structured program using materials and curriculum, approved by the department ~~regulatory authority~~, is being used to teach independent living skills. The curriculum must include information regarding each of the following areas:

1. Money management and consumer awareness;

2. Food management;

3. Personal appearance;

4. Social skills;

5. Health/sexuality;

6. Housekeeping;

7. Transportation;

8. Educational planning/career planning;

9. Job-seeking skills;

10. Job maintenance skills;

11. Emergency and safety skills;

12. Knowledge of community resources;

13. Interpersonal skills/social relationships;

14. Legal skills;

15. Leisure activities; and

16. Housing.

B. Within 14 days of placement the provider must complete an assessment, including strengths and needs, of the resident's life skills using an independent living assessment tool approved by the department ~~regulatory agency~~. The assessment must cover the following areas:

1. Money management and consumer awareness;

2. Food management;

3. Personal appearance;

4. Social skills;

5. Health/sexuality;

6. Housekeeping;

7. Transportation;

8. Educational planning/career planning;

9. Job-seeking skills;

10. Job maintenance skills;

11. Emergency and safety skills;

12. Knowledge of community resources;

13. Interpersonal skills/social relationships;

14. Legal skills;

15. Leisure activities; and

16. Housing.

C. The resident's individualized service plan shall include, in addition to the requirements found in 12 VAC 35-46-750, address each of the following areas, as applicable:

1. Money management and consumer awareness;

2. Food management;

3. Personal appearance;

4. Social skills;

5. Health/sexuality;

6. Housekeeping;

7. Transportation;

8. Educational planning/career planning;

9. Job-seeking skills;

10. Job maintenance skills;

11. Emergency and safety skills;

12. Knowledge of community resources;

13. Interpersonal skills/social relationships;

14. Legal skills;

15. Leisure activities; and

16. Housing.

D. Each independent living program shall develop and implement policies and procedures to train all direct care staff within 14 days of employment on the content of the independent living curriculum, the use of the independent living materials, the

application of the assessment tool, and the documentation methods used. Documentation of the orientation shall be kept in the employee's staff record.

E. If residents age 18 years or older are to share in the responsibility for their own medication with the provider, the independent living program shall develop and implement written policies and procedures that include:

1. Training for the resident in self administration of medication and recognition of side effects;

2. Method for storage and safekeeping of medication;

3. Method for obtaining approval for the resident to self administer medication from a person authorized by law to prescribe medication; and

4. Method for documenting the administration of medication.

F. Each independent living program shall develop and implement written policies and procedures that ensure that each resident is receiving adequate nutrition as required in 12 VAC 35-46-860 of these regulations.

22VAC 35-46-1120. Mother/Baby Programs.

A. Each provider shall develop and implement written policies and procedures to orient direct care staff within 14 days of hire regarding the following:

1. Responsibilities of mothers regarding the child;

2. Child development including age-appropriate behavior for each stage of development;

3. Appropriate behavioral interventions for infants and toddlers;

4. Basic infant and toddler care including but not limited to nutritional needs, feeding procedures, bathing techniques; and

5. Safety issues for infants and toddlers.

B. Each direct care worker shall have certification in infant CPR and first aid prior to working alone with infants or toddlers.

C. A placement agreement shall be signed by the legal guardian for each adolescent mother and a separate placement agreement shall be signed for each child at the time of admission.

D. In addition to the requirements of 12 VAC 35-46-710, the application for admission for the adolescent's child must include:

1. The placement history of the child;

2. The developmental milestones of the child; and

3. The nutritional needs of the child.

E. In addition to the requirements of 12 VAC 35-46-660, the face sheet for adolescent's child shall also include:

1. Type of delivery;

2. Weight and length at birth;

3. Any medications or allergies; and

4. Name and address, if known, of the biological father.

F. A combined service plan following the requirements of 12 VAC 35-46-750 must be written for the adolescent mother and her child within 30 days of the admission of the adolescent's child.

G. There shall be a combined documented review of the adolescent mother's and her child's progress following the requirements of the quarterly report 60 days following the first combined service plan and within each 90-day period thereafter.

H. The developmental milestones of the adolescent's child must be documented in each quarterly progress report.

I. The record of each child 18 months or younger shall include the child's feeding schedule and directions for feeding. This information shall be posted in the kitchen.

J. The provider shall develop and implement written policies and procedures for tracking:

1. What a child 18 months or younger is eating;

2. How much a child 18 months or younger is eating; and

3. The response to newly introduced foods of the child 18 months or younger.

K. The provider shall develop and implement written policies and procedures to record all diaper changes.

L. The provider shall monitor that all infants are held and spoken to and placed in a position to observe activities when they are awake.

M. Bottle-fed infants who cannot hold their own bottles shall be held when fed. Bottles shall not be propped.

N. The provider shall monitor that all children of adolescent mothers have access to age-appropriate toys and are provided opportunity for visual and sound stimulation.

O. The provider shall ensure that when an adolescent mother is in school or is working, her child is appropriately cared for, either in a licensed child day program or at the facility.

P. A daily activity log must be kept for each child of the adolescent mother showing what activities the child actually participated in during the day. The daily log must show

that children have the opportunity to participate in sensory, language, manipulative, building, large muscle, and learning activities.

Q. The provider shall develop and implement written policies and procedures regarding health care of the adolescent's child including:

1. Obtaining health care:

2. Ensuring follow-up care is provided;

3. Ensuring adolescent mothers administer to their children only prescription and nonprescription medication authorized by a health care professional licensed to prescribe medication; and

4. Medication administration.

R. The provider shall develop and implement written policies and procedures to ensure that all toys and equipment to be used by children are sturdy, are of safe construction, are nontoxic and free of hazards, and meet industry safety standards.

S. The facility shall develop and implement written policies and procedures for inspecting toys and equipment on a regular basis for cleanliness and safety.

T. Cribs shall be placed where objects outside the crib such as cords from the blinds or curtains are not within reach of infants or toddlers.

U. Pillows and filled comforters shall not be used by children under two years of age.

V. Infant walkers shall not be used.

W. Adolescent mothers and their babies may share a bedroom as allowed by 12 VAC 35-46-480, but shall not share a room with other adolescents or their children.

X. Pregnant adolescents may share a room as allowed by 12 VAC 35-46-480.

Y. Providers shall develop and implement written policies and procedures to protect infants, toddlers, and young children from dangers in their environment. The policies and procedures must include, but not be limited to, protection from:

1. Electrocution;

2. Falling down steps or ramps or gaining access to balconies, porches or elevated areas; and

3. Poisons, including poisonous plants.

22VAC42-11-1080. Campsite Programs or Adventure Activities.

A. All wilderness campsite programs and providers that take residents on wilderness/adventure activities shall develop and implement policies and procedures that include:

1. Staff training and experience requirements for each activity;

2. Resident training and experience requirements for each activity;

3. Specific staff-to-resident ratio and supervision plan appropriate for each activity; including sleeping arrangements and supervision during night time hours;

4. Plans to evaluate and document each participant's physical health throughout the activity;

5. Preparation and planning needed for each activity and time frames;

6. Arrangement, maintenance, and inspection of activity areas;

7. A plan to ensure that any equipment and gear that is to be

used in connection with a specified wilderness/adventure activity is appropriate to the activity, certified if required, in good repair, in operable condition, and age and body size appropriate;

8. 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;

9. 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;

10. Plans for food and water supplies and management of these resources;

11. Plans for the safekeeping and distribution of medication;

12. Guidelines to ensure that participation is conducted within the boundaries of the resident's capabilities, dignity and respect for self-determination;

13. 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

14. Review of trip plans by the trip coordinator.

B. All wilderness campsite programs and providers that take residents on wilderness/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 shall have experience in and knowledge regarding wilderness activities and be trained in wilderness first aid. The individual shall 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 in the individual's staff record.

3. The trip coordinator shall review all trip plans and procedures and shall ensure that staff and residents meet the requirements as outlined in the facility's policy regarding each wilderness/adventure activity to take place during the trip.

C. 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.

D. The trip coordinator shall be responsible for writing a summary of the debriefing session and shall be responsible for ensuring that procedures and policies are updated to reflect improvements needed.

E. A trip folder shall be developed for each wilderness/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. Swimming proficiency list if trip is near water;

6. Daily logs;

7. Maps of area covered by the trip; and

8. Daily plans.

F. 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 the individual's health does not prevent him from participating in the described activities.

G. First aid kits used by wilderness campsite programs and providers that take residents on adventure activities shall be activity appropriate and shall be accessible at all times.

H. Direct care workers hired by wilderness campsite programs and providers that take residents on wilderness/adventure activities shall be trained in a wilderness first aid course.

I. The provider shall ensure that before engaging in any aquatic activity, each resident shall be classified by the trip coordinator or his designee according to swimming ability in one of two classifications: swimmer and non-swimmer. This shall be documented in the resident's record and in the trip folder.

J. The provider 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.

K. A separate bed, bunk or cot shall be made available for each person.

L. A mattress cover shall be provided for each mattress.

M. Sleeping areas shall be protected by screening or other means to prevent admittance of flies and mosquitoes.

N. Bedding shall be clean, dry, sanitary, and in good repair.

O. Bedding shall be adequate to ensure protection and comfort in cold weather.

P. Sleeping bags, if used, shall be fiberfill and rated for 0°F.

Q. Linens shall be changed as often as required for cleanliness and sanitation but not less frequently than once a week.

R. Each resident shall be provided with an adequate supply of clean clothing that is suitable for outdoor living and is appropriate to the geographic location and season.

S. Sturdy, water-resistant, outdoor footwear shall be provided for each resident.

T. Each resident shall have adequate personal storage area.

U. Fire extinguishers of a 2A 10BC rating shall be maintained so that it is never necessary to travel more than 75 feet to a fire extinguisher from combustion-type heating devices, campfires, or other source of combustion.

V. Artificial lighting shall be provided in a safe manner.

W. All areas of the campsite shall be lighted for safety when occupied by residents.

X. Staff of the same sex may share a sleeping area with the residents.

Y. A telephone or other means of communication is required at each area where residents sleep or participate in programs.

DRAFT MINUTES
STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD
LICENSING REGULATIONS WORK SESSION

October 7, 2008

Piedmont Geriatric Hospital
Burkeville, Virginia

Members Present:	Daniel E. Karnes, Cheryl Ivey Green, Catherine M. Hudgins, Ruth G. Jarvis, Mary J. McQuown, Ananda K. Pandurangi, Kathryn A. Smith
Legal Counsel:	Jane Hickey, Office of the Attorney General
Staff Present:	Charline Davidson, Office of Planning and Development Leslie Anderson, Office of Licensing (by telephone) Ruth Anne Walker, Office of Legislation Meghan McGuire, Office of Communications Jewel Crosby, State Board Secretary C.C. Murphy, Virginia Center for Behavioral Rehabilitation
Call to Order:	The work session was called to order at 10:15 am.

Review of the Proposed Licensing Regulations

Charline Davidson called the members' attention to the proposed licensing regulations in the State Board Packet. She said that the Board would be considering whether to approve the proposed regulation for public comment during the meeting. If the regulations were approved for public comment, they would go to the Department of Planning and Budget and to the Governor's office for review. Following these reviews, the proposed regulations would be published in the Virginia Register and disseminated for public comments.

Using a handout distributed to the State Board members by staff, Leslie Anderson reviewed major proposed revisions to the licensing regulations. Leslie spoke to the overarching goals of the regulatory revision process, particularly to update the regulations to be consistent with the Department's focus on recovery, self-determination, and person-centered planning and to strengthen provisions that allow the Department to deny applications and revoke licenses when standards are not met and to limit activities of providers with provisional licenses.

Leslie detailed a number of specific changes to the existing regulations, including:

- Updated definitions that conform to those in statute and in the human rights and Medicaid regulations, reflect the core services taxonomy, and incorporate definitions of person-centered planning, recovery, and co-occurring disorders;
- Replacement of the term "mental retardation" with "intellectual disability;"
- New requirements for compliance with Mental Health Reform laws;
- Replacement of the three year audit requirement with language allowing the Department to require an audit should circumstances warrant it;
- New requirement that the provider designate a staff person to serve as a community liaison to work with neighbors, local government, and the community;

- Reduction in the number of allowed community ICF/MR beds from 20 to 12; and
- Strengthened requirements for sponsor residential homes, including specific requirements for sponsor residential services for children.

Members expressed interest in the new requirement for a community liaison, particularly with respect to how the liaison might be linked to the Department and local government and raised a concern that the proposed regulations allowed just one supervisor for 20 sponsor homes or up to 40 individuals. Dr. Pandurangi said that he had several suggestions that he would forward to staff.

Adjourn: The work session was adjourned at 11:00 am.

Driving Directions

GOOCHLAND POWHATAN CSB

(POWHATAN OFFICE)

From Richmond – get on Route 60, going west (this can be accessed by Route 288 South, or by many other routes further east.). Once in Powhatan County, you will pass two Food Lions on your right – just after the second Food Lion, turn left onto Old Buckingham Road. Proceed past the traffic circle and begin to look on your right for a large brick building – the sign out front has our name on it, and it is a renovated high school building. The parking lot is between the building and May Memorial Baptist Church. Enter through the front doors and our receptionist is through the waiting room on the left.

From Route 64, either direction, it is easiest to take Route 288 South to Route 60, turn towards Powhatan and follow the above directions.