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# I. ISSUING A LICENSE

## A. THE INITIAL PROVIDER APPLICATION

Providers desiring to become licensed to provide mental health, mental retardation and/or substance abuse services must apply to be licensed.

*To be licensed by DBHDS the applicant must:*

- Submit and receive preliminary approval of the initial application, [and required attachments];
- Submit, receive approval of, and demonstrate knowledge of required licensing policies, procedures and forms;
- Have an “on-site” review of the physical plant, to include interviews with providers over the content of their service description and policies and procedures, as well as compliance with other *regulations*, and copies of forms and sample client and personnel records,
- Submit and receive approval of required Human Rights Policies and Procedures;
- Affiliate with a Local Human Rights Committee,
- Set up an account and request criminal history and central registry background investigations for identified staff as required in §37.2-405 of the *Code of Virginia*; and submit *Child Protective Services reference checks*.

### Initial Application

1. The prospective applicant obtains a copy of the *Rules and Regulations for the Licensing of Providers of Behavioral Health and Developmental Services* and an “Initial Provider Application.” Applications, copies of the *Regulations*, and all forms used by the Office can be requested by telephone, (804) 786-1747, by facsimile, (804) 692-0066, in writing to: The Office of Licensing, DBHDS, P. O. Box 1797, Richmond, Virginia 23218, or, downloaded from the DBHDS website: [www.dbhds.virginia.gov/Organ/CO/Offices/OL/OLForms.asp](http://www.dbhds.virginia.gov/Organ/CO/Offices/OL/OLForms.asp).
2. A complete application packet consists of the following:
  - a. A copy of the “Initial Provider Application;”
  - b. A copy of *The Rules and Regulations for the Licensing of Providers of Behavioral Health and Developmental Disability Services*;
  - c. A copy of the *Human Rights Regulations*;
  - d. A “matrix” of which *Regulations* generally apply to the services licensed by the Department;
  - e. A staffing pattern schedule sheet; and
  - f. A listing of the Human Rights Regional Advocates with a map of each Advocate’s area of responsibility;
  - g. The applicant submits the complete application, along with all required attachments to the Office of Licensing in Richmond. **It is important to note here that these materials are not all that will be required of the applicant.**
3. The application is assigned to the licensing specialist assigned to applications or a Associate Director (RM). They review the application materials to determine if the application is complete, *including the submission of all attachments*. **INCOMPLETE APPLICATIONS WILL NOT BE REVIEWED AND WILL BE RETURNED TO THE APPLICANT.** If the applicant is unable to submit some part of the application, the applicant should contact the Office of Licensing to discuss this.
4. If the application is complete, the assigned staff will review the application to determine if the service described by the applicant is licensed by the DBHDS. This is referred to as “subjectivity.” Staff will determine subjectivity by reviewing the applicant’s service description to determine what services will be

provided to individuals who are diagnosed with mental illness, substance abuse, developmental disabilities, or who are mentally retarded or if the service is a brain injury residential service. The *Code of Virginia* [§37.2-403] defines “service” to “mean individually planned interventions intended to reduce or ameliorate mental illness, mental retardation or substance addiction or abuse through care, treatment, training, habilitation, or other supports that are delivered by a provider...”

5. If staff determines that the service being applied for is NOT SUBJECT to licensing by DBHDS, the application will be returned to the applicant with a letter explaining why the proposed service is not subject.
6. Once subject, staff will notify the provider regarding subjectivity and the completeness of the application.
7. The Office of Licensing notifies the local Regional Advocate of the Office of Human Rights, and the Office of Human Resources Management and Development. This allows the applicant to begin developing Human Rights Policies and Procedures, as well as to set up an account with the Office of Human Resources Management and Development, and request applicable background checks.

***Working with the Regional Advocate in the Office of Human Rights, the applicant must:***

- a. Develop policies for submission to the Regional advocate for approval as required in the *Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers of Mental Health, Mental Retardation and Substance Abuse Services*.
- b. Affiliate with a Local Human Rights Committee; and
- c. Have the LHRC approve those policies and procedures.

Additional copies of the human rights *regulations* can be requested from the Office of Human Rights by calling (804) 786-3988. The Office can also tell the applicant who their Regional Advocate will be. The same information is also available on the DBHDS website:

[www.dbhds.virginia.gov/Organ/CO/Offices/OHR/HumanRights/Directory112601.pdf](http://www.dbhds.virginia.gov/Organ/CO/Offices/OHR/HumanRights/Directory112601.pdf)

**Training Session**

As part of the licensing process, new applicants are strongly encouraged to purchase a training DVD at the Licensing Central Office. The training session runs about two hours. There is a fee of seventy-five dollars (\$75.00) to cover the cost of time and materials. Payment is due in the form of a check or money order made payable to Treasury of Virginia. You are strongly encouraged to view the DVD, with your CEO, CFO, Administrator, Program Director, *prior* to submitting your policies and procedures. Please call 804-786-1747 to purchase.

**B. POLICIES AND PROCEDURES SUBMITTED FOR THE INITIAL APPLICATION**

- A. The applicant then develops and submits policies, procedures, and forms, as required by *regulation*. These policies and procedures may be reviewed by either the Associate Director, or, assigned to a licensing specialist. The applicant should also submit criminal history and central registry checks to the DBHDS Office of Human Resources Management and Development for the owner and all identified staff.

***What are acceptable policies and procedures?***

Applicants should carefully read the *regulations* to determine when a written policy or procedure is required. A written policy is required when the *regulation* calls for a “written policy”, “written documentation”, “procedure”, or “plan”. “Policy” defines *what* the plan, or guiding principle of the organization is, as related to the required *regulation*; “procedures” are the process (or steps) the

applicant takes to ensure the policy is carried out. Procedures should answer the questions of *who*, *where* and *how* a policy will be implemented. **Policies and procedures are not the re-statement of a regulation.** Applicants may also need to develop other policies to guide the delivery of services even when not required by the *Regulations*. **While the Office of Licensing is happy to answer applicant questions regarding how *regulations* are interpreted, it is unable to provide “consulting services” to assist applicants in writing their program descriptions, policies, procedures or to develop forms.**

- B. The Office of Licensing will inform the applicant of needed revisions citing the specific regulation that is not yet in compliance, with a brief narrative explaining why the regulation has not been met. The applicant makes the required corrections and submits a written description of the action taken to the Office of Licensing by the due date indicated on the compliance plan. This is a “plan of corrective action.” The Office of Licensing determines if the plan of correction is acceptable and in compliance with the regulations.

C. **ON-SITE REVIEW**

When the policies, procedures, and forms have been reviewed and approved, an on-site review of the facility where services will be delivered will be scheduled. This on-site visit verifies compliance with several *regulations pertaining to*:

- a. Physical plant,
- b. Personnel: records must be complete and include evidence of completed applications for employment, evidence of required training and orientation, reference checks, and evidence of requests for background investigations,
- c. Client records, (a sample client record).
- d. The applicants knowledge of and ability to implement their service description and policies and procedures,
- e. Staffing, evidenced by applicant having trained, submitted criminal background and CPS checks, and oriented enough staff to begin service operation, (to include relief staff).
- f. Submission, for the Richmond Licensing File, of a COMPLETE, FINAL copy of the service description, policies, procedures.
- g. Compliance with human rights, including a approval of verification form and affiliation.

• **Exceptions on On-Site Reviews**

On site reviews do not have to occur at public schools for school-based day treatment services, but can be accomplished at the administrative office of the organization.

• **FINAL STEPS**

1. Achieving compliance with Licensing and Human Rights *Regulations* are generally concurrent processes. However, while the applicant must be in compliance with the *regulations* of both offices prior to being issued a license, they are separate processes. Each office independently reviews compliance with its own *regulations*.
2. When all applicable *regulations* [both Office of Licensing and Human Rights] are deemed to be in compliance, the Office of Licensing makes a recommendation to issue a license to the Commissioner.
3. The Department will issue a license to the provider with Commissioner approval.

**D. REQUIRED INITIAL APPLICATION ATTACHMENTS**

A “completed application” for licensing by the Department of Behavioral Health and Developmental Services, [DBHDS], includes the following:

1. The completed application form,
2. The applicant’s proposed working budget for the year, as required in §12 VAC 35-105-40.A.1,
3. Evidence of financial resources, or, a line of credit sufficient to cover estimated operating expenses for ninety-days, as required in §12 VAC 35-105-40.A.2,
4. A description of the applicant’s program that addresses **all** the requirements of §12 VAC 35-105-570, and §12 VAC 35-105-580, including admission, exclusion, continued stay, discharge/termination criteria, and a copy of the proposed program schedule,
5. A schedule of the proposed staffing plan, as required in §12 VAC 35-105-590,
6. Copies of the resumes of all identified staff,
7. Copies of **all** position (job) descriptions that address all the requirements of §12 VAC 35-105-410 (Position descriptions for Case management, ICT and PACT services must address additional *regulations*),
8. Evidence of the applicant’s authority to conduct business in the Commonwealth of Virginia. Generally this will be a copy of the applicant’s State Corporation Commission Certificate, see §12 VAC 35-105-190, and

THE FOLLOW MAY BE POSTPONED UNTIL LATER IN THE LICENSING PROCESS TO RESUCE COSTS TO APPLICANT BASED ON THE LENGTH OF THE PROCESS

9. A certificate of occupancy for the building where services are to be provided, as required in §12 VAC 35-105-260,

*And for residential services,*

10. A copy of the building floor plan, outlining the dimensions of each room, as required in §12 VAC 35-105-40.B (5)
11. A current health inspection, as required in (§12 VAC 35-105-290 and §12 VAC 35-105-300), and
12. A current fire inspection for residential services, as required in §12 VAC 35-105-320.

INCOMPLETE APPLICATIONS WILL BE RETURNED TO THE APPLICANT

**CO Processing of Initial Application**

- Application received—date stamped by Support staff.
- If it is a children’s residential service, ensure \$500.00 application fee is submitted and notify applicant if not.
- Support Staff enters application in OLIS and copies application.
- Support Staff forwards application to individual reviewing application.

**ENTERING THE INITIAL PROVIDER APPLICATION IN OLIS**

**OLIS:** If the application is complete and the service is subject, the application is inputted into OLIS by designated CO staff. **ONLY CENTRAL OFFICE STAFF CAN ENTER APPLICATIONS.**

1. Enter the provider information on the application/provider maintenance screen. Ensure the provider’s name on the application matches the SCC certificate. If not, contact provider for clarification. If a sole proprietorship, the owner name is the provider name. Select the provider. Select the service type from the

- “Services” box. Once you have selected the service type, the service box appears listing appropriate service types.
2. Enter Contacts for provider, services, and locations. Make sure e-mail and phone numbers are entered correctly.
  3. Select the service type. OLIS will take you to the service information screen. Complete applicable information. The staff assignment for service must be completed.
  4. Medicaid: group home only refers to CRFs that receive Medicaid. MR Wavier refers to ID Group Homes that receive Medicaid. MH refers to mental health services that receive Medicaid.
  5. Select the locations button to enter location. All services must have the location screen completed. Do not use abbreviations if possible and be consistent in how an address is entered.
  6. For initial license, add license screen. Choose type of application “initial.” Date of application is the date the application is received (application plus attachments). For CORE services, the application date and type must be put on every service screen and not just on the maintenance screen.

**E. LICENSE MODIFICATIONS**

**SERVICE MODIFICATION APPLICATION**

A provider needs to request a modification to a license when the provider changes the population to be served, adds a track to the current service, adds a service, adds or changes a service location, or changes the number served or capacity if stated on license. These service modifications are sent to specialist and coordinated by the specialist.

**ADD A SERVICE**

**Required Attachments**

- A Service Description, meeting all of the requirements outlined in §12 VAC 35-105-580,
  - Discharge criteria as outlined in §12 VAC 35-105-860.A,
  - A schedule of staffing pattern, staff credentials, §12 VAC 35-105-590,
  - The proposed working budget for the first year of the service’s operation, §12 VAC 35-105-40.A (1),
  - Evidence of financial resources, or a line of credit sufficient to cover estimated operating expenses for the first ninety-days, §12 VAC 35-105-40.A (2),
  - Copies of ALL position descriptions, §12 VAC 35-105-410,
  - Certificate of occupancy for the physical plant, §12 VAC 35-105-260,
  - Verification that new service is affiliated with local human rights committee and the current human rights policies and procedures are approved, §12 VAC 35-105-150.4,
- And for residential services,*
- A current health inspection (if not on public water or sewage), §12 VAC 35-105-580
  - A current fire inspection, §12 VAC 35-105-320, and
  - A floor plan with dimensions (for residential facilities), §12 VAC 35-105-40.B (5).

**OLIS**  
 Select provider on provider, service, or location. Enter type- modification and date. (CO staff only)  
 Use OLIS steps 3-5 for initial application above.

The Specialist must:

- Review application and attachments.
- Conduct site review.
- Confirm human rights compliance.

## ADD A LOCATION

### Required Attachments

- Notification of address, proposed opening date,
- A schedule of staffing pattern, staff credentials, §12 VAC 35-105-590
- Certificate of occupancy, §12 VAC 35-105-260
- Verification that new service is affiliated with local human rights committee and current human rights policies and procedures are approved. §12 VAC 35-105-150.4,
- The proposed working budget for the first year of the service's operation §12 VAC 35-105-40.A (1),
- Evidence of financial resources, or a line of credit sufficient to cover estimated operating expenses for the first ninety-days, §12 VAC 35-105-40.A (2),

*And for residential services,*

- A current health inspection (if not on public water or sewage), §12 VAC 35-105-580
- A current fire inspection, §12 VAC 35-105-320, and
- A floor plan with dimensions (for residential facilities), §12 VAC 35-105-40.B (5).

### The Specialist must:

- Verify new location covered by local human rights committee affiliation
- Inspect all residential locations prior to the beginning of operation.
- If a provider has a triennial license for a service and is already operating other locations, after providing notification and supporting documentation required, the provider may open a location (non-residential) without the specialist physically inspecting the facility. This would primarily apply to outpatient and day support programs. The specialist must inspect the location within six months of the effective date of operation.
- If a provider has less than a triennial license for a service, the specialist must inspect the location prior to opening.
- Verify LHRC affiliation for new location.

### **OLIS**

Enter address of new location under appropriate service with effective date.  
Create modify license record, enter comments and date.

### OTHER MODIFICATIONS

- Population Served (Age, Gender, Disability)- requires license change
- Add a Track to Current Service- requires license change
- Address change- requires license change
- Number of beds or capacity- if residential, requires license change
- Telephone number change
- Service Description- may require license change
- Name change- requires license change
- Change or add geographic locations
- Other: \_\_\_\_\_

### OLIS DATA ENTRY

#### **OLIS**

Modification information entered in OLIS application screen by either CO staff or specialist if appropriate; i.e., change of address, name of director, name of service, or capacity.

Specialist reviews information submitted for compliance with regulations and creates license screen by clicking modification, entering modifications “licensed as” statement if necessary, and specialist comments, and date.

Associate Director or Director will review OLIS data in licensing information record.

Associate Director or Director will double check application information, program information and “licensed as” statements.

Associate Director or Director will enter comments/recommendations regarding licensing and date. Director will issue with date.

Application packet and “Review of Licensing” form will be completed and forwarded to Support Staff.

## **F. ISSUANCE OF CONDITIONAL LICENSES**

If the provider has no areas of noncompliance or returns an acceptable Corrective Action Plan addressing all areas of non-compliance and the provider is compliance with human rights requirements, the specialist recommends a conditional license for the provider or service.

- The new provider will usually be issued a six-month **conditional** license, effective the date of the CAP acceptance, date of compliance with all regulations, or date requested by provider, as determined by the Licensing Specialist. Conditional licenses are issued only for new (not previously licensed) services, including services that are added to existing licensed providers.
- The Office will issue adult and children group home residential providers during the conditional period approval for 4 beds only.
- The Office will only issue one service license for a new provider during the initial period, unless the provider has a history of providing services.
- **Providers and services may receive up to two six-month conditional licenses.**

## **OLIS DATA ENTRY**

The specialist completes the following in OLIS to issue a conditional license:

### **OLIS- Specialist Entry**

Completes scoring of regulations for visit in OLIS. If regulations are still not in compliance, gives provider a CAP.

When CAP is returned and accepted, specialist enters CAP response in OLIS.

Specialist clicks on provider screen and goes to incomplete license screen created by entering initial application. Complete License Information. The specialist must estimate a future effective date for the provider. Do the same for all services. See Section H Below for “Licensed As” statement information.

Indicates when **completely** ready for licensing by entering specialist comments and date. Check in the provider or service. Conditional license do not require all regulations be scored, but only those that can be evaluated prior to the initiation of services.

### **OLIS: Central Office Entry**

Once the specialist completes the initial review (See initial review protocol), determines to proceed with licensing, enters all information in OLIS, returns the application packet to CO and makes Ready for Directors, the Directors reviews the Ready for Directors Report and identifies for the Support Staff licenses ready to issue.

The Directors:

- Checks license information screens in OLIS.
- Checks license dates and types for accuracy.
- Reviews specialist comments.
- Clicks on visit/summary button, checks visits, CAP completed and approved, and complaints closed.
- Clarifies HR status.
- Enters recommendations and date.
- Completes check-off list and forwards paperwork and files to Support Staff.

The provider receives notification of the conditional license through receipt of the physical license signed by the Commissioner or through a letter granting a conditional license signed by the Director, which is followed by issuance of the physical license.

## **G. CONDITIONAL LICENSE LETTERS**

A “conditional license” letter may be necessary when the provider needs to and is ready to open before the Department can issue a physical license. In order for the Director to approve the conditional license and sign this letter, the following must occur:

- The specialist must submit to the Directors verification that the provider or service is in compliance (see Request for Conditional License Form in appendix) and request that a conditional license letter be issued to the provider. This form may E-Mailed or faxed to the Central Office.
- The specialist verifies on the request form that the provider has a Human Rights Plan approved by the State Human Rights Committee and an affiliation with a local human rights committee.
- The Specialist drafts the conditional license letter based on information submitted. Sample letters are located in the Appendix and in the *X Drive/shared protocols consolidated file*.
- The Director signs the letter. Once the letter is signed, it can be faxed or mailed to the provider.
- The specialist must complete the licensing information in OLIS within 14 days to ensure the physical license can be signed by the Commissioner and issued within 21 days of the issuance of the conditional license letter.
- The provider can submit the conditional license letter to DMAS to verify the provider is licensed.

## **H. “LICENSED AS” STATEMENTS**

These are statements which appear on the license indicating what a service is licensed to do. They are entered on the license screens in OLIS.

### **I. PROVIDER and CORE LICENSES**

Provider “licensed as” statements should state the type of service provided:

Example:

*A PROVIDER OF MENTAL HEALTH, MENTAL RETARDATION, AND SUBSTANCE ABUSE SERVICES.*  
Use capital letters.

Stipulations refer to limitations on services or additional descriptive information that need to appear on the license. The provider may ask that a stipulation be added to the license or the specialist may recommend a stipulation be added to more accurately describe services provided. Stipulations should be in capital letters and the word stipulation needs to be written in the field.

## 2. SERVICE LICENSES

Service “licensed as” statements are formatted as follows:

Examples:

*A mental health and mental retardation group home residential service for adults with mental retardation.*  
(This would be statement used for service serving dually diagnosed individuals with mental retardation).

*A mental health and substance abuse day support intensive outpatient service for children, adolescents, and adults.*

*A mental health intensive in-home service for children and adults*

Service stipulations should also be in lower case letters. The word stipulation is not necessary.

## 3. TRACKS

Some services contain sub-units that provide somewhat different services yet are located in the same physical space and have the same staff and management. A statement may be added to the “licensed as” statement which identifies the track. Example:

*A mental retardation residential group home service with a respite care track*

### I. COMMISSIONER SIGNATURE PROCESS FOR ISSUING A LICENSE

Director will complete licensing process.

- Director reviews license screens and enters comments. Issues and dates. License cannot be printed unless issued.
- Support Staff will print license on blue paper and “proof-read” license. If modification, go to Modifications.
- CO Staff attaches a “Blue Sheet.” Sends license and routing slip to the Office of Human Rights.
- The Office of Human Rights will note if service has approved plan and is affiliated with LHRC. HR will put licenses in licensing mailbox on 13<sup>th</sup> floor and forward to Commissioner’s Office.
- If approved, Support Staff prints a transmittal letter for Director’s signature. Director makes ready to issue.
- After the license has been signed by the Commissioner, CO staff affixes a seal to each license that has the Commissioner’s signature.
- License packet returned to Support Staff and directs a file to be made for application packet and license or renewal is to be filed, or file documentation in existing file.
- Copy of license made for Licensing Specialist.

## Modifications

- If there is a modification to the provider license, the modification will be routed to the Commissioner, because this change requires a signature on the license.
- If the change in the license is a modification that only changes information on the addendum (attachment to the signed license), the director approves the modification unless the service license is modified to a provisional license.
- Support Staff complete transmittal letter for Director's review. Director approves modification.
- Copy of modification is filed and a copy of modification goes to licensing specialist.

## **J. FOLLOW-UP REVIEW FOR AN ANNUAL LICENSE**

The specialist:

- Schedules a follow-up review prior to expiration of the conditional license (usually by end of fifth month to allow time for CAP return, etc.). Gives licensee overview of review process.
- Conducts review following same procedure as initial review, except focus on consumer and record information, and any other undetermined compliance items and prior noncompliances.
- Reviews a representative random sample of records (must be greater than 2). At any review, the specialist should ask for records of clients involved in complaints or incident reports.
- Indicates in OLIS how many staff and client records were reviewed and identifies records reviewed by initials or other identifier.
- Downloads the provider, enters visits and scores all regulations in OLIS.
- Upon receipt of an acceptable Corrective Action Plan, enters pledged corrective action in OLIS with approval dates.
- Forwards to Central Office all materials submitted by the provider for the central file.
- Enters information under License Information, and specialist comments and date.
- If a new provider is in substantial compliance, it may be issued an annual license, effective the day after the conditional license expires. (If it maintains substantial compliance during future reviews, it may be issued a triennial license, thereafter.)
- If a new provider is not in substantial compliance, it may be issued a provisional license for up to six (6) months, after which it must submit a renewal application and receive another review. For a provider coming off a provisional license, the maximum length of the subsequent license will be one year.
- If a new provider has no admissions or has not established a solid consumer base during the six-month conditional license period, it may be issued a full license of up to six (6) months (not a conditional or provisional). This is because the Office of Licensing cannot assess whether the provider has implemented systems to ensure ongoing compliance. At the end of this time frame, if the service has still not served consumers, it will not receive another license.

**K. RENEWAL OF PROVIDER LICENSES**

CO staff do the following:

- Renewal applications go to CO Support Staff.
- Generate a renewal report listing providers with expiration dates in 90-120 days and send a renewal letter, renewal application and copy of last license to provider.
- Enter renewal application date and type in maintenance screen once application is received. If CORE service, must be entered on each individual screen.
- Support Staff enters renewal application date and updates information in OLIS based on input from provider.
- Check provider renewal application for changes; i.e., new addresses, new services, etc. and enter those into OLIS.
- Write license numbers on application.
- Copy application for appropriate specialist and Human Rights Office. It is not necessary to send renewal application to Interdepartmental Office.
- Licensing specialists follow initial application process at this point.
- Licensing specialists are expected to complete their work to renew a license two weeks prior to the expiration date whenever possible.

**L. THE FULL LICENSE**

- A full license may be issued to a provider or service (adult, children, or children's residential) that have demonstrated substantial compliance with the standards on expiration of an annual license.
- The full license can be for any term up to three years.
- A full license may be issued to a service when its term of licensing is less than the provider licensing term, and an issuance of a triennial or annual license would exceed the expiration of the provider license.
- A full license may be issued instead of a triennial license when a provider/service has a history of non-compliances or complaints. The Director will outline the reasons for the full license in the transmittal letter.
- A full license may issued to a service after a conditional license when the provider has triennial license and there have no serious health and safety issues cited.
- Compliance reviews are unannounced. Specialists may use discretion in scheduling follow-up reviews to the initial unannounced review to obtain needed information, review records, and complete the review.
- The requirements for inputting data in OLIS (CAPs, visits, complaints, and regs) are the same for the full license as they are for taking a service off of annual status.

**M. A TRIENNIAL LICENSE**

- The triennial license may be issued to a provider that currently holds a license issued by DBHDS, and has completed the annual period, and is in substantial compliance with the regulations.
- In making a decision about recommending the issuance of a triennial license, the specialist must consider complaint history, the seriousness of founded complaints, the number of non-compliances, and the responsiveness of providers in taking appropriate corrective action.
- Compliance reviews are unannounced, except for Children’s Residential Facilities where the initial renewal review is scheduled.
- All regs must be scored within the licensing period to issue a triennial license.
- The requirements for inputting data in OLIS (CAPs, inspections, complaints, and regs) are the same for the triennial license as they are for taking a service off of provisional.
- A triennial provider license does not ensure that each service within that provider will have a triennial license. A specific service within a provider may have a conditional, provisional, annual, or full license, although the provider may be licensed with a triennial license.

**N. THE PROVISIONAL LICENSE**

- A Provisional License is issued to a service when the service is demonstrating an inability to maintain substantial compliance with applicable regulations. A Provisional License may be issued at anytime during a current licensing period.
- A Provisional License is issued to a provider/service to allow for continued operation, *providing* that substantial compliance with applicable regulations is achieved and maintained.
- A Provisional License may be issued for a period up to six months and may be renewed **once**. In no event will the total term of the license exceed six successive months.
- The provider issued a provisional license will not be allowed to add beds, services, locations, or admissions during the provisional period.

**Examples of when a provisional may be issued:**

- Two subsequent reviews find multiple violations of different regulations or violations of the same regulation.
- Two subsequent reviews find a violation of any standards that address the health, safety or welfare of clients.
- Any review results in multiple violations of standards relating to the health, safety or welfare of clients.
- Multiple violations of Human Rights regulations.
- Failure to take documented corrective action previously submitted to the Office of Licensure.

**Provisional Licenses may be issued only when:**

- Continued operation of the provider/service would not pose a danger to the health, safety and welfare of individuals receiving services.
- The provider has submitted a Plan of Corrective Action, which addresses standards found to be in noncompliance unless the plan of correction is delayed beyond the license expiration date.
- The Office of Licensing has approved the Plan of Corrective Action.
- Where feasible, corrective action has already been taken prior to issuing the Provisional License.
- When the above conditions have not been met, the Office of Licensing shall recommend instituting a denial to renew or revocation of the affected license.

**Children’s Residential Facilities, provisional licenses can be issued only under the following circumstances:**

- Two or more occasions when the same systemic deficiency has been identified without the service taking acceptable, documented corrective action.
- Two or more occasions when different systemic deficiencies have been identified without the service taking acceptable, documented corrective action.
- When a provisional license is issued, the Department of Social Services and the Comprehensive Service Act Office must be notified and informed whether the provisional license was issued due to systemic deficiencies related health and safety violations.

**Monitoring the Provisional License**

- The Office of Licensing may schedule a meeting with the provider to discuss the reasons for the provisional license and the steps the provider is taking to come into compliance.
- The Licensing Specialist will conduct at least bi-monthly follow-up inspections to monitor corrective action pledged by the provider.
- A provider/service holding a Provisional License may have that license renewed. Renewal of Provisional Licenses is contingent upon the licensee achieving substantial compliance with all applicable regulations and the development of an acceptable plan of corrective action that appears likely to maintain continued substantial compliance, and the findings of subsequent unannounced reviews by the Office of Licensing.
- A Provisional License may be followed by a Full or Annual license for a period not to exceed one year, and may be renewed for shorter periods in order to monitor continued compliance. In no event will the renewal expiration date exceed the license expiration date of the provider.

**O. LETTERS OF GOOD STANDING**

- Letters of Good Standing are written for already licensed providers when the Department is overdue in issuing a renewal. These letters verify that the service continues to be licensed.
- The specialist generates a letter of good standing and forwards it to the Director for signature.

**P. UNANNOUNCED INSPECTIONS**

- The licensing specialist must make one unannounced inspection to each licensed service per year. The provider is not to be informed of these inspections in advance. The unannounced inspection is used to determine compliance with regulations in order to determine whether to issue or renew a license.
- During the unannounced inspection, the licensing specialist reviews a representative sample (more than two) of client records and staff records, including records of staff hired since the last inspection.
- The specialist reviews a portion of the regulations in preparation for issuing a license in the future.
- The specialist asks to see new policies and procedures related to the regulations.
- The specialist monitors compliance with corrective action recently pledged.
- The specialist interviews staff and clients.
- The specialist should tour the service building even if the specialist is not evaluating physical plant regulations.
- For services that have multiple locations, the specialist will inspect the physical locations of those services at least once every three years. For example, during a triennial licensing period, all locations should be inspected. During these physical inspections, the specialist should review compliance with relevant physical environment regulations with a focus on preventing risks to residents. The specialist will still review a sample of records and portion of the regulations for the entire service each year.
- Exceptions to the above: Sponsor Home Providers: review at least 25% of all homes during licensing period. In-School Day Support: review records at administrative office and one school per year. Contact school representative to obtain feedback on service. Choose 2 school sites and call school contact and ascertain what their perception of the in terms of developing a service plan for youth involved, reliability of providing services at school in terms of being at the school when they are supposed to be.
- Intensive-in-home: administrative office review of records, interview staff, and contact two families served each year to ask about involvement in service plan, checking to see that services recorded are being provided, satisfaction with the progress being made.
- Unannounced investigation inspections may be counted as meeting the requirement of the yearly-unannounced inspection. The specialist must review regulations that are not directly related to the investigation.

## **TEMPORARY MEASURES DUE TO STAFF REDUCTION**

### **CSBS:**

- **Focus on emergency services:**
  - Review personnel qualifications to provide emergency services, including pre-screening;
  - Review cross section of cases in emergency services from different program areas and count that review as a review of that service; i.e., individuals receiving MH outpatient, Individual with ID receiving case management services, individual who is PACT consumer, etc.
  - Review cases involving mandatory outpatient orders
  - Review cases involving pre-screening and pre-discharge planning
- **Review CSB services with less than triennial license.**

- If CARF accredited, get latest CARF review and use the CARF protocol to review outpatient and day support.
- If CARF accredited, review 25% sample of group homes during licensing period instead of 100%.
- If not CARF accredited, review 33% sample of homes during licensing period.

**OLIS**

**Add an inspection**

Complete all elements as applicable. Make sure to click on location where inspection took place. In summary description, note number of consumer and personnel records reviewed, number of staff interviewed, number of individuals served interviewed, and other actions taken during inspection. This box is not transmitted and PHI may be included in this box

Enter citations and nay comments to provider to appear on CAP on Additional Information Screen. Use coding for individual's and staff's names. Close CAP by entering date in approved date.

**Q. OTHER TYPES OF INSPECTIONS**

**Inspections for Modifications**

- All new residential group home, inpatient, and opioid treatment locations must be inspected prior to opening. Other new locations may be added with a physical inspection if the existing provider has a triennial license and not had significant health and safety violations. Adding a service will require review of service modification application and required attachments. Staff may ask for any information needed to assure services will be provided as requested. These may be announced and/or physical plant inspections.

**In-Office Reviews or Consultations**

- These are used to categorize the review of new applications and telephone cals and other work conducted in the or that is not unannounced.

**R. CLOSING PROVIDERS/SERVICES**

**OLIS**

**Unlicensed Providers/Services**

- Specialists review periodically providers/services assigned that have not been licensed to determine whether they are still in the process or whether they need to be closed.
- RMs reviews unlicensed services that have been in OLIS for six months to determine if services should be closed.
- If an unlicensed provider/service is not licensed and should be closed, the specialist should notify CO. CO staff must close the provider/service on the provider/service screens. The application material should be filed in the closed files.

**Licensed Providers/Services**

A provider must notify the Office of Licensing that it is closing or that a service or location is closing. If the entire provider or a service is closing, the provider returns the license to the Office of Licensing.

- The Specialist must inform CO about the pending closure, the closing date, and the reason for closure.

CO staff will close the provider/service on the service screen.

- CO staff moves files to closed file section, and licensing specialist forwards files to CO.

#### Licensed Locations

A provider must notify the Office of Licensing that it is closing a location with the effective date.

- The specialist or CO staff will indicate on the location screen, closed date.

## II. CITING VIOLATIONS AND CORRECTIVE ACTION PROCESS

### A. CITING VIOLATIONS

- The specialist must cite violations of regulation observed as the result of an inspection. If the violation is minor, no systemic and can be fixed during the inspection, it does not need to be cited.
- Violation cited must be based upon concrete, documented evidence and reflected in the corrective action plan.
- If a violation occurs repeatedly, it reflective of the operation of a significant portion of a service, or is very serious and impacts health and safety, it should be cited as a systemic violation.
- The Office of Licensing accepts citations from the Office of Human Rights and evaluates them based upon the written evidence cited by the Office of Human and enters them in OLIS.

### B. ISSUANCE

- The specialist must issue a notice of non-compliance when an inspection or office review reveals the violation of a licensing regulation. This may be the result of a routine inspection, a complaint, or report of an incident. The regulation number and description of the violation is provided to the service to develop a response to address and correct the violations cited.

### C. TIME FRAMES

- Corrective Action Plans (CAPs) must be returned to the specialist no later than 15 business days from the date of the CAP issuance. Date of notification is defined as the date that the CAP is faxed, mailed, or hand delivered to the provider.

### D. EXTENSIONS OF THE CAP DUE DATES

The licensing specialist may extend the due date of a CAP when:

- The request for extension is received prior to the original due date.
- The extension will not impact client health and safety.
- The provider may have up to 10 additional business days to submit the CAP.

Documentation of an extension must be entered in the comments section of the CAP, and the new date is entered under date due on the OLIS Inspection Regulations screen.

### Citing Failure To Return Cap In A Timely Manner

- The licensing specialist must issue a citation of noncompliance with regulation 170.D if the CAP is not returned by the due date. To do this, enter an in office review inspection in OLIS, citing regulation 170.D. Notify the service by issuing an additional CAP with the new violation.

### E. CRITERIA FOR AN ACCEPTABLE CAP

- Addresses all problems documented in each violation.
- Proposes a solution that demonstrates compliance with the regulation.
- Proposed action must be verifiable, measurable and have a reasonable planned date of completion.

**Entering returned CAP information into OLIS**

- The provider's response to each cited regulation should be summarized in the OLIS Visit Regulations screen.
- Pledged actions for each regulation which are not accepted should begin with the words "not accepted," followed by an explanation of what further response is required from the provider.
- If pledged actions for each regulation are accepted, enter date indicating when accepted on OLIS CAP screen.
- CAPs should be closed in OLIS prior to issuing a license.

**Unacceptable CAPs - licensing response**

- Leave the CAP accepted date on the OLIS CAP screen blank
- Document in the Comments section on the OLIS CAP screen that the CAP has been returned to the provider, and the date that the revised CAP is due.
- Provide the provider with a copy of the revised CAP, which includes the provider responses and the designations of "unacceptable" for each violation cited.

**F. FAILURE TO RETURN AN ACCEPTABLE CAP**

- If a provider does not submit an acceptable action plan for each violation cited within 15 days or within two CAP submissions, consultation with the supervisor is necessary to determine further licensing action.

**G. MONITORING CAPS**

- Violations noted in CAPs will be assessed for compliance with pledged corrective actions at the next unannounced inspection or sooner.
- Licensing specialists will determine in consultation with supervisor if ongoing monitoring procedures are needed.

### III. COMPLAINTS

**Complaints** refer to allegations that there have been violations of regulations or law in a licensed service. These allegations may result from reports by consumers, families, staff, other agencies, or the public; and they may result from or reports of incidents of abuse, neglect and serious injury or death, or observations during licensing inspections to services.

To be accepted as a complaint and investigated, the allegation or incident reported must be associated with specific regulations.

Complaints may be received verbally or in writing.

#### A. ACCEPTING AN ALLEGATION AS A COMPLAINT

- Collect facts about the allegation to determine whether there is reason to believe there are possible regulation violations.
- Identify the regulations which can be associated with the allegations.
- Determine methods of investigation. Methods of investigation may include on site inspections and/or in-office reviews.
- Inform human rights advocate if the alleged violation involves human rights regulations and determine whether there will be a joint investigation with the human rights advocate. If there are allegations of abuse and neglect, see **PROTOCOL NO. 01-2001: COORDINATION OF HUMAN RIGHTS/LICENSING RESPONSE FOR ABUSE/INGLECT INVESTIGATIONS IN LICENSED PROGRAMS** at the end of this section.
- Notify and coordinate with any other involved agencies as needed (law enforcement, DSS, etc.). In Children's Residential Facilities, licensing staff must coordinate with CPS on abuse and neglect complaints. (See Procedures for the Investigation of Complaints at Children's Residential Facilities When Child Protective Services is Involved- Section XI).
- Enter the complaint into the OLIS system or if the complaint is not investigated, document the complaint on the Documentation of Telephone/Mail Complaint Reporting form.

#### B. DETERMINING METHODS OF INVESTIGATION

1) An on-site inspection must be conducted in any or more of the following situations:

- The continuing operation of the service may present an immediate risk to the health, safety, or welfare of current clients.
- The provider has a history of failing to address and resolve serious issues affecting client care and treatment.
- The provider's internal investigation fails to identify and resolve issues of noncompliance.

2) An in-office review may be conducted for all other allegations, providing that the provider submits a comprehensive internal investigation which contains all of the following:

- A summary of the incident or problematic condition.
- An investigation into its causes.
- Actions taken by the provider to resolve the identified problems.
- Actions which the provider will take to ensure that the problem will not recur.
- Any additional information requested by the licensing specialist, including reports from other investigating agencies.

#### C. DETERMINING PRIORITY OF INVESTIGATIONS

- All reported allegations of suspected abuse, neglect, or injury in which it is reasonable to assume that consumer safety may be at ongoing risk should receive the highest investigative priority.
- Reported deaths and serious injuries in which it reasonably can be determined that consumer safety is not at on-going risk shall receive the next degree of investigative priority. All suicides will be investigated.
- All other allegations of violations of regulations shall receive the lowest degree of investigative priority.

**D. INVESTIGATIVE PROCEDURES:**

The investigation will focus on:

- What happened?
- Who was involved?
- When did it occur?
- How did it occur?
- Where did it occur?
- Why did it occur?
- What is the alleged regulation violation?
- What operational systems (if any) failed to work?
- What is the needed follow-up activity?
- Who else needs to be informed?

These questions may be answered through consumer and personnel record review; policy review; interviews with consumers, the complainant, and staff; inspection of the facility; review of internal investigation; and coordination with other investigative providers.

**Failure to Provide Internal Investigations or Other Information Needed to Investigate a Complaint**

If a provider refuses to provide a copy of its internal investigation or other necessary information to investigate a complaint, the licensing specialist must take the following steps in order of priority:

- Review regulations 12 VAC 35-105-70, 80, 160 (or regulation 230 of the children’s residential facility regulation) with provider to demonstrate the requirement for compliance.
- Request to review the internal investigation on-site. The specialist will take notes documenting significant information in the internal investigation. The specialist will inform the provider that the notes will be included in the complaint file and are subject to FOIA requests.
- If the provider refuses permission to review the internal investigation on-site, ask the provider to write its own summary of the incident and have the CEO/executive director sign it, attesting to its veracity. The summary must include descriptions about the nature of the incident, the course of their investigation, and their findings.
- If the provider continues to refuse to share its internal investigation or a summary of it, discuss with the Director the need to involve the OAG in negotiating a formal agreement with the provider about the sharing of this information.
- If the provider continues to refuse to share necessary information, tell the provider that it will be cited for noncompliance for regulations 12 VAC 35-105-70, 80, 160 (or regulation 230 of the children’s residential facility regulations and that the CAP will not be accepted until the provider has satisfied the requirements of these regulations. Remind the provider that failure to comply with these regulations could have a negative impact on the status of the license.

**OLIS: Instructions for Completing the Investigation Screens**

Use initials for individuals receiving services and staff. Full names can be entered in the "Others with Knowledge screen" (the full name of the individual receiving services can be placed here) or in the "Informant Screen."

Investigation Information Screen: Check investigation categories to identify abuse and neglect investigations. Check "Alert Human Rights" if you have informed human rights or human rights is aware of the complaint. Describe the complaint fully in the investigation details box- who what where, when, etc.

Investigation Summary Screen: For each inspection, describe the nature of the inspection in the visit summary description-number of files reviewed, interviews done, and the investigative process.

Investigation Findings Screen: Specialist summarizes findings in "Investigation Description." If complaint is unsubstantiated or there are no violations, state this in the Investigation Description. Check "Human Rights Involved" if human rights staff actively participate in investigation.

Spell check and use complete sentences in the text boxes in these screens as what is imputed on these screens appears on the Investigation Findings Report.

## E. FINDINGS

The licensing specialist may determine the following:

- A provider has **not** violated any regulation. The complaint may be closed at this point.
- A provider **violated** a regulation, but has proposed and implemented acceptable corrective actions. The violations and the provider's actions should be noted on a CAP under the description of noncompliance. The word "Accepted" should be entered in the "Actions to be taken" section on the CAP. The completed CAP should be mailed to the provider with for signature and returned to the Office of Licensing. The complaint may be closed at this point.
- A provider **is in** violation of regulation and has neither proposed or implemented corrective action. The specialist sends the CAP to the provider with the Investigation Findings Report.
- If the findings are related to an abuse and neglect investigation, follow the abuse and neglect protocol in relation to coordinating findings with Office of Human Rights.

If the provider response is not acceptable, then the CAP is returned to the provider requesting additional information. The follow up date is entered into OLIS complaint visit. When an acceptable plan is received, the specialist enters the response into OLIS, completes finding section and closes the complaint.

The complaint remains open until an acceptable plan of correction is received. The specialist may send the CAP as notification of compliance. The notification should state whether or not regulation violations were cited in relation to the complaint.

Once an acceptable corrective plan is received, the specialist enters the provider response into OLIS, completes the investigation finding screen, and closes the investigation. The specialist submits copies of the following for the investigation file in CO: the signed corrective action plan and any attachments, specialist notes and other supporting documents collected by the specialist. The Investigation Findings Report is part of the Investigation file, but does not need to be forwarded to CO. If there are violations of the Human Rights regulations, the specialist provides a copy of the CAP to the human rights advocate. The specialist notifies the complainant of the results of the investigation by sending the complainant the Investigation Findings Report and the CAP should there be citations.

**DBHDS**  
**OFFICE OF LICENSING AND OFFICE OF HUMAN RIGHTS**

**PROTOCOL NO. 01-2001**  
**COORDINATION OF HUMAN RIGHTS/LICENSING RESPONSE FOR ABUSE/NEGLECT**  
**INVESTIGATIONS IN LICENSED PROGRAMS**

Date: October 1, 2001

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**Policy**

The Office of Licensing and Office of Human Rights will jointly coordinate, communicate, consult and monitor the investigations of abuse and neglect allegations in licensed programs

**Procedure**

1. When the designated staff within the Office of Human Rights or the Office of Licensing receives information from a provider or any source that alleges that an individual receiving services might have been abused or neglected, staff will immediately notify the assigned staff person in the other office (licensing and/or human rights) by:
  - copy of the information on the Community Abuse Allegation/Neglect Report after the provider sends such report to the Office of Human Rights ( Attachment A) or;
  - copy of the Documentation of Telephone/Mail Complaint Reporting form as completed by OHR or OL( Attachment B).
  - a) The form may be e-mailed or faxed to the licensing or human rights staff person. The program must continue to provide detailed information about the allegation/complaint/incident, as it becomes available.
2. Upon the receipt of the allegation of abuse or neglect the licensing specialist will make a determination of whether or not a site visit is necessary. The determination will be made according to Office of Licensing protocol III " Complaints" and IX "Interdepartmental Procedures for Children's Residential Facilities when Child Protective Services are Involved."
  - a) Based on a review of the following criteria the licensing specialist will determine if a joint investigation with the human rights advocate is warranted.
    - the severity of the allegation,
    - the nature of the injury/harm to the individual(s) and/or
    - the potential for injury/harm to any or all individuals in the program.
  - b) When a joint investigation is warranted as determined by the criteria above the regional advocate will participate in the investigation or ensure that another OHR staff is available to participate in the investigation. In the event that the regional advocate has conflicting priorities, which make staffing the investigation impossible, the AHRD shall be notified.

- c) Whenever the licensing specialist makes a site visit to a provider as part of an investigation of abuse or neglect the appropriate human rights advocate shall be notified of the date and time of the visit.
- d) When either office discovers during the course of an ongoing complaint investigation that the facts seem to support an allegation of abuse or neglect they will immediately phone their licensing or human rights counterpart.
- e) Each licensing specialist and human rights advocate that have similar assignments will review cases they are monitoring on a monthly basis or more frequently as the situation warrants.
3. Each office must document plans for follow-up or investigation on the written report of an incident or allegation by licensing and human rights. When there is no planned follow-up or investigation, a rationale must be included on the bottom of the form. (see Attachment B section 2) When the provider sends their internal investigation report or CAP, the licensing and human rights staff will share the provider/program's report.
  4. The licensing specialist, in consultation with the human rights advocate, shall make a determination of whether or not abuse/neglect occurred based on the definitions found in the Code. Determinations made by the Office of Licensing staff shall be based on whether the facts support violations of the Licensing Regulations or the Human Rights Regulations. The standard used for the determination of abuse or neglect is "preponderance of evidence." Additional factors to consider include:
    - any DSS CPS or APS findings, however a DBHDS finding is not dependent upon and does not have to wait for the DSS finding; and
    - any findings by law enforcement agencies.
  5. When the human rights advocate has made an on-site investigation in conjunction with an incident, allegation or complaint of abuse or neglect, he/she will develop a written report of the facts with copies provided to the assigned licensing staff and to the SHRD. The advocate must indicate whether or not the facts support any violation of the Human Rights Regulations. A form for reporting the information to licensing is attached (Attachment C).
  6. The advocate will submit the report to the licensing specialist and the SHRD within ten (10) working days of the site visit. If circumstances related to health and safety warrant an immediate report, the advocate will submit the report as soon as possible.
  7. The licensing staff will include the stated human rights violations that are sufficiently supported by facts, in the report to the program/provider. The program/provider is then responsible for developing a corrective action plan to address the licensing and human rights violation(s).
  8. When there are questions or disagreement about the findings, the human rights and licensing staff shall resolve the differences through discussion involving supervisory staff when necessary.
  9. The licensing specialist will immediately share the program/provider's corrective action plan with the advocate. The advocate must provide feedback to the licensing specialist within five (5) working days of receipt of the CAP. The licensing specialist shall not delay in providing a response to the provider's CAP.
  10. Quality Assurance activities to address coordination, consultation, communication and monitoring between the OHR and OL related to the investigation of abuse and neglect allegations include the following:
    - Ongoing review of investigation activities of OL and OHR staff by OL and OHR CO supervisory staff.

**Effective: November 22, 2001**

#### IV. HUMAN RIGHTS PLANS AND AFFILIATION

The following protocols must be followed depending upon the situation encountered:

A. **EXISTING PROVIDER DOES NOT HAVE APPROVED HUMAN RIGHTS (HR) POLICIES AND/OR HAS NOT DEVELOPED ITS OWN LOCAL HUMAN RIGHTS COMMITTEE (LHRC) OR AFFILIATED WITH AN EXISTING LHRC**

- Provider will be cited for violation of §150.4. The license will not be renewed until the provider has an approved human rights policies and has affiliated with or formed its own LHRC. Specialist will refer provider to regional human rights advocate for assistance.
- Licensing specialist will request regional human rights advocate inform specialist when provider has fulfilled human rights policies or local affiliation requirement.
- Regional advocate will e-mail licensing specialist confirmation of the service's policy approval or affiliation with the LHRC and fax a copy of the approval letter to the licensing specialist.
- Office of Licensing will submit license to Commissioner for approval.

B. **NEW PROVIDER/NEW SERVICES OR LOCATIONS**

- Provider cannot operate without an approved HR Policies and affiliation with LHRC. No permission is to be granted to operate until the Office receives confirmation. E-mail the HR Regional Advocate re: status of the HR Policies and/or affiliation and ask for written or electronic response.
- Receive confirmation that provider has LHRC affiliation for new jurisdiction prior to giving permission to operate and issuing license.

## V. PROCEDURES TO DENY, REVOKE, SUSPEND OR IMPOSE SANCTIONS ON A LICENSE.

These procedures apply where violations have occurred that cannot be or have not been addressed through the usual corrective action process. The Commissioner is authorized to impose a variety of sanctions against private and public providers and public hospitals, facilities or services licensed or funded by the Department (“provider”) based upon a finding of noncompliance with Virginia Code § 37.1-84.1, the *Rules and Regulations for the Licensing of Providers of Behavioral Health and Developmental Services* (“Licensing Regulations”), and the *Rules and Regulations To Assure the Rights of Patients of Psychiatric Hospitals and Other Psychiatric Facilities Licensed by the Department of Behavioral Health and Developmental Services* (“Human Rights Regulations”). Because the denial, revocation, or suspension of a license or the imposition of sanctions on a license may be considered restrictions on the ability of a provider to conduct business, the provider is entitled to due process procedures before such a restriction is imposed.

### A. Range of Sanctions Available to DBHDS

#### 1. Revocation, suspension or refusal (denial) of issuance of license

Virginia Code § 37.2-418 authorizes the Commissioner to refuse (deny) applications for licensing or license renewals and revoke or suspend a license based on any of the following criteria found in Virginia Code § 37.2-418:

- Violation of any provision of the licensing chapter of the Code or of any applicable and valid rule or regulation made pursuant to the Code provisions;
- Permitting, aiding, or abetting the commission of an illegal act in services delivered by a provider; or
- Conduct or practices detrimental to the welfare of any individual receiving services from a provider.

Applications for licenses to operate children’s residential facilities (CORE) may be denied pursuant to 12VAC 35-46-120 when the applicant:

- Violates any provision of applicable laws or regulations;
- Has a founded disposition of child abuse or neglect after the appeal process has been completed;
- Has been convicted of a crime listed in Virginia Code § 37.2-408.1 and 63.1-248.7:2;
- Has made false statements on the application or misrepresented facts in the application process; or
- Has not demonstrated good character and reputation.

Licenses to operate a children’s residential facility may be revoked pursuant to 12VAC 35-46-130 when the licensee:

- Violates any provision of applicable laws or regulations;
- Permits, aids or abets the commission of any illegal act in the facility;
- Engages in conduct or practices which are in violation of statutes related to abuse or neglect of children;
- Deviates significantly from the services for which the license was issued without obtaining prior approval or fails to correct such deviations; or
- Engages in a willful action or gross negligence which jeopardizes the care or protection of residents.

When the provider is notified in writing of the Department’s intent to revoke, suspend or refuse to issue a license, it will be also be provided the information upon which that determination was made.

#### 2. Issuance of Special Orders (Sanctions)

If, following an informal conference, it is determined that a provider is not in compliance with applicable statutory and regulatory provisions that adversely impacts the human rights of consumers or poses an imminent and

substantial threat to the health, safety, and welfare of consumers, pursuant to Virginia Code § 37.2-418, the Commissioner may issue a special order imposing any of the following sanctions or civil penalties:

- **Probation:** The Commissioner may place the license of a provider on probation for a specified period of time, with appropriate terms and conditions.

Probation means placing appropriate and specific terms and conditions upon an existing license for a specified period of time. Such terms and conditions could include restrictions on admission, mandated hiring of consultants to correct systemic deficiencies, or the submission of scheduled performance reports. The OL will monitor compliance with all terms and conditions. Failure to comply with the imposed terms and conditions may lead to a specified outcome, such as the convening of a formal administrative hearing to consider suspension, revocation of the license, or the imposition of additional terms and conditions.

- **Reduce Capacity/Prohibit New Admissions:** If there is a finding that the provider cannot make necessary corrections to achieve compliance with applicable regulations, the Commissioner may order a temporary restriction of the provider's scope of service.
- **Require Public Announcement of License Status:** The Commissioner may require that a provider that has been issued a provisional license or has had its license placed on probation or otherwise sanctioned, place a notice of such action in a prominent place at each of the provider's public entrances.
- **Mandate Training:** If it is determined that a lack of training has led directly to violations of applicable regulations, the Commissioner may mandate training for employees of the provider, with costs to be borne by the provider.
- **Assess Monetary Penalties:** The Commissioner is authorized by Virginia Code § 37.2-405 to may assess monetary penalties of not more than \$500 per violation per day, based upon a finding that the provider is substantially out of compliance with the Human Rights Regulations and that the health or safety of consumers is at risk.
- **Withhold Funds:** Providers that receive public funds may have such funds withheld by the Commissioner, based upon a finding that the provider is in violation of the Human Rights Regulations.

## B. Process for Recommending Negative Action

Staff of the Office of Licensing (OL) and the Office of Human Rights (OHR) will monitor all providers' compliance with applicable statutes and regulations. Providers will be informed of any citations of noncompliance and will be encouraged to develop Corrective Action Plans ("CAPs") which appropriately address the cited deficiencies. When 1) a CAP does not adequately address the cited areas of noncompliance; 2) non-compliances meet statutory or regulatory requirements for denial, revocation, or sanctions; and/or 3) when there is no success in reaching an agreement with the provider on necessary remedial measures, the OL may recommend the denial, revocation, or suspension of a license or the imposition of sanctions.

The process for recommending initiation of negative action includes the following steps:

- The licensing specialist notifies the applicant/provider of the specific inadequacies in the CAP.
- The licensing specialist documents the history of inspections and investigations and the inadequacies in the provider's CAP.
- The licensing specialist provides a copy of all documentation and a recommendation for initiation of specific negative action to the Associate Director and the Director of the OL.
- The OL will develop a letter for the Commissioner to the provider outlining the reasons for the negative action.
- Prior to submitting the letter to the Commissioner, the Director will seek legal guidance from the Office of the Attorney General (OAG) as to whether the grounds for denial articulated in the supporting documentation and letter meet statutory or regulatory requirements.

- After OAG guidance is obtained, the decision brief will be finalized and submitted to the Commissioner through the Chief Deputy Commissioner. The letter for the Commissioner's signature notifies the provider of the specific areas of noncompliance, the right to request an informal conference or the scheduling of an informal conference and the range of possible sanctions that may result from the case decision and the informal conference. The Commissioner will review the documentation and recommendations and determines whether negative action will be taken will be initiated.

### **C. Process for Conducting the Informal Conference:**

Virginia's Administrative Process Act specifies that the required due process begins with an administrative proceeding called an "informal conference". The informal conference is designed to develop factual findings and, based upon those findings, issue a case decision as to whether a provider has failed to comply with applicable statutes and regulations. The provider must request an informal conference.

The Commissioner shall appoint an individual to serve as the presiding officer at the informal conference. The individual shall not be a staff member of the OL or the OHR, or the supervisor of any such staff member. The presiding officer is authorized to make decisions regarding the conduct of the conference, to regulate the procedure at the informal conference, to review all information presented, and to recommend a case decision to the Commissioner. Under this authority, the presiding officer may require the exchange of documents before the informal conference. For example, the presiding officer may require that each party provide to the other party, two weeks in advance of the informal conference, copies of all documents intended to be relied upon at the informal conference.

The OAG may assign an Assistant Attorney General to assist the OL in presenting its case at the informal conference based on the complexities of the case and the degree of involvement of legal counsel on behalf of the provider. The OL may request assistance of the OAG when a need for legal representation arises.

A provider who is noticed to appear at an informal conference is entitled by law to be provided, in advance of the informal conference, with a copy of all documents upon which the OL will rely in presenting its case to the presiding officer. For example, the OL may wish to present the presiding officer with a notebook containing such documents as letters notifying the provider of noncompliances, forms documenting noncompliance areas, corrective action plans and letters responding to corrective action plans. A copy of any such notebook must be given to the provider. The provider is not required, by law, to share its documents with the OL, but, as discussed above, the presiding officer may require that such documents be provided in advance of the informal conference.

An informal conference is designed to permit both parties to present all relevant information to support their cases, as well as to narrow and simplify issues in dispute. For this reason, the process followed should not involve trial-like procedures such as direct examination and cross-examination of witnesses. Rather, individuals with knowledge of the issues provide a narrative outlining relevant information. Formal rules of evidence do not apply, and the presiding officer may accept any information that he or she determines to be relevant to the case. Opening or closing statements may be permitted in the discretion of the presiding officer.

Based on the information presented at the informal conference, the presiding officer will recommend a decision to the Commissioner. The Commissioner is not bound by this recommendation and may review all relevant information in issuing a case decision. Any such case decision should include factual findings, conclusions as to violation of statute or regulations and, where appropriate, recommend action against the provider's license.

### **D. Formal Administrative Hearings**

If a provider is dissatisfied with the Commissioner's decision, it may request a formal administrative hearing. These hearings are trial-like proceedings conducted before a hearing officer appointed from a list maintained by the Virginia Supreme Court. All hearing officers are attorneys and are authorized by the Commissioner to recommend a decision to him.

### **E. Appeal to the Courts**

If a provider is dissatisfied with the case decision following a formal administrative hearing, it may appeal to the circuit court in the locality in which the provider is located. The Court will review the record of the formal administrative hearing and decide whether the decision was consistent with law and supported by evidence. Appeals of the decision of the circuit court lie to the Court of Appeals of Virginia and, finally, to the Virginia Supreme Court.

#### **F. Injunction**

An injunction, while not part of the general negative action process, is an extraordinary remedy that may be sought by the Commissioner in certain situations.

Virginia Code § 37.2-417 authorizes the Commissioner to seek an injunction to prevent a provider's unlawful operation or to prevent or correct violations of statutes and regulations. An injunction is an extraordinary remedy that may be granted by a court when (a) there is a risk of irreparable and immediate harm, and (b) there is no adequate remedy at law to prevent the harm from occurring. A request for an injunction is initiated by filing suit in the circuit court in the locality in which the provider operates. Situations in which an injunction may be considered include unlicensed operation of a service or facility and refusal and/or inability to cease practices which pose an immediate danger to the health and safety of consumers. If a court grants an injunction, it will issue an order directing the provider to refrain from certain activities. Violation of this court order may cause the provider to be held in civil or criminal contempt of court.

Once the Commissioner decides to seek injunctive relief, the Office of the Attorney General will prepare and file all necessary pleadings in the appropriate circuit court and will represent the Department in subsequent court proceedings.

**G. Summary Suspension:** in cases of imminent risk to health and safety, the Commissioner may issue a summary suspension order in residential facilities for children and adults. An administrative hearing must take place within three days and the facility must discharge residents when it receives the Order. If the Commissioner upholds the suspension after the administrative hearing, the provider may appeal the suspension to Circuit Court.

#### **H. Settlement/ Consent Agreements**

At any point after the provider is informed of the Department's intention to take negative action, the Department and the provider may consider negotiating a Settlement/Consent Agreement which resolves the issues through an agreed resolution acceptable to the parties. A Settlement/Consent Agreement is a written document, signed by both parties, setting forth the specific terms and conditions with which a provider agrees to comply to forego the initiation or continuation of administrative proceedings or the imposition of a sanction by the Commissioner. The OL will monitor compliance with the terms and conditions of a Settlement/Consent Agreement for the period of time specified in the agreement. Final acceptance of any such Settlement/Consent Agreement shall be within the sole discretion of the Commissioner or his designee.

Settlement/Consent Agreements are specific to the particular case. However, most such agreements include a listing of factual findings related to the provider's compliance with applicable regulations and statutes, findings as to the provider's history of compliance with applicable regulations and statutes, findings as to attempts to develop corrective action plans and conclusions as to the specific regulations and statutes of which violations were found. An Agreement normally specifies the terms and conditions to which the provider agrees as a condition of ongoing licensure and/or avoiding ongoing administrative proceedings which could result in the imposition of more severe restrictions and sanctions.

#### **I. Process for Developing a Settlement/Consent Agreement**

The OL, with assistance from the OAG and discussion with the provider, will draft an Agreement. The Agreement shall include a specified time frame for the provider to report in writing to the OL on its efforts to comply with the terms and conditions of the Agreement. The Agreement shall specify the responsibilities of both parties, which may include:

- Service requirements
- Reporting requirements
- Time frames
- Anticipated follow-up activities

At the informal conference stage, the presiding officer will review the proposed Consent Agreement that has been negotiated between the OL and the provider and forward his/her recommendation to the Commissioner. Should the Commissioner want to make changes or additions to the proposed Consent Agreement, the OL or OAG will send the proposed changes to the provider or the provider's attorney for review.

Once both parties sign the Agreement, the licensing specialist will implement follow-up activities as outlined in the Agreement. The provider will be informed of the results of the Department's ongoing monitoring through written correspondence from the OL.

At such time as the terms and conditions of the Agreement have been satisfied, the OL will draft a letter, for the Commissioner's signature, communicating to the provider the fact that the requirements of the Agreement have been successfully resolved. In this letter, the provider may be advised of the status of its license.

Settlement/Consent Agreements should contain provision(s) that specify what will happen if the provider does not comply with the terms of the Agreement. For example, the Agreement could provide that the parties agree that, upon the provider's failure to comply with any term of the Agreement, the provider's license will be revoked.

## VI. REPORTING DEATHS AND SERIOUS INJURIES

- All deaths and serious injuries reported to the Office of Licensing will be copied to the Office of Human Rights within 24 hours from the time the licensing specialist learns of the report.
- Licensing specialists are expected to share the Death and Serious Injury Form submitted by the licensed provider with the Regional Advocate. At a minimum, the following information is to be shared with the appropriate Human Rights Regional Advocate:
  - Name of licensed provider and service.
  - Client information - (initials only).
  - Date of death or serious injury.
  - Any preliminary information re: circumstances surrounding the cause of death or injury.

Licensing Specialists and Human Rights Regional Advocates will discuss and coordinate any needed plans for follow-up activities by each office.

Licensing specialists and/or support staff must enter Death and Serious Injury Forms into OLIS by the 5<sup>th</sup> of each month for reports for the previous month.

## VII. GUIDELINES FOR THE LICENSING OF OPIOID TREATMENT SERVICES

1. The provider obtains the Licensing Application, Regulations, Matrix and Opioid Treatment Service Protocol from the Office of Licensing.
2. The Licensing Specialist coordinates with the Substance Abuse Office to collaborate the approval process among the federal government, Office of Licensing and the DEA.
3. The Licensing Application and Opioid Treatment Service Protocol, once completed, is submitted to the Office of Licensing by the provider.
4. The Licensing Specialist refers the provider to the Human Rights Advocate to initiate development of the required Human Rights Policies.
5. The Licensing Specialist and the Office of Substance Abuse Services reviews the service materials, clinical protocols, description, staff qualifications, proposed location, floor plan, policies and procedures and required security measures for the dosing, storage, etc of opioid medications.
6. The provider is expected to maintain communication and coordination with the Office of Substance Abuse Services, the Licensing Specialist in the Office of Licensing, the Regional Advocate in the Office of Human Rights, as well as the individuals at the DEA and FDA responsible for monitoring compliance with the service.
7. The Licensing Specialist coordinates an on-site review of the provider with the Office of Substance Abuse and Pharmacy Consultant.
8. Operation may begin when all approvals necessary are granted and the provider's service receives:
  - A license by the Department (DBHDS).
  - A license to provide services by the Drug Enforcement Administration, including the required drug purchases forms and controlled substances registration by the Board of Pharmacy.

## **VIII. OFFICE MANAGEMENT**

### **A. COORDINATION WITH THE OFFICE OF THE ATTORNEY GENERAL**

The Office Director will initiate all requests for advice unless delegated. Verbal requests can be made by phone or informal requests by e-mail. Written requests will follow this format:

- Introductory paragraph
- Relevant laws
- Facts
- Discussion
- Question/s Presented
- Closing paragraph with date response is needed.

The Director or designee may communicate directly with the OAG, on case specific issues.

### **B. FREEDOM OF INFORMATION ACT (FOIA) REQUESTS**

- All FOIA requests received by licensing specialists should be forwarded to Central Office. Requests can be made verbally or in writing.
- FOIA requests must be responded to within 5 working days. If it is not possible to respond within 5 days, the Director/ will contact the requester in writing and notify the individual that the deadline has been extended for seven working days and the reason for the need for the extension. FOIA letters will be sent with cover letter signed by the Director.
- The office charges for copies made in preparing a FOIA request. The charge is based on the DBHDS Agency rate in effect at the time of the request.
- All non-routine requests or sensitive requests will be coordinated with the Office of Legislative Affairs and/or the Office of the Attorney General, as appropriate.
- Information exempt from FOIA disclosure are (1) records with information that identifies specific personnel information about an individual and (2) material compiled during an active investigation. Once an investigation is completed, all investigative records are subject to FOIA. Internal peer review documents may not be subject to FOIA. The Director should consult with Attorney General regarding these documents.
- Names of clients and initials must be redacted in materials submitted. If staff information is personnel information, names must be redacted. Personal Health Information (identifiable health information) shall be redacted unless the requestor has the appropriate authorization to see PHI. Health information relates to past, present, or future physical, mental health, or condition of an individual or the provision of health care.
- Copies of the FOIA requests, if written, and responses will be forwarded to the Chief Deputy Commissioner and the licensing specialist.
- Staff will utilize the Office model letter for FOIA requests.
- All copies of FOIA responses will be maintained in the Office of Licensing's FOIA file.

### **C. UPDATING THE PROTOCOL MANUAL**

- The protocol manual will be reviewed at least annually to determine the need for revisions, updating, and deletions.
- All suggestions/recommendations for updating the Office of Licensing's *Protocol Manual* will be forwarded to the respective Directors for consideration.
- Recommendations will be drafted in a format that is consistent with the manual's current format.
- Upon guidance from Directors, staff will e-mail a draft of the recommendation to all-licensing staff and request feedback. This feedback will be incorporated into the final draft.
- The final draft will be approved for inclusion by the Executive Director. Copies will be forwarded to all staff.
- New protocols will be included in all existing manuals.
- All revisions to the manual will be dated as to the effective date.

#### **D. MEDIA/ GENERAL ASSEMBLY COORDINATION**

- All calls/inquiries from the press/media must be referred to the Director of the Office of Licensing. Licensing Specialists should not respond directly to any inquiries.
- Licensing staff receiving an inquiry should notify the Director or his designee ASAP of the request and provide him or her with the following:
  - ✓ Name and telephone number of the requester; i.e., newspaper, radio/television station, Delegate or Senator.
  - ✓ The question or issue they are calling about.
  - ✓ Status updates on the issue in question.
  - ✓ Is it a Freedom of Information Act (FOIA) request?
- The Director will contact the Office of Legislation and Media Affairs and request guidance as to how to appropriately respond to the request.
- The Director will immediately alert the Chief Deputy Commissioner of the media request and seek further guidance as needed.
- Any written responses to media inquiries will go out under the Director's signature with copies forwarded to the Chief Deputy Commissioner and the Office of Legislative and Media Affairs.

#### **E. STAFF MEETINGS**

- The Office of Licensing holds staff meetings on a quarterly and/or as needed basis at its Central Office in Richmond. Attendance by all staff is expected.
- The Directors will provide a tentative agenda to all staff no later than one week prior to the scheduled meeting. All staff will be invited to suggest modification to the agenda at this time.
- Meetings will start and end promptly at the time indicated on the agenda.
- All staff are expected to schedule supervisory meetings with their supervisor on an as-needed basis. These meetings may be conducted via telephone, E-Mail, or in person.

- Management Team (Director, Associate Director, Support Staff) will meet as needed to plan office activities.

## IX. PROCEDURE FOR CHILDREN'S RESIDENTIAL FACILITIES

SUBJECT: PROCESSING COMPLAINTS

ISSUE DATE: June 1999

### A. DEFINITION

A COMPLAINT is an accusation that a regulated service is in violation of standards or law.

### B. RECEIPT OF REPORT

- c. A complaint may be made in writing or verbally. The reporter may identify himself or may choose to remain anonymous.
- d. If the reporter identifies himself, advise him that it may not be possible to keep his identity from the subject of the complaint.
- e. If the report is made verbally, gather as much information as possible.
- f. Advise the reporter that he will be notified of the results of the investigation if he gives his name and address.
- g. Determine whether the report constitutes an accusation that a service is in violation of standards or law.
- h. If the report does not meet the criteria specified in the definition of a complaint, notify the reporter that the information does not indicate that the service is in violation of standards or law.

### C. INVESTIGATION OF THE COMPLAINT

- a. If abuse or neglect is alleged, the lead department shall immediately report the complaint to the appropriate local department of social services. Make arrangements to coordinate the investigation with the Child or Adult Protective Services (CPS or APS) investigator. (See Procedures for the Investigation of Complaints When Child Protective Services Is Involved.)
- b. Determine whether a site inspection is necessary. A site inspection is the preferred method of investigation and is necessary for most complaints. A site inspection should always be conducted when the information received indicates that children may be at risk of physical or emotional harm. A site inspection should be conducted unless the investigator is confident that accurate and sufficient information has been gathered or can be gathered through correspondence and telephone contacts with the provider, the complainant, and collateral sources of information.
  - c. Identify standards to be checked for compliance.
  - d. Identify other departments, including other regulatory authorities and technical experts who should be consulted.
  - e. When a site inspection is necessary:
  - f. Determine whether the complaint is serious enough to warrant an immediate site inspection and whether the inspection should be announced or unannounced
  - g. Contact other departments involved and identify persons to participate in the site inspection.

h. Schedule the site inspection and conduct the investigation.

**NOTE:** The regulator shall not begin an investigation when other investigators (CPS workers or the police) are involved, until contact has been made with these investigators. The regulator needs to be careful not to contaminate evidence needed by these investigators.

- c. Evaluate the information obtained during the investigation.
  - 1. Determine if sufficient information has been obtained and determine the appropriate ways to gather any additional information needed.
  - 2. Review the information gathered and determine the validity of the complaint.
  - 3. Report any suspected criminal violations to the appropriate law enforcement authority.
  - 4. Consult with other departments having regulatory authority concerning the appropriate actions to be taken.

#### D. ACTION ON THE COMPLAINT

- a. Within 60 work days from receiving final reports from other investigating agencies:
  - 1. The investigation must be completed;
  - 2. Notify the provider in writing of the findings and action being taken;
  - 3. Notify the complainant in writing that the investigation has been completed.
  - 4. Complete the back of the complaint form and forward a copy to the Children's regulation with summary information regarding the complaint
  - 5. Close the complaint in CRF

- b. No violations of standards related to the complaint

Notify the provider in writing summarizing the focus of the investigation and stating there were no violations of standards related to the complaint. If violations of standards are found that are not related to the complaint enclose the corrective action plan which clearly indicates that the violations are unrelated.

Notify the complainant in writing that the complaint has been investigated and that the provider was determined to be in compliance with all standards related to the complaint.

- c. Violation of standards related to the complaint

- 1. Notify the provider in writing summarizing the focus of the investigation and stating there were violations of standards related to the complaint. Enclose the corrective action plan which lists all violations. Explain that the corrective action plan must be completed, must establish time frames for obtaining compliance, and must be submitted to the lead department.
- 2. Upon completion of the investigation, notify the complainant in writing that the complaint has been investigated and that appropriate action has been taken.

- d. If negative action is necessary, follow the lead department's procedures for revocation or injunc-

tive action.

#### E. INVESTIGATION GUIDELINES

- a. An unannounced inspection is preferable when reported conditions need to be observed.
- b. An announced inspection is preferable when it is necessary to interview individuals and appointments need to be scheduled.
- c. Consider the effect a complaint investigation may have upon the children remaining in care after a complaint has been investigated and upon staff who continue to work at the provider. Select investigation techniques which will (1) disrupt the provider's services/services as little as possible, and (2) protect children and staff from potential retribution when they cooperate in the investigation.
- d. Explain the purpose of the inspection to the person in charge. The best approach is a direct, straightforward statement to the effect that a complaint has been received and is being investigated. If the complaint is against the executive director contact should be made with the appropriate representative of the sponsoring authority (e.g. board of directors).
- e. Be prepared for an emotional response from the person in charge. There may be a need to emphasize that the investigation is a protection for the provider. The investigation protects the provider from unfounded, irresponsible, or malicious criticism from dissatisfied customers, former employees, and the provider's competitors.
- f. Be prepared for emotional responses from staff and children who are interviewed. Staff and children may feel threatened by the investigation and may be reluctant to cooperate.
- g. Be prepared to deal with "Who reported me?" Remember that who reported the complaint is not important to the investigation. Focus on the reported conditions/problems and the interests of the provider in quickly resolving any questions.
- h. Conduct interviews in a private place. Make observations as unobtrusively as possible. Work to minimize any undue alarm or concern among the children.
- i. Keep the person in charge advised of the progress of the investigation. Conduct an exit interview with the person in charge at the conclusion of the investigation. This interview may be conducted by phone when appropriate. A letter may serve as the exit interview when an onsite inspection or telephone interview is not possible. Notify the person in charge when they will receive a letter with the findings of the investigation. Determine what can and cannot be revealed during the exit interview.
- j. Advise the person in charge that follow-up may be necessary to discuss the complaint further. It is not unusual to think of something additional that should have been investigated after leaving the provider. It may be necessary to return at a later time.
- k. If violations of standards not related to the complaint are observed, deal with them separately. Advise the provider representative that violations unrelated to the complaint investigation were observed. Deal with these violations as normal and make it clear that they are not related to the complaint investigation.

**X. PROCEDURES FOR REGULATORS FOR THE INVESTIGATION OF COMPLAINTS AT CHILDREN'S RESIDENTIAL FACILITIES WHEN CHILD PROTECTIVE SERVICES IS INVOLVED**

6/99

**A. Contact Child Protective Services**

Child protective services should be contacted immediately if they have not already contacted the regulatory authority. Virginia Administrative Code states:

22 VAC 40-730-40. Involvement of regulatory agencies. The authority of the local agency to investigate complaints of alleged child abuse or neglect in regulated facilities overlaps with the authority of the public agencies which have regulatory responsibilities for these facilities to investigate alleged violations of standards.

22 VAC 40-730-40(1). For complaints in state regulated facilities and religiously exempted child day centers, the local agency shall contact the regulatory authority and share the complaint information. The regulatory authority will appoint a staff person to participate in the investigation to determine if there are regulatory concerns.

Child protective services must contact the lead regulatory authority as quickly as possible after the receipt of the complaint, prior to beginning the investigation. If the regulatory authority has not heard from them, they should initiate the call to CPS.

The regulator should become familiar with Child Protective Services policies and the role of the CPS investigator. Remember that the CPS investigator and the regulator are investigating the same incident for different purposes. The CPS investigator is making a determination of whether abuse or neglect occurred, and the regulator is making a determination on whether there are violations of standards. The regulator may be helpful to the CPS worker by orienting this worker to the provider's service and population.

**B. Develop Investigative Plan**

The appointed regulatory staff person and the CPS worker assigned to investigate the complaint shall confer on their preliminary investigation plan. The regulator and the CPS worker shall plan how each will be kept apprised of the progress of the investigation, and shall confer at the conclusion of the investigation to inform the other of their respective findings and to discuss corrective action.

22 VAC 40-730-40(2). The CPS worker assigned to investigate and the appointed regulatory staff person will discuss their preliminary investigation plan.

**C. If CPS Staff is Unavailable**

If the assigned CPS worker is unavailable to participate in the investigation process in a timely manner, the Regulator should begin his part of the investigation separately; however, the regulator should attempt to advise the CPS worker that he is beginning his investigation. The regulator needs to be careful not to contaminate evidence needed by the CPS worker or other investigators.

**D. Joint Interviews and Information Sharing**

Whatever agency received the complaint information shall share the information with the other agency. This contact shall include a review of their respective needs for information and development of a plan for the investigation based on when these needs coincide and can be met with joint interviews or with information sharing.

22 VAC 40-730-40(2)(a). The CPS worker and the regulatory staff person shall review their respective needs for information and plan the investigation based on when these needs coincide and can be met with joint interviews or with information sharing.

22 VAC 40-730-40(2)(a). The investigation plan must keep in focus the policy requirements to be met by each party as well as the impact the investigation will have on the provider's staff, the victim child or children, and the other children at the facility.

**E. Joint Investigation with Law Enforcement and Provider**

The CPS worker shall attempt to facilitate a coordinated approach among CPS, law enforcement and the regulatory authority to avoid unnecessary duplication and minimize impact on children, families, and staff.

22 VAC 40-730-50(B). When CPS and law enforcement will be conducting a joint investigation, the CPS worker shall attempt to facilitate a coordinated approach among, CPS, law enforcement and the regulatory authority.

**F. Contact with the Provider Administrator**

The regulator shall contact the facility administrator or designee at the beginning of the onsite investigation. Contact may be made by telephone prior to the initial on-site inspection. The CPS worker is also required to contact the facility administrator.

If the administrator is the alleged abuser or neglecter, this contact should be made with the individual's superior. In most circumstance this would be the chair/president of the board of directors.

**G. Arrange Necessary Interviews, Observations, and Access to Information**

Arrangements should be made with the administrator or designee for access to all information needed at the facility, including interviews with staff or children, observation of the physical environment, and review of pertinent policies, procedures and records.

**H. Update Facility Administrator of Investigation**

The regulator shall keep the facility administrator or other appropriate person apprised of the progress of the licensing investigation.

**I. Interview with Child**

When the CPS worker interviews the alleged victim the CPS worker shall determine who may be present during the interview, taking into consideration both the comfort of the child and other parties' need to have first hand information. This would not preclude a separate interview by the regulator to determine compliance with standards.

**J. Exit Interview**

The regulator shall conduct an exit interview with the facility administrator at the conclusion of the investigation. This interview may be conducted by phone when appropriate. During this interview the regulator will notify the administrator when they will receive a letter with the findings of the investigation. The regulator shall determine what can or cannot be revealed during the exit interview.

A letter may serve as the exit interview when an onsite or telephone interview is not possible.

**11. Record Keeping**

The regulator shall keep record of the complaint investigation as required by the regulatory authority.

The complaint investigation should be completed within 60 days from the receipt of the complaint. When this is not possible the reason for the delay shall be documented in the record and the regulator's supervisor shall be updated.

The front of the children regulation complaint form is to be completed at the time the complaint is received and the information is to be entered into the CRF information system. This can be done by the regulatory authority staff. The information system will assign a complaint number to the complaint.

Complaints concerning serious violations of standards resulting in serious injury or death of a child or the possible revocation or denial of the facility's license are to be reported to the Office of Licensing as soon as practical.

When the investigation is complete, the facility and the CPS worker are to be notified in writing of the results of the investigation. The back of the children's regulation's complaint form is to be completed and sent to the children's regulation along with information summarizing the complaint. Information should be entered into the CRF information system to close the complaint. Data entry can be completed by the regulatory agency staff.

Note: Regulators should not rely on CPS workers to make determinations regarding the children residential Regulations.

## **XI. TOOL FOR EVALUATING RISK AND INVESTIGATION RESPONSE**

### **A. Incidents ranked as most serious**

1. Death suicide
2. Death unexpected
3. Abuse /neglect
4. Lack of supervision
5. Serious injury
6. Restraint injury
7. Overdoses
8. Multiple violations
9. Medication errors
10. Peer to peer assaults
11. AWOLS
12. Lack of financial resources
13. Theft of funds
14. Natural deaths
15. Other

### **B. Mitigating, exacerbating and other Factor to Consider**

#### **Organizational History**

1. History of similar events
2. History of violations
3. History of providing structured program of care and treatment
4. Track record for reporting and sharing information freely
5. Sound, consistent documented history of QA improvement activities
6. Quality of Staff
7. Quality of investigations and corrective action

#### **Provider Response to Incident**

1. Immediate actions taken in response to incident
2. Actions prior to event to prevent
3. Report of incident –where report minimize issues
4. Quality and timeliness of provider's responses, degree of fact finding, investigative actions and follow-up to the reported incident

#### **Incident Related**

1. Adverse event appears to be related to provider's actions
2. Nature of incident
3. Potential for imminent threat to health, safety or welfare of other clients based on nature of the incident
4. Conflicting information provided about incident
5. Severity of injury
6. Location of incident

#### **Other Factors**

1. Concurrent criminal investigation
2. Availability of evidence and/or persons to be interviewed
3. Departmental/management priorities
4. Investigator's workload, what else needs to be done
5. Investigator's judgment in determining what is most significant/important to investigate

6. Impact of other entities-media, VOPA, government agencies, families, politicians