

DBHDS Office of Licensing
Guidance on Corrective Action Plans (CAPs)

Effective:

Purpose: This document provides guidance to DBHDS licensed providers on how to develop and implement an acceptable correction action plan (CAP).

Regulations addressed:

12VAC35-105-20. Definitions

12VAC35-105-170. Corrective Action Plan

Settlement Agreement indicators addressed:

V.C.4.8

Guidance:

12VAC35-105-20. Definitions.

The following definitions (pending final approval) are relevant to this guidance document:

"Corrective action plan" means the provider's pledged corrective action in response to cited areas of noncompliance documented by the regulatory authority.

"Systemic deficiency" means violations of regulations documented by the department that demonstrate multiple or repeat defects in the operation of one or more services.

Guidance:

The development, implementation, and monitoring of CAPs are important components of a provider's overall quality improvement process. Adequate CAPs address identified deficiencies on both an individual and systemic level.

12VAC35-105-170. Corrective action plan.

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

B. The provider shall submit to the department a written corrective action plan for each violation cited.

C. The corrective action plan shall include a:

1. *Detailed description of the corrective actions to be taken that will minimize the possibility that the violation will occur again and correct any systemic deficiencies;*
2. *Date of completion for each corrective action; and*
3. *Signature of the person responsible for oversight of the implementation of the pledged corrective action.*

Guidance:

Develop a Corrective Action Plan (CAP): CAPs must include a detailed description of planned corrective actions that are targeted to the prevention or the recurrence of the regulatory violation that the CAP is intended to address, and must be sufficiently detailed to inform the Office of Licensing of the planned action steps that will be taken to fulfill the goals of the CAP. Planned actions must be verifiable, with mechanisms for verifying the completion of the planned actions incorporated into the provider's ongoing quality improvement activities, pursuant to 12VAC35-105-620.

When developing an acceptable CAP, the provider should review the citation received by the department to identify the problems that led to the issuance of the citation. Providers are required to conduct a root cause analysis (RCA) on all Level II and Level III serious incidents that occurred within the provision of the provider's services or on the provider's property. Therefore, if the citation was issued as the result of a serious incident, the RCA will assist the provider in identifying practices or underlying conditions that may have led to the occurrence of the serious incident. Additional assistance related to RCAs can be found within the department's ["Guidance for Serious Incident Reporting."](#)

Providers may also become aware of remedies to systemic issues through the following processes: conducting quarterly reviews of all Level I serious incidents pursuant to 12VAC35-105-160.C.; annual and as needed risk assessments pursuant to 12VAC35-105-520.C.; and the use of standard quality improvement tools as part of the established quality improvement program pursuant to 12VAC35-105-620.B.

Providers should consider the following steps when writing a CAP:

1. Address all problems documented in each violation by:
 - a. Developing a systemic plan of action to address each problem, which may require updating policies, procedures, and forms, or conducting any needed training or re-training for staff, or other steps that could alleviate the problem and minimize the possibility that the violation will occur again;
 - b. Indicating the frequency for monitoring the plan including how it will be monitored (Ex: monthly audits, weekly chart reviews, quarterly check list); and
 - c. Providing written documentation to demonstrate compliance related to each violation and submitting revised policies, procedures, and forms, as applicable.
2. Identify the position responsible for monitoring implementation of the approved CAP.
3. Include a date of completion for each corrective action. Providers should ensure that completion dates for planned activities are realistic, and the individual(s) responsible for oversight of the CAP must monitor and verify the completion of the planned activities.

If a CAP is returned to the provider a second time for failure to meet all requirements within 12VAC35-105-170.C., the licensing specialist will offer to have a phone call with

the provider to provide technical assistance related to the criteria needed to create an acceptable CAP. If a CAP is returned to the provider a third time for failure to meet all requirements within 12VAC35-105-170, the CAP will be returned with an additional citation for violating regulation 12VAC35-105-170.C. and the CAP dispute process will be initiated automatically as outlined in 12VAC35-105-170.F.

Example for Creating a CAP:

After an unannounced inspection, Provider A receives a licensing report on August 1st that includes the second citation for late reporting within a one-year period.

1. Review the citation received by the department to identify the problems that led to the issuance of the citation.

As this is Provider A's second citation for the same regulatory violation within one year, Provider A conducts a RCA in accordance with the written quality improvement program, to determine the root cause of these systemic violations. The RCA reveals that two different staff members failed to report the serious incidents within 24 hours of discovery. Both staff members completed SIR training less than 10 months ago and one was recently promoted to a supervisor position with additional responsibilities related to serious incident reporting.

2. Address all problems documented in each violation by:

- a. Developing a systemic plan of action to address each problem, which may require updating policies, procedures, and forms; or conducting any needed training or re-training for staff, or other steps that could alleviate the problem and minimize the possibility that the violation will occur again.

As part of the CAP, Provider A decides to amend the agency-wide training policy to include a test that requires a 90% passing score, and amend the new supervisor training to include a review of the incident reporting requirements. The training policy is revised to state that all employees will be trained on the serious incident reporting requirements and must pass a test with a score of 90% or higher within the first 30 days of employment and prior to working alone.

Provider A recognizes that it is important to test staff understanding of the training and expectations related to incident reporting. Provider A also understands that it is important that supervisors receive additional training to enable them to monitor staff compliance with the serious incident reporting requirements. This corrective action will address the issue on both an individual and systemic level versus simply choosing to retrain the two employees who failed to report the incidents within the required timeframe.

- b. Indicating the frequency for monitoring the plan to include how it will be monitored (Example: monthly audits, weekly chart reviews, quarterly check list).

Provider A includes within the CAP that the training manager will: (i) verify all current staff have passed the serious incident report training within 30 days of hire, and (ii)

document staff review and compliance with the training policy within a written document stored with the provider's training policy.

- c. Providing written documentation to demonstrate compliance related to each violation and submitting revised policies, procedures and forms, as applicable.

Provider A will submit to the licensing specialist by the CAP due date: (i) a copy of the updated training policy and (ii) evidence all staff were retrained and passed the test with a score of 90% or higher.

3. Identify the position responsible for monitoring implementation of the approved CAP.

Provider A identifies the training manager position as the position responsible for monitoring implementation of the approved CAP. In this instance, the training manager will be responsible for updating the provider's training policy and responsible for ensuring copies of the passing test scores are included in each employee's file. In addition, the training manager will ensure employees receive both initial and retraining on serious incident reporting on the dates outlined within the revised training policy.

4. Include a date of completion for each corrective action. Providers should ensure that completion dates for planned activities are realistic, and the staff person(s) responsible for oversight of the CAP must monitor and verify the completion of the planned activities.

Provider A sets a specific date of September 1st by which the corrective action plan must be completed. Provider A is confident that this date is a realistic amount of time to amend the training policy and retrain employees.

Provider A's training manager (as identified in #3 above) will monitor implementation and effectiveness of approved corrective actions as part of the established quality improvement program required by 12VAC35-105-620 (see below). This might include developing a quality assurance process to monitor and track the timeliness of reporting of all serious incidents to ensure that the corrective actions are having the intended affect.

D. The provider shall submit a corrective action plan to the department within 15 business days of the issuance of the licensing report. One extension may be granted by the department when requested prior to the due date, but extensions shall not exceed an additional 10 business days. An immediate corrective action plan shall be required if the department determines that the violations pose a danger to individuals receiving the service.

Guidance:

Extensions to the 15 business day timeline for submitting a CAP may be granted only if requested **PRIOR** to the due date, and only for one additional period of up to 10 business days.

If a licensing specialist determines during an unannounced inspection or investigation that there is an immediate and substantial threat to the health, safety, or welfare of the individuals receiving services, the licensing specialist will immediately address the concerns with the provider and will request that the provider develop and commit to a CAP during the onsite inspection. If the provider fails to suggest a CAP during the inspection, the specialist will suggest one for them.

E. Upon receipt of the corrective action plan, the department shall review the plan and determine whether the plan is approved or not approved. The provider has an additional 10 business days to submit a revised corrective action plan after receiving a notice that the department has not approved the revised plan. If the submitted revised corrective action plan is not approved, the provider shall follow the dispute resolution process identified in this section.

Guidance:

CAPs will not be approved unless they include: (1) detailed and verifiable corrective actions targeted to remedying and preventing the recurrence of identified regulatory violations; (2) realistic planned completion dates for each of the planned actions; and (3) the signature of the identified responsible person for monitoring the implementation of the planned actions. In addition, the provider's CAP must address the systemic plan of action to address each problem (please refer to the example above).

F. When the provider disagrees with a citation of a violation or the disapproval of a revised corrective action plan, the provider shall discuss this disagreement with the licensing specialist initially. If the disagreement is not resolved, the provider may ask for a meeting with the licensing specialist's supervisor, in consultation with the director of licensing, to challenge a finding of noncompliance. The determination of the director is final.

Guidance:

- Providers should promptly communicate disagreement with a citation directly to the specialist who issued the citation (licensing specialist, IMU specialist, or investigator). **If a provider does not communicate his disagreement with the specialist before the CAP is due, a citation will be issued for not submitting the CAP on time. In addition, if a provider reaches out to the specialist's supervisor prior to addressing the specialist first, the concerns will be referred back to the specialist.**
- If a provider disagrees with a citation, and is not able to resolve the disagreement with their specialist, the CAP dispute resolution process will be initiated.
- The CAP dispute resolution may be initiated by the provider, or the specialist if the two parties are not able to come to an agreement related to the issued citation(s).
- The purpose of the CAP resolution process meeting is fact-finding and will include open discussion of the dispute issues to promote understanding of the provider's position of citations issued. Accordingly, the provider and specialist are encouraged to present relevant information at this meeting.
- While the parties may question one another regarding disputed facts and issues, the meeting should not be adversarial or treated as a hearing.
- The specialist's supervisor is charged with presiding over the meeting and must do so in an evenhanded, professional manner.

- No decisions will be made at the time of this meeting and the information will be gathered from the meeting and discussed with the Office of Licensing Associate Director and Director to make a final decision.
- After the CAP dispute meeting, the specialist's supervisor will make a decision in consultation of the Office of Licensing Director of Licensing or Associate Director.
- The Office of Licensing Director or Associate Director will issue a final decision regarding the citation within 10 business days.
- If the citation is upheld, the provider will have 10 days to submit the CAP.
- If the citation is not upheld, the Office of Licensing will remove the violation from the licensing report.
- Nothing in this procedure will prevent the Office of Licensing from enforcing immediate corrective action when the violation presents a threat to the health and safety of individuals served.

G. The provider shall implement their written corrective action plan for each violation cited by the date of completion identified in the plan.

Guidance:

Implement the Plan: For serious injuries and deaths that result from substantiated abuse, neglect, or health and safety violations, the Office of Licensing verifies that corrective action plans have been implemented within 45 days of their start date.

Failure to implement a written corrective action plan will result in a licensing report citing 12VAC35-105-170.G.

H. The provider shall monitor implementation and effectiveness of approved corrective actions as part of its quality improvement program required by 12VAC35-105-620. If the provider determines that an approved corrective action was fully implemented, but did not prevent the recurrence of a regulatory violation or correct any systemic deficiencies, the provider shall:

1. *Continue implementing the corrective action plan and put into place additional measures to prevent the recurrence of the cited violation and address identified systemic deficiencies; or*
2. *Submit a revised corrective action plan to the department for approval.*

Guidance:

Monitor CAP: In order to demonstrate compliance with this regulation, providers must show proof that they are monitoring all corrective action plans for implementation and effectiveness.

If after completion of the planned activities it is determined that the corrective actions were not sufficient to prevent the recurrence of the regulatory violation, then the provider shall implement the provider's own policies and procedures for updating the provider's quality

improvement plan or submitting revised corrective action plans, pursuant to 12VAC35-105-620.D.

Example Continued:

Provider A successfully implements the CAP by revising the training policy and ensuring all employees passed the test with a score of 90% or higher by the completion date outlined in the CAP. However, on January 1st, the provider self-identifies the failure to report a serious incident in a timely manner through the quality assurance process implemented as a result of their initial corrective action.

Provider A determines that the approved CAP was fully implemented. However, it did not correct the identified systemic deficiency. Provider A has two options: 1) to continue implementing the CAP and put into place additional measures to prevent the recurrence of the cited violation and address identified systemic deficiencies; or 2) submit a revised CAP to the department for approval.

In accordance with the provider's quality improvement policy, Provider A conducts an analysis into why the CAP has not been effective. Provider A's analysis determines that while the staff pass a test, applying the knowledge to real life situations is more difficult. As a result, Provider A determines that the CAP will continue to be implemented, but also will make sure to talk through real life scenarios and examples during each staff meeting. Provider A also implements a motto with all staff, "when it doubt, talk it out.," to encourage staff to call a supervisor if they have any questions about whether an occurrence may be considered a Level II or Level III serious incident.