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Proposed Regulation Agency Background Document

Agency name	Department (Board) of Juvenile Justice
Virginia Administrative Code (VAC) Chapter citation(s)	6 VAC35-41
VAC Chapter title(s)	Regulation Governing Juvenile Group Homes and Halfway Houses
Action title	Comprehensive review of regulatory provisions governing juvenile group homes and other nonsecure residential facilities
Date this document prepared	April 17, 2020

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The Regulation Governing Juvenile Group Homes and Halfway Houses establishes the minimum standards with which staff in non-secure juvenile group homes and similar nonsecure facilities must comply. The existing regulation addresses a wide range of topics applicable to group homes, including personnel requirements, physical plant, facility safety and security, residents' rights, program operations, health care services, and behavior support and management. The regulation also establishes requirements applicable solely to independent living programs, wilderness programs, family-oriented group homes, and respite care facilities.

This regulatory action proposes comprehensive amendments to the Regulation Governing Juvenile Group Homes and Halfway Houses. The purpose of the action is to continue to enhance programming and ensure safety and rehabilitation of residents within these facilities. Among the most noteworthy changes, the regulation imposes an obligation on staff to conduct periodic room checks, decreases the hours of required annual training necessary for direct care and direct supervision staff, and imposes

information sharing requirements when individuals who do not work in the facility transport residents off-site.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

CSU means a court service unit.

DBHDS means the Department of Behavioral Health and Developmental Services.

DSS means the Department of Social Services.

FOG means family-oriented group home.

IL means independent living.

JCC means a juvenile correctional center.

JDC means a juvenile detention center.

PREA means the Prison Rape Elimination Act of 2003.

SIR means serious incident report or serious incident reporting.

TB means tuberculosis.

TYSC means Tidewater Youth Services Commission.

VDH means the Virginia Department of Health.

VJCCCA means the Virginia Juvenile Community Crime Control Act.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

In June 2016, the Board of Juvenile Justice authorized the submission of a Notice of Intended Regulatory Action to initiate the regulatory process for a comprehensive review of the Regulation Governing Juvenile Group Homes and Halfway Houses. In May 2019, the board approved proposed amendments to this chapter for advancement through the Proposed Stage of the Standard Regulatory Process.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

The promulgating entity is the Board of Juvenile Justice (the board). Pursuant to § 16.1-309.9 of the Code of Virginia, the board is required to "develop, promulgate, and approve standards for the development, implementation, operation, and evaluation of the community-based programs, services, and facilities" authorized by the Virginia Juvenile Community Crime Control Act.

Additionally, the board is entrusted with general, discretionary authority to promulgate regulations by § 66-10 of the Code of Virginia, which authorizes the board to promulgate such regulations as may be necessary to carry out the provisions of this title and other laws of the Commonwealth.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

The proposed amendments are a result of a comprehensive review of this chapter conducted by department staff and facility administrators from group homes, shelter care facilities, and other nonsecure residential facilities regulated by the department. The amendments are necessary to clarify ambiguous or confusing provisions, eliminate requirements that are impractical or impose undue burdens on the regulants, incorporate active variances, and enact new requirements aimed at enhancing safety and security and improving the level of services available to juveniles placed in group homes and similar nonsecure juvenile residential facilities. The amendments also align with changes that have occurred since the department's last review of the regulation, as described below:

Prison Rape Elimination Act: In 2003, Congress enacted PREA (Public Law No. 108-79) to "provide for the analysis of the incidence and effects of prison rape in federal, state, and local institutions and to provide information, resources, recommendations, and funding to protect individuals from prison rape. The Act created a commission charged with developing standards for the elimination of prison rape. The final rule for these standards became effective in 2012; however, juvenile correctional facilities had until October 2017 to comply with the standards related to staffing requirements and staffing ratios. Although group homes and other similar facilities under the department's jurisdiction are not "secure facilities" as contemplated by PREA, PREA's staffing ratios provide a safe and reasonable benchmark for ensuring the safety of residents in nonsecure juvenile facilities both while on campus and while off campus participating in facility-sponsored events. The regulation's existing requirements regarding staffing ratios in group homes do not align with the required staffing ratios in PREA, and the proposed amendments will conform Virginia's regulations to these requirements.

Inclusion of active variances: The proposed amendments incorporate existing variances that acknowledge that residents in IL programs are developing skills and behaviors for successful IL and therefore do not need the same protections or level of supervision as residents in other group home facilities. The variances currently in place for IL programs address resident nutrition and staffing during resident emergencies. Because these variances are not permanent, the applicable IL program must seek authorization from the board prior to the variance expiration date in order to renew its provisions.

Room checks: Unlike the other residential facilities regulated by the board (juvenile correctional centers and secure juvenile detention centers), group homes, shelter care facilities, and other similar facilities are prohibited from placing residents behind locked doors or in secure areas where they are not free to leave. Whenever residents are confined in their rooms in JCCs and JDCs, staff must conduct periodic room checks to ensure the resident is safe. This requirement is not in place for group homes and similar facilities. The proposal directs group home staff to conduct periodic checks on residents in the facility once every 30 minutes, or more often if the circumstances justify additional checks. IL programs are excused from this requirement.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

The department recommends the following new provisions to the chapter, as summarized below:

- Section 935, requiring staff (except staff in IL programs) to conduct periodic checks of each resident in the facility at least once every 30 minutes, or more often if the circumstances justify.
- Section 1005, allowing staff in IL programs an exception to the general 1:16 staffing ratio requirement, such that in emergencies, a direct care staff in these programs may leave the facility for no longer than one hour to attend to a resident who is away from the facility and in need of immediate assistance.

The department recommends several substantive amendments to existing language in this regulation, as summarized below:

Part I – General Provisions

- Section 10, amending various definitions, including: (i) IL programs (*amended to require the director to approve these programs, rather than the board*); (ii) on duty (*expanded to include the time an employee is responsible for the direct care of residents, as well as the direct supervision of such residents*); and (iii) rest day (*amended to allow staff to perform non-supervisory duties on rest days*). Additionally, definitions were added for the following new terms: contractor, grievance, legally authorized representative, planned admission, tuberculosis risk assessment, tuberculosis screening, and wilderness program.
- Section 40, striking the provision requiring facilities to ensure that failure to comply with the regulation does not pose an immediate and direct danger to residents.
- Section 50, replacing the board with the director as the individual authorized to set age limits in group homes.
- Section 60, replacing the board with the audit team leader as the entity to whom reports and information demonstrating compliance with the regulatory requirements must be submitted.
- Section 90, directing facilities to describe in the serious incident report the manner in which the incident was communicated to the director or the director's designee.
- Section 105, clarifying that group home staff are only required to alert the facility administrator to criminal activity suspected to have occurred at the facility or at a facility-sponsored activity.
- Section 110, requiring emergency grievances be **acted on** rather than **heard** within eight hours, establishing a new definition for emergency grievance (set out in Section 10), and requiring the completion and documentation of grievances be in accordance with facility procedures.

Part II – Administrative and Personnel

- Section 140, authorizing group homes to utilize residents in human research only if the facilities comply with Chapter 170 of the department's regulations and amending the definition of human research to mirror Chapter 170's definition.
- Section 160, removing the mandate that facilities not subject to the rules of the governing authority or a local government personnel office follow DHRM's minimum entry-level qualifications.
- Section 165, clarifying that tuberculosis risk assessments must be completed and evidenced on an assessment form containing the elements on the form published by the Virginia Department of Health and limiting the authority to interpret the results of the assessment to a physician, a

physician assistant, nurse practitioner, or registered nurse. The proposal makes similar changes to Section 1210, which addresses tuberculosis screenings for residents.

- Section 180, prohibiting employees in group homes who are hired under the “fingerprint exception” from working directly with residents until all required background checks have been satisfied. Sections 180 and 290 also prohibit group homes from hiring employees or contractors or taking on volunteers who have been convicted of certain barrier crimes listed in [§ 19.2-392.02](#) of the Code.
- Sections 190 and 300, eliminating the requirement that group home staff address population control during employee and volunteer orientation.
- Section 200, removing the mandate that training accord with the provider’s training plan.
- Section 210, removing the duty of direct care and direct supervision staff to receive 40 hours of annual training, instead requiring such staff to receive an unspecified volume of training in certain topics and 15 hours of additional training in other topics. The proposal also requires the refresher training applicable to medication administrators to include a review of the requirements for medication administration set out in Section 1280.
- Section 310, adding personnel records for contractors to the list of records that must be maintained and eliminating the requirement that facilities retain annual performance evaluations in the employee’s personnel record. The proposal also clarifies that personnel records of interns may be limited to the required background checks and requires the facilities to maintain all such personnel records confidentially and securely.
- Section 330, making the facility’s duty to keep separate health records on each resident mandatory rather than discretionary.

Part III – Physical Environment

- Section 360, authorizing the facility administrator to identify which safety, emergency, and communications equipment and systems are critical and to require only those items to be subject to periodic testing, inspection, and maintenance.
- Section 440, broadening the prohibition against smoking in certain areas of the facility by imposing an absolute prohibition on resident possession, purchase, use, or distribution of tobacco products or nicotine vapor products and prohibiting staff, contractors, volunteers, interns, or visitors from using such products in any areas of the facility or its premises.
- Section 470, removing the directive that animals maintained on the premises be housed a reasonable distance from sleeping and living areas.
- Section 490, requiring the emergency preparedness and response plan to identify evacuation means for any individual in the facility who may require special accommodations rather than limiting the targets to residents with disabilities.

Part IV – Safety and Security

- Section 510, prohibiting strip searches and visual anal and vaginal cavity searches in group homes, in addition to the existing prohibition on manual and instrumental searches of such body cavities.
- Section 550, directing group homes to provide external parties (other than parents or guardians) responsible for transporting residents whom the facility has flagged for additional monitoring due to suicide inclinations or other special medical needs with a DJJ-approved form identifying pertinent information necessary for the resident’s safe transportation.

Part V – Residents' Rights

- Section 560, removing the qualifier that facilities may not place residents **alone** in a locked room, instead imposing an absolute prohibition on confining residents in locked rooms, regardless of whether they are alone or with others.
- Section 565, specifying that the assessment needed to determine whether a resident is a member of a vulnerable population must occur immediately upon a resident's admission to a group home facility.
- Section 570, providing that the resident's mail referenced in this section includes electronic mail and specifying where first class letters and packages received for transferred or released residents must be forwarded.
- Section 590, removing the facility's obligation to make visitation procedures available to "other interested persons," in addition to the resident and parent or legal guardian.
- Section 620, replacing the drought-related exceptions to the directive that facilities allow residents an opportunity to shower daily with a more generalized exception that applies if there is a documented emergency.
- Sections 650 and 1000, allowing IL programs exceptions from certain nutrition-related provisions.
- Section 680, clearly distinguishing between recreational requirements in wilderness programs and in group home facilities by expressly exempting wilderness programs from the provisions of this section. The proposal incorporates many of the requirements applicable to wilderness programs into recreational programs for group home facilities.
- Section 700, requiring the facility to obtain written permission from the **parent** or legal guardian **and the resident** before using the resident for fundraising activities.

Part VI – Program Operation

- Section 730, making the individual who referred the resident, and not the provider, the entity responsible for completing the application for admission into the group home facility.
- Sections 750 and 780, removing the language regarding self-admissions to shelter care facilities. The proposal also removes this reference from the definition of emergency admission.
- Section 800, repealing the provision that prohibits group homes from placing residents outside the facility before obtaining a placing agency license from DSS.
- Section 890, removing the directive that the department approve procedures related to positive relationships with facility neighbors.
- Section 900, eliminating facility discretion to allow residents to visit the homes of staff members, in favor of an absolute prohibition.
- Section 910, repealing the provision prohibiting direct care staff from taking on nondirect care responsibilities if they interfere with the staff's direct care duties.
- Section 920, allowing IL program staff to leave the facility temporarily to attend to a resident offsite in an emergency, provided certain requirements are met.
- Section 930, modifying the required staff-to-resident ratios from the current 1:10 to 1:8 and adding language giving the facility administrator discretion to determine appropriate staffing ratios for off-campus trips if the ratios do not fall below the 1:8 directive; striking the current 1:15 staff-to-resident ratio mandate in IL programs; and striking the requirement to have one direct care staff on duty for every 30 residents in facilities on every floor where residents are sleeping.

Part VII – Work Programs

- Section 950, moving the requirements in this section to a new Section 905, eliminating the requirement that work assignments in group homes accord with the resident's individual service plan and striking the provision requiring parents to consent to such work assignment and applicable rates of pay.

Part VIII – Independent Living Programs

- Section 970, replacing the board with the facility administrator as the entity authorized to approve the materials and curricula for IL programs, and eliminating the facility's obligation to utilize a department-approved assessment tool to assess living skills for residents in IL programs.
- Section 980, removing the directive to have trained staff administer the assessment tool currently required in Section 970.
- Section 1000, removing as impractical the requirement that IL programs ensure adequate nutrition of each resident by maintaining menus of meals served on file.

Part IX – Wilderness Programs

- Sections 1010, 1020, 1030, 1040, and 1070, narrowing the application of the wilderness program provisions to exclude facilities or programs that are not focused primarily on wilderness activities.
- Section 1010, replacing the board with the director as the individual authorized to approve wilderness programs.
- Section 1020, requiring the same 1:8 staff-to-resident ratios in wilderness programs as in group homes.
- Section 1040, eliminating the requirement that each resident in a wilderness program has adequate personal storage.
- Section 1070, directing the trip coordinator for wilderness programs to ensure that a certified lifeguard supervises all aquatic activity.

Part X – Family-Oriented Group Homes

- Section 1080, striking the provision that gives FOGs the discretion to determine, through written procedures, how and when various parties must be notified of serious incidents. The new provision imposes the same SIR reporting requirements on staff in FOGs as other nonsecure residential facilities pursuant to Section 90.
- Section 1100, requiring FOGs to conduct and document inspections on smoke alarm devices at least monthly and directing every bed in a FOG to have mattresses, pillows, linens and similar items, cleaned once every seven days.
- Section 1100, subjecting FOGs to a number of additional regulatory provisions currently applicable to other nonsecure residential facilities.

Part XI – Respite Care

- Sections 1120 through 1140, repealing these sections because the department does not regulate respite care facilities. Separate provisions that address respite care facilities in other areas of the regulation also are removed (§§ 1170(C) and 1250(D)).

Part XII – Health Care Services

- Section 1260, requiring group homes to maintain first aid kits in facility vehicles as well as in the facility.
- Section 1270, allowing an exception to the rule requiring one of certain identified individuals to accompany residents being transported away from a group home for outside medical treatment. The exception permits facility staff to send a staff member to the medical facility as soon as reasonably possible if staff accompanying the resident would jeopardize resident or staff safety in the facility.
- Section 1280, modifying the definition of medication incident (now contained in Section 10) by excluding from the list of such incidents occasions when facilities fail to administer medication due to repeated, unsuccessful attempts to obtain the medication.

Part XIII – Behavior Support Management

- Section 1300, removing the directive that staff review support plans for residents needing additional supports, and be prepared to implement such plans prior to working alone with the assigned resident.
- Section 1310, striking the mandate that facilities base their use of timeout and the frequency of resident checks during timeout on the resident’s chronological and developmental levels. Instead, the proposal requires that the facility evaluate whether the resident is prepared to be released from timeout during each 15-minute check.

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

Each of the amendments proposed in this regulatory action is expected to ensure the safety and well-being of residents and staff in nonsecure residential facilities, thereby benefiting the public. The heightened monitoring requirements proposed in Section 935 and increased staffing protocols will ensure that residents are accounted for and may reduce the likelihood of injuries or other incidents. Imposing notification requirements on facility staff when external parties are transporting certain residents off-site will put such parties on notice that additional monitoring may be warranted. Expanded smoking prohibitions will reduce the likelihood that tobacco and nicotine vapor products fall into the hands of residents for whom possession of such products is unlawful. These changes are expected to benefit the department and the Commonwealth as a whole to the extent that more effective programming in the community decreases the likelihood of commitment to the department or recidivism upon release.

A handful of amendments may impose additional burdens on affected group homes or department staff, but the additional protections resulting from these amendments are expected to outweigh any burdens to facility and department staff.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

Juvenile residential facilities regulated by the board are subject to federal constitutional requirements, as well as applicable federal law and regulations (i.e., the Americans with Disabilities Act of 1990 and the Americans with Disabilities Amendments Act of 2008, 42 USC § 12101). The proposed regulation imposes requirements consistent with the requirements, applicable provisions, and governing case law.

Agencies, Localities, and Other Entities Particularly Affected

Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

No other state agency will be particularly affected by this change.

Localities Particularly Affected

The department regulates 16 group homes operated by local governments or local commissions. Changes to the regulatory provisions will have a significant impact on these group homes and the localities and local commissions that operate them. Local law enforcement, divisions of social services, and other local entities that work closely with residents or are responsible for transporting residents in these facilities may benefit from the enhanced notification provisions set forth in Section 550; however, no one locality will be particularly impacted by any of these provisions.

Other Entities Particularly Affected

No other entities will be particularly affected by the regulatory changes.

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is change versus the status quo.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources</p>	<p>Nominal. The de minimis cost of program monitoring criteria and applicable forms will be absorbed internally through existing systems and staff resources.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>The proposed changes are not expected to impact any other state agencies.</p>

<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>The proposed changes are intended to protect the safety and well-being of residents and staff in nonsecure juvenile residential facilities regulated by the department. The changes also will help these facilities operate more effectively and efficiently, which, in turn, may reduce recidivism and help youth in these facilities successfully integrate and become productive citizens.</p>
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Impact on Localities

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>Amendments to the following provisions may result in additional administrative costs for the 16 nonsecure residential facilities the department currently regulates. These additional costs will be borne by the locality or commissions responsible for their operation, but are not expected to be significant:</p> <ul style="list-style-type: none"> • § 110 – The provision requiring emergency grievances be acted on, rather than heard, within 8 hours may necessitate additional resources to meet the deadline depending upon the complexity of the grievance and the resources currently available. While the specific costs associated with the change cannot be determined, this change is not expected to result in significant administrative expenses. • § 210 – The elimination of the mandated 40 hours of annual training will allow group homes to better tailor staff training to meet the needs of staff and free up resources to devote to facility operations and to residents, likely resulting in a reduction in administrative expenses. • § 550 – Requiring facility staff to give written information to external parties who are transporting residents with medical conditions or suicidal ideations may temporarily shift staff responsibilities or otherwise temporarily impact facility resources; however facilities will have flexibility regarding how to implement this provision, and may be able to control the burden on facility resources. Therefore, the magnitude of the impact cannot be determined. • § 590 – Eliminating the requirement to provide visitation procedures to “other family members” may reduce the amount of materials needed for distribution, which may result in a de minimis reduction in administrative expenses.
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	<ul style="list-style-type: none"> • § 1260 – Nonsecure facilities are not expected to incur additional expenses in fulfilling the duty to have first-aid kits in facility vehicles because these facilities already meet this requirement.
Benefits the regulatory change is designed to produce.	These regulatory changes are designed to enhance the safety of residents and staff in nonsecure residential facilities, reduce injuries, and improve facility programming, thus promoting public safety. Having these provisions in place will reduce the likelihood of residents in the community recidivating or committing more serious crimes that may warrant commitment to the department.

Impact on Other Entities

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	Changes to these regulations have the potential to impact service providers and businesses with whom the facilities contract. Minor modifications to consent requirements for residents hoping to obtain outside employment may expand the pool of potential employers. Changes regarding who must accompany residents for outside medical appointments may impact medical service providers.
Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	The number of "other" entities, including small businesses, that will be impacted by the proposed changes cannot be determined.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	The projected costs for individuals, businesses, or other entities resulting from these regulatory changes cannot be determined.
Benefits the regulatory change is designed to produce.	The projected costs for individuals, businesses, or other entities resulting from these regulatory changes cannot be determined.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

A viable alternative to amending the regulation is to leave the regulation as currently written and allow each applicable group home or similar facility's procedures to govern these processes. This approach is unfavorable because the department's regulations would continue to contain provisions that are vague, in conflict with PREA, obsolete, impracticable, and inadequate in addressing the monitoring of residents in these facilities. The department conducted a comprehensive review of the regulations and procedures and determined that amending the regulation is the least burdensome alternative.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

The proposed regulation may affect small businesses insofar as a small business provides a program or service subject to this regulation. The proposed amendments to the regulation will have the largest impact on group homes and similar nonsecure residential facilities. Alternative regulatory methods, such as establishing less stringent compliance or reporting requirements, schedules, or deadlines for such compliance were considered and, in some instances, amendments were made to streamline these directives and remove a number of deadlines that were extremely difficult to meet or track. As an example, the board agreed to allow qualifying IL programs an exception to the general rule prohibiting staff from allowing the passage of more than 15 hours between dinner and breakfast the following day. Alternatives had to be balanced against the objective of ensuring that the quality of services provided in facilities subject to the regulation would not be threatened.

Periodic Review and Small Business Impact Review Report of Findings

If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable.

In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments

received concerning the regulation; (3) the complexity of the regulation; (4) the extent to the which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

This regulatory chapter establishes the minimum requirements for nonsecure juvenile residential facilities and remains necessary to protect the public health, safety, and welfare and to comply with the *Code of Virginia and Executive Order 14* (as amended July 16, 2018). This chapter addresses personnel, the provision of health care, behavior management, and safety and security in nonsecure juvenile residential facilities. Each provision seeks to protect the health and welfare of residents and staff, promote programming that helps residents develop skills to live successfully upon discharge from the facility, and discourage recidivism or further penetration into the juvenile justice system. In these ways, the provisions are needed to protect the public health, safety, or welfare. While many of the changes may impact service providers, contractors, or other small businesses that work closely with such facilities, the impact is expected to be negligible.

Each provision is designed to achieve these objectives in an efficient and cost-effective manner. The existing provisions have not resulted in significant administrative costs or economic losses to the entities affected; nor will the proposed amendments increase significantly these costs or losses. Where additional burdens may result from amended provisions, the department and board have sought to ensure that the benefits of added protections for residents and staff outweigh any burden imposed. Provisions that are unnecessarily burdensome or impractical have been removed or mitigated.

The department received no public comments or complaints concerning the proposed revisions to the regulation during the NOIRA period or while the regulations were being considered for advancement to the proposed stage of the regulatory process.

While the regulation consists of over 130 sections, the vast majority of provisions in this chapter are not complex. For further simplification, the board has removed obsolete provisions and references, modified language to reflect recommendations in the Virginia Register of Regulations, and added definitions for undefined terms used throughout the regulation. The regulation tracks state law and is not in conflict with federal law. The department last conducted a review and recommended changes to the regulation beginning in 2009, and the final revisions took effect in January, 2014.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

The NOIRA was published in the Virginia Register of Regulations on October 31, 2016. The public comment period ended on November 30, 2016. No public comments were received during the NOIRA public comment period. No additional public comments were made at the board's regularly scheduled meeting in which proposed amendments to this regulatory chapter were presented for advancement to the Proposed Stage of the standard regulatory process.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

The Board of Juvenile Justice is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, (iii) the potential impacts of the regulation, and (iv) the agency's regulatory flexibility analysis stated in that section of this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to [Kristen Peterson; Department of Juvenile Justice; PO Box 1110, Richmond, Virginia 23218-1110; (804) 588-3902 (phone); (804)_ 371-6497 (fax); and Kristen.Peterson@djj.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will not be held following the publication of this stage of this regulatory action.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
10	N/A	Definitions: The current definitions governing juvenile nonsecure residential facilities are provided in this section and include the following terms: annual (<i>within 13 months of previous occurrence</i>); board (of juvenile justice); case record (<i>resident and resident family's information</i>); contraband (<i>items in a</i>	<i>The Form, Style, and Procedure Manual for Publication of Virginia Regulations</i> directs state agencies to place all definitions at the beginning of the chapter as the first numbered section. The following terms defined in other sections of the regulation were moved to Section 10 and may have been revised slightly for style: aversive stimuli (<i>560 – forces applied to a resident that are harmful or noxious</i>); behavior management (<i>1290 – methods employed to help a resident</i>

	<p>group home or on a resident that are prohibited, acquired through unapproved channels or in excess of prescribed amounts, or may jeopardize safety);</p> <p>department (of juvenile justice); direct care staff (staff primarily responsible for resident safety, care, and well-being and implementing the behavior management program); direct supervision (staff working with residents outside the presence of direct care staff); director (of the department); emergency (unexpected occurrence demanding immediate action, excluding employee time off or other anticipated situations); facility administrator (individual responsible for regular on-site management and operation of the facility); family-oriented group home (private home for residents upon placement by lawful placing agency) group home (community-based, home-like juvenile residential facility, excluding home of operator and including halfway house, that does not exceed board-approved capacity); individual service plan (written plan of action to meet the needs of a resident); juvenile residential facility/facility (facility requiring certification where 24-hour-per-day care is provided to residents separated from their legal guardians, excluding JCCs and JDCs); living unit (living space where a group of juvenile residential facility residents resides); on duty (period when employee is responsible for the direct supervision of residents); parent or legal guardian (certain biological or adoptive parents, certain judicially</p>	<p>achieve positive behavior and address a resident’s inappropriate behavior in accordance with written procedures);</p> <p>emergency admission (780 – unplanned or unexpected admission of a resident in need of immediate care);</p> <p>health care record (1150 – complete record of medical screening and examination information); health care services (1150 – preventive and therapeutic actions for the resident’s well-being); health-trained personnel (1150 – person trained by licensed health care provider to perform specific duties);</p> <p>human research (140 – systematic investigation using human subjects designed to develop or contribute to generalized knowledge); independent living program (960 - director-approved program that gives residents skills to become self-sufficient adults); legal mail (570 - written material sent to or received from a designated class of correspondents defined in written procedures); medication incident (1280 – error administering a medication to a resident excluding resident refusal of appropriate medication); physical restraint (1320 – physical intervention to prevent an individual from moving);</p> <p>rest day (920 – minimum 24-hour period during which staff excused from performing duties regarding operation of juvenile residential facility); timeout (1310 – behavior management technique which requires a resident to move to a specific location away from a source of reinforcement); volunteer/intern (270 - individual or group voluntarily providing goods and services without competitive compensation); vulnerable population (565 - resident(s) assessed reasonably likely to be exposed to the possibility of attack or harm); and weapon (540 – provides a listing of weapons derived in part from the list of weapons enumerated in Code of Virginia § 18.2-308, including firearms, various knives, certain flailing instruments, and throwing stars or oriental darts).</p> <p>Substantive revisions were made to existing terms, as outlined below:</p> <p>-Emergency admission – removed the exclusions for self-admissions to shelter care or court-ordered placements.</p>
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			regulatory authority, rules of conduct, and written.
20	N/A	Applicability: This section identifies the eleven parts that make up this chapter. Parts VII through IX apply only to the specific programs or facilities referenced (Work Programs, IL programs, Wilderness Programs, FOGs, and Respite Care facilities). The other parts apply to all juvenile residential facilities with the exception of FOGs.	The proposal rearranges some of the parts and sections to reflect changes in the arrangement of the provisions (e.g., Parts VII and XI have been repealed). The section also strikes the reference to halfway houses and shelter care, as both types of facilities are contemplated in the proposed definition of juvenile residential facility. These changes will have no additional impact.
30	N/A	Previous regulations terminated: This section outlines the regulatory chapters that were replaced when the department revised its regulations in 2014.	Repealed. These chapters were part of a previous regulatory iteration, and reference to them is no longer necessary. The change will have no additional impact.
40	N/A	Certification: (A) Facilities must comply with Chapter 20, which addresses certification of DJJ-regulated programs and facilities. (A)(3) Facilities must ensure that to the extent there is noncompliance with any of the regulatory provisions, such noncompliance does not pose an immediate and direct danger to residents.	(A) The proposal modifies the reference to certification regulations in Chapter 20 to mirror the title of the existing Certification Regulations. (A)(3) The proposal strikes this vague provision that could be perceived as encouraging noncompliance with regulatory requirements. This change is not expected to significantly impact operations. Group homes are required to comply with applicable regulatory provisions unless a variance has been approved by the board. Removing the requirement to ensure that noncompliance does not endanger residents will not relieve group home staff of their regulatory obligation and will not prevent them from having to take corrective action should such noncompliance be discovered on audit or during a monitoring visit.
50	N/A	Age of residents: (A) Facilities may admit only residents who meet board-approved age limits. (B) Facilities may not admit residents above the certified age of capacity with some exceptions, including in instances where a discharge plan has been established. This prohibition does not apply to shelter care programs.	(A) The proposal replaces the board with the director as the entity authorized to set the facility's age limits consistent with 6VAC35-20-75 . As this is consistent with existing regulations, the proposed change will have no additional impact. (B) The proposal eliminates some of the duplicative language in this section and clarifies that the exceptions are for residents who remain in the facility above the certified age (the proper reference) rather than the age of certified capacity (which is confusing). The proposal removes as unnecessary the exception regarding shelter care programs.

60	N/A	<p>Relationship to the regulatory authority: Facilities must provide the board with whatever reports and information it needs to establish compliance with these regulations.</p>	<p>The proposal mandates the submission of this information to the audit team leader, rather than the regulatory authority (board), consistent with the current mandate in 6VAC35-20-36. Because this change tracks existing regulatory language, it will have no additional impact.</p>
70	N/A	<p>Relationship with the department:</p>	<p>The proposal makes minor edits for style.</p>
80	N/A	<p>Variations: (A) Facility administrators may request variances to excuse them from meeting regulatory requirements, pursuant to the Certification Regulations.</p>	<p>(A) The proposal clarifies that variances are available only for noncritical regulatory requirements, as set out in the Certification Regulations. The proposal cites the full title of Chapter 20. (C) The proposal also adds a new subsection C that expands the scope of this section to address the director's authority to issue waivers, and amends the catchline to reflect this change. The proposal makes additional, nonsubstantive amendments. The proposed amendments are intended to closely mirror requirements in Chapter 20 and will have no additional impact.</p>
90	N/A	<p>Serious incident reports: Within 24 hours after a "serious incident" occurs, the facility must notify the placing agency, the parent or legal guardian, or both, and the director or designee. For such qualifying serious incidents, under subsection (D), the facility must prepare and maintain a written report that must be submitted to the director or designee containing, among other information (5) the name or identifying information of the person who made the report to the placing agency and the parent or legal guardian.</p>	<p>(D) The proposal modifies this subsection to require the facility to include, as part of the written report submitted to the director or designee, the manner in which the information was communicated when the facility notified the placing agency and the parent or legal guardian (e.g., by telephone call, email, letter, etc.)</p> <p>The proposal makes other nonsubstantive changes that are not expected to have additional impact.</p>
100	N/A	<p>Suspected child abuse or neglect (A) If there is a reasonable suspicion that a child is abused or neglected, the issue requires immediate reporting to the local DSS. (C) Suspected child abuse or neglect cases shall be reported and documented in accordance with the regulatory provisions</p>	<p>(A) The proposal adds language allowing staff to report this information to the state DSS's toll-free child abuse and neglect hotline. This is consistent with the language in § 63.2-1509; therefore, this change will have no additional impact. (C) The proposal clarifies that the cases necessitating a report are suspected cases of child abuse or neglect against a resident and do not extend to a child who is not under the custody or purview of the group home or similar facility. This</p>

		addressing serious incident reports (Section 90).	change reflects current practices across facilities and is not expected to impact facility operations. The proposal makes a number of additional, nonsubstantive changes. The proposed changes reflected in this section are consistent with changes proposed to the Regulations Governing Juvenile Secure Detention Centers.
105	N/A	<p>Reporting criminal activity</p> <p>(A) Staff must report to the facility administrator all known criminal activity committed by residents or staff, including physical or sexual abuse or sexual harassment.</p> <p>(B) The facility administrator must notify the appropriate persons or agencies, including law enforcement, child protective services and the department, as appropriate and applicable, of such suspected criminal violations.</p>	<p>(A) The proposal narrows this directive so that staff need report to the facility administrator only such known criminal activity suspected to have occurred at the facility or at a facility-sponsored activity. This will eliminate the need to report staff criminal activity suspected to have occurred outside the facility.</p> <p>(B) Currently, the provision requires that the department be notified as appropriate and applicable. The proposal rearranges the placement for this qualifying language to demonstrate that all criminal offenses need not be reported to child protective services (e.g., offenses that do not involve children). The proposal also removes the current requirement that suspected criminal violations relating to the health and safety or human rights of residents be reported to the director or designee. This change will not impact the facility's duty to report all criminal offenses to the department, as required in the current regulation. Once notified, department staff can determine which offenses should be routed to the director.</p>
110	N/A	<p>Grievance procedure: (A) Facilities must orient residents to and provide them continued access to a grievance procedure that provides for the following:</p> <p>(A)(3) documented, timely responses to grievances, and the decision rationale.</p> <p>(A)(7) Hearing of emergency grievances within eight hours.</p> <p>(B) Each resident shall be oriented to the grievance procedure in an age or developmentally appropriate manner.</p> <p>(C) The facility's grievance procedures must be written in clear and simple language and posted in an area that</p>	<p>(A)(3) The proposal adds language requiring the grievance responses to be completed and documented in accordance with facility procedures. This change is consistent with amendments proposed to the Regulations Governing Juvenile Secure Detention Centers.</p> <p>(A)(7) The term "emergency grievance" is not defined in the regulation or in the Certification Unit's Compliance Manual. Regulators have broad discretion to determine what types of grievances constitute emergencies for these purposes. This discretion has the potential to result in widely disparate treatment of residents across facilities. Rather than referencing "emergency grievances," the proposal specifies that this subdivision applies to grievances posing an immediate risk of hardship or harm to a resident. This change will</p>

		<p>residents, parents, and legal guardians can access with ease.</p>	<p>provide clarity to regulants and may increase compliance among group homes and similar facilities. In addition, the proposal requires that such grievances be acted on within eight hours, rather than heard within that time period. Grievances of this nature arguably demand urgency, and this provision prevents the facility from hearing the grievance within the eight hour period but extending the review or determination regarding the grievance well beyond the eight-hour period. This change may strain facility resources depending on the volume and complexity of these grievances and the availability of staff to address these issues, but will guarantee a prompt review.</p> <p>(B) The proposal requires the resident to be oriented to the grievance procedure in an age and developmentally appropriate manner. The use of the conjunction “or” in the current provision means the facility may elect not to orient residents according to their developmental levels, which may place some residents at a disadvantage if they lack a full understanding of the grievance process.</p> <p>(C) The proposal mandates that the grievance procedure also include the express definition of grievance contained in Section 10. This change seeks to ensure that residents are aware of the definition of grievance and can better identify the types of complaints or protests that may be grieved. The change will require facilities to update their grievance procedures to include this language. These minor changes are not expected to have a significant impact on facility operations but will ensure that residents are aware of their rights and the process for addressing grievances.</p>
120	N/A	<p>Responsibilities of the provider or governing authority: (A) The provider must identify the governing authority of the facility that holds the certificate.</p> <p>(C) Facilities must implement written decision-making plans that require designation of a staff person with facility administrator qualifications to be responsible temporarily for facility operations.</p>	<p>(A) The proposal clarifies that the identification must be in writing. This is consistent with the department’s longstanding interpretation and will have no additional impact.</p> <p>(C) The proposal clarifies that this temporary responsibility attaches in the absence of the facility administrator. This change is intended to provide clarification and will have no additional impact.</p>

140	N/A	<p>Participation of residents in human research: (A) The provider must have procedures approved by its governing authority that governs the review, approval, and monitoring of human research. Human research is a systematic investigation involving human subjects, designed to develop or contribute to generalized knowledge.</p> <p>(B) All records and information related to the human research must remain confidential in accordance with applicable laws and regulations.</p>	<p>(A) The proposal amends the language to authorize facilities to allow the use of residents in human research, not in accordance with the facility's procedures, but in accordance with Chapter 170 of the department's regulations and Chapter 5.1 of Title 32.1 of the Code. The proposal amends the definition of "human research" to conform to the definition in Chapter 170 and moves the definition to Section 10 of this chapter. The proposal adds language explicitly prohibiting the testing of medicines or drugs for experimentation or research. This is consistent with existing or proposed restrictions contained in the regulations that govern JCCs and JDCs. These amendments will ensure that facilities regulated by the department follow the same process as JCCs and CSUs when considering external proposals for human research on residents in their facilities.</p> <p>(B) The proposal adds cross references to §16.1-300 and 6VAC35-170 to this provision to pinpoint specific applicable statutory and regulatory provisions for purposes of clarification. This change will have no additional impact.</p>
145	N/A	<p>Operational procedures: The facility's operational procedures must be accessible to all staff.</p>	<p>The proposal clarifies that these procedures must be readily accessible to all staff. This change makes it clear that all staff must be able to access these procedures without difficulty or significant delay. This is consistent with similar language in the regulations that govern JDCs. The change is not expected to significantly impact facility operations.</p>
150	N/A	<p>Job descriptions:</p>	<p>The proposal makes minor edits for style.</p>
160	N/A	<p>Qualifications: (A) Facilities not subject to the rules of the governing authority or a local government personnel office shall follow DHRM's minimum entry level qualifications.</p> <p>(C) Facilities must document contractual agreements or staff's expertise to provide educational, counseling, psychological, medical, or other services to residents. Service provision must accord with the facility's program description as</p>	<p>(A) The proposal strikes this requirement, as DHRM does not have policies establishing minimum entry-level employee qualifications. This change will have no additional impact.</p> <p>(C) In order to simplify the language, the proposal requires facilities to document each contractor or employee's expertise to provide the services needed to assist the residents. This nonsubstantive change is intended to eliminate confusing language and is not expected to have any additional impact on facilities.</p>

		defined by the facility's criteria of admission.	
165	N/A	<p>Employee tuberculosis screening and follow-up:</p> <p>(A) On or before the employee's start date at the facility, employees must submit screening results no older than 30 days that indicate whether they are free from communicable tuberculosis.</p> <p>(B) Each employee shall submit evidence of an annual evaluation of freedom from communicable tuberculosis.</p> <p>(C) Employees must undergo a subsequent TB screening or evaluation, as applicable, if: (1) they come into contact with a known case of infectious TB; or 2) they develop chronic respiratory symptoms persisting for three or more weeks.</p> <p>(E) Any active case of TB developed by an employee or a resident must be reported to the local health department in accordance with 12VAC5-90.</p>	<p>(A) The proposal modifies this provision by requiring each employee to have received a tuberculosis risk assessment evidenced by completion of an assessment form containing the elements on VDH's assessment form. This will ensure that facilities are assessing staff or accepting documentation on forms that include the same fields and are gathering the same information. The proposal allows health-trained staff in the facility to administer the assessment but limits the authority to interpret its results to a physician, a physician assistant, a nurse practitioner, or registered nurse. This language is consistent with VDH-issued guidance from 2017.</p> <p>(B) The proposal requires the employee to submit annually a risk assessment indicating risk of exposure to TB.</p> <p>(C) The proposal requires employees to undergo a subsequent TB screening if the results of the initial annual risk assessment indicate that a subsequent screening is necessary. Language addressing employees who make contact with infectious TB or who develop chronic respiratory symptoms for three weeks has been moved to a new subsection D.</p> <p>New (D) The proposal adds a new provision requiring employees who make contact with infectious TB or who develop chronic respiratory symptoms for three weeks to consult their local health department or other medical professional for additional screening.</p> <p>New (F) The proposal strikes the requirement to report active TB cases contracted by residents, as this section addresses TB assessments and screenings for staff. Resident screenings are addressed in Section 1210. The proposal makes other edits for style that will have no additional impact.</p>
180	N/A	<p>Employee and volunteer background checks. (A) In order to work in a facility, employees, as well as regular volunteers and contractors who will be alone with residents in performing their duties, must undergo</p>	<p>(A) The proposal removes the duplicative references to volunteers in this provision, as well as in the catchline. Background checks for volunteers are covered in 6VAC35-41-290 and need not be addressed here.</p> <p>(B) The proposal expands the restriction applicable to employees hired under the</p>

		<p>fingerprint checks and a host of other background checks. (B) Facilities may hire employees pending the results of the fingerprint check if: (i) all other required background checks have been completed; (ii) the facility informs the applicant in writing that continued employment depends on the fingerprint check results; and (iii) if this exception is utilized, such employees may not be alone with residents and may work only with residents who are directly supervised by staff with fully-completed background checks.</p>	<p>fingerprint exception by prohibiting them from working directly with residents until all required background checks are satisfied. Because the position was vacant previously, this amendment is not expected to have a significant, tangible impact on facility resources. It may, however, create some delays in getting new staff fully prepared to assume their facility duties. (E) The proposal also adds a new subsection E prohibiting DJJ-regulated juvenile residential facilities from hiring employees or contractors or taking on volunteers who have been convicted of any barrier crimes listed in § 19.2-392.02 of the Code, except as authorized under § 63.2-1726. As these statutory provisions reflect current law, this change will have no additional impact.</p>
190	N/A	<p>Required initial orientation: (A) Employees must receive basic orientation on several topics, including security and population control before the completion of their seventh work day at the facility.</p>	<p>(A) The proposal removes the requirement that the orientation address population control. Population control is not a significant concern in nonsecure juvenile facilities; therefore, it is unnecessary and arguably unproductive for staff to be oriented to this issue.</p>
200	N/A	<p>Required initial training: (D) Training must be required by and provided as appropriate to the individual’s job duties and accord with the provider’s training plan.</p>	<p>(D) The proposal strikes this provision in its entirety based on the belief that directing providers to maintain a training plan is unnecessary. A training plan is not required under the comparable regulations that govern juvenile detention centers or juvenile correctional centers, and the absence of a training plan will not prevent facilities from satisfying the training mandates in this section. Group home facility training plans generally ensure that staff are complying with existing regulations; thus, this change will have no additional impact.</p>
210	N/A	<p>Required retraining (C) Direct care and direct supervision staff must complete at least 40 hours of training annually, including training in suicide prevention, child abuse and neglect, mandatory reporting, residents’ rights, standard precautions, and behavior intervention procedures. This directive does not apply to medical and behavioral health contractors.</p>	<p>(C) The proposal removes the obligation of such staff to complete a specified 40 hours of training annually, in favor of a generic requirement that they receive an unspecified volume of training in the topics established in this subsection. In addition, they will be subject to the new requirements set out in subsection (F). (E) The proposal establishes a new requirement that the refresher training include, at a minimum, a review of the components required in Section 1280. Section 1280 sets out requirements for the administration of medication, including, for example, requiring</p>

		<p>(E) Employees responsible for administering medication must complete annual refresher training on medication administration.</p> <p>(F) Facilities must require and provide retraining as appropriate to the individual's job duties.</p>	<p>medication administrators to: (i) be informed of known side effects for medication; (ii) administer medication in accordance with prescriber instructions; and (iii) maintain a medication administration record for all medicines administered to residents.</p> <p>(F) The proposal adds new language requiring facilities to ensure that staff receive at least 15 hours of additional training, apart from the required training in the topics enumerated in subsection C. This additional language, in connection with the change in subsection C, will give facilities the discretion to determine the appropriate number of training hours that should be devoted to suicide prevention, child abuse, and the other topics specified in subsection (C). This new requirement is consistent with regulatory provisions applicable to staff in similar types of facilities regulated by DBHDS and DSS and will help to ensure that training is tailored to the needs of the individual staff and the facility. The proposal makes additional, nonsubstantive edits that will have no additional impact.</p>
220	N/A	Written personnel procedures	The proposal makes a minor style edit.
250	N/A	Notification of change in driver's license status: Staff whose job responsibilities may involve transporting residents shall report to the facility administrator or designee any change in their driver's license status including but not limited to suspensions, restrictions, and revocations.	The proposal makes minor edits for style. Of note, the proposal removes the "including, but not limited to" language in order to reflect 1VAC7-10-30 of the Virginia Code Commission's regulations. Under that provision, the word "includes" means "includes, but not limited to," rendering the "but not limited to" language superfluous. The proposal removes this and all other such references throughout the chapter. The change will have no impact.
260	N/A	Physical or mental health of personnel:	The proposal makes minor style edits.
270	N/A	Definition of volunteers or interns: This section exists solely to provide a definition for "volunteers and interns."	Pursuant to the <i>Style Manual</i> , the proposal moves all definitions, including the definition of "volunteers and interns," to the beginning of this chapter, rendering this section unnecessary. The entire section has been repealed.
280	N/A	Selection and duties of volunteers or interns:	The proposal makes minor style edits.
290	N/A	Background checks for volunteers or interns: Currently, individuals who regularly volunteer or intern	Much like the proposed changes made to Section 180, the proposal adds a new subsection D prohibiting DJJ-regulated juvenile residential facilities from taking

		in a facility and will be alone with a resident in performing their duties are subject to the same background requirements as employees in Section 180.	on volunteers or interns who have been convicted of any barrier crimes listed in § 19.2-392.02 of the Code, except as authorized under § 63.2-1726 . As these statutory provisions are reflective of current law, this change will have no additional impact. The proposal makes several additional nonsubstantive changes that will have no impact.
300	N/A	Orientation and training for volunteers or interns: (A) Volunteers and interns working in juvenile residential facilities must receive basic orientation on several topics, including security and population control.	(A) The proposal removes population control as a required topic for basic orientation. The proposal makes several nonsubstantive changes for style. These amendments will have no additional impact.
310	N/A	Personnel records: (A) Juvenile residential facilities must maintain separate, current, written or automated personnel records on each employee, volunteer, or intern who must complete a background check. (B) An employee’s record must include the employee’s annual performance evaluations, among other information. (D) The records of volunteers or contractual service providers may be limited to documentation of compliance with required background checks.	(A) The proposal adds contractors’ personnel records to the list of records that must be maintained under this section. Pursuant to Section 180 of the existing regulation, individuals who provide contractual services directly and regularly to a resident in a juvenile residential facility and who will be alone with the resident in performing these services must undergo the same background checks as are required for employees, volunteers, and interns. There is no justification for excusing facilities from requiring the documentation and retention of these background checks in the same manner as required for employees, volunteers, and interns. The proposal also removes the redundant reference to automated records because they are included in the definition of “written” in Section 10. This change will have no additional impact. (B) The proposal strikes the requirement to retain annual performance evaluations in the employee’s personnel record. Retention of performance evaluations has no bearing on the health or safety of residents and need not be regulated. This change is consistent with changes proposed for other regulations. (D) The proposal corrects an omission in this subsection that fails to include interns among the list of individuals that are required to have only background checks in their personnel records. This change will have no additional impact. The proposal also makes a conforming amendment to replace “contractual

			<p>service provider” with “contractor,” because the latter term has been added to the definitions contained in Section 10. (E) Finally, the proposal adds a new subsection E to require these personnel records to be maintained in a secure location and kept confidential from unauthorized access. This is consistent both with the current requirements for residents’ records and the requirements imposed by the Department of Human Resource Management with respect to personnel records. This change will have no additional impact.</p>
330	N/A	<p>Maintenance of records: (A) Facilities must retain separate written or automated case records for each resident. (B) Facilities may keep separate health care records on each resident.</p>	<p>(A) The proposal strikes the option to retain automated case records, as the term “automated” is contemplated in the definition of “written” in Section 10. (B) The proposal makes the maintenance of separate health records on each resident mandatory rather than discretionary. The current language is inconsistent with federal law and with current facility practice. The proposal makes numerous additional changes for clarification, such as replacing references to “health records” with “health care records” to conform to existing definitions and amending the catchline to clarify that the records referenced in this section are residents’, and not personnel records. These and other minor nonsubstantive changes will have no additional impact.</p>
360	N/A	<p>Equipment and systems inspections and maintenance: Designated staff must inspect, test, and maintain all safety, emergency, and communications equipment and systems. Testing must occur at least quarterly.</p>	<p>The proposal adds language authorizing the facility administrator to identify which such equipment and systems are critical and to require only those items to be subject to the testing, inspection, and maintenance requirements of this provision. The proposal requires the facility administrator to develop written procedures for developing, maintaining, reviewing, and testing such equipment. This is consistent with a similar proposed amendment to the regulations that govern juvenile detention centers and will give the facility administrator the discretion to exclude from this recurring process equipment and systems that are not critical to facility operation or resident and staff safety. The proposal makes additional, nonsubstantive changes that will have no additional impact.</p>
370	N/A	<p>Heating and cooling systems and ventilation:</p>	<p>The proposal amends subsection B to allow for an exception if federal or state</p>

		<p>(A) Heat must be maintained in resident-occupied rooms at no less than 68 degrees unless state or federal authorities mandate otherwise.</p> <p>(B) Though air conditioning or ventilating systems must be provided in all resident-occupied rooms when the temperature exceeds 80 degrees, the regulation does not allow for any exceptions if federal or state mandates conflict with this requirement.</p>	<p>mandates conflict with this requirement. This change is intended to conform to the language in the preceding subsection. The proposal is not expected to have additional impact.</p>
380	N/A	<p>Lighting: (A) Sleeping and activity areas in juvenile residential facilities must provide natural lighting.</p>	<p>In order to promote clarity and increase compliance, the proposal replaces references to “sleeping areas” in this and other sections of the chapter with “sleeping rooms.” Both terms are used interchangeably throughout the regulations. Generally, the department considers “sleeping areas” and “sleeping rooms” as synonymous terms. There are some exceptions, such as in the context of a campsite (§ 1050) or when referring to sleeping areas for pets (§ 470). These changes will promote clarity but are not expected to have additional impact.</p>
390	N/A	<p>Plumbing and water supply; temperature: (C) Water temperatures should be maintained at 100 to 120 degrees.</p>	<p>(C) The existing regulatory language suggests a recommendation to the regulated entity, rather than a mandate. The proposal explicitly makes the maintenance of water temperatures at 100 to 120 degrees Fahrenheit mandatory. It also clarifies that this requirement applies to hot water temperatures. Because facilities currently comply with this requirement, this change will have no additional impact.</p>
400	N/A	<p>Toilet facilities</p>	<p>The proposal makes minor edits for style.</p>
410	N/A	<p>Sleeping areas: This section sets out the requirements for sleeping areas and sleeping quarters in juvenile residential facilities.</p>	<p>The proposal replaces all references to “sleeping areas” in this section with “sleeping rooms,” for the reasons explained in Section 390, above. It also replaces references to “sleeping quarters.” Although not expressly addressed in department supplemental guidance, the context in which “sleeping quarters” and “sleeping areas” are used in this regulation suggests that they are synonymous. The proposal makes additional, nonsubstantive and inconsequential changes.</p>
440		<p>Smoking prohibitions: Facilities must prohibit</p>	<p>The proposal strikes this provision in its entirety and replaces it with a</p>

		smoking in living areas and areas where residents participate in programs.	requirement that facilities prohibit residents from possessing, purchasing, using, or distributing tobacco products or nicotine vapor products. This change is needed to ensure that residents are not accessing or using tobacco or nicotine vapor products. The change is consistent with legislation enacted during the 2019 General Assembly Session and effective July 1, 2019, which increased the minimum age for the lawful purchase or possession of tobacco products, nicotine vapor products, and alternative nicotine products from 18 to 21 years (with the exception of active duty military personnel). The proposal also prohibits staff, contractors, volunteers, interns, or visitors from using such products in any areas of the facility or its premises. This change is consistent with amendments proposed to the regulations governing detention centers and will help prevent tobacco and nicotine vapor products from falling into the hands of residents in these facilities.
450	N/A	Space utilization: Every juvenile residential facility must have indoor recreation areas with appropriate recreation materials.	The proposal moves the requirement that indoor recreation areas contain appropriate recreation materials. Recreation materials should be addressed in the recreation section, and are not specifically related to the utilization of space in juvenile residential facilities. The proposal moves this requirement to Section 680, which addresses recreation more generally. The proposal makes additional nonsubstantive changes, none of which will have additional impact.
460	N/A	Maintenance of the buildings and grounds:	The proposal makes minor style edits.
470	N/A	Animals on the premises: Animals maintained on the premises must be housed a reasonable distance from sleeping, living, eating, and food preparation areas, and a safe distance from water supplies.	In order to give facility administrators the discretion to allow for animal training or animal therapy services within the facility, the proposal removes the mandate that animals maintained on the premises be housed a reasonable distance from sleeping and living areas. The existing restrictions would hinder a juvenile residential facility's ability to implement these programs. Facilities will need to continue to house such animals a reasonable distance from eating and food preparation areas and water supplies.
490	N/A	Emergency and evacuation procedures: (A)(4)(i) Every	(A)(4)(i) The proposal amends this provision to require the plan to provide

		<p>juvenile residential facility provider must have a written emergency preparedness and response plan that provides for a planned, personalized means of effective egress for non-ambulatory residents. (B) The provider must develop emergency preparedness and response training, which must address implementing evacuation procedures, including evacuating residents with special needs (i.e., deaf, blind, nonambulatory).</p>	<p>for a means to effectively evacuate any individual in the facility (including, for example, residents, staff, or visitors) who may require special accommodations and who happen to be in the facility during an emergency that requires an evacuation. Facilities will need to have a broader plan in place for evacuating any individual that might be in the facility with an impairment or disability. (B) The proposal amends this provision to require the development of training that addresses evacuation of residents who require special accommodations, as well as residents with special needs. The proposal also removes the parenthetical, exhaustive list of special needs. These amendments may require some additional planning on the part of facility staff but are not expected to significantly impact staff or operations. The proposal makes additional amendments for style, none of which will have additional impact.</p>
510	N/A	<p>Searches of residents: (A) Facilities that conduct searches must have procedures in place that set out the parameters for such searches. The procedures must direct, among other requirements, that such searches be conducted by authorized personnel. (D) Strip searches and vaginal and anal cavity visual searches are permissible in juvenile residential facilities only: (i) by court order; (ii) if conducted by law enforcement in their official capacity, or (iii) if the facility obtains board approval. Facilities conducting these types of searches must have procedures that: (i) require such searches to be performed by personnel of the same sex as the searched resident; (ii) require the searches to be conducted in an area that ensures privacy; and (iii) requires witnesses to the search to be the same sex as the searched resident.</p>	<p>(A) The proposal expands this provision to require that personnel be properly trained before conducting searches, in addition to having the required authority. Although Section 800 of the existing regulation requires staff to search incoming residents and their possessions as part of the orientation process and mandates that staff be trained to perform such duties, the existing regulation does not impose a more generalized requirement that staff conducting any searches, including those outside the context of admission and orientation, be trained. For facilities utilizing searches for facility security, including managing contraband, this provision is essential to ensure that such searches are conducted safely and in a manner that protects the dignity of the resident. (D) The proposal strikes the existing subsection D in its entirety and replaces it with a new subsection D that prohibits strip searches and visual anal and vaginal cavity searches, in addition to the existing prohibition on manual and instrumental searches of such body cavities. Residents placed in the facilities governed by this chapter generally are not the subject of such searches, and, according to facility representatives, orders of these types have not been issued historically. This change will align</p>

		(D) Manual and instrumental anal or vaginal cavity searches are prohibited unless court ordered.	these facilities with similarly-situated nonsecure residential facilities regulated by DSS; such facilities also may not conduct strip searches or body cavity searches.
520	N/A	Telephone access and emergency numbers: Juvenile residential facilities must have an emergency telephone number to reach staff immediately, 24 hours per day.	The proposal makes a minor edit to clarify that the staff person must be accessible through the emergency telephone number seven days a week and 24 hours per day. This change is not expected to have an additional impact.
540	N/A	Weapons: (A) The existing regulation contains a definition for weapons.	(A) The proposal moves the definition of weapons from this section to Section 10 in accordance with the Style Manual. This change will have no impact.
550	N/A	Transportation: Juvenile residential facilities must: make transportation available or make the necessary arrangements for resident transportation; have written safety rules for transporting residents and for using and maintaining vehicles; and have a procedure in place for verifying appropriate licensure for staff whose duties involve transporting residents.	The proposal directs facilities to provide a DJJ-approved form to external parties when they transport residents flagged for additional monitoring due to recent suicide attempts or ideations or because of special medical needs. The form must identify pertinent information concerning the resident's additional monitoring needs if such information reasonably could be considered necessary for the resident's safe transportation and supervision. This directive would not apply if the carrier is the resident's parent or guardian or if an emergency renders completion of the form impracticable or infeasible. The proposal may create additional responsibilities for existing staff, but is intended to ensure that such external parties take measures necessary to guarantee the resident's safety during transportation. The proposal makes additional, minor edits that will have no impact.
560	N/A	Prohibited actions: Among the actions prohibited in juvenile residential facilities, staff may not apply aversive stimuli to residents, which term is defined in this section. Additionally, staff may not place residents alone in a locked room or secured area where the resident cannot leave.	The proposal moves the definition of "aversive stimuli" to Section 10 pursuant to the <i>Style Manual</i> . Additionally, the proposal strikes the word, "alone" in this provision, as the qualifier suggests that juvenile residential facilities would be authorized to place a resident in a locked room or secure area, provided they were not alone. This is counter to the intent of the provision. The proposal makes additional, minor nonsubstantive changes for style. These changes will have no additional impact.
565	N/A	Vulnerable population: (A) Juvenile residential facilities must implement procedures for assessing whether	(A) The proposal adds language specifying that the vulnerability determination must occur immediately upon admitting the resident to the facility.

		<p>residents are members of a vulnerable population, and, upon such assessment, implementing additional precautions, as needed.</p> <p>(C) Vulnerable population is defined as a resident/group assessed reasonably likely to be exposed to attack or harm. The definition lists several examples that may make residents “vulnerable” such as their height, age, English proficiency, or sexual orientation.</p>	<p>This change will prevent delays in these decisions that may expose a vulnerable resident to undue harm.</p> <p>(C) The proposal moves the definition of vulnerable population to Section 10 in accordance with the Style Manual. In order to avoid the interpretation that possession of any of the enumerated characteristics renders an individual vulnerable per se, the proposal strikes these examples from the definition and clarifies in Section A that these attributes are mere factors the facility may consider in determining whether a resident is vulnerable. The proposal makes other changes that will have no impact.</p>
570	N/A	<p>Resident’s mail: (B) Staff may open and inspect residents’ incoming and outgoing nonlegal mail for contraband. Additionally, they may read, censor or reject nonlegal mail if based on legitimate facility interests of order and security.</p> <p>(C) Legal mail is defined loosely as written material sent to or received from designated individuals including the court, legal counsel, administrators of the grievance system or administrators of the department, facility, provider, or governing authority.</p> <p>(D) Staff are not authorized to read mail addressed to parents, immediate family members, legal guardians, guardians ad litem, counsel, courts, officials of the committing authority, public officials or grievance administrators without first obtaining consent from a court or unless the facility administrator determines there is a reasonable belief that the facility’s security is threatened.</p> <p>(F) Cash, stamps, and other specified items may be held for the resident.</p> <p>(I) First class letters and packages received for</p>	<p>(B) The proposal adds to the nonlegal mail classification electronic nonlegal mail. Thus, emails to or from residents’ family members, friends, teachers, etc., can be opened and inspected for contraband (e.g., nude photographs), and when legitimate security interests or interests of order dictate, may be read, censored, or rejected. The proposal also adds an “as appropriate” in order to qualify the requirement that staff notify residents when incoming or outgoing letters are withheld. Criminal investigations constitute one class of examples for which notification of the mail’s suppression could jeopardize the investigation.</p> <p>(C) The proposal strikes the definition of legal mail, moves it to Section 10, and makes minor nonsubstantive edits to the definition, for style. These changes will have no additional impact.</p> <p>(D) The proposal adds language indicating that mail, for these purposes, includes electronic mail.</p> <p>(F),The proposal adds a requirement that specified items be set out in the facility’s written procedures. This will ensure that each facility has established rules in written procedures that identify the types of items staff may hold for residents.</p> <p>(I) The proposal specifies where this mail should be forwarded, including the resident’s last known address or forwarding address or returned to sender. This change will give facilities clearer guidance on where to forward mail for transferred or released residents. The proposal makes additional amendments for style.</p>

		transferred or released residents must be forwarded.	
590	N/A	Visitation: Juvenile residential facilities must make a copy of the written procedures available to the residents' parents, when appropriate, the resident, and other interested persons important to the resident , by the date of the resident's admission.	The proposal removes the obligation to make these procedures available to other interested persons important to the resident. This language is vague, impractical, and has the potential to strain unnecessarily facility resources. The facilities will maintain the discretion to provide other interested parties with these procedures, but will no longer be under a mandate. The proposal makes nonsubstantive changes that will have no additional impact.
600	N/A	Contact with attorneys, courts, and law enforcement:	The proposal makes minor edits for style.
610	N/A	Personal necessities and hygiene: Juvenile residential facilities must provide residents with various items at admission, including, washcloths and towels and separate bed and bed linens. The washcloths, towels, and bed linens must be cleaned at least once every seven days or more often, if necessary. Bed and table linens must be laundered using bleach or another EPA-approved sanitizing agent.	The proposal removes the reference to table linens, which fall outside the purview of this section. This section addresses resident's personal hygiene and personal necessities provided to the residents in furtherance of proper hygiene. Table linens have no bearing on the resident's personal hygiene and should not have been included in this section.
620	N/A	Showers: Residents must be given the opportunity to shower daily unless the Governor has declared a state of emergency or the locality issues water restrictions due to drought. In either case, showers must be restricted as determined by the facility administrator after consulting local health officials.	The proposal removes the specific exception to the mandate that facilities allow residents an opportunity to shower daily with a general exception that applies if there is a documented emergency. This amendment will exempt facilities during emergencies such as fires, loss of utilities, or other natural disasters that might make the provision of a shower on a given day infeasible.
630	N/A	Clothing: (D) – Juvenile residential facilities must allow residents to take personal clothing when leaving the facility.	(D) The proposal moves this provision to Section 810, which sets out discharge procedures for residents in juvenile residential facilities. This nonsubstantive change will have no additional impact.
650	N/A	Nutrition: (A) With some exceptions, juvenile residential facilities must provide residents with three nutritionally balanced meals daily that meet the applicable federal requirements.	(C) The proposal replaces the requirement to retain menus for six months with a requirement to retain such menus in accordance with applicable federal requirements. This change is consistent with similar proposals for the regulations governing JDCs and JCCs

		<p>(B) The facility must provide special diets or alternative dietary schedules if prescribed by a physician or necessary to observe the resident’s established religious dietary practices.</p> <p>(C) Facilities must retain menus of meals served on file for at least six months.</p> <p>(D) Facility staff who eat in the presence of residents must have the same meals as the residents unless a physician has prescribed a special diet or in observance of established religious dietary practices.</p> <p>(E) Facilities may not allow more than 15 hours to pass between the residents’ evening meal and the next day’s breakfast unless the facility administrator allows an extension on a weekend or holiday limited to 17 hours between the two meals.</p> <p>(F) Facilities must ensure that food is available to residents who must eat breakfast before the 15 hours have expired due to documented medical or religious reasons.</p>	<p>and will prevent the department from having to update the regulation if federal requirements are amended in the future.</p> <p>(G) The proposal adds a new subsection (G), which provides an exception from certain provisions of this section for IL programs. Frequently, residents in these programs manage their meals independently and, due to work schedules, likely would encounter difficulties complying with the provisions of this section, specifically the retention of menus of actual meals served and the number of permissible hours that may pass between dinner and breakfast the next day. Under the proposal, these programs will be subject to the nutrition provisions set out in Section 1000 of this chapter, which requires such programs to establish their own written procedures that ensure residents are receiving adequate nutrition. Under Section 1000, the programs must continue to adhere to the nutrition requirements in subsections A and B of Section 650, but are not required to comply with the remaining provisions of that section.</p>
660	N/A	School enrollment and study time:	The proposal makes minor style edits.
680	N/A	<p>Recreation: (A) Every provider must have a recreation program that includes, among other elements, regularly scheduled indoor and outdoor recreational activities that are structured to develop skills and attitudes.</p> <p>(B) The provider must develop and implement written procedures to ensure the safety of residents participating in recreational activities. The written procedures must address (i) supervision of activities by people knowledgeable about the necessary safeguards to employ, (ii) how residents are</p>	<p>(A) The proposal clarifies that these activities should be structured to develop prosocial attitudes. In addition, the proposal adds to the list of elements that must be part of the recreation program, appropriate recreational materials for indoor and outdoor use. Section 450 of the existing regulation, which addresses space utilization, requires each facility to provide an indoor recreation area with appropriate recreation materials, but does not impose a similar requirement for appropriate recreation materials in outdoor recreation areas. The proposal remedies this deficiency and moves each such provision to this section. Neither the existing language nor the proposal defines what equipment is deemed “appropriate” for these purposes, leaving the facility administrator with broad</p>

		<p>assessed for suitability and the supervision provided; and (iii) safeguards for water-related activities, including ensuring that a certified lifeguard supervises all swimming activities.</p> <p>(C) For off-campus, overnight recreational trips, the provider must document trip planning, including: (1) a supervision plan that addresses sleeping and awake hours; (3) an overall emergency, safety, and communication plan for the activity including emergency numbers of facility administration; and (6) a plan to ensure that all necessary equipment for the activity is in good repair and appropriate for the activity.</p>	<p>discretion to make this determination based on the facility's residents.</p> <p>(B) The proposal removes the facility's requirements to develop and implement written procedures regarding these issues, and instead requires the facility to protect the safety of residents by ensuring that these requirements are in place and observed.</p> <p>(B)(3) Among the safeguards for water-related activities, the proposal adds a requirement that the provider try to determine each resident's swimming ability by consulting his parent or guardian.</p> <p>(B)(4) The proposal adds language directing the facility to ensure that all participants are appropriately equipped and dressed (including wearing safety gear appropriate for the activity). This requirement applies to wilderness activities currently, and should apply to all recreational activities regardless of their scope or frequency.</p> <p>(C)(1) The proposal adds language requiring the supervision plan to meet the minimum staffing ratio requirements in Section 930 (1:8 during resident waking hours and 1:16 during resident sleeping hours). This is consistent with new language added to Section 930 and specifically addressing off-campus, facility-sponsored trips.</p> <p>(C)(3) The proposal adds language requiring the emergency, safety, and communication plan to include resident accountability, prompt evacuation, and identification of emergency numbers for facility administrators and outside emergency services. This requirement applies to wilderness programs under the existing regulation and should apply to all overnight trips, regardless of their scope or frequency.</p> <p>(C)(6) The proposal changes this provision to mirror language applicable to wilderness programs.</p> <p>(D) The proposal adds a new subsection (D) that requires the facility administrator to ensure, for all overnight recreational offsite trips, that (1) a telephone is located in areas where residents sleep or participate in programs; (2) first-aid kits containing appropriate supplies are always accessible; (3) a separate bed, bunk, or sleeping bag is available for</p>
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			<p>each resident and staff member in attendance, and (4) bedding is clean, dry, sanitary, and in good condition. These new requirements are consistent with language in the provisions applicable to wilderness programs and should be followed, regardless of the types of recreational activities residents engage in off-site. Many facilities already comply with these provisions during overnight trips and will not be impacted by these changes.</p> <p>(F) The proposal adds a new subsection (F) that exempts wilderness programs from the requirements in this section, instead making them subject to sections 1010 through 1070 of this chapter. This change will have no additional impact.</p>
690	N/A	<p>Residents' funds: (B) A resident's funds (e.g., allowance or other earnings) must be used for his benefit, for court-ordered payments, or for the resident to make restitution payments for damaged property or personal injury.</p>	<p>(B) The proposal makes a minor edit to clarify that the funds referenced in this provision are the resident's personal funds, not the facility's programming funds. As this interpretation is well-established in the department's Compliance Manual, this change will have no additional impact. The proposal makes other minor changes that will have no impact.</p>
700	N/A	<p>Fundraising: Juvenile residential facilities are prohibited from using residents in fundraising without the written permission of the legal guardian and the consent of residents.</p>	<p>The proposal amends the provision to require written permission from the parent or legal guardian and the resident before the facility may use the resident in its fundraising activities. Requiring the written consent of the resident, in addition to the parent or legal guardian, will establish clear documentation of the facility's compliance with this provision. Additionally, the provision adds qualifying language that indicates that the written permission of the parent or legal guardian is necessary only "as appropriate and applicable." The chapter incorporates this language frequently to clarify that a parent or guardian's consent is necessary only when a resident is under the age of legal consent.</p>
710	N/A	<p>Placement pursuant to a court order: When a resident's facility placement is based on a court order, the facility can meet the following specific regulatory requirements by placing a copy of the court order in the file: (1) § 730 – application for admission; (2) § 740 –</p>	<p>The proposal modifies this language for purposes of clarity. The drafter intended to exempt court-ordered placements from certain specified regulatory requirements related to admission and discharge processes and to demonstrate this exemption by having staff place and maintain a copy of the court order in the resident's case file. As an example, Section 730 requires all admissions</p>

		admission procedures; (3) § 750 – written placement agreement, (4) § 780 – emergency admissions; and (5) § 810 – discharge procedures.	(except those pursuant to a court order or resulting from a transfer between facilities) to be based on an application evaluation. Section 740 allows admission to these facilities only for residents determined compatible with the facility's services. Section 750 directs the facility to include a completed placement agreement in certain residents' case records. Section 780 imposes several requirements on residents accepted as emergency admissions. Finally, Section 810 requires the provider to have written criteria for a resident's completion of the program and conditions under which a resident may be discharged before completing the program. Except discharge-related provisions, each section exempts court-ordered placements. Because of these exemptions, the current language in Section 710 is confusing because it suggests that facilities are subject to the regulatory requirements contained in these enumerated sections for court-ordered placements. The proposal clarifies that, for court-ordered placements, the enumerated regulatory requirements do not apply and the facility must maintain a copy of the court order in the resident's case records, rather than documentation required by those sections. This is similar to the language used in the regulatory provision regarding readmission to shelter care programs contained in § 720. This change is intended as a clarification and will have no additional impact.
720	N/A	Readmission to a shelter care program:	The proposal makes minor edits for style.
730	N/A	Application for admission: Before a resident is accepted for care in a facility, providers are required to develop and complete an application for admission, designed to compile certain important information, such as the resident's educational, mental health, psychological and behavioral support needs.	The proposal requires the individual who referred the resident, rather than the provider, to complete the application. The provider, in turn, is responsible for ensuring that the referral source has completed the application for each admitted resident, and that, subsequently, the application is placed in the resident's record. This change reflects current practice and will have no additional impact. The proposal makes additional minor changes for style, which will have no additional impact.
740	N/A	Admission procedures:	The proposal makes minor edits for style.
750	N/A	Written placement agreement: (A) Prior to a	(A)The proposal removes the exception for self-admissions to shelter care

		<p>routine admission, each resident's record must include a completed placement agreement signed by a facility representative and the legal guardian or placing agency. Court-ordered placements and self-admissions to shelter care facilities are exempt from this requirement. A routine admission is defined in this subsection and includes application and execution of a placement agreement.</p>	<p>facilities because the department does not regulate or certify self-admissions. The proposal also strikes references to "routine admission" in favor of the term "planned admission," which is more reflective of the process in that it involves completion and evaluation of an application and the parties entering into a written agreement. The proposal defines "planned admission" using the language in the current definition for "routine admission" in Section 10. The proposal makes additional, minor edits for style. These changes will have no additional impact.</p>
760	N/A	<p>Admission: (A) Facilities must have written procedures governing resident admission and orientation, which shall provide for, among other requirements: search of the resident; screening the resident for medical issues; notifying parents and legal guardians of the resident's admission; interviewing the resident; explaining program services and schedules to the resident; orienting the resident on his rights; and assigning him to a housing unit or room. (B) Readmissions to shelter care facilities that occur within 30 days from discharge require the facility to update the information required in subsection A.</p>	<p>(B) The proposal adds clarifying language indicating that for such readmissions, the facility must administer all searches and screenings, provide all notifications, and update all information required under subsection A. This is intended to clarify current language and is not expected to have an additional impact.</p>
770	N/A	<p>Orientation to facility rules and disciplinary procedures:</p>	<p>The proposal makes minor edits for style.</p>
780	N/A	<p>Emergency admissions: Providers that accept emergency admissions must: 1) implement procedures governing such admissions, place the court order and other documents in the resident's record, and document the individual's eligibility for admission. The proposal defines emergency admissions as unplanned admissions of residents who need immediate care, excluding self-admissions to</p>	<p>The proposal strikes the definition for emergency admission and moves it to Section 10 of the regulation. The proposal removes the exclusion for self-admissions to shelter care facilities because these admissions are neither regulated nor certified by the department. The proposal also removes from the definition the exclusion for court-ordered placements. The current provision clearly contemplates the possibility that an emergency admission may be the result of a court order, as the provision requires the court order to be placed in the resident's record.</p>

		shelter care or court-ordered placements.	
790	N/A	Resident transfer between residential facilities located in Virginia and operated by the same governing authority:	The proposal makes minor edits for style.
800	N/A	Placement of residents outside the facility: Juvenile residential facilities may not place residents outside the facility before obtaining a placing agency license from DSS, except as permitted by statute or by court order.	The proposal repeals this provision in its entirety. This residual provision was part of a previous iteration of the regulations (Standards for Interdepartmental Regulations of Children’s Residential Facilities) that was repealed in 2008. At that time, the regulations, which were jointly promulgated by several boards including DJJ and DSS, applied to all children’s residential facilities licensed by these agencies. When, in 2008, the General Assembly changed the law by making each entity the sole regulatory and licensing authority for respective residential facilities these entities funded or operated, the interdepartmental regulations were repealed. This provision was retained in the juvenile justice regulations in error. As a matter of practice, group homes and other nonsecure residential facilities regulated by the department do not make outside placements. This change will have no additional impact.
810	N/A	Discharge procedures: (B) The juvenile residential facility must make the facility’s criteria for discharge accessible to prospective residents, legal guardians and placing agencies. (C) Residents may be discharged only to the legal guardian, legally authorized representative, or foster parent with written authorization of the legal guardian’s representative. Residents over age 17 or emancipated residents may discharge themselves.	(B)-(C) The proposal clarifies that the provision restricting a resident’s discharge to his legal guardian, legally authorized representative, or foster parent applies only to residents under the age of 18. Further, the provision clarifies that emancipated residents or residents age 18 or older may assume responsibility for their own discharge. The proposal also replaces references to “the legal guardian” with “the parent or legal guardian,” consistent with other references in this chapter and with the definition in Section 10. (E) The proposal adds a new subsection (E) that authorizes the facility to permit residents to take personal clothing with them when they are discharged. This provision was moved from Section 630 and will have no additional impact. The proposal makes additional nonsubstantive changes of no impact.
820	N/A	Discharge documentation: When residents are discharged from a juvenile	The requirement that the discharge summary be placed in the resident’s record is established twice in this section.

		residential facility, their case records must include...(4) no later than 30 days after discharge, a comprehensive discharge summary, placed in the resident’s record and sent to the placing agency.	The proposal removes the second reference as repetitive and makes other amendments of a nonsubstantive nature, none of which will have an additional impact.
840	N/A	Structured programming: (A) Group homes or similar facilities must implement a structured, daily routine, including appropriate supervision designed to...(2) provide protection, guidance, and supervision and...(4) meet the objectives of any individual service plan, among other requirements.	(A) The proposal removes the provision mandating inclusion of appropriate supervision in the daily routine, as this is covered under subdivision (A)(2). In addition, the proposal adds “as applicable” language to clarify that the requirement to meet the objectives of an individual service plan is not absolute. This clarification acknowledges those facilities that have lengths of stay of 30 days or less, and contemplates the possibility that a facility may not have completed a service plan for residents in those programs. The proposal makes an additional, minor edit for style. These nonsubstantive changes will have no additional impact.
850	N/A	Daily log:	The proposal makes minor edits for style and clarification.
860	N/A	Individual service plan:	The proposal replaces all references to “service plan” in this section with the “individual service plan,” in order to reflect the amended terminology in the definitions section and for purposes of clarification. The amendment will have no additional impact.
870	N/A	Quarterly reports: Group home staff must prepare a quarterly progress report within 60 days of developing a resident’s individual service plan and every 90-day period thereafter. The quarterly reports must be distributed to the resident’s family, legal guardian, or legally authorized representative, as well as the placing agency and appropriate facility staff.	The proposal replaces the resident’s family with the resident’s parent, as one of the parties entitled to receive a copy of the quarterly progress report. The term “family” is vague and likely is broader than the drafters intended. This change will give facility administrators and staff clear guidance as to which family members are entitled to receive the quarterly progress report and may reduce some administrative burden on facility staff. The proposal makes additional style changes that will have no impact.
880	N/A	Therapy:	The proposal makes minor edits for style.
890	N/A	Community relationships: Every provider must develop and implement department-approved written procedures for promoting positive relationships with neighbors of the facility.	The proposal removes the mandate directing these procedures to be approved by the department. The department does not approve written procedures established by group homes or other regulated entities. The proposal makes additional, minor style edits that will have no additional impact.

900	N/A	<p>Resident visitation at the homes of staff: Residents may not visit staff members' homes unless they obtain written permission from the resident's parent or legal guardian, the facility administrator, and the placing agency.</p>	<p>The proposal amends this provision by removing the exceptions and placing an absolute prohibition on residents visiting staff homes, regardless of whether the specified parties consent to such visits. This change seeks to avoid impropriety, protect the staff from liability, and ensure the safety and protection of the resident. Because very few facilities allow residents to visit the homes of staff, even within the parameters of the existing regulation, this change will have no tangible impact.</p>
910	N/A	<p>Additional assignments of direct care staff: When direct care staff take on nondirect care duties, those duties may not interfere with the staff's direct care duties.</p>	<p>The proposal repeals this section in its entirety, as this matter need not be regulated. This change will have no additional impact.</p>
920	N/A	<p>Staff supervision of residents: (A) Direct care staff may not be on duty and have direct care duties more than six consecutive days without a rest day, as defined in this subsection. (D) Facilities must have at least one trained direct care staff member on duty and actively supervising residents whenever at least one resident is present.</p>	<p>(A) The proposal strikes the definition for rest day and moves it to Section 10. (D) The proposal clarifies that trained staff, for these purposes, are staff who have satisfied the initial training requirements set out in Section 200 and the annual training requirements (if applicable) set out in Section 210. The provision also highlights an exception, referenced in new subsection G, which exempts staff in IL programs from the requirement regarding active supervision of residents in certain limited circumstances. (G) The proposal provides an exception from the staffing requirements outlined in subsection D for direct care staff in IL facilities. Under the exception, such staff may leave the facility for up to one hour to attend to a resident in an emergency who is off-site and requires immediate assistance. This exception is available provided: (i) the employee has notified the facility administrator or other supervisor before leaving the facility; (ii) residents remaining in the facility have an emergency means of communicating with a staff member; and (iii) the facility has written procedures in place governing this exception. The proposal is intended to ensure that when only one direct care staff is on duty in an IL program (where residents are developing skills to live independently), that employee can address residents off-campus who may encounter emergency situations. This change reflects an active</p>

			variance currently in place and applicable to an IL facility regulated by the department and will have no additional impact on that facility. To the extent that other IL facilities are established and subject to certification by the department, staff in these facilities also may be eligible for the exception.
930	N/A	<p>Staffing pattern (A) During resident waking hours, at least one direct care staff must be awake, on duty, and responsible for supervising every 10 or fewer residents on the premises or participating in off-site, facility-sponsored activities. IL programs must satisfy the same requirements for every 15 or fewer residents on the premises or participating in off-campus, facility-sponsored activities.</p> <p>(C) Except in approved IL programs, at least one direct care staff must be on duty and responsible for supervising residents in each building where residents are sleeping.</p> <p>(D) At least one direct care staff must be awake and on duty for every 30 residents on every floor where residents are sleeping.</p>	<p>(A) The proposal changes the current 1:10 staffing ratio applicable in group homes and similar facilities to 1:8 in order to conform to the staffing ratios needed to satisfy PREA. Rules addressing off-campus events are addressed in a new subsection D, below. Finally, the proposal strikes the 1:15 staffing requirement in IL programs and sets out different requirements in a newly created subsection E, which imposes a general exception to all of the provisions of this section for IL programs.</p> <p>(C) The proposal removes from this provision any reference to IL programs. Rather, a new subsection E exempts IL programs from this section and places them under purview of Section 1005.</p> <p>(D) The proposal removes this provision in its entirety, as this requirement is not in keeping with the structure of group homes and other applicable facilities.</p> <p>New (D) The proposal supplements the 1:8 staffing ratio applicable for on-site supervision during resident waking hours with language giving the facility administrator the discretion to determine appropriate staffing ratios while residents are off-site and participating in facility-sponsored activities or events. The administrator must consider which residents are participating, the nature of the event, and other factors, but shall never allow fewer than one direct care staff member for every eight or fewer residents off-site. This supplemental requirement is intended to put facilities on notice that they may increase staffing ratios when residents are offsite, but are not required to do so.</p> <p>New (E) The proposal adds a new subsection (E) exempting IL programs from the requirements of this section and directing the regulant to newly created Section 1005, the provisions of which will apply exclusively to IL programs.</p>
	935	N/A	Periodic monitoring of residents: The proposal adds a new provision which

			<p>imposes upon staff in group homes and other nonsecure facilities a new duty to conduct periodic checks on residents present in the facility at least once every 30 minutes, or more often if necessary. The proposal directs these checks be documented in accordance with written procedures. Residents in IL programs are developing skills to live independently; therefore, periodic checks are not necessary for such facilities. The proposal is intended to ensure that group homes are adequately monitoring residents within their programs to ensure their safety. Most such facilities already follow this procedure and will not be impacted by this change.</p>
950	905	<p>Work and employment: (A) Unpaid or paid chores and work assignments must accord with the age, health, ability, and service plan of the resident. (B) Off-site work assignments or employment including reasonable rates of pay, must be approved by the facility administrator, and the parent or legal guardian must provide consent as appropriate and applicable.</p>	<p>In the current regulation, Section 950 is the only section contained under Part VII of this chapter, which addresses work programs. Rather than have one part devoted to a single section, the proposal repeals Section 950 in its entirety and moves its content to a newly created Section 905, placed under Part VI (Program Operation), Article 2 (Programs and Services). This nonsubstantive change will have no additional impact. (A) The proposal removes the mandate that work assignments accord with individual service plans. This requirement does not exempt residents for whom completion of an individual service plan is not required, nor does it allow facilities the flexibility to use chores as behavior management tools or for other purposes, independent of the resident's individual service plan. The proposal will allow facilities to retain this flexibility. Within this list, the proposal also replaces the resident's age with his developmental level. This change acknowledges that a resident's age is inconsequential if a developmental disability renders him incapable of performing a chore. (B) The proposal removes the requirement to obtain consent from the parent or legal guardian for such work assignments or employment, instead requiring the facility administrator to collaborate with the parent or legal guardian and the referring agency before approving such work assignments. This provision preserves the parent's right to weigh in on these decisions, but ultimately recognizes the possibility that</p>

			parents or legal guardians may not always be considering the resident’s best interests in making these determinations.
960	N/A	<p>Independent living programs: (A) IL programs must be competency-based programs, approved by the board to give residents the opportunity to develop skills needed to live independently after completing the program. (B) IL programs must have a written description of their curricula and methods used to teach IL skills, including finding and maintaining a job, managing finances, household budgeting, hygiene, nutrition, and other life skills.</p>	<p>(A) The proposal strikes this provision entirely and moves the language into a newly created definition for IL programs in Section 10.</p> <p>(B) The proposal strikes this provision and moves the directive that such programs have a written description of the curriculum to Section 970, which addresses curricula for IL programs. The proposal also strikes the required subject matter for IL curricula, as these topics are set out in Section 970. These changes effectively repeal this section. The repeal will have no additional impact, as the content is retained in other sections in this chapter.</p>
970	N/A	<p>Independent living programs curriculum and assessment: (A) Every IL program must demonstrate its use of a structured program with board-approved materials and curriculum to teach IL skills. (B) Within 14 days of IL placement, the provider must assess the resident’s living skills using a DJJ-approved assessment tool. The assessment must measure, among other topics: 3) personal appearance; 5) health and sexuality; and 14) legal skills. (C) The resident’s individualized service plan must include the required elements listed under Section 860, as well as goals, objectives, and strategies addressing each of the areas in which the resident is assessed.</p>	<p>(A) The proposal replaces the board with the facility administrator as the entity authorized and responsible for approving the materials and curricula. This change reflects current practice and will have no additional impact.</p> <p>(B) The proposal adds a new subsection B that incorporates the requirements currently contained in Section 960, requiring IL programs to have written descriptions of the curricula and methods used to teach living skills.</p> <p>New (C) The proposal removes the requirement that the facility use a department-approved assessment tool to complete the assessment. Because subsection C identifies clear areas for assessment, the department does not believe that an independent assessment tool is necessary to measure a resident’s progress in these areas, nor does the department wish to remove the facility’s discretion to determine how best to assess these skills. The proposal also modifies the skills categories by adding hygiene to the personal appearance category, replacing the health and sexuality category with physical and mental health, and replacing legal skills with legal matters, to clarify that the resident must demonstrate the ability to address whatever legal matters he encounters. The changes are intended to promote clarity and will have no additional impact.</p>

			(C) and new (D) The proposal adds a new subsection (D) requiring the IL program to document the resident's progress towards developing IL skills and strikes subsection (C), which requires certain information be included in the individual service plan. This change will give IL program administrators additional flexibility in administering the programs and measuring and documenting the resident's progress.
980	N/A	Employee training in independent living programs: IL programs must develop and implement procedures to train direct care staff within 14 days of employment on the content of the IL curriculum, the use of the IL materials, the application of the assessment tool, and the documentation methods used.	The proposal clarifies that direct care staff training must occur before the expiration of the staff's 14 th work day. As currently drafted, it is not clear whether 14 days of employment is measured from the date the offer of employment is accepted, the individual's start date, or some other date. This change is consistent with the department's longstanding interpretation and will have no additional impact. The proposal also conforms this provision to Section 960 by removing language directing staff to be trained on applying the assessment tool. The proposal makes additional, minor style edits, which will have no impact.
990	N/A	Medication management in IL programs:	The proposal makes minor edits for style.
1000	N/A	Nutrition procedure in IL programs: IL programs must develop and implement written procedures that ensure that each resident is receiving adequate nutrition as required in various provisions of the nutrition section (Sections 650(A),(B), and (C).	The proposal strikes subsection C from this requirement. Subsection C of Section 650, as proposed, requires facilities to maintain a file with menus of the meals they served in accordance with federal requirements. This provision is not practical for residents in IL programs who may work several jobs or hours that prevent them from preparing their own meals and maintaining documentation of what they prepared. This change is consistent with a variance issued to the TYSC in 2016 that excuses its IL apartment-style program from the menu retention requirement due to these limitations.
N/A	1005	N/A	Staffing in independent living programs: The proposal adds a new section that addresses the staffing ratio requirements for IL programs. Under the new provision, there must be at least one direct care staff member responsible for supervising every 16 residents both during hours when residents are sleeping and awake. The proposal also includes an exception with a cross reference to Section 920(G) of the regulation, which

			allows the sole direct care staff member on duty to leave the IL program facility in emergencies for no longer than one hour to attend to a resident off site who is in need of immediate assistance. This language reflects an active variance currently in place for the TYSC. Because this regulatory change is consistent with the existing variance, the change will have no further impact.
1010	N/A	<p>Requirements for wilderness program: This section is contained in Part IX, Wilderness Programs and Adventure Activities. Specifically, this section addresses wilderness programs.</p> <p>(A) The provider must obtain board approval before operating a primitive camping program.</p> <p>(B) Among the requirements, a wilderness program must have an experience curriculum.</p> <p>(C) A wilderness work program or wilderness work camp program shall have a written program description covering certain topics.</p>	<p>(A) The proposal replaces references to “primitive camping programs” in this section, with wilderness programs. The proposal also defines, in Section 10, a wilderness program, which is a residential program providing treatment and services to residents primarily through experiential wilderness expeditions. The intent is to narrow the application of this and other provisions that currently reference wilderness activities or primitive camping programs to exclude group homes or similar facilities that occasionally take residents on wilderness activities, but whose primary program does not focus on such activities. Additionally, the proposal replaces the board with the director as the entity authorized to approve such programs. These changes reflect the department’s current interpretation and will have no additional impact.</p> <p>(B) The proposal removes the redundant requirement that the wilderness program have an experience curriculum. The new definition for “wilderness program” contemplates resident treatment primarily through experiential wilderness activities, rendering this requirement unnecessary.</p> <p>(C) The proposal replaces references to the wilderness work program and wilderness work camp program with wilderness programs. There is no need to identify these individual types of programs, as they will all fall under the general wilderness program umbrella.</p>
1020	N/A	<p>Wilderness programs or adventure activities: (A) All wilderness programs and providers that take residents on wilderness or adventure activities shall develop and implement written procedures. The written procedures must include, among other topics: 3)</p>	<p>Procedures for wilderness programs; training: (A) The proposal strikes the reference to providers that take residents on wilderness or adventure activities. These specific provisions are intended to address programs for which experiential activities are a primary focus, and not those facilities occasionally participating in these activities. The proposal also requires that staff ratios meet Section</p>

		<p>specific staff to resident ratios and supervision plans appropriate for each activity. (B) Direct care workers hired by wilderness campsite programs and providers that take residents on wilderness or adventure activities shall be trained in a wilderness first aid course.</p>	<p>930's mandates (i.e., staff-to-resident ratio of 1:8 or higher for off-campus, facility-sponsored activities). These changes are consistent with changes made elsewhere in this chapter. (B) The proposal strikes references to wilderness campsite programs and providers that take residents on wilderness activities for the reasons outlined above.</p>
1030	N/A	<p>Initial physical for wilderness programs or adventure activities: This provision addresses information that must be contained in initial physical forms used by wilderness campsite programs and providers that take residents on wilderness or adventure activities.</p>	<p>The proposal replaces references to "wilderness campsite programs" with "wilderness programs" in order to utilize the new definition adopted in Section 10. The proposal also strikes the reference to "providers that take residents on wilderness or adventure activities."</p>
1040	N/A	<p>Physical environment of wilderness programs or adventure activities: This section addresses the physical environment of wilderness programs. (A) Each resident shall have adequate personal storage. (E) Each area where residents sleep or participate in programs must have a telephone or other means of communication. (F) First aid kits used by wilderness campsite programs and providers that take residents on adventure activities shall be activity-appropriate and accessible at all times.</p>	<p>(A) The proposal removes subsection (A), as the directive to provide "adequate" storage is vague and subjective. Furthermore, it is not necessary to prescribe by regulation the amount of personal storage that should be available to residents. New (D) The proposal changes the language in old subsection (E) to provide that telephones or other forms of communication must be accessible, rather than required in each such area. The existing language could be interpreted to mandate a landline or non-mobile telephone be located in each area where residents will sleep or participate in programs. It should be sufficient that staff are able to access a phone or other means of communication in such areas. New (E) The proposal removes the reference to wilderness campsite programs and providers that take residents on adventure activities for the reasons enumerated above. These changes will have no additional impact because there are no wilderness programs that are currently regulated by the department. The proposal makes additional changes for style that will have no impact.</p>
1050	N/A	<p>Sleeping areas of wilderness programs or adventure activities: (C) Wilderness programs are required to make a separate</p>	<p>Sleeping areas of wilderness programs: (A)(1) The proposal adds an introductory sentence to notify regulants that the provisions in this section apply when wilderness programs require</p>

		<p>bed, bunk, or cot available for each person. (I) Staff of the same sex may share a sleeping area with the resident.</p>	<p>outdoor, off-campus, or alternative overnight sleeping arrangements. New (A)(3) The proposal adds sleeping bags to the list of options for sleeping that may be made available to residents in wilderness programs. This change acknowledges the fact that a wilderness program may involve overnight camping trips and makes clear that residents should never have to share a sleeping bag with another resident or with staff. New (A)(9) This provision specifies that staff may not share a tent or sleeping room with a resident unless staff is of the same sex as all residents in the room or tent. The use of the term “sleeping area” in the existing regulation is ambiguous. It is not clear how much of a given area would comprise a sleeping area, particularly in a camping environment. The proposal restricting staff to tents and sleeping rooms of residents of the same sex eliminates this ambiguity and provides additional guidance. Because there are no wilderness programs currently regulated by the department, these changes will have no impact.</p>
1060	N/A	<p>Personal necessities in wilderness programs or adventure activities: (A) Residents must be provided an adequate supply of clean clothing suitable for outdoor living and appropriate to the geographic location and season. (B) Sturdy, water-resistant, outdoor footwear must be provided for each resident.</p>	<p>Personal necessities in wilderness programs: (A) and (B) The proposal combines these two provisions and imposes a broader requirement that both clothing and footwear be sturdy and suitable for the planned activity. This is preferable to a requirement for water-resistant footwear or to clothing suitable for outdoor living, as such items may not be required depending upon the program’s activities and the resident’s living arrangements. Although this change will give wilderness programs greater flexibility, the proposal is not expected to have an immediate impact because, currently, there are no existing wilderness programs regulated by the department.</p>
1070	N/A	<p>Trip or activity coordination for wilderness programs or adventure activities: (A) All wilderness programs and facilities that take residents on wilderness or adventure activities must designate a staff trip coordinator responsible for all facility wilderness or adventure trips.</p>	<p>Trip or activity coordination for wilderness programs or adventure activities: (A) The proposal removes the reference to facilities that take residents on such activities, as these wilderness program provisions are intended to apply to programs with a primary focus on experiential activities.</p>

		<p>(A)(4) The trip coordinator will review all trip plans and procedures and ensure that staff and residents meet the requirements outlined in the facility’s procedure regarding each wilderness or adventure activity planned for the trip. (E) The provider must ensure that before engaging in aquatic activity, the trip coordinator or his designee classifies each resident as swimmer or nonswimmer, according to the resident’s swimming ability. (F) The provider must ensure that lifesaving equipment (including an audible signal device and a lifesaving throwing device) is provided for all aquatic activities and immediately for emergencies.</p>	<p>(A)(4) The proposal removes this requirement because it duplicates the language in (A)(3) of this section. (E) The proposal removes the mandate directing staff to classify residents as either swimmers or nonswimmers in favor of broader language that requires the facility to develop a list that classifies residents according to swimming ability, without specifying the classifications. (F) The proposal changes the individual who is obligated to ensure the provision of lifesaving equipment from the provider to the trip coordinator. New (G) The proposal also creates a new subsection G that requires the trip coordinator to ensure a certified lifeguard supervises all aquatic activity. This change mirrors the requirement in Section 680, applicable to facilities that are not operating wilderness programs. This provision will have no impact because there are no existing DJJ-regulated wilderness programs.</p>
1080	N/A	<p>Requirements of family-oriented group home systems: FOGs must have written procedures in place for (4) preparing a treatment plan for each resident within 30 days of admission or 72 hours in the case of a shelter care facility and reviewing the plan quarterly; (9) notifying parents and guardians, the placing agency, and the department of any serious incidents, as specified in written procedures, and (11) ensuring the secure control of any firearms and ammunition in the home.</p>	<p>(4) The proposal replaces “treatment plan” with individual service plan as the plan FOGs must prepare within the time periods specified. This is consistent with language used in Section 10 and other areas of the regulation. This clarification will have no additional impact. (9) Under the existing provision, FOGs are not subject to Section 90’s SIR requirements. They may establish their own written procedures regarding how soon to notify affected entities of the types of incidents that warrant an SIR. The proposal removes this authority by striking subdivision (9) in its entirety. The department cannot provide a compelling justification for excusing FOGs from the SIR requirements applicable to JDCs, JCCs, group homes, and similar facilities regulated by the department. The purpose of SIR requirements is to notify DJJ, parents or legal guardians, and certain other applicable parties of serious incidents and to enable DJJ to take whatever additional measures are necessary to address these incidents. The proposal adds new language in Section 1110 subjecting FOGs to the SIR requirements in Section 90. (11) The existing provision requires facilities to ensure that firearms are secure, but arguably should be more</p>

			restrictive. The amendment requires group homes and similar facilities to ensure that firearms and ammunition are secured to prevent access by juveniles who are not authorized to access these weapons. The proposal makes additional, minor edits for style. Because there are no FOGs currently in operation and subject to the department's regulations, these changes will have no immediate impact.
1090	N/A	Examination by physician:	The proposal makes a minor style edit.
1100	N/A	Requirements of family-oriented group homes: This provision establishes a list of required items for FOGs, including, for example: (2) functioning smoke alarms; (4) modern sanitation facilities; (8) a separate bed for each resident; (11) an adequate number of sanitary toilet and bath facilities; and (17) daily provision of clean clothing and items necessary to maintain proper personal hygiene.	<p>(2) The proposal adds language requiring the facility to conduct and document inspections on smoke alarm devices at least monthly. This change is consistent with recommendations from the American Red Cross. Although this new language has the potential to impose additional duties on FOG operators, it will help to ensure that these devices are being inspected regularly, thereby promoting safety in these facilities, should they open in the future.</p> <p>(4) The proposal removes the requirement that FOGs have modern sanitation facilities as mandated in subdivision 4. New subdivision 10 requires facilities have sanitary toilet and bath facilities adequate for the residents. New (7) The proposal supplements the requirement that a bed be afforded to each resident by requiring each bed be equipped with a mattress, pillow, blankets, bed linens, and, if needed, a waterproof mattress cover and that such items be cleaned at least once every 7 days, or more often if necessary. The proposal requires an EPA-approved sanitizing agent be used in laundering bed linens. This mirrors the general requirement applicable to group homes and similar facilities.</p> <p>New (16) The proposal adds that shoes for indoor and outdoor wear must be part of this daily provision, and that all articles of clothing and shoes must be size appropriate, clean, and in good condition. While many of these changes impose clearer, more specific duties on FOG operators, they will have no immediate impact because there are no qualifying DJJ-regulated facilities.</p>
1110	N/A	Other applicable regulations: Currently, in addition to the regulatory	The proposal identifies 12 additional sections under this chapter that are applicable to FOGs. The regulatory

		<p>provisions listed in Part X of this regulation (Sections 1080 through 1100), FOGs are subject to the regulatory sections addressing background checks, orientation, and training, set out in Sections 180, 190, 200, and 210. By outlining only a small set of regulatory provisions in this chapter with which FOGs must comply, the board has conveyed its intent that FOGs are a special class of group homes that should not be subject to the same level of regulation as other group homes or similar facilities.</p>	<p>sections include: § 90 (<i>requiring certain incidents be reported to specified parties and that a report be prepared and maintained</i>); § 560 (<i>identifying prohibited actions in group homes including unlawful discrimination, application of aversive stimuli, use of mechanical restraints, and confinement in a locked room</i>); § 565 (<i>requiring the implementation of a procedure for assessing vulnerable residents and the application of additional precautions for such residents</i>); § 570 (<i>establishing rules for delaying, withholding, and inspecting resident mail</i>); § 580 (<i>requiring that residents have reasonable access to a telephone</i>); § 590 (<i>requiring residents have reasonable visiting privileges and directing the facility to make its visitation procedures available to parents, the resident, and other specified parties</i>); § 600 (<i>mandating that residents have uncensored, confidential contact with their legal representatives, that they not be denied access to the courts, and that they not be compelled to submit to questioning by law enforcement</i>); § 620 (<i>requiring staff to give residents daily opportunities to shower, except in certain specified circumstances</i>); § 640 (<i>directing that facilities provide residents with privacy while bathing, dressing, or using the restroom</i>); § 660 (<i>demanding that the facility make reasonable efforts to enroll compulsory school-aged residents in educational programs within 5 school business days after admission</i>); § 670 (<i>prohibiting facilities from mandating or denying resident participation in religious activities</i>); § 690 (<i>directing providers to implement written procedures for safekeeping and recordkeeping of residents' funds and limiting the use of such funds</i>; and § 700 (<i>prohibiting the provider from using residents in its fundraising activities without the written permission of the legal guardian and consent of residents</i>). Although, currently, there are no FOGs under the department's certification purview, the department believes that if any future facilities comply with these additional regulatory requirements, it will ensure the safety and well-being of the residents in such facilities.</p>
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1120	N/A	Definition of respite care: This provision defines respite care facilities, which are designed to provide temporary residential care to residents to relieve parents or guardians from these responsibilities.	The proposal repeals this section because the department does not regulate respite care facilities, rendering this definition unnecessary.
1130	N/A	Admission and discharge from respite care: This section governs the process for admitting and discharging residents from respite care.	The proposal repeals this section because the department does not regulate respite care facilities, rendering this section unnecessary.
1140	N/A	Updating health records in respite care: This provision requires respite care facilities to update certain health care information of a resident for each stay at the facility.	The proposal repeals this section because the department does not regulate respite care facilities, rendering this section unnecessary.
1150	N/A	Definitions applicable to health care services: This section provides definitions applicable to health care services, including definitions for the terms: health authority, health care record, health care services, and health-trained personnel.	The proposal repeals this entire section, and moves the definitions for health care record, health care services, and health-trained personnel to Section 10 of the regulation. The term “health authority,” though referenced in this section, is not used elsewhere in the regulation; therefore, it does not require definition. These amendments will have no additional impact.
1160	N/A	Provision of health care services:	The proposal makes minor style edits.
1170	N/A	Health care procedures: (A) Providers must implement procedures addressing arrangement for medical and mental health services for residents, according to statutory requirements or agreements with the resident’s legal guardian. (C) Respite care facilities must update certain medical information required to be accessible to staff to respond to medical emergencies.	(A) In order to be consistent with other provisions throughout this regulation, the proposal adds the parent, in addition to the legal guardian, as a party to the legal agreement addressing arrangement for the resident’s health services. (C) The proposal removes the separate provision applicable to respite care facilities, as these facilities are not regulated or certified by the department. The proposal makes additional edits for style, which will have no impact.
1180	N/A	Health trained personnel:	The proposal makes minor style edits.
1190	N/A	Consent and refusal of health care services: (A) Informed consent, as defined in this section, to health care procedures must be obtained from the resident, parent, guardian, or legal custodian as required by law.	The proposal removes the terminology “informed consent” because it is used only once in the regulation, and its use is unnecessary. The proposal specifies the extent of consent that facilities must obtain before residents may be subject to health care procedures in accordance with § 54.1-2969 of the Code. This

			provision is intended to provide clarification, and will have no impact.
1200	N/A	<p>Health screening at admission: (1) To prevent new residents who pose a health or safety threat from being admitted into general population, upon admission, all residents immediately must undergo a preliminary health screening, outside the presence of their parent or guardian if such information would violate confidentiality. The health screening must include a structured interview and observation by health care personnel or health-trained staff.</p> <p>(2) Admitted residents who pose a health threat to themselves or others shall not be admitted to general population but shall receive comparable services.</p>	<p>(1) The proposal amends the language so that the objective of the preliminary health screening process is not to prevent such residents from being admitted to the general population, but rather to prevent such residents from jeopardizing the health of other residents. This subtle change acknowledges that “general populations” are not applicable to group homes or similar settings and clarifies the provision’s purpose, which is to protect the health of each resident.</p> <p>(2) For the reason stated above, the proposal strikes the provision prohibiting admission of residents who pose a threat to the general population and replaces it with a mandate that staff separate these residents from all other residents in the facility. This change will guide facility leadership regarding placing residents who may pose a threat. Additional minor edits will have no impact.</p>
1210	N/A	<p>Tuberculosis screening: (A) Within 7 days of placement, each resident shall have had a screening assessment for tuberculosis , which can be no older than 30 days.</p>	<p>(A) The reference to a “screening assessment” combines two terms with two different meanings, which has generated some confusion among the regulated community. The proposal replaces this misleading term with a “risk assessment” to better reflect the type of initial assessment that is conducted. Additionally, the proposal provides that the risk assessment must be conducted within seven days of arrival at a facility, rather than within 7 days of placement (defined as the activity that assists in locating and effecting the movement of a resident to a juvenile residential facility). A resident’s placement date may occur in advance of his arrival date, and this change will ensure that there is sufficient time to secure the risk assessment. This change is consistent with DJJ’s interpretation.</p> <p>The proposal also adds language allowing such risk assessment to be administered by health-trained personnel but limiting the individuals authorized to interpret its results solely to physicians, physician assistants, nurse practitioners, or registered nurses, consistent with guidance issued by the Virginia Department of Health in 2017. Finally, the proposal imposes a new requirement</p>

			that the facility demonstrate completion of the risk assessment by providing documentation by a medical professional or by completion of an assessment form containing the elements on the health department's current assessment form.
1220	N/A	Medical examination and treatment: (A) Currently, each resident must receive a physical by or under the direction of a licensed physician no earlier than 90 days before admission to the facility or no later than seven days following admission. This provision does not apply to shelter care residents. An exam conducted within the preceding 12 months is acceptable in lieu of a new physical if a resident has transferred from a state-licensed or state-certified facility. A physical also shall be conducted within 30 days following an emergency admission if a report of a physical is not available.	(A) The proposal modifies the provision so that a physical may be completed no earlier than 90 days before and no later than 7 days after admission for residents accepted into the facility as planned admissions (admission after evaluation of an application). Residents accepted as emergency admissions must have a physical completed within 90 days following emergency admission. When residents are admitted to juvenile residential facilities outside of the planned admission process, frequently, 30 days is not a sufficient amount of time to have their physicals completed. The proposal allows for additional time for these types of admissions.
1230	N/A	Infectious or communicable diseases: Facilities must implement written procedures that require staff to be trained in standard precautions, initially and annually thereafter.	The proposal adds a cross reference to Sections 200, applicable to required initial training, and 210, which imposes annual training requirements. These changes are intended to clarify and will have no additional impact.
1240	N/A	Suicide prevention: (A) Providers must have written procedures that provide for a suicide prevention and intervention program developed in consultation with a qualified medical or mental health professional. All direct care staff must be trained in the program.	The proposal clarifies that staff training must accord with the required initial and annual training requirements in Sections 200 and 210. Because this provision is intended to provide clarification, it is not expected to have an additional impact on facility operations.
1250	N/A	Resident's health care records: This provision sets out the requirements for properly maintaining health records of residents in group homes and similar facilities. (C) The physical examination report must include, among other information, the resident's allergies, chronic conditions, and handicaps.	(C) The proposal replaces references to "handicaps" with "disabilities, per guidance from the National Disability Authority. (D) The proposal strikes respite care facilities from the programs exempted from this requirement. Because respite care facilities are not certified or regulated by the department, this change will have no additional impact.

		(D) The resident’s health record must document, in writing, an annual exam by a licensed dentist, and any follow-up dental care. Shelter care and respite care facilities are excluded from this requirement.	The proposal also replaces references to “health record” with “health care record,” consistent with the defined term in Section 10. The change will provide clarity to regulated entities. The proposal makes additional minor edits for style, which will have no impact.
1260	N/A	First aid kits: (A) Facilities must maintain first aid kits with an inventory of their contents. (B) Such kits should be monitored in accordance with established facility procedures.	(A) The proposal adds language indicating that a kit must be maintained within the facility and in facility vehicles used to transport residents. This amendment will help staff of facilities respond to minor resident injuries while transporting residents off site and is consistent with most facilities’ practices. (B) The proposal amends the language to mandate, rather than recommend, that facilities monitor these kits in accordance with procedures. This amendment is not expected to impact facility operations because the department assesses compliance with this provision as if it were a directive, rather than a recommendation.
1270	N/A	Hospitalization and other outside medical treatment of residents: When a resident requires off-site medical treatment: (A)(1) the resident shall be transported safely; and (A)(2) a parent or legal guardian, staff member, or law enforcement officer, as appropriate, shall accompany the resident and stay during admission.	(A)(1) The proposal strikes the provision requiring the resident to be transported safely as vague and unnecessary. Pursuant to § 550, which is applicable to transportation, each facility is required to have written safety rules for transportation of residents, and, if applicable, for the use and maintenance of vehicles. The proposal is consistent with a similar proposal to the regulations governing detention centers. (A)(2)/New (A)(1) The proposal modifies this provision to require the facility to ensure that one of the three named parties accompanies the resident to the medical facility and remains with the resident through his admission. The department does not have the authority to regulate law-enforcement officers or parents/legal guardians. The department can ensure, through its own efforts, that the resident is accompanied by one of these individuals. The proposal adds an exception that gives the facility the authority to send a staff member to the medical facility as soon as reasonably possible in those situations in which sending a staff member with the resident would impair staffing, thereby jeopardizing resident or staff safety. This will allow the facility to manage staffing.

			<p>New (A)(2) The proposal adds a provision requiring the facility to comply with the notification requirements set out in Section 550 when law enforcement officers conduct the transport. The proposal makes a number of additional, minor changes that will have no additional impact.</p>
1280	N/A	<p>Medication: (E) A program of medication, including procedures regarding the use of over the counter medication pursuant to written or verbal orders signed by personnel authorized by law to give such orders must be initiated for a resident only if prescribed by a person authorized by law to make such prescriptions. (F) Medications must be administered consistent with requirements of § 54.2-2408 of the Code of Virginia. (H) The proposal defines medication incident as “an error in administering medication to a resident...” and lists among the types of incidents excluded from the definition, “a resident’s refusal of appropriately offered medication.</p>	<p>(E) The proposal seeks to provide clarification, as its current wording is confusing. The intent of the provision is to prohibit the application of medication that has not been prescribed in writing by a person authorized to write such prescriptions, and this prohibition extends to over-the-counter medication. Because this provision clarifies existing language, it is not expected to have an additional impact. (F) The proposal replaces the erroneous citation with § 54.1-3408. (H) The proposal moves the definition of medication incident to Section 10 and modifies the definition by excluding instances in which a facility fails to administer medication due to repeated, unsuccessful attempts to obtain such medication. This change will prevent facilities from being assessed for noncompliance when staff, despite their best efforts and repeated attempts, are unable to secure the medication. This is consistent with a similar change proposed to the JDC regulations.</p>
1290	N/A	<p>Behavior management: This provision defines behavior management and sets out the information that must be contained in written procedures governing behavior management programs.</p>	<p>The proposal strikes the definition of behavior management and moves it to Section 10 of the chapter. Several additional nonsubstantive changes are made, including replacing references to legal guardians with “parents or legal guardians” and clarifying that staff must complete required trainings in behavior management, rather than “all” such trainings. None of these amendments will have an additional impact.</p>
1300	N/A	<p>Behavior support: This provision sets out the requirements for facility behavior support plans designed for residents who need supports in addition to those in the behavior management program. (C) Staff members must review and be prepared to implement the resident’s</p>	<p>The proposal removes the mandate that staff review the support plan and be ready to implement it before working alone with the resident. The restriction is more appropriate in the context of a safety plan than a behavior support plan.</p>

		behavior support plan prior to working alone with an assigned resident.	
1310	N/A	<p>Timeout: (A) Facilities are authorized to use timeouts, which, under the definition contained in this section, allow staff to move a resident to a specific location away from reinforcement for a specified period to reduce or eliminate inappropriate or problematic behavior.</p> <p>(A)(2) The conditions and maximum period of timeout are founded on the resident’s chronological and developmental level.</p> <p>(A)(5) When a resident is placed in timeout, staff must check on the resident at 15 minute intervals or more frequently depending on the nature of the resident’s disability, condition, and behavior.</p>	<p>(A) The proposal strikes the definition for timeout and moves it to Section 10.</p> <p>(A)(2) The proposal strikes the requirement to base facility use of timeout on the resident’s chronological and developmental levels. These factors do not necessarily impact the efficacy of timeouts as a tool for managing behavior management.</p> <p>New (A)(4) The proposal requires staff to monitor the resident every 15 minutes or more often depending on the circumstances. This contemplates the possibility that external factors or other circumstances outside of the resident’s disability, condition, or behavior may necessitate increasing the frequency of such checks. The proposal also adds a requirement that staff evaluate and document whether the resident is ready to be released from timeout. Having this additional provision in place will ensure that residents remain in timeout only for as long as is necessary to address the problematic or inappropriate behavior.</p>
1320	N/A	<p>Physical restraint: (A) Staff in group homes and similar facilities may use physical restraint as a last resort, only after less restrictive methods failed or to control residents whose conduct threatens safety of them or others.</p> <p>(A)(2) Staff may physically restrain a resident only after less restrictive interventions have failed or when failure to restrain would harm the resident or others.</p> <p>(A)(4) The proposal defines physical restraint as a technique to prevent an individual from moving his body.</p>	<p>((A)(2) The proposal strikes the existing (A)(2) provision as it is repetitive of language in the first paragraph.</p> <p>(A)(4) The proposal strikes the definition for physical restraint and moves it to Section 10 of the regulation and makes numerous additional minor edits for style. These changes will have no additional impact.</p>