Virginia Department of Behavioral Health & Developmental Services

DBHDS Office of Licensing

Guidance on Corrective Action Plans (CAPs)

Effective: August 22, 2020

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

Regulations addressed: Note all regulatory language is formatted in *italics* while guidance language is in plain text located within boxes under the label "guidance."

12VAC35-105-20. Definitions

12VAC35-105-170. Corrective Action Plan

Settlement Agreement indicators addressed:

V.C.4.8

Guidance:

12VAC35-105-20. Definitions.

The following definitions are relevant to this guidance document:

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

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

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

12VAC35-105-170. Corrective action plan.

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

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

C. The corrective action plan shall include a:

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

Guidance:

Develop a CAP: CAPs must include a detailed description of planned corrective actions that are targeted to the mitigation or prevention of the recurrence of the regulatory violation that the CAP is intended to address, and must be sufficiently detailed to inform the Office of Licensing of the planned action steps that will be taken to fulfill the goals of the CAP. Planned actions must be verifiable, with mechanisms for verifying the completion of the planned actions incorporated into the provider's ongoing quality improvement activities, pursuant to 12VAC35-105-620. If the provider's pledged corrective action plan includes a one-time, permanent fix such as amending language within a form template, the provider will only need to verify completion of the planned activity once as part of its quality improvement activities.

When developing an acceptable CAP, the provider should review the citation received by the department to identify the problems that led to the issuance of the citation, including a determination as to whether or not the problem is systemic and occurring across different services, locations, or staff. Providers are required to conduct a root cause analysis (RCA) on all Level II and Level III serious incidents that occurred within the provision of the provider's services or on the provider's property. Therefore, if the citation was issued as the result of a serious incident, the RCA will assist the provider in identifying practices or underlying conditions that may have led to the occurrence of the serious incident. Additional assistance related to RCAs can be found within the department's "Guidance for Serious Incident Reporting."

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

Providers should consider the following steps when writing a CAP:

1. Address all problems documented in each violation by:
   a. Identifying the root cause(s) of the violation;
   b. Developing a systemic plan of action, if applicable, to address each problem, which may require updating policies, procedures, and forms, or conducting any needed training or retraining for staff, or other steps that could alleviate the problem and minimize the possibility that the violation will occur again; and
   c. Indicating the frequency for monitoring the plan, including how it will be monitored (Ex: monthly audits, weekly chart reviews, quarterly checklist).

2. Identify the staff position(s) responsible for monitoring implementation of the approved CAP.

3. Include a date of completion for each corrective action. Providers should ensure that completion dates for planned activities are realistic, and that the individual(s) responsible for oversight of the CAP monitor and verify the completion of the planned activities. Providers will need to submit evidence of compliance with their corrective action plans by their pledged completion date for any violations of 12VAC35-105-160.E. or 12VAC35-105-520, or any violations that pose a threat to the health and safety of individuals served ("Health and Safety CAPS").

If a CAP is not accepted in whole or in part, it will be returned to the provider within 15 business days, with clearly stated comments and questions that indicate the specialist's concerns.

If a CAP is returned to the provider a second time for failure to meet all requirements within 12VAC35-105-170.C., the licensing specialist will offer to have a phone call with the provider to provide technical assistance related to the criteria needed to create an acceptable CAP.

If a CAP is returned to the provider a third time for failure to meet all requirements within 12VAC35-105-170.C., the CAP will be returned and the CAP dispute process will be initiated automatically as outlined in 12VAC35-105-170.F.

Example for Creating a CAP:

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

1. Address all problems documented in each violation by:

   a. Identifying the root cause(s) of the violation.

      As this is Provider A's second citation for the same regulatory violation within one year, Provider A conducts an analysis in accordance with the written quality improvement program, to determine the root cause of these repeat violations. The analysis reveals that two different staff members failed to report the serious incidents within 24 hours of discovery. Both staff members completed serious incident reporting training less than 10 months ago and one was recently promoted to a supervisor position with additional responsibilities related to serious incident reporting. Despite this training, and analysis of the reasons for not reporting indicated that staff had not fully understood the process or responsibilities for reporting. In addition, a survey of other staff responsible for incident reporting identified inconsistent understand of reporting policy and procedure.

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

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

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

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

Provider A includes within the CAP that the training manager will: (i) verify all current staff have passed the serious incident report training within 30 days of hire, and (ii) document the review within a written document, to be stored with the provider's training policy.

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

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

3. Include a date of completion for each corrective action. Providers should ensure that completion dates for planned activities are realistic, and the staff person(s) responsible for oversight of the CAP must monitor and verify the completion of the planned activities. Providers will need to submit evidence of compliance with their corrective action plans by their pledged completion dates for any violations of 12VAC35-105-160.E. or 12VAC35-105-520; or any violations which pose a threat to the health and safety of individuals served.

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

Provider A's training manager (as identified in #2 above) will monitor implementation and effectiveness of approved corrective actions as part of the established quality improvement program required by 12VAC35-105-620 (see below). This might include developing a quality assurance process to monitor and track the timeliness of all serious incident reporting to ensure that the corrective actions are having the intended affect.

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

Guidance:

Extensions to the 15 business day timeline for submitting a CAP may be granted to a provider only if requested by the provider **PRIOR** to the due date, and only for one additional period of up to 10 business days. The new due date for the CAP will be up to 10 days from the date the CAP was due, and not up to 10 days from the date the extension was requested.

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

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

Guidance:

The Office of Licensing will respond to CAPs within 15 business days of receipt of the provider's CAP.

CAPs will be approved if they include: (1) detailed and verifiable corrective actions targeted to remedying and preventing the recurrence of identified regulatory violations; (2) realistic planned completion dates for each of the planned actions; and (3) the signature of the identified responsible person for monitoring the implementation of the planned actions. In addition, the provider's CAP must address the systemic plan of action to address each problem, as applicable (please refer to the example above).

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

Guidance:

CAP Dispute Resolution Process:

- Providers should promptly communicate disagreement with a citation directly to the specialist who issued the citation (licensing specialist, IMU specialist, or investigator). If a provider does not communicate his disagreement with the specialist before the CAP is due, a citation will be issued for not submitting the CAP on time. Per the regulation, the provider must reach out to their licensing specialist to discuss the disagreement prior to reaching out to the licensing specialist's supervisor.

- If a provider disagrees with a citation, and is not able to resolve the disagreement with their specialist, the CAP dispute resolution process will be initiated.

- The CAP dispute resolution may be initiated by the provider or the specialist if the two parties are not able to come to an agreement related to the issued citation(s).

- The purpose of the CAP dispute resolution process meeting is fact-finding and will include open discussion of the dispute issues to promote understanding of the provider's position on citations issued. Accordingly, the provider and specialist are encouraged to present information relevant to the grievance at this meeting.

- While the parties may question one another regarding disputed facts and issues, the meeting should not be adversarial or treated as a hearing.

- The specialist's supervisor is charged with presiding over the meeting and will serve as a neutral party to the dispute.

- No decisions will be made at the time of this meeting and the information will be gathered from the meeting and discussed with the Office of Licensing Assistant Director and Director to make a final decision.

- After the CAP dispute meeting, the specialist's supervisor will make a recommendation to the Office of Licensing Director or the director's designee.

- The Office of Licensing Director or designee will issue a final decision in writing regarding the citation within 10 business days from the CAP dispute meeting. The Office of Licensing Director's decision is final.

- If the citation is upheld, the provider will have 10 business days to submit the CAP.

- If the citation is not upheld, the Office of Licensing will remove the violation from the licensing report.

- Nothing in this procedure will prevent the Office of Licensing from requiring immediate corrective action when the violation presents a threat to the health, safety, or welfare of individuals served.

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

Guidance:

Implement the Plan: For serious injuries and deaths that result from substantiated abuse, neglect, or health and safety violations ("Health and Safety CAPs"), the Office of Licensing verifies that CAPs are implemented within 30 business days of the date the corrective action plan was approved.

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

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

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

Guidance:

Monitor CAP: In order to demonstrate compliance with this regulation, each provider must show proof of monitoring all CAPs for implementation and effectiveness.

If after completion of the planned activities the provider determines that the issue that led to a citation occurred again, then the provider shall implement the provider's own policies and procedures for updating the provider's quality improvement plan, if applicable, or submitting revised corrective action plans, pursuant to 12VAC35-105-620.D. This may include determining whether or not the CAP was implemented as intended.

1. If the CAP was not fully implemented as intended, the provider should evaluate and address any barriers to implementation.

2. If the CAP was fully implemented, the provider should assess the reasons that the issue recurred and make a determination as to whether changes to the corrective action plan are necessary.
   - While prevention of a second regulatory violation may not always be possible, prevention is the goal. If a second regulatory violation occurs, the provider should always analyze whether the current CAP is the most effective means of preventing reoccurrence or if additional steps could be taken.
   - A provider may determine after review that the recurrence of a regulatory violation was not due to the insufficiency of the implemented corrective actions, and that the planned corrective actions remain the most effective means of preventing or substantially mitigating future recurrences. If this is the case, then the provider should clearly document through the quality improvement program the basis for this conclusion and continue implementing the planned corrective actions without additional measures.

- If the provider determines that revisions to the CAP are necessary, those revisions should be submitted to the licensing specialist for review and approval. The provider should document through the quality improvement program, if applicable, when it is determined that an issue has been corrected and monitoring may be discontinued.

Example Continued:

Provider A successfully implements the CAP by revising the training policy and ensuring all employees passed the test with a score of 90% or higher by the completion date outlined in the CAP. However, on January 1st, the provider self-identifies the failure to report a serious incident in a timely manner through the quality assurance process implemented as a result of the initial corrective action. The provider's quality assurance process involved tracking the timeliness of reporting each serious on a quarterly basis. A review of the data identified three instances (out of 25 serious incidents) when reports were not made within 24 hours.

Provider A determines that the approved CAP was fully implemented. However, it did not correct the identified systemic deficiency. Provider A has two options: 1) to continue implementing the CAP and put into place additional measures to prevent the recurrence of the cited violation and address identified systemic deficiencies; or 2) submit a revised CAP to the department for approval. If the provider determined that the approved corrective actions are the most effective means of addressing the issue, then this rationale should be documented through the quality improvement program and the provider may continue implementing the approved corrective actions.

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

After one year, the provider determines through quarterly monitoring that 100% of serious incidents were reported within 24 hours. Based on attaining the objectives of the CAP, the provider determines that this issue was successfully addressed and closes it as a quality improvement goal, consistent with the policies and procedures.