



COMMONWEALTH of VIRGINIA

ALISON G. LAND, FACHE
COMMISSIONER

DEPARTMENT OF
BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Post Office Box 1797
Richmond, Virginia 23218-1797

Telephone (804) 786-3921
Fax (804) 371-6638
www.dbhds.virginia.gov

MEMORANDUM

To: DBHDS Licensed Providers of Developmental Services

From: Jae Benz, Director, Office of Licensing

Cc: Veronica Davis, Associate Director for State Licensure Operations
Emily Bowles, Associate Director of Licensing, Regulatory Compliance Quality
& Data

DATE: May 15, 2020

RE: Additional Temporary Changes to OL Remote Inspection Protocol

Purpose: The purpose of this memo is to inform providers of developmental services of additional temporary changes to the Office of Licensing inspection protocols during the COVID-19 emergency. These changes will help to ensure the adequacy of individualized services and supports to individuals receiving services and will assist with continued efforts towards achieving compliance with [Commonwealth's settlement agreement](#) with the United States Department of Justice.

Overview: On March 12, 2020, Governor Ralph Northam issued [Executive Order 51](#) declaring a state of emergency in Virginia related to the COVID-19 public health crisis. As a result of Governor Northam's executive order and the pending public health crisis, the Office of Licensing sent out [correspondence](#) on March 14, 2020 to inform all licensed providers of emergency protocols put into place to govern the operations of the Office of Licensing during the COVID-19 emergency period. The effective emergency protocols, which allow for the utilization of remote provider inspections, have allowed DBHDS to continue required oversight activities while maintaining a safe and appropriate distance from provider staff and individuals served.

While the Office of Licensing and a number of providers have worked hard to implement the requirements of the settlement agreement, there is still work to be done by both DBHDS and developmental service providers to come into compliance with the settlement agreement by June 30, 2020.

Beginning today, and through the end of 2020, the Office of Licensing will be prioritizing remote inspections for providers of developmental services in order to ensure compliance with the Licensing Regulations directly tied to the settlement agreement indicators. In order to assist providers with complying with Licensing Regulation 12 VAC 35-105-160.F, which requires providers to submit, or

make available, reports and information that the department requires to establish compliance with these regulations and applicable statutes, we have put additional protocols into place.

By close of business on **Friday, May 22**, each provider of developmental services will need to submit to their Licensing Specialist a list of all individuals currently admitted for services including their admission date; as well as a list of all direct care employees and their supervisors, including their date of hire. The Licensing Specialists will use these lists to request records from providers when it is time for their remote inspection.

Once the Office of Licensing has received each provider's list of admitted individuals and employees, we will begin a temporary, modified process for remote inspections. Each Monday morning, DBHDS Licensing Specialists will e-mail several providers to let them know they will be conducting remote inspections of the provider's service(s) the next week. This e-mail will include a complete list of all documents and information the provider will need to send to the Licensing Specialist, **via encrypted e-mail**, for the Specialist to review during their remote inspection. The specific documents requested by the Licensing Specialist will vary based on documentation reviewed during previous inspections as well as the provider's compliance history. The Office of Licensing is very cognizant of the challenges facing providers during the COVID-19 emergency, and as a result, will only be requesting the minimum number of records needed to determine regulatory compliance.

The length of time each provider has to produce the requested documentation will be based on the volume of documents requested. If a provider feels that they are unable to provide the requested documentation within the time given by their Licensing Specialist, they may request an extension for additional time in writing. Extensions up to five business days may be granted, depending on the hardship faced by the provider and number of files requested by the Licensing Specialist. Please note that if a provider does not have their own encryption software, they may request for their Licensing Specialist to send them an encrypted e-mail to respond to with the requested documentation.

We have included below the documentation (**ATTACHMENT A**) we will be requesting for providers of developmental services as well as the criteria we will be reviewing for the corresponding documentation. We have also attached the Office of Licensing's V.G.3 Checklist for all Annual Visits (**ATTACHMENT B**). This document lists the additional documentation the Office of Licensing will need to review to determine the adequacy of individualized supports, as well as the corresponding regulatory requirements.

If you have any questions related to the content of this memorandum, please do not hesitate to reach out directly to your licensing specialist. For additional information related to the Commonwealth's settlement agreement with the United States Department of Justice please visit the [DBHDS DOJ Settlement Agreement webpage](#). In addition, information related to DBHDS' response to COVID-19 can be found on the department's [COVID-19 webpage](#).

Sincerely,

Jae Benz
Director, Office of Licensing
DBHDS

ATTACHMENT A

Settlement Agreement Provision	Indicator	Indicator Text	Regulation Number	Documents Requiring Electronic Submission
V.B.	3.a.ii	The provider has conducted at least quarterly review of all level I serious incidents, and a root cause analysis of all level II and level III serious incidents	12VAC35-105-160. C	<ul style="list-style-type: none"> • Internal documentation of level I serious incidents. • Quarterly reviews • Root cause analysis for level II and level III serious incidents.
V.B.	3.a.iii	The root cause analysis, when required by the Licensing Regulations, includes i) a detailed description of what happened; ii) an analysis of why it happened, including identification of all identifiable underlying causes of the incident that were under the control of the provider; and iii) identified solutions to mitigate its reoccurrence.	12VAC35-105-160. E	<ul style="list-style-type: none"> • Root cause analysis for level II and level III serious incidents
V.C.1	1.a-c	<p>The Licensing Regulations require all licensed providers, including CSBs, to implement risk management processes, including:</p> <p>a. identification of a person responsible for the risk management function who has training and expertise in conducting investigations, root cause analysis, and data analysis;</p> <p>b. implementation of a written plan to identify, monitor, reduce, and minimize harms and risks of harm, including personal injury, infectious disease, property damage or loss, and other sources of potential liability; and</p> <p>c. conducting annual systemic risk assessment reviews, to identify and respond to practices, situations, and policies that could result in harm to individuals receiving services.</p> <p>Risk assessments reviews shall address: the environment of care; clinical assessment or reassessment processes; staff competence and adequacy of staffing; the use of high risk procedures, including seclusion and restraint; and a</p>	12VAC35-105-520 A - D	<ul style="list-style-type: none"> • Risk management plan with all components laid out in 520 b. (n) • Risk assessment reviews • Name of Risk manager • Job description for employee designated for risk management function. • Employee qualifications for employee designated for risk management function.

		review of serious incidents. Risk assessments also incorporate uniform risk triggers and thresholds as defined by DBHDS. See 12 VAC 35-105- 520 found at http://register.dls.virginia.gov/details.aspx?id=6997 .		
V.C.1	4	At least 86% of DBHDS-licensed providers of DD services have been assessed for their compliance with risk management requirements in the Licensing Regulations during their annual inspections. Inspections will include an assessment of whether providers use data at the individual and provider level, including at minimum data from incidents and investigations, to identify and address trends and patterns of harm and risk of harm in the events reported, as well as the associated findings and recommendations. This includes identifying year-over-year trends and patterns and the use of baseline data to assess the effectiveness of risk management systems. The licensing report will identify any identified areas of non-compliance with Licensing Regulations and associated recommendations.	12VAC35-105-520 A - D	See requested documentation for provision V.C.1 indicator 1.a-c.
V.C.4	3	Providers that have been determined to be non-compliant with risk management requirements (as outlined in V.C.1, indicator #4) for reasons that are related to a lack of knowledge, will be required to demonstrate that they complete training offered by the Commonwealth, or other training determined by the Commonwealth to be acceptable, as part of their corrective action plan.	12VAC35-105-520 A - D	<ul style="list-style-type: none"> Evidence of completion of required training, if applicable.
V.C.4	4	Providers that have been determined to be non-compliant with requirements about training and expertise for staff responsible for the risk management function (as outlined in V.C.1, indicator #1.a) and providers that have been determined to be non-compliant with requirements about conducting root cause analyses as required by 12 VAC 35-105-160(E) will be required to demonstrate that they complete training offered by the Commonwealth, or other training determined by the Commonwealth to be acceptable, as part of their corrective action plan process.	12VAC35-105-520 A – D 12 VAC 35-105-160 E	<ul style="list-style-type: none"> Evidence of completion of required training, if applicable.

V.E.1	1	<p>DBHDS, through its regulations, requires DBHDS-licensed providers, including CSBs, to have a quality improvement (QI) program that:</p> <p>a. Is sufficient to identify, monitor, and evaluate clinical and service quality and effectiveness on a systematic and ongoing basis;</p> <p>b. Uses standard QI tools, including root cause analysis;</p> <p>c. Includes a QI plan that:</p> <ul style="list-style-type: none"> i. is reviewed and updated annually, ii. defines measurable goals and objectives; iii. includes and reports on statewide performance measures, if applicable, as required by DBHDS; iv. monitors implementation and effectiveness of approved corrective action plans; and v. includes ongoing monitoring and evaluation 	12VAC35-105-620	<ul style="list-style-type: none"> • Current quality improvement program • Current quality improvement plan • Evidence of the utilization of quality improvement tools • Root cause analysis for all level II and level III serious incidents • Documented evidence of compliance of implementing a process to regularly evaluate the progress towards meeting those goals and objectives • Evidence of the incorporation of previously pledged corrective actions • Documented evidence of input from individuals and, if applicable, ARs. • Documented evidence of implementation of improvements indicated with the QIP
V.E.1	3	On an annual basis at least 86% of DBHDS licensed providers of DD services have been assessed for their compliance with 12 VAC 35-105- 620 during their annual inspections.	12VAC35-105-620	See requested documentation for provision V.E.1 indicator 1.
V.E.1	4	On an annual basis, at least 86% of DBHDS-licensed providers of DD services are compliant with 12 VAC 35-105-620. Providers that are not compliant have implemented a Corrective Action Plan to address the violation.	12VAC35-105-620	See requested documentation for provision V.E.1 indicator 1.
V.G. 3	1-3	The DBHDS Office of Licensing (OL) develops a checklist to assess the adequacy of individualized supports and services (including supports and services for individuals with intensive medical and behavioral needs) in each of the domains listed in Section V.D.3 for which it has corresponding regulations. Data from this checklist		See Attachment B

		<p>will be augmented at least annually by data from other sources that assess the adequacy of individual supports and services in those domains not covered by the OL checklist.</p> <p>2. The DBHDS Office of Licensing uses the checklist during all annual unannounced inspections of DBHDS-licensed DD service providers, and relevant items on the checklist are reviewed during investigations as appropriate. Reviews are conducted for providers at least annually pursuant to 12VAC35-105-70.</p> <p>3. DBHDS informs providers of how it assesses the adequacy of individualized supports and services by posting information on the review tool and how it is assessed on the DBHDS website or in guidance to providers. DBHDS has informed CSBs and providers of its expectations regarding individualized supports and services, as well as the sources of data that it utilizes to capture this information.</p>		
V.H.1	8	<p>Per DBHDS Licensing Regulations, DBHDS licensed providers, their new employees, contractors, volunteers, and students shall be oriented commensurate with their function or job-specific responsibilities within 15 business days. The provider shall document that the orientation covers each of the following policies, procedures, and practices:</p> <p>a. Objectives and philosophy of the provider;</p> <p>b. Practices of confidentiality including access, duplication, and dissemination of any portion of an individual's record;</p> <p>c. Practices that assure an individual's rights including orientation to human rights regulations;</p> <p>d. Applicable personnel policies;</p> <p>e. Emergency preparedness procedures;</p> <p>f. Person-centeredness;</p> <p>g. Infection control practices and measures;</p>	12VAC35-105-440	<ul style="list-style-type: none"> • Provider's policy • Orientation records • Employee files

		<p>h. Other policies and procedures that apply to specific positions and specific duties and responsibilities; and</p> <p>i. Serious incident reporting, including when, how, and under what circumstances a serious incident report must be submitted and the consequences of failing to report a serious incident to the department in accordance with the Licensing Regulations</p>		
V.H.1	9	<p>The Commonwealth requires through the DBHDS Licensing Regulations specific to DBHDS-licensed providers that all employees or contractors who are responsible for implementing an individual's ISP demonstrate a working knowledge of the objectives and strategies contained in each individual's current ISP, including an individual's detailed health and safety protocols.</p>	12VAC35-105-665.D.	<ul style="list-style-type: none"> • Individualized services plans • Individual progress notes
V.H.1	12	<p>At least 86% of DBHDS licensed providers receiving an annual inspection have a training policy meeting established DBHDS requirements for staff training, including development opportunities for employees to enable them to support the individuals receiving services and to carry out their job responsibilities. These required training policies will address the frequency of retraining on serious incident reporting, medication administration, behavior intervention, emergency preparedness, and infection control, to include flu epidemics. Employee participation in training and development opportunities shall be documented and accessible to the department. DBHDS will take appropriate in action in accordance with Licensing Regulations if providers fail to comply with training requirements required by regulation.</p>	12VAC35-105-450	<ul style="list-style-type: none"> • Training policy • Employee files • Training records

ATTACHMENT B

V.G.3 Checklist for all annual visits				
Domain	Regulation Number to be Checked for Compliance *for all services except for Case Management for Individuals with DD	Documents Requiring Electronic Submission *for all services except for Case Management for Individuals with DD	Regulation Number to be Checked for Compliance *for Case Management services for Individuals with DD	Documents Requiring Electronic Submission *for Case Management services for Individuals with DD
<p style="text-align: center;">Safety and freedom from harm</p> <p>Settlement Agreement (SA) examples include: neglect and abuse, injuries, use of seclusion or restraints, deaths, effectiveness of corrective actions, licensing violations)</p>	<ul style="list-style-type: none"> • 12VAC35-105-160.C • 12VAC35-105-160-D2 • 12VAC35-105-160.E • 12VAC35-105-665A.6 • 12VAC35-105-780(5) 	<ul style="list-style-type: none"> • Internal documentation of level I serious incidents. • Quarterly reviews • Root cause analysis for level II and level III serious incidents. • Parts I-V of ISP including safety plan and falls risk plan • Documentation that medication errors have been reviewed quarterly (3 quarters worth) 	<ul style="list-style-type: none"> • 12VAC35-105-160.C • 12VAC35-105-160-D2 • 12VAC35-105-160.E • 12VAC35-105-665A.6 • 12VAC35-105-780(5) • 12VAC35-105-1240 (7) • 12VAC35-105-1240 (12) 	<ul style="list-style-type: none"> • Internal documentation of level I serious incidents. • Quarterly reviews • Root cause analysis for level II and level III serious incidents. • Parts I-V of ISP including safety plan and falls risk plan • Documentation that medication errors have been reviewed quarterly (3 quarters worth)
<p style="text-align: center;">Physical, mental and behavioral health and well-being</p> <p>SA examples include: access to medical care (including preventative care), timeliness and adequacy of interventions (particularly in response to changes in status);</p>	<ul style="list-style-type: none"> • 12VAC35-105-675A • 12VAC35-105-675B • 12VAC35-105-675C • 12VAC35-105-810 	<ul style="list-style-type: none"> • Quarterly reviews (2 quarters worth) • Re-assessments completed as a result of changes in status • Behavior plan, assessment that plan was based on • Documentation to show staff was trained on plan, date, by whom 	<ul style="list-style-type: none"> • 12VAC35-105-1240 (4) • 12VAC35-105-1240 (11) 	<ul style="list-style-type: none"> • CM notes showing individual linked to services as identified in assessments or steps to show making attempts

<p>Avoiding Crisis</p> <p>SA examples include Avoiding crises (e.g., use of crisis services, admissions to emergency rooms or hospitals, admissions to Training Centers or other congregate settings, contact with criminal justice system);</p>	<ul style="list-style-type: none"> • 12VAC35-105-665.A.7 	<ul style="list-style-type: none"> • Crisis/relapse plan as appropriate for individual and incorporated into ISP 	<ul style="list-style-type: none"> • 12VAC35-105-665A.7 	<ul style="list-style-type: none"> • Crisis/relapse plan as appropriate for individual and incorporated into ISP • REACH referral and service specific plans as evidence for avoiding crisis
<p>Stability</p> <p>This domain will be measured through QSR</p>	<ul style="list-style-type: none"> • N/A 	<ul style="list-style-type: none"> • 	<ul style="list-style-type: none"> • 12VAC35-105-1245 	<ul style="list-style-type: none"> • Clear documentation that at each face to face meeting the CM is documenting that services are being provided in accordance with individual's preferences?

<p>Choice and self-determination</p> <p>SA examples include service plans developed through person-centered planning process, choice of services and providers, individualized goals, self-direction of services</p>	<ul style="list-style-type: none"> • 12VAC35-105-660.D • 12VAC35-105-675D.3 	<ul style="list-style-type: none"> • Informed choice form • Signature sheet for ISP • ISP meeting notes with essential components 	<ul style="list-style-type: none"> • 12VAC35-105-660 D • 12VAC35-105-675D.3 • 12VAC35-105-1255 	<ul style="list-style-type: none"> • Informed choice form • Signature sheet for ISP • ISP meeting notes with essential components • Written policy describing how individuals are assigned case managers and how they can request a change of their assigned case manager.
<p>Community inclusion</p> <p>SA examples include community activities, integrated work opportunities, integrated living options, educational opportunities, relationships with non-paid individuals</p>	<ul style="list-style-type: none"> • 12VAC35-105-610 	<ul style="list-style-type: none"> • Proof of community inclusion tied to ISP, individualized 	<ul style="list-style-type: none"> • 12VAC35-105-1240.1 • 12VAC35-105-1240.4 	<ul style="list-style-type: none"> • Is there documentation the individual is accessing community supports consistent with their goals? • If there are barriers to an individual accessing their expressed supports that are more integrated, is there a plan in place to address this barrier.
<p>Access to services</p> <p>SA examples include: waitlists, outreach efforts,</p>	<ul style="list-style-type: none"> • 12VAC35-105-645.B • 12VAC35-105-693.C 	<ul style="list-style-type: none"> • Last 3 admission screenings if applicable 	<p>12VAC35-105-1240.6</p>	<p>CM notes and reviews show:</p> <ul style="list-style-type: none"> • There documentation of coordination with other service

<p>identified barriers, service gaps and delays, adaptive equipment, transportation, availability of services geographically, cultural and linguistic competency);</p>		<ul style="list-style-type: none"> • Discharge plan and discharge summary for last individual discharged from service. 		<p>providers as needed via CM notes or signature sheets.</p>
<p>Provider capacity SA examples include caseloads, training, staff turnover, provider competency</p>	<ul style="list-style-type: none"> • 12VAC35-105-665.D • 12VAC35-105-450 	<ul style="list-style-type: none"> • Most recent proof of DD competency completed • Proof staff trained on individuals ISPs for those individuals reviewed • Training policy • Proof staff have received training at frequency outlined in policy 	<p>12VAC35-105-1240.5</p>	<p>CM notes and reviews show:</p> <ul style="list-style-type: none"> • There is documentation of locating, developing, or obtaining needed services? • If needed services were not available.