



# 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

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Dear Providers,

We are writing as a follow up to our [March 5<sup>th</sup> correspondence](#) regarding the new coronavirus, COVID-19. Please see below for important information and updates from both the DBHDS Office of Licensing and Office of Human Rights.

## **Information from the Office of Licensing:**

As of Friday morning, the Office of Licensing enacted Emergency Protocols that will govern operations of the Office of Licensing until further notice. The purpose of the Emergency Protocols is to protect individuals served by our licensed providers as well as provider and Licensing staff by minimizing the risk of exposure to infectious diseases. These Emergency Protocols will remain in effect until the Department is confident that they are no longer necessary, at which time we will send formal correspondence to all providers to inform you of their expiration.

While these Emergency Protocols are in effect, the Office of Licensing will limit on-site inspections of providers to only those situations when it is critical for the Office to review material located at a provider's physical plant immediately because of a health and safety concern that poses an imminent risk of harm to an individual receiving services. For all other investigations and inspections, the Office of Licensing will conduct desk reviews of information submitted by providers via electronic mail (e-mail) in order to determine compliance with Licensing and Human Rights Regulations. It is likely that your assigned Licensing Specialist or Investigator will ask you to submit documentation via e-mail as part of their inspections and investigations during the effective dates of the Emergency Protocols. Providers are required to submit information requested by the Department pursuant to 12 VAC 35-46-230 of the *Regulations for Children's Residential Facilities* and 12 VAC 35-105-160.F of the *Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services* ("Licensing Regulations").

If an on-site inspection is necessary while the Emergency Protocols are in effect, Licensing staff will take steps to limit exposure to individuals when conducting the on-site inspection. These steps include limiting face-to-face meetings to only those essential for carrying out the purposes of the inspection; conducting on-site inspections when fewer individuals are present, if possible; and conducting as much of the inspection remotely as possible to limit the time needed on-site.

Below we've included an outline of the primary Licensing functions that will be affected by the Emergency Protocols.

- 1. Investigations:** The Office of Licensing will conduct on-site reviews only during investigations of matters that involve imminent risk of harm to an individual receiving services. Investigations of matters that do not pose an imminent risk of harm to individuals will be conducted remotely by requesting necessary information and documents via encrypted e-mail from the provider. If a physical plant inspection is deemed necessary prior to completing the investigation in a matter that does not involve imminent risk of harm, the Office of Licensing

will conduct as much of the investigation remotely as possible and will perform the physical plant inspection upon the expiration of the Emergency Protocols.

2. **Renewals:** License renewal applications may be processed while the Emergency Protocols are in effect without an on-site inspection if:
  - a. The renewal application is for a home or non-center based service, which includes: Intensive In Home, Mental Health Skill Building, School-Based Therapeutic Day Treatment, Supportive In-home, In-home Respite, and Non-residential Crisis Stabilization; or
  - b. The Licensing Specialist has already conducted a physical plant inspection during the calendar year (2020) as part of an investigation and major concerns related to the physical plant(s) were not identified during the inspection.

When renewals are processed without an on-site inspection, the provider shall submit to the Licensing Specialist, via encrypted e-mail, all information required by the Office of Licensing Protocols for review prior to the issuance of the renewal license. Documentation e-mailed by the provider shall include individual records; personnel records; policies and procedures; and documentation as deemed necessary by the Licensing Specialist to determine compliance with previously pledged corrective action plans as well as other applicable regulations. The Licensing Specialist will conduct staff interviews by phone.

If a physical plant inspection is required prior to the renewal of a license and the license expires before the inspection can be performed, the Department may issue a letter stating the provider or service license shall be effective for an additional six months in accordance with 12 VAC 35-105-50.F. Your Licensing Specialist will provide additional details about how to proceed in these situations.

3. **Service Modifications:** While the Emergency Protocols are in effect, the Office of Licensing will temporarily suspend the acceptance of service modifications that require an onsite inspection. Suspended service modifications will include modifications to add new residential, inpatient, center-based, and opioid treatment services or locations. If any of these service modifications that are sent to the Office of Licensing during this period, they will be returned, unless the modification is deemed necessary to accommodate emergency capacity needs. The department will assess services modifications to add a service or location in circumstances where the additional service or location is necessary to accommodate capacity needs directly related to the pending emergency on a case-by-case basis.

The Office of Licensing will continue to process the following service modifications, which do not require an onsite inspection prior to processing:

- Service Modifications to add locations for non-center based services (places where clients do not receive services) if the existing provider has a triennial license and has not had significant health and safety violations in the last three years;
- Service/provider closures;
- Name changes;
- Removal of a geographic location;
- Amendments to service descriptions (as long as the Licensing Specialist does not believe an onsite inspection is needed to review the provider's capacity to implement the amended service description);
- Organizational/administrative structures & telephone numbers; and
- Modifications to amend service population or increase capacity (as long as the Licensing Specialist does not believe an onsite inspection is needed to review the provider's capacity to change population or capacity).

## **Information from the Office of Human Rights**

### **Emergency policies:**

All providers are required to develop and implement policies and procedures that address emergencies. Emergency is defined as a situation that requires a person to take immediate action to avoid harm, injury, or death to an individual or to others [12VAC35-115-30]. As such, provider policies and procedures that address emergencies shall:

- Identify what caregivers may do to respond to an emergency;
- Identify qualified clinical staff who are accountable for assessing emergency conditions and determining the appropriate intervention;
- Require that the director immediately notify the individual's authorized representative and the advocate if an emergency results in harm or injury to any individual; and
- Require documentation in the individual's services record of all facts and circumstances surrounding the emergency [12VAC35-115-60].

### **Visitation:**

While providers shall not limit or restrict the rights of individuals more than is needed to maintain a safe and orderly environment, based on a temporary waiver to the Regulations by the Commissioner, a provider that is going to limit visitation for individuals in the program, shall ensure the following:

- Each individual and his authorized representative (if applicable) must receive a copy of revised visitation policy,
- The information should include a clear explanation about the change in visitation and information about when the change will be discontinued; and
- The change to visitation shall be posted in a summary form in all common areas (12VAC35-115-100).

No further action is required; however, consult with the Regional Advocate if there are questions.

### **Community Outings:**

The basis of any restriction should be consistent with the provider's responsibility to protect individuals from harm in the provision of services. Providers are encouraged to use technology and consider other options to continue to support and encourage appropriate and safe community integration. When providers determine a need to reduce any community integration activities, providers should ensure the services record clearly reflects the following [12VAC35-115-60]:

- The reasons for limiting or suspending community activities
- Alternative activities offered/provided and
- The anticipated date for resumed normal community activities

When limiting interactions with the community, all possible practical steps should be taken to avoid negative ramifications for the individual. Such steps include, for example, direct communication with individuals' employers to explain reasons for missing work.

### **Isolation:**

Technically, isolation meets the definition of "seclusion" in the human rights regulations. Thus, if a provider isolates an individual, the requirements for seclusion contained in the regulations would apply. Based on a temporary waiver to the regulations by the Commissioner, if a provider is going to isolate an individual who has COVID-19, is suspected to have COVID-19, or has been exposed to someone with COVID-19, the provider should:

- Explain the process to the individual/AR if applicable
- Document a conversation with the qualified healthcare professional recommending isolation,
- Indicate the symptoms or circumstances that warrant isolation,
- Notify DBHDS via email to the Regional Advocate and,
- Comply with internal emergency/infectious disease policies.

If the isolation lasts longer than 7 days the provider must document the need for the restriction in the individual's services record. Any individual/AR who believes his or her rights have been violated can make a complaint directly with the provider or through the advocate.

**OHR – Provider Interaction:**

Until further notice, OHR is suspending "non-essential" visits to include Provider Information Requests, Post Move Monitoring, Waiver Validations, and Look behinds. OHR will conduct these functions with providers by phone/email and desk reviews of documentation. Advocates will continue to monitor all Human Rights allegations and complaints through CHRIS. To the extent possible, OHR will continue to conduct site visits upon receipt of allegations of physical abuse, neglect, and/or restraint with a serious injury and allegations involving sexual assault. LHRC meetings unrelated to 12 VAC 35-115-105 or 12 VAC 35-115-200 are suspended. Guidance regarding matters governed by 12 VAC 35-115-100, 12 VAC 35-115-105 and 12 VAC 35-115-200 that require LHRC review will be provided as soon as possible.

OHR Provider Training scheduled to occur in public buildings and state operated facilities is suspended. For providers that have already registered, information about the ability to participate via webinar and/or information about a rescheduled date is forthcoming.

If you have any additional questions related to the effects of COVID-19, please visit the new DBHDS webpage created to help with questions associated with COVID-19. The new page can be found at the following link: [www.dbhds.virginia.gov/covid19](http://www.dbhds.virginia.gov/covid19). If you have a question that is not yet in the FAQ document, please use the e-mail address provided on the webpage linked above to submit your concerns. Our staff will research your question and their responses will be added to the FAQ document on a rolling basis to benefit others who may have similar questions.

Sincerely,

*Jae Benz*

Jae Benz  
Director, Office of Licensing  
DBHDS

*Deborah Lochart*

Deborah Lochart  
Director, Office of Human Rights  
DBHDS