VIRGINIA REGISTER OF REGULATIONS

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THE VIRGINIA REGISTER OF REGULATIONS is an official state publication issued every other week throughout the year. Indexes are published quarterly, and are cumulative for the year. The *Virginia Register* has several functions. The new and amended sections of regulations, both as proposed and as finally adopted, are required by law to be published in the *Virginia Register*. In addition, the *Virginia Register* is a source of other information about state government, including petitions for rulemaking, emergency regulations, executive orders issued by the Governor, and notices of public hearings on regulations.

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

Unless exempted by law, an agency wishing to adopt, amend, or repeal regulations must follow the procedures in the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). Typically, this includes first publishing in the *Virginia Register* a notice of intended regulatory action; a basis, purpose, substance and issues statement; an economic impact analysis prepared by the Department of Planning and Budget; the agency's response to the economic impact analysis; a summary; a notice giving the public an opportunity to comment on the proposal; and the text of the proposed regulation.

Following publication of the proposed regulation in the *Virginia Register*, the promulgating agency receives public comments for a minimum of 60 days. The Governor reviews the proposed regulation to determine if it is necessary to protect the public health, safety, and welfare, and if it is clearly written and easily understandable. If the Governor chooses to comment on the proposed regulation, his comments must be transmitted to the agency and the Registrar of Regulations no later than 15 days following the completion of the 60-day public comment period. The Governor's comments, if any, will be published in the *Virginia Register*. Not less than 15 days following the completion of the 60-day public comment period, the agency may adopt the proposed regulation.

The Joint Commission on Administrative Rules or the appropriate standing committee of each house of the General Assembly may meet during the promulgation or final adoption process and file an objection with the Registrar and the promulgating agency. The objection will be published in the *Virginia Register*. Within 21 days after receipt by the agency of a legislative objection, the agency shall file a response with the Registrar, the objecting legislative body, and the Governor.

When final action is taken, the agency again publishes the text of the regulation as adopted, highlighting all changes made to the proposed regulation and explaining any substantial changes made since publication of the proposal. A 30-day final adoption period begins upon final publication in the *Virginia Register*.

The Governor may review the final regulation during this time and, if he objects, forward his objection to the Registrar and the agency. In addition to or in lieu of filing a formal objection, the Governor may suspend the effective date of a portion or all of a regulation until the end of the next regular General Assembly session by issuing a directive signed by a majority of the members of the appropriate legislative body and the Governor. The Governor's objection or suspension of the regulation, or both, will be published in the *Virginia Register*.

If the Governor finds that the final regulation contains changes made after publication of the proposed regulation that have substantial impact, he may require the agency to provide an additional 30-day public comment period on the changes. Notice of the additional public comment period required by the Governor will be published in the *Virginia Register*. Pursuant to § 2.2-4007.06 of the Code of Virginia, any person may request that the agency solicit additional public comment on certain changes made after publication of the proposed regulation. The agency shall suspend the regulatory process for 30 days upon such request from 25 or more individuals, unless the agency determines that the changes have minor or inconsequential impact.

A regulation becomes effective at the conclusion of the 30-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 21-day objection period; (ii) the Governor exercises his authority to require the agency to provide for additional public comment, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the period for which the Governor has provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period and no earlier than 15 days from publication of the readopted action.

A regulatory action may be withdrawn by the promulgating agency at any time before the regulation becomes final.

FAST-TRACK RULEMAKING PROCESS

Section 2.2-4012.1 of the Code of Virginia provides an alternative to the standard process set forth in the Administrative Process Act for regulations deemed by the Governor to be noncontroversial. To use this process, the Governor's concurrence is required and advance notice must be provided to certain legislative committees. Fast-track regulations become effective on the date noted in the regulatory action if fewer than 10 persons object to using the process in accordance with § 2.2-4012.1.

EMERGENCY REGULATIONS

Pursuant to § 2.2-4011 of the Code of Virginia, an agency may adopt emergency regulations if necessitated by an emergency situation or when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or fewer from its enactment. In either situation, approval of the Governor is required. The emergency regulation is effective upon its filing with the Registrar of Regulations, unless a later date is specified per § 2.2-4012 of the Code of Virginia. Emergency regulations are limited to no more than 18 months in duration; however, may be extended for six months under the circumstances noted in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Virginia Register* and are on the Register of Regulations website at register.dls.virgina.gov.

During the time the emergency regulation is in effect, the agency may proceed with the adoption of permanent regulations in accordance with the Administrative Process Act. If the agency chooses not to adopt the regulations, the emergency status ends when the prescribed time limit expires.

STATEMENT

The foregoing constitutes a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia be examined carefully.

CITATION TO THE *VIRGINIA REGISTER*

The *Virginia Register* is cited by volume, issue, page number, and date. **34:8 VA.R. 763-832 December 11, 2017,** refers to Volume 34, Issue 8, pages 763 through 832 of the *Virginia Register* issued on December 11, 2017.

The Virginia Register of Regulations is published pursuant to Article 6 (§ 2.2-4031 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia.

PUBLICATION SCHEDULE AND DEADLINES

This schedule is available on the Virginia Register of Regulations website (http://register.dls.virginia.gov).

January 2023 through February 2024

Volume: Issue	Material Submitted By Noon*	Will Be Published On
39:12	January 11, 2023	January 30, 2023
39:13	January 25, 2023	February 13, 2023
39:14	February 8, 2023	February 27, 2023
39:15	February 22, 2023	March 13, 2023
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40:7	November 1, 2023	November 20, 2023
40:8	November 14, 2023 **(Tuesday)**	December 4, 2023
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40:10	December 13, 2023	January 1, 2024
40:11	December 27, 2023	January 15, 2024
40:12	January 10, 2024	January 29, 2024
40:13	January 24, 2024	February 12, 2024

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

DEPARTMENT OF MOTOR VEHICLES

Agency Decision

Title of Regulation: **24VAC20 - none specified.**

Statutory Authority: § 46.2-203 of the Code of Virginia.

Name of Petitioner: David Adam McKelvey, Crandall & Katt.

Nature of Petitioner's Request: The petitioner requests the Department of Motor Vehicles (DMV) to develop a regulation containing objective criteria regarding the award of DMV Select contracts to non-governmental entities that comply with the Virginia Public Procurement Act.

Agency Decision: Request denied.

Statement of Reason for Decision: The Department of Motor Vehicles (DMV) currently provides instructions on how to become a DMV Select partner and an application to be considered as a potential DMV Select partner on its website. Regulations promulgated by DMV in response to this petition for rulemaking would not provide information regarding this process that is not found in these documents. As such, DMV has decided to not initiate rulemaking in response to this petition.

Agency Contact: Melissa Velazquez, Legislative Services Manager, Department of Motor Vehicles, P.O. Box 27412, Richmond, VA 23269-0001, telephone (804) 367-1844, or email melissa.velazquez@dmv.virginia.gov.

VA.R. Doc. No. PFR23-02; Filed December 19, 2022, 9:15 a.m.

Agency Decision

Title of Regulation: **24VAC20 - none specified.**

Statutory Authority: § 46.2-203 of the Code of Virginia.

Name of Petitioner: David Adam McKelvey, Crandall & Katt.

Nature of Petitioner's Request: The petitioner requests the Department of Motor Vehicles (DMV) to develop a new regulation requiring DMV employees to fax requests for driver transcript information to other states when the other state will accept faxed requests for driver transcript information.

Agency Decision: Request denied.

Statement of Reason for Decision: The Department of Motor Vehicles (DMV) currently accepts proof of a license from another state by fax. DMV additionally accepts records via the State-to-State Verification Service, which allows a state to electronically check with all other participating states to determine if the applicant currently holds a driver license or identification card in another state. This service is utilized by a majority of states, with several additional states at various stages of implementation. As any regulation promulgated by DMV in response to this petition for rulemaking would be duplicative of existing services, DMV has decided to not initiate rulemaking in response to this petition.

Agency Contact: Melissa Velazquez, Legislative Services Manager, Department of Motor Vehicles, P.O. Box 27412, Richmond, VA 23269-0001, telephone (804) 367-1844, or email melissa.velazquez@dmv.virginia.gov.

VA.R. Doc. No. PFR23-03; Filed December 19, 2022, 9:16 a.m.

PERIODIC REVIEWS AND SMALL BUSINESS IMPACT REVIEWS

TITLE 9. ENVIRONMENT

VIRGINIA WASTE MANAGEMENT BOARD

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Virginia Waste Management Board conducted a periodic review and a small business impact review of **9VAC20-170, Transportation of Solid and Medical Wastes on State Waters**, and determined that this regulation should be retained as is. The board is publishing its report of findings dated November 15, 2022, to support this decision.

The regulation has been effective in protecting public health and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth, ensuring owners and operators comply with good solid waste management and control practices.

The board has determined that the regulation is clearly written and easily understandable by the individuals and entities the regulation affects. It is written to permit only one reasonable interpretation, to adequately identify the affected entity, and, insofar as possible, in nontechnical language. The board is recommending the regulation stay in effect without change. The regulation is consistent with the requirements of state law. The primary goal of this regulation is to protect the environment from discharges of solid wastes, regulated medical wastes, and municipal and industrial sludge from vessels transporting these wastes on state waters. The regulation contains specific container standards that must be met for these wastes to be transported. These requirements continue to be needed to protect the environment from spills of these wastes that may occur during transportation. No comments were received during the public comment period for this periodic review.

The regulation is very specific concerning standards containers must meet prior to transportation of wastes on state waters. The standards included in the regulation make the regulation appear to be complex and technical; however, the regulated community is accustomed to implementing and using technical container standards in everyday practice. There are no applicable federal requirements for waste to be containerized to be transported on state waters.

The regulation was originally adopted in November of 2003. The regulation was amended in 2006, 2010, 2011, and 2012. The board believes the regulation should not be amended or repealed to minimize the economic impact of the regulation on small businesses. The standards for transporting solid waste on Virginia waterways are necessary to protect Virginia waterways from the release of waste into state waters and the regulation is consistent with the requirements of state law.

Contact Information: Suzanne Taylor, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-1533.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Health conducted a periodic review and a small business impact review of **12VAC5-218, Rules and Regulations Governing Outpatient Health Data Reporting**, and determined that this regulation should be amended. The board is publishing its report of findings dated October 19, 2022, to support this decision.

The regulation meets the criteria set out in Executive Order 19 (2022) as necessary for the protection of public health, safety, and welfare of the citizens of the Commonwealth. The establishment of effective health care data analysis and reporting initiatives is essential to improving the quality and efficiency of health care, fostering competition among health care providers and increasing consumer choice with regard to health care services in the Commonwealth. Accurate and valuable health care data can best be identified by representatives of state government and the consumer, provider, insurance, and business communities. The regulation is clearly written and understandable.

The Virginia Department of Health (VDH) is recommending the regulation be amended to reflect current outpatient data reporting requirement needs. Amending will also allow the language to be updated for consistency of the definitions within the regulation and allow for the consideration of public comments received.

The comments received from the Virginia Hospital and Healthcare Association reflect the need to amend the regulation, as the regulation no longer accurately reflects the current outpatient data reporting needs. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation. The regulation has not been updated since 2015. VDH will convene an advisory panel to ensure the regulation minimizes the economic burden on small businesses.

Contact Information: Kindall Bundy, Policy Analyst, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, email kindall.bundy@vdh.virginia.gov.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Agency Notice

Pursuant to Executive Order 19 (2022) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review and a small business impact review: **12VAC30-141, Family Access to Medical Insurance Security Plan**. The review will be guided by the principles in Executive Order 19 (2022). The purpose of a periodic review

is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins January 16, 2023, and ends February 6, 2023.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The State Air Pollution Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9VAC5-20. General Provisions (amending 9VAC5-20-204).**

Statutory Authority: § 10.1-1308 of the Code of Virginia; §§ 110 and 182 of the federal Clean Air Act, 40 CFR Parts 51 and 81.

Effective Date: February 15, 2023.

Agency Contact: Karen G. Sabasteanski, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-1973, FAX (804) 698-4510, or email karen.sabasteanski@deq.virginia.gov.

Background: On March 26, 2021, the U.S. Environmental Protection Agency (EPA) promulgated air quality designations for the 2010 primary sulfur dioxide (SO_2) National Ambient Air Quality Standard (NAAQS). EPA has determined that a portion of Giles County is not meeting the SO_2 NAAQS and has designated it as a nonattainment area in 40 CFR 81.347.

Summary:

The amendments update Virginia's list of nonattainment areas to add a portion of Giles County as a new SO_2 nonattainment area.

9VAC5-20-204. Nonattainment areas.

A. Nonattainment areas are geographically defined ~~below~~ in this subsection by locality for the criteria pollutants indicated. Following the name of each ozone nonattainment area, in parentheses, is the classification assigned pursuant to § 181(a) of the federal Clean Air Act (42 USC § 7511(a)), 40 CFR 51.903(a), and 40 CFR 51.1103(a).

1. Ozone (1-hour).

Northern Virginia Ozone Nonattainment Area (severe).

Arlington County
Fairfax County
Loudoun County
Prince William County
Stafford County
Alexandria City
Fairfax City
Falls Church City
Manassas City
Manassas Park City

2. Ozone (8-hour, 0.08 ppm).

Northern Virginia Ozone Nonattainment Area (moderate).

Arlington County
Fairfax County
Loudoun County
Prince William County
Alexandria City
Fairfax City
Falls Church City
Manassas City
Manassas Park City

3. Ozone (8-hour, 0.075 ppm).

Northern Virginia Ozone Nonattainment Area (marginal).

Arlington County
Fairfax County
Loudoun County
Prince William County
Alexandria City
Fairfax City
Falls Church City
Manassas City
Manassas Park City

4. Ozone (8-hour, 0.070 ppm).

Northern Virginia Ozone Nonattainment Area (marginal).

Arlington County
Fairfax County
Loudoun County
Prince William County
Alexandria City
Fairfax City
Falls Church City
Manassas City
Manassas Park City

5. Sulfur dioxide.

Giles County Sulfur Dioxide Nonattainment Area (part).

That part of Giles County bounded by the lines connecting the coordinate points as designated in 40 CFR 81.347.

6. All other pollutants.

None.

B. Subdivision A 1 of this section shall not be effective after June 15, 2005.

VA.R. Doc. No. R23-7352; Filed December 21, 2022, 3:17 p.m.

STATE WATER CONTROL BOARD

Final Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 8 of the Code of Virginia, which exempts general permits issued by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.) and Chapters 24 (§ 62.1-242 et seq.) and 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01 of the Code of Virginia; (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action, forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit; (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03 of the Code of Virginia; and (iv) conducts at least one public hearing on the proposed general permit. The board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9VAC25-196. Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Noncontact Cooling Water Discharges of 50,000 Gallons Per Day or Less (amending 9VAC25-196-15, 9VAC25-196-40 through 9VAC25-196-70).**

Statutory Authority: § 62.1-44.15 of the Code of Virginia; § 402 of the Clean Water Act; 40 CFR Parts 122, 123, and 124.

Effective Date: April 1, 2023.

Agency Contact: Joseph Bryan, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-2659, FAX (804) 698-4178, or email joseph.bryan@deq.virginia.gov.

Summary:

This regulatory action amends and reissues the existing the Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Noncontact Cooling Water Discharges of 50,000 Gallons Per Day or Less, which expires on March 1, 2023. The existing general permit regulation establishes limitations, monitoring requirements, and other special conditions for point source discharges of noncontact cooling water of 50,000 gallons per day or less to surface waters in order to maintain surface water quality. The amendments include (i) adjusting effluent limits, including making chlorine non-detectable limit compatible with Environmental Protection Agency reporting requirements; (ii) clarifying definitions; (iii) adjusting water quality standards; and (iv) conforming to statutory changes.

Changes to the proposed regulation (i) update the Code of Federal Regulations cited to most recent version, that is, to July 1, 2022; (ii) clarify that only total maximum daily loads approved prior to the term of the general permit will be considered for the purposes of the regulation; and (iii) remove the requirement for hydropower facilities to provide a water use efficiency calculation pursuant to revised Environmental Protection Agency framework. Additionally, changes to Chapter 196 that became effective November 9, 2022, including definition updates and the repeal of 9VAC25-196-30, are incorporated in this action. Those updates put in place or made unnecessary amendments to 9VAC25-196-10 and 9VAC25-196-30, so, although those sections were part of the proposed regulation, because those sections have no changes, they are not being published.

9VAC25-196-15. Applicability of incorporated references based on the dates that they became effective.

Except as noted, when a regulation of the U.S. Environmental Protection Agency set forth in Title 40 of the Code of Federal Regulations is referenced or adopted in this chapter and incorporated by reference, that regulation shall be as it exists and has been published as of July 1, ~~2017~~ [~~2021~~ 2022].

9VAC25-196-40. Effective date of the permit.

This general permit will become effective on ~~March 2, 2018~~ April 1, 2023. This general permit will expire on March ~~1, 2023~~ 31, 2028. This general permit is effective as to any covered owner upon compliance with all the provisions of 9VAC25-196-50.

9VAC25-196-50. Authorization to discharge.

A. Any owner governed by this general permit is hereby authorized to discharge to surface waters of the Commonwealth of Virginia provided that the owner submits and receives acceptance by the ~~board~~ department of the registration statement of 9VAC25-196-60, submits the required permit fee, and complies with the effluent limitations and other requirements of 9VAC25-196-70, and provided that the ~~board~~ department has not notified the owner that the discharge is not eligible for coverage in accordance with subsection B of this section.

B. The ~~board~~ department will notify an owner that the discharge is not eligible for coverage under this general permit in the event of any of the following:

1. The owner is required to obtain an individual permit in accordance with 9VAC25-31-170 B 3 of the VPDES Permit Regulation;

2. The owner is proposing to discharge to Class V stockable trout waters, Class VI natural trout waters, or any state waters specifically named in other board regulations that prohibit such discharges;

3. The discharge violates or would violate the antidegradation policy in the Water Quality Standards at 9VAC25-260-30; ~~or~~

4. The discharge is not consistent with the assumptions and requirements of [~~an approved~~ a] TMDL [approved prior to the term of this general permit]; or

5. The facility is subject to the substantive provisions of 40 CFR Part 125 Subpart I or J.

C. Chlorine or any other halogen compounds shall not be used for disinfection or other treatment purposes, including biocide applications, for any discharges to waters containing endangered or threatened species as identified in 9VAC25-260-110 C of the Water Quality Standards.

D. The owner shall not use tributyltin, any chemical additives containing tributyltin, or water treatment chemicals containing hexavalent chromium in the cooling water systems.

E. The owner shall not use groundwater remediation wells as the source of cooling water.

F. Compliance with this general permit constitutes compliance, for purposes of enforcement, with §§ 301, 302, 306, 307, 318, 404, and 405(a) through (b) of the federal Clean Water Act and the State Water Control Law with the exceptions stated in 9VAC25-31-60 of the VPDES Permit Regulation. Approval for coverage under this general permit does not relieve any owner of the responsibility to comply with any other applicable federal, state, or local statute, ordinance, or regulation.

G. Continuation of permit coverage.

1. Permit coverage shall expire at the end of its term. However, expiring permit coverages are automatically continued if the owner has submitted a complete registration statement at least ~~30~~ 60 days prior to the expiration date of the permit, or a later submittal established by the ~~board~~ department, which cannot extend beyond the expiration date of the original permit. The permittee is authorized to continue to discharge until such time as the ~~board~~ department either:

a. Issues coverage to the owner under this general permit; or

b. Notifies the owner that the discharge is not eligible for coverage under this general permit.

2. When the owner that was covered under the expiring or expired general permit has violated or is violating the conditions of that permit, the ~~board~~ department may choose to do any or all of the following:

a. Initiate enforcement action based upon the general permit coverage that has been continued;

b. Issue a notice of intent to deny coverage under the ~~reissued~~ amended general permit. If the general permit coverage is denied, the owner would then be required to cease the discharges authorized by the continued general permit coverage or be subject to enforcement action for discharging without a permit;

c. Issue a VPDES individual permit with appropriate conditions; or

d. Take other actions authorized by the VPDES Permit Regulation (9VAC25-31).

9VAC25-196-60. Registration statement.

A. Deadlines for submitting registration statements. The owner seeking coverage under this general permit shall submit a complete VPDES general permit registration statement in accordance with this ~~section~~ chapter, which shall serve as a notice of intent for coverage under the VPDES general permit regulation for noncontact cooling water discharges of 50,000 gallons per day or less.

1. New facilities. Any owner proposing a new discharge shall submit a complete registration statement at least ~~30~~ 60 days prior to the date planned for commencing operation of the new discharge.

2. Existing facilities.

a. Any owner covered by a VPDES individual permit who is proposing to be covered by this general permit shall submit a complete registration statement at least ~~210~~ 240 days prior to the expiration date of the VPDES individual permit or a later submittal established by the department.

b. Any owner that was authorized to discharge under the expiring or expired VPDES general permit for noncontact cooling water discharges of 50,000 gallons per day or less and that intends to continue coverage under this general permit shall submit a complete registration statement to the ~~board~~ department at least ~~30~~ 60 days prior to the expiration date of the existing permit or a later submittal established by the ~~board~~ department.

B. Late registration statements. Registration statements will be accepted after the expiration date of the general permit, but authorization to discharge will not be retroactive.

C. The required registration statement shall contain the following information:

1. Facility name and address, owner name, mailing address, telephone number, and email address (if available);

2. Operator name, mailing address, telephone number, and email address (if available) if different from owner;

3. State Corporation Commission entity identification number if the facility is required to obtain an entity identification number by law;

4. Current VPDES permit registration number (if applicable);

~~4.~~ 5. List of point source discharges that are not composed entirely of cooling water;

~~5.~~ 6. List of type and size (tons) of cooling equipment or noncontact cooling water processes;

~~6.~~ 7. The following information if any chemical or nonchemical treatment is employed in each cooling water system:

a. Description of the treatment to be employed (both chemical and nonchemical) and its purpose; for chemical additives other than chlorine, provide the information prescribed in subdivisions ~~6~~ 7 b, c, d, e, and f of this subsection;

b. Name and manufacturer of each additive used;

c. List of active ingredients and percent composition of each additive;

d. Proposed dosing schedule and quantity of chemical usage, and either an engineering analysis or a technical evaluation of the active ingredients to determine the discharge concentration of each contaminant;

e. Available aquatic toxicity information for each proposed additive used;

f. Any other information such as product or constituent degradation, fate, transport, synergies, bioavailability, etc., that will aid the ~~board~~ department with the toxicity evaluation of the discharge; and

g. Safety data sheet for each proposed additive;

~~7.~~ 8. Description of any type of treatment or retention being provided to the wastewater before discharge (i.e., retention ponds, settling ponds, etc.);

~~8.~~ 9. A schematic drawing of the cooling water equipment that shows the source of the cooling water, its flow through the facility, and each noncontact cooling water discharge point;

~~9.~~ 10. A USGS 7.5 minute topographic map or equivalent computer generated map extending to at least one mile beyond the property boundary. The map must show the outline of the facility and the location of each of its existing and proposed intake and discharge points, and must include all springs, rivers, and other surface water bodies;

~~10.~~ 11. The following discharge information:

a. A list of all cooling water discharges identified by a unique number, latitude, and longitude;

b. The source of cooling water for each discharge;

c. An estimate of the maximum daily flow in gallons per day for each discharge;

d. The name of the waterbody receiving direct discharge or discharge through the municipal separate storm sewer system (MS4); and

e. The duration and frequency of the discharge for each separate discharge point;

~~11.~~ 12. A determination of whether the facility will discharge to a MS4. If the facility discharges to a MS4, the facility owner must notify the owner of the MS4 of the existence of the discharge at the time of registration under this permit and include that notification with the registration statement. The notice shall include the following information: the name of the facility, a contact person and contact information (telephone number and email), the location of the discharge, the nature of the discharge, and the facility's VPDES general permit registration number if a reissuance; ~~and~~

~~12.~~ 13. The following cooling water intake structure information:

a. A determination of the cooling water intake source (e.g., groundwater, surface water, third-party supplier); [and]

b. For surface water intakes or nonpotable surface water received from a third-party supplier, the following information:

(1) Source water physical data (water body description, hydrology, chemistry, and area of influence of intake structure);

(2) Cooling water intake structure data (screen size, through screen velocity, configuration of intake, flows, a water balance diagram, and typical operations);

(3) Source water baseline biological characterization data (any available studies);

(4) Cooling water system data (configuration of the cooling water system and water reuse); and

(5) Operational status (description of current and future production schedules) [~~and c. For hydroelectric facilities, a water use efficiency calculation of megawatts produced in megawatt hours divided by the cooling water used in billion gallons per day~~]; and

14. The following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information,

the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

D. The registration statement shall be signed in accordance with 9VAC25-31-110.

E. The registration statement shall be delivered by either postal or electronic mail to the DEQ regional office serving the area where the facility is located. Following notification from the department of the start date for the required electronic submission of Notices of Intent to Discharge forms (i.e., registration statements), as provided for in 9VAC25-31-1020, such forms submitted after that date shall be electronically submitted to the department in compliance with this section and 9VAC25-31-1020. There shall be at least [~~three months'~~ a three-month] notice provided between the notification from the department and the date after which such forms must be submitted electronically.

9VAC25-196-70. General permit.

Any owner whose registration statement is accepted by the ~~board~~ department will receive coverage under the following permit and shall comply with the requirements therein and be subject to all requirements of 9VAC25-31.

General Permit No: VAG25
Effective Date: ~~March 2, 2018~~ April 1, 2023
Expiration Date: March ~~1, 2023~~ 31, 2028

GENERAL PERMIT FOR NONCONTACT COOLING WATER DISCHARGES OF 50,000 GALLONS PER DAY OR LESS

AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM AND THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant thereto, owners of noncontact cooling water discharges of 50,000 gallons per day or less are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except Class V stockable trout waters, Class VI natural trout waters, and those specifically named in board regulations that prohibit such discharges. Chlorine or any other halogen compounds shall not be used for disinfection or other treatment purposes, including biocide applications, for any discharges to waters containing endangered or threatened species as identified in 9VAC25-260-110 C of the Water Quality Standards.

The authorized discharge shall be in accordance with the information submitted with the registration statement, this cover page, Part I - Effluent Limitations ~~and~~, Monitoring Requirements, Special Conditions, and Part II - Conditions Applicable to all VPDES Permits, as set forth in this general permit.

Part I
Effluent Limitations, Monitoring Requirements, Special Conditions

A. Effluent limitations and monitoring requirements.

1. Effluent limitations and monitoring requirements for discharges to freshwater receiving waterbodies. Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Maximum	Minimum	Frequency	Sample Type
Flow (MGD)	0.05	NA	1/3 Months	Estimate
Temperature (°C)	(1)	NA	1/3 Months	Immersion Stabilization
pH (SU)	9.0(2)	6.0(2)	1/3 Months	Grab
Ammonia-N(3) (mg/l)	NL	NA	1/3 Months	Grab
Total Residual Chlorine(3),(4) (mg/l)	~~Nondetectable~~ 0.011	NA	1/3 Months	Grab
Total Recoverable Copper(4) (µg/l)	9.0	NA	1/3 Months	Grab
Total Recoverable Zinc(4) (µg/l)	120	NA	1/3 Months	Grab

Total Recoverable Silver[4, 5] (µg/l)	3.4	NA	1/3 Months	Grab
Total Phosphorus[6] (mg/l)	NL	NA	1/3 Months	Grab

NL = No limitation, monitoring required
NA = Not applicable

1/3 Months = the following three-month periods each year of permit coverage: January through March, April through June, July through September, and October through December

[1]The effluent temperature shall not exceed a maximum 32°C for discharges to nontidal coastal and piedmont waters, or 31°C for mountain and upper piedmont waters. No maximum temperature limit, only monitoring, applies to discharges to estuarine waters.
The effluent shall not cause an increase in temperature of the receiving stream of more than 3°C above the natural water temperature. The effluent shall not cause the temperature in the receiving stream to change more than 2°C per hour. Natural temperature is defined as that temperature of a body of water (measured as the arithmetic average over one hour) due solely to natural conditions without the influence of any point source discharge.
[2]Where the Water Quality Standards (9VAC25-260) establish alternate standards for pH in the waters receiving the discharge, those standards shall be the maximum and minimum effluent limitations.
[3]Chlorine limitation ~~of nondetectable (<0.1 mg/l)~~ and ~~chlorine~~ monitoring only apply to outfalls directly discharging to surface waters where either: (i) a treatment additive that contains chlorine or chlorine compounds is used or (ii) the source of cooling water is chlorinated. All data below the quantification level (QL) of 0.1 mg/L shall be reported as "<QL." Ammonia monitoring only applies where the source of cooling water is disinfected using chloramines.
[4]A specific analytical method is not specified; however, a maximum quantification level (Max QL) value for each metal has been established. An appropriate method to meet the Max QL value shall be selected using any approved method presented in 40 CFR Part 136. If the test result is less than the method quantification level (QL), a "<[QL]" shall be reported where the actual analytical test QL is substituted for [QL].

Material	Max QL (µg/l)
Copper	1.0 µg/l
Chlorine	0.1 mg/l
Zinc	50.0 µg/l
Silver	1.0 µg/l

Quality control/assurance information shall be submitted to document that the required QL has been attained.
[5]Silver monitoring is only required where a Cu/Ag anode is used.
[6]Phosphorus monitoring is only required where an additive containing phosphorus is used.

2. Effluent limitations and monitoring requirements for discharges to saltwater receiving waterbodies. Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Maximum	Minimum	Frequency	Sample Type
Flow (MGD)	0.05	NA	1/3 Months	Estimate
Temperature (°C)	[1]	NA	1/3 Months	Immersion Stabilization
pH (SU)	9.0[2]	6.0[2]	1/3 Months	Grab
Ammonia-N[3] (mg/l)	NL	NA	1/3 Months	Grab
~~Total Residual Chlorine~~ Chlorine Producing Oxidant[3], [4] (mg/l)	~~Nondetectable~~ 0.0075	NA	1/3 Months	Grab

Total Recoverable Copper[4] (µg/l)	6.0	NA	1/3 Months	Grab
Total Recoverable Zinc[4] (µg/l)	81	NA	1/3 Months	Grab
Total Recoverable Silver[4, 5] (µg/l)	1.9	NA	1/3 Months	Grab
Total Phosphorus[6] (mg/l)	NL	NA	1/3 Months	Grab

NL = No limitation, monitoring required
NA = Not applicable

1/3 Months = the following three-month periods each year of permit coverage: January through March, April through June, July through September, and October through December

[1]The effluent temperature shall not exceed a maximum 32°C for discharges to nontidal coastal and piedmont waters, or 31°C for mountain and upper piedmont waters. No maximum temperature limit, only monitoring, applies to discharges to estuarine waters.
The effluent shall not cause an increase in temperature of the receiving stream of more than 3°C above the natural water temperature. The effluent shall not cause the temperature in the receiving stream to change more than 2°C per hour. Natural temperature is defined as that temperature of a body of water (measured as the arithmetic average over one hour) due solely to natural conditions without the influence of any point source discharge.
[2]Where the Water Quality Standards (9VAC25-260) establish alternate standards for pH in the waters receiving the discharge, those standards shall be the maximum and minimum effluent limitations.
[3]Chlorine limitation ~~of nondetectable (<0.1 mg/l)~~ and ~~chlorine~~ monitoring only apply to outfalls discharging to surface waters where either: (i) a treatment additive that contains chlorine or chlorine compounds is used or (ii) the source of cooling water is chlorinated. All data below the quantification level (QL) of 0.1 mg/L shall be reported as "<QL." Ammonia monitoring only applies where the source of cooling water is disinfected using chloramines.
[4]A specific analytical method is not specified; however, a maximum quantification level (Max QL) value for each metal has been established. An appropriate method to meet the Max QL value shall be selected using any approved method presented in 40 CFR Part 136. If the test result is less than the method quantification level (QL), a "<[QL]" shall be reported where the actual analytical test QL is substituted for [QL].

Material	Max QL ~~(µg/l)~~
Copper	1.0 µg/l
Chlorine	0.1 mg/l
Zinc	50.0 µg/l
Silver	1.0 µg/l

Quality control/assurance information shall be submitted to document that the required QL has been attained.
[5]Silver monitoring is only required where a Cu/Ag anode is used.
[6]Phosphorus monitoring is only required where an additive containing phosphorus is used.

B. Special conditions.

1. There shall be no discharge of floating solids or visible foam in other than trace amounts.

2. No discharges other than cooling water, as defined, are permitted under this general permit.

3. The use of any chemical additives not identified in the registration statement, except chlorine, without prior approval is prohibited under this general permit. Prior approval shall be obtained from the DEQ before any changes are made to the chemical or nonchemical treatment technology employed in the cooling water system. Requests for approval of the change shall be made in writing and shall include the following information:

a. Describe the chemical or nonchemical treatment to be employed and its purpose; if chemical additives are used, provide the information prescribed in subdivisions 3 b, c, d, e, and f of this subsection;

b. Provide the name and manufacturer of each additive used;

c. Provide a list of active ingredients and percentage of composition;

d. Give the proposed schedule and quantity of chemical usage, and provide either an engineering analysis or a

technical evaluation of the active ingredients to determine the concentration in the discharge;

e. Attach available aquatic toxicity information for each additive proposed for use;

f. Attach any other information such as product or constituent degradation, fate, transport, synergies, bioavailability, etc., that will aid the ~~board~~ department with the toxicity evaluation for the discharge; and

g. Attach a safety data sheet for each proposed additive.

4. A determination of whether the facility will discharge to a MS4. If the facility discharges to a MS4, the facility owner must notify the owner of the MS4 of the existence of the discharge at the time of registration under this permit and include that notification with the registration statement. The notice shall include the following information: the name of the facility, a contact person and contact information (telephone number and email), the location of the discharge, the nature of the discharge, and the facility's VPDES general permit registration number if a reissuance. Discharge monitoring reports (DMRs) required by this permit shall be submitted to both the department and the owner of the MS4.

5. Operation and maintenance manual requirement.

a. Within 90 days after the date of coverage under this general permit, the permittee shall develop an operation and maintenance (O&M) manual for the equipment or systems used to meet effluent limitations. The O&M manual shall be reviewed within 90 days of changes to the equipment or systems used to meet effluent limitations. The O&M manual shall be certified in accordance with Part II K of this permit. The O&M manual shall be made available for review by department personnel upon request.

b. This manual shall detail the practices and procedures that will be followed to ensure compliance with the requirements of this permit. Within 30 days of a request by the department, the current O&M manual shall be submitted to the ~~board~~ department for review and approval. The permittee shall operate the treatment works in accordance with the O&M manual. Noncompliance with the O&M manual shall be deemed a violation of the permit.

c. This manual shall include~~, but not necessarily be limited to,~~ the following items:

(1) Techniques to be employed in the collection, preservation, and analysis of effluent samples;

(2) Discussion of best management practices;

(3) Design, operation, routine preventative maintenance of equipment or systems used to meet effluent limitations, critical spare parts inventory, and recordkeeping;

(4) A plan for the management or disposal of waste solids and residues, and a requirement that all solids shall be handled, stored, and disposed of so as to prevent a discharge to state waters; and

(5) Procedures for measuring and recording the duration and volume of treated wastewater discharged.

6. The permittee shall notify the department as soon as the permittee knows or has reason to believe:

a. That any activity has occurred or will occur ~~which~~ that would result in the discharge, on a routine or frequent basis, of any toxic pollutant ~~which~~ that is not limited in this permit if that discharge will exceed the highest of the following notification levels:

(1) One hundred micrograms per liter (100 µg/l);

(2) Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; 500 micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

(3) Five times the maximum concentration value reported for that pollutant in the permit registration statement; or

(4) The level established by the board in accordance with 9VAC25-31-220 F.

b. That any activity has occurred or will occur ~~which~~ that would result in any discharge, on a nonroutine or infrequent basis, of a toxic pollutant ~~which~~ that is not limited in this permit if that discharge will exceed the highest of the following notification levels:

(1) Five hundred micrograms per liter (500 µg/l);

(2) One milligram per liter (1 mg/l) for antimony;

(3) Ten times the maximum concentration value reported for that pollutant in the permit application; or

(4) The level established by the board in accordance with 9VAC25-31-220 F.

7. Geothermal systems using groundwater and no chemical additives. Geothermal systems using groundwater and no chemical additives may be eligible for reduced monitoring requirements.

If a geothermal system was covered by the previous noncontact cooling water general permit, and the monitoring results from the previous permit term demonstrate full compliance with the effluent limitations, the permittee may request authorization from the department to reduce the monitoring to once in the first monitoring quarter of the first year of this permit term.

Owners of new geothermal systems, and previously unpermitted geothermal systems that receive coverage under this permit shall submit monitoring results to the department for the first four monitoring quarters after coverage begins. If the monitoring results demonstrate full compliance with the effluent limitations, the permittee may request authorization from the department to suspend monitoring for the remainder of the permit term.

Should the permittee be issued a warning letter or notice of violation related to violation of effluent limitations, or be the subject of an active enforcement action regarding effluent limit violations, upon issuance of the letter or notice, or initiation of the enforcement action, the monitoring frequency shall revert to 1/3 months and remain in effect until the permit's expiration date.

8. Monitoring results shall be reported using the same number of significant digits as listed in the permit. Regardless of the rounding convention used by the permittee (e.g., five always rounding up or to the nearest even number), the permittee shall use the convention consistently and shall ensure that consulting laboratories employed by the permittee use the same convention.

9. Discharges to waters with an approved TMDL. Owners of facilities that are a source of the specified pollutant of concern to waters where an approved TMDL has been established shall implement measures and controls that are consistent with the assumptions and requirements of the TMDL.

10. Notice of termination.

a. The owner may terminate coverage under this general permit by filing a complete notice of termination with the department. The notice of termination may be filed after one or more of the following conditions have been met:

(1) Operations have ceased at the facility and there are no longer cooling water discharges from the facility;

(2) A new owner has assumed responsibility for the facility (NOTE: A notice of termination does not have to be submitted if a VPDES Change of Ownership Agreement form has been submitted);

(3) All cooling water discharges associated with this facility have been covered by a VPDES individual permit or an alternative VPDES permit; or

(4) Termination of coverage is being requested for another reason, provided the ~~board~~ department agrees that coverage under this general permit is no longer needed.

b. The notice of termination shall contain the following information:

(1) Owner's name, mailing address, telephone number, and email address (if available);

(2) Facility name and location;

(3) VPDES noncontact cooling water discharges general permit number; and

(4) The basis for submitting the notice of termination, including:

(a) A statement indicating that a new owner has assumed responsibility for the facility;

(b) A statement indicating that operations have ceased at the facility and there are no longer noncontact cooling water discharges from the facility;

(c) A statement indicating that all noncontact cooling water discharges have been covered by a VPDES individual permit; or

(d) A statement indicating that termination of coverage is being requested for another reason (state the reason).

c. The following certification: "I certify under penalty of law that all noncontact cooling water discharges from the identified facility that are authorized by this VPDES general permit have been eliminated, or covered under a VPDES individual or alternative permit, or that I am no longer the owner of the facility, or permit coverage should be terminated for another reason listed above. I understand that by submitting this notice of termination that I am no longer authorized to discharge noncontact cooling water in accordance with the general permit, and that discharging pollutants in noncontact cooling water to surface waters is unlawful where the discharge is not authorized by a VPDES permit. I also understand that the submittal of this notice of termination does not release an owner from liability for any violations of this permit or the Clean Water Act."

d. The notice of termination shall be signed in accordance with Part II K.

e. The notice of termination shall be submitted to the DEQ regional office serving the area where the noncontact cooling water discharge is located.

11. The discharges authorized by this permit shall be controlled as necessary to meet applicable water quality standards.

12. Approval for coverage under this general permit does not relieve any owner of the responsibility to comply with any other federal, state, or local statute, ordinance, or regulation.

Part II
Conditions Applicable to All VPDES Permits

A. Monitoring.

1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.

2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.

3. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.

4. Samples taken as required by this permit shall be analyzed in accordance with 1VAC30-45, Certification for Noncommercial Environmental Laboratories, or 1VAC30-46, Accreditation for Commercial Environmental Laboratories.

B. Records.

1. Records of monitoring information shall include:

a. The date and exact place and time of sampling or measurements;

b. The individuals who performed the sampling or measurements;

c. The dates and times analyses were performed;

d. The individuals who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

2. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years, the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the registration statement for this permit, for a period of at least three years from the date of the sample, measurement, report, or request for coverage. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee or as requested by the ~~board~~ department.

C. Reporting monitoring results.

1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.

2. Monitoring results shall be reported on a Discharge Monitoring Report (DMR) or on forms provided, approved or specified by the department. Following notification from the department of the start date for the required electronic submission of monitoring reports, as provided for in 9VAC25-31-1020, such forms and reports submitted after that date shall be electronically submitted to the department in compliance with this section and 9VAC25-31-1020. There shall be at least [~~three months'~~ a three-month] notice provided between the notification from the department and the date after which such forms and reports must be submitted electronically.

3. If the permittee monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the department.

4. Calculations for all limitations ~~which~~ that require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.

D. Duty to provide information. The permittee shall furnish to the department, within a reasonable time, any information [~~which~~ that] the ~~board~~ department may request to determine whether cause exists for terminating coverage under this permit or to determine compliance with this permit. The ~~board~~ department may require the permittee to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from the permittee's discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the State Water Control Law. The permittee shall also furnish to the department upon request copies of records required to be kept by this permit.

E. Compliance schedule reports. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

F. Unauthorized discharges. Except in compliance with this permit or another permit issued by the ~~board~~ department, it shall be unlawful for any person to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or

2. Otherwise alter the physical, chemical, or biological properties of such state waters and make them detrimental to the public health, to animal or aquatic life, to the use of such waters for domestic or industrial consumption, for recreation, or for other uses.

G. Reports of unauthorized discharges. Any permittee who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters in violation of Part II F, or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of Part II F, shall notify the department (see Part II I 3) of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;

2. The cause of the discharge;

3. The date on which the discharge occurred;

4. The length of time that the discharge continued;

5. The volume of the discharge;

6. If the discharge is continuing, how long it is expected to continue;

7. If the discharge is continuing, what the expected total volume of the discharge will be; and

8. Any steps planned or taken to reduce, eliminate, and prevent a recurrence of the present discharge or any future discharges not authorized by this permit.

Discharges reportable to the department under the immediate reporting requirements of other regulations are exempted from this requirement.

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify (see Part II I 3), in no case later than 24 hours, the department ~~by telephone~~ after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse effects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with Part II I 1 b. Unusual and extraordinary discharges include any discharge resulting from:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;

2. Breakdown of processing or accessory equipment;

3. Failure or taking out of service some or all of the treatment works; and

4. Flooding or other acts of nature.

I. Reports of noncompliance.

1. The permittee shall report any noncompliance that may adversely affect state waters or may endanger public health.

a. An oral report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information ~~which~~ that shall be reported within 24 hours under this subsection:

(1) Any unanticipated bypass; and

(2) Any upset which causes a discharge to surface waters.

b. A written report shall be submitted within five days and shall contain:

(1) A description of the noncompliance and its cause;

(2) The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and

(3) Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The ~~board~~ department may waive the written report on a case-by-case basis for reports of noncompliance under Part II I if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

2. The permittee shall report all instances of noncompliance not reported under Part II I 1, in writing, at the time the next monitoring reports are submitted. The reports shall contain the information listed in Part II I 1 b.

~~NOTE:~~ 3. The immediate (within 24 hours) reports required in Parts II G, H, and I ~~may~~ shall be made to the department's regional office. Reports may be made by telephone, FAX, or online at ~~http://www.deq.virginia.gov/Programs/PollutionResponsePreparedness/PollutionReportingForm.aspx~~ https://www.deq.virginia.gov/get-involved/pollution-response (online reporting preferred). For reports outside normal working hours, ~~leave a message and this shall fulfill the immediate reporting requirement~~ the online portal shall be used. For emergencies, call the Virginia Department of Emergency ~~Services maintains a 24-hour telephone service~~ Management's Emergency Operations Center (24-hour) at 1-800-468-8892.

~~3.~~ 4. Where the permittee becomes aware that it failed to submit any relevant facts in a permit registration statement or submitted incorrect information in a permit registration statement or in any report to the department, it shall promptly submit such facts or information.

J. Notice of planned changes.

1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

a. The permittee plans alteration or addition to any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

(1) After promulgation of standards of performance under § 306 of Clean Water Act ~~which~~ that are applicable to such source; or

(2) After proposal of standards of performance in accordance with § 306 of Clean Water Act ~~which~~ that are applicable to such source, but only if the standards are promulgated in accordance with § 306 within 120 days of their proposal;

b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants ~~which~~ that are subject neither to effluent limitations nor to notification requirements under Part I B 6; or

c. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and

such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit registration process or not reported pursuant to an approved land application plan.

2. The permittee shall give advance notice to the department of any planned changes in the permitted facility or activity ~~which~~ that may result in noncompliance with permit requirements.

K. Signatory requirements.

1. Registration statements. All registration statements shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit registration requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a public agency includes~~:~~ (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

2. Reports and other information. All reports required by permits, and other information requested by the ~~board~~ department shall be signed by a person described in Part II K 1, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described in Part II K 1;

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company (a duly authorized representative may thus be either a named individual or any individual occupying a named position); and

c. The written authorization is submitted to the department.

3. Changes to authorization. If an authorization under Part II K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part II K 2 shall be submitted to the department prior to or together with any reports or information to be signed by an authorized representative.

4. Certification. Any person signing a document under Part II K 1 or 2 shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

L. Duty to comply. The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the State Water Control Law and the Clean Water Act, except that noncompliance with certain provisions of this permit may constitute a violation of the State Water Control Law but not the Clean Water Act. Permit noncompliance is grounds for enforcement action~~;~~, for permit coverage termination, or for denial of a permit coverage renewal.

The permittee shall comply with effluent standards or prohibitions established under § 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under § 405(d) of the Clean Water Act within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if this permit has not yet been modified to incorporate the requirement.

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall apply for and obtain coverage under a new permit. All permittees with currently effective permit coverage shall submit a new registration statement at least ~~30~~ 60 days before the expiration date of the existing permit, unless

permission for a later date has been granted by the ~~board~~ department. The ~~board~~ department shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit.

N. Effect of a permit. This permit does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or invasion of personal rights, or any infringement of federal, state, or local law or regulations.

O. State law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by § 510 of the Clean Water Act. Except as provided in permit conditions on bypass (Part II U) and upset (Part II V), nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

P. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

Q. Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) ~~which~~ that are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems ~~which~~ that are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

R. Disposal of solids or sludges. Solids, sludges, or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering state waters.

S. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit ~~which~~ that has a reasonable likelihood of adversely affecting human health or the environment.

T. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

U. Bypass.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. The permittee may allow any bypass to occur ~~which~~ that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to ensure efficient operation. These bypasses are not subject to the provisions of Part II U 2 and U 3.

2. Notice.

a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, prior notice shall be submitted, if possible at least 10 days before the date of the bypass.

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Part II I.

3. Prohibition of bypass.

a. Bypass is prohibited, and the ~~board~~ department may take enforcement action against a permittee for bypass, unless:

(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee submitted notices as required under Part II U 2.

b. The ~~board~~ department may approve an anticipated bypass, after considering its adverse effects, if the ~~board~~ department determines that it will meet the three conditions listed in Part II U 3 a.

V. Upset.

1. An upset constitutes an affirmative defense to an action brought for noncompliance with technology based permit effluent limitations if the requirements of Part II V 2 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.

2. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

a. An upset occurred and that the permittee can identify the causes of the upset;

b. The permitted facility was at the time being properly operated;

c. The permittee submitted notice of the upset as required in Part II I; and

d. The permittee complied with any remedial measures required under Part II S.

3. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

W. Inspection and entry. The permittee shall allow the director or an authorized representative, including an authorized contractor acting as a representative of the administrator, upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act and the State Water Control Law, any substances or parameters at any location.

For purposes of this subsection, the time for inspection shall be deemed reasonable during regular business hours, or whenever the facility is discharging. Nothing contained herein shall make an inspection unreasonable during an emergency.

X. Permit actions. Permits coverage may be terminated for cause. The filing of a request by the permittee for permit coverage termination or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

Y. Transfer of permit coverage.

1. Permit coverage is not transferable to any person except after notice to the department.

2. Coverage under this permit may be automatically transferred to a new permittee if:

a. The current permittee notifies the department within 30 days of the transfer of the title to the facility or property;

b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

c. The ~~board~~ department does not notify the existing permittee and the proposed new permittee of its intent to deny permit coverage. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part II Y 2 b.

Z. Severability. The provisions of this permit are severable. If any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this permit shall not be affected thereby.

VA.R. Doc. No. R21-6527; Filed December 22, 2022, 12:30 p.m.

Final Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 8 of the Code of Virginia, which exempts general permits issued by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.) and Chapters 24 (§ 62.1-242 et seq.) and 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01 of the Code of Virginia; (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action, forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit; (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03 of the Code of Virginia; and (iv) conducts at least one public hearing on the proposed general permit. The board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9VAC25-860. Virginia Pollutant Discharge Elimination System General Permit for Potable Water Treatment Plants (amending 9VAC25-860-10, 9VAC25-860-15, 9VAC25-860-40 through 9VAC25-860-70).**

Statutory Authority: § 62.1-44.15 of the Code of Virginia; § 402 of the Clean Water Act.

Effective Date: July 1, 2023.

Agency Contact: Elleanore Daub, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-2655, FAX (804) 698-4178, or email elleanore.daub@deq.virginia.gov.

Summary:

The amendments update the regulation to reissue the Virginia Pollutant Discharge Elimination System general permit for potable water treatment plants to discharge process wastewater. The amendments (i) update definitions, (ii) add total suspended solids and chlorine discharge limits for reverse osmosis and nanofiltration plants, and (iii) include electronic reporting requirements once the department establishes such processes. Changes to the proposed regulation update the effective date of Title 40 Code of Federal Regulations incorporated in the regulation to July 1, 2022, and change references from the State Water Control Board to the Department of Environmental Quality pursuant to the authority shift enacted by Chapter 356 of the 2022 Acts of Assembly. Changes effective November 9, 2022, are incorporated into this action.

Chapter 860
Virginia Pollutant Discharge Elimination System General Permit Regulation for Potable Water Treatment Plants

9VAC25-860-10. Definitions.

The words and terms used in this regulation shall have the meanings defined in the State Water Control Law and 9VAC25-31, the VPDES Permit Regulation, unless the context clearly indicates otherwise, except that for the purposes of this chapter:

"Board" means the State Water Control Board. When used outside the context of the promulgation of regulations, including regulations to establish general permits, "board" means the Department of Environmental Quality.

"Department" or "DEQ" means the Virginia Department of Environmental Quality.

"Conventional filtration treatment" means a series of processes including coagulation, flocculation, sedimentation, and filtration resulting in substantial particulate removal.

"Membrane treatment" means a pressure or vacuum driven process using synthetic materials to separate constituents from water. Membranes are used for dissolved solids or suspended solids removal. Membrane treatment for dissolved solids removal includes reverse osmosis and nanofiltration. Membrane treatment for suspended solids removal includes ultrafiltration and microfiltration.

"Microfiltration" means a method of membrane treatment designed to remove particles down to 0.1 µm in size. The treatment removes cysts, bacteria, and most (but not all) particulates.

"Nanofiltration" or "low-pressure reverse osmosis" or "membrane softening" means a method of membrane treatment designed to remove multivalent ions (softening) and removes contaminants down to 1 nm (nanometer = 0.001 µm) in size.

"Potable water treatment plant" means an establishment engaged in producing water for domestic, commercial, or industrial use as designated by North American Industry Classification System (NAICS) Code 221310 - Water Supply and Irrigation Systems, (Executive Office of the President, Office of Management and Budget, United States, 2017), Standard Industrial Classified (SIC) Code 4941 - Water Supply (Office of Management and Budget (OMB) SIC Manual, 1987), or others as approved by the [~~board~~ department].

"Reverse osmosis" means a method of membrane treatment designed to remove salts and low-molecular weight solutes and remove all contaminants down to 0.0001 µm (microns) in size. Reverse osmosis methods apply pressure in excess of osmotic pressure to force water through a semi-permeable membrane from a region of high salt concentration to a region of lower salt concentration.

"Total maximum daily load" or "TMDL" means a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards and an allocation of that amount to the pollutant's sources. A TMDL includes wasteload allocations (WLAs) for point source discharges, and load allocations (LAs) for nonpoint sources or natural background or both, and must include a margin of safety (MOS) and account for seasonal variations.

"Ultrafiltration" means a method of membrane treatment designed to remove particles down to 0.01 µm in size. The treatment removes cysts, bacteria, and viruses as well as suspended solids.

9VAC25-860-15. Applicability of incorporated references based on the dates that they became effective.

Except as noted, when a regulation of the U.S. Environmental Protection Agency set forth in Title 40 of the Code of Federal Regulations (CFR) is referenced and incorporated in this chapter, that regulation shall be as it exists and has been published as of July 1, ~~2017~~ [~~2021~~ 2022].

9VAC25-860-40. Effective date of the permit.

This general VPDES permit will become effective on July 1, ~~2018~~ 2023, and will expire on June 30, ~~2023~~ 2028. This general permit is effective for any covered owner upon compliance with all the provisions of 9VAC25-860-50.

9VAC25-860-50. Authorization to discharge.

A. Any owner governed by this general permit is hereby authorized to discharge to surface waters of the Commonwealth of Virginia provided that:

1. The owner submits a registration statement in accordance with 9VAC25-860-60 and that registration statement is accepted by the [~~board~~ department];

2. The owner submits the required permit fee;

3. The owner complies with the applicable effluent limitations and other requirements of 9VAC25-860-70; and

4. The [~~board~~ department] has not notified the owner that the discharge is not eligible for coverage in accordance with subsection B of this section.

B. The [~~board~~ department] will notify an owner that the discharge is not eligible for coverage under this general permit in the event of any of the following:

1. The owner is required to obtain an individual permit in accordance with 9VAC25-31-170 B 3 of the VPDES Permit Regulation;

2. The owner is proposing to discharge to state waters specifically named in other board regulations that prohibit such discharges;

3. The discharge violates or would violate the antidegradation policy in the Water Quality Standards at 9VAC25-260-30;

4. The discharge is not consistent with the assumptions and requirements of an approved TMDL;

5. The facility is subject to the requirements of 9VAC25-820-70 Part I G 1 (General VPDES Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Watershed in Virginia - Requirement to Register); and

6. An owner applying for coverage under this general permit submits the results of representative whole effluent toxicity testing of the discharge, and the results demonstrate that there is a reasonable potential for toxicity.

C. Compliance with this general permit constitutes compliance, for purposes of enforcement, with §§ 301, 302, 306, 307, 318, 403, and 405 (a) through (b) of the federal Clean Water Act and the State Water Control Law with the exceptions stated in 9VAC25-31-60 of the VPDES Permit Regulation. Approval for coverage under this general permit does not relieve any owner of the responsibility to comply with any other applicable federal, state, or local statute, ordinance, or regulation.

D. Continuation of permit coverage.

1. Permit coverage shall expire at the end of ~~its~~ the applicable permit term. However, expiring permit coverages are automatically continued if the owner has submitted a complete registration statement at least 60 days prior to the expiration date of the permit, or a later submittal established by the [~~board~~ department,] which cannot extend beyond the expiration date of the ~~original~~ permit. The permittee is authorized to continue to discharge until such time as the [~~board~~ department] either:

a. Issues coverage to the owner under this general permit; or

b. Notifies the owner that the discharge is not eligible for coverage under this general permit.

2. When the owner that was covered under the expiring or expired general permit has violated or is violating the conditions of that permit, the [~~board~~ department] may choose to do any or all of the following:

a. Initiate enforcement action based upon the general permit coverage that has been continued;

b. Issue a notice of intent to deny coverage under the reissued general permit. If the general permit coverage is denied, the owner would then be required to cease the discharges authorized by the continued general permit coverage ~~under the terms of the general permit~~ or be subject to enforcement action for discharging without a permit;

c. Issue an individual permit with appropriate conditions; or

d. Take other actions authorized by the VPDES Permit Regulation (9VAC25-31).

9VAC25-860-60. Registration statement.

A. Deadlines for submitting registration statement. The owner seeking coverage under this general permit shall submit a complete VPDES general permit registration statement in accordance with this section, which shall serve as a notice of intent for coverage under the ~~general~~ VPDES general permit regulation for potable water treatment plants.

1. New facilities. Any owner proposing a new discharge shall submit a complete registration statement at least 60 days prior to the date planned for commencement of the new discharge.

2. Existing facilities.

a. Any owner covered by an individual VPDES permit who is proposing to be covered by this general permit shall submit a complete registration statement at least ~~270~~ 240 days prior to the expiration date of the individual VPDES permit or a later submittal established by the [~~board~~ department].

b. Any owner that was authorized to discharge under the expiring or expired ~~general~~ VPDES general permit and who intends to continue coverage under this general permit shall submit a complete registration statement to the [~~board~~ department] at least 60 days prior to the expiration date of the existing permit or a later submittal established by the [~~board~~ department].

~~c. Any owner of a potable water treatment plant not currently covered by a VPDES permit who is proposing to be covered by this general permit shall file the registration statement.~~

B. Late registration statements. Registration statements for existing owners covered under subdivision A 2 b of this section will be accepted after the expiration date of the permit, but authorization to discharge will not be retroactive.

C. The required registration statement shall contain the following information:

1. Facility name and street address, owner name, mailing address, telephone number, and email address (if available);

2. Operator or other contact name, mailing address, telephone number, and email address ~~(if available)~~;

3. The nature of the business;

4. A USGS 7.5 minute topographic map or equivalent computer generated map showing the facility location extending to at least one mile beyond the property boundary and the location of the discharge points;

5. The receiving waters of the discharge;

6. The outfall number, latitude and longitude (in decimal degrees (six digits - ten-thousandths place)), the daily maximum ~~actual or projected process wastewater flow rate~~ and monthly average process wastewater flow (millions of gallons per day or gallons per day), ~~typical volume,~~ duration of discharges, and frequency of discharge;

7. The type of water treatment (e.g., conventional filtration treatment, microfiltration, ultrafiltration, nanofiltration, reverse osmosis, or a combination of these) and, if applicable, a description of any treatment type changes since the previous registration statement was submitted;

8. The number of any existing VPDES or VPA permit ~~that authorizes discharges from the potable water treatment plant~~;

9. The Virginia Department of Health Public Water Supply Identification (PWSID) number;

10. If the existing VPDES permit contains a groundwater monitoring plan requirement, a copy of the [~~board-approved~~ department-approved] plan shall be submitted unless the plan has been previously submitted and approved and remains unchanged. If a plan has been previously approved, cite the plan and date of approval;

~~10.~~ 11. Information regarding the lining of any settling basins or lagoons, whether such units are earthen lined, and if so, whether the linings have a permeability of no greater than 10^{-6} cm/sec;

~~11.~~ 12. The results of any whole effluent toxicity evaluation required by the ~~2013~~ 2018 potable water treatment plant general permit regulation, 9VAC25-860-50 A 3, or the current individual permit, if not previously submitted to the department;

~~12.~~ 13. A schematic drawing showing ~~the sources of water used on the property and the conceptual design of the methods of treatment and disposal of process wastewater;~~ the treatment of the water from raw water intake through finished water distribution. Indicate clearly where backwash, reject water, clean in place water, and disinfection chemicals could enter the process wastewater and exit the outfall to state waters. Also include in schematic where solids from any treatment process are settled or dried;

~~13.~~ 14. Information on chemicals used in the production of drinking water and process wastewater treatment, to include (i) a description of chemicals, (ii) a proposed or actual schedule and quantity of chemical usage, (iii) a description of any chemical or chemical usage changes since the previous registration statement was submitted, and (iv) a description of which chemicals have no likelihood of entering the process wastewater;

~~14.~~ 15. A description of how solids and residue from any settling basins or lagoons are disposed;

~~15.~~ 16. Whether the facility will discharge to a municipal separate storm sewer system (MS4). If ~~so~~ yes, the name of the MS4 owner must be provided. If the owner of the potable water treatment plant is not the owner of the MS4, the facility owner shall notify the MS4 owner of the existence of the discharge and include a copy of the notification with the registration statement. The notification shall include the following information: the name of the facility, a contact person and ~~telephone number~~ contact information (telephone number and email), the location of the discharge, the nature of the discharge, and the owner's VPDES general permit number;

~~16.~~ 17. If a new potable water treatment plant owner proposes to discharge within five miles upstream of another public water supply system's intake, the new potable water treatment plant owner shall notify the public water supply system's owner and include a copy of the notification with the registration statement; and

~~17.~~ 18. The following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

D. The registration statement shall be signed in accordance with 9VAC25-31-110.

E. The registration statement shall be delivered to the department's regional office where the industrial facility is located by either postal or electronic mail. Following notification from the department of the start date for the required electronic submission of Notices of Intent to discharge forms (i.e., registration statements) as provided for in 9VAC25-31-1020, such forms submitted after that date shall be electronically submitted to the department in compliance with this section and 9VAC25-31-1020. There shall be at least a three-month notice provided between the notification from the department and the date after which such forms must be submitted electronically.

9VAC25-860-70. General permit.

Any owner whose registration statement is accepted by the [~~board~~ department] will receive coverage under the following permit and shall comply with the requirements therein and be subject to all requirements of 9VAC25-31.

General Permit No.: VAG64
Effective Date: July 1, ~~2018~~ 2023
Expiration Date: June 30, ~~2023~~ 2028

GENERAL PERMIT FOR POTABLE WATER TREATMENT PLANTS

AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM AND THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant thereto, owners of potable water treatment plants are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those specifically named in board regulations that prohibit such discharges.

The authorized discharge shall be in accordance with the information submitted with the registration statement, this cover page, Part I - Effluent Limitations, Monitoring Requirements, ~~and~~ Special Conditions~~,~~ and Part II - Conditions Applicable to All VPDES Permits, as set forth in this general permit.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

1. Facilities other than reverse osmosis or nanofiltration plants.

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge process wastewater from outfalls: _____

Such discharges shall be limited and monitored as specified below:

EFFLUENT CHARACTERISTICS	EFFLUENT LIMITATIONS			MONITORING REQUIREMENTS	
	Monthly Average	Minimum	Maximum	Frequency(1)	Sample Type
Flow (MGD)	NL	NA	NL	1/3 Months	Estimate(2)
pH (SU)(3)	NA	6.0	9.0	1/3 Months	Grab
Total Suspended Solids (mg/l)	30	NA	60	1/3 Months	Composite(4)
Total Residual Chlorine(5) (mg/l)	0.011	NA	0.011	1/3 Months	Grab

NL - No Limitation, monitoring requirement only

NA - Not applicable

(1) Reports of quarterly monitoring shall be submitted to the DEQ regional office no later than the 10th day of April, July, October, and January.

(2)Reported estimated flow ~~is to~~ may be based on the technical evaluation of the sources contributing to the discharge.

(3)Where the Water Quality Standards (9VAC25-260) establish alternate standards for pH in waters receiving the discharge, those standards shall be the minimum and maximum effluent limitations.

(4)Composite - For continuous discharges, five grab samples collected at hourly intervals. For batch discharges, five grab samples taken at evenly placed intervals ~~until the discharge ceases~~ for the duration of the discharge, or until a minimum of five grab samples have been collected. For batch discharges, the first grab shall occur within 15 minutes of commencement of the discharge. Composite sample procedures for batch discharges unable to meet the requirements in this table may be approved by DEQ on a case-by-case basis.

(5) Total residual chlorine limit shall only be applicable if chlorine is present in the process wastewater.

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

2. Reverse osmosis and nanofiltration plants.

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge process wastewater originating from outfalls: _____

Such discharges shall be limited and monitored as specified below:

EFFLUENT CHARACTERISTICS	EFFLUENT LIMITATIONS			MONITORING REQUIREMENTS	
	Monthly Average	Minimum	Maximum	Frequency	Sample Type
Flow (MGD)	NL	NA	NL	1/ Month	Estimate(1)
pH (SU)(2)	NA	6.0	9.0	1/ Month	Grab
Total Dissolved Solids (mg/l)	NA	NA	NL	1/ Month	Composite(3)
Total Suspended Solids (mg/l)(4)	30	NA	60	1/ Month	Composite(3)
Dissolved Oxygen (mg/l)(4)(5)	NA	4.0	NA	1/ Month	Grab
Total Residual Chlorine (mg/l)(6)	0.011	NA	0.011	1/ Month	Grab

NL - No limitation, monitoring requirement only

NA - Not applicable

(1)Reported estimated flow ~~is to~~ may be based on the technical evaluation of the sources contributing to the discharge.

(2)Where the Water Quality Standards (9VAC25-260) establish alternate standards for pH in waters receiving the discharge, those standards shall be the minimum and maximum effluent limitations.

(3)Composite - For continuous discharges, five grab samples collected at hourly intervals. For batch discharges, five grab samples taken at evenly placed intervals ~~until the discharge ceases or~~ for the duration of the discharge or until a minimum of five grab samples have been collected. For batch discharges, the first grab shall occur within 15 minutes of commencement of the discharge. Composite sample procedures for batch discharges unable to meet the requirements in this table may be approved by DEQ on a case-by-case basis.

(4)Applicable when conventional filtration treatment discharge is part of drinking water treatment and present in the process wastewater.

(5)Where the Water Quality Standards (9VAC25-260) establish alternate standards for dissolved oxygen in waters receiving the discharge, those standards shall be the minimum effluent limitations.

(6)Total residual chlorine limit shall only be applicable if chlorine is present in the process wastewater.

B. Special conditions.

1. Inspection of the effluent, and maintenance of the process wastewater treatment facility, shall be performed daily. Documentation of the inspection and maintenance shall be recorded in an operational log. This operational log shall be made available for review by the department personnel upon request.

2. No domestic sewage discharges are permitted under this general permit.

3. No chemicals used for water and process wastewater treatment, other than those listed on the owner's accepted registration statement, are allowed. Prior approval shall be obtained from the [~~board~~ department] before any changes are made to the chemicals, in order to assure protection of water quality and beneficial uses of the waters receiving the discharge. The owner shall indicate whether the chemical is likely to enter state waters through the process wastewater discharge.

4. There shall be no discharge of floating solids or visible foam in other than trace amounts.

5. Owners of facilities that are a source of the specified pollutant of concern to waters where an approved total maximum daily load (TMDL) has been established shall implement measures and controls that are consistent with the assumptions and requirements of the TMDL.

6. The permittee shall notify the department as soon as the permittee knows or has reason to believe:

a. That any activity has occurred or will occur that would result in the discharge, on a routine or frequent basis, of any toxic pollutant that is not limited in this permit, if that discharge will exceed the highest of the following notification levels:

(1) One hundred micrograms per liter;

(2) Two hundred micrograms per liter for acrolein and acrylonitrile; five hundred micrograms per liter for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter for antimony;

(3) Five times the maximum concentration value reported for that pollutant in the general permit registration statement; or

(4) The level established by the [~~board~~ department].

b. That any activity has occurred or will occur that would result in any discharge, on a nonroutine or infrequent basis, of a toxic pollutant that is not limited in this permit, if that discharge will exceed the highest of the following notification levels:

(1) Five hundred micrograms per liter;

(2) One milligram per liter for antimony;

(3) Ten times the maximum concentration value reported for that pollutant in the general permit registration statement; or

(4) The level established by the [~~board~~ department].

7. If a [~~board-approved~~ department-approved] groundwater monitoring plan was submitted with the registration statement, the permittee shall continue to sample and report in accordance with the plan. The approved plan shall be an enforceable part of this permit. The [~~board~~ department] or the owner, with [~~board~~ department] approval, may evaluate the groundwater monitoring data and demonstrate that revisions to or the cessation of the groundwater monitoring are appropriate. If the department determines that monitoring indicates that groundwater is contaminated, the permittee shall submit a corrective action plan within 60 days of being notified by the regional office. The plan shall set forth the steps to ensure the contamination source is eliminated or that the contaminant plume is contained on the permittee's property. In addition, based on the extent of contamination, a risk analysis may be required. Once approved, this plan or analysis shall become an enforceable part of this permit.

8. Compliance reporting under Part I A.

a. The quantification levels (QL) shall be ~~as follows~~ less than or equal to the following:

Effluent Characteristic	Quantification Level
Chlorine	0.10 mg/l
TSS	1.0 mg/l

b. Reporting.

(1) Monthly average. Compliance with the monthly average limitations and reporting requirements for the parameters listed in subdivision 8 a of this subsection shall be determined as follows: all concentration data below the QL listed in subdivision 8 a shall be treated as zero. All concentration data equal to or above the QL listed in subdivision 8 a shall be treated as it is reported. An arithmetic average shall be calculated using all reported data for the month, including the defined zeros. This arithmetic average shall be reported on the Discharge Monitoring Report (DMR) as calculated. If all data are below the QL, then the average shall be reported as "<QL." ~~If reporting for quantity is required on the DMR and the calculated concentration is <QL, then report "<QL" for the quantity. Otherwise use the calculated concentration.~~ For quarterly monitoring frequencies, the monthly average value to be reported on the DMR shall be the maximum of the arithmetic monthly averages calculated for each calendar month during the monitoring period.

(2) Daily maximum. Compliance with the daily maximum limitations or reporting requirements for the parameters listed in subdivision 8 a of this subsection shall be determined as follows: all concentration data below the QL listed in subdivision 8 a shall be treated as zero. All concentration data equal to or above the QL shall be treated as reported. An arithmetic average shall be calculated using all reported data, including the defined zeros, collected within each day during the reporting month. The maximum value of these daily averages thus determined shall be reported on the DMR as the daily maximum. If all data are below the QL, then the average shall be reported as "<QL." ~~If reporting for quantity is required on the DMR and the calculated concentration is <QL, then report "<QL" for the quantity. Otherwise use the calculated concentration.~~ For quarterly monitoring frequencies, the daily maximum value to be reported on the DMR shall be the maximum of the daily values for each calendar day during the monitoring period.

c. Any single datum required shall be reported as "<QL" if it is less than the QL in subdivision 8 a of this subsection. Otherwise, the numerical value shall be reported.

d. The permittee shall report at least the same number of significant digits as the permit limit for a given parameter. Regardless of the rounding convention used (i.e., five always rounding up or to the nearest even number) by the permittee, the permittee shall use the convention consistently, and shall ensure that consulting laboratories employed by the permittee use the same convention.

9. Operation and maintenance manual requirement.

a. Within 90 days after the date of coverage under this general permit, the permittee shall develop or update an

operation and maintenance (O&M) manual for the process wastewater treatment works. The O&M manual shall be reviewed within 90 days of changes to the treatment system. The O&M manual shall be certified in accordance with Part II K of this permit. The O&M manual shall be made available for review by department personnel upon request.

b. This manual shall detail the practices and procedures that will be followed to ensure compliance with the requirements of this permit. Within 30 days of a request by the department, the current O&M manual shall be submitted to the [~~board~~ department] for review and approval. The permittee shall operate the process wastewater treatment works in accordance with the O&M manual. Noncompliance with the O&M manual shall be deemed a violation of the permit.

c. This manual shall include, but not necessarily be limited to, the following items, as appropriate:

(1) Techniques to be employed in the collection, preservation, and analysis of effluent samples;

(2) Discussion of best management practices;

(3) Process wastewater treatment system design, operation, routine preventive maintenance of units within the process wastewater treatment system, critical spare parts inventory, and recordkeeping;

(4) A plan for the management or disposal of waste solids and residues, which includes a requirement to clean settling basins and lagoons (if present at the facility) in order to achieve effective treatment and a requirement that all solids shall be handled, stored, and disposed of so as to prevent a discharge to state waters;

(5) Procedures for measuring and recording the duration and volume of treated process wastewater discharged; and

(6) Location of the operational log for performing the daily inspections of the effluent. The log shall note any solids or sheens and if there is no discharge at time of inspection.

10. Owners of a facility with a daily maximum flow rate greater than or equal to 50,000 gallons per day over three consecutive monitoring periods that have not conducted whole effluent toxicity (WET) testing to demonstrate there is no reasonable potential for toxicity from their discharge shall conduct WET testing as described in subdivisions 10 a through 10 e of this subsection. Owners with changes in treatment technology or chemical usage that change the characteristics of the discharge and with a daily maximum flow rate greater than or equal to 50,000 gallons per day over three consecutive monitoring periods shall conduct WET testing as described in subdivisions 10 a through 10 e of this subsection.

a. The WET testing shall consist of a minimum of four sets (a set includes both vertebrate and invertebrate tests) of acute or chronic tests that reflect the current characteristics of the process wastewater treatment plant effluent using the following tests and organisms:

For an intermittent or batch discharger	48 hour static acute toxicity tests
Freshwater organisms	Pimephales promelas or Oncorhynchus mykiss (for cold water) (vertebrates) Ceriodaphnia dubia (invertebrate)
Saltwater organisms	Cyprinodon variegatus (vertebrate) Americamysis bahia (invertebrate)
For continuous discharger	
Freshwater	7-Day Chronic Static Renewal Larval Survival and Growth Test with Pimephales promelas (vertebrate)
	3-Brood Chronic Static Renewal Survival and Reproduction Test with Ceriodaphnia dubia (invertebrate)
Saltwater	7-Day Chronic Static Renewal Larval Survival and Growth Test with Cyprinodon variegatus (vertebrate)
	7-Day Chronic Static Renewal Survival, Growth and Fecundity Test with Americamysis bahia (invertebrate)

Freshwater organisms are used where the salinity of the receiving water is less than 1.0‰ (parts per thousand). Where the salinity of the receiving water is greater than or equal to 1.0‰ but less than 5.0‰ either freshwater or saltwater organisms may be used. Saltwater organisms are used where the salinity is greater than or equal to 5.0‰. There shall be a minimum of 30 days between sets of tests, and test procedures shall follow 40 CFR Part 136, which references the EPA guidance manuals for WET testing.

b. This testing shall be completed, at a minimum, during the first year of coverage under the general permit or within one year of commencing discharge.

c. The department will evaluate all representative data statistically to see if there is reasonable potential for toxicity in the facility discharge. If such reasonable potential exists and cannot be eliminated, the owner will be notified that the owner must apply for an individual VPDES permit at next reissuance and a WET limit will be included in that individual permit. If the potential cause of the toxicity is eliminated during the five-year term of this general permit, the owner may conduct additional WET testing to demonstrate that there is no longer reasonable potential for toxicity and an individual permit will not be required at the next reissuance.

d. If the department determines that no reasonable potential for toxicity exists in the facility discharge, no further WET testing is required unless changes in treatment technology or chemical usage are made at the plant that change the characteristics of the discharge. If there have been changes to the effluent characteristics, then four sets of WET testing, either acute or chronic tests as applicable to the current characteristics of the process wastewater treatment plant effluent, must be performed to recharacterize the discharge.

e. Any WET testing data will be submitted with the next required discharge monitoring report.

11. The discharges authorized by this permit shall be controlled as necessary to meet applicable water quality standards.

12. Notice of termination.

a. The owner may terminate coverage under this general permit by filing a complete notice of termination with the department. The notice of termination may be filed after one or more of the following conditions have been met:

(1) Operations have ceased at the facility and there are no longer discharges of process wastewater from the potable water treatment plant;

(2) A new owner has assumed responsibility for the facility. A notice of termination does not have to be submitted if a VPDES Change of Ownership Agreement form has been submitted;

(3) All discharges associated with this facility have been covered by an individual VPDES permit or a VPDES general permit; or

(4) Termination of coverage is being requested for another reason, provided the [~~board~~ department] agrees that coverage under this general permit is no longer needed.

b. The notice of termination shall contain the following information:

(1) Owner's name, mailing address, telephone number, and email address (if available);

(2) Facility name and location;

(3) VPDES general permit registration number for the facility; and

(4) The basis for submitting the notice of termination, including:

(a) A statement indicating that a new owner has assumed responsibility for the facility;

(b) A statement indicating that operations have ceased at the facility and there are no longer discharges from the facility;

(c) A statement indicating that all discharges have been covered by an individual VPDES permit; or

(d) A statement indicating that termination of coverage is being requested for another reason and a description of the reason.

c. The following certification: "I certify under penalty of law that all process wastewater discharges from the identified facility that are authorized by this VPDES general permit have been eliminated, or covered under a VPDES individual or a VPDES general permit, or that I am no longer the owner of the facility, or permit coverage should be terminated for another reason listed above. I understand that by submitting this notice of termination, that I am no longer authorized to discharge process wastewater in accordance with the general permit, and that discharging pollutants to surface waters is unlawful where the discharge is not authorized by a VPDES permit. I also understand that the submittal of this notice of termination does not release an owner from liability for any violations of this permit or the Clean Water Act."

d. The notice of termination shall be submitted to the department and signed in accordance with Part II K.

13. Approval for coverage under this general permit does not relieve any owner of the responsibility to comply with any other federal, state, or local statute, ordinance, or regulation.

Part II

CONDITIONS APPLICABLE TO ALL VPDES PERMITS.

A. Monitoring.

1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.

2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.

3. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.

4. Samples taken as required by this permit shall be analyzed in accordance with 1VAC30-45, Certification for Noncommercial Environmental Laboratories, or 1VAC30-46, Accreditation for Commercial Environmental Laboratories.

B. Records.

1. Records of monitoring information shall include:

a. The date, exact place, and time of sampling or measurements;

b. The individuals who performed the sampling or measurements;

c. The dates and times analyses were performed;

d. The individuals who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

2. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the registration statement for this permit, for a period of at least three years from the date of the sample, measurement, report or request for coverage. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the [~~board~~ department].

C. Reporting monitoring results.

1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.

2. Monitoring results shall be reported on a DMR or on forms provided, approved or specified by the department. Following notification from the department of the start date for the required electronic submission of monitoring reports, as provided for in 9VAC25-31-1020, such forms and reports submitted after that date shall be electronically submitted to the department in compliance with this section and 9VAC25-31-1020. There shall be at least a three-month notice provided between the notification from the department and the date after which such forms and reports must be submitted electronically.

3. If the permittee monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the department.

4. Calculations for all limitations that require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.

D. Duty to provide information. The permittee shall furnish to the department, within a reasonable time, any information that the [~~board~~ department] may request to determine whether cause exists for ~~modifying, revoking and reissuing, or~~ terminating this permit or to determine compliance with this permit. The [~~board~~ department] may require the permittee to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from the permittee's discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the State Water Control Law. The permittee shall also furnish to the department upon request, copies of records required to be kept by this permit.

E. Compliance schedule reports. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

F. Unauthorized discharges. Except in compliance with this permit, or another permit issued by the [~~board~~ department], it shall be unlawful for any person to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or

2. Otherwise alter the physical, chemical, or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses.

G. Reports of unauthorized discharges. Any permittee that discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters in violation of Part II F, or that discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of Part II F, shall notify the department of the discharge immediately (see Part II I 3) upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department, within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;

2. The cause of the discharge;

3. The date on which the discharge occurred;

4. The length of time that the discharge continued;

5. The volume of the discharge;

6. If the discharge is continuing, how long it is expected to continue;

7. If the discharge is continuing, what the expected total volume of the discharge will be; and

8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by this permit.

Discharges reportable to the department under the immediate reporting requirements of other regulations are exempted from this requirement.

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify (see Part II I 3), in no case later than 24 hours, the department ~~by telephone~~ after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse effects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with Part II I 1 b. Unusual and extraordinary discharges include any discharge resulting from:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;

2. Breakdown of processing or accessory equipment;

3. Failure or taking out of service some or all of the treatment works; and

4. Flooding or other acts of nature.

I. Reports of noncompliance.

1. The permittee shall report any noncompliance that may adversely affect state waters or may endanger public health.

a. An oral report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information that shall be reported within 24 hours under this subsection:

(1) Any unanticipated bypass; and

(2) Any upset that causes a discharge to surface waters.

b. A written report shall be submitted within five days and shall contain:

(1) A description of the noncompliance and its cause;

(2) The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and

(3) Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The [~~board~~ department] may waive the written report on a case-by-case basis for reports of noncompliance under Part II I if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

2. The permittee shall report all instances of noncompliance not reported under Parts II I 1, in writing, at the time the next monitoring reports are submitted. The reports shall contain the information listed in Part II I 1 b.

~~NOTE:~~ 3. The immediate (within 24 hours) reports required in Parts II G, H and I ~~may~~ shall be made to the department's regional office. Reports may be made by telephone, FAX, or online at ~~http://www.deq.virginia.gov/Programs/PollutionResponsePreparedness/MakingaReport.aspx~~ https://www.deq.virginia.gov/get-involved/pollution-response (online reporting preferred). For reports outside normal working hours, ~~a message may be left and this shall fulfill the immediate reporting requirement~~ the online portal shall be used. For emergencies, call the Virginia Department of Emergency ~~Services maintains a 24-hour telephone service~~ Management's Emergency Operations Center (24-hours) at 1-800-468-8892.

~~3.~~ 4. Where the permittee becomes aware that it failed to submit any relevant facts in a permit registration statement, or submitted incorrect information in a permit registration statement or in any report to the department, it shall promptly submit such facts or information.

J. Notice of planned changes.

1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

a. The permittee plans alteration or addition to any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

(1) After promulgation of standards of performance under § 306 of the Clean Water Act that are applicable to such source; or

(2) After proposal of standards of performance in accordance with § 306 of the Clean Water Act that are applicable to such source, but only if the standards are promulgated in accordance with § 306 within 120 days of their proposal;

b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations nor to notification requirements under Part I B 6; or

c. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit registration process or not reported pursuant to an approved land application plan.

2. The permittee shall give advance notice to the department of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.

K. Signatory requirements.

1. Registration statement. All registration statements shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit registration requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a public agency includes (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

2. Reports and other information. All reports required by permits, and other information requested by the [~~board~~ department] shall be signed by a person described in Part II K 1, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described in Part II K 1;

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and

c. The written authorization is submitted to the department.

3. Changes to authorization. If an authorization under Part II K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part II K 2 shall be submitted to the department prior to or together with any reports, or information to be signed by an authorized representative.

4. Certification. Any person signing a document under Part II K 1 or 2 shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

L. Duty to comply. The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the State Water Control Law and the Clean Water Act, except that noncompliance with certain provisions of this permit may constitute a violation of the State Water Control Law but not the Clean Water Act. Permit noncompliance is grounds for enforcement action, for permit coverage termination, or for denial of permit coverage renewal.

The permittee shall comply with effluent standards or prohibitions established under § 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if this permit has not yet been modified to incorporate the requirement.

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall submit a new registration statement at least 60 days before the expiration date of the existing permit, unless permission for a later date has been granted by the [~~board~~ department]. The [~~board~~ department] shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit.

N. Effect of a permit. This permit does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or invasion of personal rights, or any infringement of federal, state or local law or regulations.

O. State law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by § 510 of the Clean Water Act. Except as provided in permit conditions on "bypassing" (Part II U), and "upset" (Part II V) nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

P. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

Q. Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems that are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

R. Disposal of solids or sludges. Solids, sludges, or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering state waters.

S. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.

T. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

U. Bypass.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Part II U 2 and U 3.

2. Notice.

a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, prior notice shall be submitted, if possible at least 10 days before the date of the bypass.

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Part II I.

3. Prohibition of bypass.

a. Bypass is prohibited, and the [~~board~~ department] may take enforcement action against a permittee for bypass, unless:

(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee submitted notices as required under Part II U 2.

b. The [~~board~~ department] may approve an anticipated bypass, after considering its adverse effects if the [~~board~~ department] determines that it will meet the three conditions listed in Part II U 3 a.

V. Upset.

1. An upset constitutes an affirmative defense to an action brought for noncompliance with technology-based permit effluent limitations if the requirements of Part II V 2 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.

2. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

a. An upset occurred and that the permittee can identify the causes of the upset;

b. The permitted facility was at the time being properly operated;

c. The permittee submitted notice of the upset as required in Part II I; and

d. The permittee complied with any remedial measures required under Part II S.

3. In any enforcement preceding the permittee seeking to establish the occurrence of an upset has the burden of proof.

W. Inspection and entry. The permittee shall allow the director, or an authorized representative, including an authorized contractor acting as a representative of the administrator, upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act and the State Water Control Law, any substances or parameters at any location.

For purposes of this subsection, the time for inspection shall be deemed reasonable during regular business hours or whenever the facility is discharging. Nothing contained in this general permit shall make an inspection unreasonable during an emergency.

X. Permit actions. Permit coverages may be terminated for cause. The filing of a request by the permittee for a permit termination or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

Y. Transfer of permit coverage.

1. Permit coverage is not transferable to any person except after notice to the department.

2. Coverage under this permit may be automatically transferred to a new permittee if:

~~1.~~ a. The current permittee notifies the department within 30 days of the transfer of the title to the facility or property unless permission for a later date has been granted by the [~~board~~ department];

~~2.~~ b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

~~3.~~ c. The [~~board~~ department] does not notify the existing permittee and the proposed new permittee of its intent to deny the new permittee coverage under the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part II Y 2.

Z. Severability. The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

VA.R. Doc. No. R21-6872; Filed December 21, 2022, 1:03 p.m.

TITLE 12. HEALTH

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Final Regulation

Title of Regulation: **12VAC35-46. Regulations for Children's Residential Facilities (amending 12VAC35-46-10; adding 12VAC35-46-1150 through 12VAC35-46-1250).**

Statutory Authority: §§ 37.2-302 and 37.2-408 of the Code of Virginia.

Effective Date: February 17, 2023.

Agency Contact: Ruth Anne Walker, Director of Regulatory Affairs, Department of Behavioral Health and Developmental Services, Jefferson Building, 1220 Bank Street, 4th Floor, Richmond, VA 23219, telephone (804) 225-2252, FAX (804) 371-4609, TDD (804) 371-8977, or email ruthanne.walker@dbhds.virginia.gov.

Summary:

Pursuant to Item 318 of Chapter 1289 of the 2020 Acts of Assembly (Appropriation Act of 2020), the amendments align Virginia children's residential facilities licensing regulations with the American Society of Addiction Medicine (ASAM) Levels of Care Criteria or an equivalent set of criteria to ensure the provision of outcome-oriented and strengths-based care in the treatment of addiction to ensure individualized, clinically driven, participant-directed, and outcome-informed treatment. The regulatory action provides the necessary definitions for the newly aligned services to be provided and creates staff, program admission, discharge, and co-occurring enhanced program criteria for ASAM levels of care 3.5 and 3.1. Clarifying changes have been made to the proposed regulation

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

12VAC35-46-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise.

"Allegation" means an accusation that a facility is operating without a license or receiving public funds for services it is not certified to provide.

"Allied health professional" means a professional who is involved with the delivery of health or related services pertaining to the identification, evaluation, and prevention of diseases and disorders, such as a certified substance abuse counselor, certified substance abuse counseling assistant, peer recovery support specialist, certified nurse aide, or occupational therapist.

"Annual" means within 13 months of the previous event or occurrence.

"Applicable state regulation" means any regulation that the department determines applies to the facility. The term includes, but is not necessarily limited to, regulations promulgated by the Departments of Education, Health, Housing and Community Development, or other state agencies.

"Applicant" means the person, corporation, partnership, association, or public agency that has applied for a license.

"ASAM" means the American Society of Addiction Medicine.

"Aversive stimuli" means the physical forces (e.g., sound, electricity, heat, cold, light, water, or noise) or substances (e.g., hot pepper sauce or pepper spray) measurable in duration and intensity that when applied to a resident are noxious or painful to the resident but in no case shall the term "aversive stimuli" include striking or hitting the individual with any part of the body or with an implement or pinching, pulling, or shaking the resident.

"Behavior support" means those principles and methods employed by a provider to help a child achieve positive behavior and to address and correct a child's inappropriate behavior in a constructive and safe manner in accordance with written policies and procedures governing program expectations, treatment goals, child and staff safety and security, and the child's individualized service plan.

"Behavior support assessment" means identification of a resident's behavior triggers, successful intervention strategies, anger and anxiety management options for calming, techniques for self-management, and specific goals that address the targeted behaviors that lead to emergency safety interventions.

"Body cavity search" means any examination of a resident's rectal or vaginal cavities, except the performance of medical procedures by medical personnel.

"Brain injury" means any injury to the brain that occurs after birth, but before age 65, that is acquired through traumatic or nontraumatic insults. Nontraumatic insults may include~~, but are not limited to,~~ anoxia, hypoxia, aneurysm, toxic exposure, encephalopathy, surgical interventions, tumor, and stroke. Brain injury does not include hereditary, congenital, or degenerative brain disorders, or injuries induced by birth trauma.

"Brain Injury Waiver" means a Virginia Medicaid home and community-based waiver for persons with brain injury approved by the Centers for Medicare and Medicaid Services.

"Care" or "treatment" means a set of individually planned interventions, training, habilitation, or supports that help a resident obtain or maintain an optimal level of functioning, reduce the effects of disability or discomfort, or ameliorate symptoms, undesirable changes, or conditions specific to physical, mental, behavioral, or social functioning.

"Child" means any person legally defined as a child under state law. The term includes residents and other children coming into contact with the resident or facility (e.g., visitors). When the term is used, the requirement applies to every child at the facility regardless of whether the child has been admitted to the facility for care (e.g., ~~staff/child~~ staff to child ratios apply to all children present even though some may not be residents).

"Child-placing agency" means any person licensed to place children in foster homes or adoptive homes or a local board of social services authorized to place children in foster homes or adoptive homes.

"Children's residential facility" or "facility" means a publicly or privately operated facility, other than a private family home, where 24-hour per day care is provided to children separated from their legal guardians and is required to be licensed or certified by the Code of Virginia except:

1. Any facility licensed by the Department of Social Services as a child-caring institution as of January 1, 1987, and that receives public funds; and

2. Acute-care private psychiatric hospitals serving children that are licensed by the Department of Behavioral Health and Developmental Services under the Rules and Regulations for ~~the~~ Licensing ~~of~~ Providers ~~of Mental Health, Mental Retardation and Substance Abuse, the Individual and Family Developmental Disabilities Support Waiver, and Residential Brain Injury~~ by the Department of Behavioral Health and Developmental Services, 12VAC35-105.

"Clinically managed, low-intensity residential care" [or "Level of care 3.1"] means providing an ongoing therapeutic environment for children requiring some structured support in which treatment is directed toward applying recovery skills; preventing relapse; improving emotional functioning; promoting personal responsibility; reintegrating the child into work, education, and family environments; and strengthening adaptive skills that may not have been achieved or have been diminished during the child's active addiction. A clinically managed, low-intensity residential care is also designed for the child suffering from chronic, long-term alcoholism or drug addiction and affords an extended period of time to establish sound recovery and a solid support system.

"Clinically managed, medium-intensity residential care" [or "Level of care 3.5"] means a substance use treatment program that offers 24-hour supportive treatment of children with significant psychological and social problems by credentialed addiction treatment professionals in an interdisciplinary treatment approach. The children served by clinically managed, medium-intensity residential care are children who are not sufficiently stable to benefit from outpatient treatment regardless of intensity of service.

"Commissioner" means the Commissioner of the Department of Behavioral Health and Developmental Services or his authorized agent.

"Complaint" means an accusation against a licensed facility regarding an alleged violation of regulations or law.

"Contraband" means any item prohibited by law or by the rules and regulations of the department, or any item that conflicts with the program or safety and security of the facility or individual residents.

"Corporal punishment" means punishment administered through the intentional inflicting of pain and discomfort to the

body through actions such as, but not limited to (i) striking or hitting with any part of the body or with an implement; or (ii) any similar action that normally inflicts pain or discomfort.

"Counseling" means certain formal treatment interventions such as individual, family, and group modalities [~~,~~] that provide for support and problem solving. Such interventions take place between provider staff and resident families or groups and are aimed at enhancing appropriate psychosocial functioning or personal sense of well-being.

"Corrective action plan" means the provider's pledged corrective action in response to cited areas of noncompliance documented by the department. A corrective action plan must be completed within a specified time.

"Crisis" means any acute emotional disturbance in which a resident presents an immediate danger to self or others or is at risk of serious mental or physical health deterioration caused by acute mental distress, behavioral or situational factors, or acute substance abuse related problems.

"Crisis intervention" means those activities aimed at the rapid management of a crisis.

"Day" means calendar day unless the context clearly indicates otherwise.

"Department" or "DBHDS" means the Department of Behavioral Health and Developmental Services ~~(DBHDS)~~.

"Developmental disability" means a severe, chronic disability of an individual that (i) is attributable to a mental or physical impairment or a combination of mental and physical impairments other than a sole diagnosis of mental illness; (ii) is manifested before the individual reaches 22 years of age; (iii) is likely to continue indefinitely; (iv) results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and (v) reflects the individual's need for a combination and sequence of special interdisciplinary or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated. An individual from birth to nine years of age, inclusive, who has a substantial developmental delay or specific congenital or acquired condition may be considered to have a developmental disability without meeting three or more of the criteria described in clauses (i) through (v) if the individual without services and supports has a high probability of meeting those criteria later in life.

"Diagnostic and Statistical Manual of Mental Disorders" or "DSM" means the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition, DSM-5, of the American Psychiatric Association.

"DOE" means the Department of Education.

"Emergency" means a sudden, generally unexpected occurrence or set of circumstances demanding immediate action. Emergency does not include regularly scheduled time off for permanent staff or other situations that should reasonably be anticipated.

"Emergency admission" means the sudden, unplanned, unexpected admittance of a child who needs immediate care or a court-ordered placement.

"Goal" means expected results or conditions that usually involve a long period of time and that are written in behavioral terms in a statement of relatively broad scope. Goals provide guidance in establishing specific short-term objectives directed toward the attainment of the goal.

"Good character and reputation" means findings have been established and knowledgeable and objective people agree that the individual maintains business or professional, family, and community relationships that are characterized by honesty, fairness, truthfulness, and dependability, and has a history or pattern of behavior that demonstrates that the individual is suitable and able to care for, supervise, and protect children. Relatives by blood or marriage, and persons who are not knowledgeable of the individual, such as recent acquaintances, shall not be considered objective references.

"Group home" means a children's residential facility that is a community-based, homelike single dwelling, or its acceptable equivalent, other than the private home of the operator, and serves up to 12.

"Health record" means the file maintained by the provider that contains personal health information.

"Human research" means any systematic investigation including research development, testing, and evaluation, utilizing human subjects, that is designed to develop or contribute to generalized knowledge. Human research shall not include research exempt from federal research regulations pursuant to 45 CFR 46.101(b).

"Immediately" means directly without delay.

"Independent living program" means a competency-based program that is specifically approved by the department to provide the opportunity for the residents to develop the skills necessary to live successfully on their own following completion of the program.

"Individualized service plan" means a written plan of action developed and modified at intervals to meet the needs of a specific resident. It specifies measurable short and long-term goals, objectives, strategies, and time frames for reaching the goals and the individuals responsible for carrying out the plan.

"Intellectual disability" means ~~mental retardation~~ a disability originating before 18 years of age, characterized concurrently by (i) significant subaverage intellectual functioning as demonstrated by performance on a standardized measure of

intellectual functioning administered in conformity with accepted professional practice that is at least two standard deviations below the mean and (ii) significant limitations in adaptive behavior as expressed in conceptual, social, and practical adaptive skills.

"Legal guardian" means the natural or adoptive parents or other person, agency, or institution that has legal custody of a child.

"License" means a document verifying approval to operate a children's residential facility and that indicates the status of the facility regarding compliance with applicable state regulations.

"Live-in staff" means staff who are required to be on duty for a period of 24 consecutive hours or more during each work week.

"Living unit" means the space in which a particular group of children in care of a residential facility reside. A living unit contains sleeping areas, bath and toilet facilities, and a living room or its equivalent for use by the residents of the unit. Depending upon its design, a building may contain one living unit or several separate living units.

"Mechanical restraint" means the use of a mechanical device that cannot be removed by the individual to restrict the freedom of movement or functioning of a limb or a portion of an individual's body when that behavior places him or others at imminent risk.

"Medication" means prescribed and over-the-counter drugs.

"Medication administration" means the direct application of medications by injection, inhalation, or ingestion or any other means to a resident by (i) persons legally permitted to administer medications; or (ii) the resident at the direction and in the presence of persons legally permitted to administer medications.

"Medication assisted treatment" or "MAT" means the use of U.S. Food and Drug Administration-approved medications in combination with counseling and behavioral therapies to provide treatment of substance use disorders.

"Medication error" means an error made in administering a medication to a resident including the following: (i) the wrong medication is given to the resident; (ii) the wrong resident is given the medication; (iii) the wrong dosage is given to a resident; (iv) medication is given to a resident at the wrong time or not at all; and (v) the proper method is not used to give the medication to the resident. A medication error does not include a resident's refusal of offered medication.

~~"Mental retardation" ("intellectual disability") means a disability originating before the age of 18 years characterized concurrently by (i) significantly subaverage intellectual functioning as demonstrated by performance on a standardized measure of intellectual functioning, administered in conformity with accepted professional practice, that is at least two standard deviations below the mean; and (ii) significant limitations in adaptive behavior as expressed as conceptual, social, and practical adaptive skills (§ 37.2-100 of the Code of Virginia). According to the American Association of Intellectual Disabilities (AAID) definition, these impairments should be assessed in the context of the individual's environment, considering cultural and linguistic diversity as well as differences in communication, and sensory motor and behavioral factors. Within an individual limitations often coexist with strengths. The purpose of describing limitations is to develop a profile of needed supports. With personalized supports over a sustained period, the functioning of an individual will improve. In some organizations the term "intellectual disability" is used instead of "mental retardation."~~

"Motivational enhancement" means a person-centered approach that is collaborative, employs strategies to strengthen motivation for change, increases engagement in substance use services, resolves ambivalence about changing substance use behaviors, and supports individuals to set goals to change their substance use.

"Neurobehavioral services" means the assessment, evaluation, and treatment of cognitive, perceptual, behavioral, and other impairments caused by brain injury, that affect an individual's ability to function successfully in the community.

"Objective" means expected short-term results or conditions that must be met in order to attain a goal. Objectives are stated in measurable, behavioral terms and have a specified time for achievement.

"On-duty" means that period of time during which a staff person is responsible for the supervision of one or more children.

~~"On-site"~~ "On-site" means services that are delivered by the provider and are an integrated part of the overall service delivery system.

"Parent" means a natural or adoptive parent or surrogate parent appointed pursuant to DOE's regulations governing special education programs for students with disabilities.~~"~~ "Parent" means either parent unless the facility has been provided documentation that there is a legally binding instrument, a state law, or court order governing such matters as divorce, separation, or custody, that provides to the contrary.

"Pat down" means a thorough external body search of a clothed resident.

"Personal health information" means oral, written, or otherwise recorded information that is created or received by an entity relating to either an individual's physical or mental health or the provision of or payment for health care to an individual.

"Placement" means an activity by any person that provides assistance to a parent or legal guardian in locating and effecting

the movement of a child to a foster home, adoptive home, or children's residential facility.

"Premises" means the tracts of land on which any part of a residential facility for children is located and any buildings on such tracts of land.

"Provider" means any person, entity, or organization, excluding an agency of the federal government by whatever name or designation, that delivers (i) residential services to children with mental illness, ~~mental retardation (intellectual disability)~~ developmental disability, or substance abuse; or (ii) residential services for persons with brain injury.

"Record" means up-to-date written or automated information relating to one resident. This information includes social data, agreements, all correspondence relating to the care of the resident, service plans with periodic revisions, aftercare plans and discharge summary, and any other data related to the resident.

"Resident" means a person admitted to a children's residential facility for supervision, care, training, or treatment on a 24-hour per day basis.

"Residential treatment program" means 24-hour, supervised, medically necessary, out-of-home programs designed to provide necessary support and address mental health, behavioral, substance abuse, cognitive, or training needs of a child or adolescent in order to prevent or minimize the need for more intensive inpatient treatment. Services include, but shall not be limited to, assessment and evaluation, medical treatment (including medication), individual and group counseling, neurobehavioral services, and family therapy necessary to treat the child. The service provides active treatment or training beginning at admission related to the resident's principle diagnosis and admitting symptoms. These services do not include interventions and activities designed only to meet the supportive nonmental health special needs including~~, but not limited to,~~ personal care, habilitation, or academic educational needs of the resident.

"Respite care facility" means a facility that is specifically approved to provide short-term, periodic residential care to children accepted into its program in order to give the parents or legal guardians temporary relief from responsibility for their direct care.

"Rest day" means a period of not less than 24 consecutive hours during which a staff person has no responsibility to perform duties related to the facility.

"Restraint" means the use of a mechanical device, medication, physical intervention, or hands-on hold to prevent an individual from moving his body to engage in a behavior that places him or others at imminent risk. There are three kinds of restraints:

1. Mechanical restraint means the use of a mechanical device that cannot be removed by the individual to restrict the freedom of movement or functioning of a limb or a portion of an individual's body when that behavior places him or others at imminent risk.

2. Pharmacological restraint means the use of a medication that is administered involuntarily for the emergency control of an individual's behavior when that individual's behavior places him or others at imminent risk and the administered medication is not a standard treatment for the individual's medical or psychiatric condition.

3. Physical restraint, also referred to as manual hold, means the use of a physical intervention or hands-on hold to prevent an individual from moving his body when that individual's behavior places him or others at imminent risk.

"Routine admission" means the admittance of a child following evaluation of an application for admission and execution of a written placement agreement.

"Rules of conduct" means a listing of a facility's rules or regulations that is maintained to inform residents and others about behaviors that are not permitted and the consequences applied when the behaviors occur.

"Sanitizing agent" means any substance approved by the Environmental Protection Agency to destroy bacteria.

"Seclusion" means the involuntary placement of an individual alone in an area secured by a door that is locked or held shut by a staff person by physically blocking the door, or by any other physical or verbal means so that the individual cannot leave it.

"Self-admission" means the admittance of a child who seeks admission to a temporary care facility as permitted by Virginia statutory law without completing the requirements for "routine admission."

"Serious incident" means:

1. Any accident or injury requiring medical attention by a physician;

2. Any illness that requires hospitalization;

3. Any overnight absence from the facility without permission;

4. Any runaway; or

5. Any event that affects, or potentially may affect, the health, safety, or welfare of any resident being served by the provider.

"Serious injury" means any injury resulting in bodily hurt, damage, harm, or loss that requires medical attention by a licensed physician.

"Service" ~~or "services"~~ means planned individualized interventions intended to reduce or ameliorate mental illness, ~~mental retardation (intellectual disability)~~ developmental disability, or substance abuse through care, treatment, training,

habilitation, or other supports that are delivered by a provider to individuals with mental illness, ~~mental retardation (intellectual disability)~~ developmental disability, or substance abuse. Services include residential services, including those for persons with brain injury.

"Severe weather" means extreme environment or climate conditions that pose a threat to the health, safety, or welfare of residents.

"Social skills training" means activities aimed at developing and maintaining interpersonal skills.

"Strategies" means a series of steps and methods used to meet goals and objectives.

"Strip search" means a visual inspection of the body of a resident when that resident's outer clothing or total clothing is removed and an inspection of the removed clothing. Strip searches are conducted for the detection of contraband.

"Structured program of care" means a comprehensive planned daily routine including appropriate supervision that meets the needs of each resident both individually and as a group.

"Student/intern" means an individual who simultaneously is affiliated with an educational institution and a residential facility. Every student/intern who is not an employee is either a volunteer or contractual service provider depending upon the relationship among the student/intern, educational institution, and facility.

"Substantial compliance" means that while there may be noncompliance with one or more regulations that represents minimal risk, compliance clearly and obviously exists with most of the regulations as a whole.

"Systemic deficiency" means violations documented by the department that demonstrate defects in the overall operation of the facility or one or more of its components.

"Target population" means individuals with a similar, specified characteristic or disability.

"Temporary contract worker" means an individual who is not a direct salaried employee of the provider but is employed by a third party and is not a consistently scheduled staff member.

"Therapy" means provision of direct diagnostic, preventive, and treatment services where functioning is threatened or affected by social and psychological stress or health impairment.

"Time out" means the involuntary removal of a resident by a staff person from a source of reinforcement to a different open location for a specified period of time or until the problem behavior has subsided to discontinue or reduce the frequency of problematic behavior.

"Treatment" means individually planned, sound, and therapeutic interventions that are intended to improve or maintain functioning of an individual receiving services in those areas that show impairment as the result of mental disability, substance addiction, or physical impairment. In order to be considered sound and therapeutic, the treatment must conform to current acceptable professional practice.

"Variance" means temporary or permanent waiver of compliance with a regulation or portion of a regulation, or permission to meet the intent of the regulation by a method other than that specified in the regulation, when the department, in its sole discretion, determines (i) enforcement will create an undue hardship and (ii) resident care will not be adversely affected.

"Volunteers" means any individual or group who of their own free will, and without any financial gain, provides goods and services to the program without compensation.

12VAC35-46-1150. (Reserved).

12VAC35-46-1160. Clinically managed, medium-intensity residential services [Level of care 3.5] staff criteria.

A clinically managed, medium-intensity residential [~~care~~ services] program shall meet the following staff requirements. The program shall:

1. Ensure the availability of emergency consultation with a licensed physician by telephone or in person in case of emergency related to an individual's substance use disorder, available 24 hours a day, seven days a week. The program shall also provide [allied health professional] staff 24 hours a day;

2. Provide licensed clinicians who are able to obtain and interpret information regarding the signs and symptoms of intoxication and withdrawal, as well as the appropriate monitoring and treatment of those conditions and how to facilitate entry into ongoing care;

3. Provide appropriately trained staff who are competent to implement physician-approved protocols for the child's or adolescent's observation, supervision, and treatment, including over the counter medications for symptomatic relief, determination for the appropriate level of care, and facilitation of the child's or adolescent's transition to continuing care;

4. Provide staff training that shall include at a minimum the requirements within 12VAC35-46-310, and all staff administering over the counter medications shall complete the training program approved by the Board of Nursing and required by subsection L of § 54.1-3408 of the Code of Virginia;

5. Provide access, as needed, to medical evaluation and consultation, which shall be available 24 hours a day to monitor the safety and outcome of withdrawal management in this setting, in accordance with the provider's written criteria for admission and discharge as required by 12VAC35-46-640 and 12VAC35-46-765; and

6. Ensure all clinical staff are qualified by training and experience and appropriately licensed, certified, or registered by the appropriate health regulatory board to serve individuals admitted to the service.

12VAC35-46-1170. Clinically managed, medium-intensity residential services [Level of care 3.5] program criteria.

A clinically managed, medium-intensity residential [~~care~~ services] program shall meet the following programmatic requirements. The program shall:

1. Provide daily clinical services, including a range of cognitive, behavioral, and other therapies in individual or group therapy, programming, and psychoeducation as deemed appropriate by a licensed professional and included in an assessment and treatment plan;

2. Provide counseling and clinical interventions to teach a child or adolescent the skills needed for daily productive activity, prosocial behavior, and reintegration into family and community;

3. Provide motivational enhancement and engagement strategies appropriate to the child's or adolescent's stage of readiness to change and level of comprehension;

4. Have direct affiliations with other easily accessible levels of care or coordinate through referral to more or less intensive levels of care and other services;

5. Provide family and caregiver treatment services as deemed appropriate by a licensed professional and included in an assessment and treatment plan;

6. Provide educational, vocational, and informational programming adaptive to individual needs;

7. Utilize random drug screening to monitor progress and reinforce treatment gains as appropriate to an individual treatment plan;

8. Ensure and document that the length of stay is determined by the child's or adolescent's condition and functioning;

9. Make medication assisted treatment (MAT) available for all individuals [with opioid use disorder or alcohol use disorder]. MAT may be provided by facility staff or coordinated through alternative resources;

10. Provide educational services in accordance with state law to maintain the educational and intellectual development of the child or adolescent while they are admitted to the service. When indicated, additional educational opportunities shall be provided to remedy deficits in the educational level of children or adolescents who have fallen behind because of their involvement with alcohol and other drugs;

11. Ensure that all children and adolescents served by the residential service have access to the substance use treatment program; and

12. Provide daily clinical services to assess and address the child's or adolescent's withdrawal status and service needs. This may include nursing or medical monitoring, use of medications to alleviate symptoms, or individual or group therapy or programming specific to withdrawal and withdrawal support.

12VAC35-46-1180. Clinically managed, medium-intensity residential services [Level of care 3.5] admission criteria.

A. A clinically managed, medium-intensity residential [~~care~~ services] program provides treatment for children who have impaired functioning across a broad range of psychosocial domains, including disruptive behaviors, delinquency and juvenile justice involvement, educational difficulties, family conflicts and chaotic home situations, developmental immaturity, and psychological problems.

B. Before a clinically managed, medium-intensity residential service program may admit a child or adolescent, the child or adolescent shall meet the criteria for admission as defined by the provider's policies. The provider's policy regarding admission shall at a minimum require the child or adolescent to:

1. Meet diagnostic criteria for a substance use disorder or addictive disorder of moderate to high severity as defined by the DSM; and

2. Meet the admission criteria of Level 3.5 of ASAM, including the specific criteria for adolescent populations.

12VAC35-46-1190. Clinically managed, medium-intensity residential services [Level of care 3.5] discharge criteria.

Before a clinically managed, medium-intensity residential [~~service~~ services] program may discharge or transfer a child or adolescent, the child or adolescent shall meet the criteria for discharge or transfer as defined by the provider's policies, which shall include provisions for the discharge or transfer of children or adolescents who have:

1. Achieved the goals of the treatment services and no longer require ASAM 3.5 level of care;

2. Been unable to achieve the goals of the child's or adolescent's treatment but could achieve the child's or adolescent's goals with a different type of treatment; or

3. Achieved the child's or adolescent's original treatment goals but have developed new treatment challenges that can only be adequately addressed in a different type of treatment.

12VAC35-46-1200. Clinically managed, medium-intensity residential services [Level of care 3.5] co-occurring enhanced programs.

A. Clinically managed, medium-intensity residential services co-occurring enhanced programs shall offer psychiatric services, medication evaluation, and laboratory services. Such

services shall be available by telephone within eight hours and onsite or closely coordinated offsite within 24 hours.

B. Clinically managed, medium-intensity residential services co-occurring enhanced programs shall be staffed by appropriately credentialed mental health professionals, including addiction psychiatrists, who are able to assess and treat co-occurring mental disorders and who have specialized training in behavior management techniques. All clinical staff shall be qualified by training and experience and appropriately licensed, certified, or registered by the appropriate health regulatory board to serve individuals admitted to the service.

C. Clinically managed, medium-intensity residential services co-occurring enhanced programs shall offer planned clinical activities designed to stabilize the child's or adolescent's mental health problems and psychiatric symptoms and to maintain such stabilization, including medication education and management and motivational and engagement strategies. Goals of therapy shall apply to both the substance use disorder and any co-occurring mental disorder.

12VAC35-46-1210. Clinically managed, low-intensity residential services [Level of care 3.1] staff criteria.

A clinically managed, low-intensity residential services program shall meet the following staff requirements. The program shall:

1. Offer telephone or in-person consultation with a physician and emergency services, available 24 hours a day, seven days a week by the clinically managed, low-intensity residential services provider. The program shall also provide allied health professional staff present onsite 24 hours a day;

2. Have clinical staff, with the credentials described in subdivision 3 of this section, who are knowledgeable about the biological and psychosocial dimensions of substance use disorder and their treatment and are able to identify the signs and symptoms of acute psychiatric conditions;

3. Have a team comprised of appropriately trained and credentialed medical, addiction, and mental health professionals; [~~and~~]

4. Have staff that shall be knowledgeable about child or adolescent development and experienced in engaging and working with children or adolescents [~~.~~; and]

5. Ensure all clinical staff are qualified by training and experience and appropriately licensed, certified, or registered by the appropriate health regulatory board to serve individuals admitted to the service.

12VAC35-46-1220. Clinically managed, low-intensity residential services [Level of care 3.1] program criteria.

A clinically managed, low-intensity residential services program shall meet the following programmatic requirements. The program shall:

1. Offer a minimum of five hours a week of [planned clinical program activities that are] professionally directed [~~treatment,~~] in addition to other treatment services offered to children or adolescents [~~, such as partial hospitalization or intensive outpatient treatment~~]. Services shall be designed to stabilize the child's or adolescent's substance use disorder, improve the child's or adolescent's ability to structure, and organize the tasks of daily living and recovery;

2. Collaborate with care providers to develop an individual treatment plan for each child or adolescent with time-specific goals and objectives;

3. Provide counseling and clinical monitoring to support successful initial involvement in regular, productive daily activity;

4. Provide case management services;

5. Provide motivational interventions appropriate to the child's or adolescent's stage of readiness to change and level of comprehension;

6. Maintain direct affiliations with other easily accessible levels of care or coordinate through referral to more or less intensive levels of care and other services. Include the ability to arrange for needed procedures as appropriate to the severity and urgency of the child's or adolescent's condition;

7. Provide family and caregiver treatment and peer recovery support services as deemed appropriate by a licensed professional and included in an assessment and treatment plan;

8. Provide addiction pharmacotherapy and the ability to arrange for pharmacotherapy for psychiatric medications;

9. Utilize random drug screening to monitor progress and reinforce treatment gains;

10. Ensure that all children and adolescents served by the residential service have access to the substance use treatment program; and

11. Make MAT available for all children [or adolescents with opioid use disorder or alcohol use disorder]. MAT may be provided by facility staff or coordinated through alternative resources.

12VAC35-46-1230. Clinically managed, low-intensity residential services [Level of care 3.1] admission criteria.

Before a clinically managed, low-intensity residential [~~service~~ services] program may admit a child or adolescent, the child or adolescent shall meet the criteria for admission as defined by the provider's policies. The provider's policy regarding admission shall at a minimum require the child or adolescent to:

1. Meet diagnostic criteria for a substance use disorder or addictive disorder of moderate to high severity as defined by the DSM; and

2. Meet the admission criteria of Level 3.1 of ASAM, including the specific criteria of adolescent populations.

12VAC35-46-1240. Clinically managed, low-intensity residential services [Level of care 3.1] discharge criteria.

Before a clinically managed, low-intensity residential [~~service~~ services] program may discharge or transfer a child or adolescent, the child or adolescent shall meet the criteria for discharge or transfer as defined by the provider's policies, which shall include provisions for the discharge or transfer of children or adolescents who have:

1. Achieved the goals of the treatment services and no longer require ASAM 3.1 level of care;

2. Been unable to achieve the goals of the child's or adolescent's treatment but could achieve the child's or adolescent's goals with a different type of treatment; or

3. Achieved the child's or adolescent's original treatment goals but have developed new treatment challenges that can only be adequately addressed in a different type of treatment.

12VAC35-46-1250. Clinically managed, low-intensity residential services [Level of care 3.1] co-occurring enhanced programs.

A. Clinically managed, low-intensity residential services co-occurring enhanced programs shall offer appropriate psychiatric services, including medication evaluation and laboratory services. Such services shall be provided onsite or closely coordinated offsite, as appropriate to the severity and urgency of the child's or adolescent's mental condition.

B. Clinically managed, low-intensity residential services co-occurring enhanced programs shall be staffed by appropriately credentialed mental health professionals who are able to assess and treat co-occurring disorders with the capacity to involve addiction-trained psychiatrists.

C. Clinically managed, low-intensity residential services co-occurring enhanced programs shall offer planned clinical activities that are designed to stabilize the child's or adolescent's mental health problems and psychiatric symptoms and to maintain such stabilization, including medication education and management and motivational and engagement strategies. Goals of therapy shall apply to both the substance use disorder and any co-occurring mental disorder.

DOCUMENTS INCORPORATED BY REFERENCE (12VAC35-46)

Report of Tuberculosis Screening, Virginia Department of Health, http://www.vdh.virginia.gov/epidemiology/DiseasePrevention/Programs/Tuberculosis/Forms/documents/Form2.pdf.

U.S. Department of Health and Human Services and U.S. Department of Agriculture Dietary Guidelines for Americans, 6th Edition, January 2005, U.S. Government Printing Office, Washington, D.C.

The ASAM: Treatment for Addictive, Substance-Related and [~~Co-Occuring~~ Co-Occurring] Conditions, Third Edition, American Society of Addiction Medicine, 11400 Rockville Pike, Suite 200, Rockville, MD 20852, asam.org.

Diagnostic and Statistical Manual of Mental Disorders, 5th Edition. DSM-5, American Psychiatric Association, 800 Maine Avenue, SW, Suite 900 Washington, DC 20024, psychiatry.org

VA.R. Doc. No. R21-6440; Filed December 21, 2022, 3:23 p.m.

Final Regulation

Title of Regulation: **12VAC35-105. Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services (amending 12VAC35-105-20, 12VAC35-105-30, 12VAC35-105-1360 through 12VAC35-105-1390, 12VAC35-105-1410).**

Statutory Authority: §§ 37.2-302 and 37.2-400 of the Code of Virginia.

Effective Date: February 17, 2023.

Agency Contact: Ruth Anne Walker, Director of Regulatory Affairs, Department of Behavioral Health and Developmental Services, Jefferson Building, 1220 Bank Street, 4th Floor, Richmond, VA 23219, telephone (804) 225-2252, FAX (804) 371-4609, TDD (804) 371-8977, or email ruthanne.walker@dbhds.virginia.gov.

Summary:

Pursuant to Item 318 of Chapter 1289 of the 2020 Acts of Assembly (2020 Appropriation Act) and to align the department's licensing regulations with anticipated changes to Medicaid behavioral health regulations in Item 313 of Chapter 1289, the amendments remove provisions that would conflict with newly funded behavioral health services and establish new licensed services for those newly funded behavioral health services that cannot be nested under an existing department license, including substantive changes to the existing license requirements for program for assertive community treatment (PACT) services, which are inconsistent with the assertive community treatment (ACT) services that will be funded as part of Behavioral Health Enhancement.

The amendments include (i) the creation of a service definition and license for mental health intensive outpatient service; (ii) a revised definition of substance abuse intensive outpatient service; (iii) the creation of ACT as a newly licensed service in place of the previously licensed PACT service, which includes modification of the licensing requirements to align with the ACT service model and ensure that providers licensed to provide ACT services meet a basic level of fidelity to the ACT model; and (iv) the removal of the provisions of the regulations related to intensive community treatment as it will no longer be a licensed service.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

12VAC35-105-20. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Abuse" means any act or failure to act by an employee or other person responsible for the care of an individual in a facility or program operated, licensed, or funded by the department, excluding those operated by the Virginia Department of Corrections, that was performed or was failed to be performed knowingly, recklessly, or intentionally, and that caused or might have caused physical or psychological harm, injury, or death to an individual receiving care or treatment for mental illness, developmental disabilities, or substance abuse. Examples of abuse include acts such as:

1. Rape, sexual assault, or other criminal sexual behavior;

2. Assault or battery;

3. Use of language that demeans, threatens, intimidates, or humiliates the individual;

4. Misuse or misappropriation of the individual's assets, goods, or property;

5. Use of excessive force when placing an individual in physical or mechanical restraint;

6. Use of physical or mechanical restraints on an individual that is not in compliance with federal and state laws, regulations, and policies, professional accepted standards of practice, or his individualized services plan; or

7. Use of more restrictive or intensive services or denial of services to punish an individual or that is not consistent with his individualized services plan.

"Activities of daily living" or "ADLs" means personal care activities and includes bathing, dressing, transferring, toileting, grooming, hygiene, feeding, and eating. An individual's degree of independence in performing these activities is part of determining the appropriate level of care and services.

"Admission" means the process of acceptance into a service as defined by the provider's policies.

"Assertive community treatment service" or "ACT" means a self-contained interdisciplinary community-based team of medical, behavioral health, and rehabilitation professionals who use a team approach to meet the needs of an individual with severe and persistent mental illness. ACT teams:

1. Provide person-centered services addressing the breadth of an individual's needs, helping him achieve his personal goals;

2. Serve as the primary provider of all the services that an individual receiving ACT services needs;

3. Maintain a high frequency and intensity of community-based contacts;

4. Maintain a very low individual-to-staff ratio;

5. Offer varying levels of care for all individuals receiving ACT services and appropriately adjust service levels according to each individual's needs over time;

6. Assist individuals in advancing toward personal goals with a focus on enhancing community integration and regaining valued roles, such as worker, family member, resident, spouse, tenant, or friend;

7. Carry out planned assertive engagement techniques, including rapport-building strategies, facilitating meeting basic needs, and motivational interviewing techniques;

8. Monitor the individual's mental status and provide needed supports in a manner consistent with the individual's level of need and functioning;

9. Deliver all services according to a recovery-based philosophy of care; and

10. Promote self-determination, respect for the individual receiving ACT as an individual in such individual's own right, and engage peers in promoting recovery and regaining meaningful roles and relationships in the community.

"Authorized representative" means a person permitted by law or 12VAC35-115 to authorize the disclosure of information or consent to treatment and services or participation in human research.

"Behavior intervention" means those principles and methods employed by a provider to help an individual receiving services to achieve a positive outcome and to address challenging behavior in a constructive and safe manner. Behavior intervention principles and methods shall be employed in accordance with the individualized services plan and written policies and procedures governing service expectations, treatment goals, safety, and security.

"Behavioral treatment plan," "functional plan," or "behavioral support plan" means any set of documented procedures that are an integral part of the individualized services plan and are developed on the basis of a systematic data collection, such as a functional assessment, for the purpose of assisting individuals to achieve the following:

1. Improved behavioral functioning and effectiveness;

2. Alleviation of symptoms of psychopathology; or

3. Reduction of challenging behaviors.

"Brain injury" means any injury to the brain that occurs after birth~~, but before age 65,~~ that is acquired through traumatic or nontraumatic insults. Nontraumatic insults may include anoxia, hypoxia, aneurysm, toxic exposure, encephalopathy, surgical interventions, tumor, and stroke. Brain injury does not include hereditary, congenital, or degenerative brain disorders or injuries induced by birth trauma.

"Care," "treatment," or "support" means the individually planned therapeutic interventions that conform to current acceptable professional practice and that are intended to improve or maintain functioning of an individual receiving services delivered by a provider.

"Case management service" or "support coordination service" means services that can include assistance to individuals and their family members in accessing needed services that are responsive to the individual's needs. Case management services include identifying potential users of the service; assessing needs and planning services; linking the individual to services and supports; assisting the individual directly to locate, develop, or obtain needed services and resources; coordinating services with other providers; enhancing community integration; making collateral contacts; monitoring service delivery; discharge planning; and advocating for individuals in response to their changing needs. "Case management service" does not include assistance in which the only function is maintaining service waiting lists or periodically contacting or tracking individuals to determine potential service needs.

"Clinical experience" means providing direct services to individuals with mental illness or the provision of direct geriatric services or special education services. Experience may include supervised internships, practicums, and field experience.

"Commissioner" means the Commissioner of the Department of Behavioral Health and Developmental Services.

"Community gero-psychiatric residential services" means 24-hour care provided to individuals with mental illness, behavioral problems, and concomitant health problems who are usually age 65 or older in a geriatric setting that is less intensive than a psychiatric hospital but more intensive than a nursing home or group home. Services include assessment and individualized services planning by an interdisciplinary services team, intense supervision, psychiatric care, behavioral treatment planning and behavior interventions, nursing, and other health related services.

"Complaint" means an allegation of a violation of this chapter or a provider's policies and procedures related to this chapter.

"Co-occurring disorders" means the presence of more than one and often several of the following disorders that are identified independently of one another and are not simply a cluster of symptoms resulting from a single disorder: mental illness, a developmental disability, substance abuse (substance use disorders), or brain injury.

"Co-occurring services" means individually planned therapeutic treatment that addresses in an integrated concurrent manner the service needs of individuals who have co-occurring disorders.

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

"Correctional facility" means a facility operated under the management and control of the Virginia Department of Corrections.

"Crisis" means a deteriorating or unstable situation often developing suddenly or rapidly that produces acute, heightened, emotional, mental, physical, medical, or behavioral distress.

"Crisis stabilization" means direct, intensive nonresidential or residential direct care and treatment to nonhospitalized individuals experiencing an acute crisis that may jeopardize their current community living situation. Crisis stabilization is intended to avert hospitalization or rehospitalization; provide normative environments with a high assurance of safety and security for crisis intervention; stabilize individuals in crisis; and mobilize the resources of the community support system, family members, and others for ongoing rehabilitation and recovery.

"Day support service" means structured programs of training, assistance, and specialized supervision in the acquisition, retention, or improvement of self-help, socialization, and adaptive skills for adults with a developmental disability provided to groups or individuals in nonresidential community-based settings. Day support services may provide opportunities for peer interaction and community integration and are designed to enhance the following: self-care and hygiene, eating, toileting, task learning, community resource utilization, environmental and behavioral skills, social skills, medication management, prevocational skills, and transportation skills. The term "day support service" does not include services in which the primary function is to provide employment-related services, general educational services, or general recreational services.

"Department" means the Virginia Department of Behavioral Health and Developmental Services.

"Developmental disability" means a severe, chronic disability of an individual that (i) is attributable to a mental or physical impairment or a combination of mental and physical impairments other than a sole diagnosis of mental illness; (ii) is manifested before the individual reaches 22 years of age; (iii) is likely to continue indefinitely; (iv) results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and (v) reflects the individual's need for a combination and sequence of special interdisciplinary or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated. An individual from birth to nine years of age,

inclusive, who has a substantial developmental delay or specific congenital or acquired condition may be considered to have a developmental disability without meeting three or more of the criteria described in clauses (i) through (v) if the individual without services and supports has a high probability of meeting those criteria later in life.

"Developmental services" means planned, individualized, and person-centered services and supports provided to individuals with developmental disabilities for the purpose of enabling these individuals to increase their self-determination and independence, obtain employment, participate fully in all aspects of community life, advocate for themselves, and achieve their fullest potential to the greatest extent possible.

"Direct care position" means any position that includes responsibility for (i) treatment, case management, health, safety, development, or well-being of an individual receiving services or (ii) immediately supervising a person in a position with this responsibility.

"Discharge" means the process by which the individual's active involvement with a service is terminated by the provider, individual, or authorized representative.

"Discharge plan" means the written plan that establishes the criteria for an individual's discharge from a service and identifies and coordinates delivery of any services needed after discharge.

"Dispense" means to deliver a drug to an ultimate user by or pursuant to the lawful order of a practitioner, including the prescribing and administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery (§ 54.1-3400 et seq. of the Code of Virginia).

"Emergency service" means unscheduled and sometimes scheduled crisis intervention, stabilization, and referral assistance provided over the telephone or face-to-face, if indicated, available 24 hours a day and seven days per week. Emergency services also may include walk-ins, home visits, jail interventions, and preadmission screening activities associated with the judicial process.

"Group home or community residential service" means a congregate service providing 24-hour supervision in a community-based home having eight or fewer residents. Services include supervision, supports, counseling, and training in activities of daily living for individuals whose individualized services plan identifies the need for the specific types of services available in this setting.

"HCBS Waiver" means a Medicaid Home and Community Based Services Waiver.

"Home and noncenter based" means that a service is provided in the individual's home or other noncenter-based setting. This includes noncenter-based day support, supportive in-home, and intensive in-home services.

"Individual" or "individual receiving services" means a current direct recipient of public or private mental health, developmental, or substance abuse treatment, rehabilitation, or habilitation services and includes the terms "consumer," "patient," "resident," "recipient," or "client". When the term is used in this chapter, the requirement applies to every individual receiving licensed services from the provider.

"Individualized services plan" or "ISP" means a comprehensive and regularly updated written plan that describes the individual's needs, the measurable goals and objectives to address those needs, and strategies to reach the individual's goals. An ISP is person-centered, empowers the individual, and is designed to meet the needs and preferences of the individual. The ISP is developed through a partnership between the individual and the provider and includes an individual's treatment plan, habilitation plan, person-centered plan, or plan of care, which are all considered individualized service plans.

"Informed choice" means a decision made after considering options based on adequate and accurate information and knowledge. These options are developed through collaboration with the individual and his authorized representative, as applicable, and the provider with the intent of empowering the individual and his authorized representative to make decisions that will lead to positive service outcomes.

"Informed consent" means the voluntary written agreement of an individual, or that individual's authorized representative, to surgery, electroconvulsive treatment, use of psychotropic medications, or any other treatment or service that poses a risk of harm greater than that ordinarily encountered in daily life or for participation in human research. To be voluntary, informed consent must be given freely and without undue inducement; any element of force, fraud, deceit, or duress; or any form of constraint or coercion.

"Initial assessment" means an assessment conducted prior to or at admission to determine whether the individual meets the service's admission criteria; what the individual's immediate service, health, and safety needs are; and whether the provider has the capability and staffing to provide the needed services.

"Inpatient psychiatric service" means intensive 24-hour medical, nursing, and treatment services provided to individuals with mental illness or substance abuse (substance use disorders) in a hospital as defined in § 32.1-123 of the Code of Virginia or in a special unit of such a hospital.

"Instrumental activities of daily living" or "IADLs" means meal preparation, housekeeping, laundry, and managing money. A person's degree of independence in performing these activities is part of determining appropriate level of care and services.

"Intellectual disability" means a disability originating before 18 years of age, characterized concurrently by (i) significant subaverage intellectual functioning as demonstrated by

performance on a standardized measure of intellectual functioning administered in conformity with accepted professional practice that is at least two standard deviations below the mean and (ii) significant limitations in adaptive behavior as expressed in conceptual, social, and practical adaptive skills.

~~"Intensive community treatment service" or "ICT" means a self-contained interdisciplinary team of at least five full-time equivalent clinical staff, a program assistant, and a full-time psychiatrist that:~~

~~1. Assumes responsibility for directly providing needed treatment, rehabilitation, and support services to identified individuals with severe and persistent mental illness, especially those who have severe symptoms that are not effectively remedied by available treatments or who because of reasons related to their mental illness resist or avoid involvement with mental health services;~~

~~2. Minimally refers individuals to outside service providers;~~

~~3. Provides services on a long-term care basis with continuity of caregivers over time;~~

~~4. Delivers 75% or more of the services outside program offices; and~~

~~5. Emphasizes outreach, relationship building, and individualization of services.~~

"Intensive in-home service" means family preservation interventions for children and adolescents who have or are at-risk of serious emotional disturbance, including individuals who also have a diagnosis of developmental disability. Intensive in-home service is usually time-limited and is provided typically in the residence of an individual who is at risk of being moved to out-of-home placement or who is being transitioned back home from an out-of-home placement. The service includes 24-hour per day emergency response; crisis treatment; individual and family counseling; life, parenting, and communication skills; and case management and coordination with other services.

"Intermediate care facility/individuals with intellectual disability" or "ICF/IID" means a facility or distinct part of a facility certified by the Virginia Department of Health as meeting the federal certification regulations for an intermediate care facility for individuals with intellectual disability and persons with related conditions and that addresses the total needs of the residents, which include physical, intellectual, social, emotional, and habilitation, providing active treatment as defined in 42 CFR 435.1010 and 42 CFR 483.440.

"Investigation" means a detailed inquiry or systematic examination of the operations of a provider or its services regarding an alleged violation of regulations or law. An investigation may be undertaken as a result of a complaint, an incident report, or other information that comes to the attention of the department.

"Licensed mental health professional" or "LMHP" means a physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, licensed substance abuse treatment practitioner, licensed marriage and family therapist, certified psychiatric clinical nurse specialist, licensed behavior analyst, or licensed psychiatric/mental health nurse practitioner.

"Location" means a place where services are or could be provided.

"Medically managed withdrawal services" means detoxification services to eliminate or reduce the effects of alcohol or other drugs in the individual's body.

"Mandatory outpatient treatment order" means an order issued by a court pursuant to § 37.2-817 of the Code of Virginia.

"Medical detoxification" means a service provided in a hospital or other 24-hour care facility under the supervision of medical personnel using medication to systematically eliminate or reduce effects of alcohol or other drugs in the individual's body.

"Medical evaluation" means the process of assessing an individual's health status that includes a medical history and a physical examination of an individual conducted by a licensed medical practitioner operating within the scope of his license.

"Medication" means prescribed or over-the-counter drugs or both.

"Medication administration" means the direct application of medications by injection, inhalation, ingestion, or any other means to an individual receiving services by (i) persons legally permitted to administer medications or (ii) the individual at the direction and in the presence of persons legally permitted to administer medications.

"Medication assisted treatment (Opioid treatment service)" means an intervention strategy that combines outpatient treatment with the administering or dispensing of synthetic narcotics, such as methadone or buprenorphine (suboxone), approved by the federal Food and Drug Administration for the purpose of replacing the use of and reducing the craving for opioid substances, such as heroin or other narcotic drugs.

"Medication error" means an error in administering a medication to an individual and includes when any of the following occur: (i) the wrong medication is given to an individual, (ii) the wrong individual is given the medication, (iii) the wrong dosage is given to an individual, (iv) medication is given to an individual at the wrong time or not at all, or (v) the wrong method is used to give the medication to the individual.

"Medication storage" means any area where medications are maintained by the provider, including a locked cabinet, locked room, or locked box.

"Mental Health Community Support Service" or "MCHSS" means the provision of recovery-oriented services to individuals with long-term, severe mental illness. MHCSS includes skills training and assistance in accessing and effectively utilizing services and supports that are essential to meeting the needs identified in the individualized services plan and development of environmental supports necessary to sustain active community living as independently as possible. MHCSS may be provided in any setting in which the individual's needs can be addressed, skills training applied, and recovery experienced.

"Mental health intensive outpatient service" means a structured program of skilled treatment services focused on maintaining and improving functional abilities through a time-limited, interdisciplinary approach to treatment. This service is provided over a period of time for individuals requiring more intensive services than an outpatient service can provide and may include individual, family, or group counseling or psychotherapy; skill development and psychoeducational activities; certified peer support services; medication management; and psychological assessment or testing.

"Mental health outpatient service" means treatment provided to individuals on an hourly schedule, on an individual, group, or family basis, and usually in a clinic or similar facility or in another location. Mental health outpatient services may include diagnosis and evaluation, screening and intake, counseling, psychotherapy, behavior management, psychological testing and assessment, laboratory, and other ancillary services, medical services, and medication services. Mental health outpatient service specifically includes:

1. Mental health services operated by a community services board or a behavioral health authority established pursuant to Chapter 5 (§ 37.2-500 et seq.) or Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia;

2. Mental health services contracted by a community services board or a behavioral health authority established pursuant to Chapter 5 (§ 37.2-500 et seq.) or Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia; or

3. Mental health services that are owned, operated, or controlled by a corporation organized pursuant to the provisions of either Chapter 9 (§ 13.1-601 et seq.) or Chapter 10 (§ 13.1-801 et seq.) of Title 13.1 of the Code of Virginia.

"Mental health partial hospitalization service" means time-limited active treatment interventions that are more intensive than outpatient services, designed to stabilize and ameliorate acute symptoms, and serve as an alternative to inpatient hospitalization or to reduce the length of a hospital stay. Partial hospitalization is provided through a minimum of 20 hours per week of skilled treatment services focused on individuals who require intensive, high coordinated, structured, and interdisciplinary ambulatory treatment within a stable environment that is of greater intensity than intensive outpatient, but of lesser intensity than inpatient.

"Mental illness" means a disorder of thought, mood, emotion, perception, or orientation that significantly impairs judgment, behavior, capacity to recognize reality, or ability to address basic life necessities and requires care and treatment for the health, safety, or recovery of the individual or for the safety of others.

"Missing" means a circumstance in which an individual is not physically present when and where he should be and his absence cannot be accounted for or explained by his supervision needs or pattern of behavior.

"Neglect" means the failure by a person, or a program or facility operated, licensed, or funded by the department, excluding those operated by the Department of Corrections, responsible for providing services to do so, including nourishment, treatment, care, goods, or services necessary to the health, safety, or welfare of an individual receiving care or treatment for mental illness, developmental disabilities, or substance abuse.

"Neurobehavioral services" means the assessment, evaluation, and treatment of cognitive, perceptual, behavioral, and other impairments caused by brain injury that affect an individual's ability to function successfully in the community.

~~"Outpatient service" means treatment provided to individuals on an hourly schedule, on an individual, group, or family basis, and usually in a clinic or similar facility or in another location. Outpatient services may include diagnosis and evaluation, screening and intake, counseling, psychotherapy, behavior management, psychological testing and assessment, laboratory and other ancillary services, medical services, and medication services. "Outpatient service" specifically includes:~~

~~1. Services operated by a community services board or a behavioral health authority established pursuant to Chapter 5 (§ 37.2-500 et seq.) or Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia;~~

~~2. Services contracted by a community services board or a behavioral health authority established pursuant to Chapter 5 (§ 37.2-500 et seq.) or Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia; or~~

~~3. Services that are owned, operated, or controlled by a corporation organized pursuant to the provisions of either Chapter 9 (§ 13.1-601 et seq.) or Chapter 10 (§ 13.1-801 et seq.) of Title 13.1 of the Code of Virginia.~~

~~"Partial hospitalization service" means time-limited active treatment interventions that are more intensive than outpatient services, designed to stabilize and ameliorate acute symptoms, and serve as an alternative to inpatient hospitalization or to reduce the length of a hospital stay. Partial hospitalization is~~

~~focused on individuals with serious mental illness, substance abuse (substance use disorders), or co-occurring disorders at risk of hospitalization or who have been recently discharged from an inpatient setting.~~

"Person-centered" means focusing on the needs and preferences of the individual; empowering and supporting the individual in defining the direction for his life; and promoting self-determination, community involvement, and recovery.

~~"Program of assertive community treatment service" or "PACT" means a self-contained interdisciplinary team of at least 10 full-time equivalent clinical staff, a program assistant, and a full-time or part-time psychiatrist that:~~

~~1. Assumes responsibility for directly providing needed treatment, rehabilitation, and support services to identified individuals with severe and persistent mental illnesses, including those who have severe symptoms that are not effectively remedied by available treatments or who because of reasons related to their mental illness resist or avoid involvement with mental health services;~~

~~2. Minimally refers individuals to outside service providers;~~

~~3. Provides services on a long-term care basis with continuity of caregivers over time;~~

~~4. Delivers 75% or more of the services outside program offices; and~~

~~5. Emphasizes outreach, relationship building, and individualization of services.~~

"Provider" means any person, entity, or organization, excluding an agency of the federal government by whatever name or designation, that delivers (i) services to individuals with mental illness, developmental disabilities, or substance abuse (substance use disorders) or (ii) residential services for individuals with brain injury. The person, entity, or organization shall include a hospital as defined in § 32.1-123 of the Code of Virginia, community services board, behavioral health authority, private provider, and any other similar or related person, entity, or organization. It shall not include any individual practitioner who holds a license issued by a health regulatory board of the Department of Health Professions or who is exempt from licensing pursuant to §§ 54.1-2901, 54.1-3001, 54.1-3501, 54.1-3601, and 54.1-3701 of the Code of Virginia.

"Psychosocial rehabilitation service" means a program of two or more consecutive hours per day provided to groups of adults in a nonresidential setting. Individuals must demonstrate a clinical need for the service arising from a condition due to mental, behavioral, or emotional illness that results in significant functional impairments in major life activities. This service provides education to teach the individual about mental illness, substance abuse, and appropriate medication to avoid complication and relapse and opportunities to learn and use independent skills and to enhance social and interpersonal skills within a consistent program structure and environment. Psychosocial rehabilitation includes skills training, peer support, vocational rehabilitation, and community resource development oriented toward empowerment, recovery, and competency.

"Qualified developmental disability professional" or "QDDP" means a person who possesses at least one year of documented experience working directly with individuals who have a developmental disability and who possesses one of the following credentials: (i) a doctor of medicine or osteopathy licensed in Virginia, (ii) a registered nurse licensed in Virginia, (iii) a licensed occupational therapist, or (iv) completion of at least a bachelor's degree in a human services field, including sociology, social work, special education, rehabilitation counseling, or psychology.

"Qualified mental health professional" or "QMHP" means a person who by education and experience is professionally qualified and registered by the Board of Counseling in accordance with 18VAC115-80 to provide collaborative mental health services for adults or children. A QMHP shall not engage in independent or autonomous practice. A QMHP shall provide such services as an employee or independent contractor of the department or a provider licensed by the department.

"Qualified mental health professional-adult" or "QMHP-A" means a person who by education and experience is professionally qualified and registered with the Board of Counseling in accordance with 18VAC115-80 to provide collaborative mental health services for adults. A QMHP-A shall provide such services as an employee or independent contractor of the department or a provider licensed by the department. A QMHP-A may be an occupational therapist who by education and experience is professionally qualified and registered with the Board of Counseling in accordance with 18VAC115-80.

"Qualified mental health professional-child" or "QMHP-C" means a person who by education and experience is professionally qualified and registered with the Board of Counseling in accordance with 18VAC115-80 to provide collaborative mental health services for children. A QMHP-C shall provide such services as an employee or independent contractor of the department or a provider licensed by the department. A QMHP-C may be an occupational therapist who by education and experience is professionally qualified and registered with the Board of Counseling in accordance with 18VAC115-80.

"Qualified mental health professional-eligible" or "QMHP-E" means a person receiving supervised training in order to qualify as a QMHP in accordance with 18VAC115-80 and who is registered with the Board of Counseling.

"Qualified paraprofessional in mental health" or "QPPMH" means a person who must meet at least one of the following

criteria: (i) registered with the United States Psychiatric Association (USPRA) as an Associate Psychiatric Rehabilitation Provider (APRP); (ii) has an associate's degree in a related field (social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, human services counseling) and at least one year of experience providing direct services to individuals with a diagnosis of mental illness; (iii) licensed as an occupational therapy assistant, and supervised by a licensed occupational therapist, with at least one year of experience providing direct services to individuals with a diagnosis of mental illness; or (iv) has a minimum of 90 hours classroom training and 12 weeks of experience under the direct personal supervision of a QMHP-A providing services to individuals with mental illness and at least one year of experience (including the 12 weeks of supervised experience).

"Quality improvement plan" means a detailed work plan developed by a provider that defines steps the provider will take to review the quality of services it provides and to manage initiatives to improve quality. A quality improvement plan consists of systematic and continuous actions that lead to measurable improvement in the services, supports, and health status of the individuals receiving services.

"Recovery" means a journey of healing and transformation enabling an individual with a mental illness to live a meaningful life in a community of his choice while striving to achieve his full potential. For individuals with substance abuse (substance use disorders), recovery is an incremental process leading to positive social change and a full return to biological, psychological, and social functioning. For individuals with a developmental disability, the concept of recovery does not apply in the sense that individuals with a developmental disability will need supports throughout their entire lives although these may change over time. With supports, individuals with a developmental disability are capable of living lives that are fulfilling and satisfying and that bring meaning to themselves and others whom they know.

"Referral" means the process of directing an applicant or an individual to a provider or service that is designed to provide the assistance needed.

"Residential crisis stabilization service" means (i) providing short-term, intensive treatment to nonhospitalized individuals who require multidisciplinary treatment in order to stabilize acute psychiatric symptoms and prevent admission to a psychiatric inpatient unit; (ii) providing normative environments with a high assurance of safety and security for crisis intervention; and (iii) mobilizing the resources of the community support system, family members, and others for ongoing rehabilitation and recovery.

"Residential service" means providing 24-hour support in conjunction with care and treatment or a training program in a setting other than a hospital or training center. Residential services provide a range of living arrangements from highly structured and intensively supervised to relatively independent requiring a modest amount of staff support and monitoring. Residential services include residential treatment, group homes, supervised living, residential crisis stabilization, community gero-psychiatric residential, ICF/IID, sponsored residential homes, medical and social detoxification, neurobehavioral services, and substance abuse residential treatment for women and children.

"Residential treatment service" means providing an intensive and highly structured mental health, substance abuse, or neurobehavioral service, or services for co-occurring disorders in a residential setting, other than an inpatient service.

"Respite care service" means providing for a short-term, time-limited period of care of an individual for the purpose of providing relief to the individual's family, guardian, or regular care giver. Persons providing respite care are recruited, trained, and supervised by a licensed provider. These services may be provided in a variety of settings including residential, day support, in-home, or a sponsored residential home.

"Restraint" means the use of a mechanical device, medication, physical intervention, or hands-on hold to prevent an individual receiving services from moving his body to engage in a behavior that places him or others at imminent risk. There are three kinds of restraints:

1. Mechanical restraint means the use of a mechanical device that cannot be removed by the individual to restrict the individual's freedom of movement or functioning of a limb or portion of an individual's body when that behavior places him or others at imminent risk.

2. Pharmacological restraint means the use of a medication that is administered involuntarily for the emergency control of an individual's behavior when that individual's behavior places him or others at imminent risk and the administered medication is not a standard treatment for the individual's medical or psychiatric condition.

3. Physical restraint, also referred to as manual hold, means the use of a physical intervention or hands-on hold to prevent an individual from moving his body when that individual's behavior places him or others at imminent risk.

"Restraints for behavioral purposes" means using a physical hold, medication, or a mechanical device to control behavior or involuntary restrict the freedom of movement of an individual in an instance when all of the following conditions are met: (i) there is an emergency; (ii) nonphysical interventions are not viable; and (iii) safety issues require an immediate response.

"Restraints for medical purposes" means using a physical hold, medication, or mechanical device to limit the mobility of an individual for medical, diagnostic, or surgical purposes, such as routine dental care or radiological procedures and related post-procedure care processes, when use of the restraint

is not the accepted clinical practice for treating the individual's condition.

"Restraints for protective purposes" means using a mechanical device to compensate for a physical or cognitive deficit when the individual does not have the option to remove the device. The device may limit an individual's movement, for example, bed rails or a gerichair, and prevent possible harm to the individual or it may create a passive barrier, such as a helmet to protect the individual.

"Restriction" means anything that limits or prevents an individual from freely exercising his rights and privileges.

"Risk management" means an integrated system-wide program to ensure the safety of individuals, employees, visitors, and others through identification, mitigation, early detection, monitoring, evaluation, and control of risks.

"Root cause analysis" means a method of problem solving designed to identify the underlying causes of a problem. The focus of a root cause analysis is on systems, processes, and outcomes that require change to reduce the risk of harm.

"Screening" means the process or procedure for determining whether the individual meets the minimum criteria for admission.

"Seclusion" means the involuntary placement of an individual alone in an area secured by a door that is locked or held shut by a staff person, by physically blocking the door, or by any other physical means so that the individual cannot leave it.

"Serious incident" means any event or circumstance that causes or could cause harm to the health, safety, or well-being of an individual. The term "serious incident" includes death and serious injury.

"Level I serious incident" means a serious incident that occurs or originates during the provision of a service or on the premises of the provider and does not meet the definition of a Level II or Level III serious incident. Level I serious incidents do not result in significant harm to individuals, but may include events that result in minor injuries that do not require medical attention or events that have the potential to cause serious injury, even when no injury occurs. "Level II serious incident" means a serious incident that occurs or originates during the provision of a service or on the premises of the provider that results in a significant harm or threat to the health and safety of an individual that does not meet the definition of a Level III serious incident.

"Level II serious incident" includes a significant harm or threat to the health or safety of others caused by an individual. Level II serious incidents include:

1. A serious injury;

2. An individual who is or was missing;

3. An emergency room visit;

4. An unplanned psychiatric or unplanned medical hospital admission of an individual receiving services other than licensed emergency services, except that a psychiatric admission in accordance with the individual's Wellness Recovery Action Plan shall not constitute an unplanned admission for the purposes of this chapter;

5. Choking incidents that require direct physical intervention by another person;

6. Ingestion of any hazardous material; or

7. A diagnosis of:

a. A decubitus ulcer or an increase in severity of level of previously diagnosed decubitus ulcer;

b. A bowel obstruction; or

c. Aspiration pneumonia.

"Level III serious incident" means a serious incident whether or not the incident occurs while in the provision of a service or on the provider's premises and results in:

1. Any death of an individual;

2. A sexual assault of an individual; or

3. A suicide attempt by an individual admitted for services, other than licensed emergency services, that results in a hospital admission.

"Serious injury" means any injury resulting in bodily hurt, damage, harm, or loss that requires medical attention by a licensed physician, doctor of osteopathic medicine, physician assistant, or nurse practitioner.

"Service" means (i) planned individualized interventions intended to reduce or ameliorate mental illness, developmental disabilities, or substance abuse (substance use disorders) through care, treatment, training, habilitation, or other supports that are delivered by a provider to individuals with mental illness, developmental disabilities, or substance abuse (substance use disorders). Services include outpatient services, intensive in-home services, opioid treatment services, inpatient psychiatric hospitalization, community gero-psychiatric residential services, assertive community treatment and other clinical services; day support, day treatment, partial hospitalization, psychosocial rehabilitation, and habilitation services; case management services; and supportive residential, special school, halfway house, in-home services, crisis stabilization, and other residential services; and (ii) planned individualized interventions intended to reduce or ameliorate the effects of brain injury through care, treatment, or other supports provided in residential services for persons with brain injury.

"Shall" means an obligation to act is imposed.

"Shall not" means an obligation not to act is imposed.

"Skills training" means systematic skill building through curriculum-based psychoeducational and cognitive-behavioral interventions. These interventions break down complex

objectives for role performance into simpler components, including basic cognitive skills such as attention, to facilitate learning and competency.

"Social detoxification service" means providing nonmedical supervised care for the individual's natural process of withdrawal from use of alcohol or other drugs.

"Sponsored residential home" means a service where providers arrange for, supervise, and provide programmatic, financial, and service support to families or persons (sponsors) providing care or treatment in their own homes for individuals receiving services.

"State board" means the State Board of Behavioral Health and Developmental Services. The board has statutory responsibility for adopting regulations that may be necessary to carry out the provisions of Title 37.2 of the Code of Virginia and other laws of the Commonwealth administered by the commissioner or the department.

"State methadone authority" means the Virginia Department of Behavioral Health and Developmental Services that is authorized by the federal Center for Substance Abuse Treatment to exercise the responsibility and authority for governing the treatment of opiate addiction with an opioid drug.

"Substance abuse (substance use disorders)" means the use of drugs enumerated in the Virginia Drug Control Act (§ 54.1-3400 et seq.) without a compelling medical reason or alcohol that (i) results in psychological or physiological dependence or danger to self or others as a function of continued and compulsive use or (ii) results in mental, emotional, or physical impairment that causes socially dysfunctional or socially disordering behavior; and (iii), because of such substance abuse, requires care and treatment for the health of the individual. This care and treatment may include counseling, rehabilitation, or medical or psychiatric care.

"Substance abuse intensive outpatient service" means structured treatment provided ~~in a concentrated manner for two or more consecutive hours per day to groups of individuals in a nonresidential setting. This service is provided over a period of time for individuals requiring~~ to individuals who require more intensive services than is normally provided in an outpatient service ~~can provide. Substance abuse intensive outpatient services include multiple group therapy sessions during the week, individual and family therapy, individual monitoring, and case management.~~ but do not require inpatient services. Treatment consists primarily of counseling and education about addiction-related and mental health challenges delivered a minimum of nine to 19 hours of services per week for adults or six to 19 hours of services per week for children and adolescents. Within this level of care, an individual's needs for psychiatric and medical services are generally addressed through consultation and referrals.

"Substance abuse outpatient services" means a center based substance abuse treatment delivered to individuals for fewer than nine hours of service per [~~weeks~~ week] for adults or fewer than six hours per week for adolescents on an individual, group or family basis. Substance abuse outpatient services may include diagnosis and evaluation, screening and intake, counseling, psychotherapy, behavior management, psychological testing and assessment, laboratory and other ancillary services, medical services, and medication services. Substance abuse outpatient service includes substance abuse services or an office practice that provides professionally directed aftercare, individual, and other addiction services to individuals according to a predetermined regular schedule of fewer than nine contact hours a week. Substance abuse outpatient service also includes:

1. Substance abuse services operated by a community services board or a behavioral health authority established pursuant to Chapter 5 (§ 37.2-500 et seq.) or Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia;

2. Substance abuse services contracted by a community services board or a behavioral health authority established pursuant to Chapter 5 (§ 37.2-500 et seq.) or Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia; [or]

3. Substance abuse services that are owned, operated, or controlled by a corporation organized pursuant to the provisions of either Chapter 9 (§ 13.1-601 et seq.) or Chapter 10 (§ 13.1-801 et seq.) of Title 13.1 of the Code of Virginia.

"Substance abuse partial hospitalization services" means a short-term, nonresidential substance use treatment program provided for a minimum of 20 hours a week that uses multidisciplinary staff and is provided for individuals who require a more intensive treatment experience than intensive outpatient treatment but who do not require residential treatment. This level of care is designed to offer highly structured intensive treatment to [~~those~~ an] individual whose condition is sufficiently stable so as not to require 24-hour-per-day monitoring and care, but whose illness has progressed so as to require consistent near-daily treatment intervention.

"Substance abuse residential treatment for women with children service" means a 24-hour residential service providing an intensive and highly structured substance abuse service for women with children who live in the same facility.

"Suicide attempt" means a nonfatal, self-directed, potentially injurious behavior with an intent to die as a result of the behavior regardless of whether it results in injury.

"Supervised living residential service" means the provision of significant direct supervision and community support services to individuals living in apartments or other residential settings. These services differ from supportive in-home service because the provider assumes responsibility for management of the physical environment of the residence, and staff supervision

and monitoring are daily and available on a 24-hour basis. Services are provided based on the needs of the individual in areas such as food preparation, housekeeping, medication administration, personal hygiene, treatment, counseling, and budgeting.

"Supportive in-home service" (formerly supportive residential) means the provision of community support services and other structured services to assist individuals, to strengthen individual skills, and that provide environmental supports necessary to attain and sustain independent community residential living. Services include drop-in or friendly-visitor support and counseling to more intensive support, monitoring, training, in-home support, respite care, and family support services. Services are based on the needs of the individual and include training and assistance. These services normally do not involve overnight care by the provider; however, due to the flexible nature of these services, overnight care may be provided on an occasional basis.

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

"Therapeutic day treatment for children and adolescents" means a treatment program that serves (i) children and adolescents from birth through 17 years of age and under certain circumstances up to 21 years of age with serious emotional disturbances, substance use, or co-occurring disorders or (ii) children from birth through seven years of age who are at risk of serious emotional disturbance, in order to combine psychotherapeutic interventions with education and mental health or substance abuse treatment. Services include: evaluation; medication education and management; opportunities to learn and use daily living skills and to enhance social and interpersonal skills; and individual, group, and family counseling.

"Time out" means the involuntary removal of an individual by a staff person from a source of reinforcement to a different, open location for a specified period of time or until the problem behavior has subsided to discontinue or reduce the frequency of problematic behavior.

"Volunteer" means a person who, without financial remuneration, provides services to individuals on behalf of the provider.

12VAC35-105-30. Licenses.

A. Licenses are issued to providers who offer services to individuals who have mental illness, a developmental disability, or substance abuse (substance use disorders) or have brain injury and are receiving residential services.

B. Providers shall be licensed to provide specific services as defined in this chapter or as determined by the commissioner. These services include:

1. Assertive community treatment (ACT);

2. Case management;

~~2. Community gero-psychiatric residential;~~ 3. ICF/IID;

~~3.~~ 4. Community intermediate care facility-MR;

~~4.~~ 5. Residential crisis stabilization;

~~5.~~ 6. Nonresidential crisis stabilization;

~~6.~~ 7. Day support;

~~7.~~ 8. Day treatment, includes therapeutic day treatment for children and adolescents;

~~8. Group home and community residential;~~

9. Emergency;

10. Group home and community residential;

11. Inpatient psychiatric;

~~10. Intensive community treatment (ICT);~~

~~11.~~ 12. Intensive in-home;

~~12.~~ 13. Managed withdrawal, including medical detoxification and social detoxification;

~~13.~~ 14. Mental health community support;

~~14.~~ 15. Mental health intensive outpatient;

16. Mental health outpatient;

17. Mental health partial hospitalization;

18. Opioid treatment/medication assisted treatment;

~~15. Emergency;~~

~~16. Outpatient;~~

~~17. Partial hospitalization;~~

~~18. Program of assertive community treatment (PACT);~~

19. Psychosocial rehabilitation;

~~20.~~ 20. Residential treatment;

~~21.~~ 21. Respite care;

~~22.~~ 22. Sponsored residential home;

~~23. Substance abuse residential treatment for women with children;~~

~~24.~~ 23. Substance abuse intensive outpatient;

24. Substance abuse outpatient;

25. Substance abuse partial hospitalization;

26. Substance abuse residential treatment for women with children;

27. Supervised living residential; and

~~26.~~ 28. Supportive in-home.

C. A license addendum shall describe the services licensed, the disabilities of individuals who may be served, the specific locations where services are to be provided or administered, and the terms and conditions for each service offered by a licensed provider. For residential and inpatient services, the license identifies the number of individuals each residential location may serve at a given time.

Article 7

~~Intensive Community Treatment and Program of~~ Assertive Community Treatment Services

12VAC35-105-1360. Admission and discharge criteria.

A. Individuals must meet the following admission criteria:

1. Diagnosis of a severe and persistent mental illness, predominantly schizophrenia, other psychotic disorder, or bipolar disorder that seriously impairs functioning in the community. Individuals with a sole diagnosis of a substance ~~addiction or abuse~~ use disorder or developmental disability ~~are not eligible for services~~, personality disorder, traumatic brain injury, or an autism spectrum disorder are not the intended service recipients and should not be referred to ACT if they do not have a co-occurring psychiatric disorder.

2. Significant challenges to community integration without intensive community support including persistent or recurrent difficulty with one or more of the following:

a. Performing practical daily living tasks;

b. Maintaining employment at a self-sustaining level or consistently carrying out homemaker roles; or

c. Maintaining a safe living situation.

3. High service needs indicated due to one or more of the following:

a. Residence in a state hospital or other psychiatric hospital but clinically assessed to be able to live in a more independent situation if intensive services were provided or anticipated to require extended hospitalization, if more intensive services are not available;

b. Multiple admissions to or at least one recent long-term stay (30 days or more) in a state hospital or other acute psychiatric hospital inpatient setting within the past two years; or a recent history of more than four interventions by psychiatric emergency services per year;

c. Persistent or very recurrent severe major symptoms (e.g., affective, psychotic, suicidal);

d. Co-occurring substance addiction or abuse of significant duration (e.g., greater than six months);

e. High risk or a recent history (within the past six months) of criminal justice involvement (e.g., arrest or incarceration);

f. Ongoing difficulty meeting basic survival needs or residing in substandard housing, homeless, or at imminent risk of becoming homeless; or

g. Inability to consistently participate in traditional office-based services.

B. Individuals receiving ~~PACT or ICT~~ ACT services should not be discharged for failure to comply with treatment plans or other expectations of the provider, except in certain circumstances as outlined. Individuals must meet at least one of the following criteria to be discharged:

1. Change in the individual's residence to a location out of the service area;

~~2. Death of the individual;~~

~~3.~~ 2. Incarceration of the individual for a period to exceed a year or long-term hospitalization (more than one year); however, the provider is expected to prioritize these individuals for ~~PACT or ICT~~ ACT services upon the individual's anticipated return to the community if the individual wishes to return to services and the service level is appropriate to his needs;

~~4. Choice of the individual with the provider responsible for revising the ISP to meet any concerns of the individual leading to the choice of discharge~~ 3. The individual and, if appropriate, the legally responsible person, choose to withdraw from services and documented attempts by the program to re-engage the individual with the service have not been successful; or

~~5. Significant sustained recovery by the individual in all major role areas with minimal team contact and support for at least two years as determined by both the individual and ICT or PACT team~~ 4. The individual and team determine that ACT services are no longer needed based on the attainment of goals as identified in the person centered plan and a less intensive level of care would adequately address current goals.

12VAC35-105-1370. Treatment team and staffing plan.

A. ~~Services~~ ACT services are delivered by interdisciplinary teams.

~~1. PACT and ICT teams shall include the following positions:~~

~~a. Team Leader – one full-time QMHP-A with at least three years experience in the provision of mental health services to adults with serious mental illness. The team leader shall oversee all aspects of team operations and shall routinely provide direct services to individuals in the community.~~

~~b. Nurses – PACT and ICT nurses shall be full-time employees or contractors with the following minimum qualifications: A registered nurse (RN) shall have one year of experience in the provision of mental health services to adults with serious mental illness. A licensed practical nurse (LPN) shall have three years of experience in the provision of mental health services to adults with serious~~

~~mental illness. ICT teams shall have at least one qualified full-time nurse. PACT teams shall have at least three qualified full-time nurses at least one of whom shall be a qualified RN.~~

~~c. One full-time vocational specialist and one full-time substance abuse specialist. These staff members shall provide direct services to individuals in their area of specialty and provide leadership to other team members to also assist individuals with their self-identified employment or substance abuse recovery goals.~~

~~d. Peer specialists – one or more full-time equivalent QPPMH or QMHP-A who is or has been a recipient of mental health services for severe and persistent mental illness. The peer specialist shall be a fully integrated team member who provides peer support directly to individuals and provides leadership to other team members in understanding and supporting individuals' recovery goals.~~

~~e. Program assistant – one full-time person with skills and abilities in medical records management shall operate and coordinate the management information system, maintain accounts and budget records for individual and program expenditures, and provide receptionist activities.~~

~~f. Psychiatrist – one physician who is board certified in psychiatry or who is board eligible in psychiatry and is licensed to practice medicine in Virginia. An equivalent ratio to 20 minutes (.008 FTE) of psychiatric time for each individual served must be maintained. The psychiatrist shall be a fully integrated team member who attends team meetings and actively participates in developing and implementing each individual ISP.~~

~~2. QMHP-A and mental health professional standards:~~

~~a. At least 80% of the clinical employees or contractors, not including the program assistant or psychiatrist, shall be QMHP-As qualified to provide the services described in 12VAC35-105-1410.~~

~~b. Mental health professionals – At least half of the clinical employees or contractors, not including the team leader or nurses and including the peer specialist if that person holds such a degree, shall hold a master's degree in a human service field.~~

~~3. Staffing capacity:~~

~~a. An ICT team shall have at least five full-time equivalent clinical employees or contractors. A PACT team shall have at least 10 full-time equivalent clinical employees or contractors.~~

~~b. ICT and PACT teams shall include a minimum number of employees (counting contractors but not counting the psychiatrist and program assistant) to maintain an employee to individual ratio of at least 1:10.~~

~~c. ICT teams may serve no more than 80 individuals. PACT teams may serve no more than 120 individuals.~~

~~d. A transition plan shall be required of PACT teams that will allow for "start up" when newly forming teams are not in full compliance with the PACT model relative to staffing patterns and individuals receiving services capacity.~~

~~B. ICT and PACT teams shall meet daily Monday through Friday or at least four days per week to review and plan routine services and to address or prevent emergency and crisis situations~~

1. ACT teams shall have sufficient staffing composition to meet the varying needs of individuals served by the team as required by this section. Each ACT team shall meet the following minimum position and staffing requirements:

a. Team leader. There shall be one full-time LMHP with three years of work experience in the provision of mental health services to adults with serious mental illness; a resident who is under the supervision of a licensed professional counselor in accordance with 18VAC115-20-10 and who is registered with the Virginia Board of Counseling with three years of experience in the provision of mental health services to adults with serious mental illness; a resident in psychology who is under supervision of a licensed clinical psychologist and is registered with the Virginia Board of Psychology in accordance with 18VAC125-20-10 and who has three years of experience in the provision of mental health services to adults with serious mental illness; a supervisee, in social work who is under the supervision of a licensed clinical social worker and who is registered with the Virginia Board of Social Work in accordance with 18VAC140-20-10 and who has three years of experience in the provision of mental health services to adults with serious mental illness; or one full-time registered QMHP-A with at least three years of experience in the provision of mental health services to adults with serious mental illness who was employed by the provider as a team leader prior to July 1, 2020. The team leader shall oversee all aspects of team operations and shall provide direct services to individuals in the community.

b. Nurses. ACT nurses shall be full-time employees or contractors with the following minimum qualifications: a registered nurse shall have one year of experience in the provision of mental health services to adults with serious mental illness, or a licensed practical nurse shall have three years of experience in the provision of mental health services to adults with serious mental illness.

(1) Small ACT teams shall have at least one full-time nurse, who shall be either an RN or an LPN;

(2) Medium ACT teams shall have at least one full-time RN and at least one additional full-time nurse who shall be an LPN or RN; and

(3) Large ACT teams shall have at least one full-time RN and at least two additional full-time nurses who shall be LPNs or RNs.

c. Vocational specialist. There shall be one or more full-time vocational specialist, who shall be a registered QMHP with demonstrated expertise in vocational services through experience or education.

d. Co-occurring disorder specialist. There shall be one or more full-time co-occurring disorder specialists, who shall be a LMHP; a resident who is under the supervision of a licensed professional counselor in accordance with 18VAC115-20-10 and who is registered with the Virginia Board of Counseling; a resident in psychology who is under supervision of a licensed clinical psychologist and is registered with the Virginia Board of Psychology in accordance with 18VAC125-20-10; a supervisee in social work who is under the supervision of a licensed clinical social worker and who is registered with the Virginia Board of Social Work in accordance with 18VAC140-20-10; registered QMHP; or certified substance abuse specialist (CSAC) with training or experience working with adults with co-occurring serious mental illness and substance use disorder.

e. ACT peer specialists. There shall be one full-time equivalent peer recovery specialists who is or has been a recipient of mental health services for severe and persistent mental illness. The peer specialist shall be certified as a peer recovery specialist in accordance with 12VAC35-250, or shall become certified in the first year of employment. The peer specialist shall be a fully integrated team member who provides peer support directly to individuals and provides leadership to other team members in understanding and supporting each individual's recovery goals.

f. Program assistant. There shall be one full-time or two part-time program assistants with skills and abilities in medical records management shall operate and coordinate the management information system, maintain accounts and budget records for individual and program expenditures, and perform administrative support activities.

g. Psychiatric care provider. There shall be one physician who is board certified in psychiatry or who is board eligible in psychiatry and is licensed to practice medicine in Virginia or a psychiatric nurse practitioner practicing within the scope of practice as defined in 18VAC90-30-120. An equivalent ratio of 16 hours of psychiatric time per 50 individuals served must be maintained. The psychiatric care provider shall be a fully integrated team member who attends team meetings and actively participates in developing and implementing each individual ISP.

h. Generalist clinical staff. There shall be additional clinical staff with the knowledge, skill, and ability required, based on the population and age of individuals being served, to carry out rehabilitation and support functions, at least 50% of whom shall be LMHPs, QMHP-As, QMHP-Es, or QPPMHs.

(1) Small ACT teams shall have at least one generalist clinical staff;

(2) Medium ACT teams shall have at least two generalist clinical staff; and

(3) Large ACT teams shall have at least three generalist clinical staff.

2. Staff-to-individual ratios for ACT Teams:

a. Small ACT teams shall maintain a caseload of no more than 50 individuals and shall maintain at least one staff member per eight individuals, in addition to a psychiatric care provider and a program assistant.

b. Medium ACT teams shall maintain a caseload of no more than 74 individuals and shall maintain at least one staff member per nine individuals, in addition to a psychiatric care provider and a program assistant.

c. Large ACT teams shall maintain a caseload of no more than 120 individuals and shall maintain at least one staff member per nine individuals, in addition to a psychiatric care provider and a program assistant.

~~C. ICT teams shall operate a minimum of eight hours per day, five days per week and shall provide services on a case-by-case basis in the evenings and on weekends. PACT~~ B. ACT teams shall be available to individuals 24 hours per day and shall operate a minimum of 12 hours each weekday and eight hours each weekend day and each holiday.

~~D.~~ C. The ~~ICT or PACT~~ ACT team shall make crisis services directly available 24 hours a day but may arrange coverage through another crisis services provider if the team coordinates with the crisis services provider daily.

D. The ~~PACT~~ ACT team shall operate an after-hours on-call system and shall be available to individuals by telephone ~~or~~ and in person when needed as determined by the team.

E. ACT teams in development may submit a transition plan to the department for approval that will allow for "start-up" when newly forming teams are not in full compliance with the ACT model relative to staffing patterns and individuals receiving services capacity. Approved transition plans shall be limited to a six-month period.

12VAC35-105-1380. Contacts.

A. The ~~ICT and PACT~~ ACT team shall ~~have the capacity to~~ provide multiple contacts per week to individuals experiencing severe symptoms or significant problems in daily living~~, for an aggregate average of three contacts per individual per week~~.

B. Each individual receiving ~~ICT or PACT~~ ACT services shall be seen face-to-face by an employee or contractor~~; or the employee or contractor should attempt to make contact~~ as

specified in the individual's ISP. Providers shall document all attempts to make contact, and if contact is not made, the reasons why contact was not made.

12VAC35-105-1390. ~~ICT and PACT~~ ACT service daily operation and progress notes.

A. ~~ICT teams and PACT~~ ACT teams shall conduct ~~daily~~ organizational meetings Monday through Friday at least four days per week at a regularly scheduled time to review the status of all individuals and the outcome of the most recent employee or contractor contact, assign daily and weekly tasks to employees and contractors, revise treatment plans as needed, plan for emergency and crisis situations, and to add service contacts that are identified as needed.

B. A daily log that provides a roster of individuals served in the ~~ICT or PACT~~ ACT services program and documentation of services provided and contacts made with them shall be maintained and utilized in the ~~daily~~ team meeting. Daily logs shall not be considered progress notes.

C. There shall also be ~~at least a weekly~~ individual progress ~~note~~ notes documenting services provided in accordance with the ISP ~~or attempts to engage the individual in services~~ each time the individual receives services, which shall be included within the individual's record. ACT teams shall also document within the individual's record attempts at outreach and engagement.

12VAC35-105-1410. Service requirements.

~~Providers~~ ACT teams shall document that the following services are provided consistent with the individual's assessment and ISP.

1. Ongoing assessment to ascertain the needs, strengths, and preferences of the individual;

2. Case management;

3. Nursing;

4. Support for wellness self-management, including the development and implementation of individual recovery plans, symptom assessment, and recovery education;

5. Psychopharmacological treatment, administration, and monitoring;

6. ~~Substance abuse assessment and treatment for individuals with a co-occurring diagnosis of mental illness and substance abuse~~ Co-occurring diagnosis substance use disorder services that are nonconfrontational, trauma informed, person-centered, consider interactions of mental illness and substance use, and have goals determined by the individual;

7. ~~Individual supportive therapy~~ Empirically supported interventions and psychotherapy;

8. ~~Skills training in activities of daily living, social skills, interpersonal relationships, and leisure time~~ Psychiatric rehabilitation, which may include skill-building, coaching, and facilitating access to necessary resources to help individuals with personal care, safety skills, money management, grocery shopping, cooking, food safety and storage, purchasing and caring for clothing, household maintenance and cleaning skills, social skills, and use of transportation and other community resources;

9. ~~Supportive in-home services; 10.~~ Work-related services ~~to help find and maintain employment~~ that follow evidence-based supported employment principles, such as direct assistance with job development, locating preferred jobs, assisting the individual through the application process, and communicating with employers;

~~11.~~ 10. Support for resuming education;

~~12.~~ 11. Support, education, consultation, and skill-teaching to family members ~~and~~, significant others, and broader natural support systems, which shall be directed exclusively to the well-being and benefit of the individual;

~~13.~~ 12. Collaboration with families and ~~assistance to individuals with children~~ development of family and other natural supports;

13. Assistance in obtaining and maintaining safe, decent, and affordable housing that follows the individual's preferences in level of independence and location, consistent with an evidence-based supportive housing model;

14. Direct support to help individuals ~~secure and maintain decent, affordable housing that is integrated into the broader community and to~~ obtain legal and advocacy services, financial support, money-management services, medical and dental services, transportation, and natural supports in the community; ~~and~~

15. ~~Mobile crisis~~ Crisis assessment, interventions to prevent or resolve potential crises, and admission to and discharge from psychiatric hospitals;

16. Assistance in developing and maintaining natural supports and social relationships;

17. Medication education, assistance, and support; and

18. Peer support services, such as coaching, mentoring, assistance with self-advocacy and self-direction, and modeling recovery practices.

VA.R. Doc. No. R21-6076; Filed December 21, 2022, 3:25 p.m.

Final Regulation

Title of Regulation: **12VAC35-105. Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services (amending 12VAC35-105-20, 12VAC35-105-30, 12VAC35-105-925 through 12VAC35-105-960, 12VAC35-105-980 through 12VAC35-**

105-1010, 12VAC35-105-1110; adding 12VAC35-105-935, 12VAC35-105-945, 12VAC35-105-965, 12VAC35-105-1420 through 12VAC35-105-1820).

Statutory Authority: §§ 37.2-302 and 37.2-400 of the Code of Virginia.

Effective Date: February 17, 2023.

Agency Contact: Ruth Anne Walker, Director of Regulatory Affairs, Department of Behavioral Health and Developmental Services, Jefferson Building, 1220 Bank Street, 4th Floor, Richmond, VA 23219, telephone (804) 225-2252, FAX (804) 371-4609, or email ruthanne.walker@dbhds.virginia.gov.

Summary:

Pursuant to Item 318 of Chapter 1289 of the 2020 Acts of Assembly (Appropriation Act of 2020), the amendments align Virginia provider licensing regulations with the American Society of Addiction Medicine (ASAM) Levels of Care Criteria or an equivalent set of criteria to ensure the provision of outcome-oriented and strengths-based care in the treatment of addiction to ensure individualized, clinically driven, participant-directed, and outcome-informed treatment. Additionally, some amendments align the regulation with 42 CFR Part 8 Subpart C requirements for opioid treatment programs, including (i) staffing and programs, (ii) special services for pregnant individuals, (iii) drug screening, and (iv) take-home medications and theft or diversion detection procedures for treatment providers. Nonsubstantive changes have been made to the proposed regulation, including (i) clarifying that a licensed nurse practitioner or physician assistant, in addition to a physician, may be the practitioner who shall assess an individual within 24 hours of admission to an intensive inpatient treatment program and (ii) removing substance abuse residential treatment for women and children as a standalone service as it was absorbed into an ASAM level of care.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

12VAC35-105-20. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Abuse" means any act or failure to act by an employee or other person responsible for the care of an individual in a facility or program operated, licensed, or funded by the department, excluding those operated by the Virginia Department of Corrections, that was performed or was failed to be performed knowingly, recklessly, or intentionally, and that caused or might have caused physical or psychological harm, injury, or death to an individual receiving care or treatment for mental illness, developmental disabilities, or substance abuse. Examples of abuse include acts such as:

1. Rape, sexual assault, or other criminal sexual behavior;

2. Assault or battery;

3. Use of language that demeans, threatens, intimidates, or humiliates the individual;

4. Misuse or misappropriation of the individual's assets, goods, or property;

5. Use of excessive force when placing an individual in physical or mechanical restraint;

6. Use of physical or mechanical restraints on an individual that is not in compliance with federal and state laws, regulations, and policies, professional accepted standards of practice, or his individualized services plan; or

7. Use of more restrictive or intensive services or denial of services to punish an individual or that is not consistent with his individualized services plan.

"Activities of daily living" or "ADLs" means personal care activities and includes bathing, dressing, transferring, toileting, grooming, hygiene, feeding, and eating. An individual's degree of independence in performing these activities is part of determining the appropriate level of care and services.

["Addiction" means a primary, chronic disease of brain reward, motivation, memory, and related circuitry. Addiction is defined as the inability to consistently abstain, impairment in behavioral control, persistence of cravings, diminished recognition of significant problems with one's behaviors and interpersonal relationships, and a dysfunctional emotional response. Like other chronic diseases, addiction often involves cycles of relapse and remission. Without treatment or engagement in recovery activities, addiction is progressive and can result in disability or premature death.]

"Admission" means the process of acceptance into a service as defined by the provider's policies.

"Allied health professional" means a professional who is involved with the delivery of health or related services pertaining to the identification, evaluation, and prevention of diseases and disorders, such as a certified substance abuse counselor, certified substance abuse counseling assistant, peer recovery support specialist, certified nurse aide, or occupational therapist.

"ASAM" means the American Society of Addiction Medicine.

"Authorized representative" means a person permitted by law or 12VAC35-115 to authorize the disclosure of information or consent to treatment and services or participation in human research.

"Behavior intervention" means those principles and methods employed by a provider to help an individual receiving services to achieve a positive outcome and to address challenging behavior in a constructive and safe manner. Behavior intervention principles and methods shall be employed in accordance with the individualized services plan and written policies and procedures governing service expectations, treatment goals, safety, and security.

"Behavioral treatment plan," "functional plan," or "behavioral support plan" means any set of documented procedures that are an integral part of the individualized services plan and are developed on the basis of a systematic data collection, such as a functional assessment, for the purpose of assisting individuals to achieve the following:

1. Improved behavioral functioning and effectiveness;

2. Alleviation of symptoms of psychopathology; or

3. Reduction of challenging behaviors.

"Brain injury" means any injury to the brain that occurs after birth, but before age 65, that is acquired through traumatic or nontraumatic insults. Nontraumatic insults may include anoxia, hypoxia, aneurysm, toxic exposure, encephalopathy, surgical interventions, tumor, and stroke. Brain injury does not include hereditary, congenital, or degenerative brain disorders or injuries induced by birth trauma.

"Care," "treatment," or "support" means the individually planned therapeutic interventions that conform to current acceptable professional practice and that are intended to improve or maintain functioning of an individual receiving services delivered by a provider.

"Case management service" or "support coordination service" means services that can include assistance to individuals and their family members in accessing needed services that are responsive to the individual's needs. Case management services include identifying potential users of the service; assessing needs and planning services; linking the individual to services and supports; assisting the individual directly to locate, develop, or obtain needed services and resources; coordinating services with other providers; enhancing community integration; making collateral contacts; monitoring service delivery; discharge planning; and advocating for individuals in response to their changing needs. "Case management service" does not include assistance in which the only function is maintaining service waiting lists or periodically contacting or tracking individuals to determine potential service needs.

"Clinical experience" means providing direct services to individuals with mental illness or the provision of direct geriatric services or special education services. Experience may include supervised internships, practicums, and field experience.

"Clinically managed high-intensity residential care" [or "Level of care 3.5"] means a substance use treatment program that offers 24-hour supportive treatment of individuals with significant psychological and social problems by credentialed addiction treatment professionals in an interdisciplinary treatment approach. A clinically managed high-intensity residential care program provides treatment to individuals who present with significant challenges, such as physical, sexual, or emotional trauma; past criminal or antisocial behaviors, with a risk of continued criminal behavior; an extensive history of treatment; inadequate anger management skills; extreme impulsivity; and antisocial value system.

"Clinically managed low-intensity residential care" [or "Level of care 3.1"] means providing an ongoing therapeutic environment for individuals requiring some structured support in which treatment is directed toward applying recovery skills; preventing relapse; improving emotional functioning; promoting personal responsibility; reintegrating the individual into work, education, and family environments; and strengthening and developing adaptive skills that may not have been achieved or have been diminished during the individual's active addiction. A clinically managed low-intensity residential care program also provides treatment for individuals suffering from chronic, long-term alcoholism or drug addiction and affords an extended period of time to establish sound recovery and a solid support system.

"Clinically managed population specific high-intensity residential services" [or "Level of care 3.3"] means a substance use treatment program that provides a structured recovery environment in combination with high-intensity clinical services provided in a manner to meet the functional limitations of individuals. The functional limitations of individuals who are placed within this level of care are primarily cognitive and can be either temporary or permanent.

"Commissioner" means the Commissioner of the Department of Behavioral Health and Developmental Services.

"Community gero-psychiatric residential services" means 24-hour care provided to individuals with mental illness, behavioral problems, and concomitant health problems who are usually age 65 or older in a geriatric setting that is less intensive than a psychiatric hospital but more intensive than a nursing home or group home. Services include assessment and individualized services planning by an interdisciplinary services team, intense supervision, psychiatric care, behavioral treatment planning and behavior interventions, nursing, and other health related services.

"Complaint" means an allegation of a violation of this chapter or a provider's policies and procedures related to this chapter.

"Co-occurring disorders" means the presence of more than one and often several of the following disorders that are identified independently of one another and are not simply a cluster of symptoms resulting from a single disorder: mental

illness, a developmental disability, substance abuse (substance use disorders), or brain injury.

"Co-occurring services" means individually planned therapeutic treatment that addresses in an integrated concurrent manner the service needs of individuals who have co-occurring disorders.

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

"Correctional facility" means a facility operated under the management and control of the Virginia Department of Corrections.

"Credentialed addiction treatment professional" means a person who possesses one of the following credentials issued by the appropriate health regulatory board: (i) an addiction-credentialed physician or physician with experience or training in addiction medicine; (ii) a licensed nurse practitioner or a licensed physician assistant with experience or training in addiction medicine; (iii) a licensed psychiatrist; (iv) a licensed clinical psychologist; (v) a licensed clinical social worker; (vi) a licensed professional counselor; (vii) a licensed [~~psychiatric clinical~~] nurse [~~specialist; (viii) a licensed psychiatric nurse~~] practitioner [with experience or training in psychiatry or mental health]; [~~(ix)~~ (viii)] a licensed marriage and family therapist; [~~(x)~~ (ix)] a licensed substance abuse treatment practitioner; [~~(xi)~~ (x)] a resident who is under the supervision of a licensed professional counselor (18VAC115-20-10), licensed marriage and family therapist (18VAC115-50-10), or licensed substance abuse treatment practitioner (18VAC115-60-10) and is registered with the Virginia Board of Counseling; [~~(xii)~~ (xi)] a resident in psychology who is under supervision of a licensed clinical psychologist and is registered with the Virginia Board of Psychology (18VAC125-20-10); or [~~(xiii)~~ (xii)] a supervisee in social work who is under the supervision of a licensed clinical social worker and is registered with the Virginia Board of Social Work (18VAC140-20-10).

"Crisis" means a deteriorating or unstable situation often developing suddenly or rapidly that produces acute, heightened, emotional, mental, physical, medical, or behavioral distress.

"Crisis stabilization" means direct, intensive nonresidential or residential direct care and treatment to nonhospitalized individuals experiencing an acute crisis that may jeopardize their current community living situation. Crisis stabilization is intended to avert hospitalization or rehospitalization; provide normative environments with a high assurance of safety and security for crisis intervention; stabilize individuals in crisis; and mobilize the resources of the community support system, family members, and others for ongoing rehabilitation and recovery.

"Day support service" means structured programs of training, assistance, and specialized supervision in the acquisition, retention, or improvement of self-help, socialization, and adaptive skills for adults with a developmental disability provided to groups or individuals in nonresidential community-based settings. Day support services may provide opportunities for peer interaction and community integration and are designed to enhance the following: self-care and hygiene, eating, toileting, task learning, community resource utilization, environmental and behavioral skills, social skills, medication management, prevocational skills, and transportation skills. The term "day support service" does not include services in which the primary function is to provide employment-related services, general educational services, or general recreational services.

"Department" means the Virginia Department of Behavioral Health and Developmental Services.

"Developmental disability" means a severe, chronic disability of an individual that (i) is attributable to a mental or physical impairment or a combination of mental and physical impairments other than a sole diagnosis of mental illness; (ii) is manifested before the individual reaches 22 years of age; (iii) is likely to continue indefinitely; (iv) results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and (v) reflects the individual's need for a combination and sequence of special interdisciplinary or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated. An individual from birth to nine years of age, inclusive, who has a substantial developmental delay or specific congenital or acquired condition may be considered to have a developmental disability without meeting three or more of the criteria described in clauses (i) through (v) if the individual without services and supports has a high probability of meeting those criteria later in life.

"Developmental services" means planned, individualized, and person-centered services and supports provided to individuals with developmental disabilities for the purpose of enabling these individuals to increase their self-determination and independence, obtain employment, participate fully in all aspects of community life, advocate for themselves, and achieve their fullest potential to the greatest extent possible.

"Diagnostic and Statistical Manual of Mental Disorders" or "DSM" means the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition, DSM-5, of the American Psychiatric Association.

"Direct care position" means any position that includes responsibility for (i) treatment, case management, health, safety, development, or well-being of an individual receiving services or (ii) immediately supervising a person in a position with this responsibility.

"Discharge" means the process by which the individual's active involvement with a service is terminated by the provider, individual, or authorized representative.

"Discharge plan" means the written plan that establishes the criteria for an individual's discharge from a service and identifies and coordinates delivery of any services needed after discharge.

"Dispense" means to deliver a drug to an ultimate user by or pursuant to the lawful order of a practitioner, including the prescribing and administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery (§ 54.1-3400 et seq. of the Code of Virginia).

"Emergency service" means unscheduled and sometimes scheduled crisis intervention, stabilization, and referral assistance provided over the telephone or face-to-face, if indicated, available 24 hours a day and seven days per week. Emergency services also may include walk-ins, home visits, jail interventions, and preadmission screening activities associated with the judicial process.

"Group home or community residential service" means a congregate service providing 24-hour supervision in a community-based home having eight or fewer residents. Services include supervision, supports, counseling, and training in activities of daily living for individuals whose individualized services plan identifies the need for the specific types of services available in this setting.

"HCBS Waiver" means a Medicaid Home and Community Based Services Waiver.

"Home and noncenter based" means that a service is provided in the individual's home or other noncenter-based setting. This includes noncenter-based day support, supportive in-home, and intensive in-home services.

"Individual" or "individual receiving services" means a current direct recipient of public or private mental health, developmental, or substance abuse treatment, rehabilitation, or habilitation services and includes the terms "consumer," "patient," "resident," "recipient," or "client". When the term is used in this chapter, the requirement applies to every individual receiving licensed services from the provider.

"Individualized services plan" or "ISP" means a comprehensive and regularly updated written plan that describes the individual's needs, the measurable goals and objectives to address those needs, and strategies to reach the individual's goals. An ISP is person-centered, empowers the individual, and is designed to meet the needs and preferences of the individual. The ISP is developed through a partnership between the individual and the provider and includes an individual's treatment plan, habilitation plan, person-centered plan, or plan of care, which are all considered individualized service plans.

"Informed choice" means a decision made after considering options based on adequate and accurate information and knowledge. These options are developed through collaboration with the individual and his authorized representative, as applicable, and the provider with the intent of empowering the individual and his authorized representative to make decisions that will lead to positive service outcomes.

"Informed consent" means the voluntary written agreement of an individual, or that individual's authorized representative, to surgery, electroconvulsive treatment, use of psychotropic medications, or any other treatment or service that poses a risk of harm greater than that ordinarily encountered in daily life or for participation in human research. To be voluntary, informed consent must be given freely and without undue inducement; any element of force, fraud, deceit, or duress; or any form of constraint or coercion.

"Initial assessment" means an assessment conducted prior to or at admission to determine whether the individual meets the service's admission criteria; what the individual's immediate service, health, and safety needs are; and whether the provider has the capability and staffing to provide the needed services.

"Inpatient psychiatric service" means intensive 24-hour medical, nursing, and treatment services provided to individuals with mental illness or substance abuse (substance use disorders) in a hospital as defined in § 32.1-123 of the Code of Virginia or in a special unit of such a hospital.

"Instrumental activities of daily living" or "IADLs" means meal preparation, housekeeping, laundry, and managing money. A person's degree of independence in performing these activities is part of determining appropriate level of care and services.

"Intellectual disability" means a disability originating before 18 years of age, characterized concurrently by (i) significant subaverage intellectual functioning as demonstrated by performance on a standardized measure of intellectual functioning administered in conformity with accepted professional practice that is at least two standard deviations below the mean and (ii) significant limitations in adaptive behavior as expressed in conceptual, social, and practical adaptive skills.

"Intensity of service" means the number, type, and frequency of staff interventions and other services provided during treatment at a particular level of care.

"Intensive community treatment service" or "ICT" means a self-contained interdisciplinary team of at least five full-time equivalent clinical staff, a program assistant, and a full-time psychiatrist that:

1. Assumes responsibility for directly providing needed treatment, rehabilitation, and support services to identified individuals with severe and persistent mental illness, especially those who have severe symptoms that are not

effectively remedied by available treatments or who because of reasons related to their mental illness resist or avoid involvement with mental health services;

2. Minimally refers individuals to outside service providers;

3. Provides services on a long-term care basis with continuity of caregivers over time;

4. Delivers 75% or more of the services outside program offices; and

5. Emphasizes outreach, relationship building, and individualization of services.

"Intensive in-home service" means family preservation interventions for children and adolescents who have or are at-risk of serious emotional disturbance, including individuals who also have a diagnosis of developmental disability. Intensive in-home service is usually time-limited and is provided typically in the residence of an individual who is at risk of being moved to out-of-home placement or who is being transitioned back home from an out-of-home placement. The service includes 24-hour per day emergency response; crisis treatment; individual and family counseling; life, parenting, and communication skills; and case management and coordination with other services.

"Intermediate care facility/individuals with intellectual disability" or "ICF/IID" means a facility or distinct part of a facility certified by the Virginia Department of Health as meeting the federal certification regulations for an intermediate care facility for individuals with intellectual disability and persons with related conditions and that addresses the total needs of the residents, which include physical, intellectual, social, emotional, and habilitation, providing active treatment as defined in 42 CFR 435.1010 and 42 CFR 483.440.

"Investigation" means a detailed inquiry or systematic examination of the operations of a provider or its services regarding an alleged violation of regulations or law. An investigation may be undertaken as a result of a complaint, an incident report, or other information that comes to the attention of the department.

"Licensed mental health professional" or "LMHP" means a physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, licensed substance abuse treatment practitioner, licensed marriage and family therapist, certified psychiatric clinical nurse specialist, licensed behavior analyst, or licensed psychiatric/mental health nurse practitioner.

"Location" means a place where services are or could be provided.

~~"Medically managed withdrawal services" means detoxification services to eliminate or reduce the effects of alcohol or other drugs in the individual's body.~~

"Mandatory outpatient treatment order" means an order issued by a court pursuant to § 37.2-817 of the Code of Virginia.

"Medical detoxification" means a service provided in a hospital or other 24-hour care facility under the supervision of medical personnel using medication to systematically eliminate or reduce ~~effects~~ the presence of alcohol or other drugs in the individual's body.

"Medical evaluation" means the process of assessing an individual's health status that includes a medical history and a physical examination of an individual conducted by a licensed medical practitioner operating within the scope of his license.

"Medically managed intensive inpatient service" [or "Level of care 4.0"] means an organized service delivered in an inpatient setting, including an acute care general hospital, psychiatric unit in a general hospital, or a freestanding psychiatric hospital. This service is appropriate for individuals whose acute biomedical and emotional, behavioral, and cognitive problems are so severe that they require primary medical and nursing care. Services at this level of care are managed by a physician who is responsible for diagnosis, treatment, and treatment plan decisions in collaboration with the individual.

"Medically monitored intensive inpatient treatment" [or "Level of care 3.7"] means a substance use treatment program that provides 24-hour care in a facility under the supervision of medical personnel. The care provided includes directed evaluation, observation, medical monitoring, and addiction treatment in an inpatient setting. The care provided may include the use of medication to address the effects of substance use. This service is appropriate for an individual whose subacute biomedical, emotional, behavioral, or cognitive problems are so severe that they require inpatient treatment but who does not need the full resources of an acute care general hospital or a medically managed intensive inpatient treatment program.

"Medication" means prescribed or over-the-counter drugs or both.

"Medication administration" means the direct application of medications by injection, inhalation, ingestion, or any other means to an individual receiving services by (i) persons legally permitted to administer medications or (ii) the individual at the direction and in the presence of persons legally permitted to administer medications.

"Medication assisted opioid treatment ~~(Opioid treatment service)~~" means an intervention [~~strategy that combines outpatient treatment with the~~ of] administering or dispensing of [~~synthetic narcotics~~ medications], such as methadone ~~or,~~ buprenorphine [~~(suboxone)~~], or naltrexone approved by the federal Food and Drug Administration for the purpose of [~~replacing the use of and reducing the craving for~~ treating]

opioid [~~substances, such as heroin or other narcotic drugs~~ use disorder].

"Medication assisted treatment" or "MAT" means the use of U.S. Food and Drug Administration approved medications in combination with counseling and behavioral therapies to provide treatment of substance use disorders. Medication assisted treatment includes [~~medication assisted~~ medications for] opioid [use disorder as well as medications for] treatment [of alcohol use disorder].

"Medication error" means an error in administering a medication to an individual and includes when any of the following occur: (i) the wrong medication is given to an individual, (ii) the wrong individual is given the medication, (iii) the wrong dosage is given to an individual, (iv) medication is given to an individual at the wrong time or not at all, or (v) the wrong method is used to give the medication to the individual.

"Medication storage" means any area where medications are maintained by the provider, including a locked cabinet, locked room, or locked box.

"Mental Health Community Support Service" or "MCHSS" means the provision of recovery-oriented services to individuals with long-term, severe mental illness. MHCSS includes skills training and assistance in accessing and effectively utilizing services and supports that are essential to meeting the needs identified in the individualized services plan and development of environmental supports necessary to sustain active community living as independently as possible. MHCSS may be provided in any setting in which the individual's needs can be addressed, skills training applied, and recovery experienced.

"Mental health intensive outpatient service" means a structured program of skilled treatment services focused on maintaining and improving functional abilities through a time-limited, interdisciplinary approach to treatment. This service is provided over a period of time for individuals requiring more intensive services than an outpatient service can provide and may include individual, family, or group counseling or psychotherapy; skill development and psychoeducational activities; certified peer support services; medication management; and psychological assessment or testing.

"Mental health outpatient service" means treatment provided to individuals on an hourly schedule, on an individual, group, or family basis, and usually in a clinic or similar facility or in another location. Mental health outpatient services may include diagnosis and evaluation, screening and intake, counseling, psychotherapy, behavior management, psychological testing and assessment, laboratory, and other ancillary services, medical services, and medication services. Mental health outpatient service specifically includes:

1. Mental health services operated by a community services board or a behavioral health authority established pursuant to Chapter 5 (§ 37.2-500 et seq.) or Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia;

2. Mental health services contracted by a community services board or a behavioral health authority established pursuant to Chapter 5 (§ 37.2-500 et seq.) or Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia; or

3. Mental health services that are owned, operated, or controlled by a corporation organized pursuant to the provisions of either Chapter 9 (§ 13.1-601 et seq.) or Chapter 10 (§ 13.1-801 et seq.) of Title 13.1 of the Code of Virginia.

"Mental health partial hospitalization service" means time-limited active treatment interventions that are more intensive than outpatient services, designed to stabilize and ameliorate acute symptoms and serve as an alternative to inpatient hospitalization or to reduce the length of a hospital stay. Partial hospitalization is provided through a minimum of 20 hours per week of skilled treatment services focused on individuals who require intensive, highly coordinated, structured, and interdisciplinary ambulatory treatment within a stable environment that is of greater intensity than intensive outpatient, but of lesser intensity than inpatient.

"Mental illness" means a disorder of thought, mood, emotion, perception, or orientation that significantly impairs judgment, behavior, capacity to recognize reality, or ability to address basic life necessities and requires care and treatment for the health, safety, or recovery of the individual or for the safety of others.

"Missing" means a circumstance in which an individual is not physically present when and where he should be and his absence cannot be accounted for or explained by his supervision needs or pattern of behavior.

"Motivational enhancement" means a person-centered approach that is collaborative, employs strategies to strengthen motivation for change, increases engagement in substance use services, resolves ambivalence about changing substance use behaviors, and supports individuals to set goals to change their substance use.

"Neglect" means the failure by a person, or a program or facility operated, licensed, or funded by the department, excluding those operated by the Department of Corrections, responsible for providing services to do so, including nourishment, treatment, care, goods, or services necessary to the health, safety, or welfare of an individual receiving care or treatment for mental illness, developmental disabilities, or substance abuse.

"Neurobehavioral services" means the assessment, evaluation, and treatment of cognitive, perceptual, behavioral, and other impairments caused by brain injury that affect an individual's ability to function successfully in the community.

~~"Outpatient service" means treatment provided to individuals on an hourly schedule, on an individual, group, or family basis,~~

~~and usually in a clinic or similar facility or in another location. Outpatient services may include diagnosis and evaluation, screening and intake, counseling, psychotherapy, behavior management, psychological testing and assessment, laboratory and other ancillary services, medical services, and medication services. "Outpatient service" specifically includes:~~

~~1. Services operated by a community services board or a behavioral health authority established pursuant to Chapter 5 (§ 37.2-500 et seq.) or Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia;~~

~~2. Services contracted by a community services board or a behavioral health authority established pursuant to Chapter 5 (§ 37.2-500 et seq.) or Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia; or~~

~~3. Services that are owned, operated, or controlled by a corporation organized pursuant to the provisions of either Chapter 9 (§ 13.1-601 et seq.) or Chapter 10 (§ 13.1-801 et seq.) of Title 13.1 of the Code of Virginia.~~

~~"Partial hospitalization service" means time limited active treatment interventions that are more intensive than outpatient services, designed to stabilize and ameliorate acute symptoms, and serve as an alternative to inpatient hospitalization or to reduce the length of a hospital stay. Partial hospitalization is focused on individuals with serious mental illness, substance abuse (substance use disorders), or co-occurring disorders at risk of hospitalization or who have been recently discharged from an inpatient setting.~~

"Person-centered" means focusing on the needs and preferences of the individual; empowering and supporting the individual in defining the direction for his life; and promoting self-determination, community involvement, and recovery.

"Program of assertive community treatment service" or "PACT" means a self-contained interdisciplinary team of at least 10 full-time equivalent clinical staff, a program assistant, and a full-time or part-time psychiatrist that:

1. Assumes responsibility for directly providing needed treatment, rehabilitation, and support services to identified individuals with severe and persistent mental illnesses, including those who have severe symptoms that are not effectively remedied by available treatments or who because of reasons related to their mental illness resist or avoid involvement with mental health services;

2. Minimally refers individuals to outside service providers;

3. Provides services on a long-term care basis with continuity of caregivers over time;

4. Delivers 75% or more of the services outside program offices; and

5. Emphasizes outreach, relationship building, and individualization of services.

"Provider" means any person, entity, or organization, excluding an agency of the federal government by whatever name or designation, that delivers (i) services to individuals with mental illness, developmental disabilities, or substance abuse (substance use disorders) or (ii) residential services for individuals with brain injury. The person, entity, or organization shall include a hospital as defined in § 32.1-123 of the Code of Virginia, community services board, behavioral health authority, private provider, and any other similar or related person, entity, or organization. It shall not include any individual practitioner who holds a license issued by a health regulatory board of the Department of Health Professions or who is exempt from licensing pursuant to §§ 54.1-2901, 54.1-3001, 54.1-3501, 54.1-3601, and 54.1-3701 of the Code of Virginia.

"Psychosocial rehabilitation service" means a program of two or more consecutive hours per day provided to groups of adults in a nonresidential setting. Individuals must demonstrate a clinical need for the service arising from a condition due to mental, behavioral, or emotional illness that results in significant functional impairments in major life activities. This service provides education to teach the individual about mental illness, substance abuse, and appropriate medication to avoid complication and relapse and opportunities to learn and use independent skills and to enhance social and interpersonal skills within a consistent program structure and environment. Psychosocial rehabilitation includes skills training, peer support, vocational rehabilitation, and community resource development oriented toward empowerment, recovery, and competency.

"Qualified developmental disability professional" or "QDDP" means a person who possesses at least one year of documented experience working directly with individuals who have a developmental disability and who possesses one of the following credentials: (i) a doctor of medicine or osteopathy licensed in Virginia, (ii) a registered nurse licensed in Virginia, (iii) a licensed occupational therapist, or (iv) completion of at least a bachelor's degree in a human services field, including sociology, social work, special education, rehabilitation counseling, or psychology.

"Qualified mental health professional" or "QMHP" means a person who by education and experience is professionally qualified and registered by the Board of Counseling in accordance with 18VAC115-80 to provide collaborative mental health services for adults or children. A QMHP shall not engage in independent or autonomous practice. A QMHP shall provide such services as an employee or independent contractor of the department or a provider licensed by the department.

"Qualified mental health professional-adult" or "QMHP-A" means a person who by education and experience is professionally qualified and registered with the Board of Counseling in accordance with 18VAC115-80 to provide

collaborative mental health services for adults. A QMHP-A shall provide such services as an employee or independent contractor of the department or a provider licensed by the department. A QMHP-A may be an occupational therapist who by education and experience is professionally qualified and registered with the Board of Counseling in accordance with 18VAC115-80.

"Qualified mental health professional-child" or "QMHP-C" means a person who by education and experience is professionally qualified and registered with the Board of Counseling in accordance with 18VAC115-80 to provide collaborative mental health services for children. A QMHP-C shall provide such services as an employee or independent contractor of the department or a provider licensed by the department. A QMHP-C may be an occupational therapist who by education and experience is professionally qualified and registered with the Board of Counseling in accordance with 18VAC115-80.

"Qualified mental health professional-eligible" or "QMHP-E" means a person receiving supervised training in order to qualify as a QMHP in accordance with 18VAC115-80 and who is registered with the Board of Counseling.

"Qualified paraprofessional in mental health" or "QPPMH" means a person who must meet at least one of the following criteria: (i) registered with the United States Psychiatric Association (USPRA) as an Associate Psychiatric Rehabilitation Provider (APRP); (ii) has an associate's degree in a related field (social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, human services counseling) and at least one year of experience providing direct services to individuals with a diagnosis of mental illness; (iii) licensed as an occupational therapy assistant, and supervised by a licensed occupational therapist, with at least one year of experience providing direct services to individuals with a diagnosis of mental illness; or (iv) has a minimum of 90 hours classroom training and 12 weeks of experience under the direct personal supervision of a QMHP-A providing services to individuals with mental illness and at least one year of experience (including the 12 weeks of supervised experience).

"Quality improvement plan" means a detailed work plan developed by a provider that defines steps the provider will take to review the quality of services it provides and to manage initiatives to improve quality. A quality improvement plan consists of systematic and continuous actions that lead to measurable improvement in the services, supports, and health status of the individuals receiving services.

"Recovery" means a journey of healing and transformation enabling an individual with a mental illness to live a meaningful life in a community of his choice while striving to achieve his full potential. For individuals with substance abuse (substance use disorders), recovery is an incremental process leading to positive social change and a full return to biological, psychological, and social functioning. For individuals with a developmental disability, the concept of recovery does not apply in the sense that individuals with a developmental disability will need supports throughout their entire lives although these may change over time. With supports, individuals with a developmental disability are capable of living lives that are fulfilling and satisfying and that bring meaning to themselves and others whom they know.

"Referral" means the process of directing an applicant or an individual to a provider or service that is designed to provide the assistance needed.

"Residential crisis stabilization service" means (i) providing short-term, intensive treatment to nonhospitalized individuals who require multidisciplinary treatment in order to stabilize acute psychiatric symptoms and prevent admission to a psychiatric inpatient unit; (ii) providing normative environments with a high assurance of safety and security for crisis intervention; and (iii) mobilizing the resources of the community support system, family members, and others for ongoing rehabilitation and recovery.

"Residential service" means providing 24-hour support in conjunction with care and treatment or a training program in a setting other than a hospital or training center. Residential services provide a range of living arrangements from highly structured and intensively supervised to relatively independent requiring a modest amount of staff support and monitoring. Residential services include residential treatment, group homes, supervised living, residential crisis stabilization, community gero-psychiatric residential, ICF/IID, sponsored residential homes, medical and social detoxification, [and] neurobehavioral services [~~, and substance abuse residential treatment for women and children~~].

"Residential treatment service" means providing an intensive and highly structured mental health, substance abuse, or neurobehavioral service, or services for co-occurring disorders in a residential setting, other than an inpatient service.

"Respite care service" means providing for a short-term, time-limited period of care of an individual for the purpose of providing relief to the individual's family, guardian, or regular care giver. Persons providing respite care are recruited, trained, and supervised by a licensed provider. These services may be provided in a variety of settings including residential, day support, in-home, or a sponsored residential home.

"Restraint" means the use of a mechanical device, medication, physical intervention, or hands-on hold to prevent an individual receiving services from moving his body to engage in a behavior that places him or others at imminent risk. There are three kinds of restraints:

1. Mechanical restraint means the use of a mechanical device that cannot be removed by the individual to restrict the individual's freedom of movement or functioning of a limb

or portion of an individual's body when that behavior places him or others at imminent risk.

2. Pharmacological restraint means the use of a medication that is administered involuntarily for the emergency control of an individual's behavior when that individual's behavior places him or others at imminent risk and the administered medication is not a standard treatment for the individual's medical or psychiatric condition.

3. Physical restraint, also referred to as manual hold, means the use of a physical intervention or hands-on hold to prevent an individual from moving his body when that individual's behavior places him or others at imminent risk.

"Restraints for behavioral purposes" means using a physical hold, medication, or a mechanical device to control behavior or involuntary restrict the freedom of movement of an individual in an instance when all of the following conditions are met: (i) there is an emergency; (ii) nonphysical interventions are not viable; and (iii) safety issues require an immediate response.

"Restraints for medical purposes" means using a physical hold, medication, or mechanical device to limit the mobility of an individual for medical, diagnostic, or surgical purposes, such as routine dental care or radiological procedures and related post-procedure care processes, when use of the restraint is not the accepted clinical practice for treating the individual's condition.

"Restraints for protective purposes" means using a mechanical device to compensate for a physical or cognitive deficit when the individual does not have the option to remove the device. The device may limit an individual's movement, for example, bed rails or a gerichair, and prevent possible harm to the individual or it may create a passive barrier, such as a helmet to protect the individual.

"Restriction" means anything that limits or prevents an individual from freely exercising his rights and privileges.

"Risk management" means an integrated system-wide program to ensure the safety of individuals, employees, visitors, and others through identification, mitigation, early detection, monitoring, evaluation, and control of risks.

"Root cause analysis" means a method of problem solving designed to identify the underlying causes of a problem. The focus of a root cause analysis is on systems, processes, and outcomes that require change to reduce the risk of harm.

"Screening" means the process or procedure for determining whether the individual meets the minimum criteria for admission.

"Seclusion" means the involuntary placement of an individual alone in an area secured by a door that is locked or held shut by a staff person, by physically blocking the door, or by any other physical means so that the individual cannot leave it.

"Serious incident" means any event or circumstance that causes or could cause harm to the health, safety, or well-being of an individual. The term "serious incident" includes death and serious injury.

"Level I serious incident" means a serious incident that occurs or originates during the provision of a service or on the premises of the provider and does not meet the definition of a Level II or Level III serious incident. Level I serious incidents do not result in significant harm to individuals, but may include events that result in minor injuries that do not require medical attention or events that have the potential to cause serious injury, even when no injury occurs. "Level II serious incident" means a serious incident that occurs or originates during the provision of a service or on the premises of the provider that results in a significant harm or threat to the health and safety of an individual that does not meet the definition of a Level III serious incident.

"Level II serious incident" includes a significant harm or threat to the health or safety of others caused by an individual. Level II serious incidents include:

1. A serious injury;

2. An individual who is or was missing;

3. An emergency room visit;

4. An unplanned psychiatric or unplanned medical hospital admission of an individual receiving services other than licensed emergency services, except that a psychiatric admission in accordance with the individual's Wellness Recovery Action Plan shall not constitute an unplanned admission for the purposes of this chapter;

5. Choking incidents that require direct physical intervention by another person;

6. Ingestion of any hazardous material; or

7. A diagnosis of:

a. A decubitus ulcer or an increase in severity of level of previously diagnosed decubitus ulcer;

b. A bowel obstruction; or

c. Aspiration pneumonia.

"Level III serious incident" means a serious incident whether or not the incident occurs while in the provision of a service or on the provider's premises and results in:

1. Any death of an individual;

2. A sexual assault of an individual; or

3. A suicide attempt by an individual admitted for services, other than licensed emergency services, that results in a hospital admission.

"Serious injury" means any injury resulting in bodily hurt, damage, harm, or loss that requires medical attention by a

licensed physician, doctor of osteopathic medicine, physician assistant, or nurse practitioner.

"Service" means (i) planned individualized interventions intended to reduce or ameliorate mental illness, developmental disabilities, or substance abuse (substance use disorders) through care, treatment, training, habilitation, or other supports that are delivered by a provider to individuals with mental illness, developmental disabilities, or substance abuse (substance use disorders). Services include outpatient services, intensive in-home services, medication assisted opioid treatment services, inpatient psychiatric hospitalization, community gero-psychiatric residential services, assertive community treatment and other clinical services; day support, day treatment, partial hospitalization, psychosocial rehabilitation, and habilitation services; case management services; and supportive residential, special school, halfway house, in-home services, crisis stabilization, and other residential services; and (ii) planned individualized interventions intended to reduce or ameliorate the effects of brain injury through care, treatment, or other supports provided in residential services for persons with brain injury.

"Shall" means an obligation to act is imposed.

"Shall not" means an obligation not to act is imposed.

"Skills training" means systematic skill building through curriculum-based psychoeducational and cognitive-behavioral interventions. These interventions break down complex objectives for role performance into simpler components, including basic cognitive skills such as attention, to facilitate learning and competency.

~~"Social detoxification service" means providing nonmedical supervised care for the individual's natural process of withdrawal from use of alcohol or other drugs.~~

"Sponsored residential home" means a service where providers arrange for, supervise, and provide programmatic, financial, and service support to families or persons (sponsors) providing care or treatment in their own homes for individuals receiving services.

"State board" means the State Board of Behavioral Health and Developmental Services. The board has statutory responsibility for adopting regulations that may be necessary to carry out the provisions of Title 37.2 of the Code of Virginia and other laws of the Commonwealth administered by the commissioner or the department.

"State methadone authority" means the Virginia Department of Behavioral Health and Developmental Services that is authorized by the federal Center for Substance Abuse Treatment to exercise the responsibility and authority for governing the treatment of opiate addiction with an opioid drug.

"Substance abuse (substance use disorders)" means the use of drugs enumerated in the Virginia Drug Control Act (§ 54.1-3400 et seq.) without a compelling medical reason or alcohol that (i) results in psychological or physiological dependence or danger to self or others as a function of continued and compulsive use or (ii) results in mental, emotional, or physical impairment that causes socially dysfunctional or socially disordering behavior; and (iii), because of such substance abuse, requires care and treatment for the health of the individual. This care and treatment may include counseling, rehabilitation, or medical or psychiatric care.

"Substance abuse intensive outpatient service" ["Level of care 2.1"] means structured treatment provided ~~in a concentrated manner for two or more consecutive hours per day to groups of individuals in a nonresidential setting. This service is provided over a period of time for individuals requiring more intensive services than an outpatient service can provide. Substance abuse intensive outpatient services include multiple group therapy sessions during the week, individual and family therapy, individual monitoring, and case management.~~ to individuals who require more intensive services than is normally provided in an outpatient service but do not require inpatient services. Treatment consists primarily of counseling and education about addiction-related and mental health challenges delivered a minimum of nine to 19 hours of services per week for adults or six to 19 hours of services per week for children and adolescents. Within this level of care an individual's needs for psychiatric and medical services are generally addressed through consultation and referrals.

"Substance abuse outpatient service" [or "Level of care 1.0"] means a center based substance abuse treatment delivered to individuals for fewer than nine hours of service per week for adults or fewer than six hours per week for adolescents on an individual, group, or family basis. Substance abuse outpatient services may include diagnosis and evaluation, screening and intake, counseling, psychotherapy, behavior management, psychological testing and assessment, laboratory and other ancillary services, medical services, and medication services. Substance abuse outpatient service includes substance abuse services or an office practice that provides professionally directed aftercare, individual, and other addiction services to individuals according to a predetermined regular schedule of fewer than nine contact hours a week. Substance abuse outpatient service also includes:

1. Substance abuse services operated by a community services board or a behavioral health authority established pursuant to Chapter 5 (§ 37.2-500 et seq.) or Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia;

2. Substance abuse services contracted by a community services board or a behavioral health authority established pursuant to Chapter 5 (§ 37.2-500 et seq.) or Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia; or

3. Substance abuse services that are owned, operated, or controlled by a corporation organized pursuant to the

provisions of either Chapter 9 (§ 13.1-601 et seq.) or Chapter 10 (§ 13.1-801 et seq.) of Title 13.1 of the Code of Virginia.

"Substance abuse partial hospitalization services" [or "Level of care 2.5"] means a short-term, nonresidential substance use treatment program provided for a minimum of 20 hours a week that uses multidisciplinary staff and is provided for individuals who require a more intensive treatment experience than intensive outpatient treatment but who do not require residential treatment. This level of care is designed to offer highly structured intensive treatment to those individuals whose condition is sufficiently stable so as not to require 24-hour-per-day monitoring and care, but whose illness has progressed so as to require consistent near-daily treatment intervention.

[~~"Substance abuse residential treatment for women with children service" means a 24-hour residential service providing an intensive and highly structured substance abuse service for women with children who live in the same facility.~~]

"Suicide attempt" means a nonfatal, self-directed, potentially injurious behavior with an intent to die as a result of the behavior regardless of whether it results in injury.

"Supervised living residential service" means the provision of significant direct supervision and community support services to individuals living in apartments or other residential settings. These services differ from supportive in-home service because the provider assumes responsibility for management of the physical environment of the residence, and staff supervision and monitoring are daily and available on a 24-hour basis. Services are provided based on the needs of the individual in areas such as food preparation, housekeeping, medication administration, personal hygiene, treatment, counseling, and budgeting.

"Supportive in-home service" (formerly supportive residential) means the provision of community support services and other structured services to assist individuals, to strengthen individual skills, and that provide environmental supports necessary to attain and sustain independent community residential living. Services include drop-in or friendly-visitor support and counseling to more intensive support, monitoring, training, in-home support, respite care, and family support services. Services are based on the needs of the individual and include training and assistance. These services normally do not involve overnight care by the provider; however, due to the flexible nature of these services, overnight care may be provided on an occasional basis.

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

"Therapeutic day treatment for children and adolescents" means a treatment program that serves (i) children and adolescents from birth through 17 years of age and under certain circumstances up to 21 years of age with serious emotional disturbances, substance use, or co-occurring disorders or (ii) children from birth through seven years of age who are at risk of serious emotional disturbance, in order to combine psychotherapeutic interventions with education and mental health or substance abuse treatment. Services include: evaluation; medication education and management; opportunities to learn and use daily living skills and to enhance social and interpersonal skills; and individual, group, and family counseling.

"Time out" means the involuntary removal of an individual by a staff person from a source of reinforcement to a different, open location for a specified period of time or until the problem behavior has subsided to discontinue or reduce the frequency of problematic behavior.

"Volunteer" means a person who, without financial remuneration, provides services to individuals on behalf of the provider.

12VAC35-105-30. Licenses.

A. Licenses are issued to providers who offer services to individuals who have mental illness, a developmental disability, or substance abuse (substance use disorders) or have brain injury and are receiving residential services.

B. Providers shall be licensed to provide specific services as defined in this chapter or as determined by the commissioner. These services include:

1. Case management;

2. Clinically managed high-intensity residential care [or Level of care 3.5];

3. Clinically managed low-intensity residential care [or Level of care 3.1];

4. Clinically managed population specific high-intensity residential [or Level of care 3.3];

5. Community gero-psychiatric residential;

~~3.~~ 6. ICF/IID;

~~4.~~ 7. Residential crisis stabilization;

~~5.~~ 8. Nonresidential crisis stabilization;

~~6.~~ 9. Day support;

~~7.~~ 10. Day treatment, includes therapeutic day treatment for children and adolescents;

~~8.~~ 11. Group home and community residential;

~~9.~~ 12. Inpatient psychiatric;

~~10.~~ 13. Intensive community treatment (ICT);

~~11.~~ 14. Intensive in-home;

~~12. Managed withdrawal, including medical detoxification and social detoxification;~~

~~13.~~ 15. Medically managed intensive inpatient service [or Level of care 4.0];

16. Medically monitored intensive inpatient treatment [or Level of care 3.7];

17. Medication assisted opioid treatment;

18. Mental health community support;

~~14. Opioid treatment/medication assisted treatment;~~

~~15.~~ 19. Mental health intensive outpatient;

20. Mental health outpatient;

21. Mental health partial hospitalization;

22. Emergency;

~~16. Outpatient;~~

~~17. Partial hospitalization;~~

~~18.~~ 23. Program of assertive community treatment (PACT);

~~19.~~ 24. Psychosocial rehabilitation;

~~20.~~ 25. Residential treatment;

~~21.~~ 26. Respite care;

~~22.~~ 27. Sponsored residential home;

~~23.~~ [~~28. Substance abuse residential treatment for women with children;~~

~~24. 29.~~ 28.] Substance abuse intensive outpatient;

~~25.~~ [~~30.~~ 29.] Substance abuse outpatient;

[~~31.~~ 30.] Substance abuse partial hospitalization;

[~~32.~~ 31.] Supervised living residential; and

~~26.~~ [~~33.~~ 32.] Supportive in-home.

C. A license addendum shall describe the services licensed, the disabilities of individuals who may be served, the specific locations where services are to be provided or administered, and the terms and conditions for each service offered by a licensed provider. For residential and inpatient services, the license identifies the number of individuals each residential location may serve at a given time.

Article 1
Medication Assisted Opioid Treatment ~~(Opioid Treatment Services)~~

12VAC35-105-925. Standards for the evaluation of new licenses for providers of services to individuals with opioid addiction.

A. Applicants requesting an initial license to provide a service for the treatment of opioid addiction through the use of methadone or any other opioid treatment medication or controlled substance shall supply information to the department that demonstrates the appropriateness of the proposed service in accordance with this section.

B. The proposed site of the service shall comply with § 37.2-406 of the Code of Virginia.

C. In jurisdictions without zoning ordinances, the department shall request that the local governing body advise it as to whether the proposed site is suitable for and compatible with use as an office and the delivery of health care services. The department shall make this request when it notifies the local governing body of a pending application.

D. Applicants shall demonstrate that the building or space to be used to provide the proposed service is suitable for the treatment of opioid addiction by submitting documentation of the following:

1. The proposed site complies with the requirements of the local building regulatory entity;

2. The proposed site complies with local zoning laws or ordinances, including any required business licenses;

3. In the absence of local zoning ordinances, the proposed site is suitable for and compatible with use as offices and the delivery of health care services;

4. In jurisdictions where there are no parking ordinances, the proposed site has sufficient off-street parking to accommodate the needs of the individuals being served and prevent the disruption of traffic flow;

5. The proposed site can accommodate individuals during periods of inclement weather;

6. The proposed site complies with the Virginia Statewide Fire Prevention Code; and

7. The applicant has a written plan to ensure security for storage of methadone at the site, which complies with regulations of the Drug Enforcement Agency (DEA), and the Virginia Board of Pharmacy.

E. Applicants shall submit information to demonstrate that there are sufficient personnel available to meet the following staffing requirements and qualifications:

1. The program sponsor means the person responsible for the operation of the opioid treatment program and who assumes responsibility for all its employees, including any practitioners, agents, or other persons providing medical, rehabilitative, or counseling at the program at any of its medication units. The program sponsor is responsible for ensuring the program is in continuous compliance with all federal, state, and local laws and regulations.

2. The program director shall be licensed or certified by the applicable Virginia health regulatory board ~~or by a nationally recognized certification board~~ or registered as eligible for this license or certification with relevant training, experience, or both, in the treatment of individuals with

opioid addiction~~; 2.~~. The program director is responsible for the day-to-day management of the program.

3. The medical director shall be a board-certified addictionologist or have successfully completed or will complete within one year a course of study in opiate addiction that is approved by the department; and:

a. Is responsible for ensuring all medical, psychiatric, nursing, pharmacy, toxicology, and other services offered by the medication assisted opioid treatment provider are conducted in compliance with federal regulations at all times; and

b. Shall be physically present at the program for a sufficient number of hours to ensure regulatory compliance and carry out those duties specifically assigned to the medical director by regulation.

~~3.~~ 4. A minimum of one pharmacist~~;~~.

~~4.~~ 5. Nurses~~;~~.

~~5.~~ 6. Counselors shall be licensed or certified by the applicable Virginia health regulatory board ~~or by a nationally recognized certification board~~ or eligible for this license or certification~~; and~~.

~~6.~~ 7. Personnel to provide support services.

8. Have linkage with or access to psychological, medical, and psychiatric consultation.

9. Have access to emergency medical and psychiatric care through affiliations with more intensive levels of care.

10. Have the ability to conduct or arrange for appropriate laboratory and toxicology tests.

11. Ensure all clinical staff, whether employed by the provider or available through consultation, contract, or other means, are qualified by training and experience and appropriately licensed, certified, or registered by the appropriate health regulatory board to serve individuals admitted to the service.

F. The applicant may provide peer recovery specialists (PRS). Peer recovery specialists shall be professionally qualified by education and experience in accordance with [~~12VAC35-105-250~~ 12VAC35-250]. A registered peer recovery specialist shall be a PRS registered with the Board of Counseling in accordance with 18VAC115-70 and provide such services as an employee or independent contractor of DBHDS, a provider licensed by the DBHDS, a practitioner licensed by or holding a permit issued from the Department of Health Professions, or a facility licensed by the Virginia Department of Health.

G. If there is a change in or loss of any staff in the positions listed or any change in the provider's ability to comply with the requirements in subsection E of this section, the provider shall formally notify the Substance Abuse and Mental Health Services Administration (SAMHSA) and DBHDS. The provider shall also submit a plan to SAMHSA and DBHDS for immediate coverage within three weeks.

H. Applicants shall submit a description for the proposed service that includes:

1. Proposed mission, philosophy, and goals of the provider;

2. Care, treatment, and services to be provided, including a comprehensive discussion of levels of care provided and alternative treatment strategies offered;

3. Proposed hours and days of operation;

4. Plans for ~~on site~~ onsite security and services adequate to ensure the safety of patients, staff, and property; and

5. A diversion control plan for dispensed medications, including policies for use of drug screens.

~~G.~~ I. Applicants shall, in addition to the requirements of 12VAC35-105-580 C 2, provide documentation of their capability to provide the following services and support directly or by arrangement with other specified providers when such services and supports are (i) requested by an individual being served or (ii) identified as an individual need, based on the assessment conducted in accordance with 12VAC35-105-60 B and included in the individualized services plan:

1. General.

~~2.~~ a. Psychological services;

b. Social services;

~~3.~~ c. Vocational services;

~~4.~~ d. Educational services, including HIV/AIDS education and other health education services; and

~~5.~~ e. Employment services.

2. Initial medical examination services.

3. Special services for pregnant patients.

4. Initial and periodic, individualized, patient-centered assessment and treatment services.

5. Counseling services.

6. Drug abuse testing services.

7. Case management services, including medical monitoring and coordination, with onsite and offsite treatment services provided as needed.

~~H.~~ J. Applicants shall submit documentation of contact with community services boards or behavioral health authorities in their service areas to discuss their plans for operating in the area and to develop joint agreements, as appropriate.

~~I.~~ K. Applicants shall provide policies and procedures that shall address assessment, administration, and regulation of medication and dose levels appropriate to the individual. The policies and procedures shall at a minimum require that each individual served ~~to~~ be assessed every six months by the

treatment team to determine if that individual is appropriate for safe and voluntary medically supervised withdrawal from opioid analgesics, including methadone or buprenorphine, alternative therapies including other medication assisted treatments, or continued federally approved pharmacotherapy treatment for opioid addiction.

~~J.~~ L. Applicants shall submit policies and procedures describing services they will provide to individuals who wish to discontinue medication assisted opioid treatment services.

~~K.~~ M. Applicants shall provide assurances that the service will have a community liaison responsible for developing and maintaining cooperative relationships with community organizations, other service providers, local law enforcement, local government officials, and the community at large.

~~L.~~ N. The department shall conduct announced and unannounced reviews and complaint investigations in collaboration with the Virginia Board of Pharmacy and DEA to determine compliance with the regulations.

12VAC35-105-930. Registration, certification, or accreditation.

A. The medication assisted opioid treatment service shall maintain current registration or certification with:

1. The federal Drug Enforcement Administration;

2. The federal Department of Health and Human Services; and

3. The Virginia Board of Pharmacy.

B. A provider of medication assisted opioid treatment services shall maintain accreditation with an entity approved under federal regulations.

12VAC35-105-935. Criteria for patient admission.

A. Before a medication assisted opioid treatment program may admit an individual, the individual shall meet the criteria for admission as defined by the provider's policies. The provider's policy regarding admission shall at a minimum require the individual to (i) meet diagnostic criteria for opioid use disorder as defined within the DSM; and (ii) meet the admission criteria of Level 1.0 of ASAM. The policies shall be consistent with subsections B through E of this section.

B. A medication assisted opioid treatment program shall maintain current procedures that are designed to ensure that individuals are admitted to [~~short~~ short-term] or long-term detoxification treatment by qualified personnel, such as a program physician who determines that such treatment is appropriate for the specific individual by applying established diagnostic criteria. An individual with two or more unsuccessful detoxification episodes within a 12-month period must be assessed by the medication assisted opioid treatment program physician for other forms of treatment. A program shall not admit an individual for more than two detoxification treatment episodes in one year.

C. [~~An~~ A] medication assisted opioid treatment program shall maintain current procedures designed to ensure that individuals are admitted to maintenance treatment by qualified personnel who have determined, using accepted medical criteria, that the person is currently addicted to an opioid drug, and that the individual became addicted at least one year before admission for treatment. In addition, a program physician shall ensure that each individual voluntarily chooses maintenance treatment, that all relevant facts concerning the use of the opioid drug are clearly and adequately explained to the individual, and that each individual provides informed written consent to treatment.

D. A person younger than 18 years of age is required to have had two documented unsuccessful attempts at short-term detoxification or drug-free treatment within a 12-month period to be eligible for maintenance treatment. No individual younger than 18 years of age may be admitted to maintenance treatment unless parent, legal guardian, or responsible adult designated by the relevant state authority consents in writing to such treatment.

E. If clinically appropriate, the program physician may waive the requirement of a one-year history of addiction under subsection C of this section, for individuals released from penal institutions (within six months after release), for pregnant patients (program physician must certify pregnancy), and for previously treated individuals (up to two years after discharge).

12VAC35-105-940. Criteria for involuntary termination from treatment.

A. The provider shall establish criteria for involuntary termination from treatment that describe the rights of the individual receiving services and the responsibilities and rights of the provider.

B. The provider shall establish a grievance procedure as part of the rights of the individual.

C. On admission, the individual shall be given a copy of the criteria and grievance procedure and shall sign a statement acknowledging receipt of same. The signed ~~acknowledgement~~ acknowledgment shall be maintained in the individual's service record.

D. Upon admission and annually thereafter all individuals shall sign an authorization for disclosure of information to allow ~~programs~~ the provider access to the Virginia Prescription Monitoring System. ~~Failure to comply shall be grounds for nonadmission to the program.~~ Individuals who fail to sign this authorization shall be denied admission to the program.

12VAC35-105-945. Criteria for patient discharge.

Before a medication assisted opioid treatment program may discharge or transfer an individual, the individual shall meet the criteria for discharge or transfer as defined by the provider's policies, which shall include provisions for the discharge or transfer of individuals who have:

1. Achieved the goals of the treatment services and no longer require medication assisted opioid treatment level of care;

2. Been unable to achieve the goals of the individual's treatment but could achieve the individual's goals with a different type of treatment; or

3. Achieved the individual's original treatment goals but have developed new treatment challenges that can only be adequately addressed in a different type of treatment.

12VAC35-105-950. Service operation schedule.

A. The service's days of operation shall meet the needs of the individuals served. If the service dispenses or administers a medication requiring daily dosing, the service shall operate seven days a week, 12 months a year, except for official state holidays. Prior approval from the state methadone authority shall be required for additional closed days.

B. The service may close on Sundays if all the following criteria are met:

1. The provider develops and implements policies and procedures that address recently ~~inducted~~ admitted individuals receiving services, individuals not currently on a stable dose of medication, patients that present noncompliance treatment behaviors, and individuals who previously picked up take-home medications on Sundays, security of take-home medication doses, and health and safety of individuals receiving services.

2. The provider receives prior approval from the state ~~methadone~~ opioid treatment authority (SOTA) for Sunday closings. Each program must have a policy that addresses medication for the newly inducted patients and those who are deemed at risk, for example, are still actively using illicit substances or medical issues that may warrant closer monitoring of medication.

3. Once approved, by the [~~state opioid treatment authority~~ SOTA] to close on Sundays, the provider shall notify individuals receiving services in writing at least 30 days in advance of their intent to close on Sundays. The notice shall address the risks to the individuals and the security of take-home medications. All individuals shall receive an orientation addressing take-home policies and procedures, and this orientation shall be documented in the individual's service record prior to receiving take-home medications.

4. The provider shall establish procedures for emergency access to dosing information 24 hours a day, seven days a week. This information may be provided via an answering service, pager, or other electronic measures. Information needed includes the individual's last dosing time and date, and dose.

C. Medication dispensing hours shall include at least two hours each day of operation outside normal working hours, ~~i.e.~~ that is, before 9 a.m. and after 5 p.m. The ~~state methadone authority~~ SOTA may approve an alternative schedule if the SOTA determines that schedule meets the needs of the population served by the provider.

12VAC35-105-960. ~~Physical examinations~~ Initial and periodic assessment services.

A. The individual shall have a complete physical examination prior to admission to the service unless the individual is transferring from another licensed ~~opioid agonist~~ medication assisted opioid treatment service in Virginia. The provider shall maintain the report of the individual's physical examination in the individual's service record. The results of serology and other tests shall be available within 14 days of admission.

B. ~~Physical exams of each individual shall be completed annually or more frequently if there is a change in the individual's physical or mental condition.~~ The program physician shall review a consent to treatment form with the patient and sign the form prior to the individual receiving the first dose of medication.

C. The provider shall maintain the report of the individual's physical examination in the individual's service record.

D. ~~On admission, all individuals shall be offered testing for AIDS/HIV. The individual may sign a notice of refusal without prejudice.~~ The program shall have a policy to ensure that coordination of care is in place with any prescribing physician.

E. ~~The provider shall coordinate treatment services for individuals who are prescribed benzodiapines and prescription narcotics with the treating physician. The coordination shall be the responsibility of the provider's physician and shall be documented.~~ The provider shall coordinate treatment services for individuals who are prescribed benzodiazepines and prescription narcotics with the treating physician. The coordination shall be the responsibility of the provider's physician and shall be documented.

12VAC35-105-965. Special services for pregnant individuals.

The program shall ensure that every pregnant woman has the opportunity for prenatal care, prenatal education, and postpartum follow-up, either onsite or by referral to an appropriate health care provider.

12VAC35-105-980. Drug screens.

A. The provider shall perform at least ~~eight~~ one random drug ~~screens during a 12-month period~~ screen per month unless the

conditions in ~~subdivision~~ subsection B of this ~~subsection~~ section apply~~:~~.

B. Whenever an individual's drug screen indicates continued illicit drug use or when clinically and environmentally indicated, random drug screens shall be performed weekly.

C. Drug screens shall be analyzed for opiates, methadone (if ordered), benzodiazepines, ~~and~~ cocaine, and buprenorphine. In addition, drug screens for other drugs that have the potential for addiction shall be performed when clinically and environmentally indicated.

D. The provider shall implement a written policy on how the results of drug screens shall be used to direct treatment.

12VAC35-105-990. Take-home medication.

A. Prior to dispensing regularly scheduled take-home medication, the provider shall ensure the individual demonstrates a level of current lifestyle stability as evidenced by the following:

1. Regular clinic attendance, including dosing and participation in counseling or group sessions;

2. Absence of recent alcohol abuse and illicit drug use;

3. Absence of significant behavior problems;

4. Absence of recent criminal activities, charges, or convictions;

5. Stability of the individual's home environment and social relationships;

6. Length of time in treatment;

7. Ability to ~~assure~~ ensure take-home medications are safely stored; and

8. Demonstrated rehabilitative benefits of take-home medications outweigh the risks of possible diversion.

B. Determinations for the take-home approval shall be based on the clinical [~~judgement~~ judgment] of the physician in consultation with the treatment team and shall be documented in the individual's service record.

C. If it is determined that an individual in comprehensive maintenance treatment is appropriate for handling take-home medication, the amount of take-home medication shall not exceed:

1. A single take-home dose for one day when the clinic is closed for business, including Sundays and state or federal holidays.

2. A single dose each week during the first 90 days of treatment (beyond that in subdivision 1 of this subsection). The individual shall ingest all other doses under the supervision of a medication administration trained employee.

3. Two doses per week in the second 90 days of treatment (beyond that in subdivision 1 of this subsection).

4. Three doses per week in the third 90 days of treatment (beyond that in subdivision 1 of this subsection).

5. A maximum six-day supply of take-home doses in the remaining months of the first year of treatment.

6. A maximum two-week supply of take-home medication after one year of continuous treatment.

7. One month's supply of take-home medication after two years of continuous treatment with monthly visits made by the individual served.

D. No medication shall be dispensed to individuals in short-term detoxification treatment or interim maintenance treatment for unsupervised take-home use.

E. Medication assisted opioid treatment providers shall maintain current procedures adequate to identify the theft or diversion of take-home medications. These procedures shall require the labeling of containers with the medication assisted opioid treatment providers name, address, and telephone number. Programs shall ensure that the take-home supplies are packaged in a manner that is designed to reduce the risk of accidental ingestion, including child proof containers.

F. The provider shall educate the individual on the safe transportation and storage of take-home medication.

12VAC35-105-1000. Preventing duplication of medication services.

To prevent duplication of medication assisted opioid ~~medication~~ treatment services to an individual, prior to admission of the individual, the provider shall implement ~~a~~ written policy and procedures for contacting every medication assisted opioid treatment service within a 50-mile radius before admitting an individual.

12VAC35-105-1010. Guests.

A. For the purpose of this section a guest is a patient of a medication assisted opioid treatment service in another state or another area of Virginia, who is traveling and is not yet eligible for take-home medication. Guest dosing shall be approved by the individual's home clinic.

B. The provider shall not dispense medication to any guest unless the guest has been receiving such medication services from another provider and documentation from that provider has been received prior to dispensing medication.

~~B.~~ C. Guests may receive medication for up to 28 days. To continue receiving medication after 28 days, the guest must be admitted to the service. Individuals receiving guest medications as part of a residential treatment service may exceed the 28-day maximum time limit at the medication assisted opioid treatment service.

Article 2
Medically ~~Managed Withdrawal~~ Monitored Intensive Inpatient Services [1]

12VAC35-105-1110. Admission assessments.

During the admission process, providers of ~~managed withdrawal services~~ medically monitored intensive inpatient services shall:

1. Identify individuals with a high-risk for medical complications or who may pose a danger to themselves or others;

2. Assess substances used and time of last use;

3. Determine time of last meal;

4. Administer a urine screen;

5. Analyze blood alcohol content or administer a breathalyzer; and

6. Record vital signs.

12VAC35-105-1420. (Reserved.).

Part VII
Addition Medicine Service Requirements

Article 1
Medically Managed Intensive Inpatient [Level of care 4.0]

12VAC35-105-1430. Medically managed intensive inpatient [Level of care 4.0] staff criteria.

A medically managed intensive inpatient program shall meet the following staff requirements:

1. Have a team of appropriately trained and credentialed professionals who provide medical management by physicians 24 hours a day, primary nursing care and observation 24 hours a day, and professional counseling services 16 hours a day;

2. Have an interdisciplinary team of appropriately credentialed clinical staff, which may include addiction-credentialed physicians, nurse practitioners, physician assistants, nurses, counselors, psychologists, and social workers, who assess and treat individuals with severe substance use disorders or addicted individuals with concomitant acute biomedical, emotional, or behavioral disorders;

3. Have staff who are knowledgeable about the biopsychosocial dimensions of addiction as well as biomedical, emotional, behavioral, and cognitive disorders;

4. Have facility-approved addiction counselors or licensed, certified, or registered addiction clinicians who administer planned interventions according to the assessed needs of the individual; and

5. All clinical staff shall be qualified by training and experience and appropriately licensed, certified, or registered by the appropriate health regulatory board to serve individuals admitted to the service.

12VAC35-105-1440. Medically managed intensive inpatient [Level of care 4.0] program criteria.

A medically managed intensive inpatient program shall meet the following programmatic requirements. The program shall:

1. Deliver services in a 24-hour medically managed, acute care setting and shall be available to all individuals within that setting;

2. Provide cognitive, behavioral, motivational, pharmacologic, and other therapies provided on an individual or group basis, depending on the individual's needs;

3. Provide, for the individual who has a severe biomedical disorder, physical health interventions to supplement addiction treatment;

4. Provide, for the individual who has stable psychiatric symptoms, individualized treatment activities designed to monitor the individual's mental health;

5. Provide planned clinical interventions that are designed to enhance the individual's understanding and acceptance of his addiction illness;

6. Provide family and caregiver treatment services as deemed appropriate by a licensed professional and included in an assessment and treatment plan;

7. Provide health education services;

8. Make medication assisted treatment (MAT) available for all individuals admitted to the service. MAT may be provided by facility staff or coordinated through alternative resources; and

9. Comply with 12VAC35-105-1055 through 12VAC35-105-1130.

12VAC35-105-1450. Medically managed intensive inpatient [Level of care 4.0] admission criteria.

Before a medically managed intensive inpatient program may admit an individual, the individual shall meet the criteria for admission as defined by the provider's policies. The provider's policy regarding admission shall at a minimum require the individual to:

1. Meet diagnostic criteria for a substance use disorder or [~~addictive disorder of moderate to high severity~~ substance induced disorder] as defined by the DSM; and

2. Meet the admission criteria of Level 4.0 of ASAM, including the specific criteria for adult and adolescent populations.

12VAC35-105-1460. Medically managed intensive inpatient [Level of care 4.0] discharge criteria.

Before a medically managed intensive inpatient program may discharge or transfer an individual, the individual shall meet the criteria for discharge or transfer as defined by the provider's policies, which shall include provisions for the discharge or transfer of individuals who have:

1. Achieved the goals of the treatment services and no longer require ASAM 4.0 level of care;

2. Been unable to achieve the goals of the individual's treatment but could achieve the individual's goals with a different type of treatment; or

3. Achieved the individual's original treatment goals but have developed new treatment challenges that can only be adequately addressed in a different type of treatment.

12VAC35-105-1470. Medically managed intensive inpatient [Level of care 4.0] co-occurring enhanced programs.

A. Medically managed intensive inpatient co-occurring enhanced programs shall be staffed by appropriately credentialed mental health professionals who assess and treat the individual's co-occurring mental disorders. All clinical staff shall be qualified by training and experience and appropriately licensed, certified, or registered by the appropriate health regulatory board to serve individuals admitted to the service.

B. Medically managed intensive inpatient co-occurring enhanced programs shall offer individualized treatment activities designed to stabilize the individual's active psychiatric symptoms, including medication evaluation and management.

Article 2
Medically Monitored Intensive Inpatient Services [2 Level of care 3.7]

12VAC35-105-1480. Medically monitored intensive inpatient services [Level of care 3.7] staff criteria.

A medically monitored intensive inpatient treatment program shall meet the following staff requirements. The program shall:

1. Have a licensed physician to oversee the treatment process and ensure quality of care. A physician, a licensed nurse practitioner, or a licensed physician assistant shall be available 24 hours a day in person or by telephone. A physician [, a licensed nurse practitioner, or a licensed physician assistant] shall assess the individual in person within 24 hours of admission;

2. Offer 24-hour nursing care and conduct a nursing assessment on admission. The level of nursing care must be appropriate to the severity of needs of individuals admitted to the service;

3. Have interdisciplinary staff, which may include physicians, nurses, addiction counselors, and behavioral health specialists who are able to assess and treat the individual and obtain and interpret information regarding the individual's psychiatric and substance use or addictive disorders;

4. Offer daily onsite counseling and clinical services. Clinical staff shall be knowledgeable about the biological and psychosocial dimensions of addiction and other behavioral health disorders with specialized training in behavior management techniques and evidence-based practices;

5. Have staff able to provide a planned regimen of 24-hour professionally directed evaluation, care, and treatment services;

6. Make MAT available for all individuals [with opioid use disorder or alcohol use disorder]. MAT may be provided by facility staff or coordinated through alternative resources; and

7. Ensure all clinical staff are qualified by training and experience and appropriately licensed, certified, or registered by the appropriate health regulatory board to serve individuals admitted to the service.

12VAC35-105-1490. Medically monitored intensive inpatient services [Level of care 3.7] program criteria.

A medically monitored intensive inpatient treatment program shall meet the following programmatic requirements. The program shall:

1. Be made available to all individuals within the inpatient setting;

2. Provide a combination of individual and group therapy as deemed appropriate by a [~~licensed mental health professional~~ credentialed addiction treatment professional] and included in an assessment and treatment plan. Such therapy shall be adapted to the individual's level of comprehension;

3. Make available medical and nursing services onsite to provide ongoing assessment and care of addiction needs;

4. Provide direct affiliations with other easily accessible levels of care or close coordination through referral to more or less intensive levels of care and other services;

5. Provide family and caregiver treatment services as deemed appropriate by a [~~licensed mental health professional~~ credentialed addiction treatment professional] and included in an assessment and treatment plan;

6. Provide educational and informational programming adapted to individual needs. The educational and informational programming shall include materials designed

to enhance the individual's understanding of addiction and may include peer recovery support services as appropriate;

7. Utilize random drug screening to monitor drug use and reinforce treatment gains;

8. Regularly monitor the individual's adherence in taking any prescribed medications; and

9. Comply with 12VAC35-105-1055 through 12VAC35-105-1130.

12VAC35-105-1500. Medically monitored intensive inpatient [Level of care 3.7] admission criteria.

Before a medically monitored intensive inpatient program may admit an individual, the individual shall meet the criteria for admission as defined by the provider's policies. The provider's policy regarding admission shall at a minimum require the individual to:

1. Meet diagnostic criteria for a [~~substance use disorder of the DSM or addictive disorder of moderate to high severity~~ moderate or severe substance use or addictive disorder]; and

2. Meet the admission criteria of Level 3.7 of ASAM, including the specific criteria for adult and adolescent populations.

12VAC35-105-1510. Medically monitored intensive inpatient [Level of care 3.7] discharge criteria.

A. Before a medically monitored intensive inpatient program may discharge or transfer an individual, the individual shall meet the criteria for discharge or transfer as defined by the provider's policies, which shall include provisions for the discharge or transfer of individuals who have:

1. Achieved the goals of the treatment services and no longer require ASAM 3.7 level of care;

2. Been unable to achieve the goals of the individual's treatment but could achieve the individual's goals with a different type of treatment; or

3. Achieved the individual's original treatment goals but have developed new treatment challenges that can only be adequately addressed in a different type of treatment.

B. Discharge planning shall occur for individuals and include realistic plans for the continuity of MAT services as indicated.

12VAC35-105-1520. Medically monitored intensive inpatient [Level of care 3.7] co-occurring enhanced programs.

A. Medically monitored intensive inpatient co-occurring enhanced programs shall offer psychiatric services, medication evaluation, and laboratory services as indicated by the needs of individuals admitted to the service. A psychiatrist shall assess the individual by telephone within four hours of admission and in person with 24 hours following admission. [~~An LMHP~~ A credentialed addiction treatment professional] shall conduct a behavioral health-focused assessment at the time of admission. A registered nurse shall monitor the individual's progress and administer or monitor the individual's self-administration of psychotropic medications.

B. Medically monitored intensive inpatient co-occurring enhanced programs shall be staffed by addiction psychiatrists and appropriately credentialed behavioral health professionals who are able to assess and treat co-occurring psychiatric disorders and who have specialized training in behavior management techniques and evidence based practices. All clinical staff shall be qualified by training and experience and appropriately licensed, certified, or registered by the appropriate health regulatory board to serve individuals admitted to the service.

C. Medically monitored intensive inpatient co-occurring enhanced programs shall offer planned clinical activities designed to promote stabilization of the individual's behavioral health needs and psychiatric symptoms and to promote such stabilization, including medication education and management and motivational and engagement strategies.

Article 3
Clinically Managed High-Intensity Residential Services
[Level of care 3.5]

12VAC35-105-1530. Clinically managed high-intensity residential services [Level of care 3.5] staff criteria.

A clinically managed high-intensity residential care program shall meet the following staff requirements. The program shall:

1. Offer telephone or in-person consultation with a physician, a licensed nurse practitioner, or a licensed physician assistant in case of emergency related to an individual's substance use disorder 24 hours a day seven days a week;

2. Offer onsite 24-hour-a-day clinical staffing by credentialed addiction treatment professionals [~~and~~ in addition to] other allied health professionals, such as peer recovery specialists, who work in an interdisciplinary team;

3. Have clinical staff knowledgeable about the biological and psychosocial dimensions of substance use and mental health disorders and their treatment. Staff shall be able to identify the signs and symptoms of acute psychiatric conditions. Staff shall have specialized training in behavior management techniques; and

4. [~~All~~ Ensure that all] clinical staff [~~shall be~~ are] qualified by training and experience and appropriately licensed, certified, or registered by the appropriate health regulatory board to serve individuals admitted to the service.

12VAC35-105-1540. Clinically managed high-intensity residential services [Level of care 3.5] program criteria.

A clinically managed high-intensity residential care program shall meet the following programmatic requirements. The program shall:

1. Provide daily clinical services, including a range of cognitive, behavioral, and other therapies in individual or group therapy; programming; and psychoeducation as deemed appropriate by a [~~licensed professional~~ credentialed addiction treatment professional] and included in an assessment and treatment plan;

2. Provide counseling and clinical interventions to teach an individual the skills needed for daily productive activity, prosocial behavior, and reintegration into family and community;

3. Provide motivational enhancement and engagement strategies appropriate to an individual's stage of readiness to change and level of comprehension;

4. Have direct affiliations with other easily accessible levels of care or provide coordination through referral to more or less intensive levels of care and other services;

5. Provide family and caregiver treatment services as deemed appropriate by a [~~licensed professional~~ credentialed addiction treatment professional] and included in an assessment and treatment plan;

6. Provide educational, vocational, and informational programming adaptive to individual needs;

7. Utilize random drug screening to monitor progress and reinforce treatment gains as appropriate to an individual treatment plan;

8. Ensure and document that the length of an individual's stay shall be determined by the individual's condition and functioning;

9. Make a substance use treatment program available for all individuals; and

10. Make MAT available for all individuals [with opioid use disorder or alcohol use disorder]. Medication assisted treatment may be provided by facility staff, or coordinated through alternative resources.

12VAC35-105-1550. Clinically managed high-intensity residential services [Level of care 3.5] admission criteria.

A. The individuals served by [a] clinically managed high-intensity residential care [program] are individuals who are not sufficiently stable to benefit from outpatient treatment regardless of intensity of service.

B. Before a clinically managed high-intensity residential service program may admit an individual, the individual shall meet the criteria for admission as defined by the provider's policies. The provider's policy regarding admission shall at a minimum require the individual to:

1. Meet diagnostic criteria for a substance use disorder or addictive disorder of moderate to high severity as defined by the DSM; and

2. Meet the admission criteria of Level 3.5 of ASAM.

12VAC35-105-1560. Clinically managed high-intensity residential services [Level of care 3.5] discharge criteria.

Before a clinically managed high-intensity residential service program may discharge or transfer an individual, the individual shall meet the criteria for discharge or transfer as defined by the provider's policies, which shall include provisions for the discharge or transfer of individuals who have:

1. Achieved the goals of the treatment services and no longer require ASAM 3.5 level of care;

2. Been unable to achieve the goals of the individual's treatment but could achieve the individual's goals with a different type of treatment; or

3. Achieved the individual's original treatment goals but have developed new treatment challenges that can only be adequately addressed in a different type of treatment.

12VAC35-105-1570. Clinically managed high-intensity residential services [Level of care 3.5] co-occurring enhanced programs.

A. Clinically managed high-intensity residential services co-occurring enhanced programs shall offer psychiatric services, medication evaluation, and laboratory services. Such services shall be available by telephone within eight hours and onsite or closely coordinated offsite within 24 hours.

B. Clinically managed high-intensity residential services co-occurring enhanced programs shall be staffed by appropriately credentialed mental health professionals, including addiction psychiatrists who are able to assess and treat co-occurring mental disorders and who have specialized training in behavior management techniques. All clinical staff shall be qualified by training and experience and appropriately licensed, certified, or registered by the appropriate health regulatory board to serve individuals admitted to the service.

C. Clinically managed high-intensity residential services co-occurring enhanced programs shall offer planned clinical activities designed to stabilize the individual's mental health problems and psychiatric symptoms and to maintain such stabilization, including medication education and management and motivational and engagement strategies. Goals of therapy shall apply to both the individual's substance use disorder and any co-occurring mental disorder.

Article 4
Clinically Managed Population-Specific High Intensity Residential Services [Level of care 3.3]

12VAC35-105-1580. Clinically managed population-specific high-intensity residential services [Level of care 3.3] staff criteria.

A [clinically managed, population-specific,] high-intensity residential services program shall meet the following staff requirements. The program shall:

1. Offer telephone or in-person consultation with a physician, a licensed nurse practitioner, or a physician assistant in case of emergency related to an individual's substance use disorder 24 hours a day, seven days a week;

2. Have allied health professional staff onsite 24 hours a day. At least one clinician with competence in the treatment of substance use disorder shall be available onsite or by telephone 24 hours a day;

3. Have clinical staff knowledgeable about the biological and psychosocial dimensions of substance use and mental health disorders and their treatment and able to identify the signs and symptoms of acute psychiatric conditions. Staff shall have specialized training in behavior management techniques; and

4. Ensure all clinical staff are qualified by training and experience and appropriately licensed, certified, or registered by the appropriate health regulatory board to serve individuals admitted to the service.

12VAC35-105-1590. Clinically managed population-specific high-intensity residential services [Level of care 3.3] program criteria.

A [clinically managed, population-specific,] high-intensity residential services program shall meet the following programmatic requirements. The program shall:

1. Provide daily clinical services that shall include a range of cognitive, behavioral, and other therapies administered on an individual and group basis, medication education and management, educational groups, and occupational or recreation activities as deemed appropriate by a [~~licensed professional~~ credentialed addiction treatment professional] and included in an assessment and treatment plan;

2. Provide daily professional addiction and mental health treatment services that may include relapse prevention, exploring interpersonal choices, peer recovery support, and development of a social network;

3. Provide services to improve the individual's ability to structure and organize the tasks of daily living and recovery. Such services shall accommodate the cognitive limitations within this population;

4. Make available medical, psychiatric, psychological, and laboratory and toxicology services through consultation or referral as indicated by the individual's condition;

5. Provide case management, including ongoing transition and continuing care planning;

6. Provide motivational interventions appropriate to the individual's stage of readiness to change and designed to address the individual's functional limitations;

7. Have direct affiliations with other easily accessible levels of care or coordinate through referral to more or less intensive levels of care and other services;

8. Provide family and caregiver treatment services as deemed appropriate by an assessment and treatment plan;

9. Utilize random drug screening to monitor progress and reinforce treatment gains;

10. Regularly monitor the individual's adherence to taking prescribed medications;

11. Make the substance use treatment program available to all individuals served by the residential care service; and

12. Make MAT available for all individuals [with opioid use disorder or alcohol use disorder]. Medication assisted treatment may be provided by facility staff or coordinated through alternative resources.

12VAC35-105-1600. Clinically managed population-specific high-intensity residential services [Level of care 3.3] admission criteria.

Before a clinically managed, population-specific, high-intensity residential service program may admit an individual, the individual shall meet the criteria for admission as defined by the provider's policies. The provider's policy regarding admission shall at a minimum require the individual to:

1. Meet diagnostic criteria for a [~~substance use disorder or addictive disorder of moderate to high severity~~ moderate or severe substance use or addictive disorder] as defined by the DSM; and

2. Meet the admission criteria of Level 3.3 of ASAM.

12VAC35-105-1610. Clinically managed population-specific high-intensity residential services [Level of care 3.3] discharge criteria.

A. Before a clinically managed, population-specific, high-intensity residential service program may discharge or transfer an individual, the individual shall meet the criteria for discharge or transfer as defined by the provider's policies, which shall include provisions for the discharge or transfer of individuals who have:

1. Achieved the goals of the treatment services and no longer require ASAM 3.3 level of care;

2. Been unable to achieve the goals of the individual's treatment but could achieve the individual's goals with a different type of treatment; or

3. Achieved the individual's original treatment goals but have developed new treatment challenges that can only be adequately addressed in a different type of treatment.

B. Discharge planning shall occur for individuals and include realistic plans for the continuity of MAT services as indicated.

12VAC35-105-1620. Clinically managed population-specific high-intensity residential services [Level of care 3.3] co-occurring enhanced programs.

A. Clinically managed population-specific high-intensity residential services co-occurring enhanced programs shall offer psychiatric services, medication evaluation, and laboratory services. Such services shall be available by telephone within eight hours and onsite or closely coordinated offsite within 24 hours, as appropriate to the severity and urgency of the individual's mental condition.

B. Clinically managed population-specific high-intensity residential services co-occurring enhanced programs shall be staffed by appropriately credentialed psychiatrists and licensed mental health professionals who are able to assess and treat co-occurring mental disorders and who have specialized training in behavior management techniques. All clinical staff shall be qualified by training and experience and appropriately licensed, certified, or registered by the appropriate health regulatory board to serve individuals admitted to the service.

C. Clinically managed population-specific high-intensity residential services co-occurring enhanced programs shall offer planned clinical activities designed to stabilize the individual's mental health problems and psychiatric symptoms and to maintain such stabilization, including medication education and management and motivational and engagement strategies. Goals of therapy shall apply to both the substance use disorder and any co-occurring mental health disorder.

Article 5
Clinically Managed Low-Intensity Residential Services
[Level of care 3.1]

12VAC35-105-1630. Clinically managed low-intensity residential services [Level of care 3.1] staff criteria.

A clinically managed low-intensity residential services program shall meet the following staff requirements. The program shall:

1. Offer telephone or in-person consultation with a physician in case of emergency related to an individual's substance use disorder, available 24 hours a day, seven days a week. The program shall also provide allied health professional staff onsite 24 hours a day;

2. Have clinical staff who are knowledgeable about the biological and psychosocial dimensions of substance use disorder and their treatment and are able to identify the signs and symptoms of acute psychiatric conditions;

3. Have a team comprised of appropriately trained and credentialed medical, addiction, and mental health professionals; and

4. Ensure all clinical staff are qualified by training and experience and appropriately licensed, certified, or registered by the appropriate health regulatory board to serve individuals admitted to the service.

12VAC35-105-1640. Clinically managed low-intensity residential services [Level of care 3.1] program criteria.

A clinically managed low-intensity residential services program shall meet the following programmatic requirements. The program shall:

1. Offer a minimum of five hours a week of professionally directed treatment in addition to other treatment services offered to individuals, such as partial hospitalization or intensive outpatient treatment the focus of which is stabilizing the individual's substance use disorder. Services shall be designed to improve the individual's ability to structure and organize the tasks of daily living and recovery;

2. Ensure collaboration with care providers to develop an individual treatment plan for each individual with time-specific goals and objectives;

3. Provide counseling and clinical monitoring to support successful initial involvement in regular, productive daily activity;

4. Provide case management services;

5. Provide motivational interventions appropriate to the individual's stage of readiness to change and level of comprehension;

6. Have direct affiliations with other easily accessible levels of care or coordinate through referral to more or less intensive levels of care and other services;

7. Include the ability to arrange for needed procedures as appropriate to the severity and urgency of the individual's condition;

8. Provide family and caregiver treatment and peer recovery support services as deemed appropriate by a licensed professional and included in an assessment and treatment plan;

9. Provide addiction pharmacotherapy and the ability to arrange for pharmacotherapy for psychiatric medications;

10. Utilize random drug screening to monitor progress and reinforce treatment gains;

11. Make a substance abuse treatment program available to all individuals; and

12. Make MAT available for all individuals [with opioid use disorder and alcohol use disorder]. Medication assisted treatment may be provided by facility staff or coordinated through alternative resources.

12VAC35-105-1650. Clinically managed low-intensity residential services [Level of care 3.1] admission criteria.

Before a clinically managed low-intensity residential service program may admit an individual, the individual shall meet the criteria for admission as defined by the provider's policies. The provider's policy regarding admission shall at a minimum require the individual to:

1. Meet diagnostic criteria for a [~~substance use disorder or addictive disorder of moderate to high severity~~ moderate or severe substance use or addictive disorder] as defined by the DSM; and

2. Meet the admission criteria of Level 3.1 of ASAM.

12VAC35-105-1660. Clinically managed low-intensity residential services [Level of care 3.1] discharge criteria.

Before a clinically managed low-intensity residential [~~service~~ services] program may discharge or transfer an individual, the individual shall meet the criteria for discharge or transfer as defined by the provider's policies, which shall include provisions for the discharge or transfer of individuals who have:

1. Achieved the goals of the treatment services and no longer require ASAM 3.1 level of care;

2. Been unable to achieve the goals of the individual's treatment but could achieve the individual's goals with a different type of treatment; or

3. Achieved the individual's original treatment goals but have developed new treatment challenges that can only be adequately addressed in a different type of treatment.

12VAC35-105-1670. Clinically managed low-intensity residential services [Level of care 3.1] co-occurring enhanced programs.

A. Clinically managed low-intensity residential services co-occurring enhanced programs shall offer psychiatric services, including medication evaluation and laboratory services. Such services shall be provided onsite or closely coordinated offsite, as appropriate to the severity and urgency of the individual's mental condition.

B. Clinically managed low-intensity residential services co-occurring enhanced programs shall be staffed by appropriately credentialed licensed mental health professionals who are able to assess and treat co-occurring disorders with the capacity to involve addiction-trained psychiatrists. All clinical staff shall be qualified by training and experience and appropriately licensed, certified, or registered by the appropriate health regulatory board to serve individuals admitted to the service.

C. Clinically managed low-intensity residential services co-occurring enhanced programs shall offer planned clinical activities that are designed to stabilize the individual's mental health problems and psychiatric symptoms and to maintain such stabilization, including medication education and management and motivational and engagement strategies. Goals of therapy shall apply to both the substance use disorder and any co-occurring mental disorder.

Article 6
Partial Hospitalization [Level of care 2.5]

12VAC35-105-1680. Substance abuse partial hospitalization services [~~(ASAM 2.5 level of care)~~ Level of care 2.5] staff criteria.

A substance abuse partial hospitalization program shall meet the following staff requirements. The program shall:

1. Have an interdisciplinary team of addiction treatment professionals, which may include counselors, psychologists, social workers, and addiction-credentialed physicians. Physicians treating individuals in this level shall have specialty training or experience in addiction medicine;

2. Have staff able to obtain and interpret information regarding the individual's biopsychosocial needs;

3. Have staff trained to understand the signs and symptoms of mental disorders and to understand and be able to explain the uses of psychotropic medications and their interactions with substance-related disorders; and

4. Ensure all clinical staff are qualified by training and experience and appropriately licensed, certified, or registered by the appropriate health regulatory board to serve individuals admitted to the service.

12VAC35-105-1690. Substance abuse partial hospitalization services [Level of care 2.5] program criteria.

A substance abuse partial hospitalization program shall meet the following programmatic requirements. The program shall:

1. Offer no fewer than 20 hours of [~~programming~~ skilled treatment services] per week in a structured program. Services may include individual and group counseling, medication management, family therapy, peer recovery support services, educational groups, or occupational and recreational therapy;

2. Provide a combination of individual and group therapy as deemed appropriate by a licensed professional and included in an assessment and treatment plan;

3. Provide medical and nursing services as deemed appropriate by a licensed professional and included in an assessment and treatment plan;

4. Provide motivational enhancement and engagement strategies appropriate to an individual's stage of readiness to change and level of comprehension;

5. Have direct affiliations with other easily accessible levels of care or coordinate through referral to more or less intensive levels of care and other services;

6. Provide family and caregiver treatment services as deemed appropriate by a licensed professional and included in an assessment and treatment plan;

7. Provide educational and informational programming adaptable to individual needs;

8. Ensure and document that the length of service shall be determined by the individual's condition and functioning;

9. Make emergency services available by telephone 24 hours a day, seven days a week when the program is not in session; and

10. Make MAT available for all individuals [with opioid use disorder or alcohol use disorder]. MAT may be provided by facility staff or coordinated through alternative resources.

12VAC35-105-1700. Substance abuse partial hospitalization [Level of care 2.5] admission criteria.

Before a substance abuse partial hospitalization program may admit an individual, the individual shall meet the criteria for admission as defined by the provider's policies. The provider's policy regarding admission shall at a minimum require the individual to:

1. Meet diagnostic criteria for a substance use disorder or addictive disorder as defined by the DSM; and

2. Meet the admission criteria of Level 2.5 of ASAM, including the specific criteria for adult and adolescent populations.

12VAC35-105-1710. Substance abuse partial hospitalization [Level of care 2.5] discharge criteria.

Before a substance abuse partial hospitalization program may discharge or transfer an individual, the individual shall meet the criteria for discharge or transfer as defined by the provider's policies, which shall include provisions for the discharge or transfer of individuals who have:

1. Achieved the goals of the treatment services and no longer require ASAM 2.5 level of care;

2. Been unable to achieve the goals of the individual's treatment but could achieve the individual's goals with a different type of treatment; or

3. Achieved the individual's original treatment goals but have developed new treatment challenges that can only be adequately addressed in a different type of treatment.

12VAC35-105-1720. Substance abuse partial hospitalization [Level of care 2.5] co-occurring enhanced programs.

A. Substance abuse partial hospitalization co-occurring enhanced programs shall offer psychiatric services appropriate to the individual's mental health condition. Such services shall be available by telephone and onsite or closely coordinated offsite, within a shorter time than in a co-occurring capable program.

B. Substance abuse partial hospitalization co-occurring enhanced programs shall be staffed by appropriately credentialed mental health professionals who assess and treat co-occurring mental disorders. Intensive case management shall be delivered by cross-trained, interdisciplinary staff through mobile outreach and shall involve engagement-oriented addiction treatment and psychiatric programming. All clinical staff shall be qualified by training and experience and appropriately licensed, certified, or registered by the appropriate health regulatory board to serve individuals admitted to the service.

C. Substance abuse partial hospitalization co-occurring enhanced programs shall offer intensive case management, assertive community treatment, medication management, and psychotherapy.

Article 7
Intensive Outpatient Services [Level of care 2.1]

12VAC35-105-1730. Substance abuse intensive outpatient services [Level of care 2.1] staff criteria.

A substance abuse intensive outpatient services program shall meet the following staff requirements. The program shall:

1. Be staffed by interdisciplinary team of appropriately credentialed addiction treatment professionals, which may include counselors, psychologists, social workers, and addiction-credentialed physicians. Physicians shall have specialty training or experience in addiction medicine or addiction psychiatry;

2. Have program staff that are able to obtain and interpret information regarding the individual's biopsychosocial needs;

3. Have program staff trained to understand the signs and symptoms of mental disorders and to understand and be able to explain the uses of psychotropic medications and their interactions with substance use and other addictive disorders; and

4. Ensure all clinical staff are qualified by training and experience and appropriately licensed, certified, or registered by the appropriate health regulatory board to serve individuals admitted to the service.

12VAC35-105-1740. Substance abuse intensive outpatient services [Level of care 2.1] program criteria.

A substance abuse intensive outpatient [services] program shall meet the following programmatic requirements. The program shall:

1. Offer a minimum of three service hours per service day to achieve no fewer than nine hours and no more than 19 hours of programming per week in a structured environment;

2. Ensure psychiatric and other medical consultation shall be available within 24 hours by telephone and within 72 hours in person;

3. Offer consultation in case of emergency related to an individual's substance use disorder by telephone 24 hours a day, seven days a week when the treatment program is not in session;

4. Provide a combination of individual and group therapy as deemed appropriate by a licensed professional and included in an assessment and treatment plan;

5. Have direct affiliations with other easily accessible levels of care or coordinate through referral to more or less intensive levels of care and other services;

6. Provide family and caregiver treatment and peer recovery support services as deemed appropriate by a licensed professional and included in an assessment and treatment plan;

7. Provide education and informational programming adaptable to individual needs and developmental status;

8. Ensure and document that the length of service shall be determined by the individual's condition and functioning; and

9. Make MAT available for all individuals [with opioid use disorder and alcohol use disorder]. MAT may be provided by facility staff or coordinated through alternative resources.

12VAC35-105-1750. Substance abuse intensive outpatient services [Level of care 2.1] admission criteria.

Before a substance abuse intensive outpatient [~~service~~ services] program may admit an individual, the individual shall meet the criteria for admission as defined by the provider's policies. The provider's policy regarding admission shall at a minimum require the individual to:

1. Meet diagnostic criteria for a substance use disorder or addictive disorder as defined by the DSM; and

2. Meet the admission criteria of Level 2.1 of ASAM, including the specific criteria for adult and adolescent populations.

12VAC35-105-1760. Substance abuse intensive outpatient services [Level of care 2.1] discharge criteria.

Before a substance abuse intensive outpatient [~~service~~ services] program may discharge or transfer an individual, the individual shall meet the criteria for discharge or transfer as defined by the provider's policies, which shall include provisions for the discharge or transfer of individuals who have:

1. Achieved the goals of the treatment services and no longer require ASAM 2.1 level of care;

2. Been unable to achieve the goals of the individual's treatment but could achieve the individual's goals with a different type of treatment; or

3. Achieved the individual's original treatment goals but have developed new treatment challenges that can only be adequately addressed in a different type of treatment.

12VAC35-105-1770. Substance abuse intensive outpatient services [Level of care 2.1] co-occurring enhanced programs.

A. Substance abuse intensive outpatient services co-occurring enhanced programs shall offer psychiatric services appropriate to the individual's mental health condition. Such services shall be available by telephone and onsite or closely coordinated offsite, within a shorter time than in a co-occurring capable program.

B. Substance abuse intensive outpatient services co-occurring enhanced programs shall be staffed by appropriately credential mental health professionals who assess and treat co-occurring mental disorders. Capacity to consult with an addiction psychiatrist shall be available. All clinical staff shall be qualified by training and experience and appropriately licensed, certified, or registered by the appropriate health regulatory board to serve individuals admitted to the service.

C. Substance abuse intensive outpatient services co-occurring enhanced programs shall offer intensive case management, assertive community treatment, medication management, and psychotherapy.

Article 8

Substance Abuse Outpatient Services [Level of care 1.0]

12VAC35-105-1780. Substance abuse outpatient services [Level of care 1.0] staff criteria.

Substance abuse outpatient [~~service~~ services] programs shall meet the following staff requirements. The program shall:

1. Have appropriately credentialed or licensed treatment professionals who assess and treat substance-related mental and addictive disorders;

2. Have program staff who are capable of monitoring stabilized mental health problems and recognizing any

instability of individuals with co-occurring mental health conditions;

3. Provide medication management services by a licensed independent practitioner with prescribing authority; and

4. Ensure all clinical staff are qualified by training and experience and appropriately licensed, certified, or registered by the appropriate health regulatory board to serve individuals admitted to the service.

12VAC35-105-1790. Substance abuse outpatient [~~service~~ services Level of care 1.0] program criteria.

Substance abuse outpatient [~~service~~ services] programs shall meet the following programmatic requirements. The program shall:

1. Offer no more than nine hours of programming a week;

2. Ensure emergency services shall be available by telephone 24 hours a day, seven days a week;

3. Provide individual or group counseling, motivational enhancement, family therapy, educational groups, occupational and recreational therapy, psychotherapy, addiction, and pharmacotherapy as indicated by each individual's needs;

4. For individuals with mental illness, ensure the use of psychotropic medication, mental health treatment and that the individual's relationship to substance abuse disorders shall be addressed as the need arises;

5. Provide medical, psychiatric, psychological, laboratory, and toxicology services onsite or through consultation or referral. Medical and psychiatric consultation shall be available within 24 hours by telephone, or if in person, within a timeframe appropriate to the severity and urgency of the consultation requested;

6. Have direct affiliations with other easily accessible levels of care or coordinate through referral to more or less intensive levels of care and other services; and

7. Ensure through documentation that the duration of treatment varies with the severity of the individual's illness and response to treatment.

12VAC35-105-1800. Substance abuse outpatient [~~service~~ services Level of care 1.0] admission criteria.

Before a substance abuse outpatient [~~service~~ services] program may admit an individual, the individual shall meet the criteria for admission as defined by the provider's policies. The provider's policy regarding admission shall at a minimum require the individual to:

1. Meet diagnostic criteria for a substance use disorder or addictive disorder as defined by the DSM; and

2. Meet the admission criteria of Level 1.0 of ASAM, including the specific criteria for adult and adolescent populations.

12VAC35-105-1810. Substance abuse outpatient services [Level of care 1.0] discharge criteria.

Before a substance abuse outpatient [~~service~~ services] program may discharge or transfer an individual, the individual shall meet the criteria for discharge or transfer as defined by the provider's policies, which shall include provisions for the discharge or transfer of individuals who have:

1. Achieved the goals of the treatment services and no longer require ASAM 1.0 level of care;

2. Been unable to achieve the goals of the individual's treatment but could achieve the individual's goals with a different type of treatment; or

3. Achieved the individual's original treatment goals but have developed new treatment challenges that can only be adequately addressed in a different type of treatment.

12VAC35-105-1820. Substance abuse outpatient services [Level of care 1.0] co-occurring enhanced programs.

A. Substance abuse outpatient services co-occurring enhanced programs shall offer ongoing intensive case management for highly crisis-prone individuals with co-occurring disorders.

B. Substance abuse outpatient services co-occurring enhanced programs shall include credentialed mental health trained personnel who are able to assess, monitor, and manage the types of severe and chronic mental disorders seen in a level 1 setting as well as other psychiatric disorders that are mildly unstable. Staff shall be knowledgeable about management of co-occurring mental and substance-related disorders, including assessment of the individual's stage of readiness to change and engagement of individuals who have co-occurring mental disorders. All clinical staff shall be qualified by training and experience and appropriately licensed, certified, or registered by the appropriate health regulatory board to serve individuals admitted to the service.

C. Substance abuse outpatient services co-occurring enhanced programs shall offer therapies to actively address, monitor, and manage psychotropic medication, mental health treatment, and interaction with substance-related and addictive disorders.

DOCUMENTS INCORPORATED BY REFERENCE (12VAC35-105)

The ASAM: Treatment for Addictive, Substance-Related and Co-Occurring Conditions, Third Edition, American Society of Addiction Medicine, Address, asam.org.

Diagnostic and Statistical Manual of Mental Disorders, 5th Edition. DSM-5, American Psychiatric Association, 800 Maine Avenue, S.W., Suite 900 Washington, DC 20024, psychiatry.org

VA.R. Doc. No. R21-6439; Filed December 21, 2022, 3:24 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF LONG-TERM CARE ADMINISTRATORS

Forms

REGISTRAR'S NOTICE: Forms used in administering the regulation have been filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

Titles of Regulations: **18VAC95-20. Regulations Governing the Practice of Nursing Home Administrators.**

18VAC95-30. Regulations Governing the Practice of Assisted Living Facility Administrators.

Agency Contact: Erin Barrett, Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4688, or email erin.barrett@dhp.virginia.gov.

FORMS (18VAC95-20)

~~Nursing Home Administrator Application – form available online only at https://www.license.dhp.virginia.gov/apply/~~

Checklist and Instructions for Nursing Home Administrator Application for Initial Licensure (rev. 7/2021)

Checklist and Instructions for Nursing Home Administrator Application by Endorsement (rev. 7/2021)

~~Nursing Home Administrator-in-Training Application, online form available at https://www.license.dhp.virginia.gov/apply/~~

~~Checklist and Instructions for Nursing Home Administrator-in-Training (rev. 7/2021)~~

~~Nursing Home Administrator Preceptor Application, online form available at https://www.license.dhp.virginia.gov/apply/~~

Checklist and Instructions for Nursing Home Administrator-in-Training (rev. 12/2022)

Nursing Home Administrator-in-Training Notice of Change of Status or Discontinuance (rev. 7/2020)

Checklist and Instructions for Nursing Home Administrator Preceptor Application (rev. 7/2021)

Preceptor Reinstatement Application (rev. 9/2022)

Checklist and Instructions for Nursing Home Administrator Reinstatement Application (rev. 7/2021)

~~Monthly Report of Nursing Home Administrator-in-Training (rev. 7/2020)~~

~~Nursing Home Administrator-in-Training Documentation of Completion Form (rev. 7/2020)~~

~~Proposed AIT Program Training Plan Domains of Practice (rev. 7/2020)~~

~~Continued Competency Activity and Assessment Form for Nursing Home Administrators (rev. 10/2014)~~

Monthly Report of Nursing Home Administrator-in-Training (rev. 12/2022)

Nursing Home Administrator-in-Training Documentation of Completion Form (rev. 12/2022)

Proposed Administrator-in-Training Program Training Plan Domains of Practice (rev. 12/2022)

Continuing Education Affidavit of Completion for Nursing Home Administrators (rev. 12/2022)

Continued Education (CE) Credit Form for Volunteer Practice (rev. 7/2020)

FORMS (18VAC95-30)

~~Assisted Living Facility Administrator Application for Licensure form available online only at https://www.dhp.virginia.gov/nha/nha_forms.htm#alfa~~

~~Assisted Living Facility Administrators Education and Experience Matrix (rev. 7/2020)~~

~~Assisted Living Facility Administrator Administrator-in-Training Application form available online at https://www.license.dhp.virginia.gov/apply/~~

~~Monthly Report of Assisted Living Facility Administrator-in-Training (rev. 7/2020)~~

~~Assisted Living Facility Administrator-in-Training Documentation of Completion Form (rev. 7/2020)~~

Assisted Living Facility Administrators Education and Experience Matrix (rev. 12/2022)

Monthly Report of Assisted Living Facility Administrator-in-Training (rev. 12/2022)

Assisted Living Facility Administrator-in-Training Documentation of Completion Form (rev. 12/2022)

Assisted Living Facility Administrator-in-Training Notice of Change of Status or Discontinuance (rev. 7/2020)

~~Assisted Living Facility Administrator Preceptor Application form only available online at https://www.dhp.virginia.gov/nha/nha_forms.htm#alfa~~

~~Checklist and Instructions for Assisted Living Facility Administrator Preceptor Application (rev. 7/2021)~~

~~Proposed AIT Program Training Plan Domains of Practice (rev. 7/2020)~~

Checklist and Instructions for Assisted Living Facility Administrator Preceptor Application (rev. 9/2022)

Proposed AIT Program Training Plan Domains of Practice (rev. 12/2022)

Checklist and Instructions for Assisted Living Facility Administrator Reinstatement Application (rev. 7/2021)

Checklist and Instructions for Assisted Living Facility Administrator Preceptor Reinstatement Application (rev. 7/2021)

~~Checklist and Instructions for Acting Assisted Living Facility Administrator-in-Training (rev. 7/2021)~~

~~Continuing Competency Activity and Assessment Form for Assisted Living Facility Administrators (rev. 9/2010)~~

~~Continuing Education (CE) Credit Form for Volunteer Practice (eff. 2/2018)~~

~~Name/Address Change Form (rev. 3/2019)~~

~~Request for Verification of Virginia NHA or ALFA License (eff. 3/2019)~~

Checklist and Instructions for Assisted Living Facility Administrator-in-Training (rev. 12/2022)

Checklist and Instructions for Acting Assisted Living Facility Administrator-in-Training (rev. 12/2022)

Continuing Education Affidavit of Completion for Assisted Living Facility Administrators (rev. 12/2022)

Continuing Education (CE) Credit Form for Volunteer Practice (rev. 7/2020)

Name/Address Change Form (rev. 1/2021)

Request for Verification of Virginia Long-Term Care Administrators License (rev. 11/2019)

VA.R. Doc. No. R23-7450; Filed December 21, 2022, 2:40 p.m.

GUIDANCE DOCUMENTS

PUBLIC COMMENT OPPORTUNITY

Pursuant to § 2.2-4002.1 of the Code of Virginia, a certified guidance document is subject to a 30-day public comment period after publication in the Virginia Register of Regulations and prior to the guidance document's effective date. During the public comment period, comments may be made through the Virginia Regulatory Town Hall website (http://www.townhall.virginia.gov) or sent to the agency contact. Under subsection C of § 2.2-4002.1, the effective date of the guidance document may be delayed for an additional period. The guidance document may also be withdrawn.

The following guidance documents have been submitted for publication by the listed agencies for a public comment period. Online users of this issue of the Virginia Register of Regulations may click on the name of a guidance document to access it. Guidance documents are also available on the Virginia Regulatory Town Hall (http://www.townhall.virginia.gov) or from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, Richmond, Virginia 23219.

DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

Title of Document: State Plan for Assistive Technology System.

Public Comment Deadline: February 15, 2023.

Effective Date: February 16, 2023.

Agency Contact: Charlotte Arbogast, Senior Policy Analyst and Regulatory Coordinator, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA 23229, telephone (804) 662-7093, or email charlotte.arbogast@dars.virginia.gov.

STATE BOARD OF HEALTH

Title of Document: School and Day Care Minimum Immunization Requirements.

Public Comment Deadline: February 15, 2023.

Effective Date: February 16, 2023.

Agency Contact: Kristin Collins, Deputy Director, Division of Immunization, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7298, or email kristin.collins@vdh.virginia.gov.

STATE WATER CONTROL BOARD

Title of Document: Guidance Memorandum No. 22-2013 - Nutrient Management Plans for Irrigation Reuse of Reclaimed Water and Land Treatment of Wastewater.

Public Comment Deadline: February 15, 2023.

Effective Date: February 16, 2023.

Agency Contact: Valerie Rourke, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 774-9126, or email valerie.rourke@deq.virginia.gov.

GENERAL NOTICES

DEPARTMENT OF ENVIRONMENTAL QUALITY

Proposed Enforcement Action for Arlington County Water Pollution Control Bureau

An enforcement action has been proposed for Arlington County Water Pollution Control Bureau for violations of State Water Control Law and regulations and applicable permit at an Arlington County water pollution control plant located in Arlington, Virginia. The proposed consent order is available from the Department of Environmental Quality contact listed or at www.deq.virginia.gov/permits-regulations/public-notices. The staff contact will accept written comments from January 16, 2023, to February 15, 2023.

Contact Information: Holly Shupe, Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, or email holly.shupe@deq.virgnia.gov.

Proposed Consent Special Order for Glenwood Ridge Apartments LLC - City of Richmond

The Virginia Department of Environmental Quality (DEQ) proposes to issue a consent special order to Glenwood Ridge Apartments LLC for alleged violation of the Virginia Waste Management Act at the Glenwood Ridge Apartments, 3801 Glenwood Avenue, Richmond, Virginia. Latitude and longitude coordinates are 37.5260, -77.4058. A description of the proposed action is available at the DEQ office listed or online at www.deq.virginia.gov. The staff contact will accept comments by email or postal mail from January 16, 2023, to February 15, 2023.

Contact Information: Cara Witte, Enforcement Specialist, Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, telephone (804) 712-4192, or email cara.witte@deq.virginia.gov.

Notice of Consent Special Order Amendment for Henrico County

The Department of Environmental Quality (DEQ) proposes to issue an amendment to a consent special order issued to Henrico County on December 15, 2021, for violation of the Virginia State Water Control Law. The amendment proposes to add certain requirements to the order to improve planning, monitoring, and upgrades. A description of the proposed action is available at the DEQ office listed or online at www.deq.virginia.gov. The staff contact will accept comments by email or postal mail from January 16, 2023, to February 15, 2023.

Contact Information: Jeff Reynolds, Department of Environmental Quality, Piedmont Regional Office, 4949A Cox Road, Glen Allen, VA 23060, telephone (804) 720-4754, or email jefferson.reynolds@deq.virginia.gov.

Proposed Enforcement Action for Love's Travel Stops and Country Stores Inc. - Wythe County

An enforcement action has been proposed for Love's Travel Stops and Country Stores Inc. for violations of the State Water Control Law at 145 Major Grahams Road, Max Meadows, Wythe County. The Department of Environmental Quality (DEQ) proposes to issue a consent order to resolve violations associated with the facility. A description of the proposed action is available at the DEQ office listed or online at www.deq.virginia.gov. The staff contact person will accept comments by email or postal mail from January 17, 2023, to February 16, 2023.

Contact Information: Jonathan Chapman, Enforcement Specialist, Department of Environmental Quality, Southwest Regional Office, 355-A Deadmore Street, Abingdon, VA 24210, or email jonathan.chapman@deq.virginia.gov.

North Ridge Culpeper Solar Project Notice of Intent for Small Renewable Energy Project (Solar) - Culpeper County

North Ridge Culpeper Solar LLC has provided the Department of Environmental Quality a notice of intent to submit the necessary documents for a permit by rule for a small renewable energy project (solar) in Culpeper County. North Ridge Culpeper Solar Project will be located off of Sherwood Farm Road off Route 3 East in Stevensburg, Virginia. Latitude and longitude coordinates are 38.423346, -77.869669. The proposed project is approximately 26.0 megawatts alternating current on 345 acres and will include approximately 75,000 photovoltaic solar panels.

Contact Information: Susan Tripp, Department of Environmental Quality, 1111 East Main Street, Richmond, VA 23219, telephone (804) 664-3470, or email susan.tripp@deq.virginia.gov.

Willow Solar Project Notice of Intent for Small Renewable Energy Project (Solar) - Franklin County

Willow Solar LLC has provided the Department of Environmental Quality a notice of intent to submit the necessary documents for a permit by rule for a small renewable energy project (solar) in Franklin County. Willow Solar Project will be located in Rocky Mount, Virginia. Latitude and longitude coordinates are 36.968325, -79.932292. The proposed project is an approximately 12 megawatts alternating current photovoltaic ground-mounted solar facility. The footprint area of the project is approximately 150 acres. The solar array will use approximately 32,000 solar panels.

Contact Information: Susan Tripp, Department of Environmental Quality, 1111 East Main Street, Richmond, VA 23219, telephone (804) 664-3470, or email susan.tripp@deq.virginia.gov.

Request for Citizen Nomination of State Surface Waters for Inclusion in Virginia Department of Environmental Quality's Annual Water Quality Monitoring Plan

In accordance with § 62.1-44.19:5 F of the Code of Virginia, the Water Quality Monitoring Information and Restoration Act, any person may request that a specific body of water be included in the Department of Environmental Quality (DEQ) annual water quality monitoring plan. Such requests shall include at a minimum (i) a geographical description of the water body recommended for monitoring, (ii) the reason the monitoring is requested, and (iii) any water quality data that the petitioner may have collected or compiled. Each request received by April 30, 2023, shall be reviewed when DEQ develops the annual water quality monitoring plan for the following calendar year. DEQ will respond in writing on its approval or denial of each nomination by August 31, 2023.

Please see the nomination form. Use of the nomination form is preferred; however, all nominations with the minimum of information as outlined in this notice will be accepted for review.

Please note that the monitoring program covered by this process is directed at the surface waters of the state. Private ponds, privately owned lakes, and any other body of water not deemed to be "state waters" are ineligible.

Nominations can be submitted by email, postal mail, or hand delivered to the receptionist desk at the DEQ Central Office at 1111 East Main Street, Richmond, Virginia.

Email: citizenwater@deq.virginia.gov

Mailing address: Meighan Wisswell, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218

Street address: Meighan Wisswell, Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, VA 23219

Nomination Form: Request to Include a Water Segment in the DEQ Annual Monitoring Plan

Name:				Date:	
Mailing Address:					
Street					
City:		State:		Zip:	
E-mail address:					
Home telephone:		Business telephone:			

(1) Name of the water body or water bodies proposed for monitoring:

(2) Please provide a description of the upstream and downstream boundaries of the water bodies that show specifically where monitoring is proposed. Please describe the monitoring site locations as thoroughly as possible. A site map (photocopy or screenshot of an online map) is preferred. Latitude/longitude coordinates and descriptions of identifiable landmarks such as road crossings are also very helpful.

(3) Monitoring objective. Please give the reason for requesting the monitoring and, if possible, list the types of measurements or sampling that you are requesting.

(4) Attach any water quality data that you have collected or compiled. Include the name of the organization/entity that generated the data.

Contact Information: Meighan Wisswell, Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, VA 23219, or P.O. Box 1105, Richmond, VA 23218, telephone (571) 866-6494, or email citizenwater@deq.virginia.gov.

Notice of Public Solicitation of Water Quality Data for Virginia's 2024 Water Quality Assessment Integrated Report

The Virginia Department of Environmental Quality (DEQ) is currently requesting data in preparation of the 2024 Water Quality Assessment Integrated Report (IR). In order to provide a comprehensive report on water quality conditions in the Commonwealth, DEQ accepts water quality data from a variety of sources, including volunteers and other monitoring groups outside of DEQ. If an organization collected water quality data in Virginia during January 1, 2017, through December 31, 2022, the organization should consider submitting the data for review and consideration for use in the 2024 IR.

DEQ accepts water quality data to be reviewed and evaluated for assessment purposes on a continual basis. However, in order to be used for the 2024 IR, all data must be submitted to DEQ by March 6, 2023. Data submitted after this date will be reviewed in preparation of the 2026 IR.

The process for submitting data to DEQ is outlined on the agency's Citizen Monitoring website under "Submit your Monitoring Data to DEQ" at https://www.deq.virginia.gov/water/water-quality/monitoring/citizen-monitoring. Notably this cycle, DEQ has released the Virginia Data Explorer (VDE), a collaboration between DEQ and the Chesapeake Monitoring Cooperative, as a platform for submitting water quality data collected by volunteers and other monitoring groups outside of DEQ for consideration in the 2024 IR.

DEQ will hold a public webinar to provide an overview of the new VDE and the process for submitting water quality monitoring data to DEQ on Tuesday, February 7, 2023, from

5:30 p.m. until 7 p.m. Register for the webinar at https://attendee.gotowebinar.com/register/3893139104808588892.

Questions on submitting water quality monitoring data to DEQ may be sent to citizenwater@deq.virginia.gov, or by contacting Drew Garey, telephone (804) 659-2673, or Reid Downer, telephone (804) 217-4777, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218.

Contact Information: Drew Garey, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-2673, or email citizenwater@deq.virginia.gov.

Public Meeting and Opportunity for Public Comment for a Cleanup Study for Hat Creek and Black Creek in Nelson County

Purpose of notice: The Department of Environmental Quality (DEQ) seeks public comment on the development of a cleanup study, also known as a total maximum daily load report (TMDL), for Hat Creek and Black Creek in Nelson County. These streams are listed as impaired waters and require a cleanup study since monitoring data indicates that the waters do not meet Virginia's water quality standards for Aquatic Life (Benthic impairment). Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the State Water Control Law requires DEQ to develop cleanup studies to address pollutants responsible for causing waters to be on Virginia's § 303(d) list of impaired waters. A component of a cleanup study is the wasteload allocation (WLA); therefore, this notice is provided pursuant to § 2.2-4006 A 14 of the Code of Virginia for any future adoption of the WLA into the Water Quality Management Planning Regulation (9VAC25-720) after completion of the study. DEQ will introduce the community to the process used in Virginia to improve stream water quality, provide pollutant source and monitoring information for the Hat Creek and Black Creek watershed, discuss the next steps in the study process, and invite the public to participate in the study through an advisory committee.

Cleanup study location: The cleanup study addresses impaired stream segments as described. The Hat Creek stream segment, located in Nelson County, is 9.5 miles long and begins at the headwaters of Hat Creek and continues to its confluence with the Tye River. The Black Creek stream segment, located in Nelson County, is two miles in length and begins at the headwaters of Black Creek and continues to the confluence with the Tye River.

Advisory committee: An advisory committee to assist in development of this cleanup study will be established. Persons interested in participating should notify the DEQ contact person by the end of the comment period and provide their name, address, phone number, email address, and the organization represented (if any). Notification of the composition of the advisory committee will be sent to all applicants.

Public meeting: The first public meeting on the development of the cleanup study will be held at the Nelson County Public Library, 8521 Thomas Nelson Highway, Lovingston, VA 22949, on January 25, 2023, from 5:30 p.m. to 7 p.m. In the event of inclement weather, the meeting will be held on January 30, 2023, at the same time and location.

Public comment period: January 25, 2023, to February 24, 2023.

How to comment: DEQ accepts comments orally at the public meeting, by email, fax, or postal mail. All comments must be received by DEQ during the comment period. Submittals must include the name, organization represented (if any), mailing addresses, and telephone numbers of the commenter or requester.

Contact the staff person listed for public comments, document requests, and additional information.

Contact Information: Nesha McRae, Department of Environmental Quality, Valley Regional Office, 4411 Early Road, Harrisonburg, VA 24401, telephone (540) 217-7173, FAX (804) 698-4178, or email nesha.mcrae@deq.virginia.gov.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Draft Addiction and Recovery Treatment Services Provider Manual Chapter II

The draft ARTS Provider Manual Chapter II is now available on the Department of Medical Assistance Services website at https://www.dmas.virginia.gov/for-providers/general-information/medicaid-provider-manual-drafts/ for public comment until January 20, 2023.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680.

Draft Hospital Provider Manual Chapter V

The draft Hospital Provider Manual Chapter V is now available on the Department of Medical Assistance Services website at https://www.dmas.virginia.gov/for-providers/general-information/medicaid-provider-manual-drafts/ for public comment until January 19, 2023.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680.

Draft Mental Health Services Provider Manual Chapter V

The draft Mental Health Services Provider Manual Chapter V is now available on the Department of Medical Assistance Services website at https://www.dmas.virginia.gov/for-providers/general-information/medicaid-provider-manual-drafts/ for public comment until January 26, 2023.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680.

Draft Residential Treatment Services Provider Manual Chapter V

The draft Residential Treatment Services Provider Manual Chapter V is now available on the Department of Medical Assistance Services website at https://www.dmas.virginia.gov/for-providers/general-information/medicaid-provider-manual-drafts/ for public comment until January 20, 2023.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, Pocahontas Building, 900 East Main Street, 8th Floor, Richmond, VA 23219; *Telephone:* (804) 698-1810; *Email:* varegs@dls.virginia.gov.

Meeting Notices: Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at https://commonwealthcalendar.virginia.gov.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at http://register.dls.virginia.gov/documents/cumultab.pdf.

Filing Material for Publication in the *Virginia Register of Regulations:* Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

ERRATA

STATE WATER CONTROL BOARD

Title of Regulation: **9VAC25-720. Water Quality Management Planning Regulation.**

Publication: 39:7 VA.R. 1003-1030 November 21, 2022.

Correction to Final Regulation:

Page 1008, 9VAC25-720-60 C table row G11E, HRSD - Nansemond STP, column 5, unstrike "45, 689^{3}"

VA.R. Doc. No. R20-6191; Filed December 28, 2022, 1:50 p.m.

STATE BOARD OF HEALTH

Title of Regulation: **12VAC5-431. Sanitary Regulations for Hotels.**

Publication: 39:10 VA.R. 1315 January 2, 2023.

Correction to Final Regulation:

Page 1315, Effective Date: after "February 1," replace "2022" with "2023"

VA.R. Doc. No. R23-7128; Filed December 30, 2022, 3:15 p.m.