



COMMONWEALTH of VIRGINIA

DEPARTMENT OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

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COMMISSIONER

MEMORANDUM

To: DBHDS Licensed Providers of Developmental Services

From: Jae Benz, Director, Office of Licensing

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

DATE: February 12, 2021

RE: Annual Inspections for providers of developmental services

Purpose: The purpose of this memo is to inform providers of developmental services about the current plan for completing annual inspections for calendar year 2021. This plan will help to ensure the adequacy of individualized services and supports to individuals receiving services and will assist with continued efforts towards achieving compliance with Commonwealth's settlement agreement with the United States Department of Justice.

Overview: On March 12, 2020, Governor Ralph Northam issued Executive Order 51 declaring a state of emergency in Virginia related to the COVID-19 public health crisis. As a result of Governor Northam's executive order and the pending public health crisis, the Office of Licensing sent out correspondence on March 14, 2020 to inform all licensed providers of emergency protocols put into place to govern the operations of the Office of Licensing during the COVID-19 emergency period. To date, Virginia remains under a state of emergency due to the continued presence of COVID-19 throughout the Commonwealth, including within DBHDS licensed services. As a result, the Office of Licensing continues to operate under modified emergency protocols. These effective emergency protocols allow for the use of remote provider inspections as well as virtual physical site reviews, when appropriate. This allows DBHDS to continue required oversight activities while reducing the risk of unnecessary exposure to COVID-19 of individuals served, direct care staff and licensing staff by maintaining a safe and appropriate distance from provider staff and individuals served.

During calendar year 2020, the Office of Licensing was still able to collect critical information related to providers' compliance with key regulations that are required to be monitored and as part of the *Joint Filing of Complete Set of Agreed Upon Compliance Indicators* signed on January 14, 2020 by completing remote inspections. The Office of Licensing greatly appreciates the collaborative efforts made by providers to submit required information in a timely manner during a time of unprecedented challenges.

While the pandemic and its many challenges continue into 2021, the Commonwealth of Virginia continues to be tasked with showing progress towards coming into compliance with the settlement agreement.

During calendar year 2021, the Office of Licensing will once again be prioritizing remote inspections for providers of developmental services in order to ensure compliance with the Licensing Regulations directly tied to the settlement agreement indicators. In order to assist providers with complying with Licensing Regulation 12 VAC 35-105-160.F, which requires providers to make available and, when requested, submit reports and information that the department requires to establish compliance with the Licensing Regulations and applicable statutes, the following schedule has been put into place.

By close of business on **Tuesday, February 23, 2021**, each provider of developmental services will be required to submit to their Licensing Specialist a list of all individuals currently admitted for services including their admission date; as well as a list of all direct care employees and their supervisors, including their date of hire. The Licensing Specialists will use these lists to request records from providers when it is time for their remote inspection.

Once the Office of Licensing has received each provider's updated list of admitted individuals and employees, we will begin the process of conducting remote annual inspections for 2021. Each Monday morning, DBHDS Licensing Specialists will e-mail several providers to let them know they will be conducting remote inspections of the provider's service(s) the next week. This e-mail will include a complete list of all documents and information the provider will need to send to the Licensing Specialist, **via encrypted e-mail**, for the Specialist to review during their remote inspection. The specific documents requested by the Licensing Specialist will vary based on documentation reviewed during previous inspections as well as the provider's compliance history. **Please note, the specialist will be evaluating compliance for any regulations found to be in non-compliance within the past calendar year as well as reviewing corrective action plans to determine if they have been implemented as approved.** In addition, each provider will be expected to submit the following policies, procedures and plans for review for compliance with these Licensing Regulations: Serious Incident Reporting Policy (12VAC35-105-160), Root Cause Analysis Policy (12VAC35-105-160), written Risk Management Plan (12VAC35-105-520), and written policies and procedures for a quality improvement program (12VAC35-105-620).

As part of the remote inspection, the specialist will conduct a physical plant inspection. The Licensing Specialist will reach out to the provider to set up a time for the conference. Prior to initiating the video conference, the Licensing Specialist will confirm with the provider that all HIPAA related documents have been put away and will not be in the video. Protected health information (PHI) will not be discussed during the video conference.

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

We have included a chart below that outlines the minimum regulations that will be reviewed as well as the documents that will be viewed to determine compliance (**ATTACHMENT A**). Please read this document carefully and provide all of the information when requested. Your specialist will be reaching out to you via email to reiterate the documents that must be submitted and the time-frame in which they will need to be provided. They will also be available to answer questions you may have.

As part of the annual inspection process, the specialist will conduct a brief 30-minute exit meeting with the provider. This meeting time will be scheduled at the beginning of the inspection to allow the provider ample time to make arrangements. The exit meeting should be attended by the person responsible for oversight of the implementation of the pledged corrective action. The specialist will outline the preliminary findings from the inspection including areas of non-compliance. The provider will be given the opportunity to ask questions and provide additional information, as appropriate. A provider may choose to decline an exit meeting. If a provider does not respond to a request for an exit meeting or declines the opportunity to participate in the meeting, the specialist will note this and proceed with closing out the inspection or issuing citations for any regulatory violations, if indicated.

In order to support providers in achieving and maintaining compliance with the [Final DOJ Licensing Regulations](#), the Office of Licensing has offered a number of training opportunities over the past year. Select training topics included an overview of the Final DOJ Licensing Regulations, root cause analysis, quality improvement, and risk management. In addition, new and updated guidance documents have been posted on the [Virginia Regulatory Town Hall](#) website and the Office of Licensing webpage to provide additional explanation and examples to providers. Please take this opportunity to visit the [Office of Licensing webpage](#) to review these materials if you have not already done so.

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