



LICENSING Summary of Changes

AGENCY: Behavioral Healthcare, Developmental Disabilities & Hospitals

DIVISION: Licensing

RULE IDENTIFIER: 212-RICR-10-00-01

RULE TITLE: Rules and Regulations for the Licensing of Organizations and Facilities Licensed by the Department of Behavioral Healthcare, Developmental Disabilities & Hospitals

ERLID: 7340

TYPE OF FILING: Adoption with Associated Repeal

SUMMARY OF PROPOSED ACTION ON THE RULE:

By this rulemaking, the Department is proposing to:

1. Revise to comply with RICR formatting and codification guidelines. This includes minor, non-substantive corrections in spelling, grammar and formatting throughout the regulation in order to make the regulatory content fit into the RICR format and codification guidelines.
2. Preface summary amended and moved to Section 1.1 – Authority, Purpose and Applicability.
 - a. Remove informational/non-regulatory language
 - b. Added purpose “It the expectation of the Department that each person’s array of supports and services be customized to meet the individual needs and desires in the least restrictive environment” for consistency and strengthened language for HCBS compliance.
3. Table of Contents removed per RICR formatting requirements.
4. “Participant” changed to “individual” throughout this Part to generalize term for use in all impacted entities.
5. Where appropriate, “Director” changed to “Department” when referencing regulatory authority.

6. § 1.0 Definitions

a. Delete all “abbreviations”

b. Delete

1.2 “Adverse incident/adverse event” deleted not referenced in the body of this Part.

1.3 “Agency” deleted as not referenced in the body of this Part.

1.7 “Case Management” deleted as not referenced in the body of this Part.

1.10 “Chief of Licensure and Standards” deleted as the term is no longer used.

1.13 “Community Psychiatric Supportive Treatment (CPST)” deletes as not referenced in this Part.

1.15 “Community Support Program” deleted as not referenced in the body of this Part.

1.16 “Counseling” deleted as not referenced in the body of this Part.

1.17 “Crisis Intervention” deleted as not referenced in the body of this Part.

1.19 “Developmentally Disabled Adult” deleted as it is defined in R.I. Gen. Laws.

1.21 “Division of Developmental Disabilities (DDD)” deleted as not referenced in the body of this Part.

1.23 “Dispense” deleted for use of “Administer.”

1.29 “Medical Detoxification” deleted as not referenced in the body of this Part.

1.32 “Opioid Treatment Program” deleted as not referenced in the body of this Part.

1.33 “Organization” deleted as term is defined separately in BHO, DDO and CDO.

1.35 “Outpatient Detoxification” deleted as not referenced in the body of this Part.

1.36 “Perpetrator” deleted as not referenced in the body of this Part.

1.38 “Priority Population” deleted as not referenced in the body of this Part.

1.41 “Program Sponsor” deleted as not referenced in the body of this Part.

1.42 “Recovery” deleted as not referenced in the body of this Part.

1.43 “Shall” does not require a definition.

1.45 “State Methadone Authority” deleted as not referenced in the body of this Part.

c. Moved

§1.30 Mistreatment moved under abuse related definitions and amended to comply with R.I. Gen. Laws.

§1.31 Neglect moved under abuse related definitions and amended to comply with R.I. Gen. Laws

§1.31 Financial Exploitation/Theft moved under abuse related definitions and deleted theft from the definitions

§ 1.14 “Community Residence” moved from BHDDH DDO Regulations 212-RICR-10-05-01 and was amended to align terminology with Behavioral Health.

§ 1.24 “Day Program Service” moved in its entirety to BHDDH Licensing Regulations 212-RICR-10-00-01.

§ 1.42 “Integrated Community-Based Employment” was moved to BHDDH Licensing Regulations 212-RICR-10-00-01 and amended to be termed Supportive Employment Services.

§ 1.45 “Intervention” was moved to BHDDH Licensing Regulations 212-RICR-10-00-01.

§ 1.30 “Mistreatment” was moved into the moved under abuse related definitions and deleted theft from the definitions.

d. Amended

§1.1 “Abuse” amended to comply with current statutes.

§ 1.6 “Board” amended to clarify that this term applies to both local and national not for profit organizations.

§ 1.14 “Caregiver” amended to clarify and align definition incorporated within the abuse and reporting statute.

§ 1.20 “Developmental Disability Organizations” was amended to clarify ‘organizations’ vs ‘agencies.’

§ 1.26 “Individual” or “Individual Served” amended to clarify use by removing “a person who has been found eligible by the department through its Division of Developmental Disabilities”.

§ 1.28 “Individualized Plan” amended to “Individualized Service Plan (ISP)”. Changed definition to “means the annual document derived from a person-centered plan which details the services for an individual supported.”

§ 1.27 “Investigation” amended by adding “an investigation may be undertaken because of a complaint, an adverse event or incident report, or other information that comes to the attention of the department or the organization.”

§ 1.11 “Licensing Office” amended to “Office of Licensure and Standards.”

§ 1.67 “Office of Quality Assurance and/or Office of Quality Improvement” amended to reflect R. I. Gen. Laws 40.1.26-2. All other references have been removed.

§ 1.72 “Person-Centered Planning” amended to “Person-Centered” to reflect what is being defined. No change to definition.

§ 1.76 “Practical Nursing” amended to reflect R.I. Gen. Laws Chapter 5-34-3.

§ 1.39 “Program” amended by adding planned “structured” service.

§ 1.76 “Professional Nursing” amended to reflect R.I. Gen. Laws Chapter 5-34-3.

§ 1.40 “Provider” amended by adding “to persons served” to the end of the definition.

§ 1.44 “Staff” amended from original BH regulations meaning “an employee, intern, trainee, independent contractor, or volunteer performing a service or activities for the organization and for meeting the needs of individuals served for which competent performance is expected to clarify the use of the term in the regulations.” Amended to say, “includes but is not limited to any employee, intern, trainee, or volunteer performing a service or activities for the organization and for meeting the needs of individuals served for which competent performance is expected.”

§ 1.47 “Violation of Human Rights” amended from original DDO regulations meaning “any action or inaction which deprives a Participant of any of his or her legal rights, as articulated in law or in these regulations “to reflect R.I. Gen. Laws and these regulations which states, “any action or inaction which deprives an individual of any of his or her civil rights, as articulated in federal or state law or in this Part.”

e. Add

“Administer” added to clarify a term used in regulation.

“Admission” added to clarify a term used in regulation.

“Assessment” added to clarify a term used in regulation.
 “Assistive Technology” added to clarify specialized equipment for individuals in programs.
 “Aversive” and “Aversive Techniques” added to clarify terms used in regulation.
 “Caregiver” added to clarify term used in practice.
 “Cognitive Disability Organization (CDO)” added to identify an additional organization being licensed by BHDDH.
 “Certification” added to clarify different uses of term in BHO and DDO regulations.
 “Complaint” added to clarify term used in this Part.
 “Concern” added to clarify term used in this Part.
 “Controlled Substance” was added to comply with current statutes.
 “Day Program Service” added to reflect current practice.
 “Human Rights Committee (HRC)” added to reflect current practice.
 “Incident” added to reflect current practice.
 “Independent Contractor” added to clarify a role used in practice.
 “Integration” added to reflect current practice.
 “Non-Congregant” added to reflect current practice.
 “Office of Licensure and Standards” added for clarification.
 “Office of Quality Assurance” added to reflect current practice.
 “Orientation” added to reflect current practice.
 “Outcome” added to clarify a term used in regulation.
 “Participant” added to clarify a term used in regulation.
 “Person” added to clarify a term used in regulation.
 “Person-Centered” added to clarify a term used in regulation.
 “Residential Services” added to clarify term used in this Part.
 “Restraint,” “Chemical or Pharmacological Restraint,” “Mechanical Restraint,” “Physical Restraint” added to clarify terms used in practice.
 “Services” added to clarify the use of the term in the regulations.
 “Significant Others” added to clarify the use of the term in the regulations.
 “Support Coordinator” added to clarify the use of the term in the regulations.

7. § 3.1 General Requirements changed to “Application for Licensure, Renewal, or Change in Licensure Status.” Section formatted for the purpose of clarity. Last sentence amended to clarify language.
8. § 3.2 Behavioral Health Removed section from this Part as requirements are a summary of 212-RICR-10-10-01, “Rules and Regulations for Behavioral Health Organizations.”
9. § 3.3 Support to Adults with Developmental Disabilities Removed section from this Part as requirements are a summary of 212-RICR-10-05-01, “Rules and Regulations for Developmental Disability Organizations.”
10. § 4.1.1 – 4.1.5 General Requirements Moved to “Components of Licensure” § 1.5.3(C) – (G).

- a. Moved “Components of Licensure” from the original DDO regulations to this Part.
 - i. DDO 2.04(j) Added “DDO specific” for the purpose of clarification.
 - ii. DDO 2.04(s) Deleted item related to staffing patterns as ratios will not be applied to DDOs. Staffing will be addressed in 212-RICR-10-10-01 for BHOs.
 - iii. DDO 2.04(z) Deleted item related to provision of supports as it was in reference to “tiers” which are no longer addressed in regulation.
 - b. Added 1.5.3(B) “The Organization shall demonstrate compliance with applicable regulations and laws. The Organization shall submit to readiness reviews and onsite visits to ensure preparedness for service provision.”
- 11. § 4.2 Behavioral Health Organizations Removed section from this Part as requirements are a summary of 212-RICR-10-10-01, “Rules and Regulations for Behavioral Health Organizations.”
- 12. § 4.3 Agencies Providing Services to Adults with Developmental Disabilities Removed section from this Part as requirements are a summary of 212-RICR-10-10-01, “Rules and Regulations for Behavioral Health Organizations.”
- 13. § 10.0 License Modification Moved to § 1.5.5.
 - a. § 10.1 Added “on the licensing change form provided by the Department.”
- 14. § 5.1 Mergers, Affiliations, Change of Ownership or Operator Added “and if required, any federal, state or accrediting authority.”
 - a. 5.1(a) Section on Opioid Treatment Facilities removed as they are a subset of BHOs and must meet the same requirements as other licensed Organizations.
- 15. § 3.1.1 Removed paragraph as non-regulatory language.
- 16. § 6.0 Term of License Change name to “Application Process” for clarification.
 - a. § 6.2, 6.2(b) “A license shall be issued to an Organization for specific services...” removed as services licenses will no longer be issued. Organizations will be licensed to perform services under the Organization license.
 - b. § 6.2(a) retained in this Part under 1.5.4(A)(1).
 - c. Added 1.5.4(B) “the procedure for renewing a license is to submit a renewal application on a form provided by the Department sixty (60) days prior to the expiration date for the current license.
 - d. Added 1.5.4(F) The procedure for applying for approval for alterations for additions to a current facility may be made by completing an application change from provided by the Department and by attaching plans and specifications prior to commencement of construction pursuant to R.I. Gen. Laws Chapter 40.1-24-11.
- 17. Added Section 1.7 “Types of Licenses.”
- 18. § 7.0 Provisional Licenses Section reformatted for the purpose of clarity.
 - a. § 7.1 Amended language from “will be issued to a new Organization” to “may be issued to...”
 - b. § 7.1(c) Amended language from, “a Provisional License may be renewed. However, a Provisional License and any renewals shall not exceed twelve (12) successive months for all provisional licenses and renewals combined” and

amended to “may be renewed but the cumulation the original provisional license and all renewals shall not exceed twelve (12) successive months.” Length of time successive provisional licenses may be issued for the purpose of clarity.

19. § 8.0 Conditional License Section reformatted for the purpose of clarity.

20. § 12.0 Reports of Deficiency Moved to § 1.8, “Reports of Deficiencies”

21. § 11.0 Suspension, Revocation, Curtailment and Denial Removed “if the Department finds any of the following: (examples in items a -j)”

- a. Replaced with “if the Department has sufficient evidence to establish that the licensee has violated federal or state statute or regulation subject to Sections 1.9 or 1.12 of this Part.” The examples removed (items a – j) were of statutes and regulations. Section 1.12 identifies the Organization’s right to appeal. Section 1.9 identifies the Department’s suspension authority in emergencies.

22. § 14.0 Licensing Actions §14.1 of this Section removed as redundant. This section redefines each license type and the ability of the Department to take action. It is unnecessary as the regulatory authority is stated in §§ 1.7, 1.9, 1.10, 1.11.

23. § 15.0 Right of Appeal Amended to identify current practice.

24. § 16.0 Monitoring and Auditing

- a. Removed § 16.3(a) “The Department shall issue those element of the rules and regulations of the Behavioral Health Organizations.”
- b. Added § 1.13(E) “The Organization shall also be prepared for periodic program reviews.”

25. §17.0 Plans of Correction

- a. 17.3 Added “The plan shall include evidence of compliance for each resolution or a plan for how evidence will be presented upon resolution.”
- b. 17.3(a) Amended language from “The Department may determine that a Plan of Correction must be submitted within less than the thirty (30) day timeframe” to “Upon request from the Department shall submit a Plan of Correction in a timeframe that is less than thirty (30) days.”
- c. 17.3(b) Amended language from “The Department may request an amended Plan of Correction.” to “An amended Plan of Correction shall be submitted if the Department determines that the initial submission is insufficient to address the deficiencies.”
- d. Added “All actions of this Section are subject to the provision of Section 1.12.”

26. § 18.0 Variance Procedure Clarified language to identify correct procedure to apply for a variance. Amended from §18.0 of the original “Licensing Procedure and Process,” “The Department may, within its discretion and for good reason, grant a variance to specific requirements contained in these regulations. A variance will be granted only when the Department determines that the health, safety, or welfare of individuals or the quality of services or treatment provided to individuals is not adversely affected. The Department reserves the right to revoke a variance if conditions required are not met. An Organization may submit a request for a variance in writing to the Office of Licensure and Standards. A variance for a specific section of these regulations shall be granted if both of the following conditions exist: There is an alternative for providing an equivalent level of health, safety, well-being, and treatment for the persons served. There are

unusual or special circumstances that justify the variance. Such written request shall include a specific reference to the section of the regulation for which a variance is sought, a full explanation of why the variance is necessary, and a full explanation of alternative of why the variance is necessary, and full explanation of alternative provisions or procedures proposed by the Organization. The Organization may implement a variance only after it has received written approval from the Department. A variance may be time limited. A variance may have other attached conditions or stipulations. Within thirty (30) days of the receipt of the variance request, unless additional time is required, the Department. of BHDDH Variance Review Committee will review the request and provide a written decision to the licensee or applicant. Appeal of the denial of a variance request shall be made in writing to the Director. The Director's decision is final."

Amended to "a variance, at the discretion of the Department, may be granted if it is determined that the variance does not adversely impact the health, safety, or welfare of individuals receiving services. The Organization shall also demonstrate how meeting the regulation as written will cause undo harm. The request for variance should be sent to the Department Office of Licensure and Standards in writing with an explanation of the Organization's intent to meet the spirit of the regulation being varied and/or its intent over time to meet the stated regulations as written. The regulation may not be varied by the Organization has received written approval from the Department.

27. §19.0 Rules Governing Practices and Procedures Rule revised in accordance to Section 1.12 Right of Appeal, as referenced in the Appeals Process and Procedures for EOHHS Agencies and Programs 210-RICR-10-05-2.
28. § 20.0 Operation of Unlicensed Agency Language clarified to reflect R.I. Gen. Laws. §40.1-24-14 Amended from stating the applicable law "Any person establishing, conducting, managing or operating any agency as defined by these rules, regulations and standards without a license shall be guilty of a misdemeanor and upon conviction shall be fined not more than one thousand dollars (\$1000) or imprisoned not more than six (6) months or both at the discretion of the court for each offense." Amended to "Operating if an unlicensed agency may be fined in accordance with R.I. Gen. Laws §40.1-24-14.
29. Added Provider Governance, §1.17, Added consolidated language from DDO and BHO regulations for consistent governance of Organizations licensed by the Department.
 - a. Added clarifying language regarding individuals and family member participation on the Board of Directors for the purpose non-disclosure and confidentiality. 1.17.1(A)(4). Language states "Evidence of compliance shall be provided to the Department upon request but shall be non-public for purposes of R.I. Gen. Laws Chapter 38-2."
 - b. Added clarifying language regarding the Board review of the executive director or "equivalent position." §1.17.1(A) (5) "The Board of Directors shall adopt by-laws, or an acceptable equivalent that shall: Describe the lines and levels of authority for relationships among itself, the executive director, or equivalent position and the community", §1.17.1(A) (7) "The Board of Directors shall review and approve major program changes recommended by the executive director, or equivalent position or an equivalent position.", §1.17.1(A)(9), "The Board of Directors shall be responsible for annually evaluating the performance

of the executive director, or equivalent position, or person serving in an equivalent position, of the Organization.”

- c. Removal of “each BHO/DDO that is either (a) a for profit entity or (b) a not for profit entity that is part of a national organization providing services in RI shall have either a board of directors that meets all of the requirements of a board of directors as mandated in these regulations or an advisory board that meets all of the requirements of a board of directors as mandated in these regulations.”
- d. Removed language regarding planning process and performance improvement, “Planning shall address all of the DDO’s services and organizational functions that are described in these regulations. The leadership of the DDO shall communicate the DDO’s mission, vision, values, and plan to all staff of the DDO and to Participants. The planning process provides framework for setting performance improvement priorities and identifies how priorities are adjusted in response to unusual or urgent events.” It is addressed in §1.18 (A-B), “Quality Performance/Improvement and Individual Satisfaction”, which states that “all organizations shall have written policies and procedures for assessing individual satisfaction with services and supports received, individual choice regarding services received, and individual involvement in monitoring and directing the provision of services. The Organization shall have an effective, ongoing, Organization-wide quality performance/improvement program to evaluate the provision of services and supports to individuals that addresses the quality requirements of the BHO and DDO regulations.”.
- e. Added “processes to ensure that agency systems are in place to ensure agency appropriate funding streams are available to carry out the purpose for which the provider is licensed.”
- f. Removed “in accordance with the MMIS” from the statement, “The Organization shall maintain its financial records in accordance with generally accepted accounting and bookkeeping practices.”
- g. Removed “requirements of Appendix one herein” from the statement, “Organizations shall bill appropriate entity for services rendered to individuals in accordance with the appropriate program requirements.”
- h. Added, “The Organization shall provide audited financial statements, audit findings and any recommendations, including corrective action plans, and any supplemental schedules, as may be required by the Department.”
- i. Removed “in collaboration with representatives from the appropriate disciplines and organizational units, at least, required by applicable law, and regulations.” As applicable laws are referenced within revised BH regulations.
- j. Removed language “in the service area of the CMHC” As applicable laws are referenced within revised BH regulations.
- k. Removed “Services shall be designed through the collaboration of the organizations’ leaders with persons served, leaders of the various communities served by the organization and other provider organizations.” Each CMHC shall develop and maintain collaborative relationships with the emergency

departments and psychiatric units of local and other applicable hospitals.” As applicable laws are referenced within revised BH regulations.

- l. Removed “The scope of services provided by each program or service of the organization is defined in writing and is approved by the organization’s leaders. “All services shall be organized and delivered according to evidence-based ad best practice standards and guidelines, when available.” As applicable laws are referenced within revised BH regulations.
 - m. Removed “Administrative leaders, clinical leaders, other appropriate staff, and persons served shall have the opportunity to participate in the organization’s decision-making structures and processes.” As applicable laws are referenced within the revised BH regulations.
 - n. Removed “The budget review process shall consider the appropriateness of the organization’s plan for providing treatment and services to meet the needs of individuals served and their recovery.” The budget review process shall also “include representatives from every appropriate clinical and administrative discipline and category of management.” As applicable laws are referenced within the revised BH regulations.
 - o. Removed “If the organization is responsible for funds belonging to the person served, there are procedures that are addressed; the identification of such funds, accountability of the organization for any expenditure of such fund; the expenditure or investment of such funds only with the consent of the person served or, if appropriate, his or her legal representative; ensuring that if the funds of the person served are invested, that the interest earned accrues to the person served; access by the person served, or his or her legal representative, to the records of his or her funds. As applicable laws are referenced within the revised BH regulations.
 - p. Moved Organization Ethics to this Section.
 - q. Within 1.17.1 (C 2), added language “pursuant to § 1.17, 1.21 and 1.26 of this Part.”
 - r. Added “independent contractors directly involved in support services” for clarification.
 - s. Amended language from “Staff is prohibited and staff shall not” and is amended to ‘the prohibition of’
 - t. Amended language from “The Code of Ethical Conduct shall be posted in a conspicuous place in all buildings where services are provided” and is amended to “The Code of Ethical Conduct shall be made available, in a written or electronic format, in all licensed facilities where services are provided”
30. Added Quality Performance/Improvement and Individual Satisfaction, §1.18. Language requires policies and procedures for ongoing quality performance and Improvement (see § 8.0 “Quality Assurance/Improvement and Participant Satisfaction” of original DDO regulations and §§ 6.0 “Direction of Services” and 7.0 “Leadership’s Role in Performance Improvement” of current BHO regulations).
31. Added one element to “Program Documentation Requirements”, § 1.19(A)(4) Clarifies general records documentation requirements and retention schedule. Added “Maintained

in accordance with EOHHS Records Retention requirements pursuant to R.I. Gen. Laws §38-3-6 (a)(c)(k)(1).

32. Added Abuse, Neglect, Mistreatment, and Other Human Rights Violations Moved reporting and employee criminal background check requirements from original DDO regulations, §§ 26.0 “Abuse, Neglect, Mistreatment, and Other Human Rights Violations,” 11.5.1, 11.8.3, “Staff Qualifications and Personal Files” and the BHO regulations, §8.5.4 “Human Resources.” The language reflects current practice as BHOs, as well as DDOs are now included in the investigatory process under the Office of Quality Assurance.
 - a. Added §1.21(D) “If a criminal background check contains positive findings, the Organizations Human Resources, with input and guidance from the Organization’s Senior Management, shall make and document a judgement regarding the employment of the prospective employee.”
 - b. A list of disqualifying offenses was added to the regulations.
 - i. Category One offenses automatically disqualify candidates from employment.
 - ii. Category Two offenses allow the employer discretion in hiring the candidate.
33. Added Physical Environment Requirements for Licensed Physical Entities, § 1.22. Summarizes requirements from the original DDO regulations § 12.0 “Physical Environment Requirements Where Licensed Services are Provided” and the original BHO regulations §10.0 “Management of the Environment of Care.”
34. Added Community Residence; Additional Physical Environment Requirements § 1.23. Moved from the original DDO regulations §13.0 “Community Residence; Additional Physical Environment Requirements” and modified to meet HCBS requirements.
35. Added Nutrition, § 1.24, Combined requirements for BHO and DDO regulations. Clarified what is DDO specific.
36. Added Transportation, § 1.25.1, Moved from original DDO regulation § 15.0 “Safety: Transportation.”
37. Added Individual Summary Information, § 1.25.2, Combined and moved information from original DDO regulations § 16.0 “Safety: Participant Summary Sheets” and original BHO regulations § 11.14.1 “Management of Information.”
38. Added Emergency Information § 1.25.3, Combined and moved information from original DDO regulations § 17.0 “Safety: Emergency Information” and original BHO regulations § 29.3 “Emergency, Crisis Intervention and Crisis Stabilization.”
39. Added Emergency Management Plan, § 1.25.4, combined and moved information from the original DDO regulations § 18.0 “Safety: Emergency Management Plan” and original BHO regulations § 10.6 “Management of the Environment of Care.”
40. Added Fire Safety and Fire Drill Requirements § 1.25.5, combined and moved information from original DDO regulations § 19.0 “Safety: Fire Safety and Fire Drill Requirements” and original BHO regulations §§10.7 – 10.14 “Management of the Environment of Care.”
41. Added Individual (Participant) Rights, § 1.26, combined and moved information from original DDO regulations § 20.0 “Participant Rights” and original BHO regulations

§§15.0 – 16.0 “Rights of Persons Served and Responsibilities of BHO” and “Rights of Persons Served in Residential Programs.”