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TITLE 212 – DEPARTMENT OF BEHAVIORAL HEALTHCARE, DEVELOPMENTAL DISABILITIES, AND HOSPITALS

CHAPTER 10 – LICENSING AND GENERAL ADMINISTRATION

SUBCHAPTER 00 - N/A

PART 1 – Rules and Regulations for the Licensing of Organizations and Facilities Licensed by the Department of Behavioral Healthcare, Developmental Disabilities and Hospitals

1.1 Applicability

- A. These regulations are promulgated pursuant to the authority conferred under R.I. Gen. Laws §§ [23-17.8-9](#), [40.1-1-13](#), [40.1-2-2](#), [40.1-5-3](#), [40.1-5.4-11](#), [40.1-8.5-7](#), [40.1-21-12](#), [40.1-22-4](#), [40.1-24-9](#), [40.1-24.5-2](#), [40.1-26-11](#), and [40.1-27-3](#); as well as R.I. Gen. Laws Chapter [42-35](#), and are established for the purpose of adopting prevailing standards for the licensure and operation of facilities and programs providing rehabilitation, support, and guidance for individuals with developmental disabilities or cognitive disabilities.
- B. It is the expectation of the Department that each individual's array of supports and services be customized to meet the individual needs and desires in the least restrictive environment.
- C. These Rules and Regulations apply to any licensed organization under [Subchapter 05 Part 1 of this Chapter](#) (Rules and Regulations for Developmental Disability Organizations), and [Subchapter 10 Part 1 of this Chapter](#) (Rules and Regulations for Behavioral Healthcare Organizations).
- D. These Rules and Regulations do not apply to the following:
 - 1. Health care facilities licensed by the Rhode Island Department of Health pursuant to R.I. Gen. Laws Chapter [23-17](#);
 - 2. Assisted living residences licensed by the Rhode Island Department of Health pursuant to R.I. Gen. Laws Chapter [23-17.4](#);
 - 3. Facilities and programs licensed by the Rhode Island Department of Children, Youth and Families pursuant to R.I. Gen. Laws Chapter [42-72.1](#);

4. Facilities, programs, or organizations already licensed or certified by any other appropriate state agency, pursuant to R.I. Gen. Laws.

1.2 Authority

The statutes cited in § 1.1 of this Part delineate the general scope of authority for this Chapter, as do the Part's specific provisions.

1.3 Definitions

A. Wherever used in this Part, the following terms shall be construed to mean:

1. "Abuse" means the treatment or act toward any person with developmental disabilities, as defined in R.I. Gen. Laws § [40.1-27-1](#) on the part of anyone, including an employee, intern, volunteer, consultant, contractor, visitor, family member, caregiver, neighbor, citizen or other person with a disability, whether or not the person is or appears to be injured or harmed. The failure to exercise one's responsibility to intercede on behalf of a person receiving services also constitutes abuse. Abuse includes:
 - a. "Physical abuse" may include, but is not limited to: physical assault, battery and/or actions such as: hitting, kicking, biting, pinching, burning, strangling, shoving, shaking, dragging, yanking, punching, slapping, pulling hair, grabbing or pushing, or using more force than is necessary for the safety of the person.
 - (1) For incidents involving a caregiver, abuse is defined as the willful subjection of an adult with developmental disabilities to willful infliction of physical pain, willful deprivation of services necessary to maintain physical or mental health, or to unreasonable confinement.
 - (2) For incidents of physical abuse involving two people with disabilities, only an attack resulting in injury in which one person needs medical care beyond routine first aid or a series of deliberate acts (i.e. hitting, kicking, slapping, pulling hair, etc.) displayed by one person with a disability towards another person with a disability should be reported to the Office of Quality Assurance. Other incidents should be documented and handled by the agency's internal Incident Management Committee.

- b. "Sexual abuse" means any sexual contact, consensual or otherwise, between a person receiving services and a paid employee, consultant or contractor of the Organization. Any sexual contact between a person receiving services and an immediate blood relative is incest and is sexual abuse. Any non-consensual sexual contact between a person with a disability and another person with a disability is also sexual abuse. This includes but is not limited to oral/genital contact, sexual penetration or fondling and any other assault as defined in R.I. Gen. Laws § [11-37.1-1](#) *et seq.*
- c. "Sexual contact" means the touching, fondling or intrusion of the genitals or other intimate parts of the person or offender directly or through clothing for the purpose of sexual arousal or gratification.
- d. "First degree sexual assault" means any forced or coerced intrusion, however slight, of the vagina, anus, or mouth, by part of another person's body or by an object, including cunnilingus or fellatio.
- e. "Second degree sexual assault" means any forced or coerced or intentional touching or sexual contact (not penetration) clothed or unclothed, with a person's genital area, anal area, groin, buttocks, or the breasts of a female for the purpose of sexual arousal, gratification or assault.
- f. "Third degree sexual assault" means penetration where one person is 18 years of age or older and the other is over the age of 14 years, but under the age of consent (age 16 years).
- g. "Sexual exploitation" may include, but is not limited to, causing a person to expose or touch themselves or anyone else for the purpose of demeaning the person, for the sexual arousal or personal gratification, taking sexually explicit photographs, forcing or encouraging a person to view pornographic materials encouraging a person to use sexually explicit language which he/she may not fully understand, the use of harmful genital practices such as creams, enemas, etc. to meet the idiosyncratic needs of an offender, etc.
- h. "Psychological/verbal abuse" means intentionally engaging in a pattern of harassing conduct which causes or is likely to cause emotional harm. This includes the use of verbal or non-verbal expression that subjects a person to ridicule, humiliation, contempt, manipulation, or is otherwise threatening, socially stigmatizing and

fails to respect the dignity of the individual, including name-calling or swearing at a person, intimidating or condescending actions, behaviors, or demeaning tone of voice or any other pattern of harassing conduct.

- i. "Mistreatment" means the inappropriate use of medications, isolation, or use of physical or chemical restraints as punishment, for staff convenience, as a substitute for treatment or care, in conflict with a physician's order, or in quantities, which inhibit effective care or treatment, which harms or is likely to harm the individual.
- j. "Neglect" means the failure of a person to provide treatment, care, goods and services necessary to maintain the health and safety of the individual, as defined in R.I. Gen. Laws § [40.1-27-1](#), and other laws. For the purposes of this Part, "Neglect" shall also include the failure to report or act on health problems of the person or changes in his or her health conditions as indicated within a plan approved by the Department. Neglect also includes lack of attention to the physical needs of the person including personal care, cleanliness and personal hygiene, meals and/or failure to provide appropriate nutrition or a safe and sanitary environment; failure to carry out a plan of treatment or care prescribed by a physician and/or other health care professional; failure to provide services/supports as indicated within an ISP approved by the Department; and failure to provide proper supervision to the persons as required within an ISP or by a court.
- k. "Financial exploitation" means the use of funds, personal property or resources of a person receiving services by an individual for their own monetary or personal benefit, profit or gain with or without the informed consent of the person, including but not limited to the coercion or manipulation of a person to spend their own personal funds for something they may or may not have use for or soliciting of gifts, funds or favors. This includes any suspected theft of or missing property or funds of a person. For incidents involving a caregiver, financial exploitation is defined as an act or process of taking pecuniary advantage of a person with a developmental disability by use of undue influence, harassment, duress, deception, false misrepresentation, false pretenses, or misappropriation of funds.

2. “Administer” means the direct application of a medication, whether by injection, inhalation, ingestion, or any other means, to the body of an individual by
 - a. a licensed and authorized agent and under his or her direction; or
 - b. the individual at the direction and in the presence of the licensed and authorized agent.
3. “Admission” means acceptance into a program or service, after an initial biopsychosocial assessment has been conducted and includes opening a treatment record for the person, orienting him or her to the organization, and assigning his or her treatment to an appropriate staff person or team. Individuals shall be admitted to the organization no later than their third consecutive face-to-face clinical service.
4. “Advocate” means a:
 - a. legal guardian or
 - b. an individual acting in support of or on behalf of a person in a manner consistent with the interests of the person.
5. “Assessment” means the process of testing, gathering biopsychosocial information, and making a diagnostic judgment to determine an individual's behavioral health status and need for services, conducted by a qualified staff person.
6. “Assistive technology” means specialized medical equipment and supplies to include devices, controls, or appliances, specified in the individualized service plan, that enable individuals to increase their ability to perform activities of daily living; devices, controls, or appliances that enable the individual to perceive, control, or communicate with others in the environment in which they live; including such other durable and non-durable medical equipment not available under the state plan that is necessary to address individual functional limitations. Items reimbursed with waiver funds are in addition to any medical equipment and supplies furnished under the state plan and exclude those items that are not of direct medical or remedial benefit to the individual. All items shall meet applicable standards of manufacture, design and installation and are subject to prior approval on an individual basis by the Department.
7. “Authorization” means the service approved by BHDDH for everyone based upon the ISP or treatment plan.

8. "Behavioral healthcare" means the umbrella term that encompasses all mental health and substance use related assessment, treatment, prevention, and support services.
9. "Behavioral healthcare organization" or "BHO" means a public or private establishment primarily constituted, staffed, and equipped to deliver mental health and/or substance use services to the public.
10. "Board" means the Board of Directors of the organization and/or the Advisory Board of a local Organization that is:
 - a. a for profit entity or
 - b. a not for profit entity providing services in Rhode Island.
11. "Caregiver" means a person who provides care for a person with disabilities without payment, natural support.
12. "Certification" shall have the meaning as defined under § [05-1.2\(A\)\(15\) of this Chapter](#) and [Subchapter 10 Part 1 of this Chapter](#) depending on the program being utilized.
13. "Change in operator" means a transfer of the authority of the Board of Directors, by the Board of an organization, to any other person or group of persons (excluding delegations of authority to the medical or administrative staff of the Organization).
14. "Change in owner" means:
 - a. When an Organization is a partnership: the removal, addition, or substitution of a partner that results in the new partner acquiring a controlling interest in the Organization.
 - b. When an Organization is an unincorporated sole proprietorship: the transfer of the title and property to another person.
 - c. When an Organization is a corporation:
 - (1) A sale, lease, exchange, or other disposition of all, or substantially all the property and assets of the corporation.
 - (2) A merger of the corporation into another corporation.
 - (3) The consolidation of two (2) or more corporations resulting in the creation of a new corporation.

- d. When an Organization is a for profit corporation: any transfer of corporate stock that results in a new person acquiring a controlling interest in such corporation.
 - e. When an Organization is a non-profit corporation: any change in membership that results in a person acquiring a controlling vote in such corporation.
15. "CMHC" or "CMHO" means a private, non-profit community mental health center organization designated by the Director of the Department and licensed as such to ensure services are available through program delivery, local planning, service coordination, and monitoring outcomes within a specified geographical area according to R.I. Gen. Laws Chapter [40.1-8.5](#) for the Department's priority targeted populations within eight (8) areas according to R.I. Gen. Laws § [40.1-5.4-7\(3\)](#).
 16. "Cognitive disability organization" or "CDO" means an organization licensed by BHDDH to provide services to adults with cognitive disorders. As used herein, CDOs shall have the same meaning as "providers" or "Organizations" and shall meet the licensing requirements of DDOs.
 17. "Community residence" means a facility that operates twenty-four (24) hours a day to provide room, board, supervision and supportive services to three (3) or more people who have developmental, mental and/or substance related disabilities.
 18. "Complaint" means a formal, written request for further review of an unresolved concern or an allegation against a licensed organization or provider regarding an alleged violation of ethical standards, regulations, or law.
 19. "Concern" means an issue that is perceived as interfering with a person receiving adequate treatment.
 20. "Controlled medications" or "controlled substances" means substances pursuant to R.I. Gen. Laws Chapter [21-28](#) that have a high potential for abuse which may lead to severe psychological or physical dependence.
 21. "Co-occurring disorder" is the coexistence of two or more behavioral health conditions, existing simultaneously and often independently of each other.
 22. "Day program service" means a service offered at a center-based day program or a community-based day program by a licensed developmental disability organization. The service includes the provision of education,

training and opportunity to acquire the skills and experience needed to participate in the community. This may include activities to support individuals with building problem solving skills, social skills, adaptive skills, daily living skills, and leisure skills. Other services include assistance in establishing friendships, using public transportation, participating in community events, or otherwise undertaking activities to promote community integration.

23. "Department" means the Rhode Island Department of Behavioral Healthcare, Developmental Disabilities and Hospitals (BHDDH).
24. "Developmental disability organizations" or "DDOs" means an organization licensed by BHDDH to provide services to adults with disabilities, as provided herein. As used herein, DDOs shall have the same meaning as "providers" or "Organizations."
25. "Director" means the Director of the Department of Behavioral Healthcare, Developmental Disabilities and Hospitals (BHDDH).
26. "Evidence-based practice" is an intervention or service for which there is strong research demonstrating effectiveness in assisting persons to achieve desired outcomes.
27. "Facility" means the physical plant where programs and services are provided and/or overseen, or could be provided, and as defined in R.I. Gen. Laws § [40.1-24-1\(6\)](#) and other laws as applicable.
28. "Human rights committee" or "HRC" means any duly constituted group of people with developmental disabilities, advocates, volunteers, and professionals who have training or experience in the area of behavioral treatment, and other citizens who have been appointed to a provider's human rights committee for the purposes of
 - a. promoting human rights;
 - b. reviewing, approving and monitoring individuals' plans designed to modify behavior which utilize restrictive interventions techniques or impair the individual's liberty, or other plans and procedures that involve risks to the person's protection and rights; and,
 - c. participating in the provider's individual grievance procedures.
29. "Incident" means a situation in which a person who receives services from the Department and/or an Organization licensed by the Department is harmed, or is involved in an event, which causes concern for the person's

health, safety and/or welfare. It also refers to any adult, whether or not the person is receiving services from the Department, with developmental disabilities who is harmed or is involved in an event, which causes concern for the person's health, safety and/or welfare.

30. "Independent contractor" means a person who is not an employee of the Organization and provides and/or contributes to the direct service to and/or has responsibility for an individual.
31. "Individual" or "individual served" means a person who receives services or is assessed to need services based on the results of an initial assessment. The term "person served" shall be synonymous herein with the term "individual" or "individual served."
32. "Individual service plan" or "ISP" means the annual document derived from a person-centered plan which details the services for an individual supported.
33. "Integration" means:
 - a. The use by individuals with developmental disabilities of the same community resources that are used by and available to other persons in the community;
 - b. Participation in the same community activities in which persons without a developmental disability participate, together with regular contact with persons without a developmental disability; and
 - c. Individuals with developmental disabilities who live in homes that are in proximity to community resources and foster contact with persons in their community.
34. "Investigation" means a systematic review and search for facts. It is objective in nature and is intended to identify facts, sequence and chronology of events, active failure(s), latent failure(s) and assessment of risk as pertinent to a specific adverse event. 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.
35. "Non-congregant residential support services" means services provided in residential settings other than a host family that are not Community Residences as defined herein. The service includes residential support services and may include specialized residential support services. Non-congregant residential support services do not include payments for room

and board. Payments for non-congregant residential support services are based on residential resource levels.

36. "Office of Licensure and Standards" means the unit within BHDDH that is responsible for licensing provider organizations and programs.
37. "Office of Quality Assurance" or "OQA" shall have the same meaning as the office described in R.I. Gen. Laws § [40.1-26-10](#).
38. "Orientation" means a process to provide initial information about the BHO and DDO and its services to persons served and to staff of the organization. For staff, orientation includes an assessment of their competence relative to their job responsibilities and the organization's mission, vision, and values.
39. "Outcome" means the result(s) of the performance or the non-performance of a function or process.
40. "Participant" means an adult who has a developmental disability as defined herein. As used in this Part, "individual" shall have the same meaning, in addition to its meaning in § 1.3(A)(31) of this Part.
41. "Person" means any individual, governmental unit, corporation, company, association, or joint stock association and the legal successor thereof.
42. "Person-centered" shall have the meaning as defined in the BHO or DDO regulations, depending on the program being utilized.
43. "Premises" means a tract of land and the buildings thereon where direct services are provided.
44. "Program" means a planned structured service delivery system structured to provide specific components that are responsive to the needs of the persons served.
45. "Provider" means a person or organization that manages or delivers clinical and/or support services.
46. "Residential services" shall have the meaning as defined in the BHO and DDO regulations, depending on the program being utilized.
47. "Restraint" means restricting the movement of the whole or a portion of a person's body as a means of controlling a person's physical activity to protect the person or others from injury.

- a. “Chemical or pharmacological restraint” means medication that is given for the emergency control of behavior when the medication is not standard treatment for the individual's medical or psychiatric condition.
 - b. “Mechanical restraint” means the use of an approved mechanical device that restricts the freedom of movement or voluntary functioning of a limb or a portion of a person's body as a means to control his or her physical activities.
 - c. “Physical restraint” means the use of approved physical interventions or "hands on" holds to prevent an individual from moving his or her body to engage in a behavior that places him, her or others at risk of physical harm.
48. “Services” mean individually planned interventions intended to reduce or ameliorate the symptoms of mental disorders or substance dependence or abuse through treatment, training, rehabilitation, or other supports. Services also refer to person-centered interventions provided to developmentally disabled adults.
49. “Significant others” mean and include individuals who are important to the person served, as identified by the person served.
50. “Staff” means, including but 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.
51. “Support coordinator” means the individual employed by the Organization who delivers Support Coordination services. The term is synonymous with Case Manager in these regulations and includes, but is not limited to, the external coordination and monitoring of the Shared Living Arrangements.
52. “Treatment” or “Care” means a set of individually planned interventions or supports that help an individual work towards his or her recovery goals and 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 functions.
53. “Violation of human rights” means 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.

1.4 Application for Licensure, Renewal, or Change in Licensure Status

1.4.1 Application for Licensure, Renewal, or Change in Licensure Status

- A. To apply for a license, renew an existing license, or remove or replace the provisional or conditional status of a license, an applicant or licensee shall contact the Department's Office of Licensure and Standards. The Office of Licensure and Standards shall provide an applicant or licensee with the appropriate Departmental license forms.
- B. Application for a license to conduct, maintain or operate a BHO, DDO, or Cognitive Disability Organization shall be made to the Department upon forms provided by the Department and shall contain such information as the Department requires, including but not limited to evidence of ability to comply with any and all applicable Department rules and regulations.
- C. The Department shall either deny an application or renewal, or shall issue or renew a provisional license, conditional license or license.
- D. Such license shall be issued to the applicant or licensee for the operation of specific agencies and facilities and shall not be transferable or assignable except with the written approval of the Director.

1.4.2 Licensed Organizations

- A. An Organization that wishes to provide services shall apply for a License under the relevant Organizational category:
 - 1. Behavioral Healthcare Organization ("BHO").
 - 2. Developmental Disability Organization ("DDO").
 - 3. Cognitive Disability Organization ("CDO"), which shall also meet all DDO licensing requirements.
- B. Authorization to provide services to individuals will require meeting approved certification standards by BHDDH. The Department will grant licenses to agencies providing services and to agency premises in which services are delivered. Services may be delivered in the community in accordance with the needs of individuals.

1.5 License Issuance and Renewal and Initial Licensure Review

1.5.1 General Requirements

An application for licensure is required for an initial license; for license renewal; for changes in owner, operator, or lessee; and when there is a new legal affiliation of two (2) or more Organizations.

1.5.2 Licensure

- A. All licensed DDOs, BHOs and CDOs that provide services to adults in Rhode Island must meet all the requirements contained in these regulations.
- B. An entity seeking to become a licensed DDO, BHO or CDO shall complete initial applications for licensure using the forms and in the format specified by the Department. Upon approval by the Department, an applicant shall be granted a license for a period of two (2) years.
- C. Upon approval by the Department, including an on-site review, an applicant for certification shall be granted provider service certifications that shall remain in effect for up to two (2) years. To remain a licensed provider, the provider must maintain active approved certifications.

1.5.3 Components of Licensing

- A. The licensing process shall include but is not limited to a review of the prospective Organization's:
 - 1. Mission.
 - 2. Corporate philosophy.
 - 3. Organizational background and corporate history.
 - 4. Experience providing services to individuals in RI and other states.
 - 5. Corporate experience.
 - 6. Demonstrated commitment to individuals.
 - 7. Provisions for how individuals who are served participate in the operation of the Organization.
 - 8. Strategies for promoting community inclusion and membership. (DDO specific)
 - 9. Approach to the respectful, age-appropriate imagery of people with developmental disabilities, and strategies for increasing valued roles and perceptions of people in the community.

10. Strategies for providing a voice in all aspects of daily life for the individuals the Organization serves.
 11. Human Rights Committee.
 12. Board of Directors.
 13. Staffing.
 14. Staff experience.
 15. Job descriptions.
 16. Staff resumes.
 17. Staff recruitment, selection, training and supervision approach.
 18. Criminal background checks.
 19. Conflicts of interest.
 20. Financial disclosure information.
 21. Audit (annually audited financial statements for past three (3) years).
 22. Fiscal capacity (including business plan if it is a new entity).
 23. Tax compliance.
 24. References.
 25. Written policies and procedures.
 26. Certification Standards Application.
- B. The Organization shall demonstrate compliance with applicable laws and regulations. The Organization shall submit to readiness reviews and onsite visits to ensure preparedness for service provision.
- C. If an applicant fails to provide complete, accurate, and truthful information during the application and licensing process, the Department may cause licensure to be delayed, or may deny or revoke the license.
- D. Any applicant or person with a controlling interest in a BHO or DDO will be considered responsible for acts occurring during, and relating to, the operation of licensed services or Organization for purpose of licensing.

- E. The Department may consider the background and operating history of the applicant(s) and each person with a controlling ownership interest when determining to issue a license.
- F. When an application for initial licensure is made by an applicant(s) who owns or operates other licensed Community Residences or facilities in Rhode Island, the Department may deny the license if the applicant's existing Community Residences or facility(ies) are not, or have not been, in substantial compliance with the applicable Rhode Island licensing authority regulations and/or health and safety standards.
- G. All applicants must fulfill the applicable requirements described in this Part.

1.5.4 Application Process

- A. Upon receipt and approval of an application for a license, the Department shall issue a license or renewal thereof for a period of no more than two (2) years, if the applicant meets the requirements of the rules and regulations herein and the other applicable standards and requirements contained in other regulations.
 - 1. A license shall not be transferable, except with the written approval of the Department. The license shall be issued only for the individual owner, program sponsor, operator, or lessee or to the corporate entity responsible for its governance.
- 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 of the current license.
- C. A license continues in effect after the end of the licensure period if the Organization has submitted a timely and sufficient renewal application and there are no grounds to deny the license under any provision of this Part.
- D. The Organization shall notify the Office of Licensure and Standards in writing of any plans to suspend services or end services or to close a program at least ninety (90) days prior to any proposed suspension, cessation or closure.
- E. The license shall be returned to the Department immediately upon surrender, suspension or revocation of the license.
- F. The procedure for applying for approval for alterations or additions to a current facility may be made by completing an application change form provided by the Department and by attaching plans and specifications prior to commencement of construction pursuant to R.I. Gen. Laws § [40.1-24-11](#).

1.5.5 License Modification

- A. Upon written request of the Organization, on the license change form provided by the Department, the license may be modified during the term of the license with respect to the populations served, the programs and services offered, the locations where programs and services are provided, the maximum number of persons served in residential programs and homes, and any stipulations. Approval of such request shall be at the sole discretion of the Department.
- B. Any change which requires a license modification shall not be implemented prior to approval by the Department.

1.6 Mergers, Affiliations, Change of Ownership or Operator

- A. The Department, and if required, any federal, state or accrediting authority, shall be notified of any proposed mergers, affiliations or change of ownership, program sponsor, or operator at least ninety (90) days prior to that proposed merger, affiliation or change. Any such change or action will require the application for and issuance of a new license.
- B. In cases where the application involves a merger, consolidation or otherwise legal affiliation of two (2) or more Organizations, the application shall include the proposed immediate and long-term plans of such Organizations with respect to the programs to be offered and services to be provided by such Organizations because of the merger, consolidation or otherwise legal affiliation.

1.7 Types of Licenses

1.7.1 Provisional License

- A. A Provisional License may be issued to a new Organization that demonstrates compliance with:
 - 1. administrative and policy-related regulations;
 - 2. all health and safety requirements; and
 - 3. has demonstrated the ability to perform services to individuals in accordance to this Part;
- B. A Provisional License may be issued to a new Organization that has not demonstrated compliance with all the regulations.
- C. A Provisional License:

1. may not exceed six (6) months.
 2. may be renewed but the cumulation the original provisional license and all renewals shall not exceed twelve (12) successive months;
 3. will be issued only if such issuance will not result in undue hazard to residents or persons served, as determined by the Department, or by the State Fire Marshal, or by the State Fire Marshal's delegated authority.
- D. An Organization holding a Provisional License shall demonstrate ongoing progress toward compliance remaining requirements for full licensure.

1.7.2 Conditional License

- A. A Conditional License may be issued to an Organization that has demonstrated:
1. an inability to maintain compliance with regulations;
 2. has a serious violation of human rights or applicable regulations;
 3. has multiple violations of human rights or licensing regulations;
 4. has demonstrated conduct or practice found by the Department to be detrimental to the welfare of the persons served; or
 5. has failed to comply with a previous plan of correction.
- B. A Conditional License may be issued at any time during either the issuance or renewal process or during the term of a license at the discretion of the Department.
- C. The term of a Conditional License may not exceed six (6) months.
- D. A Conditional License may be renewed; however, a Conditional License and any renewals shall not exceed twelve (12) successive months for all Conditional Licenses and renewals combined.
- E. An Organization holding a Conditional License shall demonstrate progress towards full compliance with the regulations.
- F. The Department may issue a Conditional License if the Department determines that denial of a renewal application or Revocation of an existing license would not be in the best interests of the persons served by the licensee or in the best interests of the community served by the licensee. The Department shall state the requirements of and orders with which a licensee must comply to receive a Conditional License in lieu of denial of a renewal application or Revocation.

- G. A Conditional License shall be issued only if such issuance shall not result in undue hazard to residents or persons served, as determined by the Department or by the State Fire Marshal or the State Fire Marshal's delegated authority.

1.7.3 License with Stipulations and Restrictions

A license may bear stipulations. Stipulations may be limitations on the Organization or may impose additional requirements. Stipulations may be added at any time at the discretion of the Department subject to R.I. Gen. Laws Chapter [42-35](#). Terms of any such stipulations shall be listed on the Organization's license.

1.8 Reports of Deficiencies

Reports of deficiencies noted in inspections conducted in accordance with these and other applicable Regulations, and results of any Departmental investigation, and plans of correction or compliance orders as described herein, shall be maintained on file in the Department, and shall be considered by the Department in rendering determinations to deny, condition, limit, suspend or revoke the license or to curtail certain specific activities and programs of an Organization.

1.9 Suspension in Emergencies

If the Director finds that public health, safety, or welfare requires emergency action and the Department incorporates such findings in an order, the Director may order summary suspension of the license or curtailment of activities as enumerated above, pending proceedings for revocation; or other action in accordance with R.I. Gen. Laws § [42-35-14](#)(c).

1.10 Suspension, Revocation, Curtailment, and Denial

The Department may deny, suspend, annul, withdraw, amend, refuse to issue or renew, or revoke the license of, or the operation of a specific program authorized under the license of, or curtail some or all the activities of, any Organization if the Department has sufficient evidence to establish that the licensee has violated federal or state statute or regulation subject to § 1.9 or § 1.12 of this Part.

1.11 Licensing Actions

- A. The Department may take licensing action against the license in whole and/or in part:

1. The Department may curtail, revoke, suspend or place on conditional status certain services, programs and/or facilities or premises without revoking or otherwise taking sanctions against the Organization's license.
2. The Department shall determine, in part or in whole, which of those applied for services, programs, and/or facilities or premises included by the Organization on the application for licensure or certification issuance or renewal shall be granted.

1.12 Right of Appeal

A licensee has the right to appeal any decision made by the Department. All appeals will be addressed in accordance with the Appeals Process and Procedures for EOHHS Agencies and Programs, [210-RICR-10-05-2](#).

1.13 Monitoring and Auditing

- A. The Department shall make or cause to be made such inspections and investigations that it deems necessary, in accordance with the Department rules and regulations.
 1. Authorized persons from the Department shall have free access to the grounds, buildings, and all books and records relating to any Organization.
 2. The Department shall be entitled to receive from all persons connected in any way with the Organization, such information and assistance for any examination or inquiry as the Department may require.
 3. The Department shall investigate complaints regarding potential violations of licensing regulations. Organizations shall cooperate fully with any complaint investigation.
- B. Any non-compliance with the regulations cited herein shall constitute a valid ground for licensure action.
- C. If an Organization has received certification from an acceptable national accreditation body, the Department shall substitute relevant accreditation review findings for related licensure requirements.
 1. The following documentation will be required from the Organization for consideration:
 - a. A copy of the certificate awarded by the accrediting body.

- b. The written report from the accrediting body regarding the results of its survey.
 - c. The Organization's response, if any, to the report of results from the accrediting body.
- D. The Department may deem the Organization in compliance with relevant licensure standards, in part or in whole, after consideration of the extent of compliance with the accrediting body's standards.
- E. The Organization shall also be prepared for periodic full quality program reviews.

1.14 Plans of Correction

- A. The Department shall notify the Executive Director or other Organization legal authority of violations of any Subchapter of this Chapter through a notice of deficiencies which shall be sent to the Organization, unless the Department determines that immediate action is necessary to protect the health, welfare, or safety of the public (or any member thereof) through the issuance of an immediate Compliance Order.
- B. If the Department rejects the plan of correction, or if the Organization does not provide a plan of correction within the stipulated period, or if the Organization whose plan of correction has been approved by the Department fails to execute its plan within a reasonable time, as determined by the Department, the Department may invoke the sanctions enumerated herein.
- C. The Organization that receives a notice of deficiencies must submit a plan of correction, which shall include time frames for completion, to the Department within thirty (30) days of the date the Organization receives notice of the deficiencies. The plan of correction may include any requests for variances in accordance with the Variance Procedures requirements. The plan shall include evidence of compliance for each resolution or a plan for how evidence will be presented upon resolution.
 - 1. Upon request from the Department, the provider shall submit a Plan of Correction in a time frame that is less than thirty (30) days.
 - 2. An amended plan of correction shall be submitted if the Department determines that the initial submission is insufficient to address the deficiencies. The amended plan of correction must be submitted to the Department within ten (10) business days of the date of the Organization's receipt of the request for an amended plan of correction.

- a. An immediate Compliance Order shall identify violations of the applicable licensing standards and instruct the Organization to immediately comply with such order. A copy of the compliance order shall be maintained in the agency record file of the Licensing Office.
- D. If the Organization is aggrieved by the action of the Department, the Organization may appeal the decision and request a hearing in accordance with R.I. Gen. Laws Chapter [42-35](#).
 - 1. The notice of the hearing to be given by the Department shall comply in all respects with the provisions of R.I. Gen. Laws Chapter [42-35](#). The hearing shall in all respects comply with the provisions therein.
- E. All actions of this Section are subject to the provision of § 1.12 of this Part.

1.15 Variances

- A. An Organization may apply for a variance.
- B. 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.
- C. The Organization shall also demonstrate how meeting the regulation as written will cause undo harm.
- D. The request for variance should be sent to the Department's 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 regulation as written.
- E. The regulation may not be varied by the Organization until the Organization has received written approval from the Department.
- F. No provision or procedure prescribed by state or federal statute shall be waived.

1.16 Operation of Unlicensed Agency

Operation of an unlicensed agency may be fined in accordance with R.I. Gen. Laws § [40.1-24-14](#).

1.17 Licensure

1.17.1 Provider Governance

A. Leadership and Organization Planning

1. The Organization shall operate in accordance with all applicable local, state and federal laws, rules, and regulations.
2. Each Organization shall have an organized Board that functions as its governing body and that is ultimately responsible for:
 - a. Program and fiscal management and operation of the Organization;
 - b. Assurance of the quality of services;
 - c. Compliance with all federal, state, and local laws and regulations pertaining to Organizations, and the regulations herein; and
 - d. Compliance with all applicable components of the Americans with Disabilities Act and other federal and state disability civil rights laws.
3. The Board shall provide appropriate Organizational oversight.
4. The Board shall include persons who represent the greater community, including individual and family participation. At least twenty-five percent (25%) of the Board shall be persons who reflect the population served by the Organization and/or family members of individuals. At a minimum, one (1) Board member shall be an individual served. 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](#). Efforts shall be made to recruit members who represent the cultural diversity and population of the local community of the Organization.
5. The Board of Directors shall adopt by-laws, or an acceptable equivalent, that shall:
 - a. Describe the lines and levels of authority for relationships among itself, the executive director, or equivalent position and the community;
 - b. Define the ethical standards and the responsibilities for the governance of the operation and performance of the Organization; and
 - c. Stipulate at least four (4) regular meetings of the Board of Directors each year and shall describe qualifications for membership, quorum requirements and require recording of minutes.

6. There shall be a written statement of the specific responsibilities of the Board of Directors.
7. The Board of Directors shall review and approve major program changes recommended by the executive director, or equivalent position or and equivalent position.
8. The Board of Directors shall adopt an annual budget, approve policies, and receive written reports of income and expenditures by program and receive a copy of the annual audit.
9. The Board of Directors shall be responsible for annually evaluating the performance of the executive director, or equivalent position, or a person serving in an equivalent position, of the Organization.
10. A written plan shall define the mission, vision, and values for the Organization as well as strategic, operational, program-related, and other plans and policies to achieve them.
11. The Organization shall have a written policy and procedure manual that shall be implemented, reviewed, and updated as necessary.
12. The leadership of an Organization shall develop programs to promote staff recruitment, retention, development, and continuing education.

B. Financial Management

1. The Organization shall develop an annual operating budget and long-term capital expenditure plan and strategy to monitor the implementation of the plan, both of which will be approved by the Board of Directors. The plan shall include:
 - a. An authorized budget with a review of financial performance at least quarterly;
 - b. Provisions for meeting the needs of individuals and producing the desired outcomes;
 - c. Attention to long-term financial solvency;
 - d. 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;
 - e. Identification of the sources of funding for the operations of the Organization.

2. The Organization shall contract with an independent certified public accountant to conduct an annual audit of the Organization's financial statements.
3. 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.
4. The Organization shall secure insurance to:
 - a. Cover damage, injury, or loss of life caused by fire, accident, or any other dangers that might occur during the operation of the Organization;
 - b. Provide liability coverage for all vehicles owned, leased or operated by the Organization;
 - c. Carry worker's compensation insurance in accordance with the laws of the State of Rhode Island.; and,
 - d. Protect the personal funds of individuals, to cover damage, injury or loss of life caused by fire, accident or any other dangers which might arise in the operation of the Organization.
5. The Organization shall maintain its financial records in accordance with generally accepted accounting and bookkeeping practices
6. The Organization shall have the infrastructure and ability to develop, support, and maintain a billing system that can track services provided and bill accordingly.
7. Organizations shall bill the appropriate entity for services rendered to individuals in accordance with the appropriate program requirements.

C. Organization Ethics

1. Each Organization shall have a written Code of Ethical Conduct.
2. The Organization's written Code of Ethical Conduct shall address ethical issues in the management and provision of services and in the implementation of clinical practices pursuant to §§ 1.17, 1.21, and 1.26 of this Part.
3. All staff, volunteers, independent contractors directly involved in support services and shared living arrangement contractors shall adhere to both

the Code of Ethics of their respective disciplines, as applicable, and the Organization's Code of Ethical Conduct that will include:

- a. the use of accurate and respectful language in all communications to and about persons served.
 - b. the prohibition from engaging in or promising to engage in a personal, scientific, professional, financial, or other relationship, that is outside the professional relationship sanctioned by the Organization, with persons currently or formerly served by the Organization.
 - c. the prohibition of taking advantage of any professional relationship or exploit others for their personal, religious, financial, sexual, political, or business interests.
 - d. the respect for the confidentiality of each person served.
4. The Organization's policies and procedures shall reflect ethical practices for marketing, admission, transfer and billing.
5. The Organization 's Code of Ethical Conduct shall address the provision of appropriate care without consideration of the individual's personal financial resources.
6. The Organization's Code of Ethical Conduct shall include a policy regarding gifts, goods, or services given to or received from persons served.
7. The Code of Ethical Conduct shall be made available, in a written or electronic format, in all licensed facilities where services are provided and shall be communicated to all personnel and to all persons served during orientation to the Organization and shall be available upon verbal or written request.
8. Training regarding the Code of Ethical Conduct shall be provided to all staff, volunteers, consultants, and shared living arrangement contractors, as applicable.
 - a. A record of this training shall be maintained by the Organization.
9. The Organization shall have a written policy and procedure to address any violation of the Code of Ethical Conduct.

10. All staff and volunteers affiliated with the Organization shall sign a copy of the Code of Ethical Conduct to indicate that they understand their responsibility to abide by these standards and maintained in the individual's personnel file.
11. The Organization shall not take retaliatory or punitive action against any employee or person served for his or her report of a possible or perceived violation of any rule, regulation, standard, or statute committed by the Organization or by an employee of the Organization.

1.18 Quality Performance/Improvement and Individual Satisfaction

- A. 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.
- B. 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.

1.19 Program Documentation Requirements

- A. All records, entries and documentation required by these regulations shall be:
 1. Prepared at the time, or immediately following, the event being recorded;
 2. Accurate and contain no willful falsifications;
 3. Legible, dated, and signed by the person making the entry; and
 4. Maintained in accordance with EOHHS Records Retention requirements pursuant to R.I. Gen. Laws § [38-3-6\(a\)\(c\)\(k\)\(1\)](#).

1.20 Abuse, Neglect, Mistreatment, and Other Human Rights Violations

1.20.1 Duty to Report

- A. Any Organization shall be responsible to make a telephone report to the Department's Office of Quality Assurance (OQA) within twenty-four (24) hours after an observation of an overt act, after an observation of physical harm to an individual, after receipt of an individual's oral, written, or gestured disclosure, any of which make a reasonable person believe that the individual was subjected to a

violation of his or her civil rights, including but not limited to financial exploitation, mistreatment, neglect, and/or verbal, mental, sexual, and physical abuse, injury of unknown source, death that may have been caused by abuse or neglect, financial exploitation, and/or misappropriation of client property by anyone,

- B. Any Organization that has reasonable cause to believe that an assault or a battery has been committed upon an individual shall make an immediate report to the Department's OQA, and such report shall include the identity of parties and witnesses, and details of the incident. The Department shall cause the report to be investigated immediately. The Department shall, and the Organization may if the law otherwise allows, notify the Mental Health Advocate and appropriate law enforcement agencies of the Department investigation of such assault or battery.
- C. Any health care professional who is licensed in Rhode Island, and any police officer, emergency medical technician, firefighter, or any person (within the scope of their employment at a facility or in their professional capacity) who has knowledge, or reasonable cause to believe, that a patient or resident in a facility has been abused, mistreated, or neglected shall make, within twenty-four (24) hours or by the end of the next business day, a telephone report to the Department's OQA for those incidents involving community residences for people with developmental disabilities; and a telephone report to the Department of Health of the same such knowledge or reasonable cause to believe if the patient is a on a long-term unit in Eleanor Slater Hospital.
- D. Any caregiver or person within the scope of their employment at an Organization or in their professional capacity who has knowledge of or reasonable cause to believe that an individual in a program has been abused, mistreated or neglected shall file within twenty-four (24) hours or by the end of the next business day, a written report.
- E. If an individual in a Department-operated community residence dies, the managing officer shall furnish to the Department Director within twenty-four (24) hours after the death the date and cause of death, and other facts as the Department requires. In case of an accident, injury, or death of an individual, the managing officer shall complete a written report, and also telephone the Department's OQA, within twenty-four (24) hours of the individual's accident, injury or death. The writer of the report shall include the circumstances of the injury or death as fully as possible, including but not limited to the information listed in § 1.20.1(A) of this Part. Any such record shall be accessible only to the Director of the Department or any such employee designated by the Director as having a need to know such information, unless an applicable law or regulation otherwise permits.

- F. For every report required by §§ 1.20.1(A), (B), (C), or (D) of this Part the information in such telephone or written report shall include at least the following:
1. The caregiver or employee's name, Organization address, Organization telephone number, direct extension if applicable, and occupation,
 2. The name and address of the individual who is believed to be the victim of the abuse, mistreatment, or neglect;
 3. The details, observations, and beliefs concerning the incident(s);
 4. The individual's oral, written or gestured statements regarding the incident(s), to whom they were made, and at what date and time they were made;
 5. The date, time, and place of each incident;
 6. The name of all individuals believed to have knowledge of the incident(s); and
 7. The name of all individuals believed to have been responsible for the incident(s) or could have been responsible for the incident if unknown cause and unknown perpetrator.
- G. Such written report that is filled in by the deadline in this section shall be made available to the Office of Quality Assurance upon request, or within five (5) days of the incident(s), whichever occurs earlier.
- H. Any deadline in this section to file a written and/or telephone report of an alleged violation of civil rights, or of an alleged act of abuse, neglect, mistreatment or exploitation against an individual, shall not be extended even if a reporter is allowed to inform a "high managerial officer" of the reporter's Organization.
- I. At the requested/or with the consent of the individual, the Organization shall immediately inform the legal guardians and/or others of any situation involving abuse, neglect, mistreatment, or human rights violations against the individual. If an individual in a Department-operated community residence dies, the managing officer shall furnish to the Department Director within twenty-four (24) hours after the death the date and cause of death, and other facts as the Department requires. In case of an accident, injury, or death of an individual, the managing officer shall complete a written report, and also telephone the Department's OQA, within twenty-four (24) hours of the individual's accident, injury or death. The writer of the report shall include the circumstances of the injury or death as fully as possible, including but not limited to the information listed in § 1.20.1(A) of this Part. Any such record shall be accessible only to the Director of the

Department or any such employee designated by the Director as having a need to know such information, unless an applicable law or regulation otherwise permits.

- J. Such written report that is filled in by the deadline in this section shall be made available to the Office of Quality Assurance upon request, or within five (5) days of the incident(s), whichever occurs earlier.

1.20.2 Internal Investigation Protocol

- A. The Organization shall have a written policy specifying designated, authorized individuals who are responsible for conducting investigations in the event of a serious reportable incident and specifying the action or procedures the employee may take.
 - 1. The Organization will establish capacity to implement investigatory protocol established by the department.
 - 2. The Organization's policy shall specify the intent of an investigation to determine all the facts around a reported incident and to protect any individual with a developmental disability from any further harm.
- B. The Organization shall provide information/data on the numbers/types of incidents that are internally reported at the request of the Office of Quality Assurance.
- C. Nothing herein shall change the timeframe for report to the Office of Quality Assurance pursuant to R.I. Gen. Laws § [40.1-27-2\(a\)](#).
- D. Based upon the results of its investigation, the Organization shall provide the Department with written recommendations to prevent further abuse, mistreatment or neglect of the individual or other program individuals.
 - 1. The investigative analysis will evaluate if any other risk to the individual or other individuals remain.
 - 2. The Organization shall complete a final investigative analysis report using current standardized forms and protocol provided by the Department and shall submit the report to the Department.
- E. The Organization shall take all necessary steps to prevent and protect an individual who has been a victim of abuse, neglect, mistreatment, or other violation of his or her basic human rights from further abuse.

- F. When abuse is alleged or death of an individual has occurred and a law enforcement agency, or the Department, or the Department's designee, has determined to initiate an investigation, the Organization shall not endeavor to investigate unless directed by the Department to do so.
- G. The Organization shall provide information on the conclusion and recommendations of a completed investigation to the alleged victim or his or her legal guardian, as requested by the individual and/or their legal guardian.
 - 1. The Organization shall develop a safety plan as well as a risk assessment for the alleged victim because of any investigation in which the allegation has been substantiated or inconclusive.
 - 2. The Organization shall develop a quality improvement plan within twenty (20) working days to ensure the health and safety of the individual.
 - 3. The Organization shall complete a status report within three (3) months, responding to the recommendations that were made.

1.20.3 Policies and Training

- A. The Organization shall have written policies and procedures for assuring the health, safety and well-being of the population participating in their programs that are consistent with these regulations. The policy shall:
 - 1. Include definitions of abuse, neglect, mistreatment, other human rights violation, and serious incidents; and
 - 2. Explain the types of incidents which need to be reported within the agency; and
 - 3. Explain the process for reporting and documenting the incident in accordance with § 1.25.1 of this Part; and
 - 4. Delineate the responsibilities of employees for conducting and/or participating in investigations that involve a violation of a person's rights or a serious incident; and
 - 5. Include provisions for administrative action, disciplinary action, and dismissal of employees, contractors, and volunteers involved with abuse, neglect, mistreatment or other human rights violations.
- B. Staff Training
 - 1. The Organization shall have established orientation and annual training programs for all new and existing employees as required in their job

description. Staff training records shall contain dated documentation of completion, including verification. Orientation and annual training shall include education in the following areas:

a. Minimum training for all employees:

- (1) Fire training, which includes training in the program's emergency evacuation procedures;
- (2) Code of ethical conduct;
- (3) Rights of individuals, human rights, and the provider's human rights committee;
- (4) Detection and prevention of abuse, neglect, mistreatment, financial exploitation and other human rights violations;
- (5) Procedures for reporting allegations of abuse, neglect, mistreatment or other human rights violations to the Office of Quality Assurance, various state agencies or other entities such as police and human rights committee; and
- (6) Confidentiality.

b. Job-specific training:

- (1) Grievance and appeal procedures;
- (2) Service quality;
- (3) Overview of person-centered planning in compliance with Medicaid Home and Community Based Services (HCBS) regulations ([210-RICR-50-10-1](#));
- (4) Behavioral supports, healthcare and medication administration training; and
- (5) Development and implementation of behavioral supports.

2. Organizations that utilized an online learning management system shall have a protocol in place that requires employee registration. The evidence of training may include a completion certificate and/or access to the system for review by staff.
3. Organizations shall determine staff training needs and develop a schedule of ongoing training programs that will be offered to employees. The

training opportunities will be individualized based on the needs of the individuals served by the Organization.

1.21 Personnel

A. Basic Personnel Policies and Procedures

1. The Organization shall have and shall implement personnel policies and procedures that:
 - a. Comply with all applicable state and federal statutes, rules, and regulations regarding non-discrimination in employment practices.
 - b. Include language for conducting reference, employment, and background checks from the BCI and NCIC within the Office of the Attorney General.
 - c. Exclude the employment and/or volunteering of any person who has been convicted of child abuse or of a felony for sexual or physical assault including all consultants and/or contractors.
 - d. Require employees to report to the Organization any changes in the status of their criminal background checks subsequent to their being hired by the Organization.
 - e. Provide for any fringe benefits provided to full time and part time employees and any reimbursement procedures (as applicable and appropriate).
 - f. Address suspension, increased supervision, or other appropriate disciplinary employment procedures.
 - g. Provide written job descriptions that include minimal qualifications for each position, major duties, responsibilities, reporting supervisors and positions supervised.
 - h. Include a process for evaluating the job performance of each staff member at the end of his or her initial training period and annually thereafter.

B. “Duty to Report” Personnel Policies and Procedures

1. The Organization shall have policies and procedures that prohibit retaliation against any staff, who reports suspected

abuse/neglect/mistreatment or retaliation against the individual with respect to any report. Language must also include:

- a. A requirement that all personnel participate and cooperate with all authorized persons conducting investigations/regulatory reviews involving the Organization and/or any person receiving supports/services from the Organization.
- b. A process for annual notification of mandatory reporting statutes to all employees, advisors, skill trainers, respite providers, contractors, and volunteers of the Organization.

C. Staff Qualifications and Personnel Files

- 1. Any employee providing direct assistance to individuals shall meet the following criteria:
 - a. Be at least eighteen (18) years of age
 - b. Have clear job responsibilities as described in a current and dated job description;
 - c. Have a high school diploma or a GED®.
- 2. The Organization shall maintain the personnel record for all employees and contractors that includes the following information as applicable:
 - a. Reference and qualification checks;
 - b. An approved BCI and NCIC;
 - c. Annual job-related training, as applicable to the position, including current valid certification of cardiopulmonary resuscitation (CPR) and biennial first aid training;
 - d. Evidence of professional licensure or certification, including renewals, as applicable.
- 3. The Organization shall maintain a record for each volunteer that includes the following documentation:
 - a. References and qualifications checks;
 - b. A completed BCI and NCIC;
 - c. A detailed list of functions for each position.

- D. If a criminal background check contains positive findings, the Organization's Human Resources, with input and guidance from the Organization's Senior Management, shall make and document a judgment regarding the employment of the prospective employee. The following offenses shall be determined to be disqualifying for employment by the Organization:
1. Any facility or program licensed or operated by the department shall require all applicants for employment -- if that employment involves routine contact with patients, residents or clients without the presence of other employees -- to apply to the bureau of criminal identification (BCI) of the state police or the local police department for a nationwide criminal records center (NCIC) background check. The check will conform to the applicable federal standards, including the taking of fingerprints of the applicant.
 2. Any conviction for an offense listed in paragraph 2(b) (Category One) below creates a rebuttable presumption that an individual is disqualified from serving in a caring capacity in a program or service operated or licensed by BHDDH, or from residing in a household wherein such a program or service is provided or from owning or operating any such program or service or from serving as a BHDDH employee, intern, volunteer or consultant or from functioning in any other capacity that is subject to a statewide or nationwide criminal record background check in accordance with federal and/or state law or BHDDH regulation.
 - a. If a criminal background check contains conviction(s) for any of the crimes listed below in paragraph 4(a) while the applicant was an adult, the Organization shall provide notice to the applicant that the conviction for such crime is presumed to be disqualifying for employment, but the applicant may appeal to rebut such presumed disqualification through the hearing process pursuant to EOHHS regulations.
 - b. Category One (1) OFFENSES:
 - (1) Murder, voluntary manslaughter, involuntary manslaughter
 - (2) First-degree sexual assault
 - (3) Second-degree sexual assault
 - (4) Assault on persons sixty (60) years of age or older

- (5) Assault with intent to commit specified felonies (murder, robbery, rape, burglary, or the abominable and detestable crimes against nature)
- (6) First-degree arson
- (7) Crime under section 1128(a) of the Social Security Act ([42 U.S.C. § 1320a-7\(a\)](#))
- (8) Criminal offense related to person's involvement in any program under Medicare, Medicaid, or the Title XX services program.
- (9) Felony Domestic Violence committed less than five (5) years ago
- (10) 1st Degree Child Molestation
- (11) 2nd Degree Child Molestation
- (12) Child Pornography
- (13) Sale or exhibition to minor of indecent publications, pictures or articles
- (14) Child nudity in publication
- (15) Kidnapping
- (16) Car-jacking
- (18) Mayhem
- (19) Felony Assault committed less than five (5) years ago
- (20) Felony Battery committed less than five (5) years ago
- (21) A person convicted of any crime under R.I. Gen. Laws Chapters [40.1-24](#), [40.1-24.5](#), or [40.1-26](#).

c. Category Two (2) OFFENSES: If an individual has been convicted of any of the following offenses that was (were) committed within the previous ten (10) years from the date of the application for the background check, the individual will be presumed to be disqualified to work for an Organization, but such presumption may be determined to be rebutted by the Organization after its

Administration and/or Board of Directors considers and documents the factors related to current qualification in the context of conviction for any of the crimes listed in this paragraph.

- (1) Transportation for Indecent purposes
- (2) Harboring
- (3) Felony Assault committed over five (5) years ago that resulted in injury to the victim
- (4) Felony Battery committed over five (5) years ago
- (5) Felony Drug Offense committed less than five (5) years ago
- (6) Robbery
- (7) Breaking and Entering
- (8) Burglary
- (9) Illegal Possession of a Firearm
- (10) Misdemeanor Domestic Assault
- (11) 3rd Degree Sexual Assault
- (12) Child Abuse or Neglect Indicated by DCYF or similar out of state agency.
- (13) Circulation of obscene publications and shows
- (14) First or Second-Degree Arson
- (15) Any substantiated finding by a State agency under 42 U.S.C. 1395i-3(g)(1)(C), 1396r(g)(1)(C) or a Federal agency that a direct patient access employee has committed an act of patient or resident abuse or neglect or a misappropriation of patient or resident property.
- (16) Prior employment history of child or client abuse, neglect or Mistreatment

- d. If the BCI check reveals conviction of the applicant as an adult for any crime described in Category One (1) in paragraph 2(b), or if the BCI check reveals conviction of the applicant during the ten (10)

years prior to the date of application for the background check for any crime listed in Category Two (2) in paragraph 2(c), the BCI of the state police or the local police department will inform the employer, in writing, without disclosing the nature of the disqualifying information, that an item of disqualifying nature has been discovered. In addition, the BCI of the state police or the local police department will inform the applicant, in writing, of the nature of the disqualifying information. An applicant against whom disqualifying information has been found may request that a copy of the criminal background report be sent to the employer.

- e. In considering a request to rebut a disqualifying presumption for a Category One (1) or Category Two (2) conviction, the following factors shall be considered and documented:
- (1) the circumstances, severity and duration of the crime;
 - (2) whether the victim of the crime was a child or was an individual with a developmental or other disability;
 - (3) circumstances such as illegal use of drugs or alcohol, or addiction to substances, at the time the crime was committed;
 - (4) length of time that has elapsed since the commission of the crime for which the individual was convicted,
 - (5) length of time that has elapsed since the completion of any imposed sentence;
 - (6) length of time with no further convictions of crimes;
 - (7) the individual's conduct in seeking and actively engaging in rehabilitation;
 - (8) the individual's ability to explain their remorse for the crime and/or efforts to prevent commission of such a crime in the future;
 - (9) the extent to which the crime bears a direct impact on performing the job for which the individual is applying;
 - (10) any expert opinions of health care providers and clinicians who have worked with the individual if the individual chooses to share such confidential information; and

(11) any work history, education and job training before and after the commission of the crime.

3. The annual evaluation process shall include the following:
 - a. An assessment of job performance in relation to the required skills and expectations set forth in the job description;
 - b. A documented review of the evaluation with the staff person maintained within the personnel record;
 - c. Documentation that individuals served by the employee had input into this process, to the extent possible.
 - d. Review status of employee criminal background check and enquire about possible criminal conviction(s) since the occurrence of the previous background check.

1.22 Physical Environment Requirements for Licensed Physical Entities

- A. The Organization shall ensure that all the locations where services are provided are accessible to meet the needs of people receiving services from the Organization and designed to protect the health and safety of all persons. The Organization shall also ensure that all the locations where services are provided are clean, sanitary, in good repair, free from accumulation of combustible debris and waste material, and free from offensive odors and insects.
- B. Reasonable accommodations shall be made available to all individuals living in residential settings, including but not limited to the following:
 1. the provision of specialized safety equipment such as irons, toasters, coffee pots, and other equipment that shut off when unattended;
 2. an accessible working telephone;
 3. any other such services or equipment deemed necessary to assist individuals; and/or,
 4. with maximizing independence and living successfully within the home.
- C. Restrooms shall be available and accessible for individuals and staff in all the facilities where licensed services are provided.

- D. First-aid kits and first-aid manuals shall be readily available to staff in a designated location in all facilities where licensed services are provided.
- E. A documented safety review shall be conducted by the Organization every six (6) months to ensure that each facility where licensed services are provided, including, but not limited to community residences, is free of hazards. The documentation shall include date of inspections, name of the person(s) the inspection is conducted by, identification of areas inspected, any corrective actions taken in response to deficiencies cited, and date completed.
- F. All the settings where services are provided shall meet the State Fire Code requirements for such facilities and/or occupancies.
- G. It is the responsibility of the Organization to ensure that each licensed site, has received an initial and thereafter routine fire and life safety inspections that meet the approval of the Office of the State Fire Marshal. It is the responsibility of the Organization to communicate with the Office of the State Fire Marshal and comply with the State Fire Code, including, but is not limited to, scheduling re-inspections after a violation(s) is resolved.
- H. It is the responsibility of the Organization to ensure that each licensed site shall have on site: fire extinguishers, smoke detectors, and any other fire detection and suppression system(s) required by law.
- I. All compliance records will be Maintained in accordance with EOHHS Records Retention requirements pursuant to R.I. Gen. Laws §§ [38-3-6](#)(a), (c), and (k)(1).
- J. The Organization shall comply with all applicable federal, state, and local governmental safety and sanitation laws, rules and regulations.
- K. All toxic materials including, but not limited to, poisons, chemicals, and pesticides shall be:
 - 1. Properly labeled;
 - 2. Stored in original container separate from all foods, food preparation utensils, linens and medications; and
 - 3. Stored in a locked area.
- L. All flammable and combustible materials shall be properly labeled, stored and locked in accordance with the State Fire Safety Code.

- M. The temperature within premises shall be maintained within a normal comfort range. During times of extreme summer heat, the provider shall make reasonable efforts to keep individuals comfortable using ventilation, fans, or air conditioning.
- N. Equipment and supplies shall be provided for cleaning of all surfaces. Such equipment shall be maintained in a safe, sanitary condition and shall be properly stored.
 - 1. Hazardous cleaning solutions, compounds, and substances shall be labeled, stored in a safe place, and kept in an enclosed section separate from other cleaning materials.

1.23 Community Residence; Additional Physical Environment Requirements

- A. The interior and exterior of a community residence shall be kept free of litter, garbage and refuse.
- B. The exterior of a community residence shall be maintained and kept neat with regular yard work performed as appropriate to the season, including, but not limited to, mowing the lawn, raking the leaves, and snow removal.
- C. All measures necessary shall be taken to prevent the entry of and to eradicate the presence of rodents, flies, mosquitoes and other insects at community residences.
- D. All well water sources at a community residence shall be tested every three (3) years.
- E. Septic tanks or other private sewage disposal systems at community residences shall be in good working order.
- F. The water temperature shall not exceed one hundred and twenty (120) degrees Fahrenheit.
- G. All heating and cooling devices in a community residence shall be installed in accordance with current building codes and maintained in good working order.
- H. Handrails shall be provided on all stairways in a community residence in accordance with any and all federal and state statutes and regulations.
- I. All furniture shall be clean and in good repair.
- J. Bedroom furniture shall be provided in a community residence for each individual and shall include:

1. A bed, including a frame unless otherwise documented by a clinical team decision, a clean comfortable mattress, a waterproof mattress cover, if the individual is incontinent, and a pillow;
 2. A private dresser or similar storage area for personal belongings that is readily accessible to the individual;
 3. A closet or similar storage area for clothing that is readily accessible to the individual;
 4. Individuals have the freedom to furnish sleeping or living units within the lease or other agreements;
 5. Sufficient supply of personal linens.
- K. Providers will take all possible steps to ensure privacy is maintained.
- L. Swimming pools, hot tubs, saunas, or spas located on the premises of a community residence shall be equipped with safety barriers and devices designed to prevent injury and unsupervised access and shall be clean, sanitary, and maintained in good working order.
- M. Sanitation for household pets and other domestic animals shall be adequate to prevent health hazards. Proof of current vaccinations that are required for the pet by a licensed veterinarian shall be maintained on the premises. Pets not confined in enclosures shall be under control and shall not present a danger or health risk to individuals or their guests.
- N. Operative flashlights, at least one (1) per floor, shall be readily available to staff in case of emergency within each community residence.
- O. Sleeping or living units must have entrance doors lockable by the resident with only appropriate staff having keys to doors. In the case of BHOs, refer to program specific guidelines in cases when this regulation is not applicable by an overriding federal or state statute or regulation.

1.24 Nutrition

- A. Foods shall be served in a form consistent with the individuals' needs and provide opportunities for choice in food selection. The Organization will ensure that there is adequate food available at any time, that it is stored appropriately, that it reflects individual preferences and needs. In the case of DDO, for individuals with physician or health care provider ordered modified or special needs diets, plans shall be annually reviewed and contained in the ISP.

- B. Adequate supplies of staple foods for a minimum of one (1) week and perishable foods for a minimum of two (2) days shall be maintained on the premises.
- C. Food shall be stored, prepared and served in a sanitary manner.

1.25 Safety

1.25.1 Transportation

- A. Organizations, including employees and volunteers, who own or operate vehicles that transport individuals, shall:
 - 1. Maintain the vehicles in safe operating condition. All vehicles utilized by employees of the Organization to transport individuals shall have a current vehicle inspection sticker from the state where the car is registered.
 - 2. Comply with Division of Motor Vehicles laws, rules and regulations;
 - 3. Maintain or assure insurance coverage including liability, on all vehicles and all authorized drivers;
 - 4. Carry a stocked first aid kit in agency vehicles used to transport individuals;
 - 5. The Organization shall be responsible for ensuring that only properly licensed drivers operate Organization vehicles or use their own personal vehicles to transport individuals.

1.25.2 Individual Summary Information

- A. A current summary sheet must be maintained by DDOs and updated as necessary for each individual receiving services from the Organization. The summary sheet shall be reviewed annually at a minimum and shall include:
 - 1. The individual's name, current address, date of birth, sex, marital status, religious preference, preferred hospital, medical insurance information, and guardianship status where applicable; and
 - 2. The name, address and telephone number of:
 - a. The individual's legal guardian, family, advocate or other significant person;
 - b. The individual's primary care provider, secondary provider or clinic;
 - c. The individual's dentist;

- d. The individual's pharmacy;
- e. The individual's day program, or employer, if applicable;
- f. The individual's Support Coordinator/Case Manager; and
- g. Other Organizations providing services to the individual.

1.25.3 Emergency Information

- A. Subject to the protection of federal and state healthcare confidentiality statutes and regulations, the DDOs and all BHO residential programs shall maintain emergency information for each individual receiving services from the program in addition to the individual summary sheet identified above in this Part.
- B. The emergency information shall be reviewed annually, updated as needed, and shall include:
 - 1. The individual's name, date of birth, and medical insurance information;
 - 2. The Organization's name, address and telephone number;
 - 3. The address and telephone number where the individual lives;
 - 4. The individual's physical description, which could include a picture and the date it was taken, and identification of:
 - a. The individual's race, gender identity, height, weight range, hair and eye color; and
 - b. Any other identifying characteristics that could assist in identifying the individual should the need arise, such as marks or scars, tattoos, or body piercings.
 - 5. Information on the individual's abilities and characteristics including:
 - a. How the individual communicates;
 - b. The language the individual uses or understands;
 - c. Any additional information that could assist a person not familiar with the individual to understand what the individual can do for him/herself.
 - 6. The individual's health support needs including:
 - a. Diagnosis;

- b. Allergies or adverse drug reactions;
 - c. Health issues that a person would need to know when taking care of the individual;
 - d. Name(s) and telephone number(s) of the primary care provider, and other relevant health care providers/specialists;
 - e. Date of last annual physical;
 - f. Special dietary or nutritional needs, such as requirements around the textures or consistency of foods and fluids;
 - g. Food or fluid limitations, due to allergies, diagnosis or medications the individual is taking, that may be an aspiration risk or other risk for the individual;
 - h. Additional special requirements the individual has related to eating or drinking, such as special positional needs or a specific way foods or fluids are given to the individual;
 - i. Immunization information, including date of last tetanus, including DTap (Diphtheria-Tetanus Toxoids & Acellular Pertussis);
 - j. List of current medications and dosages;
 - k. Protocol for emergency treatment and advance directives (if applicable);
 - (1) Guardian and/or next of kin's name(s) and telephone number(s);
 - l. Physical limitations that may affect the individual's ability to communicate, respond to instructions or follow directions; and
 - m. Assistive technology needed for mobility, positioning, communication, or other health related needs.
7. The individual's emotional and behavioral support needs including:
- a. Mental health or behavioral diagnosis and the behaviors displayed by the individual; and
 - b. Approaches to use when dealing with the individual to minimize emotional and physical outbursts, including an approved behavioral treatment plan.

8. Any court ordered or guardian authorized contacts or limitations;
9. The individual's supervision requirements and why; and
10. Any additional pertinent information the Organization has that could assist in the care and support of the individual should an emergency or disaster occur.

1.25.4 Emergency Management Plan

- A. Subject to the protection of federal and state healthcare confidentiality statutes and regulations, the Organization shall develop, maintain, update, and implement a written Emergency Management Plan for the protection of all individuals in the event of an emergency or disaster, including 911.
- B. The Emergency Management Plan shall:
 1. Be practiced annually at a minimum. The Emergency Management Plan practice may consist of a walk-through of the duties or a discussion exercise dealing with a hypothetical event, commonly known as a tabletop exercise;
 2. Consider the needs of the individuals being served and address all natural and man-made events identified as a significant risk for the facility where a licensed service is provided, (i.e.- terrorist attack, a pandemic or an earthquake, etc.).
 3. Include provisions for evacuation and relocation:
 - a. A method for tracking and reporting to the Department, the physical location of each individual until a different entity resumes responsibility for the individual.
 4. Address the needs of the individuals, including provisions to provide:
 - a. Immediate and continued access to medical treatment and continued access to life-sustaining pharmaceuticals, medical supplies and equipment during and after an evacuation and relocation;
- C. Applicable parts of the emergency management plan shall coordinate with each affected program to address the possibility of an emergency or disaster.

1.25.5 Fire Safety and Fire Drill Requirements

- A. The Organization shall assess, within twenty-four (24) hours of entry to the premises, the individual's ability to evacuate the residential setting in response to an alarm or simulated emergency. At a minimum, each individual's ability to evacuate shall be reassessed and documented in each individual's Emergency Management Plan on an annual basis and when there is a substantial change in the individual's functional capacity (physical and/or mental). Individual Safety Plans shall be maintained in each community residence's or non-congregant residential setting's fire book.
- B. The Organization shall document in each individual's Emergency Management Plan the level of assistance needed by each individual to safely evacuate the premises within twenty-four (24) hours of entry to the premises and on an annual basis and when there is a substantial change in the individual's functional capacity (physical and/or mental). Such documentation shall be maintained both in the premises and the individual's records. Staffing shall reflect the level of assistance required for evacuation and provide for the health and safety of all the individuals as included in the core residential and day program services requirements.
- C. A written emergency evacuation plan shall be in effect and available at each location where licensed services are delivered, including but not limited to, community residences. This plan shall include policies and procedures for the evacuation of all occupants from the building in the event of fire, and for their relocation to a safe area outside the building. This plan shall be reviewed annually and updated as the needs of the building occupants change. Staffing shall reflect the level of assistance required for evacuation and provide for the health and safety of all the individuals as included in the core residential and day program services requirements contained herein.
- D. All direct service staff shall have specific fire training, consisting of not less than four (4) documented hours per year, and shall include training in the Organization's emergency evacuation procedures. Staff working in multiple service locations shall review the emergency evacuation plan for each service delivery location at which they work.
- E. All individuals residing in premises and/or participating in a day program shall be trained in and practice the proper actions to take in the event of fire. This training shall include actions to take in the event the primary escape route is blocked.
- F. Fire exit drills shall be conducted not less than six (6) times per year on a bimonthly basis for community residences with not less than two (2) drills conducted during the night when individuals are sleeping. Drills shall occur at different times of the day, evening and night shifts with exit routes being varied based on the location of a simulated fire. The complete drill shall involve the

actual evacuation of the building to a meeting place outside the home where the individuals know to congregate as specified in the written emergency evacuation plan.

- G. Fire exit drills shall be conducted not less than quarterly for non-residential programs. The complete drill shall involve the actual evacuation of the building to a meeting place outside the building where the individuals know to congregate as specified in the written emergency evacuation plan.
- H. Written documentation shall be made at the time of the fire drill and shall be kept maintained in accordance with EOHHS Records Retention requirements pursuant to R.I. Gen. Laws §§ [38-3-6](#)(a), (c), and (k)(1).
- I. Fire drill documentation shall include:
 - 1. For a community residence:
 - a. The date and time of the drill and the type of drill (obstructed or unobstructed);
 - b. The location of the simulated fire and exit route;
 - c. The names of all individuals and staff present on the premises at the time of the drill;
 - d. The type of evacuation assistance provided by staff to individuals as specified in each individual's safety plan;
 - e. The amount of time required by each individual to evacuate;
 - f. The amount of time taken to evacuate the building;
 - g. The signature of the staff conducting the drill; and
 - h. The record of problems identified during the drill and a detailed plan of correction to resolve the problems identified.
 - 2. For a non-residential program:
 - a. The date and time of the drill;
 - b. The location of the simulated fire and exit route;
 - c. The names of all staff present on the premises at the time of the drill;

- d. The number of individuals present on the premises and evacuated at the time of the drill;
- e. The amount of time taken to evacuate the building;
- f. The signature of the staff conducting the drill; and
- g. The record of problems identified during the drill and a detailed plan of correction to resolve the problems identified.

1.26 Individual (Participant) Rights

- A. Organizations shall establish written policies and procedures that promote the highest practicable professional standards related to individual rights. These policies and procedures shall be adhered to always, in all settings, and during all interactions.
- B. Each individual will be informed of their rights in a way they understand.
- C. Organizations shall follow these procedures throughout the entire process of care, including but not limited to, initial contact, application, eligibility determination, admission, orientation, delivery of services, revision of direct services, transfer of services, and discharge from services.
- D. Organizations shall continually afford each person these rights and inform them of these rights, as appropriate, and in a manner consistent with his or her individual learning style.
- E. Organizations shall maintain a written statement of rights for individuals receiving services and those requesting services.
- F. Individuals requesting services shall have the right to receive an individualized assessment.
- G. Each individual, legal guardian, and/or advocate shall be provided with a written statement of the "Rights of individuals" that shall contain, the following:
 - 1. This Part hereby adopts and incorporates by reference R.I. Gen. Laws §§ [40.1-24.5-3](#), [40.1-24.5-5](#), [40.1-24.5-6](#), and [40.1-24.5-7](#) and [40.1-26-3](#) as applicable to each individual.
 - 2. Each Organization and its employees and volunteers shall mindfully and carefully follow all federal and state confidentiality laws and regulations to protect the privacy and dignity of each individual as much as possible and necessary:

- a. to the extent any exception may apply that allows lawful disclosure, including but not limited to, by court order or in emergencies to legally define persons, such Organization will exercise due diligence to ensure compliance with the letter and spirit of the statutory and/or regulatory exception in the applicable confidentiality law.
3. Each Organization will ensure individual's rights of privacy, dignity and respect and freedom from coercion and restraint.
4. Individuals will be provided with the right to full access to the community, including the right to engage in community life, to control personal resources, and to receive services in the community to the same degree as those not receiving Medicaid HCBS, in accordance with 42 C.F.R. § [441.301\(C\)\(4\)\(I-vi\)](#).
5. Each individual has privacy in their sleeping or living unit:
 - a. Units have lockable doors by the individual with only appropriate staff having keys to the doors;
 - b. Individuals sharing units have a choice of roommates in that setting;
 - c. Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.
 - d. Individuals have the freedom and support to control their own schedules and activities;
 - e. Individuals have access to food at any time;
 - f. Individuals may have visitors of their choosing at any time.
 - g. The setting is physically accessible to the individual.

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**TITLE 212 - DEPARTMENT OF BEHAVIORAL HEALTHCARE,
DEVELOPMENTAL DISABILITIES AND HOSPITALS**

CHAPTER 10 - LICENSING AND GENERAL ADMINISTRATION

SUBCHAPTER 00 - N/A

PART 1 - RULES AND REGULATIONS FOR THE LICENSING OF
ORGANIZATIONS AND FACILITIES LICENSED BY THE DEPARTMENT OF
BEHAVIORAL HEALTHCARE, DEVELOPMENTAL DISABILITIES AND
HOSPITALS

Type of Filing: Adoption

Agency Signature

Agency Head Signature

Agency Signing Date

Department of State

Regulation Effective Date

Department of State Initials

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