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ADULT SERVICES APPROVED PROVIDERS

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ADULT SERVICES APPROVED PROVIDERS

5.1 Legal basis

Legal authority and requirements for Adult Services Providers are based in the Code of Virginia and state regulation (22 VAC 30-120). Throughout this section, text that is indented with a blue vertical line denotes material taken verbatim from the Code or the Department's regulations.

This section describes policies and procedures for providers of services to adults who are approved by the local department of social services (LDSS). The services include:

- Home-based services (i.e., companion, chore, and homemaker services).
- Adult foster care.
- Adult day services.

5.2 Definitions

The following words and terms are defined in the Code of Virginia or state regulation (22 VAC 30-120-10) unless otherwise specified. When used in this section, they shall have the following meaning, unless the context clearly indicates otherwise.

Term	Definition
Activities of Daily Living or ADLs	Bathing, dressing, toileting, transferring, bowel control, bladder control, and eating/feeding. A person's degree of independence in performing these activities is part of determining the

Term	Definition
	appropriate level of care and services.
Adult	Any individual 18 years of age or over.
Adult Abuse	The willful infliction of physical pain, injury, or mental anguish or unreasonable confinement of an adult as defined in 63.2-1603 (§ 63.2-100 of the Code of Virginia).
Adult Day Services Provider	A provider who gives personal supervision for up to three adults for part of a day. The provider promotes social, physical, and emotional well-being through companionship, self-education, and satisfying leisure activities. Adult day services that are provided for more than three adults require licensure by the Virginia Department of Social Services (VDSS).
Adult Exploitation	The illegal, unauthorized, improper, or fraudulent use of an adult as defined in § 63.2-1603 or his funds, property, benefits, resources or other assets for another's profit, benefit, or advantage, including a caregiver or person serving in a fiduciary capacity, or that deprives the adult of his rightful use of or access to such funds, property, benefits, resources, or other assets. “Adult exploitation” includes (i) an intentional breach of a fiduciary obligation to an adult to his detriment or an intentional failure to use the financial resources of an adult in a manner that results in neglect of such adult; (ii) the acquisition, possession, or control of the adult’s financial resources or property through the use of undue influence, coercion, or duress; and (iii) forcing or coercing an adult to pay for goods or services or perform services against his will for another’s profit , benefit, or advantage if the adult did not agree or was tricked, misled, or defrauded into agreeing, to pay for such goods or services or perform such services. (§ 63.2-100 of the Code of Virginia).
Adult Foster Care	Room and board, supervision, and special services to an adult who has a physical or mental condition or an emotional or behavioral problem. Adult foster care may be provided by a single provider for up to three adults.
Adult Foster	A provider who gives room and board, supervision, and special services in his own home for up to three (3) adults who are

Term	Definition
Care Provider	unable to remain in their own home because of a physical or mental condition or an emotional or behavioral problem. Care provided for more than three (3) adults requires licensure by the VDSS.
Adult Neglect	An adult as defined in § 63.2-1603 is living under such circumstances that he is not able to provide for himself or is not being provided services necessary to maintain his physical and mental health and that the failure to receive such necessary services impairs or threatens to impair his well-being. However, no adult shall be considered neglected solely on the basis that such adult is receiving religious nonmedical treatment or religious nonmedical nursing care in lieu of medical care, provided that such treatment or care is performed in good faith and in accordance with the religious practices of the adult and there is a written or oral expression of consent by that adult (§ 63.2-100 of the Code of Virginia).
Adult Services	Services that are provided to adults 60 years of age and older and to adults 18 years of age and older who are impaired.
Assistant	Any individual who is responsible to assist adult services approved provider in caring for adult clients. Assistants shall meet the same requirements as the provider.
Chore Provider	A provider who performs non-routine, heavy home maintenance tasks for adult clients unable to perform such tasks for themselves. Chore services include minor repair work on furniture and appliances in the adult's home; carrying coal, wood, and water; chopping wood; removing snow; yard maintenance; and painting.
Client	Any adult who needs supervision and/or services and seeks assistance in meeting those needs from a local department of social services (LDSS).
Companion Provider	A provider who assists adult clients unable to care for themselves without assistance and where there is no one available to provide the needed services without cost in activities such as light housekeeping, companionship, shopping, meal preparation, transportation, household management, and

Term	Definition
	activities of daily living (ADLs).
Department	The Virginia Department for Aging and Rehabilitative Services.
Home-Based Services	Companion, chore, and homemaker services that allow individuals to attain or maintain self-care and are likely to prevent or reduce dependency.
Homemaker Services	A provider who gives instruction in or, where appropriate, performs activities such as personal care, home management, household maintenance, and nutrition, consumer, or hygiene education.
In-Home Provider	An individual who provides care in the home of the adult client needing supervision and/or services. In-home providers include companion, chore, and homemaker providers.
Instrumental Activities of Daily Living (IADLs)	Meal preparation, housekeeping/light housework, shopping for personal items, laundry, or using the telephone. An adult client's degree of independence in performing these activities is part of determining the appropriate level of care and services.
Local Board	The local board of social services representing one or more counties or cities.
Local Department (LDSS)	The local department of social services of any county or city in this Commonwealth.

Term	Definition
Local Department-Approved Provider	A provider that is not subject to licensure and is approved by an LDSS to provide services to clients.
Out-of-Home Provider	An individual who provides care in the individual's own home to adult clients who enter the home for purposes of receiving needed supervision and/or services.
Personal Care Services	The provision of non-skilled services including assistance in the activities of daily living, and may include instrumental activities of daily living related to the needs of the adult client, to maintain the adult client's health and safety in their home.
Responsible Person	An individual designated by or for an adult client who is authorized to make decisions concerning the adult client and/or to receive information about the adult client.

5.3 LDSS-approved providers

(22 VAC 30-120-20). This regulation applies to providers approved by a local department and does not apply to facilities or organizations licensed by a licensing or regulatory agency.

The local department is not required to accept provider applications for any type of service when the local department has a sufficient number of providers for that service to meet the client population needs or does not offer the type of service.

Prior to approving an out-of-home provider located in another jurisdiction, the local department shall seek written permission from the local department where the provider will provide services.

Local departments may use an approved provider from another jurisdiction without performing another approval study when the local department obtains written permission and a copy of the approval documents from the local department which conducted the approval study.

This guidance is applicable to the following providers who are approved by the LDSS:

- Out-of-Home Providers

  - Adult day services providers
  - Adult foster care providers
- In-Home Providers
  - Companion providers
  - Chore providers
  - Homemaker providers

5.3.1 Mixed programs

Approval of a provider for more than one type of care is permitted. The requirements applicable to each specific type of care provided shall be met.

5.4 Requirements for providers and their households

The following guidance applies to providers of adult services and their households.

5.4.1 Age

> (22 VAC 30-120-30). All local department-approved adult services homemaker providers shall be at least 18 years of age.
>
> All local department-approved adult services chore and companion providers shall be at least 16 years of age. If the local department chooses to approve a chore or companion provider who is at least 16 years of age but less than 18 years of age, the local department shall determine that the provider is competent and able to provide the service.
>
> Any assistant to a local department-approved in-home provider for adult services shall be at least 16 years of age.

5.4.2 Criminal records

> (22 VAC 30-120-30). The provider and any assistant, the spouse of the provider, or other adult household members who come in contact with adults in care shall identify any criminal convictions and consent to a criminal record search.
>
> A new criminal record background check shall be required at the time of renewal.

The following persons shall be prohibited from being approved as providers of services to adults:

- The provider.
- The assistant.
- The spouse of the provider.
- Other adult household members who come in contact with adults in care.

If either of the following applies:

- They are convicted of offenses listed in clause (i) of § 19.2-392.02, or
- They have been convicted of any other felony or misdemeanor that, in the judgment of the LDSS, jeopardizes the safety or proper care of adults.

5.4.2.1 Application

The "Application for Department Approved Provider" requires the provider to identify any criminal convictions.

5.4.2.2 Central Criminal Records Exchange – all providers

Virginia State Police maintain criminal history record information for arrests and convictions in Virginia. Section 19.2-389 authorizes the LDSS to request criminal history for all agency approved providers of Adult Services directly from the Virginia State Police through the Central Criminal Records Exchange. SP-230 is the State Police form to use when requesting this information. The SP-230 and instructions are available on the Virginia State Police website.

SP-230 may be downloaded as a PDF document or an electronic form may be submitted directly from the website. The cost for each Central Criminal Records Exchange search is $15.00. The payment for criminal records checks is made through the Administrative Budget Line 855.

The LDSS should consider establishing a payment account with the State Police to use the electronic submission form.

A statewide criminal record check shall be performed on the provider, any assistant, the provider's spouse, and all other adult household members who have contact with adults receiving adult foster care services. This shall be done

regardless of the response to the criminal records question on the Application. These checks should be repeated at the time of renewal.

5.4.2.2.1 Local police records

Local police have access to criminal history record information. The LDSS should explore what criminal record information is available through the local police. Information, if available, may be on local convictions only, on statewide convictions, or on convictions from other states. In exploring this question with local police, the LDSS should establish a process for obtaining criminal history information in the event an emergency placement or provider approval is needed.

5.4.2.2.2 Criminal record information from other states

If not available through the local police, criminal record information on arrests and convictions occurring in other states may be obtained from the state where the provider or household member resided if the other state's law allows information to be disseminated.

5.4.2.2.3 National criminal background check

The Virginia State Police can also conduct a national criminal background check for employees or volunteers providing care to elderly individuals and individuals with a disability using form SP-24 available on the Virginia State Police website. One applicant fingerprint card (FD-258) must be completed and attached to this form. The Virginia State Police or local law enforcement may be contacted for information about the fingerprint card. Search fees are $37.00 for an employee or $26.00 for a volunteer.

5.4.2.3 Information received from the Central Criminal Record Exchange

- If no record exists on the individual, the Central Criminal Records Exchange will stamp and return the form to indicate this.
- If a record exists, the information furnished will include identifying information, contributing agency, date of occurrence, charge, and disposition.
- Information on providers and all household members will only include information on convictions.

- The Central Criminal Records Exchange will provide information concerning offenses enumerated in § 19.2-392.02. It does not contain information on certain offenses such as driving a motor vehicle while intoxicated; disorderly conduct; trespassing; and class III and IV misdemeanors (such as gambling, slander, drunk in public, etc.).

5.4.2.4 Determining when criminal convictions jeopardize adults

- If the following persons have been convicted of any offense enumerated in §19.2-392.02, they shall be prohibited from being approved as an LDSS-approved provider of services to adults. See Appendix J for the list of barrier crimes.
    - The provider.

For adult day services and AFC:

- The spouse of the provider.
- The assistant.
- Any other household member who comes in contact with the adult receiving care.

- The LDSS will need to exercise judgment in the approval or denial of providers when convictions of other felonies and misdemeanors not listed in §19.2-392.02 are found. The provider record should document the reasons for the approval or denial. No denial may be based solely on arrest information where no conviction has been made.

5.4.2.5 Confidentiality of criminal record information

Criminal record information can only be used for the purpose intended. It shall not be shared with anyone other than the individual identified in the record. For example, conviction information on a household member cannot be shared with the provider. However, the provider could be told that he or she is being denied because this requirement is not met.

> (§ 63.2-1601.1). If approval as an agency approved provider is denied because of information obtained through a Central Criminal Records Exchange search, the local board, upon request, shall provide a copy of the information obtained to the individual who is the subject of the search. Further dissemination of the criminal history record information is prohibited.

5.5 Interviews, references, employment history, and assessment

The sections below describe interviews, references, employment history, and assessments for providers of adult services.

5.5.1 Interviews – all providers

> (22 VAC 30-120-30). The provider shall participate in interviews with the local department.

5.5.1.1 Out-of-home providers

At least one interview with an out-of-home provider shall occur in the provider's home (where care is to be provided) at the time of the initial approval and at renewal. If 24-hour care will be provided, all household members should be interviewed.

> (22 VAC 30-120-30). For adult foster care and adult day services, at least one interview shall occur in the home where the care is to be provided. All adult household members shall be interviewed to ensure that they understand the demands and expectations of the care to be provided.

5.5.1.2 In-home providers

At least one interview with an in-home provider shall be face-to-face at the time of initial approval and at renewal. For in-home providers used by the LDSS, the LDSS representative will interview the provider face-to-face as often as necessary, but at least semi-annually to monitor the provider.

5.5.2 References – all providers

> (22 VAC 30-120-30). The provider shall provide at least two references from persons who have knowledge of the provider's ability, skill, or experience in the provision of services and who shall not be related to the provider.

The LDSS may request more than two (2) references.

5.5.2.1 Follow-up

- The LDSS shall check references for the initial approval. References do not need to be rechecked at renewal.

- The LDSS may contact references by telephone, face-to-face interview, or request a reference in writing. References which are not written shall be documented in the provider record by the worker. A sample format for reference questions is contained in Appendix C.

5.5.3 Employment history – all providers

> (22 VAC 30-120-30). The provider shall provide information on the provider's employment history.

5.5.3.1 Application

The provider shall list previous employment on the Application for Department Approved Provider.

5.5.3.2 Follow-up

The LDSS shall check employment that is relevant to the type of care to be provided at initial approval. The LDSS may wish to check other employment to assess the prospective provider on characteristics identified in Section 5.5.4. The LDSS may check employment by telephone, face-to-face interview, or through written verification.

5.5.3.3 Additional requirements

The LDSS may further evaluate the applicant to ensure that he or she is able to meet the demands of providing the services.

> (22 VAC 30-120-30). The provider shall have the capability to fully perform the requirements of the position, have the moral and business integrity and reliability to ensure good faith performance and be determined by the local department to meet the requirements of the position.

5.5.4 Assessment of provider – all providers

> (22 VAC 30-120-30). The local department shall use the interviews, references, and employment history to assess that the provider is:
>
> a. Knowledgeable of and physically and mentally capable of providing the necessary care for adults.
>
> b. Able to sustain positive and constructive relationships with adults in care, and to relate to adults with respect, courtesy, and understanding.

c. Capable of handling emergencies with dependability and good judgment.

d. Able to communicate and follow instructions sufficiently to ensure adequate care, safety and protection for adults.

5.5.4.1 Additional requirement for adult foster care providers

(22 VAC 30-120-30). For adult foster care providers, the local department shall further use the interview, references, and employment history to assess that the provider has sufficient financial income or resources to meet the basic needs of his own family and has the knowledge, skills, and abilities to care for adults, including, but not limited to:

a. Provision of a furnished room in the home that meets applicable zoning, building, and fire safety codes.

b. Housekeeping services based on the needs of the adult in care.

c. Nutritionally balanced meals and snacks, including extra portions and special diets as necessary.

d. Provision of clean bed linens and towels at least once a week and as needed by the adult.

e. Assistance with personal hygiene including bathing, dressing, oral hygiene, hair grooming and shampooing, care of clothing, shaving, care of toenails and fingernails, arranging for haircuts as needed, care of needs associated with menstruation or occasional bladder or bowel incontinence.

f. Provision of generic personal toiletries including soap and toilet paper.

g. Assistance with the following: care of personal possessions; care of personal funds if requested by the adult and adult foster care home's policy permits it; use of telephone; arranging transportation; obtaining necessary personal items and clothing; making and keeping appointments; and correspondence.

h. Securing health care and transportation when needed for medical treatment.

i. Providing social and recreational activities as required by the LDSS and consistent with licensing regulations.

j. General supervision for safety education.

The purpose of this assessment is to determine that the provider is not relying on the payment made for the foster care adult to be income to support his or her family. The payment is to support the adult. It is not taxable income to the provider.

This requirement can be addressed during the interview by determining how the provider is able to pay his or her personal bills.

5.5.4.2 Homemaker providers

> (22 VAC 30-120-30). For homemaker providers, the local department shall further use the interview, references, and employment history to assess that the provider has knowledge, skills, and ability, as appropriate, in:
>
> a. Home management and household maintenance;
>
> b. The types of personal care of the elderly or adults with a disability permitted by regulation;
>
> c. Nutrition education and meal planning and preparation, including special diets; and
>
> d. Personal hygiene and consumer education.

5.6 Training – all providers

> (22 VAC 30-120-30). The local department shall provide some basic orientation to any approved provider.
>
> The provider shall attend any orientation and training required by the local department. The provider shall bear the cost of any required training unless the local department subsidizes the cost for all local department approved providers.

5.7 Medical requirements – all providers

> (22 VAC 30-120-30). The provider and assistant shall submit the results of a physical and mental health examination when requested by the local department.

- If the LDSS needs verification to determine if the provider is physically or mentally capable of providing the necessary care for adults, the LDSS should request an examination.

- The physical or mental health examination may be paid by the LDSS as an administrative cost charged to services if not covered by any other insurance program.

5.7.1 Tuberculosis

> (22 VAC 30-120-30). The provider; for out-of-home care, the assistant, the provider's spouse, and all other adult household members who come in contact with adults in care shall submit a statement from the local health department or licensed physician that he is believed to be free of tuberculosis in a communicable form.

- The statement shall indicate that the individual is free from tuberculosis in a communicable form. This does not mean that the actual test shall be performed; a risk assessment is permitted. The Request for Tuberculosis Statement form is available on the VDSS internal website and may be used to obtain the statement.

- After initial approval, a statement regarding tuberculosis does not need to be obtained again unless the individual has contact with someone who has tuberculosis or develops chronic respiratory symptoms (more than four weeks in duration).

- If the individual was tested for tuberculosis within the past year, a new test does not need to be performed as long as the statement is obtained.

- The cost of any tuberculosis test may be paid by the LDSS as an administrative cost charged to services if not covered by any other insurance program.

If the individual named within this section is not believed to be free of tuberculosis in a communicable form, the individual may not provide services to adults, assist with the adult's care, or live in the same household.

5.8 Changes in household

> (22 VAC 30-120-30). All local department approved providers shall keep the local department informed of changes in the household that may affect approval of the provider.

5.9 Requirements for care

The following sections describe the requirements for all providers.

5.9.1 Non-discrimination

> (22 VAC 30-120-40). The provider shall provide care that does not discriminate on the basis of race, ethnicity, sex, national origin, age, religion, disability or impairment.

5.9.2 Supervision

> (22 VAC 30-120-40). The provider shall have a plan for seeking assistance from police, firefighters, and medical professionals in an emergency.
>
> A responsible adult or an approved assistant shall always be available to provide appropriate care for the adult in case of an emergency.
>
> The provider shall ensure that adequate care and supervision is provided to adults in care and that the adult's health, safety, and well-being are protected.

5.9.3 Substitute arrangements

> (22 VAC 30-120-40). If extended absence of the provider is required, the local department shall approve any substitute arrangements the provider wishes to make. An extended absence shall be defined as greater than one day.

- The LDSS shall approve substitute arrangements prior to the provision of services by the substitute provider. The approval may include contact with the substitute.
- The substitute provider shall meet the requirements of this section as appropriate.

5.10 Food – adult foster care and adult day services providers

This section does not require that the provider supply all food. In adult day services, the adult may bring food. In adult foster care or adult day services, the individual may eat elsewhere.

> (22 VAC 40-120-40). The following standards apply to food provided to adult clients by adult day services and adult foster care providers:
>
> 1. Adults in care shall receive nutritionally balanced meals and snacks appropriate to the length of time in care each day and the daily nutritional needs of each adult.

> 2. Adults in care shall receive special diets if prescribed by a licensed physician or in accordance with religious or ethnic requirements, the adult's preferences, or other special needs.
>
> 3. Adequate drinking water shall be available at all times.

Adults in adult foster care shall receive a minimum of three well-balanced meals a day (22 VAC 30-80-30).

5.11 Clothing – adult foster care

> (22 VAC 30-120-40). The adult foster care provider shall ensure that adults in care have adequate, properly fitting, and seasonal clothing and that all clothing is properly laundered or cleaned and altered or repaired as necessary.

5.12 Transportation

Pursuant to 22 VAC 30-120-40 persons who transport adults in adult day services or adult foster care may include:

- The provider;
- The assistant in out-of home services;
- Spouse of the provider;
- Volunteer, or
- Any other agent involved in the day-to-day operation.

The provider or the person transporting adults in adult day services or adult foster care shall:

- Have a valid driver's license.
- Have automobile liability insurance.
- Ensure the vehicle transporting the adults has a valid license and inspection sticker.
- Ensure that all passengers use safety belts in accordance with requirements of Virginia law.

In addition:

- Minimum liability insurance coverage in Virginia applies.
- An "uninsured motorist" can operate a vehicle in Virginia and have no insurance coverage. This does not meet the insurance requirement.
- Transportation costs of any provider are not a reimbursable cost through Budget Line 833. If it can be determined that the adult in care will be neglected or at risk of being neglected without transportation assistance and transportation is a part of the service plan, Budget Line 895 (APS) funding could be used after all Adult Protective Services procedures are followed.

5.13 Medical care – all providers

> (22 VAC 30-120-40). The provider shall have the name, address, and telephone number of each adult's physician and responsible person easily accessible.
>
> The provider shall be able to meet the identified needs of the adult before accepting the adult for care and in order to continue to provide services to the adult.

The provider shall seek emergency medical care as needed and immediately report all major or serious injuries and accidents to the individual's responsible person and the LDSS.

5.13.1 Medical care – adult foster care and adult day services providers

> (22 VAC 30-120-40). The adult foster care and adult day services provider shall:
>
> 1. Ensure that the adult receives prescription drugs only in accordance with an order signed by a licensed physician or authentic prescription label and, with the responsible person's written consent, as appropriate;
>
> 2. Document all medications taken by adults in care, including over-the-counter medications;
>
> 3. Ensure that the adult in care receives nonprescription drugs only with the adult's or responsible person's written consent, as required;
>
> 4. Keep medications separate from food except those items that shall be refrigerated;
>
> 5. Report all major injuries and accidents to the adult's responsible person immediately;

6. Have authorization for emergency medical care for each adult in care; and

7. Have first aid supplies easily accessible in case of accidents.

5.13.2 Additional requirement for adult foster care providers

(22 VAC 30-120-40). Admission or retention of adults in an adult foster care home is prohibited when the adult's care needs cannot be met by the provider as determined by the assessment of the adult services worker or by the adult's physician.

5.14 Activities – adult foster care and adult day services

(22 VAC 30-120-40). The adult day services and adult foster care provider shall provide recreational and other planned activities appropriate to the needs, interests, and abilities of the adults in care.

5.15 Requirements for the home of the out-of-home provider

The following describe the physical requirements for the home of the provider of out-of-home adult services.

5.15.1 Physical accommodations

(22 VAC 30-120-50). Physical accommodations requirements include:

1. The home shall have appropriate space and furnishings for each adult receiving care in the home to include:

a. Space to keep clothing and other personal belongings;

b. Accessible and adequate basin and toilet facilities;

c. Comfortable sleeping or napping furnishings;

d. For adults unable to use stairs unassisted, sleeping space on the first floor of the home;

e. Adequate space for recreational activities; and

f. Sufficient space and equipment for food preparation, service, and proper storage.

2. All rooms used by adults shall be heated in winter, dry, and well ventilated.

3. All doors and windows used for ventilation shall be appropriately screened.

4. Rooms used by adults in care shall have adequate lighting for activities and the comfort of adults.

5. The provider and any adult in care shall have access to a working telephone in the home.

6. The home shall be in compliance with all local ordinances.

7. Additional standards for adult foster care include:

a. No more than two adults shall share a sleeping room unless they request and consent to sharing such a sleeping arrangement.

b. There shall be space in the household for privacy outside of the sleeping rooms for the adult to entertain visitors and talk privately.

c. For adult foster care, at least one toilet, one basin, and one tub or shower for every eight persons living in the home (including the adult in care and any household members).

5.16 Home safety – adult foster care and adult day services

(22 VAC 30-120-50). Home safety requirements include:

1. The home and grounds shall be free from litter and debris and present no hazard to the safety of the adults receiving care.

2. The provider shall permit a fire inspection of the home by appropriate authorities if conditions indicate a need for approval and the LDSS requests it.

3. The provider shall have a written emergency plan that includes, but is not limited to, fire or natural disaster and rehearse the plan at least twice a year. The provider shall review the plan with each new adult placed in the home.

4. Attics or basements used by adults in care shall have two emergency exits; one of the emergency exits shall lead directly outside and may be a door or an escapable window.

5. Possession of any weapons, including firearms, in the home shall be in compliance with federal, state, and local laws and ordinances. The provider shall store all weapons, firearms, and ammunition in a locked cabinet with safety mechanisms activated. The key or

> combination to the cabinet shall not be accessible to the adult in care. Any glass cabinets used to store any weapons, including firearms, shall be shatterproof.
>
> 6. The provider shall protect adults from household pets that may be a health or safety hazard. Household pets shall be inoculated as required by state or local ordinances. Documentation of inoculations shall be made available upon local department request.
>
> 7. The provider shall keep cleaning supplies and other toxic substances stored away from food and out of the reach of adults in care who are mentally incapacitated.
>
> 8. The provider shall provide and maintain at least one approved, properly installed, and operable battery-operated smoke detector, at a minimum, in each sleeping area and on each additional floor. Existing installations that have been approved by the state or local fire marshal are exempted from this requirement.

A sleeping area can include several bedrooms in the same area. However, a home with bedrooms in two wings would require a smoke detector in each wing.

5.16.1 Fire and safety inspections

- Each LDSS should determine the appropriate local authority to inspect for safety hazards and may wish to develop an internal guide based on direction from that authority. See Appendix G for an example of a request for fire inspection.
- The LDSS may wish to do the following prior to requesting a safety inspection:
  - Determine if there are any overloaded electrical wall outlets.
  - Determine if there is any deteriorated insulation on electrical equipment.
  - Inquire if the furnace is serviced regularly.
  - Observe if any wood stove is on a non-combustible surface and combustibles are at least three feet away.
  - Inquire if the chimney flue is lined and cleaned regularly.
  - Inquire if a permit was obtained for any liquid propane (LP) gas heater.
  - Observe if there is any accumulation of grease around the range or oven.

- Observe if there is excessive trash, old rags, or other combustibles lying around.

5.17 Sanitation – adult foster care and adult day services

(22 VAC 30-120-50). Sanitation requirements include:

1. The provider shall permit an inspection of the home's private water supply and sewage disposal system by the local health department if conditions indicate a need for approval and the local department requests it.

2. The home and grounds shall be free of garbage, debris, insects, and rodents that would present a hazard to the health of the adult in care.

5.17.1 Water testing fee

The usual and customary fee for water testing by the State Department of Health applies. This fee may be paid as an administrative cost charged to services. See Appendix H for an example of a request for sanitation inspection.

5.18 Capacity – adult foster care and adult day services

(22 VAC 30-120-50). Capacity standards include:

1. The provider shall not exceed the maximum allowable capacity for the type of care provided and approved by the local department.

2. The adult day services provider shall not accept more than three adults in the home at any one time. A provider who has more than three adults receiving day services shall be licensed by the Department of Social Services.

3. The adult foster care provider shall not accept more than three adults for the purpose of receiving room, board, supervision, or special services, regardless of relationship of any adult to the provider. A provider who accepts more than three adults for these purposes shall be licensed as an assisted living facility by the Department of Social Services.

5.18.1 Out-of-home provider providing more than one type of care

The LDSS shall carefully evaluate all providers who request to provide more than one type of care (e.g. child foster care and adult foster care) to ensure the provider is able to meet the needs of the individuals receiving care.

5.19 Record requirements for the out-of-home provider

(22 VAC 30-120-60). Record requirements for adult foster care and adult day services providers:

A. The provider shall maintain written legible information on each adult in care.

B. Information on the adult in care shall include:

1. Identifying information on the adult in care;

2. Name, address, and home and work telephone numbers of responsible persons;

3. Name and telephone number of person to be called in an emergency when the responsible person cannot be reached;

4. Name, address, and home and work telephone numbers of persons authorized to pick up the adult in care;

5. Name of persons not authorized to call or visit the adult in care;

6. Date of admission and discharge of the adult in care;

7. Daily attendance records, where applicable. Daily attendance records are required for adult day services;

8. Medical information pertinent to the health care of the adult in care;

9. Correspondence related to the adult in care as well as other written adult information provided by the local department; and

10. Placement agreement between the provider and the adult and his responsible person, where applicable.

C. Adult records are confidential and shall not be shared without the approval of the adult in care or responsible person.

D. The local department and its representatives shall have access to all records.

E. The Department and its representative shall have access to all records.

5.19.1 Confidentiality

- When the adult leaves the home, the LDSS may request that certain information be returned to the LDSS, the adult, or his representative in order to accompany the individual to his or her next placement.
- After the adult leaves, the provider may wish to keep information needed for the provider's purposes such as copies of unpaid invoices or other information for income taxes.

5.20 Provider approval – all providers

5.20.1 Approval period

> (22 VAC 30-120-70). The approval period for a provider may be up to 24 months when the provider meets the standards. In the case of adult day services and adult foster care, the home shall also meet the standards.

5.20.2 Application

- An Application for Department Approved Provider shall be completed by each applicant provider for the initial approval. It is not necessary for a renewal.
- The application, once received by the LDSS, should be acted upon as quickly as possible.
- A copy of the requirements should be given to each applicant provider.

5.20.3 Compliance form

A Compliance Form for Department Approved Provider (Parts A & B) should be completed for each applicant provider at the initial approval/denial determination and for each provider at each renewal. Part B of this form is only applicable to the out-of-home provider (e.g., adult day services and adult foster care).

5.20.4 Certificate of Approval

A Certificate of Approval should be issued to the adult services provider when the provider is approved.

5.20.5 Expiration of approval period

The expiration date for the approval period should be set for the last day of the month in which approval is granted and be two (2) years hence unless the approval is emergency, provisional, or suspended.

5.20.6 Notification

The applicant provider or provider shall receive written notification **within 10 working days** regarding action on the application or at renewal. A Certificate of Approval is adequate written notice for approved providers. See Appendix D for a sample denial letter.

5.21 Allowable variance

22 VAC 30-120-80 describes allowable variances.

> A. The provider may request an allowable variance on a standard if the variance does not jeopardize the safety and proper care of the adult or violate federal, state, or local law and the local department approves the request.
>
> B. The local department shall consult with the state adult services consultant prior to granting an allowable variance.
>
> C. The allowable variance shall be in writing with a copy maintained by the local department and the provider.
>
> D. The local department and the provider shall develop a plan to meet the applicable standard for which the allowable variance has been granted.
>
> E. The allowable variance shall be requested and granted by the local department prior to the approval of the provider or at the time of the provider's renewal.

5.21.1 Procedures for requesting a variance

- The provider cannot request a variance without the LDSS' agreement. If the LDSS decides to accept the variance request, the LDSS will assist the provider in preparing the written variance request for review.
- The request should specify, at a minimum:
  - The type of provider.

  - What specific reasons or circumstances exist in the situation that justify requesting the variance.
  - The requirement(s) for which a variance is requested.
  - What efforts have been/will be made to meet the requirement(s).
  - The length of time for which a variance is requested.
  - What precautions are being taken to ensure the safety and protection of the adults in care while the variance is in effect.
- The request shall be signed by the LDSS director or his designee.
- *The APS Division* Regional Consultant shall review the variance request and provide technical assistance, if needed.

5.21.2 Approval or denial of a variance

If the LDSS approves the variance, the decision will indicate the length of time for which the variance is granted.

A copy of the variance request and LDSS' decision will be maintained in the provider's record.

5.22 Emergency approval of a provider

State regulation (22 VAC 30-120-90) applies to the emergency approval of a provider.

> A. Emergency approval of a provider may be granted under the following conditions:
>
> 1. The court orders emergency placement; or
>
> 2. The adult or his responsible person requests placement or service in an emergency.
>
> B. A representative of the local department shall visit the provider's home to ensure that minimum safety standards are evident and that the provider is capable of providing the care prior to the emergency placement of the adult in adult foster care or adult day services.
>
> C. For an in-home provider, the representative of the local department shall interview the provider to ensure that the emergency provider is capable of providing the needed services.
>
> D. Emergency approval should not exceed 30 days.

> E. The provider shall meet all applicable standards if services shall be provided beyond the thirty-day emergency approval or if the emergency approval is extended beyond 30 days.

5.22.1 Criminal history information

The LDSS shall request criminal history information on the provider and household members who may have contact with the adult (see Section 5.4.2).

5.22.2 Length of time

- Emergency approval should not exceed 30 days.
- A full compliance study shall be initiated immediately if the LDSS plans to use the provider beyond the 30 days.
- If medical, water and sanitation, fire inspection, or criminal record check requirements cannot be determined within the 30-day period, emergency approval could continue up to 45 days as long as other requirements are met. It shall not exceed 45 days. Appropriate documentation shall be made in the provider record explaining why the emergency approval exceeded 30 days.

5.22.3 Denial of approval

Emergency approval may be denied by the LDSS if the provider, and in the case of adult foster care or adult day services, the home does not meet minimum standards. The LDSS reviewing the request for approval shall indicate the reason for the denial of the emergency approval on the Compliance Form.

5.22.4 Notification

The approval or denial of the emergency application shall be in writing and given to the adult and the prospective provider. See Appendix E for an example of an emergency approval or denial letter.

5.23 Provider monitoring

22 VAC 30-120-100 describes procedures for monitoring of providers.

> A. For adult day services or adult foster care providers, the local department representative shall visit the home of the provider as often as necessary, but at least semi-annually to monitor the performance of the provider.

> B. For home-based care providers, the local department representative shall interview the provider face-to-face as often as necessary, but at least semi-annually, to monitor the performance of the provider.
>
> C. Provider monitoring shall include interviews with adults receiving care from the provider.
>
> D. The adult in care or his responsible person shall have access to all provider monitoring reports completed by the local department upon request.

- The purpose of the monitoring visits/interviews is to allow the LDSS staff to determine the provider's compliance with applicable standards. If the provider had difficulty meeting a particular standard, this should be checked at the monitoring contact. It is not intended to be a reexamination of all standards.
- The monitoring can be performed by the staff person who approved the provider, a staff person who facilitated the adult-provider relationship, or another LDSS staff person designated by the appropriate LDSS supervisor.
- Monitoring visits shall be documented on the Compliance Form for Department Approved Provider or in a provider narrative maintained in the provider's record.

5.24 Renewal process

> (22 VAC 30-120-110). The local department shall reapprove the provider prior to the end of the approval period if the provider continues to meet the standards. In the case of adult day services or adult foster care providers, the home also shall continue to meet the standards.

The following areas do not need to be reexamined unless the LDSS feels there is a need:

- Application (no renewal application is necessary).
- Tuberculosis Statement.
- References.
- Employment History.

The Compliance Form for Department Approved Provider shall be completed to document the initial approval and each renewal.

5.25 Provider responsibilities

A provider in good standing is an LDSS approved provider who:

- Has the capability, in all respects, to perform fully the requirements of an LDSS approved provider.
- Has the moral and business integrity and the reliability that will assure good faith performance.
- Has been approved by the LDSS as meeting the requirements for the type of provider the individual applies or is approved to be.

In determining whether the provider has good standing, a number of factors, including but not limited to the following, are considered. The provider should:

- Have a satisfactory record of performance, including providing services in a timely manner, being present to provide care when assigned, and having no legitimate complaints from the adult in care about the care and services received.
- Comply with the required performance of job duties.
- Have the necessary facilities, organization, experience, technical skills, and financial resources to fulfill the terms of the requirements of the position, as needed.
- Have no active allegation(s) of adult abuse, neglect, or exploitation made against him or her. In this case, it is within the purview of the LDSS to find a substitute provider until the allegation(s) has been resolved; a substantiated APS allegation shall be used as a basis for revocation of the approval of the provider or denial of the applicant.
- Have satisfactory monitoring assessments completed by the LDSS indicating that quality work is performed according to the vendor agreement with the LDSS.
- For in-home providers, provide documentation of time worked and be able to verify that services were provided to the adult as agreed. For out-of-home providers, be able to verify that services were provided to the adult in care pursuant to the adult foster care/adult day care agreement between the provider and the LDSS.

The provider who does not meet these requirements shall be considered to no longer be in good standing as a provider. In such case, the LDSS has the authority to grant provisional approval, suspend approval, or revoke approval.

5.26 Inability of the provider to meet requirements

> (22 VAC 30-120-120). If the provider cannot meet the standards for adult services approved providers, the local department shall grant provisional approval, suspend approval, or revoke approval, depending on the duration and nature of noncompliance.

The provider shall be given the opportunity to correct any non-compliance issues and be reassessed by the LDSS, at which time the provider approval may be reinstated as being in good standing with or without a variance, suspended, or revoked.

5.26.1 Provisional approval

> (22 VAC 30-120-120). The local department may grant provisional approval if noncompliance does not jeopardize the safety or proper care of the adults in care. Provisional approval shall not exceed three months.

5.26.2 Suspension of approval

> (22 VAC 30-120-120). The local department may suspend approval if noncompliance may jeopardize the safety and proper care of the adults in care. Suspension shall not exceed three months. During the suspension, the provider can give no care to adults referred by the local department.

5.26.3 Revocation of approval

> (22 VAC 30-120-120). If the provider is found to be out of compliance with the standards set forth herein and cannot meet standards within three months and a variance is not granted, the approval shall be revoked.
>
> The local department shall immediately revoke its approval if noncompliance jeopardizes the health, safety and proper care of the adults in care. Adults in adult foster care and adult day services shall be removed within five calendar days from the date of the decision.

5.26.4 Notification of action

> (22 VAC 30-120-120). The decision to grant provisional approval, suspend approval or revoke approval shall be in writing with the effective date of the decision noted.

The LDSS shall notify the provider in writing, specify the reasons for provisional approval, suspension, or revocation, and indicate the provider's right of review. See Appendix F for a sample letter.

5.27 Relocation of the out- of-home provider – adult foster care and adult day services

The following sections describe the circumstances when an out-of-home provider relocates.

5.27.1 Within the approving jurisdiction

> (22 VAC 30-120-130). If the out-of-home provider moves, the local department approving the provider shall determine continued compliance with standards related to the home as soon as possible, but no later than 30 days after relocation to avoid disruption of services to the adult in care.

The renewal period does not change unless a full re-approval is done at the same time. A new Certificate of Approval does not need to be issued unless the provider requests one.

5.27.2 Outside of the approving jurisdiction

> (22 VAC 30-120-130). If an out-of-home provider moves outside of the locality that approved the provider, the local department in the new place of residence may accept the provider approval of the initial local department based upon the recommendation of the initial local department or may initiate the approval process itself.

The receiving LDSS shall visit to determine compliance with requirements for the home as soon as possible but **no later than 30 days** after relocation to avoid a disruption in services to the adult(s) in care.

5.28 Right of review

> (22 VAC 30-120-140). The provider shall have the right to request that the decision of the LDSS be reviewed by the local director of social services.
>
> The provider shall request the review within 10 calendar days from the effective date of the Notice of Action.

5.28.1 Review process

If a dispute cannot be resolved between an approved provider or applicant provider and an LDSS, the applicant/provider has the right to request a review of the LDSS' decision by the local director of social services. The request to review the LDSS' decision shall be made **within 10 calendar days** from the effective date of the department's written notice. The steps of the review are as follows:

1. The LDSS shall schedule a review conference **within 10 working days** of receipt of the written request by the applicant/provider.
2. Participants in the review conference may include:
    - The applicant/provider(s).
    - The appropriate LDSS staff.
    - The LDSS director or his designee.
    - Up to two (2) other individuals chosen by the applicant/provider.
3. The LDSS shall write a summary of the review conference **within 10 working days** of the conference. The summary of the review will also include the local director's decision. A copy of the summary shall be shared with all participants. The decision of the local director is final.

5.29 Use of provider by more than one LDSS

The initial approving LDSS is responsible for continued approval of providers used by more than one LDSS.

An LDSS may accept the provider approval of another LDSS. The other LDSS shall notify and obtain prior approval of the initial approving LDSS for each adult who is to receive services.

5.30 LDSS record-keeping

The LDSS shall maintain a separate file on each approved provider. Documentation in the file shall be complete, accurate, and legible and signed with LDSS staff person's name and title and dated with month, day, and year. Confidentiality of records shall be ensured.

5.30.1 Contents of the provider file

- Application for Department Approved Provider or earlier version of an application.
- Compliance Form for Department Approved Provider and for out-of-home providers (Parts A and B).
- Purchase of Service Agreements.
  - An Individual Vendor Agreement may be used when services are purchased from the following providers: adult day services, adult foster care, and chore, companion, and homemaker.
  - Any Purchase of Service Orders and Vendor Invoices (related to the Individual Vendor Agreement) should be maintained in the adult's record, not the provider's file. Copies of these documents may be maintained in the provider file.
  - Other information may include, where applicable, medical statements, criminal record check, fire inspection, water and sanitation inspection, correspondence, and provider narrative.

5.31 Department data system

LDSS approved providers should be entered into ASAPS or local data system when they are approved.

5.32 When the provider is the subject of an APS allegation

If a provider is the subject of an APS allegation against an adult in care, the LDSS may assign another provider to care for the adult until the allegation is resolved.

5.33 The LDSS as the adult’s fiscal agent

In an agreement reached between the VDSS and the Internal Revenue Service (IRS), it was determined that there is a common-law employer-employee relationship between the adult services home-based provider (companion, chore, and homemaker) and the adult. The VDSS/IRS agreement was effective January 1, 1995. Per the agreement, LDSS act as fiscal agents on behalf of the adult by ensuring that necessary taxes are paid. The services performed by the home-based provider constitute "domestic service in a private home of the employer." Therefore, the adult is the employer of the provider. Neither the state nor the LDSS is the provider's employer.

LDSS have to file Form 941-Employer's Quarterly Federal Tax Return and Form 940-Employer's Annual Federal Unemployment (FUTA) Tax Return under the EIN of the filing entity. Each return should report an aggregate of all of the taxable wages paid by the entity on behalf of the individual receiving services.

However, the IRS has confirmed that LDSS are not required to file Schedule R (Form 941) and Schedule R (Form 940) because the LDSS are not in a section 3504 relationship with the client.

5.33.1 Authorization to act on adult's behalf

The LDSS should inform the adult that the LDSS is acting as fiscal agent on his or her behalf in paying and withholding the required taxes. Authorization should be obtained and retained in the individual's record. The signed form should be filed in the adult's record. A copy of the form may also be filed in the provider's record. This form is located on the VDSS internal website.

5.33.2 Purchase of Services Orders

For each Purchase of Services Order written, the LDSS should encumber, as fiscal agent for the adult, the funds required to pay the applicable taxes. A Purchase of Services Order is available on the VDSS internal website.

5.33.3 Immigration and Naturalization Service verification

The LDSS, as fiscal agent for the adult, is responsible for completing the I-9 form from the Immigration and Naturalization Service (INS) on behalf of the adult. The I-9 form is available on the INS website.

5.33.4 Contracting with an external organization for home-based services

If an LDSS chooses to contract with an external organization to provide home-based services that contract organization shall assume responsibility for collecting and paying FICA and payment of unemployment taxes, if applicable, and for issuing W-2 or W-4 forms to providers.

5.33.5 SSI benefits received by provider

In cases where a provider is receiving SSI, SSA, or other public assistance benefits, the income received as a provider may have an effect on the provider's amount of or entitlement to SSI. The effects of receiving this additional income shall be discussed with the provider. The provider shall be advised of his responsibility for notifying the Social Security Administration.

5.33.6 Rate of payment for home-based services

Each LDSS shall establish local board policy to specify the maximum number of hours of service and rate of pay for providers. The rate of payment for companion, chore, and homemaker services shall be at least the minimum wage.

5.34 Abuse, neglect, and exploitation reporting – all providers

> (22 VAC 30-120-40). All providers of adult services shall immediately report any suspected abuse, neglect, or exploitation of any adult in care to the local department or to the 24-hour toll-free hotline (hotline number: 888-83-ADULT). Providers covered by this regulation are mandatory reporters in accordance with § 63.2-1606 of the Code of Virginia. Failure to report could result in the imposition of civil penalties.

5.35 Rights of adults in care

Adults in the care of LDSS approved providers have extensive rights specified by regulation. Each individual in care, or his or her representative, shall receive a copy of these rights and acknowledge receipt of these rights by signing another copy which will be maintained in the adult's record. All approved providers shall also receive a copy of the rights of adults in care and acknowledge receipt of the rights by signing another copy which will be placed in the provider's record. The out-of home providers (Adult Foster Care and Adult Day Care) shall make available in an easily accessible place a copy of these rights and responsibilities. In addition, the out-of-home provider shall include with the rights, the telephone number of the Adult Protective Services Hotline as well as the toll-free telephone number of the Virginia Long-Term Care Ombudsman Program and any local ombudsman program serving the jurisdiction. See Appendix B for a copy of these rights. A copy is also available online on the VDSS internal website.

5.36 Responsibilities of adults in adult foster care or adult day services

22 VAC 30-120-160 describes the responsibilities of adults in adult foster care or adult day services.

> A. The adult in care shall follow the rules of the provider unless these rules are in violation of adults' rights.
>
> B. Adults in care, or the local department when appropriate, shall give a two-week written notice of intent to leave the placement.
>
> C. Adults in care shall notify providers if there are changes in the adult's health status.

5.37 Fraud

> (22 VAC 30-120-30). Any provider who causes the local department to make an improper payment by withholding information or providing false information may be required to pay the amount of the improper payment. Failure to repay any improper payment shall result in a referral for criminal or civil prosecution.

Section 63.2-522 deems guilty of larceny any person who obtains assistance or benefits by means of a willful false statement or who knowingly fails to notify of a change in circumstances that could affect eligibility for assistance. Recipients deemed guilty of larceny, upon conviction, are subject to penalties as specified in the § 18.2-95. The LDSS shall explain to individuals applying for adult services and providers the importance of providing accurate and thorough information and of notifying the LDSS of changes during service delivery. The LDSS shall have a tracking system in place to ensure that claims are established and satisfied.

5.38 Appendix A: Forms

The following forms may be used for Adult Service Providers. These forms are located on the Adult Services forms page of the VDSS internal website.

Application for Department Approved Provider
This form is completed by an individual who wants to become an adult services provider.

Authorization to Act on Adult's Behalf
This form is used to explain to the adult that the LDSS is acting as fiscal agent on his or her behalf in paying and withholding the required taxes.

Certificate of Approval
This form is issued to providers once they have been approved.

Compliance Form
This form is completed on each provider during initial approval process and at renewal.

Purchase of Services Order
This form is used to order services from vendors or to terminate or change existing orders.

Rights of Adults in Care
This form lists the rights of adults who are receiving care from department approved providers.

Tuberculosis Statement
This form is used to certify that an individual who wants to become an adult services provider is free from tuberculosis.

5.39 Appendix B: Rights of adults in care

Adults in the care of LDSS approved providers shall have the rights and responsibilities specified in this section. The provisions of this section shall not be construed to restrict or abridge any right that any adult has under the law. The provider shall establish policies and procedures to ensure that adults in care are aware of the following rights:

- To be fully informed, prior to the beginning of the provision of services, of his rights and of all rules and expectations governing his conduct and responsibilities; the adult and, if appropriate, his responsible persons shall acknowledge, in writing, receipt of this information, which shall be filed in his record.

- To be fully informed, prior to the beginning of the provision of services, of services available and of any related charges, if any; this shall be reflected by the adult's written acknowledgment of having been so informed, which shall be filed in his record.

- Unless a conservator of such person has been appointed, to be free to manage his personal finances and funds; to be entitled to access to personal account statements reflecting financial transactions made; and, when receiving adult foster care, to be given at least a quarterly accounting of financial transactions made on his behalf.

- To be afforded confidential treatment of his personal affairs and records and to approve or refuse their release to any individual outside the home except as otherwise provided in law and except in case of his transfer to another setting.

- When receiving adult foster care or adult day services, to be transferred or discharged only when provided with a statement of reasons, or for nonpayment for his stay, and to be given advance notice of **at least 30 days**; upon notice of discharge or upon giving reasonable advance notice of his desire to move, the adult shall be afforded reasonable assistance to ensure an orderly transfer or discharge; such actions shall be documented in his record; the LDSS that made the placement shall be given advance notice of **at least 30 days** for any transfer or discharge.

- An adult receiving adult foster care or adult day services may be discharged immediately if his physical or mental health conditions or his behavior places himself or others at risk of serious bodily harm or injury; the discharge shall be to a setting which will ensure the protection of the adult's health, safety and welfare; the LDSS which made the placement shall be notified of the emergency

discharge as soon as practicable but **no later than 24 hours** after the emergency discharge.

- In the event a medical condition should arise while he is under the care of the provider, to be afforded the opportunity to participate in the planning of his program or care and medical treatment and the right to refuse treatment.

- When receiving care from an adult foster care or adult day services provider, to not be required to perform services for the home except as voluntarily contracted pursuant to an agreement for services that states the terms of consideration or remuneration and is documented in writing and retained in his record.

- To be free to select health care services from reasonably available resources.

- To be free from mental, emotional, physical, sexual, and financial abuse or exploitation; to be free from forced isolation, threats, or other degrading or demeaning acts against him; and, when receiving care from an adult foster care or adult day services provider, to not have his known needs neglected or ignored by the provider.

- To be treated with courtesy, respect, and consideration as a person of worth, sensitivity, and dignity.

- To be free to voice grievances and recommend changes in policies and services, free of coercion, discrimination, threats, or reprisal.

- When receiving care from an out-of-home LDSS-approved provider, to be permitted to retain and use his personal clothing and possessions as space permits unless to do so would infringe upon rights of other adults.

- To be encouraged to function at his highest mental, emotional, physical, and social potential.

- To receive and send uncensored, unopened mail.

- To refuse medication unless there has been a court finding of incapacity.

- To choose which services are included in the service agreement and to receive all physician-prescribed treatments. Adults also have the right to refuse services, if doing so does not endanger the health or safety of other adults.

- To be free of physical, mechanical, or chemical restraint except in the following situations and with appropriate safeguards, including training for the provider on the use of restraints:
    - As necessary to respond to unmanageable behavior in an emergency situation that threatens the immediate safety of the adult or others.
    - As medically necessary, as authorized in writing by a physician, to provide physical support to a weakened adult.
- To be free of prescription drugs except where medically necessary, specifically prescribed, and supervised by the attending physician.
- To be accorded respect for ordinary privacy in every aspect of daily living, including but not limited to the following:
    - In the care of his personal needs except as assistance may be needed.
    - In any medical examination or health-related consultations that the adult may have at the home.
    - In communications, in writing, or by telephone.
    - During visitations with other persons.
    - When receiving care from an out-of-home provider, in the adult's room or portion thereof; adults shall be permitted to have guests or other adults in their rooms unless to do so would infringe upon the rights of other adults; staff may not enter an adult's room without making their presence known except in an emergency or in accordance with safety oversight requirements included in regulations administered by the Commissioner for Aging and Rehabilitative Services.
    - When receiving care from an out-of-home provider, in visits with his spouse; if both are adults of the home they are permitted, but not required, to share a room unless otherwise provided in the adult's agreements.
- Is permitted to meet with and participate in activities of social, faith-based, and community groups at his discretion unless medically contraindicated as documented by his physician in his medical record.

If the adult is unable to fully understand and exercise the rights and responsibilities contained in this section, the LDSS shall require that a responsible person, of the adult's choice when possible, designated in writing in the adult's record, be made aware of

each item in this section and the decisions that affect the adult or relate to specific items in this section; an adult shall be assumed capable of understanding and exercising these rights unless a physician determines otherwise and documents the reasons for such determination in the adult's record.

The out-of-home provider shall make available in an easily accessible place a copy of these rights and responsibilities and shall include in them the name and telephone number of the Adult Protective Services Hotline as well as the toll-free telephone number for the Virginia Long-Term Care Ombudsman Program and any state ombudsman program serving the area.

The out-of-home provider shall make its policies and procedures for implementing this section available and accessible to adults, relatives, agencies, and the general public.

Each out-of-home provider shall provide appropriate staff training to implement each adult's rights included in this section.

Adults in care have the right to be fully informed in advance about recommended care and treatment and of any recommended changes in that care or treatment.

Adults in care have the right to freedom from searches of personal belongings without the adult or responsible person's permission, unless the care provider has reason to suspect that the adult possesses items that are illegal or prohibited in the out-of-home provider setting and the adult is present during the search.

When receiving care from an out-of-home provider, adults have the right to be notified before the adult's room or roommate is changed.

When receiving care from an out-of-home provider, adults have the right to communicate privately and without restriction with any other adult who does not object to the communications.

Adult Protective Services Hotline (888) 832-3858
State Long-Term Care Ombudsman (804) 565-1600

Local Adult Protective Services _____

Local Ombudsman Program _____

_____ _____
(Signature) (Date)

_____ _____
(Signature) (Date)

_____ _____
(Service Worker) (Date)

_____
(Telephone Number)

5.40 Appendix C: Sample letter – reference/employment verification

Dear_____ (reference or employer):

_____ (provider's name) has applied to our local

department to be _____ (type of provider) and has given your name as a reference (or employer). We would appreciate your answering the following questions. Your comments are necessary to assist our local department to determine this individual's ability, skill, and experience in providing care to adults.

We appreciate your time and assistance. If you have any questions, please call me at _____ (telephone number). A stamped, self-addressed envelope is enclosed for your convenience. Thank you very much.

Sincerely,

_____
(Service Worker)

1. How long have you known this person?

2. Explain how you came to know this person.

3. What abilities, skills, and/or experiences does this person have to provide care to adults?

4. Is this person:

Physically and mentally capable of providing care to adults?
yes ❑ no ❑ Comment:_____

Able to have positive and constructive relationships with adults?
yes ❑ no ❑ Comment:_____

Able to relate to adults with respect, courtesy, and understanding?
yes ❑ no ❑ Comment:_____

Capable of handling emergencies with dependability and good judgment?
yes ❑ no ❑ Comment:_____

Able to communicate and follow instructions sufficiently to assure an adult's safety and protection?
yes ❑ no ❑ Comment:_____

Your signature _____

5.41 Appendix D: Sample letter – denial of application or renewal

Date:_____

Dear _____:

This is to notify you that our local department has taken the following action:

❑ Denied your application or renewal as a (type of provider) because:

_____
_____
_____

If you have any questions, please call me at (telephone number). If you are not satisfied with the action of the local department, you have the right to request a review of the department's decision by the director of the local department. The request for review shall be made within 10 calendar days from the date of this notice. The local director's decision is final.

Sincerely,

_____
(Service Worker)

_____
(Title)

5.42 Appendix E: Sample letter – emergency approval or denial

Date:_____

Dear _____:

This is to notify you that our local department has taken the following action:

❑ Approved you as a (type of provider) on an emergency basis. Your approval period is from (date) to (date). In order to be considered for full approval, you will need to meet the following requirement(s) (specify requirement(s) to be met):

_____
_____
_____
_____

❑ Denied your application as a (type of provider) because:

_____
_____
_____

If you have any questions, please call me at (telephone number). If you are not satisfied with the action of the local department, you have the right to request a review of the department's decision by the director of the local department. The request for review shall be made within 10 calendar days from the date of this notice. The local director's decision is final.

Sincerely,

_____
(Service Worker)

_____
(Title)

5.43 Appendix F: Sample letter – provisional, suspension, or revocation of approval

Date:_____

Dear _____:

This is to notify you that our local department has taken the following action regarding your status as a (type of provider) until (date).

❑ Provisional approval ❑ Suspension of approval ❑ Revocation of Approval

The reason for this action is that you do not meet the following requirements (specify requirements):

_____
_____
_____
_____

If you have any questions about this, please call me at (telephone number). If you are not satisfied with the action of the local department, you have the right to request a review of the department's decision by the director of the local department. The request for review shall be made within 10 calendar days from the date of this notice. The local director's decision is final.

Sincerely,

_____
(Service Worker)

_____
(Title)

5.44 Appendix G: Sample letter – request for fire inspection

DATE:

TO: Fire Inspection Authority

FROM: (Worker name, agency, telephone number, and address)

SUBJECT: REQUEST FOR FIRE INSPECTION

The following individual(s) has applied to be a
_____(type of provider).
We request that you inspect the home to determine compliance with the applicable fire safety code and provide us a report of your findings.

Thank you.

Name of Provider/Applicant:
Address:
Directions to Home:

5.45 Appendix H: Sample letter – request for sanitation inspection

DATE:

TO: Health Department

FROM: (Worker name, agency, telephone number, and address)

SUBJECT: REQUEST FOR SANITATION INSPECTION

The following individual(s) has applied to be _____(type of provider). The home has a private water supply (and/or sewage disposal system). We request that you inspect this home to determine if it meets the rules and regulations governing "semi-public restaurants serving 12 or less recipients of service" and provide us a report of your findings.

Please request the State Health Department to bill our agency for the fee to test water. The address is as follows:

Agency Name/Address

Thank you.

Name of Provider/Applicant:
Address:
Directions to Home:

5.46 Appendix I: Code of Virginia – criminal history release

(§ 19.2-389). Dissemination of criminal history record information.

A. Criminal history record information shall be disseminated, whether directly or through an intermediary, only to:

36. Public agencies when and as required by federal or state law to investigate (i) applicants as providers of adult foster care and home-based services or (ii) any individual with whom the agency is considering placing an adult on an emergency, temporary, or permanent basis pursuant to § 63.2-1601.1, subject to the restriction that the data shall not be further disseminated by the agency to any party other than a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination, subject to limitations set out in subsection G; and

45. Other entities as otherwise provided by law.

Upon an ex parte motion of a defendant in a felony case and upon the showing that the records requested may be relevant to such case, the court shall enter an order requiring the Central Criminal Records Exchange to furnish the defendant, as soon as practicable, copies of any records of persons designated in the order on whom a report has been made under the provisions of this chapter.

Notwithstanding any other provision of this chapter to the contrary, upon a written request sworn to before an officer authorized to take acknowledgments, the Central Criminal Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish a copy of conviction data covering the person named in the request to the person making the request; however, such person on whom the data is being obtained shall consent in writing, under oath, to the making of such request. A person receiving a copy of his own conviction data may utilize or further disseminate that data as he deems appropriate. In the event no conviction data is maintained on the data subject, the person making the request shall be furnished at his cost a certification to that effect.

B. Use of criminal history record information disseminated to noncriminal justice agencies under this section shall be limited to the purposes for which it was given and may not be disseminated further.

C. No criminal justice agency or person shall confirm the existence or nonexistence of criminal history record information for employment or licensing inquiries except as provided by law.

D. Criminal justice agencies shall establish procedures to query the Central Criminal Records Exchange prior to dissemination of any criminal history record information on offenses required to be reported to the Central Criminal Records Exchange to ensure that the most up-to-date disposition data is being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases where time is of the essence and the normal response time of the Exchange would exceed the necessary time period. A criminal justice agency to whom a request has been made for the dissemination of criminal history record information that is required to be reported to the Central Criminal Records Exchange may direct the inquirer to the Central Criminal Records Exchange for such dissemination. Dissemination of information regarding offenses not required to be reported to the Exchange shall be made by the criminal justice agency maintaining the record as required by § 15.2-1722.

E. Criminal history information provided to licensed nursing homes, hospitals and to home care organizations pursuant to subdivision 15 of subsection A shall be limited to the convictions on file with the Exchange for any offense specified in §§ 32.1-126.01, 32.1-126.02, and 32.1-162.9:1.

F. Criminal history information provided to licensed assisted living facilities, licensed district homes for adults, and licensed adult day-care centers pursuant to subdivision 16 of subsection A shall be limited to the convictions on file with the Exchange for any offense specified in § 63.1-189.1 or § 63.2-1720.

G. Criminal history information provided to public agencies pursuant to subdivision 3*6* of subsection A shall be limited to the convictions on file with the Exchange for any offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02.

(§ 63.2-1601.1). Criminal history check for agency approved providers of services to adults.

A. Each local board shall obtain, in accordance with regulations adopted by the Board, criminal history record information from the Central Criminal Records Exchange of any individual the local board is considering approving as a provider of home-based services pursuant to § 63.2-1600 or adult foster care pursuant to § 63.2-1601. The local board may also obtain such a criminal records search on all adult household members residing in the home of the individual with whom the adult is to be placed. The local board shall not hire for compensated employment any persons who have been convicted of any offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02. If approval as an agency approved provider is denied because of information obtained through a Central Criminal Records Exchange search, the local board, upon request, shall provide a copy of the information obtained to the individual who is the subject of the search. Further dissemination of the criminal history record information is prohibited.

B. In emergency circumstances, each local board may obtain from a criminal justice agency the criminal history record information from the Central Criminal Records Exchange for the criminal records search authorized by this section. The provision of home-based services shall be immediately terminated or the adult shall be removed from the home immediately, if any adult resident has been convicted of any offense set forth in clause (i) of the definition of barrier crime as described in § 19.2-392.02.

5.47 Appendix J: Code of Virginia – barrier crimes

The local board shall not hire for compensated employment any persons who have been convicted of any offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02 of the Code of Virginia.

Barrier crime means:

- A felony violation of*:*
  - § 16.1-253.2 (Felony violation of a protective order)
- Any violation of:
  - § 18.2-31 (Capital murder)
  - § 18.2-32 (1st & 2nd Degree murder)
  - § 18.2-32.1 (Murder of a pregnant woman)
  - § 18.2-33 (Felony homicide)
  - § 18.2-35 (Voluntary manslaughter)
  - § 18.2-36 (Involuntary manslaughter)
  - § 18.2-36.1 (Certain conduct punishable as involuntary manslaughter)
  - § 18.2-36.2 (Involuntary manslaughter; operating a watercraft under the influence)
  - § 18.2-41 (Shooting stabbing, etc., with intent to maim, kill by mob)
  - § 18.2-42 (Assault or battery by mob)
- Any felony violation of:
  - § 18.2-46.2 (Criminal street gang participation)
  - § 18.2-46.3 (Recruitment of persons for criminal street gang)
  - § 18.2-46.3:1 (3rd or subsequent conviction of criminal street gang crimes)
  - § 18.2-46.3:3 (Enhanced punishment for gang activity in a gang-free zone)

- Any violation of:
  - § 18.2-46.5 (Committing, conspiring and aiding and abetting acts of terrorism)
  - § 18.2-46.6 (Possession, manufacture, distribution, etc. of weapon of terrorism or hoax device)
  - § 18.2-46.7 (Act of bioterrorism against agricultural crops or animals)
- Any violation of subsection A or B of:
  - § 18.2-47 (Abduction and kidnapping)
- Any violation of:
  - § 18.2-48 (Abduction with intent to extort money or for immoral purpose)
  - § 18.2-49 (threatening, attempting or assisting in such abduction)
  - § 18.2-50.3 (Enticing another into a dwelling house with intent to commit certain felonies)
- Any violation of:
  - § 18.2-51 (Shooting, stabbing with intent to maim, kill)
  - § 18.2-51.1 (Malicious bodily injury to law-enforcement officers, firefighters, search and rescue)
  - § 18.2-51.2 (Aggravated malicious wounding)
  - § 18.2-51.3 (Reckless endangerment of others by throwing objects from places)
  - § 18.2-51.4 (Maiming of another resulting from driving while intoxicated)
  - § 18.2-51.5 (Maiming, etc., of another resulting from operating a watercraft while intoxicated)
  - § 18.2-51.6 (Strangulation of another)
  - § 18.2-52 (Malicious bodily injury by means of any caustic substance or agent or use of any explosive or fire)

- § 18.2-52.1 (Possession of infectious biological substances or radiological agents)
- § 18.2-53 (Shooting, etc., in committing or attempting a felony)
- § 18.2-53.1 (Use or display of firearm in committing felony)
- § 18.2-54.1 (Attempts to poison)
- § 18.2-54.2 (Adulteration of food, drink, drugs, cosmetics)
- § 18.2-55 (Bodily injuries caused by prisoners, state juvenile probationers and state and local adult probationers or adult parolees)
- § 18.2-55.1 (Hazing of youth gang members unlawful; criminal liability)
- § 18.2-56 (Hazing unlawful; civil and criminal liability; duty of school, etc., officials)

- Any violation of subsection A of A1 of:
  - § 18.2-56.1 (Reckless handling of firearms; reckless handling while hunting)
- Any violation of:
  - § 18.2-56.2 (Allowing access to firearms by children)
  - § 18.2-57 (Assault and battery)
  - § 18.2-57.01 (Pointing a laser at a law-enforcement officer)
  - § 18.2-57.02 (Disarming a law-enforcement of correctional officer)
  - § 18.2-57.2 (Assault and battery against a family or household member
  - § 18.2-58 (Robbery)
  - § 18.2-58.1 (Carjacking)
  - § 18.2.59 (Extortion of money, property or pecuniary benefit)
  - § 18.2-60 (Threats of death or bodily injury to a person or member of his family)

  - § 18.2-60.1 (Threatening the Governor or his immediate family)

- Any felony violation of:
  - § 18.2-60.3 (Stalking)
  - § 18.2.60.4 (Protective order)
- Any violation of:
  - § 18.2-61 (Rape)
  - § 18.2-63 (Carnal knowledge of a child)
  - § 18.2-64.1(Carnal knowledge of certain minor)
  - § 18.2-64.2 (Carnal knowledge of an inmate, parolee, probationer, detainee, or pretrial or post trial offender)
  - § 18.2-67.1 (Forcible sodomy)
  - § 18.2-67.2 (Object sexual penetration)
  - § 18.2-67.3 (Aggravated sexual battery)
  - § 18.2-67.4 (Sexual battery)
  - § 18.2-67.4:1 (Infected sexual battery)
  - § 18.2-67.4:2 (Sexual abuse of a child under 15 years of age)
  - § 18.2-67.5 (Attempted rape, forcible sodomy, object sexual penetration, aggravated sexual battery, and sexual battery)
  - § 18.2-67.5:1 (Third misdemeanor offense)
  - § 18.2-67.5:2 (Conviction of certain subsequent felony sexual assault)
  - § 18.2-67.5:3 (Conviction of certain subsequent violent felony sexual assault)
  - § 18.2-77 (Arson)
  - § 18.2-79 (Burning or destroying a meeting house)

- § 18.2-80 (Burning or destroying any other building or structure)
- § 18.2-81 (Burning or destroying personal property)
- § 18.2-82 (Burning building or structure while in such building or structure with intent to commit felony)
- § 18.2-83 (Threats to bomb or damage buildings or means of transportation)
- § 18.2-84 (Causing, inciting, etc.)
- § 18.2-85 (Manufacture, possession, use, etc., of fire bombs or explosive materials or devices)
- 18.2-86 (Setting fire to woods, fences, grass, etc.)
- § 18.2-87 (Setting woods, etc., on fire intentionally)
- § 18.2-87.1 (Setting off chemical bombs capable of producing smoke in certain public buildings)
- § 18.2-88 (Carelessly damaging property by fire)

- Any felony violation of:
  - § 18.2-279 (Discharging firearms or missiles within or at building or dwelling house)
  - § 18.2-280 (Willfully discharging firearms in public places)
  - § 18.2-281 (Setting spring gun or other deadly weapon)
  - § 18.2-282 (Pointing, holding, or brandishing firearm, air or gas operated weapon or object similar in appearance)
  - § 18.2-282.1 (Brandishing a machete or other bladed weapon with intent to intimidate)
  - § 18.2-286.1 (Shooting from vehicles so as to endanger persons)
  - § 18.2-287.2 (Wearing of body armor while committing a crime)
- Any felony violation of:
  - § 18.2-289 (Use of machine gun for crime of violence)

  - § 18.2-290 (Use of machine gun for aggressive purpose)
  - § 18.2-300 (Possession or use of "sawed-off" shotgun or rifle)
  - § 18.2-308.4 (Possession of firearms while in possession of certain substances)
  - § 18.2-314 (Failing to secure medical attention for injured child)
- Any felony violation of § 18.2-346 (Prostitution; commercial sexual conduct; commercial exploitation of a minor)
- Any violation of:
  - § 18.2-355 (Taking, detaining, etc., person for prostitution)
  - § 18.2-356 (Receiving money for procuring person)
  - § 18.2-357 (Receiving money from earnings of male or female prostitute)
  - § 18.2-357.1 (Commercial sex trafficking)
- Any violation of subsection B of § 18.2-361 (Crimes against nature)
- Any violation of:
  - § 18.2-366 (Adultery and fornication by persons forbidden to marry)
  - § 18.2-369 (Abuse and neglect of incapacitated adults)
  - § 18.2-370 (Taking indecent liberties with children)
  - § 18.2-370.1 (Taking indecent liberties with child by person in custodial or supervisory relationship)
  - § 18.2-370.2 (Sex offenses prohibiting proximity to children)
  - § 18.2-370.3 (Sex offenses prohibiting residing in proximity to children)
  - § 18.2-370.4 (Sex offenses prohibiting working on school property)
  - § 18.2-370.5 (Sex offenses prohibiting entry onto school or other property)
  - § 18.2-370.6 (Penetration of mouth of child with lascivious intent)

  - § 18.2-371.1 (Abuse and neglect of children)
  - § 18.2-374.1 (Production, publication, sale, financing, etc., of child pornography)
  - § 18.2-374.1:1 (Possession, reproduction, distribution, solicitation, and facilitation of child pornography)
  - § 18.2-374.3 (Use of communications systems to facilitate certain offenses involving children)
  - § 18.2-374.4 (Display of child pornography or grooming video or materials to a child)
  - § 18.2-379 (Employing or permitting minor to assist in offense under article)
  - § 18.2-386.1 (Unlawful creation of image of another)
  - § 18.2-386.2 (Unlawful dissemination or sale of images of another)
- Any felony violation of:
  - § 18.2-405 (Riot)
  - § 18.2-406 (Unlawful assembly)
- Any violation of:
  - § 18.2-408 (Conspiracy; incitement to riot)
  - § 18.2-413 (Commission of certain offenses in a state of riot or insurrection)
  - § 18.2-414 (Injury to property or persons by persons unlawfully or riotously assembled)
  - § 18.2-423 (Burning cross on property of another or public place with intent to intimidate)
  - § 18.2-423.01 (Burning object on property of another or a highway or other public place with intent to intimidate)
  - § 18.2-423.1 (Placing swastika on certain property with intent to intimidate; penalty)

- § 18.2-423.2 (Displaying noose on property of another or a highway or other public place with intent to intimidate)
- § 18.2-433.2 (Paramilitary activity)
- § 18.2-472.1 (Providing false information or failing to provide registration information)
- § 18.2-474.1 (Delivery of drugs, firearms, explosives, etc., to prisoners or committed persons)
- § 18.2-477 (Prisoner escaping from jail)
- § 18.2-477.1 (Escapes from juvenile facility)
- § 18.2-477.2 (Punishment for certain offenses committed within a secure juvenile facility or detention home)
- § 18.2-478 (Escape from jail or custody by force or violence without setting fire to jail)
- § 18.2-480 (Escape, etc., by setting fire to jail)
- § 18.2-481 (Treason)
- § 18.2-484 (Advocacy of change in government by force, violence or other unlawful means)
- § 18.2-485 (Conspiring to incite one race to insurrection against another race)
- § 37.2-917 (Escape of persons committed)
- § 53.1-203 (Felonies by prisoners)

Or any substantiality similar offense under the laws of another jurisdiction; or any conspiracy of attempt to commit any offense listed in this clause.