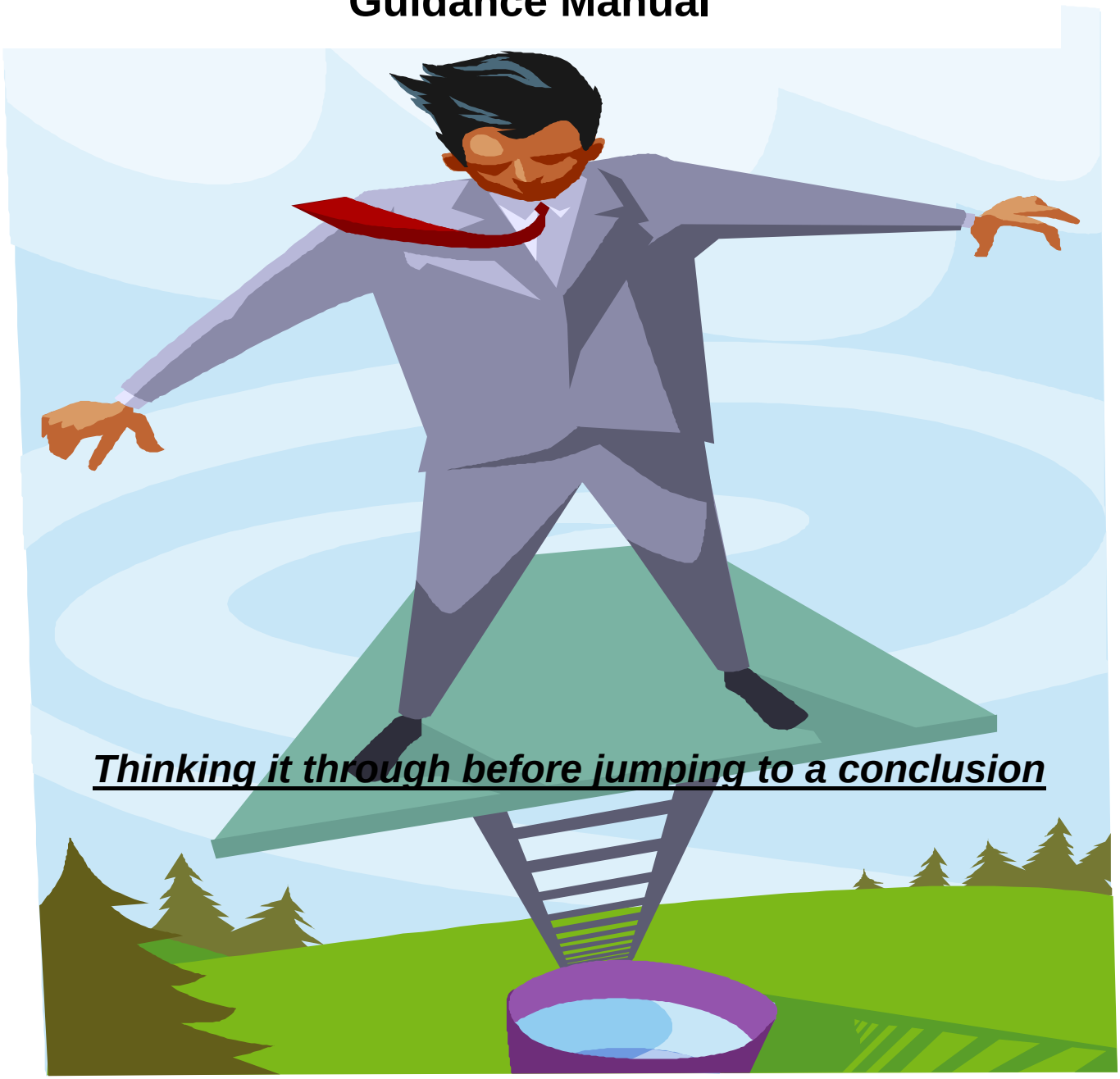
Virginia Department of Social Services

Division of Licensing Programs

Risk Assessment and Adverse Enforcement Guidance Manual



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A Guidance Manual for Assessing Risk and Determining Adverse Enforcement Options

I. Overview

This guidance manual is intended to assist the Division of Licensing Programs (DOLP) in providing better protection to individuals receiving services in adult or child care facilities and homes. This is accomplished by the development and implementation of a tool that enhances the uniformity in assessing risk of harm from violated standards considered critical to the health, safety, and human rights of persons in care. In addition, an expanded aspect of the tool is the ability to consider enforcement options for egregious violations, which includes detailed procedures for determining civil penalties for assisted living facilities. Portions of this document are intended to supplement the *Standard Operating Procedures (SOP)* on *Adverse Enforcement*.

The purpose of licensure and registration requirements is to ensure that consumers receive at least the minimum level of acceptable care. Unfortunately, because the threshold is set at the minimum level, there is no significant buffer or safety zone. That is, most violations pose some degree of risk for consumers. For this reason, risk assessment comes to the forefront of any type of facility/home inspection. While the expectation is that all providers achieve and remain in substantial compliance with all requirements of care at all times, the degree of risk posed by each violated requirement varies widely. In this risk assessment process, attention is focused on violations and patterns of violations that pose significant and obvious risk to consumers.

II. Goal

The goal of this guidance will be achieved by integrating the following components into a comprehensive risk assessment process:

A) Identifying regulatory requirements considered key to ensuring the health, safety, and human rights of consumers.

B) Developing a conceptual framework to assist in consistently evaluating potential or actual harm and appropriate enforcement options.

C) Implementing ongoing staff training activities in order to improve the decision-making process involved with the assessment of risks and the consideration of enforcement options.

D) Establishing a database to track trends in violations, associated risks, and enforcement actions taken for the purposes of accountability and staff education.

III. Definitions

Duration of violation – The longest length of time that at least one key health, safety, or human rights violation has been in a continuous, non-continuous, or intermittent state of non-compliance.

Short – The conditions that caused the violation have existed for a day or less.

Intermediate – The conditions that caused the violation to have persisted for at least two days but no more than two weeks.

Long – The conditions that caused the violation have persisted for more than two weeks.

Exacerbating variables – Variables that reflect internal or external characteristics of a person, place, or thing considered to have the potential to increase the risk of harm from a violation.

Mitigating variables – Variables that reflect internal or external characteristics of a person, place, or thing considered to have the potential to decrease or eliminate the risk of harm from a violation.

Nature or type of violations– The nature of violations relates to whether or not violated standards have been identified as key health, safety, and human rights standards.

Occurrence – A violation with the potential to result in harm.

Low (A) – Means harm is relatively unlikely.

Medium (B) – Means harm is more likely than not to occur.

High (C) – Means harm is likely to occur at any time, or that harm has already occurred.

Operation – The performance of an activity or function involving the practical application of principles or processes, e.g., sub-sections of a regulation that pertain to administration and administrative services, staff qualifications and training, staffing and supervision, resident care and related services, buildings and grounds, etc.

Pervasiveness – The degree to which violations are found throughout the operations of a facility.

Isolated – One or more violations in only one operation or regulation sub-section.

Scattered – Three or fewer violations in each of no more than two operations or regulation sub-sections.

Widespread - Four or more violations in each of two or more operations or regulation sub-sections.

Repeated – Any violation that has been observed over two or more separate inspections or investigations during the licensure period of the facility/home.

Risk – An expression indicating the reasonable likelihood that harm will result from a violation and if it does, the reasonable severity of harm likely to result.

Risk assessment – The process of identifying violations and assessing any associated risks for harm.

Risk management plan – A plan that is intended to eliminate or reduce opportunities for individuals to be harmed or injured from violations of licensure requirements by relying on indicators that act as early warning signs of a problem or on procedures that provide one or more additional barriers of protection if the primary barrier of protection should fail.

Severity – An assessment of the level of intervention(s) that would be needed by an individual(s), as reflected by the knowledge, skills, and abilities, to appropriately address actual or potential harm caused by a violation.

> Moderate (1) – Harm that can be appropriately addressed by intervention(s) provided by non-professional staff, e.g., a direct care staff member or a teacher's aide.
>
> Serious (2) – Harm that is non-life threatening or is a temporary condition that would require professional intervention(s) to appropriately address.
>
> Extreme (3) – Harm that reflects a life threatening partial or total physical and/or mental health condition that would require professional intervention(s) to appropriately address.

System – Two or more related processes or activities that lead to a certain outcome.

Systemic – When violations cited in one or more operations or sub-sections of a regulation are considered significant and related to inadequate management oversight.

IV. The Risk Assessment Process

> It is widely accepted that the accuracy of assessing risk of harm from an event is very susceptible to individual experiences, knowledge, and intuition of the assessor. To bridge the perceptual gaps among licensing staff in how they determine risk, achieving a common understanding of the circumstances giving rise to a violation, and a systematic approach to evaluating the impact of the violation on some individual or thing, must be an ongoing endeavor by the division. To minimize these perceptual differences among staff, all licensing offices are required on a routine basis to offer staff in-service training on assessing risk in the form of presentations by field experts, staff case presentations and discussions, literature searches and discussions, etc. To achieve a systematic approach to evaluating the impact of a violation, a risk

assessment process (see Appendix A) has been outlined with essential information for staff to consider as they inspect and interpret a situation involving a violation. As revealed by the flow chart, the process follows a circular route, i.e., beginning with a trigger (the violation) that sets the process in motion, and ending with staff training. Hence, this process reflects the heart of having an ever improving tool for assessing risk.

V. Instructions on Assessing Risk and Using the Risk Assessment Matrix

A) Key elements of health, safety, and human rights standards and the Division of Licensing Programs Help and Information Network (DOLPHIN) system.

1. In order to assure the protection of consumers, licensure and registration requirements provide the oversight for a number of areas in the operation of a facility or home. Generally, these areas (see also Appendix B) cover the following:

Staffing and supervision
Hygienic conditions
Environmental conditions
Physical, psychological, and emotional care
Medication and treatment practices and procedures
Reporting and Recordkeeping

2. The DOLPHIN system replaces many of the past manual procedures for reporting and recording findings from inspections, investigations, and other licensing activities. All regulatory licensure and registration requirements for adult and children's programs, with their relevant sections of the *General Procedures* and *Virginia Codes,* have been stored in the DOLPHIN database. This automation facilitates the licensing inspector's efforts in reviewing compliance with licensure or registration requirements, and provides for storage and retrieval of current and historical licensing information.

For relevant adult and children's programs, certain standards, general procedures, and code sections have been designated as being critical to the protection of consumers' health, safety, and/or human rights. These designations were determined by a statewide survey of licensing staff. Violations of these specially *flagged* standards will initiate DOLPHIN to prompt the inspector to assign a level of risk to the violation. DOLPHIN, in turn, assigns a pre-determined numerical weight according to the assigned level of risk. These steps are taken for all programs with the exception of the Religious Exempt and Voluntary Registration programs.

3. Although the inspector needs to become very familiar with this guidance manual, for quick reference the licensing inspector should have

a copy of the *Risk Assessment and Enforcement Options Matrix* (see Appendix C). The matrix is used as an aid in determining the level of risk or actual harm found in connection with any violations of key and/or widespread standards.

B) Violations involving key licensure requirements versus widespread and/or repeated non-key requirements

1. Violations of key requirements

Any violation of a requirement designated as key to the protection of a consumer's health, safety, and human rights, is automatically subjected to the matrix. Each violation of a key requirement is assessed individually for the level of risk to the consumer. As stated, DOLPHIN prompts the inspector to enter an assessed risk level for each violation of a key requirement. In turn, each risk level has a pre-determined numerical weight that DOLPHIN will use to calculate a total risk index score. This is discussed in greater detail later.

2. Widespread and/or repeated violations of non-key licensure requirements

Violations of requirements <u>not designated as key</u> are subject to the matrix when they are found to be widespread and/or repeated.

a) Widespread and/or repeated violations are likely to reflect a serious problem with management and the oversight of day-to-day operations at the facility/home through systematic monitoring and follow-up. Unless brought under control, safeguards that a facility/home might normally have in place to protect consumers are very likely to fail due to failures to comply with the policies and procedures of the facility/home, or due to the lack of policies and procedures.

Trigger: When violations are widespread (i.e., four or more violations in each of two or more operations), or when violations have been repeated (i.e., over two or more separate inspections during the licensure period), an overall assessment of risk shall be made to determine the actual or potential for harm to the consumers.

b) When assessing risk associated with violations that are widespread and/or repeated, it is not necessary to subject each individual violation to the matrix. (Only violations of standards designated as key to the health, safety, and human rights of individuals are subject to the matrix.) Rather, the attempt is made to assess the extent to which individuals in care might be harmed

by the collective impact of non-key licensure requirements that are violated. In other words, the inspector may determine that a single risk level, e.g., C-2, should be assigned to a group of non-key requirements due to the impact that the systemic problem will have on the individuals in care.

While DOLPHIN will calculate risk index scores for violations of key requirements for each inspection section, the determination of whether violations of non-key requirements are widespread, and/or repeated violations will require a visual inspection of these violations. DOLPHIN will, however, generate a report of all violations, i.e., key and non-key requirements.

C) Conceptual framework for assessing risk

1. Purpose

The matrix provides the conceptual framework to assist licensing staff with evaluating potential or actual harm. Information from this assessment may then be used to determine whether a need exists for greater oversight and/or appropriate enforcement options. Ultimately, the operation of a facility or home could adversely be affected by how well a provider manages the day-to-day operations to ensure the health, safety, and rights of individuals in care. In using the matrix, the assumption is that a violation was found of either a key or non-key standard (Steps 1 and 2 on the flow chart). The question that the licensing staff must then answer is, "What is the potential for harm to result, if it has not already, and how severe might the harm be to the consumer if it continues?" Again, according to the definition, risk is an expression indicating the potential for harm to result from a violation and the severity likely to be suffered. Hence, the matrix is constructed to permit the licensing staff to look at a violation along two dimensions or scales, i.e., the potential or actual *"occurrence"* of harm and the potential or actual *"severity"* of harm resulting from the violation (Step 3 on flow chart).

2. The construction of the matrix

The matrix is comprised of a two dimensional table of measurements. Specifically, there are nine (9) different combinations of letters and numbers that correspond to nine progressive levels of risk. The dimension referred to as *"Occurrence"* is on the y-axis (or vertical side) of the table. It indicates the potential or actual harm that could from a violation. This dimension is comprised of three progressive measures, i.e., *low, medium, and high*, which are denoted by the letters *A, B, and C*, respectively. If, however, harm has occurred, then the rating must be *C.* In other words, a rating of "high" means that harm is imminent (i.e., could occur at any moment) or has occurred.

The dimension referred to as *"Severity"* is on the x-axis (or horizontal side) of table. It indicates the level of intervention skills that would be required to treat or resolve conditions involving actual or potential harm. The dimension of severity is also comprised of three progressive measures, i.e., *moderate, serious, and extreme*, which are denoted by the numbers *1, 2, and 3*, respectively.

3. Guiding principles to use in determining the appropriate level of risk

Each standard is adopted because it defends against one or more risks to consumers; hence any violation is presumed to expose consumers to some degree of risk. Determining risk in human care is far from an exact science. There are many unknowns and inter-twined variables, many of which cannot be fully accommodated in a human care licensing response. However, by using knowledge acquired through training, education, research, experience, opinions of colleagues, and/or an expert in a relevant field, greater accuracy and consistency in assessing risk among licensing staff can be achieved. Relevant to training and educating licensing staff, the division has provided the following guidance for staff to use when attempting to determine the best judgment regarding the potential for harm to result from a violation of a licensure requirement. (See Step 3 on flow chart for the Risk Assessment Process).

When assessing risk:

a) determine whether there are exacerbating variables that may increase the potential for harm to occur to the person(s) in care. Exacerbating variables may be characteristics or conditions unique to the person(s) likely to be harmed or injured based on age, developmental, physical, mental, and/or emotional status. Or, exacerbating variables may be characteristics or conditions unique to the person(s) or non-human entity likely to cause actual or potential harm. When involving a person(s) who could cause harm, examples of these characteristics or conditions may relate to the sufficiency of knowledge, skills, and abilities, or to whether there is a history or propensity for criminal or abusive behavior, unstable mental and/or emotional functioning. When involving a non-human entity that could cause harm, examples of these characteristics or conditions may relate to the physical force, hazardous conditions, toxicity, operating or performance status, and the duration, repetition, and pervasiveness of any of the pertinent variables. It is important to remember that what may be an exacerbating variable for one may not be for another. Knowledge of the target population and/or the thing inflicting harm is critical to determining the impact of exacerbating variables.

b) determine whether there are mitigating variables that may decrease the potential for harm to occur to the person(s) in care. Mitigating variables are defined as planned contingencies, which take into account the characteristics of a person, place, or thing that may decrease or prevent the risk of harm from a violation. Better known as components of a risk management or risk reduction plan, these variables must be taken into consideration before deciding what level of risk to assess from a violation. In developing a risk management plan, the person implementing the plan has reason to believe (e.g., based on scientific literature or proven history) that the contingencies represent an extra layer of protection. As in the case of exacerbating variables, whether a particular variable lessens the risk for harm to a person(s) may depend on characteristics or conditions unique to that person(s).

Just as the person implementing risk management contingencies needs to have sound reasons for the elements of the plan, any consideration by licensing staff of these variables or contingencies in determining the level of risk must be based on sound judgment. This judgment must be based on being adequately informed, via training, research, expert opinion(s), etc., about what things could elevate risk and what things could lower or prevent risk.

c) determine risk based on the potential for harm to occur and do not assign the lowest risk level rating, or none at all, on the basis that actual harm did not result from a violation. The task is to assess the potential for harm to occur.

d) determine whether a risk level rating should be lowered on the basis that the facility has implemented a risk management plan that unequivocally prevented or reduced the degree of harm that could have occurred from a violation.

e) do not lower a risk assessment rating on the basis that the provider promises to correct a problem or will never violate a particular standard again. Although any promises to fix problems affect the future, the incident that already occurred still has the potential to cause harm during the immediate and distant future.

f) when there is obvious harm, the likelihood of occurrence of harm rating should automatically be assessed as a C. When in doubt about whether harm has occurred, the licensing staff should consult other resources, e.g., medical or mental health experts, peers, supervisor, etc. Some situations could involve a person receiving a drug or being affected by an action of another person where the effects may not be noticeable for days later.

g) when the degree of severity of an actual harm is less than the degree of severity expected (the expected is based on available research findings, expert opinion, and/or consultations with staff within the division) the rating must always be assessed at the degree of severity expected and not the actual severity of the harm that occurred. The rationale is that mere good luck during a particular incident does not alter the assessment.

h) when the degree of severity of an actual harm is greater than the degree of severity expected, the rating must always be assessed at the degree of severity that actually occurred and not based on the expected severity. The rationale is that actual harm is the real event and outweighs the theoretical estimation.

i) when assessing the potential severity of harm, the severity must be considered in the context of the knowledge, skills, and abilities needed by an individual(s) to implement a certain level of intervention(s) to appropriately and effectively address the harm caused by a violation, e.g., moderate severity implies that the intervention(s) required would not exceed the skills possessed by direct care staff or a teacher's aide.

4. Locating the risk level rating on the matrix

To determine the coding for a certain level of risk (Step 4 on flow chart), first determine whether potential or actual harm from a violation has occurred by selecting the corresponding letter, .i.e. A, B, or C. Next, determine the potential or actual degree of harm that may or has occurred from a violation by selecting the corresponding number, i.e., 1, 2, or 3. For instance, a risk level of A-3 means that there is a low potential that a violation will result in harm (i.e., A), but if harm does occur, the degree of harm will most likely be extreme (i.e., 3). If, however, we are no longer considering the potential for harm to occur, but actually find immediate and obvious harm from a violation, then the assessment rating from the scale related to "Occurrence", i.e., the "y-axis", must be C, as stated earlier. The assessor, then, needs only to estimate the severity of harm that occurred. Consultation with an appropriate professional is recommended if the degree of harm has not been determined by a person with the appropriate qualifications or credentials.

Two scenarios are provided below to illustrate the process of assessing risk.

Child Daycare Center (CDC): During an unannounced inspection of a CDC, the licensing inspector (LI) requested records of the monthly evacuation practice drills. The administrator said that she could not get to them at the time because the files were boxed up due to the renovation being done in the administration office. The LI observed that the two-story building had a sprinkler system on both floors. Also both floors were found to have a primary and secondary means of egress. The LI determined from a review of work schedules that the center has been adequately staffed for the number of children in care. The administrator asked if the evacuation drill reports could be mailed to her in a couple of days. Although the LI agreed to this arrangement, the administrator failed to provide the reports after two phone call attempts by the LI to secure them. The LI interpreted this failure to mean that the practice drills had not been conducted.

Violation cited: Failure to conduct evacuation drills.

Risk level rating assessed: The LI determined that the likelihood of harm occurring from the failure to conduct the drills to be low (A), but that should harm had occurred the severity would most likely have involved at least a serious degree of harm (2). The LI based her assessment on the following findings:

- the building had a sprinkler system
- each floor had a designated primary and secondary evacuation route, which staff could correctly identify
- there were no children in care who would require unusual assistance in evacuating the building
- there was no indication that there would have been a problem with having adequate staff to safely evacuate the number of children in care
- the facility had not been cited previously for this violation since being licensed
- information obtained from a representative from the fire department stated that in light of the number of fires they respond to, the incidents of injuries are very low, but that when there were injuries, victims were sent to the hospital with non-life threatening injuries

Assisted Living Facility (ALF): An LI happened to be at an ALF when residents were being returned to the facility from a field trip. In spite of the facility's policy and procedures requiring a head-count by the driver of the residents as they exited the vehicle upon arriving at their destination, a 79 year-old, physically frail resident with advanced Alzheimer's disease was discovered sleeping on the van. The van driver clearly had neglected to account for all residents. The discovery of the sleeping resident was the result of a second head-count procedure that is required to be done by a second staff within 5 minutes of residents reaching their destination. The LI observed the second staff escorting the resident off the van and determined that no more than 5 minutes had elapsed between the time the van arrived and when the sleeping resident was discovered.

Violation cited: Failure to protect the physical and mental well-being of residents.

Risk level rating assessed: The LI determined that the likelihood of harm occurring from the failure to conduct a head-count of all residents on the van after returning from a trip was imminent (C) and that the severity of harm, had it occurred, would have been of an extreme degree (3). The LI based his assessment on the following factors:

- the resident has a diagnosis of advanced Alzheimer's disease and was determined to be unable to protect self
- the resident's physical health was determined to be frail and easily compromised by extreme temperatures, i.e., hot or cold.
- the inspector's research on heat-related injuries revealed that the temperature in a vehicle can rise 19 degrees in 10 minutes and that the temperature existing at the approximate time of the incident was 85 degrees

Risk Mitigation: The LI was asked by the administrator to consider the facility's risk management plan implemented for transporting residents to and from the facility. After reviewing the facility's risk management plan and other relevant information, the LI determined that it would be appropriate to adjust the risk level rating from a C-3 to a B-3. The LI based the adjustment on the following findings:

- the LI did confirm that the plan requires that within 5 minutes after arriving at a destination, a staff person other than the van driver must conduct a second head-count of all residents. This procedure was carried out.

- although the sleeping resident was discovered within 5 minutes, had the resident woken up, there was time for the resident to walk off the van without supervision
- a review of the roll call records for trips taken over the past 6 months showed that a second staff member did consistently conduct a head-count and signed the required head-count record after each trip.

D) Determining risk index scores and the role of DOLPHIN

1. Risk index score for individual regulatory sections vs overall risk index score for the facility/home

The determination of a risk index score for a regulatory section or sub-section and/or the overall risk index score for the facility/home will be performed by DOLPHIN. Specifically, each of the nine (9) risk levels has been assigned a numerical weight that progresses in magnitude as the level of risk increases. The intent of this procedure is to provide some sense of how pervasive and harmful the problems may be in a particular area of operation or throughout the entire facility/home. Once the risk level has been determined for individual key standards or for a group of non-key standards, the next step involves DOLPHIN adding the values to determine a score for each regulatory section and/or for the overall facility/home. Not far in the future, the division will be using this scoring procedure to assist in determining licensure. However, for now, it is important to note that interpretive statements about a score or scores obtained by a facility/home will be limited until guidelines can be developed for making inferences about the outcomes. As the division aggregates more and more data about how facilities perform, it may be necessary to adjust the scoring weights currently used.

The assigned weights have been programmed into DOLPHIN as follows:

A-1= 2	B-1= 8	* C-1= 10
A-2= 4	* B-2= 12	C-2= 16
A-3= 6	* B-3= 14	C-3= 18

* A decision was made to reverse the assigned weights for risk levels B-2, B-3, and C-1. Although harm is considered imminent (or has happened) with an assessment of C-1, the opinion was that a B-2 and B-3 necessitated a higher weight because harm is not only *likely to occur*, but will either be of a *serious* to *extreme* level of severity.

2. An example of the above procedure can be illustrated by the following violations found in the regulatory section pertaining to *Buildings and Grounds for an assisted living facility:*

Key Standards Violated	Assessed Risk	Assigned Weight
General requirements (840.A)	A-1	2
Maintenance of buildings and ground (850.B)	B-2	12
Maintenance of buildings and ground (850.C)	B-2	12
Heating, ventilation, and cooling (860.A)	C-3	18
Lights and lighting fixtures (870.D)	C-2	16
Toileting, handwashing and bathing (890.D.1)	C-2	16
	Risk Index for this regulatory section =	76

To obtain the overall risk index for the facility/home, the scores from all regulatory sections are totaled.

VI. Instructions for Using the Table of Adverse Enforcement Options

A) Purpose

When enforcement actions are deemed necessary, assistance with selecting the most appropriate option(s) is available by using a reference table located beneath the matrix (Steps 5 on flow chart). As with using an automated scoring system to help in determining the type of license to issue, hopefully in the near future, this scoring system will assist licensing staff with determining the type of sanction to issue. The table reflects a stepwise progression of enforcement options that apply to adult and childcare facilities and homes when they have been found to place individuals at risk for serious harm.
Staff should also refer to the SOP on *Adverse Enforcement* for a more extensive treatment of this subject. Before deciding on an enforcement action to recommend, consideration must be given to enforcement-related mitigating variables.

Enforcement-related mitigating variables: These are variables that reflect any course of action taken or planned by licensing and/or the service provider with the intent to reduce or prevent the future occurrence of violations and any associated harm. Examples of enforcement-related mitigating variables are the facility/homes' ability/willingness to respond immediately and appropriately to protect persons in care, to develop and implement an appropriate plan of correction in a timely manner, and the compliance history of the facility/home. Another type of information that may have mitigating influence is the licensing division's consideration of its own history of enforcement responses to similar violations. In other words, consistency of enforcement responses to similar violations may negate any consideration of the facility/home's ability/willingness to take corrective actions because of the seriousness of the violation(s). For instance, a child daycare center that loses a child or an assisted living facility that

seriously under or over medicates a resident is almost certain to receive an intermediate or ultimate sanction. Whatever the decision regarding the recommended enforcement action, the justification must be well documented and retained in the case file.

B) Construction and use of the Table of Adverse Enforcement Options

1. There are three shaded rectangular blocks following the matrix containing the enforcement options.

2. Although the options are arranged progressively, they are not necessarily used progressively; they are applied according to assessed risk and according to the conditions in the facility and facility-management. For example, a facility that has not responded to a previous lower-level intervention is not a good candidate for that same level or type of enforcement intervention. The logic is also that failure to achieve and maintain reliable compliance elevates consumer risk, i.e., equates to an undependable environment.

3. It is also important to note that licensing staff is obligated to consider the options as directed by the matrix.

4. The enforcement options begin with corrective action and consultation. This is followed by the consideration of intermediate sanctions and concludes with the consideration of forcible closure sanctions, i.e., revocation or denial. For example, if a violation was rated A-1, i.e., assessed as having a low potential of causing harm, and only causing minor harm if it does occur, then the enforcement option might be consultation only. Another option could be corrective action and consultation plus a civil penalty. If a violation was rated C-3, i.e., assessed as having a high potential of causing harm, and causing extreme harm if it does occur, then revocation or denial must be considered.

5. It is very important to remember that the table of enforcement options is intended to aid the decision-making process, not to replace judgment and other sources of information, e.g., the facility's history of effectively and promptly resolving problems.

VII. Communication and Documentation Requirements after deciding on the Risk Level and an Adverse Enforcement Option

A) Communicating Findings

1. Communicating with the licensee about inspection findings

In order for licensees to improve in their protection and care of children and adults under their supervision, they must clearly understand any potential risk of harm, or actual harm, associated with violations, and the expectation to implement an appropriate plan of preventive correction. When communicating the findings from a risk assessment, the licensing inspector should avoid using jargon, such as, A-1, B-2, etc. In addition, the inspectors should explain, with as much detail as possible, that the risk level determination was reached by considering variables such as the nature and repetition of the violation, characteristics of the target population that make this population especially vulnerable, and the level of skills which were or would be required to provide the necessary interventions to prevent or treat the injury. The inspector should explain in simple language that the level of risk was determined by analysis of the facts of the violation, e.g., consideration of the opinions and/or recommendations of persons consulted within the DSS licensing division, relevant research literature, outside professional consultants, and/or one's own personal experiences.

2. DOLP's Recordkeeping

The DOLPHIN system replaces the Compliance Record and Review Form that was formerly used, in part, to document the findings of an inspector's risk assessment. Being able to defend the risk assessment requires that the justification(s) for whatever determinations reached be sound and well documented. Licensing staff shall document information that they considered in their assessment in the comment section provided in the Compliance menu located in the licensing inspection module (LIM). Another location in the LIM for this documentation on relevant violations is on the violation notice.

B) Staff Training

Undeniably, staff training is an extremely important component of the risk assessment process. Training, particularly ongoing training, increases standardization in how information is interpreted and applied in the field. Through intensive training, the division is in a much better position to achieve consistency in enforcement. Hence, the expectation of DOLP management is that training on risk assessment be included as a topic in all monthly regional unit meetings. The format for such training may include case presentation and discussion. In addition, DOLP staff development activities will augment regional training by offering opportunities to learn from experts within and outside of our agency.

C) Database

Currently, the division is setting up a special database to track enforcement activities. The expectation is that the information will help make the division become more accountable for enforcement decisions made, and may also be

used as part of the training program on risk assessment. On a regular basis, DOLP will provide each regional licensing office with a report on all enforcement activities.

Appendix A

Risk Assessment Process and Matrix

FLOW CHART FOR THE RISK ASSESSMENT PROCESS

Staff Training

Step 1 **Risk Assessment Triggers**

- **Violations cited during licensing inspections, complaint and allegation investigations**

Step 2 **Determine Type of Violations**

- **Violations of Key Health, Safety, & Human Rights Standards**
- **Other Violations (i.e., non- key)**

Step 3 **Assess Potential or Actual Occurrence and Severity of Harm**

Consider Exacerbating and Mitigating Variables before assigning risk.

- **History of Similar Events and Current Prediction of a Similar Event in the Immediate Future**
  - ✓ Low
  - ✓ Medium
  - ✓ High
- **History of Past Harm from Similar Events and Current Prediction of Harm from a Similar Event in the immediate Future**
  - ✓ Moderate
  - ✓ Serious
  - ✓ Extreme

Enforcement Analysis and Problem Identification

Step 4 **Risk Level From Matrix**

Assign risk level by locating intersection point for occurrence and severity of harm to persons in care. **The assessed risk level must be made separate from any consideration of enforcement options.**

Assessing risk stops here →

Deciding on enforcement action begins here →

Step 5 **Select Risk-Justified Enforcement Action**

based on:

-- History of Facility's Management of Operations

- ✓ Level of demonstrated prevention-based compliance
- ✓ Resourcefulness in problem resolution

-- Consistency of Enforcement Decisions reached for Similar Violations

-- Other Enforcement-Related Mitigating Factors.

Note: If the inspector recommends an enforcement action that deviates from the matrix placement, prepare justification and seek concurrence from Administrator. Consult with Central Office as necessary.

Database

-Types of Violations
-Associated Risks
-Enforcement actions

Appendix B

INVENTORY OF KEY HEALTH AND SAFETY STANDARDS

A. Staffing and Supervision

- Sufficient staff
- Adequate supervision
- Adequate personnel management

B. Hygienic Conditions

- Clean and odor free environment
- Optimal hand washing practices and universal precautions
- Clean supplies and equipment
- Proper disposal of body fluids

C. Environmental Conditions

- Proper maintenance of equipment
- Proper (management of) storage of hazardous substances
- Proper maintenance of plant and premises, e.g. burn hazards, fall hazards
- Well developed emergency preparedness plans- with resources (battery radios, 1st aid, etc.), drills

D. Physical, Psychological and Emotional Care

- Appropriate behavior management and physical interventions
- Appropriate programs, activities and services (that meet individual and group needs)
- Appropriate health services (including mental health)
- Elimination of abuse, neglect, exploitation (mental, emotional, physical, financial, and other human rights not stated here)
- Medication and Treatment Practices and Procedures
- Adhering to physician's order

- Securing medications or supplies and equipment
- Staffing with qualified staff to administer medications and/or treatments
- Properly disposing of unusable medications or unusable supplies and/or equipment
- Providing and/or securing timely medical assistance as needed
- Appropriately documenting all administrations of medications and/or treatments

F. Reporting and Recordkeeping

- Ensuring appropriate documentation
- Ensuring compliance with laws that apply to agency or facility
- For child-placing agencies, following procedures for submission to court and court review of foster care service plans and submitting adoption progress reports to court
- For child-caring institutions, following confidentiality requirements of the law, receiving placement agreements from parents or legal guardian
- Reporting suspected child or adult abuse and neglect

Appendix C

Risk Assessment Matrix and Adverse Enforcement Options

OCCURRENCE Step 1: Potential for violation to result in harm?	1) Moderate	2) Serious	3) Extreme
C) High Harm is imminent or has occurred	**C-1**	**C-2**	**C-3**
B) Medium Harm is likely to occur	**B-1**	**B-2**	**B-3**
A) Low Harm is not likely to occur, but possibility exists	**A-1**	**A-2**	**A-3**

SEVERITY
Step 2: Potential or actual degree of harm from violation?

1) Moderate

A violation could or did cause minor harm to a consumer but would or did not require intervention(s) beyond the knowledge, skills, and abilities of direct care staff, teachers, or aides to address the problem, e.g., for one medication administration, a staff failed to give a high-blood pressure med on a single occasion to a resident who currently is medically stable. There are no indications of a medication administration problem in the facility.

2) Serious

A violation could or did cause significant harm to a consumer and would or did require professional intervention(s) such as from medical or mental health professionals to address the problem, e.g., the lack of supervision resulted in a child breaking her arm after gaining access to a piece of playground equipment that was not age appropriate.

3) Extreme

A violation could or did cause harm to a consumer resulting in a life-threatening (if not actual death), or a permanent partial or total disability in the area of physical, emotional and/or psychological functioning, e.g., a teacher gave a child peanut butter and crackers in spite of there being a visible notice on the child's file indicating the life-threatening allergy to peanut products.

The assessment of risk will be influenced by the following conditions:

1. Whenever harm has resulted from a violation, the likelihood of occurrence rating must always be assessed as a "C."
2. Whenever the degree of severity from an actual injury is less than the degree of severity expected under the violated conditions, the rating must always be assessed at the degree of severity expected and not the actual severity that resulted.
3. Whenever the degree of severity from an actual injury is greater than the degree of severity expected, the rating must always be assessed at the degree of severity that actually occurred and not the expected severity.
4. Variables that may affect the risk rating:
   (a) Exacerbating characteristics of violations to consider: nature (or type); repetition (rare, episodic, or frequent); pattern (isolated, scattered, or systemic); duration of exposure (length of impact); speed (acceleration of impact), etc.
   (b) Exacerbating characteristics of the affected individual or population: physiological development, status of mental, emotional and physical health, etc.
   (c) Mitigating variables: enhanced physical safety features or surveillance of building or landscape, staffing above required number, training above required KSA's, annual skills proficiency test requirement, etc.

The assessment of risk must always be based on professional experience and, whenever needed, on consultation with field or home office staff, review of research, or expert(s) from a relevant field of study or practice.

TABLE OF ADVERSE ENFORCEMENT OPTIONS

At Minimum, Consultation Is Provided A-1=2 A-2=4 A-3=6	Intermediate Sanctions Must Be Considered A-3=6 B-1=8 C-1=10 B-2=12
Revocation/Denial Must Be Considered **B-2=12 B-3=14 C-2=16 C-3=18**	
Must consider the following variables before recommending an enforcement option: history of demonstrated prevention-based compliance, resourcefulness in problem resolution, consistency of enforcement actions for similar violations.	

Appendix D

Examples of Factors Affecting The Potential for Harm

High: Means harm is imminent because of the nature of the violation and/or population.

Examples: Unsafe playground, improper refrigeration; lack of sight/sound supervision, unqualified person administering medication, administering wrong medications, admitting inappropriate residents, failure to refer residents with serious physical and/or psychiatric conditions for appropriate help, failure to remove or secure hazardous substances, failure to eliminate hazardous areas or repair hazardous equipment, furnishings, or parts of building construction.

Medium: Means harm is likely to occur.

Examples: Failure to adhere to asbestos management plan, two or three incidents of not administering medication for high blood pressure, not consistently and thoroughly documenting a resident's needs and developing a care plan in the individualized service plan, a staff member feels nothing is wrong with using profanity when speaking to children but agrees to make an effort to stop, a resident is receiving psychotropic medication for mental illness but is not involved in psychosocial rehabilitation services as ordered by his physician.

Low: Means harm is less likely to occur, but the possibility exists. With respect to time, the event is unpredictable but would seldom happen, such as once or twice a year or less.

Examples:

A resident has not received her vitamin pill for several weeks, the facility has not developed an emergency evacuation plan, an immunization record has not been received for one child, there is no screen for a window in the room used to care for preschool children in a child day center, a light is out on the 1st floor hallway in an assisted living facility where there are geriatric residents.

Appendix E

Examples of Severity of Harm

Extreme: Means the following:

1) The potential physical impact in the form of an injury or disease that could result in death, hospitalization, or the need for emergency medical care;

2) A child-placing agency's action or failure to act that results in disrupted placements, illegal adoptions, irreversible placement decisions, or abuse or neglect of a child in its care;

3) An emotional, psychological, or legal impact that has the potential to leave lasting effects that will require long term therapeutic, in-patient care, and/or legal action to correct;

4) A child caring institution's action or failure to act that results in abuse or neglect.

Examples: Potentially life-threatening injury/illness, medication mismanagement or diversion, physical/emotional abuse including sexual molestation, and exposure to a highly contagious disease; financial mismanagement that could result in agency or facility closure; for child-placing agencies: placements without the legal authority to do so; failure to follow the mandated termination of parental rights procedures; failure to receive criminal record or child protective services checks on foster parents or adoptive parents before placement; failure to follow Code mandated service plan requirements for children in agency custody.

Serious: Means the following:

1) The potential physical impact that is likely to require medical care for an injury or disease or medication error with a recuperation period of several days (in-patient care may or may not be required)

2) A psychological, emotional or legal impact that has a noticeable effects for a similar length of time (or on a short-term basis);
3) A child-pacing agency's actions or failure to act that results in inappropriate placements, lack of service planning or provision of services.

Examples: Injury/illness that requires health care for symptomatic or preventive treatment, or moderate physical/emotional abuse that requires short-term attention from health professionals; for child-

placing agencies: not obtaining all required admission documentation to make appropriate placements; a pattern of not completing service plans; failure to provide agreed upon services.

Moderate: Means the following:

1) The potential physical or emotional impact that requires only minor care in the home or facility, with little or no interruption in daily activities and no oversight from a health care professional. In-patient care is not required. For child-placing agencies, there is no disruption in placement or abuse of children in care.

Examples: Minor injury/illness or minor emotional upset that requires only brief attention; for child-placing agencies: some children have not received annual medical or dental check-ups; caseworker briefly exceeds caseload requirements during short-term staff shortage.