

**REGULATION GOVERNING THE MONITORING, APPROVAL, AND  
CERTIFICATION OF JUVENILE JUSTICE PROGRAMS AND FACILITIES**

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CHAPTER 20  
REGULATION GOVERNING THE MONITORING, APPROVAL, AND CERTIFICATION  
OF JUVENILE JUSTICE PROGRAMS AND FACILITIES

**Part I Definitions and General Provisions**

**6VAC35-20-10. Definitions.**

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Appeal of a finding of noncompliance" means the action taken by a facility or program administrator after a certification audit when there is disagreement with a finding of noncompliance with an individual regulatory requirement.

"Audit team leader" means the person designated by the director or designee to organize and facilitate the certification audit or the audit of a VJCCCA program or office on youth.

"Board" means the Virginia Board of Juvenile Justice.

"Certification" or "certified" means the formal finding that a facility is approved to operate for a specific period of time as provided for in 6VAC35-20-100.

"Certification action" means the department's decision to issue or deny certification or to decertify a program or facility as provided for in 6VAC35-20-100 or the board's decision to take action pursuant to 6VAC35-20-115.

"Certification audit" means the process by which designated personnel assess a program's or facility's compliance with applicable regulatory requirements, which includes an on-site visit, the results of which are reported in a certification audit report for certification action as provided for in 6VAC35-20-100. All facilities and court service units regulated by the board shall be subject to certification audits.

"Certification audit report" means the official report of certification audit findings prepared by the audit team leader as provided for in 6VAC35-20-90.

"Certification status" means the type of certification issued to a program or facility, which includes the period of time specified in the certificate, during which the program or facility is approved to operate and must maintain compliance with its regulatory requirements and any corrective action plan.

"Compliance" means meeting the requirements of a standard or an applicable board policy.

"Compliance documentation" means specific documents or information including records, reports, observations, and verbal responses to establish or confirm compliance with a regulatory requirement by a program or facility.

"Conditional certification" means a temporary certification status issued to a new or newly opened facility as provided for in 6VAC35-20-100.

"Corrective action plan" means a written document that, in accordance with 6VAC35-20-91, states what has been or will be done to bring all deficiencies into compliance with regulatory requirements.

"Critical regulatory requirements" means those regulatory requirements for programs or facilities, as defined by the board that must be maintained at 100% compliance. Critical regulatory requirements were previously termed "mandatory standards."

"Decertified" means a status imposed in accordance with 6VAC35-20-120 when it is determined that a program or facility has not met an acceptable percentage of compliance with its regulatory requirements as provided for in 6VAC35-20-85.

"Deficiency" and "noncompliance" means that the program or facility (i) does not meet, or has not demonstrated that it meets regulatory requirements or (ii) does not comply with the Virginia Juvenile Community Crime Control Act local plan approved by the board.

"Department" means the Virginia Department of Juvenile Justice.

"Director" means the Director of the Department of Juvenile Justice.

"Health, welfare, or safety violation" means any action or omission that causes an immediate and substantial threat to the health, welfare, or safety of the juveniles or staff in juvenile residential facilities.

"Juvenile residential facility" or "facility" means a publicly or privately operated facility or placement where 24 hour-per-day care is provided to residents who are separated from their legal guardians and that is certified pursuant to this chapter. As used in this regulation, the term includes juvenile group homes and halfway houses, juvenile secure detention centers, and juvenile correctional centers.

"Monitoring review" means a review by designated department personnel assessing the program's or facility's compliance with regulatory requirements. A monitoring review may be conducted via electronic means and does not require on-site examination of the program or facility. A monitoring review may be done in conjunction with a program's or facility's self-audit, which is provided for in 6VAC35-20-61.

"Monitoring visit" means an on-site evaluation and inspection by designated personnel to assess a program's or facility's compliance with regulatory requirements.

"Newly opened facility" means (i) a facility that is newly constructed or (ii) an existing facility that is being placed in service as a juvenile residential facility.

"Office on Youth" means nonresidential programs funded via the Virginia Delinquency Prevention and Youth Development Act (Chapter 3 (§ 66-26 et seq.) of Title 66 of the Code of Virginia).

"Preliminary summary suspension order" means an order issued by the director as provided in 6VAC35-20-37 taking immediate action against a program or facility when there is a known substantial health, welfare, or safety threat. This order is issued summarily prior to review by the board and is subject to due process protections after issuance.

"Probationary certification" means the temporary status granted to a program or facility to provide a period of time in which to demonstrate compliance with regulatory requirements.

"Program" means a court service unit or a nonresidential service subject to applicable regulatory requirements. For the purpose of this regulation, VJCCCA programs and offices on youth are not included in this definition.

"Program or facility administrator" means the individual responsible for the operations of a program, or facility subject to regulatory requirements.

"Regulatory requirement" means a provision of a regulation promulgated by the board to which a program or facility must adhere. A section, subsection, or subdivision of a regulation may include multiple regulatory requirements as provided for in 6VAC35-20-85.

"Status report" means a report that summarizes a review of the areas on which there was a finding of noncompliance and states the program's or facility's compliance standing indicated through the review. For a status report, the regulatory requirements are monitored at the same level of compliance as assessed in the certification audit.

"Summary suspension order" means an order issued by the director in accordance with § 66-24 of the Code of Virginia and 6VAC35-20-37 temporarily suspending a program's or facility's certification.

"Variance" means a board action that relieves a program or facility from having to meet a specific regulatory requirement or develop a corrective action plan for that regulatory requirement for a determined period of time

"VJCCCA program" means a nonresidential program established under the Virginia Juvenile Community Crime Control Act (Article 12.1 (§ 16.1-309.2 et seq.) of Chapter 11 of Title 16.1 of the Code of Virginia).

"VJCCCA program or office on youth audit" means the on-site visit by designated department personnel to assess a program funded through the Virginia Juvenile Community Crime Control Act (Article 12.1 (§ 16.1-309.2 et seq.) of Chapter 11 of Title 16.1 of the Code of Virginia) or the Virginia Delinquency Prevention and Youth Development Act (Chapter 3 (§ 66-26 et seq.) of Title 66 of the Code of Virginia) for compliance with the regulatory requirements as provided for in 6VAC35-150 (Regulation for Nonresidential Services) and 6VAC35-60 (Minimum Standards for Virginia Delinquency Prevention and Youth Development Act Grant Programs), as applicable.

"VJCCCA program or office on youth audit report" means an official report of a VJCCCA program or office on youth audit.

"Waiver" means a formal statement from the department temporarily excusing a program or facility from meeting a noncritical regulatory requirement pending board action on a formal variance request.

"Written" means the required information is communicated in writing. Such writing may be available in either hard copy or electronic form.

### **6VAC35-20-30. Purpose.**

This regulation prescribes how, in accordance with §§ 16.1-234, 16.1-249, 16.1-309.9, 16.1-309.10, 16.1-349, 66-10, 66-24, and 66-25.1:3 of the Code of Virginia, (i) the department will monitor and audit juvenile residential facilities, programs, VJCCCA programs, and offices on youth; (ii) the department will certify residential facilities and state-operated and local court

service units that are part of the Commonwealth's juvenile justice system; and (iii) the board will review certification audit reports of programs and facilities found in noncompliance with applicable regulatory requirements.

#### **6VAC35-20-35. Guidance documents.**

To help programs and facilities meet all regulatory requirements, the department shall prepare guidance documents compiling all regulatory requirements applicable to each type of program or facility subject to this chapter and stating how compliance will be assessed. The guidance documents shall serve as the basis for monitoring visits, monitoring reviews, certification audits, and VJCCCA program or offices on youth audits. The guidance documents shall be posted on the department's website at <http://www.djj.virginia.gov>.

#### **6VAC35-20-36. Program or facility relationship to regulatory authority.**

A. The program or facility shall submit or make available to the audit team leader such reports and information required to establish compliance with applicable regulatory requirements. Documentation supporting compliance with regulatory requirements shall be retained by the program or facility from the date of the previous certification audit or VJCCCA program or office on youth audit.

B. The program or facility administrator shall notify the director or designee within five business days of any significant change in administrative structure or newly hired chief administrative officer or program or facility administrator or director.

C. The program or facility administrator shall, in accordance with the process established by the department, notify the director or designee of the following:

1. Any serious incidents affecting the health, welfare, or safety of citizens, individuals under the supervision of the department, or staff;
2. Lawsuits against or settlements relating to the health, welfare, safety, or human rights of residents; and
3. Any criminal charges or reports of suspected child abuse or neglect against staff relating to the health, welfare, safety, or human rights of residents.

#### **6VAC35-20-36.1. Department response to reports of health, welfare, or safety violations.**

Whenever the department becomes aware of a health, welfare, or safety violation, the department shall take immediate action to correct the situation if not already done by the program or facility. The department's actions may include, but are not limited to, the following:

1. Reporting the situation to child protective services, the Virginia State Police or the law-enforcement agency with jurisdiction, or other enforcement authorities, as applicable and appropriate; or
2. Taking any action authorized in 6VAC35-20-37 for violations in a juvenile residential facility.
3. Reporting to the board no later than its next regularly scheduled meeting (i) the nature and scope of the health, welfare, or safety violation and (ii) the action taken by the department or the program or facility to correct the violation.

### **6VAC35-20-37. Director's authority to take immediate administrative action.**

A. Nothing in this regulation shall be construed to limit the director's authority to take immediate administrative action in accordance with law whenever (i) evidence is found of any health, welfare, or safety violation or (ii) a program or facility is not in compliance regulatory requirements or the Virginia Juvenile Community Crime Control Act requirements. Such administrative action may include, but is not limited to (a) withholding funds; (b) removing juveniles from the program or facility; (c) placing the program or facility on probationary certification status for up to six months pending review by the board pursuant to 6VAC35-20-115; or (d) summarily suspending the certificate pursuant to subsection B of this section. In taking such action, the department shall notify the program or facility administrator, the administrative entity to which the program or facility reports, and the board, in writing, of the reason for the administrative action and the action the program or facility must take to correct the violation.

B. In accordance with subsection A of this section, the director may issue a preliminary summary suspension order of the certificate of the juvenile residential facility regulated by the board as follows:

1. A preliminary summary suspension order may be issued when conditions or practices exist in the facility that pose an immediate and substantial threat to the health, welfare, or safety of the residents including, but not limited to, the following:

- a. Violations of any provision of applicable laws or applicable regulations made pursuant to such laws;
- b. Permitting, aiding, or abetting the commission of any illegal act in the regulated facility;
- c. Engaging in conduct or practices that are in violation of statutes related to abuse or neglect of children;
- d. Deviating significantly from the program or services for which a certificate was issued without obtaining prior written approval from the regulatory authority or failing to correct such deviations within the specified time; or
- e. Engaging in a willful action or gross negligence that jeopardizes the care or protection of the resident.

2. The director shall immediately upon issuance of the preliminary summary suspension order and without delay notify the certificate holder verbally and in writing via (i) facsimile, (ii) electronic mail, or (iii) hand delivery of the issuance of the preliminary order of suspension and the opportunity for a hearing before the director or designee within three business days of the issuance of the preliminary summary suspension order. The chair of the board must be notified immediately when the director issues a preliminary summary suspension order. In accordance with 6VAC35-20-36.1, the director shall report the action taken to the board no later than its regularly scheduled meeting.

- a. The certificate holder may decline the opportunity for an appeal to the director or designee.
- b. Whenever an appeal is requested and a criminal charge is also filed against the appellant involving the same conduct, the appeal process shall be stayed until the criminal prosecution is completed. During such stay, the certificate holder's right of access to the records of the department regarding the matter being appealed shall also be stayed. Once the criminal

prosecution in court has been completed, the department shall advise the appellant in writing of his right to resume his appeal within the time frames provided by law and regulation.

3. The certificate holder may appear before the director or designee by personal appearance or by telephone. Any documents filed may be transmitted by facsimile and the facsimile and any signatures thereon shall serve, for all purposes, as an original document.

a. Upon request, the department shall provide the appellant a summary of the information used in making its determination. Information prohibited from being disclosed by state or federal law or regulation shall not be released. In the case of any information being withheld, the certificate holder shall be advised of the general nature of the information and the reasons, of privacy or otherwise, that it is being withheld.

b. The director or designee shall preside over the appeal. With the exception of the director, no person whose regular duties include substantial involvement with the certification of the facilities shall preside over the appeal.

(1) The certificate holder may be represented by counsel.

(2) The certificate holder shall be entitled to present the testimony of witnesses, documents, factual data, arguments, or other submissions of proof.

4. The director or designee shall have the authority to sustain, amend, or reverse the preliminary summary suspension order. If sustained or amended, the order is considered final. The director or designee shall notify the certificate holder in writing of the results of the appeal and of the right to appeal the final order to the appropriate circuit court within 10 business days of the decision. Notification of the results of the appeal before the director or designee shall be mailed certified with return receipt to the certificate holder.

a. The chair of the board must be immediately notified when the director issues a final summary suspension order. In accordance with 6VAC35-20-36.1, the director shall report the action taken to the board no later than its next regularly scheduled meeting.

b. If the certificate holder is not satisfied, the certificate holder may dispute the noncompliance finding in accordance with 6VAC35-20-90.

## **Part II**

### **Certification Audits of Programs and Facilities**

#### **6VAC35-20-50. Preaudit process for certification audits.**

A. At least six months in advance of a certification audit, the department shall notify each program or facility to be audited of the scheduled audit date and the name of the designated audit team leader.

B. At least 90 calendar days before the scheduled audit, the program or facility administrator may request that the audit be rescheduled. Except as provided in 6VAC35-20-100, audits, even if rescheduled, must occur before the expiration of the current certification, unless specifically approved by the director.

C. The audit team leader shall provide the program or facility administrator with a list of audit team members as soon as practicable, but no later than 10 business days before the scheduled certification audit. Upon notification of the audit team members, the program or facility administrator may request that one or more members of the audit team be replaced. Every

reasonable effort will be made to comply with the request. Any subsequent addition or substitution of the audit team members shall be communicated to the program or facility administrator as soon as practicable and may be made subject to the mutual agreement of the audit team leader and program or facility administrator.

**6VAC35-20-60. Monitoring of programs and facilities.**

A. All programs or facilities subject to regulations issued by the board shall be subject to periodic, scheduled monitoring visits or monitoring reviews conducted in accordance with department procedures.

B. The department shall annually develop a plan for monitoring programs and facilities subject to certification audits, which shall provide for at least the following:

1. All programs and facilities that are subject to certification audits shall receive at least one scheduled monitoring visit per year. A certification audit shall satisfy the requirement of a scheduled monitoring visit.

2. Additional monitoring visits or monitoring reviews may be conducted at the request of the board, department, or program or facility administrator.

**6VAC35-20-61. Self-audit of programs and facilities subject to certification audits.**

A. All programs and facilities subject to certification audits shall, in accordance with the department's Guidance Document: Self-Audits/Evaluations, September 2013, conduct, except in the year the program or facility is subject to a certification audit, an annual self-audit for compliance with applicable regulatory requirements.

B. The self-audit reports shall be made available during the certification audit.

6VAC35-20-63

6VAC35-20-63. (Repealed.)

6VAC35-20-65

6VAC35-20-65. (Repealed.)

6VAC35-20-67

6VAC35-20-67. (Repealed.)

6VAC35-20-69

6VAC35-20-69. Newly opened facilities and new construction, expansion, or renovation of residential facilities.

A. When a newly opened facility seeks certification to allow the admission of residents, the facility administrator shall contact the director or designee to request a review of the facility for conditional certification.

B. The facility administrator and the department shall follow the requirements of this chapter and department procedures in reviewing a facility prior to admission of residents. New construction, expansions, and renovations in all juvenile residential facilities, whether or not the facility or its sponsor is seeking reimbursement for construction or operations, shall conform to the governing provisions of the following:

1. Regulation Governing Juvenile Correctional Centers (6VAC35-71);

2. Regulation Governing Juvenile Secure Detention Centers (6VAC35-101);
3. Regulation Governing Juvenile Group Homes and Halfway Houses (6VAC35-41); and
4. Regulation Governing State Reimbursement of Local Juvenile Residential Facility Costs (6VAC35-30).

C. A newly constructed, expanded, or renovated facility shall, except as provided in subsection D of this section, obtain conditional certification as provided in 6VAC35-20-100 prior to the placement of residents in the new facility or portion of an existing facility subject to the expansion or renovation.

D. The director or designee shall consider the request for certification within 60 days of receiving the request and report of the basic audit findings. Actions taken by the director or designee shall be governed by the provisions of 6VAC35-20-100.

#### **6VAC35-20-75. Certification of individual programs or facilities.**

A. The director or designee shall certify each (i) juvenile residential facility and (ii) court service unit.

B. The director or designee may extend a current certification for a specified period of time pending a certification audit and the completion of an administrative review, provided the department is not aware of any health, welfare, or safety violations.

C. If a program's or facility's certification expires prior to the director's or designee's consideration of the certification audit report, the program's or facility's current certification status shall continue in effect until the director or designee takes certification action.

D. The director or designee may, upon the request of a program or facility administrator or the department, modify during the term of the certificate the conditions of a certificate relating to a program's or facility's certification status or capacity, the residents' age range or sex, the facility's location, or changes in the services offered and provided.

E. A certificate is not transferrable and automatically expires when there is a change of ownership or sponsorship of the program or facility.

F. When the program or facility ceases to operate, the program or facility administrator shall return the certificate to the director or designee. The department shall notify the board of the change in the program's or facility's status.

#### **6VAC35-20-80. Certification audit procedures.**

A. The program or facility shall demonstrate compliance as required in this chapter that the program or facility has no areas of noncompliance that pose an immediate and direct danger to residents.

B. The audit team shall (i) visit the program or facility and (ii) review and examine sufficient documentation to adequately render a determination of compliance as provided for in 6VAC35-20-85.

1. The burden of providing proof of compliance with regulatory requirements rests with the program or facility staff.

2. A program or facility with an approved variance or waiver shall provide such documentation to the certification audit team.
3. It is permissible to provide additional documentation should the certification team request it; however, such documentation must already exist when the audit begins.
4. Compliance shall be determined through documentation, interview, and observation.

**6VAC35-20-85. Determining compliance with individual regulatory requirements.**

A. During the audit process, the department shall determine whether the program or facility is compliant with each regulatory requirement. To be found in compliance, the following shall be shown:

1. The program or facility shall:
  - a. For critical regulatory requirements, demonstrate 100% compliance;
  - b. For noncritical regulatory requirements with multiple elements, the certification audit team will make a determination of compliance as provided in department procedures that shall require (i) an acceptable percentage of compliance with the entire regulatory requirement or (ii) any single element; or
  - c. For all noncritical regulatory requirements, demonstrate acceptable percentage compliance as provided in department procedures.
2. The program or facility shall not have:
  - a. Any circumstance or condition constituting a pattern of action that presents a concern for the health, welfare, or safety of the residents, program participants, or staff; or
  - b. Any circumstance or condition that presents an immediate threat to the health, welfare, or safety of the residents, program participants, or staff.
  - c. The determination of noncompliance shall be a decision made by the entire certification team.
  - d. For purposes of calculating percentage of compliance, the determination of what constitutes individual regulatory requirements (e.g., section, subsection, subdivision, or element in a list in the regulatory chapter) will be specified as provided in department procedures.

**6VAC35-20-90. Certification audit findings.**

- A. Upon the completion of the audit, the certification audit findings shall be discussed with the program's or facility's administrator or designee.
- B. A written report of the findings from the certification audit shall be submitted, within 10 business days following the certification audit, to (i) the program or facility administrator and (ii) the director or designee. Any finding of noncompliance with a regulatory requirement shall be documented.
- C. Any program or facility that is cited for noncompliance with a regulatory requirement may within 10 business days of receiving the written report of the findings for the certification audit:

1. Request in writing a variance in accordance with 6VAC35-20-92; or
2. Appeal the finding of noncompliance in writing and in accordance with department procedures and 6VAC35-20-94.

**6VAC35-20-91. Corrective action plans and certification audit reports.**

A. For each finding of noncompliance, the program or facility administrator shall develop a corrective action plan.

1. The corrective action plan shall be submitted to the department within 30 calendar days of receipt of the written certification audit findings. For good cause, the department may grant a 30-calendar day extension to a program or facility administrator for the development of the corrective action plan.
2. The department shall issue guidelines that provide for (i) the format and (ii) the process for the department's review and approval of corrective action plans.
3. The corrective action plan shall include the following:
  - a. A description of any extenuating or aggravating factors contributing to the noncompliant circumstances or conditions;
  - b. A description of each corrective action required or tasks required to correct the deficiency and prevent its recurrence;
  - c. The actual or proposed date of task completion; and
  - d. The identification of the person responsible for oversight of each element of the implementation of the corrective action plan.

If the corrective action proposed by the program or facility involves a request for a variance in accordance with 6VAC35-20-92, the corrective action plan must also state what action will be taken to meet or attempt to meet the regulatory requirement should the request for the variance be denied.

4. The program or facility administrator shall be responsible for developing and implementing a written corrective action plan.
5. If a finding of noncompliance results in a request for an appeal of the finding of noncompliance or a variance, documentation of the request for a variance or of the appeal of the finding of noncompliance should be attached to the corrective action plan.

B. Each certification audit report submitted to the director or designee shall contain:

1. The program's or facility's name, administrator, and location;
2. A summary of the program's or facility's population served, programs, and services provided;
3. The date of the certification audit and the names of the audit team leader and members; and
4. Notation of all regulatory requirements for which there was a finding of noncompliance as provided for in 6VAC35-20-85.

If there is a finding of noncompliance with a regulatory requirement, the report shall describe the noncompliance and incorporate the program's or facility's corrective action plan for each area of noncompliance. If a program or facility administrator fails to submit a corrective action plan within the time specified, the certification audit report shall be submitted to the director or designee for consideration.

C. The program or facility administrator shall submit to the audit team leader, upon completion of the corrective action plan, documentation confirming all corrective actions have been fully executed.

#### **6VAC35-20-92. Variance request.**

A. Any request for a variance must be submitted in writing ~~and~~. If the request is submitted subsequent to a finding of noncompliance in a certification audit, the request must be submitted within 10 business days of receiving the written report of the findings from the certification audit. All requests shall include:

1. The noncritical regulatory requirement for which a variance is requested;
2. The justification for the request;
3. Any actions taken to come into compliance;
4. The person responsible for such action;
5. The date at which time compliance is expected; and
6. The specific time period requested for this variance.

B. Documentation of any variance requests stemming from a finding of noncompliance in a certification audit shall be submitted along with the corrective action plan for correcting any deficiencies cited during the certification audit as provided for in 6VAC35-20-91.

C. A requested variance shall not be implemented prior to obtaining the approval of the board.

D. Requests for variances shall be placed on the agenda for consideration at the next regularly scheduled board meeting.

E. In issuing variances, the board shall specify the scope and duration of the variance.

#### **6VAC35-20-93. Waivers.**

A. When a program or facility has submitted a formal variance request to the board concerning noncritical regulatory requirement, the director may, but is not required to, grant a waiver temporarily excusing a program or facility from meeting the requirements of the regulation when (i) the regulatory requirement is not required by statute or by federal or state regulations other than those issued by the board; (ii) noncompliance with the regulatory requirement will not result in a threat to the health, welfare, or safety of residents, the community, or staff; (iii) enforcement will create an undue hardship; and (iv) juveniles' care or services would not be adversely affected.

B. A waiver shall be granted only when the program or facility is presented with emergency conditions or circumstances making compliance with the regulatory requirement either impossible or impractical.

C. The waiver shall be in effect only until such time as the board acts on the variance request. The board will act on the matter at its first meeting following notice from the director or designee that a waiver has been granted.

D. The director or designee shall promptly notify the board chair in writing of waivers granted, and the rationale for so granting.

E. A program or facility will not be cited for noncompliance with the requirements of a regulatory requirement subject to a waiver during the time it operates pursuant to a waiver approved by the director or designee.

#### **6VAC35-20-94. Appeal process for a finding of noncompliance.**

A. A program or facility administrator may appeal a finding of noncompliance of an audit by submitting the appeal to the director or designee within 10 business days of receipt of the written notification of the audit findings.

B. The manager for the certification team or designee shall contact the program or facility administrator and make every effort to resolve the appeal within 10 business days of receipt of the appeal.

C. If department personnel and the program or facility administrator are not able to informally resolve the issue on appeal, the request for an appeal shall be forwarded by the manager for the certification team or designee as soon as practicable to the director or designee.

1. The director or designee shall issue a decision on the appeal within 15 business days of receipt.

2. The program or facility administrator shall be informed as soon as practicable, but no later than the end of the next business day, of the director's or designee's decision.

D. If the appealed finding of noncompliance remains unresolved after exhaustion of the informal review and appeal to the director or designee, the program or facility administrator may appeal the director's or designee's decision to the board. Upon request, the department shall place the appealed finding of noncompliance on the board's agenda for consideration at its next regularly scheduled meeting.

E. If the appeal is granted and the finding overruled, the finding of noncompliance shall be removed from the certification audit report.

F. An appeal pursuant to this section does not negate the requirement to submit a corrective action plan, as required by 6VAC35-20-91, on the disputed regulatory requirement.

#### **6VAC35-20-100. Certification action.**

A. The department shall notify the program or facility administrator of the date, time, and location the director or designee will take certification action relating to the program's or facility's certification audit. The program or facility administrator shall have the right to appear in person or by counsel or other qualified representative when the director or designee considers the audit report and makes a certification decision. The program or facility administrator shall be provided notice of the right to appear 10 business days prior to the director's or designee's consideration of the audit report and final certification determination.

B. A conditional certification for up to six months will be issued to a new program or a newly opened facility that:

1. Demonstrates 100% compliance with (i) all critical regulatory requirements and (ii) any physical plant regulatory requirements;
2. Demonstrates at least 90% compliance with all noncritical regulatory requirements and has an acceptable corrective action plan; and
3. Has no unresolved health, welfare, or safety violations.

C. Upon review of the audit findings and any acceptable corrective action plans, the director or designee shall take the following certification actions:

1. If the certification audit finds the program or facility in 100% compliance with all regulatory requirements, the director or designee shall certify the facility for three years.
2. If the certification audit finds the program or facility in less than 100% compliance with all regulatory requirements and a subsequent status report, completed prior to the certification action, finds 100% compliance on all regulatory requirements, the director or designee shall certify the facility for a specific period of time, up to three years.
3. If the certification audit finds the program or facility in less than 100% compliance with all critical regulatory requirements or less than 90% on all noncritical regulatory requirements or both, and a subsequent status report, completed prior to the certification action, finds 100% compliance on all critical regulatory requirements and 90% or greater compliance on all noncritical regulatory requirements, the program or facility shall be certified for a specified period of time, up to three years.
4. If the certification audit finds the program or facility in less than 100% compliance with all critical regulatory requirements or less than 90% on all noncritical regulatory requirements or both, and a subsequent status report, completed prior to the certification action, finds less than 100% compliance on all critical regulatory requirements or less than 90% compliance on all noncritical regulatory requirements or both, the program or facility shall be subject to the following actions:
  - a. If there is an acceptable corrective action plan and no conditions or practices exist in the program or facility that pose an immediate and substantial threat to the health, welfare, or safety of the residents, the program's or facility's certification shall be continued for a specified period of time up to one year with a status report completed for review prior to the extension of the certification period.
    - (1) If the status report results find the program or facility in 100% compliance on all critical regulatory requirements and 90% or greater compliance on all noncritical regulatory requirements, the program or facility shall be certified for a specified period of time, up to three years, retroactive to the date upon which the prior certification was scheduled to expire.
    - (2) If the status report results find that the program or facility continues to be at less than 100% compliance on the critical regulatory requirements or less than 90% compliance on all noncritical regulatory requirements, the program or facility shall be placed on probationary certification status for a specified period of time, up to one year.

b. If there is not an acceptable corrective action plan or there is a health, welfare, or safety violation or both, the program or facility shall be placed on probationary certification status for a specified period of time up to one year or decertified.

5. Whenever a program or facility is placed on probationary certification status, a status report shall be completed prior to the expiration of the probationary certification period.

a. If the status report results find the program or facility in 100% compliance on all critical regulatory requirements and 90% or greater compliance on all noncritical regulatory requirements, the program or facility shall be certified for a specified period of time, up to three years retroactive to the date upon which the prior certification was scheduled to expire.

b. If the status report results find the program or facility continues to be at less than 100% compliance on the critical regulatory requirements or less than 90% compliance on all noncritical regulatory requirements, the program or facility shall be decertified.

6. When a program or facility is placed on probationary certification status, (i) the director or designee shall, taking into account the program's or facility's history of compliance with regulatory requirements, specify the duration of the probationary certification status and (ii) the department and program or facility shall provide a status report to the board at all meetings for the duration of this status.

a. If the status report indicates no continued areas of noncompliance, the director or designee shall certify the facility for up to three years, subject to the provisions of subdivision 8 of this subsection.

b. If any area of noncompliance continues thereafter, the director or designee may (i) continue the probationary certification status, (ii) decertify the program or facility as provided for in 6VAC35-20-120, or (iii) take any other action provided for by law.

7. If the certification audit report indicates an immediate threat to the health, welfare, or safety to the residents of a facility, notwithstanding the foregoing provisions, the director or designee may decertify the program or facility as provided for in subsection D of this section and 6VAC35-20-120 or take any other action provided for by law.

8. If a program's or facility's certification status is continued after the initial period expires, the subsequent certification will be retroactive to the date of expiration, unless the director or designee specifically issues a certification with different terms.

D. Any program or facility, regardless of current certification status, may be decertified or denied certification when:

1. The program or facility has an unacceptable level of compliance, as provided in department procedures, with applicable regulatory requirements without acceptable corrective action plans to address deficiencies;

2. The program or facility, if on probation or administrative probation, has not corrected the circumstances that were cited in placing the program or facility on probation or administrative probation to the point that the program or facility would qualify for at least conditional certification;

3. The program's or facility's staff have knowingly (i) committed, permitted, aided or abetted any illegal act in the program or facility resulting in a criminal conviction; (ii) violated child abuse or

neglect laws; (iii) deviated significantly from the program or services for which a certificate was issued without prior approval from the director or designee; (iv) failed to correct any such deviations within the time specified by the director or designee; or (v) falsified records, and the facility administrators knew or should have known and have failed (i) to report the actions and (ii) to take immediate remediating actions; or

4. If the program or facility fails to adequately correct the health, welfare, or safety violation per 6VAC35-20-36.1.

E. Certification decisions may be issued outside the requirements of subsections C and D of this section under the following circumstances:

1. The director may consider any aggravating and mitigating circumstances affecting the facts resulting in any finding of noncompliance, including, but not limited to, the history of the facility and the ability of the facility to predict and control the conditions resulting in the noncompliance. In such circumstances, the director may operate outside the requirements of subsection C of this section.

2. When considering whether to place a facility on probationary certification status or to decertify a program or facility due to a finding of noncompliance on a critical regulatory requirement, the director may consider whether the facility (i) had control over and knowledge of the circumstances, behaviors, or conditions leading to the finding and (ii) took appropriate steps to immediately rectify the situation. In such cases, the director may continue the certification in lieu of taking those actions.

F. Once the director or designee takes certification action, the department shall issue a certificate or letter clearly identifying the program or facility, the certification status, and the period of time during which the certification will be effective unless the certificate is revoked or surrendered sooner. The program or facility administrator shall be informed, briefly and generally, of the factual or procedural basis when any program or facility is issued a probationary certification or is decertified.

G. A program's or facility's status shall remain in effect until subsequent action by the director or designee.

#### **6VAC35-20-110. Notice of certification action.**

Within two weeks of any certification action, the director or designee shall send notice of the certification action to:

1. The program or facility administrator;
2. The program's or facility's supervisory or governing authority; and
3. Other state and local authorities, as appropriate to the specific circumstances.

#### **6VAC35-20-115. Board review of programs and facilities found in noncompliance.**

A. When a program or facility is found in noncompliance with one or more regulatory requirements, the audit report with a statement of the director's or designee's certification action taken shall be placed on the agenda at the next regularly scheduled board meeting for oversight

and review. The department shall provide the program or facility administrator with notice of the date and time of the board meeting.

B. Whenever a facility is found in noncompliance with one or more regulatory requirements, the board may enter an order, pursuant to § 16.1-309.9 B of the Code of Virginia, prohibiting or limiting the placement of children in the program or facility or take any other action provided by law. In addition to the reports required by this section and 6VAC35-20-100, the board may request the department or the program or facility administrator to provide a status update or report at subsequent board meetings.

#### **6VAC35-20-120. Actions following decertification or denial of certification.**

A. When a program or facility operated by the department is decertified or denied certification, the department shall take remedial action and may choose to close the program or facility or relocate the residents.

1. A report shall be sent to the board within 90 calendar days after the decertification or denial detailing the actions taken by the department to (i) bring the program or facility into compliance with all regulatory requirements and (ii) protect the health, welfare, or safety of the residents.

2. If after 90 calendar days the program or facility has not met the requirements for at least conditional certification and the department has not closed the program or facility, the board shall recommend to the Governor and the Secretary of Public Safety appropriate action to be taken under the circumstances.

B. When a program or facility that is locally, regionally, or privately operated is decertified or denied certification, the board and the department may take any and all of the following actions as appropriate to the circumstances:

1. The facility supervisory and the governing authority may be required to reorganize the program structure or take necessary personnel action or any other steps as may be necessary to qualify the program or facility for at least a conditional certification within 90 calendar days.

2. The director or designee may, as applicable, reduce or suspend funding to the program or facility in accordance with §§ 16.1-322.1, § 16.1-309.9 C, or § 66-30 of the Code of Virginia or may withdraw the approval required by § 16.1-249 A (3) and (4) of the Code of Virginia.

3. The board may enter an order, pursuant to § 16.1-309.9 B of the Code of Virginia, prohibiting or limiting the placement of children in the program or facility.

4. The department shall not utilize facilities for residential placements that are decertified or denied certification.

#### **6VAC35-20-150. Critical regulatory requirements for juvenile residential facilities.**

A. The board has the sole authority for designating critical regulatory requirements. The board shall identify the designated critical regulatory requirements at the first board meeting after the final regulation is published in the Virginia Register.

B. The designated critical regulatory requirements may be amended by a majority of the board at a regularly scheduled board meeting only when (i) the proposed change was raised at a board meeting but not voted upon and a date for final consideration and voting is set at that meeting; (ii) notice of the proposed change is posted with the notice of board meeting designated for

discussion and voting; (iii) consideration of the change is placed on the board meeting agenda at which a vote is anticipated; and (iii) written notice is provided to the facility administrators prior to the board meeting at which the vote is anticipated.

C. A request to review the critical regulatory requirements can be made by any person at any time.

D. The list of designated critical regulatory requirements shall be posted on the department's website at <http://www.djj.virginia.gov>.

### **Part III**

#### **VJCCCA Programs and Offices on Youth Program Audits**

##### **6VAC35-20-200. Monitoring of VJCCCA programs or offices on youth.**

The department shall develop a schedule for monitoring all VJCCCA programs or offices on youth that shall provide for at least one scheduled on-site VJCCCA program or office on youth audit every two years. Whenever deemed necessary or appropriate, additional monitoring visits or reviews may be scheduled.

##### **6VAC35-20-210. VJCCCA programs and offices on youth self-evaluations.**

A. All VJCCCA programs and offices on youth shall, in accordance with department procedures or manuals, do the following:

1. Conduct an annual self-evaluation; and
2. Provide the department with a written summary of (i) the self-evaluation process and (ii) the findings of the self-evaluation.

B. The department shall schedule each VJCCCA program or office on youth to conduct the self-evaluation and complete the report.

C. The department shall review each VJCCCA program's or office on youth's self-evaluation report and provide feedback to the VJCCCA program or office on youth.

##### **6VAC35-20-220. VJCCCA program and office on youth audits.**

A. During the program audit, the VJCCCA program or office on youth shall demonstrate an acceptable level of compliance, as provided in this chapter, with all (i) statutory requirements; (ii) the approved local plan; (iii) applicable regulatory requirements; and (iv) applicable department procedures or manuals.

B. The burden of proving compliance with the applicable requirements rests with the program staff.

C. Any finding of noncompliance shall be documented.

##### **6VAC35-20-230. VJCCCA program and office on youth audit findings.**

A. Upon completion of the VJCCCA program or office on youth audit, the VJCCCA program or office on youth audit findings shall be reported to the VJCCCA program plan contact or office

on youth program director along with a copy to the individual with supervisory authority over that individual.

B. The VJCCCA program plan contact or office on youth program director may appeal the VJCCCA program or office on youth audit findings to the director or designee.

C. The department will monitor the progress of the VJCCCA program or office on youth in correcting the identified noncompliance through subsequent documentation and monitoring visits.

**6VAC35-20-240. Effect of VJCCCA program or office on youth noncompliance.**

A. If the department determines that a VJCCCA program or office on youth is not in compliance, it may suspend all or any portion of the VJCCCA program's or office on youth's funding until there is compliance as provided in subsection C of § 16.1-309.9 of the Code of Virginia.

B. The department shall notify the person responsible for the daily administration of the VJCCCA program or office on youth of the intent to withhold funding prior to such withholding. The notification shall include the justification for the intended withholding and any corrective actions the VJCCCA program or office on youth must complete.

C. The VJCCCA program or office on youth may appeal to the director or designee the withholding of funding, in writing, within 10 business days of receiving notice of the department's intent to withhold the funding.

**DOCUMENTS INCORPORATED BY REFERENCE (6VAC35-20)**

**Guidance Document: Self-Audits/Evaluations, September 2013, Department of Juvenile Justice**