

## COMMONWEALTH of VIRGINIA

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## MEMORANDUM

To: DBHDS Licensed Providers

From: Jae Benz, Director, Office of Licensing

**Date:** November 23, 2021

**Re:** Sponsored Provider Certification Process effective 11/22/2021

**Purpose:** The purpose of this memorandum is to inform providers of sponsored residential services ("Sponsored Providers") of the process for adding additional sponsored home locations less than 100 miles from previously approved homes.

**Background:** The Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services ("Licensing Regulations") outline service specific requirements for Sponsored Providers. Specifically, 12VAC35-105-1180.A states:

The provider shall evaluate and certify each sponsored residential home other than his own through face-to-face interviews, home inspections, and other information documenting compliance with this section. The provider shall submit the certification form to the department before individuals are placed in the home and ensure that the following requirements are met annually.

In addition, 12VAC35-105-1180.H states:

The provider shall submit the name, address, and certification of the sponsored residential home to the department prior to adding the home. The provider shall submit the name and address of the sponsored residential home to the department prior to closing the home. The provider shall submit a service modification when approving homes more than 100 miles from the previously approved homes.

## **Certification Process Expectations:**

## Implementation:

In order to implement the certification process outlined within the Licensing Regulations, it is essential that the OL formally tracks the name(s) and address of each sponsored home and that each of these homes are listed on the Sponsored Provider's license addendum. This will allow the OL to monitor regulatory compliance for each location by conducting inspections (announced and unannounced) and investigations, when warranted. Therefore, Sponsored Providers will need to submit the attached "Attestation of Certification" form directly to their Licensing Specialist (LS) through the CONNECT provider communications portal. Once this step is completed, the provider may proceed with adding the home without the current OL formal approval process.

# Please note: If a Sponsored Provider would like to add a home more than 100 miles from all the previously approved homes, the provider will need to follow the formal location modification process within CONNECT prior to adding the home.

## **Provider Responsibility:**

The certification process places the responsibility on the Sponsored Provider to ensure the sponsored home staff have the necessary skills, training, education, and knowledge to meet the individual's unique support needs, as well as to ensure the appropriateness of the actual sponsored home. This determination must be made through completion of thorough face-to-face interviews, home inspections, and a review of other relevant information. The certification process must be clearly documented and available to the Office of Licensing ("OL") for inspection. In addition, there must be a signed agreement with the sponsor that includes a provision for granting the right of entry to state Licensing Specialists (LS) or Human Rights Advocates to conduct inspections (announced and unannounced).

## Office of Licensing Responsibilities:

Once the completed certification request has been submitted through the CONNECT provider portal in accordance with the attached instructions, the LS will add the location to the license addendum within 60 days of receipt of the certification. The Sponsored Provider does not need to wait for the location to be added to their addendum prior to providing services at the new location, so long as the certification has been submitted PRIOR to providing services. The LS will not review anything other than the uploaded and completed certification form and will not be required to complete a physical site inspection prior to the Sponsored Provider adding a new home.

The Office of Licensing is responsible for oversight and monitoring of licensed providers to ensure compliance with applicable regulations and standards as well as to ensure that providers are able to adequately meet the needs of the individuals they support. By more closely enforcing the certification requirements as the primary means of adding new locations, it will be even more important that Sponsored Providers closely monitor any citations issued by the OL, and submit and implement corrective action plans in accordance with 12VAC35-105-170 and 12VAC35-105-620.

If a provider has significant or re-occurring citations, the Code of Virginia and Licensing Regulations provide the OL with the authority to enforce negative actions and/or sanctions against the provider. However, the OL is committed to working with providers in an effort to support the development and continuance of high quality services. Therefore, prior to taking negative action against a provider, the OL

will issue a licensing report and provide technical assistance to the provider. If a provider receives multiple citations for the same location, or citations of the same regulation amongst multiple locations, a systemic violation will be issued. If a provider cannot or will not make necessary corrections to achieve compliance with the Licensing Regulations, further action could be necessary, including reducing licensed capacity, prohibiting new admissions or adding new homes.

Some criteria the OL uses to determine whether to take negative action:

- Does the provider have multiple repeat citations of the same violation (including violations related to training)?
- Does the provider have multiple citations of the *Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Behavioral Health and Developmental Services*("Human Rights Regulations,")
- Does the provider have multiple citations of the Human Rights Regulations?
- Has the provided received multiple citations for failure to submit a Corrective Action Plan (CAP) or failure to implement their CAP?
- Does the provider incorporate a review of citations and areas of concerns in their Quality Improvement (QI) plan?
- Has the provider received health and safety CAPs?
- Did the provider aid or abet the commission of an illegal act?
- Did the provider refuse to submit reports or to make records available as requested by the department?
- Did the provider refuse to admit a representative of the department who displays a state-issued photo identification to the premises?
- Did the provider submit any misleading or false information to the department?

## **Collaboration:**

The Director for the Office of Licensing will meet with Sponsored Providers on a quarterly basis to ensure a smooth transition to this process, monitor the quality of care provided to individuals within sponsored homes, and address questions or concerns in a timely manner.

For general questions relating to the certification or service modification process, please reach out directly to your assigned licensing specialist.

## QUESTIONS FROM SPONSORED PROVIDERS 11/2/2021

# 1. Are there specific documents that licensing has found some agencies may be missing that need to be used by all agencies in this process that the sponsored group can share with one another to help ensure as many agencies as possible are successful in this process?

Attached below are helpful reminders and some concerns the OL has seen related to sponsored homes.

## 2. What processes does licensing find most helpful that agencies are using and that you hope to see agencies using to be successful.

It would be most helpful to develop a standardized checklist that all sponsored providers use to document that the Licensing Regulations have been monitored for compliance at each location by the sponsored provider and that each location was found to be compliant. Sponsored Providers could present this checklist when the OL conducts inspections or investigations to help confirm regulatory compliance.

# 3. In the past there may have been variances needed for a home that could have a room or addition like a porch converted to a bathroom with slanted ceilings with one side under the minimum height. How would licensing like for agencies to proceed in those situations?

If a sponsored provider reviews a sponsored home location and determines they are unable to meet any single regulatory requirement, including physical requirements, a variance must be submitted and approved **prior** to submitting the certification form. The sponsored provider may <u>not</u> proceed with adding this location until, and if, the variance has been approved.

If in doubt, please feel free to contact your licensing specialist via the CONNECT provider portal prior to submitting a variance. If there are concerns, the next step is to contact the Regional Manager for that area.

## 4. If we submitted a service modification to add a location but it has not yet been processed, what do we do?

Please reach out to your licensing specialist and copy their regional manager to notify them you are withdrawing your service modification form to add a location and will be submitting a certification form instead. This process will move more quickly for you and is consistent with the new process.

# 5. Some agencies provide a variety of types of services in addition to Sponsored Residential. Our Sponsors, as contractors, must comply with more intense internal requirements for training, inspection and supervision than those required for a DSP or even a mid-level manager who is an employee. Regarding "significant or re-occurring citations", will Sponsored Residential sites be impacted if this type of situation has arisen in an unrelated service, for example, Community Engagement or In Home?

The OL reviews providers for regulatory compliance at the <u>service level</u>. Therefore, if a provider operates both group home and sponsored residential services, and there are concerns with their group home service only, progressive action, would only be sought against the group home service license.

**Please note:** If there are significant concerns across multiple services, the OL may consider this information when determining whether to approve a service modification or other types of expansion including whether to deny a provider's ability to submit certification forms to add new locations. In addition, Sponsored Providers that are currently receiving enhanced monitoring due to health and safety CAPs may receive additional oversight of new locations to ensure new homes are in compliance.

## 6. In reference to the October 6 memo, is there a percentage that has been determined for repeat late reporting?

This regulatory requirement has been in effect for a number of years. In addition, there are now the additional requirements outlined in the DOJ settlement agreement and agreed upon indicators that outline very specific expectations for providers and the OL to come into compliance, including:

DBHDS implements an incident management process that is responsible for review and follow up of all reported serious incidents, as defined in the Licensing Regulations.

DBHDS monitors compliance with the serious incident reporting requirements of the Licensing Regulations as specified by DBHDS policies during all investigations of serious injuries and deaths and during annual inspections. DBHDS requires corrective action plans for 100% of providers who are cited for violating the serious incident reporting requirements of the Licensing Regulations.

DBHDS identifies providers, including CSBs, that have failed to report serious incidents, deaths, or allegations of abuse or neglect as required by the Licensing Regulations. Identification occurs through: a. Licensing inspections and investigations; b. DBHDS receipt of information from external agencies, such as the protection and advocacy agency, or other agencies such as the Department of Health or local adult protective services agencies; c. Any other information that DBHDS may receive from individuals, other providers, family members, or others; d. Reports of deaths from the Virginia Department of Health as described in Indicator 7.c of V.C.5.

Providers, including CSBs, that have recurring deficiencies in the timely implementation of DBHDS-approved corrective action plans related to the reporting of serious incidents, deaths, or allegations of abuse or neglect will be subject to further action as appropriate under the Licensing Regulations and approved by the DBHDS Commissioner.

The OL has published within memos and guidance documents, the situations in which a late report may be excused, and while the OL closely monitors timeliness of serious incident reporting and cites accordingly, up to this point, a provider has not had their license revoked or denied <u>solely</u> because of late reporting. However, a provider who has repeat citations for late reporting, with or without failure to implement previous corrective action plans (CAPs), may also have other regulatory concerns such as:

- > Not responding to incidents in a timely manner;
- Not following internal policies or protocols;
- Not completing a review of all serious incidents at least quarterly in accordance with 12VAC35-105-160.C;

- Not monitoring implementation and effectiveness of approved corrective actions as part of its quality improvement program required by 12VAC35-105-620 in accordance with 12VAC35-105-170.H;
- ➢ Insufficient staffing; and/or
- Inadequate training.

The OL has heard the concerns voiced by providers regarding progressive action for repeated late citations; specifically the concern that larger providers will likely have more incidents to report and therefore may have more late reports, even though they are a small fraction of the total number of incidents. An exciting component of the new CONNECT system will be the ability to collect data in an entirely new way. The OL will be able to determine not only which providers have had incidents and if there have been any late reports but also determine the percentage of the provider's late reports over the total number of reports submitted (overall compliance rating). This will provide much more valuable input to the OL, providers, and DOJ regarding a provider's overall compliance with this specific regulation.

The OL is hoping to be able to gather baseline data related to a provider's compliance with serious incident reporting compliance and use that to measure each provider against this baseline data in order to determine when to take progressive actions related to late reporting. Please be patient as we get our new system up and running as we will need to be sure everything is working prior to pulling and using this data. This information will help to better determine when late reporting is a systemic issue or rises to the level of a health and safety concern.

It is also important to share, that the IMU does group citations for late reports into one licensing report when they occur close together and an initial report for the 1<sup>st</sup> citation has not yet been issued. For example, if a provider submits a report late on Monday and Thursday and on Friday the IMU specialist has not yet issued a citation for the 1<sup>st</sup> late report, both citations will be included in one licensing report and the provider is able to respond to both citations in a singular CAP. If the reason for the late reports differs and the provider is able to support their reasoning for determining the issue is not systemic and is due to different, unrelated causes, the OL would expect any corrective actions to address those individual causes, as opposed to systemic ones.

# 7. We all want this to work and be something we can carry into the next version of licensing regs. Are there any potential stumbling blocks that you or others within licensing hope to see us avoid and that we can help head off as a group?

If, after reinstating the certification process, the OL sees any of the below situations, we may have concerns with continuing with the certification process. However, our office will be meeting quarterly with sponsored providers so that we may work collaboratively to provide additional information, answer questions and address potential concerns in a timely manner.

- An increase in non-compliance with the Licensing Regulations;
- > Significant increase in complaints from CSBs or families; and/or
- Higher number of incidents that result in an increase in care concerns and where it is determined sponsor did not respond appropriately.
- 8. Where does licensing see the HCBS certification process (Redcap Submissions) falling in the certification process?

While compliance with HCBS is a DMAS requirement, those requirements are not outlined in the Rules and Regulations for Licensing Providers. Therefore, while compliance is reviewed by our Department, the OL does not review providers for compliance prior to licensing a provider. Our Department is still determining how the ongoing HCBS compliance monitoring will look.

# 9. If a Sponsor, already licensed with the agency, has purchased a new home and is moving will we be able to use this same certification process as long as it is not more than 100 miles from an existing site?

Yes, the sponsored provider will be able to follow the same certification process. They will need to clearly state which location is being closed and which location is being opened as well as all the other information required within the form.

## Important Notes and Areas of Concern (response to Question #1)

Concerning Situations the OL has Encountered:

- Pools with individuals who are not safe around water without being supervised and without sufficient physical safety measure or written protocols in place.
- Narrow and steep staircases while serving individuals with physical limitations.
- Some history of providers seeking the OL to be the bearer of "bad news" and inform potential sponsors that the room or area is not acceptable for an individual. Sponsors must be comfortable and able to set strict rules about what is/is not an appropriate sponsor home and support this with clear documentation that is readily available to the OL and OHR. If you would not be willing to live in the home or have a family member live in the home, then the home is not suitable.
- 12VAC35-105-310. Weapons. All sponsored providers must have and implement a written policy governing the use and possession of firearms, pellet guns, air rifles, and other weapons on the premises, including parking areas, of the provider's services. There must be documentation the sponsors are aware of policy and agree to this.
  - The OL has encountered situations where gun cabinets are not locked or they are enclosed in glass which can be easily broken without additional measures in place. This needs to be part of a sponsored provider checklist.
- 12VAC35-105-1220. Regulations pertaining to staff. Providers shall certify and document compliance of sponsors with regulations pertaining to staff. (1) Back-up staff who have been background checked and fully trained prior to individual being admitted to the home. Emergencies can arise from the first day and a fully trained back up staff needs to be available day 1 of serving individuals.
- 12VAC35-105-280. Physical environment.
  - A. The physical environment, design, structure, furnishings, and lighting shall be appropriate to the individuals served and the services provided.
  - B. The physical environment shall be accessible to individuals with physical and sensory disabilities, if applicable.
  - C. The physical environment and furnishings shall be clean, dry, free of foul odors, safe, and well-maintained.
    - > This includes ensuring handrails on all staircases.
    - Is there gas coming into the home? If so, sufficient carbon monoxide detectors according to the size and number of levels in the home. While not in the regulations, this is an important safety measure
    - Are all dogs and cats vaccinated against rabies? While these are not clearly specified in the regulations. Virginia requires pets to be vaccinated.

G. Lighting shall be sufficient for the activities being performed and all areas within buildings and outside entrances and parking areas shall be lighted for safety.

- > Are there street signs and house numbers that are plainly visible from the road?
- Are the house numbers illuminated at night? Emergency services may find it difficult to locate a home that is hidden from the main road or not clearly visible at night.

## Important Reminders:

- There are regulations outside of the service specific regulations that state "Sponsored residential service providers shall certify that their sponsored residential homes comply with this regulation." Please ensure all of these are documented on your checklist.
- Licensed Sponsored Providers who want to close their sponsored residential license and apply to become a residential group home will still be required to submit a service modification form, which will be reviewed and will require an on-site inspection prior to approval.
  - Please note, per our <u>memo dated October 6, 2021</u> group home services are not a prioritized service to be reviewed by the OL.
- If work is being done to an already licensed location, the OL requires a provider to submit, <u>ahead</u> <u>of time</u>, building plans outlining the work. The provider shall also indicate how individuals will remain safe during the planned construction, provide an estimated start/completion date, and indicate how it will or will not impact services.
  - > 12VAC35-105-270. Building modifications.
    - A. The provider shall submit building plans and specifications for any planned construction at a new location, changes in the use of existing locations, and any structural modifications or additions to existing locations where services are provided for review by the department to determine compliance with the licensing regulations. This section does not apply to correctional facilities, jails, or home and non center-based services.

B. The provider shall submit an interim plan to the department addressing safety and continued service delivery if new construction involving structural modifications or additions to existing buildings is planned.

• <u>The Licensing Regulations also apply to families wanting to serve their own family</u> <u>members</u>

## Process for Submitting Certification in CONNECT Portal

## Effective 11/22/2021

From the DBHDS CONNECT Provider Portal Dashboard, choose the "Messaging" option from the Correspondence Center:

Vertice         Communication Center           Communication center allows you to correspond with the DBHDS Office of Licensing and manage your organization's contacts and access to this Provider Portal.
Provider Portal Dashboard      Wall Residences, Inc 071      Usg Out      Welcome to the Virginia Department of Behavioral Health and Developmental Services Provider Portal.      Wew Wat Let      Please notify the Office of Licensing any time a change of ownership for this organization is going to take place by clicking <u>here</u> .      Communication Center:      The communication center allows you to correspond with the DBHDS Office of Licensing and manage your organization's contacts and access to this Provider Portal.
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Menu:
You may choose from the various options below to submit applications and modifications, as well as to manage organization contacts and respond to corrective action plans.
If a menu option is greyed out, then you may not have security access to the process, or the process is not available to the Provider Organization at this time. The Manage Authorized Contacts menu option below allows the organization to grant access and control security for each Provider Portal user.
If you need assistance navigating the processes available to you or the organization, please contact the organization's primary contact before contacting the DBHDS Office of Licensing for assistance.
➤ Manage Authorized Contacts
≻ Initial Provider Application @
Children's Residential Provider Application
► Background Checks
> Service Modification●
> Location Modification

From the Communication Center Messages screen, click the "New Message" button.

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	To submit questions or information to the Office of Licensing, select the 'New Message' button. To view and respond to ongoing communication, select the appropriate 'Ope Message' link.	en
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On the Provider Inquiry screen, choose "Modification Application" for the Message Topic, then click Save.

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On the Provider Inquiry screen, select your licensing specialist, enter the Subject, **the naming convention must be followed exactly as shown below including full address.** 

Enter the Message for the specialist, then click to upload the attachment.

Please remember the certification form must be fully completed prior to uploading.

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	Please find attached the certification to add a location to our sponsored residential service license.	
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Enter the name of the document, the document should be titled "Sponsored Service Certification

Upload the Certificate, then click "Save Changes".

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Cancel Save Changes When finished, click the Save Changes button	

When finished entering the information and uploading the document, click the "Submit Message" button.

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	NOTE: If there are not any names available to select in the "Send Message To" field, leave the field blank when you submit the message. We will still receive the message and it will be routed to the appropriate person to respond.	
	Send Message To: Mark Seymour, Licensing Specialist  Subject: Sponsored Service Certification - 111 SE Ib <sup>+</sup>	
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The certification is sent to the Office of Licensing via the Provider Portal Messaging and the Licensing Specialist will respond when the Location has been added.





## Virginia Department of Behavioral Health & Developmental Services Certification to Add a Sponsored Home Location

This certification form is to be read, completed and signed by the sponsored provider staff person authorized to make changes on behalf of the provider.

Licensing Regulation 12VAC35-105-1180.A outlines the requirement for a sponsored provider to submit the name, address, and certification of the sponsored residential home to the department prior to adding the home. The provider shall also submit the name and address of the sponsored residential home to the department prior to closing the home. If a sponsored provider would like to add a home more than 100 miles from the previously approved homes, the provider will need to follow the formal modification process prior to adding the home.

Each sponsored home must be evaluated by the sponsored provider, prior to adding the new location. The sponsored provider is responsible for ensuring compliance with applicable regulations as outlined in the ("Licensing Regulations"). The sponsored provider must document the sponsored home/staff have the necessary skills, training, education, motivation and knowledge to meet the individual's unique support needs through completion of face-to-face interviews, home inspections, and review of other information.

## 1. Sponsored Provider Information:

Organization Name: Click or tap here to enter text.

DBHDS License Provider #: Click or tap here to enter text.

DBHDS License Service #: Click or tap here to enter text.

Full Name of Sponsors: Click or tap here to enter text.

New Sponsored Home Physical Address: Click or tap here to enter text.

City: Click or tap here to enter text. County: Click or tap here to enter text.

State: Click or tap here to enter text. Zip: Click or tap here to enter text.

Phone: Click or tap here to enter text. Email: Click or tap here to enter text.

Location Start Date: Click or tap here to enter text.

Number of licensed beds (cannot exceed more than 2 beds): Choose an item.

Total Number of bedrooms at the location: Click or tap here to enter text.

#### 2. Distance from Previous Home

This sponsored home location is less than 100 miles from other sponsored homes locations licensed by Organization.

Yes D No D

3. The Location Manager of the Sponsored Residential Home Location

The provider shall have a supervisor for every 15 sponsored residential homes where individuals are residing. The Location Manager and Location Manager Phone Number for this location is: Click or tap here to enter text.

#### Certification of Compliance

- I am a licensed DBHDS Sponsored Residential Provider.
- I have reviewed the Licensing Regulations with the sponsored home staff living/working at this location.
- The certification process as outlined within 12VAC35-105-1180 has been completed and documentation of this shall be available for inspection by the Licensing Specialist.
- There is a signed agreement with the sponsor that includes a provision for granting the right of entry to state Licensing Specialists or Human Rights Advocates to conduct inspections (announced and unannounced).
- The sponsored residential home to be added meets the criteria for physical environment and residential services within the Licensing Regulations.
- The sponsored residential home staff is willing and able to meet the needs of the individuals placed in the home.
- I have obtained three job-related references, past licensing history, criminal background checks, and a search of the registry of founded complaints of child abuse and neglect maintained by the Department of Social Services for the sponsor and all staff.
- I have assessed the education, qualifications, and experience of the sponsor or staff with the individuals served including Virginia Department of Motor Vehicles driving record, tuberculosis screening, first-aid and CPR certification, and completion of medication administration and behavior interventions training.
- The identified sponsor, any adults residing in the home of the sponsor, and any person employed by the sponsor have NOT been convicted of (i) any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in §19.2-392.02 or (ii) any offense set forth in clause (iv) of the definition of barrier crime in §19.2-392.02 (a) in the five years prior to the application date to be a sponsored residential service provider; the sponsor is not on probation or parole and has not failed to pay required court costs for such offense set forth in clause (iv) of the definition of barrier crime in §19.2-392.02.

- I have confirmed the financial capacity of the sponsor to meet the sponsor's own expenses for up to 90 days, independent of payments received for residents living in the home.
- On an on-going basis and at least annually, I will review and document compliance by each sponsored residential home and sponsor with regulations related to sponsored residential homes.
- I will conduct inspections of each sponsored residential home at least on a quarterly basis during the year with at least two being unannounced inspections.
- I confirm that the sponsored residential home will not serve individuals until the Certificate of Occupancy is obtained and filed at the sponsored location.
- I understand as a provider licensed for Sponsored Residential Services, I am responsible for the compliance of the sponsored homes and the care the individuals in my service receive.
- I understand that systemic regulatory non-compliance or health and safety citations that are not addressed appropriately may lead to negative actions against my license. Additional steps may include any of the following:
  - Issuance of any of the sanctions listed within Code of Virginia § 37.2-419;
  - Denial of an application for license renewal (Code of Virginia § 37.2-418 and 12VAC35- 105-110 or 12VAC35-46-120);
  - Issuance of a provisional license (Code of Virginia § 37.2-415 and 12VAC35-105-50A.2. or 12VAC35- 46-90.B.); or
  - Revocation or suspension a full, conditional, or provisional license (Code of Virginia § 37.2-418 and 12VAC35-105-110 or 12VAC35-46-1630).
- I understand that an application for a license or license renewal may be denied and a full, conditional, or provisional license may be revoked or suspended if the provider submits any misleading or false information to the Department, including the submission of a false or misleading Certification to Add a Sponsored Home Location.

## TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL INFORMATION CONTAINED HEREIN IS CORRECT AND COMPLETE. I FURTHER DECLARE MY AUTHORITY AND RESPONSIBILITY TO MAKE THIS SERVICE MODIFICATION APPLICATION.

Signature: Click or tap here to enter text. Title: Click or tap here to enter text.

Date: Click or tap here to enter text.

Original Date: November 2021 Revision Date: July 2024