

# Virginia Administrative Code

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## CHAPTER 40

### CERTIFICATION REQUIREMENTS MANUAL

#### Part I

#### General Provisions

#### **24VAC35-40-10. Definitions.**

The terms used in this chapter shall have the following meanings unless the context indicates otherwise.

"ASAP" means Alcohol Safety Action Program formed by political subdivisions or by the commission as a criminal justice program that uses community and state services to address the problem of driving under the influence of alcohol and other drugs. ASAPs receive referrals from local courts or the commission. ASAPs deliver intervention services within locally-administered programs to specific municipal jurisdictions within the Commonwealth of Virginia pursuant to §§ 18.2-271.1 and 18.2-271.2 of the Code of Virginia.

"BAC" means blood alcohol concentration which is determined by law-enforcement personnel or other licensed organizations in accordance with procedures established in § 18.2-268.

"Certification" means the process whereby the commission evaluates an ASAP for its organization, management, fiscal standing, and overall operation. Certification also hinges on the ASAP's ability to receive referrals from courts of persons convicted of DUI.

"Classification" means a process involving the assessment of an offender's personal involvement with alcohol or other drugs and which results in referral to an appropriate intervention service (educational treatment).

"Commission" means the state agency established as the Commission on the Virginia Alcohol Safety Action Program. It is composed of two members from the House Committee for Courts of Justice, two members from the Senate Committee for Courts of Justice, two sitting or retired district court judges who regularly hear or heard cases involving DUI and who are familiar with local ASAPs, two directors of ASAPs, one representative from the law-enforcement profession, one citizen at large, one representative

from the Department of Motor Vehicles and one representative from the Department of Mental Health, Mental Retardation and Substance Abuse Services.

The commission shall establish and certify ASAPs and require them to be operated in accordance with commission standards pursuant to § 18.2-271.2 of the Code of Virginia.

"Components" means the separation of actions into specifically defined areas which the VASAP system uses to offset and deter the actions of Driving Under the Influence (DUI) and potential DUI offenders. They comprise a systematic approach to educate the general public, reduce the incidence of impaired driving and drunk driving. There are five specific components defined and utilized by the VASAP system.

"Deficit" means an excess of expenditures over revenue. A planned deficit means that the ASAP, in order to conduct its program, expects to or projects that it will expend more funds than it will receive from offenders or other sources in a fiscal year. Deficit means an excess of expenditures over revenue.

"Director of ASAP" means the person who is in charge of and accountable for the operation of an ASAP. The ASAP director reports to the ASAP policy board.

"DMV" means the Commonwealth of Virginia Department of Motor Vehicles.

"DUI" means operating or driving a motor vehicle or boat under the influence of alcohol or drugs (§§ 18.2-266, 46.2-341.28 and 29.1-738 of the Code of Virginia).

"Education" means commission-approved classes provided to some offenders following classification. The intervention services include alcohol or drug education, young offender education, and intensive education.

"Enrollment" means that the offender has to report to the ASAP, obtain an intake appointment, make arrangements to pay the ASAP fee, and sign an agreement to participate as provided in §§ 18.2- 266 through 18.2-273.

"Executive director" means the executive director of the commission. This person is appointed by the commission and carries out the purposes of §§ 18.2-271.1 and 18.2-271.2 of the Code of Virginia.

"Intake" means the process wherein offenders, either individually or in groups, provide objective and subjective information to case managers for use in their classification.

"Intervention services" means direct service activities to offenders entering through a program which provides direct services. Such activities include assessment services, crisis intervention, case

management services and exit activities.

"Joint exercise of powers" means ASAPs organized as provided in §§ 15.1-20 and 15.1-21 of the Code of Virginia.

"Policy board" means a group established by the ASAP which controls and gives direction to the ASAP's activities and provides input of local needs. This board may also be established in accordance with §§ 18.2-271.1 and 18.2-271.2 of the Code of Virginia by the commission.

"Treatment" means intervention services provided to offenders subsequent to a recommendation for referral by an ASAP to outpatient, inpatient or residential services treatment and provided by a certified agent or licensed program.

"VASAPDA" means the Virginia Alcohol Safety Action Program Directors' Association, a group composed of the directors of the various ASAPs established and operating in the Commonwealth.

"VASAP" means the Virginia Alcohol Safety Action Program, a probation intervention system providing services to offenders referred to the program by the courts. VASAP consists of the Commission on VASAP, the Advisory Board to the Commission on VASAP, local ASAP policy boards and local Alcohol Safety Action Programs as established in §§ 18.2-271.1 and 18.2-271.2 of the Code of Virginia.

"VMIS" means an Automated Management Information System; a computer network which provides offender profiles to the ASAPs and a mechanism for the transfer of cases and information between the ASAPs and the VASAP office.

Statutory Authority

§§ 18.2-271.1 and 18.2-271.2 of the Code of Virginia.

Historical Notes

Derived from VR647-01-04 § 1.1, eff. September 13, 1989; amended, Virginia Register Volume 7, Issue 9, eff. February 28, 1991.

## Part II

### Standards for Certification

#### **24VAC35-40-20. Certification.**

All programs established or operating under § 18.2-271.1 of the Code of Virginia are required by § 18.2-271.2 to be certified by the Commission on VASAP.

Certification of Alcohol Safety Action Programs within the Commonwealth of Virginia is established to

ensure administrative consistency within the system and the quality of services provided to DUI offenders, the courts and the community.

The Commonwealth of Virginia is geographically organized into 26 local ASAPs and three ASAP regions: the Colonial Council, the Battlefield Council and the Blue Ridge Mountains Council. A certification team is assigned to each region.

#### Statutory Authority

§§ 18.2-271.1 and 18.2-271.2 of the Code of Virginia.

#### Historical Notes

Derived from VR647-01-04 § 2.1, eff. September 13, 1989; amended, Virginia Register Volume 7, Issue 9, eff. February 28, 1991.

#### **24VAC35-40-30. Methodology.**

A. Team composition. Each regional team consists of one commission member, one local ASAP director and one case management representative from the VASAP system. Each team member is appointed by the commission. The membership of each regional team shall be rotated among available representatives on an annual basis. The executive director of the Commission on VASAP shall serve as ex-officio member of each regional team. Team I will serve as the certification team in the Battlefield Region. Team II will serve as the certification team for the Blue Ridge Region and Team III will serve as the certification team for the Colonial Region.

B. Training. The executive director of the Commission on VASAP shall be responsible for providing training to each certification review team.

C. Information request. Prior to an on-site visit, the executive director of the Commission on VASAP will direct each program to be certified to submit necessary documentation.

D. Data and program review. Prior to the certification process, each ASAP director shall submit to the executive director requested data concerning the operation of the ASAP. After compilation of the requested information, it shall be distributed to the respective regional certification team. Each team shall review the data and perform preliminary audits. Following this review, on-site visits shall be scheduled. Additional data shall be collected and observations made during the on-site visit to validate the documentation submitted. Staff interviews, review of samples of client files and financial records as well as a physical examination of the office space shall be performed.

At the completion of the on-site review, the certification review team shall hold a summation conference with the director of the program. During this conference, the certification review team shall present areas of concern for discussion and clarification, and the ASAP director shall be given full opportunity to comment when a program is found out of compliance. The program must provide an action plan as required in 24VAC35-20-90 of the policy and procedure manual (24VAC35-20-10 et seq.).

E. Report submission. A written report of the team's findings shall be submitted to the executive director of the Commission on VASAP noting observations and recommendations of the review team. The chair of the reviewing team shall be responsible for submission of the report.

F. Recommendation of certification. The executive director shall provide the commission a report which contains recommendations for certification. The commission shall consider the recommendations of the executive director, and if necessary, review the findings, documents, documentation of compliance, as well as any other relevant material received.

G. Confidentiality. Each certification team shall adhere to all federal, state, and local laws governing confidentiality. The certification review and findings are the sole property of the Commission on VASAP. Dissemination of any information, except as expressly provided herein, constitutes a violation of confidentiality.

The Commission on VASAP shall be the sole source responsible for dissemination of any information regarding a program's certification review.

H. Standards. Each ASAP shall comply with these standards as indicated. Each standard shall be reviewed at the time of certification for compliance and at such time as the commission deems necessary in order to ensure continued compliance with standards.

#### Statutory Authority

§§ 18.2-271.1 and 18.2-271.2 of the Code of Virginia.

#### Historical Notes

Derived from VR647-01-04 § 2.2, eff. September 13, 1989; amended, Virginia Register Volume 7, Issue 9, eff. February 28, 1991.

### **24VAC35-40-40. Organization and administration.**

Category 1 - Statement of Purpose

Sc. 1: Each ASAP shall have a written statement of purpose which shall include its relationship to transportation safety, the courts and the community.

Sc. 2: Each ASAP shall have written goals and objectives which reflect the overall Commission on VASAP goal.

#### Category 2 - Authority

Sc. 1: Each ASAP shall have an independent legally-constituted policy board which has due authority for the operation of the program.

Sc. 2: The program policy board shall have written regulations and bylaws which follow the commission on VASAP policies and procedures and includes at minimum:

- a. Purpose and responsibility.
- b. Method of appointment of members (who, how, when, tenure).
- c. Frequency of meetings
- d. Parliamentary authority
- e. Responsibility of independent policy board to the Commission on VASAP for adherence and compliance of local program with statewide regulations.

Sc. 3: Each ASAP shall have a program organizational chart which clearly delineates administrative and staff responsibility for program operations, and reflects positions identified through job descriptions.

Sc. 4: Each ASAP shall have an identifiable director as defined in the policy and procedure manual, 24VAC35-20-10.

#### Category 3 - Personnel

Sc. 1: Each ASAP shall have an explicit written job description which includes minimum, explicit job qualifications for all staff positions. The review team will sample and review descriptions for all positions on the organizational chart.

Sc. 2: Each ASAP shall have a written personnel policies and procedures manual which shall, at minimum comply with all applicable federal, state or local mandates. The manual, at minimum, shall include the following areas:

- a. Benefits: Each ASAP shall have clear descriptions of personnel benefits.

b. Confidentiality: Each ASAP shall have policies and procedures regarding disclosure of defendant information which comply with all state and federal regulations. Included in these procedures shall be measures to ensure security, storage, access and destruction of all defendant records.

c. Conflict of interest: Each ASAP shall have policy and procedures to avoid any activity deemed to be in conflict with the interests of the program, as defined in the VASAP Policy and Procedures Manual, 24VAC35-20-10 et seq.

d. Affirmative action plan: Each ASAP shall promote equal employment opportunity in recruitment and selection processes by ensuring that qualification requirements do not limit or restrict employment opportunities because of race, color, religion, national origin, political affiliation, handicap, sex or age (except where there is a bona fide occupational requirement).

e. Equal employment opportunity: Each ASAP shall have policy and procedures to provide equal employment to employees and applicants for employment in all aspects of personnel management and race, color, religion, national origin, political affiliation, handicap, sex or age (except where there is a bona fide occupational requirement).

f. Grievance procedures: Each ASAP shall have policy and procedures to provide for resolution of employee problems and complaints wherein employees can freely discuss their concerns and ensure that employees will have an effective procedure by which various grievances can be fairly and objectively reviewed.

g. Office hours: Each ASAP shall have stated specific hours of program operation.

h. Salary scales: Each ASAP shall have policy and procedures to assign a salary grade for each job position in accordance with local pay scales approved by the local policy board.

i. Performance appraisal: Each ASAP shall have policy and procedures to provide an effective means for appraising the work performance of employees and for providing a pay for performance system.

j. Personnel records: Each ASAP shall have policy and procedures to maintain a complete and accurate personnel record for each employee. Included in these procedures shall be measures to ensure security, storage, access and destruction of all personnel records.

k. Probationary period: Each ASAP shall have policy and procedures to require satisfactory

completion of a probationary period as a prerequisite to continued employment, unless otherwise determined by local or state directives.

l. Purchasing: Each ASAP shall have a written procurement plan.

m. Reduction in force (staff): Each ASAP shall have a written reduction in force (staff) policies and procedures. An annual reduction in force plan shall include clear and distinct criteria and processes for personnel and positions affected, as well as, rationale for each proposed staff reduction and budgetary impact.

n. Standard of conduct: Each ASAP shall have written standards of conduct designed to protect the well-being and rights for all employees, to provide a safe efficient operation and to maintain compliance with public law.

o. Termination of employment: Each ASAP shall have policies and procedures for termination of employees.

p. Training: Each ASAP shall have policy and procedure to ensure that all staff participate in all Commission on VASAP training as well as to encourage and assist in staff development through academic study or through such other means to contribute to further service to the local ASAP program.

q. Travel: Each ASAP shall have policy and procedures for work related travel. Where local regulations do not exist, travel must conform with the Commonwealth of Virginia travel regulations.

Sc. 4: The certification review team will require documentation, evidence, or statements verifying action or efforts to fulfill each policy or procedure. Examples of documentation may include the following:

- a. Job description;
- b. Purchasing documents;
- c. A copy of an EEO policy;
- d. Staff interview; and
- e. Travel reimbursement documents.

#### Category 4 - Staffing

Sc. 1: Each ASAP shall employ staff to ensure that required services are provided for each

referral.

Sc. 2: Each ASAP shall employ staff to ensure that each component activity is completed.

## Category 5 - Components

Sc. 1: Each ASAP shall have written action plans, policy statements and exhibits of work for each of the components.

### A. Enforcement.

1. Each ASAP shall have written policy statements regarding:

- a. Increasing the number of persons arrested and convicted of DUI.
- b. Reducing the average BAC of arrested motorists.

2. The certification review team will require documentation, evidence, or statements verifying action or efforts used to fulfill requirements.

Examples of documentation may include the following:

- local, regional, state DUI-related training
- local, regional, state DUI-related projects/programs
- enforcement contacts, formal and informal
- services provided (roll-call activities, films, materials, etc.)
- policy board representation; and
- grant funding activity

### B. Adjudication.

1. Each ASAP shall have policy statements regarding:

- a. Enhanced adjudication of DUI offenders
- b. Maintaining a consistent rate of DUI referrals

2. The certification review team will require documentation, evidence, or statements verifying action or efforts to fulfill the requirements. Examples of documentation may include:

- local, regional, state DUI-related training
- local, regional, state DUI-related projects/programs
- judicial contacts, formal and informal

- availability of ASAP personnel for court hearings and testimony
- services provided (administrative/clerical, personnel, presentations, evaluations, etc.)
- policy board representation

#### C. Case management.

1. Each ASAP shall have policy statements requiring adherence to case management policies contained in the Commission on VASAP Policies and Procedures Manual (24VAC35-20-10 et seq.).

2. The certification review team will examine up to 10% of the active caseload or no more than 150 files. Case managers will be interviewed and case management systems will be examined, including local ASAP forms and documents.

3. The team will review the following areas of regulation, and will require documentation for verification of:

- a. Training
- b. Transfers
- c. Referral contact
- d. Intake
- e. Classification
- f. Education/treatment referral
- g. Monitoring
- h. Reporting

#### D. Education/treatment.

1. Each ASAP shall have policy statement regarding:

- a. Use of standardized VASAP curricula

- education

- intensive education

- young offenders (if applicable)

- b. Use of treatment referral resources which are properly licensed

2. The certification review team will require documentation, evidence, or statements verifying

action or efforts to fulfill the requirements. Examples of documentation may include:

a. Copies of service provider contracts or letters of agreement for both educational and treatment services

b. Copies of license of service providers

c. Copies of confidentiality regulations (local, state, federal)

d. Evidence of adherence to reporting guidelines from service providers:

-written receipt of referral within five working days

-Individual treatment plan within 15 days of the treatment interview

-written notice of change in treatment plan within 15 days

-verbal notice next working day, and written notice within five days, of absence or any other violation

-written progress reports every ninety days as well as final reports from treatment providers

-written final education reports

-written interim and final intensive education reports.

e. ASAP reports to service provider.

-written notice of referral summary of alcohol/drug information

-written notice of terminations, transfers, and excused and unexcused absences.

f. Evidence of instructor training for education and intensive education.

E. Public Information, education and prevention (PI & E).

1. Each ASAP shall have policy statements regarding the following:

a. Prevention and reduction of DUI incidents

b. Increase public knowledge of VASAP

c. Increase public knowledge of the alcohol/drug problem in transportation safety

2. The certification review team will require documentation, evidence or statements verifying action or efforts to fulfill the requirements. Examples of documentation may include:

a. Designation of person(s) in charge of PI & E activities

b. Annual PI & E plan

- c. Participation in Commission on VASAP and other statewide PI & E campaigns
- d. Attendance at PI & E training workshops
- e. Serve as PI & E resource for the community
- F. Evaluation and certification.

1. Each ASAP shall have policy statements regarding:

- a. Designation of person(s) in charge of evaluation activities;
- b. Production of annual program report;
- c. Evaluation of education/treatment services; and
- d. Participation in state surveys/evaluation projects.

2. The certification review team will require documentation, evidence or statements verifying action or efforts to fulfill the requirements. Examples of documentation may include:

- a. Automated systems reports;
- b. Annual program reports;
- c. Evidence of evaluations from education and treatment programs; or
- d. Evidence of participation with Commission on VASAP and other statewide information gathering projects.

#### Category 6 - Fiscal Policies

Sc. 1: Each ASAP shall have written fiscal policies and procedures conforming to generally-accepted accounting principles. Such policies should include, at minimum, budgeting, purchasing, auditing, property management, receipt of revenue, accounts payable, accounts receivable and methods of accounting. Each ASAP shall have policies which conform to fiscal requirements provided in the policy and procedure manual (24VAC35-20-10 et seq.).

#### Category 7 - Security and Confidentiality

Each ASAP shall have written policies which conform to the security and confidentiality requirements provided in the Policy and Procedure Manual, 24VAC35-20-220.

The certification team will require documentation, evidence or statements verifying efforts to fulfill the requirements. Examples of documentation may include the following:

- a. Release of information form;

- b. Disclosure logs; and
- c. File location and security.

#### Category 8. Waiver

Sc. 1 A justified exemption may be granted from a specific ASA certification requirement or any part thereof.

Sc. 2: The ASAP requesting a waiver shall submit the request in writing to the executive director.

Sc. 3: The executive director must act on the waiver request within 15 calendar days after receipt of the request in conformance with § 3.3 of the Policy and Procedure Manual, 24VAC35-20-10.

#### Statutory Authority

§§ 18.2-271.1 and 18.2-271.2 of the Code of Virginia.

#### Historical Notes

Derived from VR647-01-04 § 2.3, eff. September 13, 1989; amended, Virginia Register Volume 7, Issue 9, eff. February 28, 1991.

#### **24VAC35-40-50. Certificate of certification (approval).**

The certificate of approval shall be delivered or mailed to the approved ASAP and shall be kept in custody and control of such ASAP, posted in such a manner as to be viewable by the general public.

#### Statutory Authority

§§ 18.2-271.1 and 18.2-271.2 of the Code of Virginia.

#### Historical Notes

Derived from VR647-01-04 § 2.4, eff. September 13, 1989; amended, Virginia Register Volume 7, Issue 9, eff. February 28, 1991.

#### **24VAC35-40-60. Recertification.**

Recertification shall be based upon the ASAP's continued adherence to Standards for Certification.

ASAPs shall undergo the complete certification process every third year.

#### Statutory Authority

§§ 18.2-271.1 and 18.2-271.2 of the Code of Virginia.

#### Historical Notes

Derived from VR647-01-04 § 2.5, eff. September 13, 1989; amended, Virginia Register Volume 7, Issue 9, eff. February 28, 1991.

**24VAC35-40-70. Final certification decision.**

The executive director shall file with the commission a report which details the certification reviews conducted since the last commission meeting. The commission shall review the document presented and make a certification decision. The executive director shall notify in writing the director and the policy board chairperson of each ASAP reviewed of the commission's decision.

The commission may certify, revoke certification or decline to certify an ASAP.

If the commission fails to certify or revokes an ASAP's certification, the commission may establish a new ASAP.

The commission's certification decision shall be sent to the ASAP director, the ASAP policy board chairman, political subdivisions, and the courts the ASAP serves or would serve.

In the event of certification disputes with the certification review team, or the denial of a request for waiver of certification requirements by the executive director, the ASAP director may request a hearing before the commission. The request for the hearing must be in written form from the ASAP director and submitted to the commission 30 thirty days prior to the next regularly scheduled meeting of the commission. Upon receipt of a written request, the commission or its designee shall schedule a hearing.

Failure to file such a request or to appear as scheduled shall be deemed a settlement of the certification dispute or acceptance of the executive director's waiver decision.

Statutory Authority

§§ 18.2-271.1 and 18.2-271.2 of the Code of Virginia.

Historical Notes

Derived from VR647-01-04 § 2.6, eff. September 13, 1989; amended, Virginia Register Volume 7, Issue 9, eff. February 28, 1991.

FORMS (24VAC35-40)

Treatment Agency Report, VAS-10 (1/91).

Consent for the Release of Confidential Information, VASAP-34 (Rev. 7/90).

Financial Report.

Request for Deficit Funding.

Proposed Standard Treatment Services Agreement.

Transfer Sheet, VASAP-33 (Rev. 10/89).

Report Form, VASAP-42 (Rev. 10/89).

Certification Review Instrument/Certification Questionnaire Score Sheet.

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