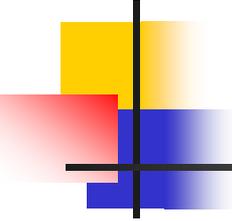


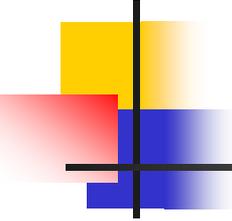
HUMAN RIGHTS REGULATION TRAINING

**Virginia Department of Mental Health, Mental Retardation and
Substance Abuse Services
Fall 2007**



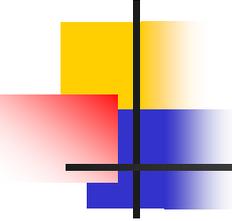
Welcome

- Introduction of presenters
- Goal for the day:
 - To provide an overview of the human rights regulations



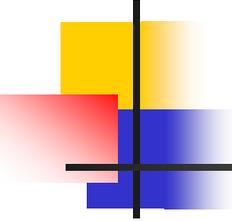
Overview Of The Day

- **8:30-10:30-Basic Rights and Administrative processes**
- **10:30-10:45-Break**
- **10:45-12:00- Participation in Decision Making and Consent/Substitute Decision Making/LHRC reviews of Consent and Authorizations**
- **12:00-1:00-Lunch break**
- **1:00-2:00-Life of a Complaint**
- **2:00-3:00-Confidentiality/Access and Amendment of Service Records**
- **3:00-3:15-Break**
- **3:15-4:15-Use of Seclusion, Restraint and Time Out**



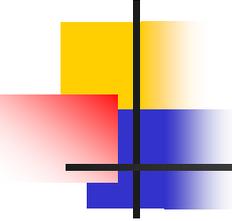
12 VAC 35-115-10 Authority

Section 37.2-400 of the Code of Virginia requires the State MHMRSAS Board to promulgate these regulations to further define and to protect the rights of individuals receiving services from providers of mental health, mental retardation and substance abuse services in the Commonwealth of Virginia.



12 VAC 35-115-10 Applicability

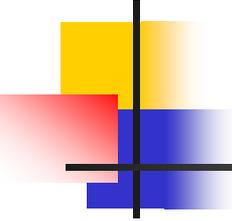
- Facilities operated by DMHMRSAS
- Sexually violent predator programs (Code § 37.2-909)
- Community Services Boards (§ 37.2-500) and Behavioral Health Authorities (§ 37.2-600)
- Providers licensed by DMHMRSAS under Code § 37.2-403 except those operated by DOC
- Any other provider receiving funding from DMHMRSAS (except those receiving funding from Part C of IDEA)



12 VAC 35-115-20 Policy

Each individual is assured:

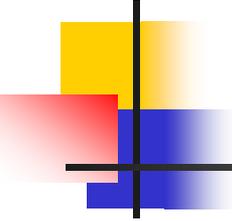
- Protection to exercise legal, civil, human rights
- Respect for basic human dignity
- Services consistent with sound therapeutic practice
- Legal rights, privileges or benefits are not denied solely because he has been voluntarily or involuntarily admitted, certified or committed to services.



12 VAC 35-115-20 Policy

Legal rights include the right to:

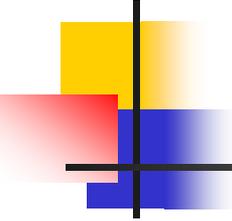
- **Acquire, retain, and dispose of property**
- **Buy or sell**
- **Sign legal documents**
- **Enter into contracts**
- **Register and vote**
- **Get married, separated, divorced, or have a marriage annulled**
- **Hold a professional, occupational, or vehicle operator's license**
- **Make a will**
- **Have access to lawyers and the courts.**



12 VAC 35-115-40 Assurance of Rights

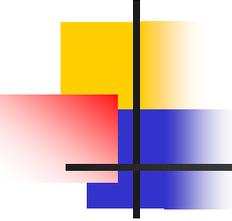
Individuals are entitled to know what their rights are under these regulations; therefore, providers shall take the following actions:

- Display, in areas most likely to be noticed, a document listing the rights of individuals under these regulations and how individuals can contact a human rights advocate. The document shall be presented in the manner, format and languages most frequently understood by the individual.



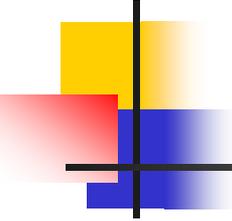
12 VAC 35-115-40 Assurance of Rights

- Notify each individual and his authorized representative, as applicable, about how to file a complaint. The notice shall:
 - be in writing and in any other form most easily understood by the individual, and
 - include the name and phone number of the human rights advocate and give a short description of the advocate's role, and
- The provider shall give this notice to and discuss it with the individual at the time services begin and every year thereafter.



12 VAC 35-115-40 Assurance of Rights

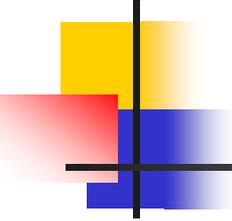
- Ask the individual or authorized representative to sign the notice of rights. File the notice in the individual's service record. If the individual or AR cannot or will not sign, the person who gave the notice shall document that fact in the services record.
- Give a copy of the regulations to anyone who asks for one.
- Display and provide information as requested by the Virginia Office of Protection and Advocacy (VOPA) that informs the individual of their right to contact that agency.



12 VAC 35-115-40 Assurance of Rights

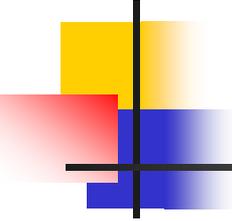
Every individual receiving services has a right to seek informal resolution and file a human rights complaint. Any individual receiving services (or anyone acting on his behalf) who thinks that a provider has violated any of his rights under these regulations may file a complaint and get help in filing the complaint.

These regulations do not prevent anyone from pursuing any other legal remedy.



12 VAC 35-115-40 Assurance of Rights (Definitions)

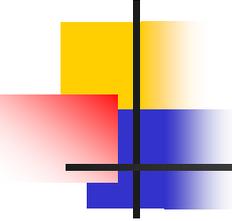
- **“Individual”** means a person who is receiving services. This term includes the terms *consumer, patient, resident, recipient, and client.*



12 VAC 35-115-50 Dignity

Each individual has a right to exercise his legal, civil and human rights including:

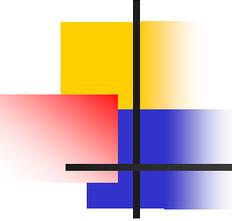
- constitutional rights
- statutory rights
- the rights contained in these regulations.



12 VAC 35-115-50 Dignity

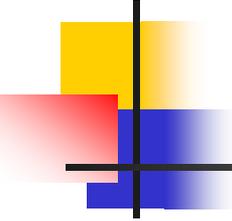
Each individual has a right to services that he receives:

- Respond to his needs and preferences, and
- Be person-centered.
 - "Person centered" means focusing on the needs and preferences of the individual, empowering and supporting the individual in defining the direction for his life, and promoting self-determination, community involvement, and recovery.



12 VAC 35-115-50 Dignity

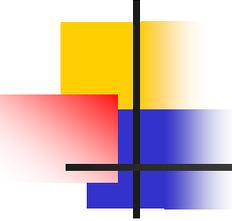
- Each individual has the right to be:
 - Protected,
 - Respected, and
 - Supported in exercising these rights.



12 VAC 35-115-50 Dignity

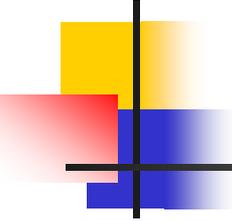
Each individual has the right to:

- Use his preferred or legal name.
 - May be limited when a licensed professional determines that the use of a name will result in demonstrable harm or have significant negative impact on the program itself or the individual's treatment, progress or recovery.
 - Requirements include:
 - **Discuss** with individual
 - **Notify** the advocate
 - **Document** reasons in services record
 - Need for restriction **reviewed** every month



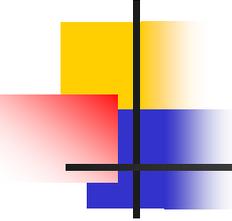
12 VAC 35-115-50 Dignity

- Each individual has the right to:
 - Be protected from harm, including abuse, neglect and exploitation.
 - Have help in learning about, applying for and fully using any public service or benefit to which he may be entitled.



12 VAC 35-115-50 Dignity

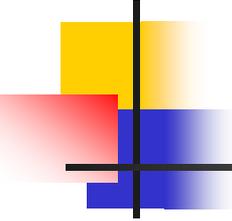
- Each individual has the right to:
 - Have opportunities to communicate in private with lawyers, judges, legislators, clergy, licensed health care providers, legally authorized representatives, advocates, the Inspector General and employees of VOPA.
 - Be provided with information about program services and policies in a manner format and language easily understood by the individual.



12 VAC 35-115-50 Dignity

In residential settings, each individual has a right to:

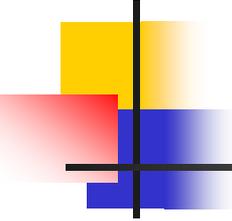
- Have sufficient and suitable clothing for his exclusive use.
- Receive nutritionally adequate, varied and appetizing meals that are prepared and served in sanitary conditions, are served at appropriate times and temperatures, and are consistent with any individualized diet program.



12 VAC 35-115-50 Dignity

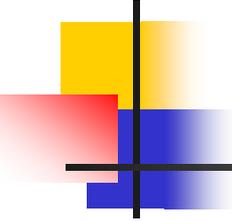
Live in a humane, safe, sanitary environment that gives the each individual, at a minimum:

- Reasonable privacy and private storage space;
- Toilets, sinks, showers tubs designed to accommodate individual's needs;
- Direct outside air provided by a window that opens or an air conditioner;
- Windows or skylights in all major areas;
- Clean air, free of bad odors;and



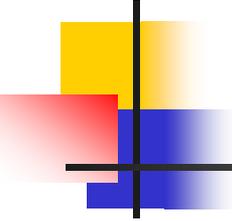
12 VAC 35-115-50 Dignity

- Room Temperatures that are comfortable year round and compatible with health requirements.



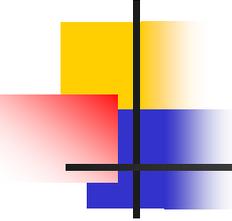
Dignity-Religious right

- Practice a religion and participate in religious services subject to their availability, provided that the services are not dangerous and do not infringe on the freedom of others.
- Religious services or practices may be limited if:
 - It presents a danger of bodily injury;
 - Interferes with another persons religious beliefs or practices
 - In accordance with other general rules limiting privileges or times or places of activities.



12 VAC 35-115-50 Dignity

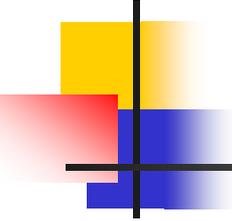
- When limiting religious practices or services the provider shall:
 - **Discuss** the reason of the with the individual;
 - **Notify** the human rights advocate of the restriction prior to the implementation; and
 - **Document** the reason for the restriction in the services record.
 - **Review**



12 VAC 35-115-50 Dignity

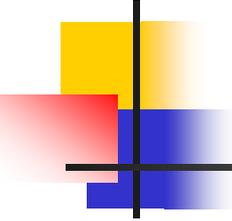
In residential settings and inpatient settings, each individual has a right to:

- Have paper, pencil and stamps free of charge for at least one letter every day upon request.
 - If the individual has funds to buy paper, pencil and stamps to send a letter every day, the provider does not have to pay for them.



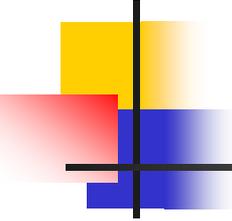
Dignity: Mail

- In residential settings each individual has the right to:
- Communicate privately with any person by mail and have help in writing or read mail as needed.
- a. An individual's access to mail may be limited only if the provider has reasonable cause to believe that the mail contains illegal material or anything dangerous. If so, the director or his designee may open the mail, but not read it, in the presence of the individual.



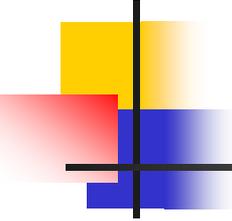
Dignity: Mail continued

- b. An individual's ability to communicate by mail may be limited if, in the judgment of a licensed professional, the individual's communication with another person or persons will result in demonstrable harm to the individual's mental health.
- c. The director or his designee shall **discuss** the issue with the individual and **inform** the human rights advocate of the reasons for any restriction prior to implementation and the reasons for the restriction shall be **documented** in the individual's services record. The need for the restriction shall be **reviewed** by the team every month and documented in the services record.



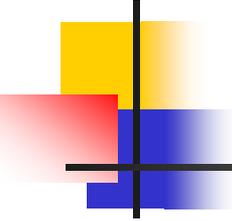
Dignity: Mail continued

- **"Licensed professional"** means a physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, licensed or certified substance abuse treatment practitioner, or certified psychiatric nurse specialist.



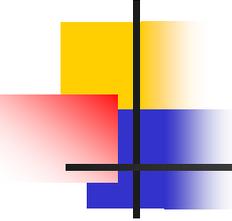
Dignity-Telephone

- In residential settings each individual has the right to:
- Communicate privately with any person by telephone and have help in doing so. Use of the telephone may be limited to certain times and places to make sure that other individuals have equal access to the telephone and that they can eat, sleep, or participate in an activity without being disturbed.



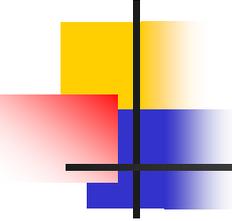
Dignity-Telephone continued

- a. An individual's access to the telephone may be limited only if, in the judgment of a licensed professional, communication with another person or persons will result in demonstrable harm to the individual or significantly affect his treatment.
- b. The director or his designee shall **discuss** the issue with the individual and **inform** the human rights advocate of the reasons for any restriction prior to implementation and the reasons for the restriction shall be **documented** in the individual's services record. The need for the restriction shall be **reviewed** by the team every month and documented in the individual's services record.



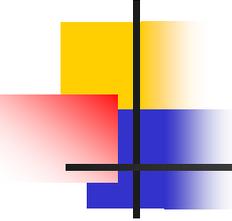
Dignity-Telephone continued

- c. Residential substance abuse services providers that are not inpatient hospital settings or crisis stabilization programs may develop policies and procedures that limit the use of the telephone during the initial phase of treatment when sound therapeutic practice requires restriction, subject to the following conditions:
- (1) Prior to implementation and when it proposes any changes or revisions, the provider shall submit policies and procedures, program handbooks, or program rules to the LHRC and the human rights advocate for review and approval.
- (2) When an individual applies for admission, the provider shall notify him of these restrictions.



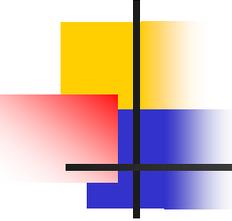
Dignity- Visitors

- In residential settings each individual has the right to
- Have or refuse visitors.
- a. An individual's access to visitors may be limited or supervised only when, in the judgment of a licensed professional, the visits result in demonstrable harm to the individual or significantly affect the individual's treatment or when the visitors are suspected of bringing contraband or threatening harm to the individual in any other way.



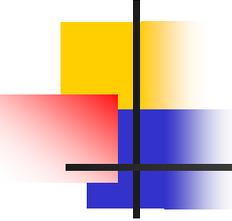
Dignity- Visitors continued

- b. The director or his designee shall discuss the issue with the individual and inform the human rights advocate of the reasons for any restriction prior to implementation and the restriction shall be documented in the individual's services record. The need for the restriction shall be reviewed by the team every month and documented in the individual's services record.



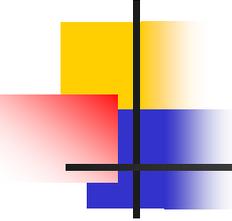
Dignity- Visitors continued

- c. Residential substance abuse service providers that are not inpatient hospital settings or crisis stabilization programs may develop policies and procedures that limit visitors during the initial phase of treatment when sound therapeutic practice requires the restriction, subject to the following conditions:
 - (1) Prior to implementation and when proposing any changes or revisions, the provider shall submit policies and procedures, program handbooks, or program rules to the LHRC and the human rights advocate for review and approval.
 - (2) The provider shall notify individuals who apply for admission of these restrictions.



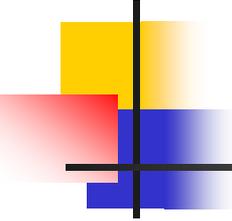
12 VAC 35-115-50 Dignity

- 9. Nothing in these provisions shall prohibit a provider from stopping, reporting, or intervening to prevent any criminal act.



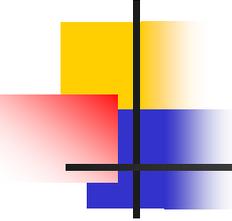
12 VAC 35-115-50 Dignity

- Providers' duties
- 1. Providers shall recognize, respect, support, and protect the dignity rights of each individual at all times. In the case of a minor, providers shall take into consideration the expressed preferences of the minor and the parent or guardian.
- 2. Providers shall develop, carry out, and regularly monitor policies and procedures that assure the protection of each individual's rights.



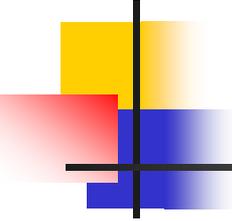
12 VAC 35-115-50 Dignity

- Abuse, neglect and exploitation duties:
 - As a condition of employment or volunteering anyone who has reason to believe that an individual may have been abused, neglected or exploited must *immediately report this to the director.*



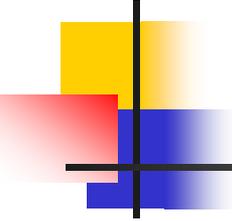
Dignity: Abuse, neglect and exploitation duties- continued

- The director shall *immediately take steps to protect the individual* until investigation is complete. **This may include the following:**
 - (1) Direct the employee or employees involved to have no further contact with the individual. In the case of incidents of peer-on-peer aggression, protect the individuals from the aggressor in accordance with sound therapeutic practice and these regulations.
 - (2) Temporarily reassign or transfer the employee or employees involved to a position that has no direct contact with individuals receiving services.
 - (3) Temporarily suspend the involved employee or employees pending completion of an investigation.



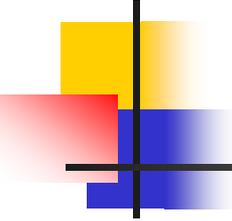
Dignity: Abuse, neglect and exploitation duties- continued

- *Immediately notify the human rights advocate and the authorized representative. (Not to exceed 24 hours).*
- Retaliation against employee who reports abuse to an outside entity is forbidden.
- *Initiate or cooperate with an impartial investigation within 24 hours.* The investigation shall be conducted by a person trained to do investigations and who is not involved in the issues under investigation.



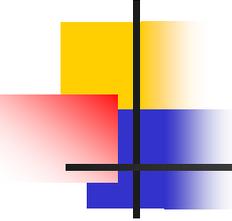
Abuse, neglect and exploitation duties:

- Investigator reports to director or investigating authority and human rights advocate within 10 days.
- The director or investigating authority decide based on report, whether abuse, neglect or exploitation occurred. Standard for this decision is *preponderance of evidence*.
- If abuse, neglect or exploitation has occurred, the Director shall take *any action* required to protect the individual and other individuals. All actions must be documented and reported as required in 12 VAC 35-115-230.



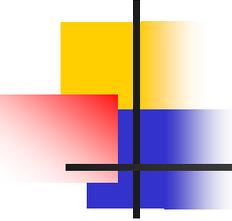
Abuse, neglect and exploitation duties:

- The director shall provide written notice, within 7 working days from the completion of the investigation, of the decision and all actions taken, to the individual or the authorized representative, the human rights advocate, the investigating authority and the involved employee or employees. The decision shall be in writing and in the manner, format, and language most easily understood by the individual.



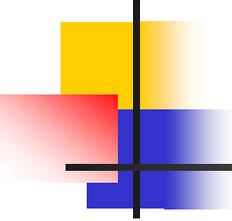
Abuse, neglect and exploitation duties:

- If the individual affected by the abuse, neglect or exploitation or his authorized representative is not satisfied with the director's actions, he or his authorized representative or anyone else acting on his behalf may file a petition for an LHRC hearing. (See 12 VAC 35-115-180)



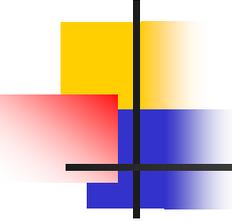
Abuse, neglect and exploitation investigation requirements :

- Director must cooperate with external investigations.
- Director must report to DSS according to Code § 63.2-1509 and 63.2-1606.
- Director must *immediately* report to law enforcement authorities if at any time a crime is suspected.



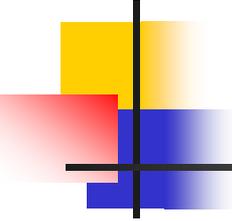
12 VAC 35-115-50 Dignity

- **“Abuse”** means any act or failure to act by an employee or other person responsible for the care of an individual that was performed or was failed to be performed knowingly, recklessly, or intentionally, and that caused or might have caused physical or psychological harm, injury, or death to an individual receiving services. Examples of abuse include but are not limited to the following:



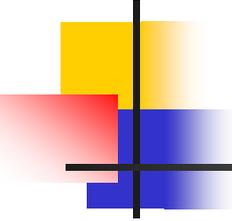
12 VAC 35-115-50 Dignity

- Rape, sexual assault, or other criminal sexual behavior
- Assault or battery
- Use of language that demeans, threatens, intimidates or humiliates the person
- Misuse or misappropriation of the person's assets, goods or property
- Use of excessive force when placing a person in physical or mechanical restraint



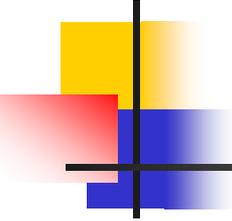
12 VAC 35-115-50 Dignity

- Use on a person of physical or mechanical restraints that is not in compliance with federal and state laws, regulations, and policies, professionally accepted standards of practice or the person's individualized services plan
- Use of more restrictive or intensive services or denial of services to punish the person or that is not consistent with his individualized services plan.



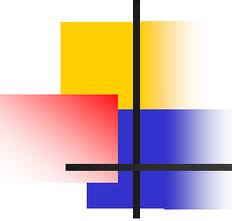
12 VAC 35-115-50 Dignity

- **Exploitation** means the misuse or misappropriation of the individual's assets, goods, or property. Exploitation is a type of abuse. (See §37.2-100 of the Code of Virginia.) Exploitation also includes the use of a position of authority to extract personal gain from an individual. Exploitation includes violations of 12VAC35-115-120 (Work) and 12VAC35-115-130 (Research). Exploitation does not include the billing of an individual's third party payer for services.



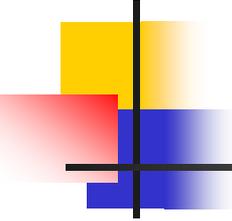
12 VAC 35-115-50 Dignity

- Exploitation does not include:
 - Billing of an individual's third party payer for services
 - Instances of use or appropriation of an individual's assets, goods or property when permission is given by the individual or his authorized representative:
 - With full knowledge of the consequences,
 - With no inducements, or
 - Without force, misrepresentation, fraud, deceit, duress of any form, constraint or coercion.



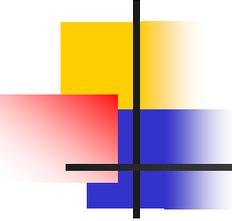
12 VAC 35-115-50 Dignity

- **“Neglect”** means the failure by an individual, program or facility responsible for providing services to provide nourishment, treatment, care, goods, or services necessary to the health, safety or welfare of a person receiving care or treatment for mental illness, mental retardation or substance abuse.



12 VAC 35-115-50 Dignity

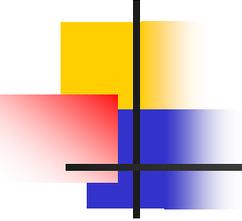
- **“Peer-on-peer aggression”** means a physical act, verbal threat or demeaning expression by an individual against or to another individual that causes physical or emotional harm to that individual. Examples include hitting, kicking, scratching, and other threatening behavior. Such instances may constitute potential neglect.



12 VAC 35-115-60 Services

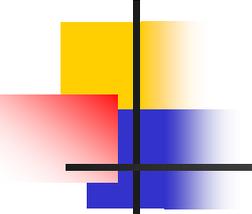
Services:

Each individual receiving services shall receive those services according to law and sound therapeutic practice.



12 VAC 35-115-60 Services

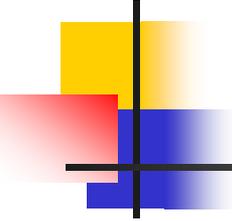
- Providers shall develop, carry out, and regularly monitor policies and procedures governing discrimination in the provision of services.
- Providers shall comply with all state and federal laws, including any applicable provisions of the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.)



12 VAC 35-115-60 Services

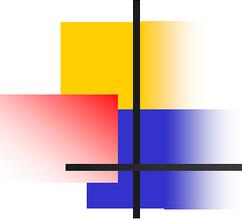
Anti-Discrimination

- Policies and procedures must require, at a minimum:
 - Avenue of complaint to the director
 - Appropriate investigation be conducted immediately
 - Decision, action, and documentation within 10 working days of receipt of complaint
 - Forwarding of decision and action to the individual, the human rights advocate, and any employee or employee involved
 - Right to petition for an LHRC hearing under 12 VAC 35-115-180



12 VAC 35-115-60 Services

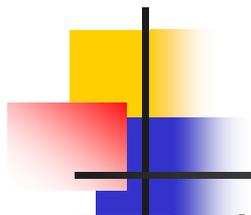
- Providers shall ensure that all services, including medical services and treatment, are at all times delivered in accordance with sound therapeutic practice. Providers may deny or limit an individual's access to services if sound therapeutic practice requires limiting the service to individuals of the same sex or similar age, disability, or legal status.



12 VAC 35-115-60 Services

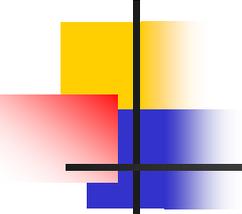
Emergencies:

- An “Emergency” is a situation that requires a person to take immediate action to avoid harm, injury, or death to an individual receiving services or to others.



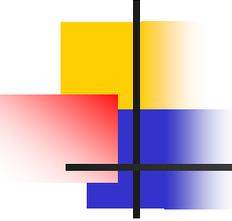
12 VAC 35-115-60 Services

- Providers shall develop and implement policies and procedures that address emergencies, which must:
 - Identify what caregivers may do to respond to an emergency
 - Identify qualified clinical staff who are accountable for assessing emergency conditions and determining the appropriate intervention
 - Require that the director immediately notify the individual's AR in harm or injury to any individual
 - Require documentation in the individual's services record of all facts and circumstances surrounding the emergency.



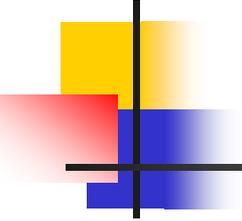
12 VAC 35-115-60 Services

- Providers shall assign a specific person or group of persons to carry out each of the following activities:
 - Medical, mental and behavioral screenings and assessments, as applicable, upon admission and during the provision of services
 - Preparation, implementation, and appropriate changes in an individual's services plan based on the ongoing review of the medical, mental, and behavioral needs of the individual receiving services and
 - Preparation and implementation of an individual's discharge plan.



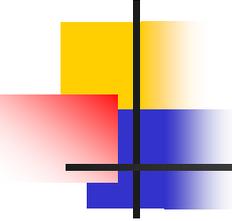
12 VAC 35-115-60 Services

- Review every use of seclusion and restraint by a qualified professional who is involved in providing services to the individual.



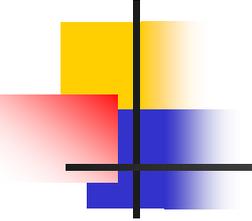
12 VAC 35-115-60 Services

- Providers shall not prepare or deliver any service for any individual without a services plan that is tailored specifically to the needs and expressed preferences of the individual receiving services and, in the case of a minor, the minor and the minor's parent or guardian. Services provided in response to emergencies or crises shall be part of the services plan and thereafter documented in the individual's services plan.



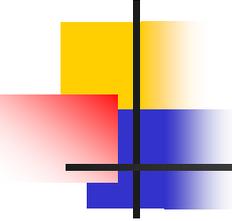
12 VAC 35-115-60 Services

- Providers shall write the services plan and discharge plan in clear, understandable language.
- Definitions follow:



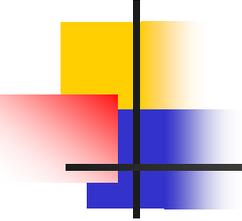
12 VAC 35-115-60 Services

“Individualized Services Plan or ISP” means a comprehensive and regularly updated written plan that describes the individual’s needs, the measurable goals and objectives to address those needs, and strategies to reach the individual’s goals. An ISP is person-centered, empowers the individual, and is designed to meet the needs and preferences of the individual. The ISP is developed through a partnership between the individual and the provider and includes an individual’s treatment plan, habilitation plan, person-centered plan, or plan of care.



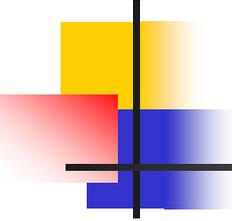
12 VAC 35-115-60 Services

"Discharge Plan" means the written plan that establishes the criteria for an individual's discharge from a service and identifies and coordinates delivery of any services needed after discharge.



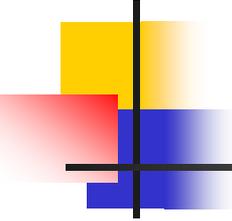
12 VAC 35-115-60 Services

- When preparing and changing an individual's services or discharge plan, providers shall ensure that all services received by the individual are integrated.
 - With the individual's or the individual's authorized representative's authorization, providers may involve family members in services and discharge planning. When the individual or his authorized representative requests such involvement, the provider shall take all reasonable steps to do so.
 - In the case of services to minors, the parent or guardian or other person authorized to consent to treatment pursuant to §54.1-2969 A of the Code of Virginia shall be involved in service and discharge planning.



12 VAC 35-115-60 Services

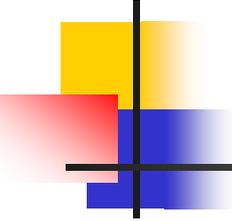
- Providers shall ensure that the entries in an individual's services record are at all times authentic, accurate, complete, timely, and pertinent.



12 VAC 35-115-100 Restrictions of Freedoms of Everyday Life

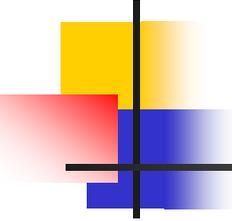
From admission until discharge from service, each individual is entitled to:

- Enjoy all the freedoms of everyday life that are consistent with his need for services, and the protection of others, that do not interfere with his services or the services of others.
- These freedoms include the following:
 - Freedom to move within the service setting, it's grounds and the community.
 - Freedom to communicate, associate, and meet privately with anyone the individual chooses.



12 VAC 35-115-100 Restrictions of Freedoms of Everyday Life

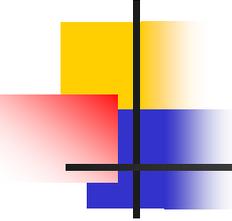
- Freedom to have and spend money.
- Freedom to see, hear or receive television, radio, books, newspapers...
- Freedom to keep and use personal clothing and other personal items.
- Freedom to use recreational facilities and enjoy the outdoors.
- Freedom to make purchases in canteens, vending machines or stores selling a basic selection of food and clothing.
- Receive services in that setting and under those conditions that are least restrictive of his freedom.



12 VAC 35-115-100 Restrictions of Freedoms of Everyday Life

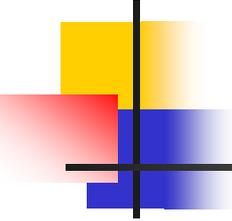
Provider Duties:

- Encourage participation in normal activities, and support the individual's freedoms.
- Providers shall not limit or restrict an individual's freedom more than is needed to achieve a therapeutic benefit, maintain a safe and orderly environment or intervene in an emergency.



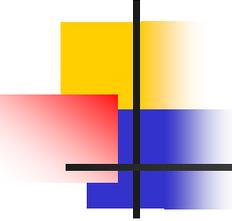
12 VAC 35-115-100 Restrictions of Freedoms of Everyday Life

- A qualified professional shall regularly review every restriction is discontinued when the individual as met the criteria for removal.
- No restriction on personal freedom of any individual solely because criminal or delinquency charges are pending, except for individuals transferred directly from jail or detention.
- Restrictions must be justified and carried out according to these regulations.



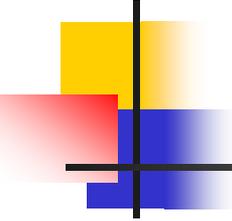
12 VAC 35-115-100 Restrictions of Freedoms of Everyday Life

- Except as provided in 12 VAC 35-115-50 (E) providers may impose restrictions if a qualified professional involved in providing services has in advance:
 - Assessed and documented all possible alternatives to the restrictions...
 - Determined that the restriction is necessary for effective treatment or to protect him or others from harm...



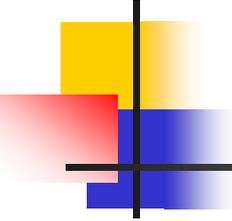
12 VAC 35-115-100 Restrictions of Freedoms of Everyday Life

- Documented the need for the restriction.
- Explained the reason for the restriction to the individual...
- Regularly reviews the need for the restriction and it is discontinued when the criteria is met
- Restriction may be imposed if a court has so ordered...
- Program Rules may be developed and enforced if they do not conflict with the regulations or any individual's services plan and the rules are needed to maintain a safe and orderly environment.



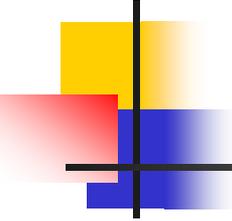
12 VAC 35-115-100 Restrictions of Freedoms of Everyday Life

- Providers shall in the development of program rules:
 - Get suggestions from individuals
 - Apply the rules in the same way to all
 - Give the rules to each individual/AR
 - Post the rules in areas of regular access
 - Submit rules to LHRC for review and approval upon request of the advocate or LHRC



12 VAC 35-115-100 Restrictions of Freedoms of Everyday Life

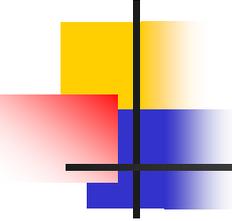
- Providers shall in the development of program rules:
 - Prohibit individuals from disciplining other individuals, except as part of an organized self government program conducted according to a written policy approved in advance by the LHRC.



12 VAC 35-115-100 Restrictions of Freedoms of Everyday Life

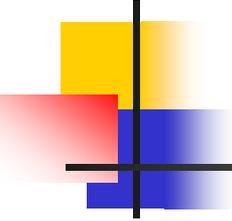
Definition:

- **“Restriction”** means anything that limits or prevents an individual from freely exercising his rights and privileges.



12 VAC 35-115-120 Work

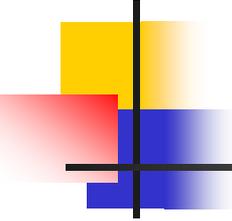
- Individuals have a right to engage in work or work related activities consistent with their needs while receiving services. Personal maintenance and personal housekeeping by individuals in residential settings are not subject to this provision.



12 VAC 35-115-120 Work

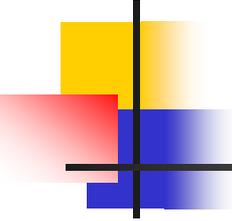
Provider Duties:

- Individuals shall not be required to perform labor for the provider as a condition for service. If an individual chooses to perform labor for the provider, it must be consistent with his individualized services plan. All policies and procedures, including pay, must be consistent with the Fair Labor Standards Act.
- Individuals receiving services shall be considered for employment opportunities on an equal basis with other applicants and in accordance with the ADA.



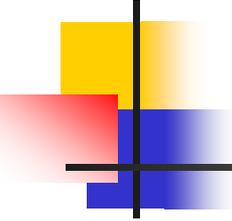
12 VAC 35-115-120 Work

- Providers shall give employees information, training and policies affecting the employment of individuals receiving services upon request.
- Vocational training, extended employment or supportive employment procedures shall be documented and available.



12 VAC 35-115-120 Work

- Providers who employ individuals receiving services shall not deduct the cost of services from their wages unless ordered by a court.
- Providers shall not sell to or purchase goods or services from an individual receiving services except through policy that is consistent with DOL.

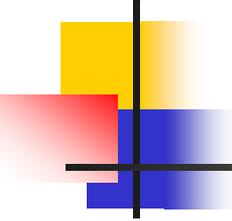


12 VAC 35-115-130 Research

- Each individual has a right to choose to participate or not participate in human research.

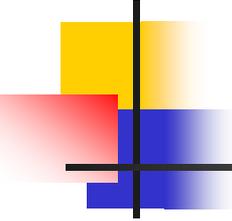
Provider Duties:

- Informed consent (written and prior to beginning of participation).
- Comply with all federal and state regulations regarding human research including § 32.1-162.17).



12 VAC 35-115-130 Research

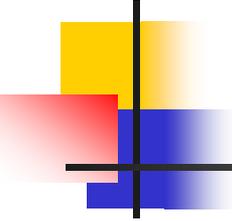
- Review and approval by an institutional review board or research review committee prior to participation in human research.
- Inform and provide a copy of the IRB approval to the LHRC before participation in human research.
- Provide periodic updates on the status of the research to the LHRC.



12 VAC 35-115-130 Research

Definition:

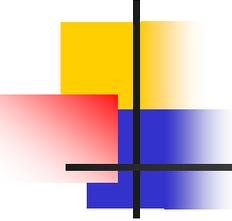
- **“Human Research”** means any systematic investigation, including research development, testing, and evaluation, utilizing human subjects, that is designed to develop or contribute to generalized knowledge. Human research shall not include research exempt from federal research regulations pursuant to 45 CFR 46.101(b).



12 VAC 35-115-130 Research

Definition:

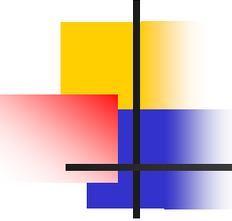
- **“Historical Research”** means the review of information that identifies individuals receiving services for the purpose of evaluating or otherwise collecting data of general historical significance. See 12VAC35-115-80 B (Confidentiality).



12 VAC 35-115-130 Research

Definition:

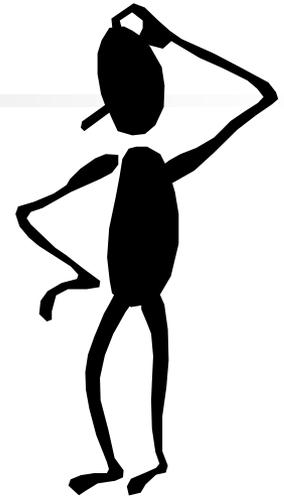
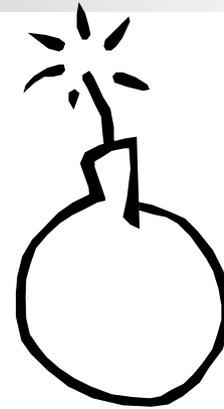
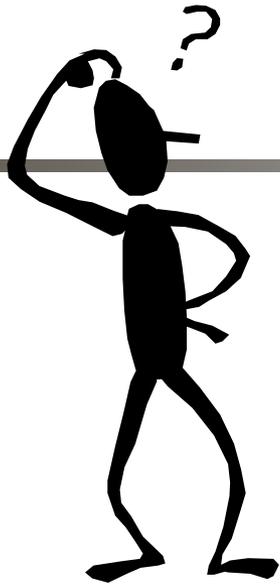
- **“Research review committee”** or **“Institutional review board”** means a committee of professionals to provide complete and adequate review of research activities. The committee shall be sufficiently qualified through maturity, experience, and diversity of its members, including consideration of race, gender, and cultural background, to promote respect for its advice and counsel in safeguarding the rights and welfare of participants in human research.

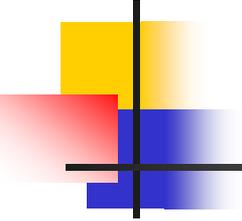


Administrative processes

- Variances
- Reporting Requirements
- Enforcement and Sanctions
- Offices, compositions and duties

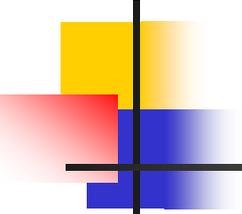
Variations





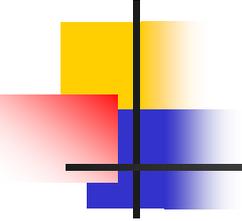
Variations

- Variations to the regulations shall be requested and approved only when the provider has tried to implement the relevant requirement without a variance and can provide objective, documented information that continued operation without a variance is not feasible or will prevent the delivery of effective and appropriate services and supports to individuals.



Variations

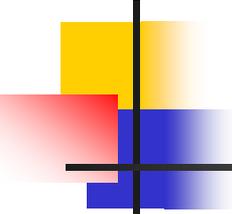
- The requirement that you try to implement the variance does not mean you would have to put consumers at risk of injury, sickness or death.
- Only directors may apply for variations, and they must first be approved by the provider, the governing body of the provider, or the commissioner, as appropriate, before consideration by an LHRC or the SHRC.
- Upon receiving approval from the governing body, and after notifying the human rights advocate and other interested persons, the director shall file a formal application for variance with the LHRC.



Variations

Application

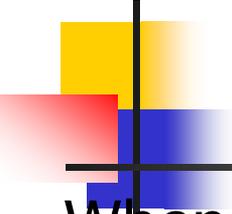
- The application must reference:
 - The specific part of the regulations to which a variance is needed
 - The proposed wording of the substitute rule or procedure
 - The justification for the variance
 - The time limits and other conditions for duration and the circumstances that will end the applicability of the variance.



Variances

LHRC Review

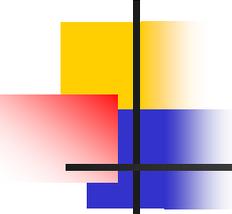
- When the LHRC receives the application, it shall:
 - Invite, and provide ample time to receive, oral or written statements about the application from the human rights advocate, those affected by the variance, and other interested persons
 - Review the application and prepare a written report of facts, which shall include its recommendation for approval, disapproval, or modification and
 - Send its report, recommendations, and a copy of the original application to the State Human Rights Director, the SHRC, and the director making application for the variance.



Variances

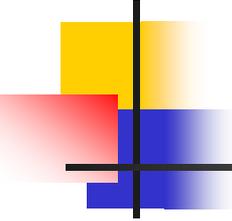
SHRC Review

- When the SHRC receives the application and LHRC report, it shall:
 - Invite oral or written statements about the application by publishing the request for variance in the next issue of the Virginia Register of Regulations
 - Notify the Inspector General
 - Prepare a written decision
 - Disapprove, modify or approve the application.
 - Notify persons in accordance with the regulations.



Variances

- The decision of the SHRC granting or denying a variance shall be final.
- All variances shall be approved for a specific time period and must be reviewed annually.
- The decision of all variances and reasons shall be published in the next issue of the Virginia Register of Regulations.
- Directors shall implement approved variances in strict compliance with the written application as amended, modified, or approved by the SHRC.
- Providers shall develop policies and procedures for monitoring the implementation of any approved variance..



Variations

- Following the granting of a variance, the provider shall notify all individuals affected by the variance about the details of the variance.
- If an individual is in immediate danger due to a provider's implementation of these regulations, the provider may request a temporary variance pending approval pursuant to the process described in this section. Such a request shall be submitted in writing to the commissioner, chairperson of the SHRC, and state human rights director. The commissioner, chairperson of the SHRC, and state human rights director shall issue a decision within 48 hours of the receipt of such a request.

12 VAC 35-115-230

Provider Requirements for Reporting to the Department

- Collect, maintain and report on abuse, neglect and exploitation:
 - DMHMRSAS facilities according to appropriate operating instructions.
 - Licensed or funded entities shall report each allegation of abuse or neglect to the human rights advocate within 24 hours from the receipt of the allegation.

12 VAC 35-115-230

Provider Requirements for Reporting to the Department

- Written investigation report due to human rights advocate within 10 working days from the date the investigation began. The report shall include the following:
 - Whether abuse, neglect or exploitation occurred;
 - Type of abuse; and
 - Whether the act resulted in physical or psychological injury.

12 VAC 35-115-230

Provider Requirements for Reporting to the Department

- Collect, maintain and report on deaths and serious injuries.
 - DMHMRSAS facilities according to appropriate operating instructions.
 - Licensed or funded entities shall report deaths and serious injuries in writing to the Office of Licensing within 24 hours of discovery and by telephone to the AR within 24 hours.

12 VAC 35-115-230

Provider Requirements for Reporting to the Department

- All such reports shall include but not be limited to the following:
 - Date and place of death/injury
 - Nature of injuries and treatment required; and
 - Circumstances of death/serious injury.

12 VAC 35-115-230

Provider Requirements for Reporting to the Department

- Collect, maintain and report the following information concerning seclusion and restraint:
 - DMHMRSAS facilities according to appropriate operating instructions.
 - Licensed or funded entities shall submit an annual report of each instance of seclusion or restraint to the office of Health and Quality Care by January 15 of each year. Format to follow.

12 VAC 35-115-230

Provider Requirements for Reporting to the Department

- Each instance of seclusion or restraint shall be compiled on a monthly basis and include:
 - Types to include:
 - Physical restraint (manual hold)
 - Mechanical restraint
 - Pharmacological (chemical restraint)
 - Seclusion
 - Rationale for the use of seclusion or restraint:
 - Behavioral purpose
 - Medical purpose
 - Protective purpose

12 VAC 35-115-230

Provider Requirements for Reporting to the Department

- Duration of the seclusion or restraint:
 - The actual time the individual is in seclusion or restraint from the time of initiation until release.
 - For medical and protective purposes, the duration is the length of the episode as indicated in the order.
- Any instance of seclusion or restraint that does not comply with these regulations or approved variances or that results in injury shall be reported to the AR and the human rights advocate within 24 hours.

12 VAC 35-115-230

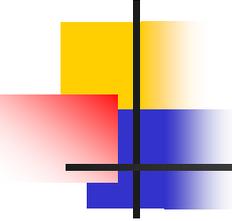
Provider Requirements for Reporting to the Department

- Collect, maintain and report the following information concerning human rights activities:
 - Monthly information on the type, resolution level and findings of each complaint of a human rights violation. LHRC as requested.
 - Monthly reports to the advocate and LHRC about the implementation of any variances.
- Use department forms or automated reporting format.

12 VAC 35-115-230

Provider Requirements for Reporting to the Department

- DMHMRSAS shall compile all data reported under this section and make available to the public. Identifying information will be removed.
- Maintain confidentiality in all reporting.
- Privileged information is not reported.
- Report to Department of Health Professions as required.

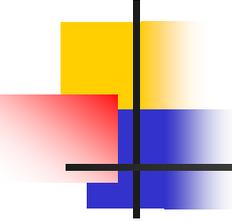


12 VAC 35-115-250

Offices, Compositions and Duties

Providers and their directors shall:

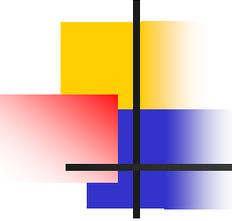
- Identify a person/persons accountable for helping individuals to exercise their rights and resolve complaints regarding services.
- Comply with all state laws governing the reporting of abuse and neglect and all procedures set forth in these regulations.
- Require competency-based training on these regulations upon employment and at least annually thereafter.



12 VAC 35-115-250

Offices, Compositions and Duties

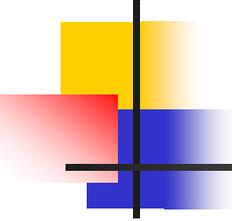
- Take all steps necessary to assure compliance with these regulations in all services provided.
- Communicate information about the availability of a human rights advocate and assure an LHRC to all individuals receiving services.
- Assure that the appropriate staff attend LHRC meetings in accordance with the LHRC meeting schedule to report on human rights activities, to impart information to the LHRC at the request of the human rights advocate or LHRC, and discuss specific concerns or issues with the LHRC.



12 VAC 35-115-250

Offices, Compositions and Duties

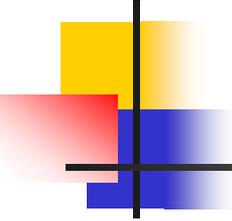
- Assure one LHRC affiliation within the region as defined by the SHRC. The SHRC may require multi-site providers to have more than one LHRC affiliation within a region if the SHRC determines that additional affiliations are necessary to protect individuals' human rights.



12 VAC 35-115-250

Offices, Compositions and Duties

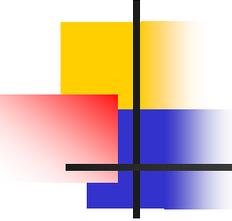
- Cooperate with the human rights advocate and the LHRC to investigate and correct conditions or practices interfering with the free exercise of individual's rights.
- Provide the advocate unrestricted access to individuals and service records.
- Submit policies and procedures that may affect individual rights to the human rights advocate for review and comment.



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Offices, Compositions and Duties

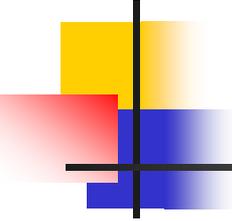
- Comply with requests from the SHRC, LHRC and human rights advocate for information, policies and written reports.
- Name a liaison to the LHRC who shall give the LHRC suitable meeting accommodations, clerical support...Oversight and assistance with the LHRC's substantive implementation of these regulations shall be provided by the SHRC.
- Submit applications for variances as a last resort.



12 VAC 35-115-250

Offices, Compositions and Duties

- Post in program locations information about the human rights program.
- Not influence the appointment of any person to an LHRC associated with the provider or director.

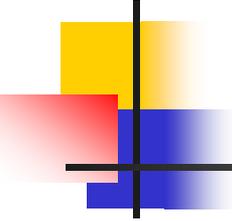


12 VAC 35-115-250

Offices, Compositions and Duties

Employees of the provider shall, as a condition of employment:

- Learn about, comply with and help individuals understand these regulations.
- Protect individuals from any form of abuse, neglect or exploitation:
 - By not abusing, neglecting or exploiting the individual.
 - By not permitting or condoning anyone else to abuse, neglect or exploit.

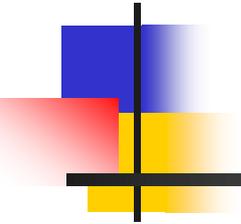


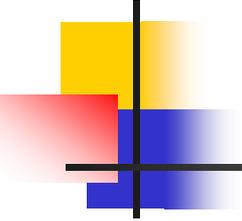
12 VAC 35-115-250

Offices, Compositions and Duties

- By reporting all suspected abuse to the program director.
- Use minimum force necessary to restrain an individual
- Cooperate with any investigation, meeting, hearing or appeal.

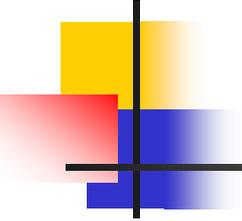
Enforcement and Sanctions





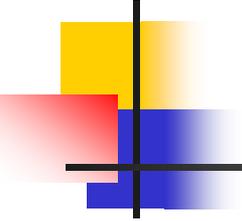
Enforcement and Sanctions

- The commissioner may invoke the sanctions enumerated in §37.2-419 of the Code of Virginia:
 - Upon receipt of information that a provider licensed or funded by the department is in violation of the HR regulations; or (iii) provision of the licensing regulations
 - Such violation adversely impacts the human rights of individuals receiving services or poses an imminent and substantial threat to the health, safety or welfare of individuals receiving services.



Enforcement and Sanctions

- The commissioner will notify the provider in writing of the specific violation or violations found and of his intention to convene an informal conference pursuant to Va. Code §2.2-4019 at which the presiding officer will be asked to recommend issuance of a special order.
- The sanctions contained in the special order shall remain in effect during the pendency of any appeal of the special order.

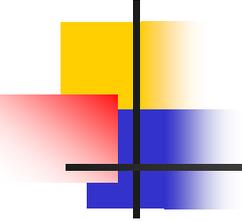


Enforcement and Sanctions

Examples

The Commissioner may:

- Place a service of a provider on probation;
- Reduce licensed capacity or prohibit new admissions;
- Require that probationary status announcements, provisional licenses, and denial or revocation notices be of sufficient size and distinction and be posted in a prominent place at each public entrance of the affected service.



Enforcement and Sanctions

Examples

- Mandate training for the provider's employees, with any costs to be borne by the provider;
 - Assess civil penalties of not more than \$500 per violation per day;
 - Withhold funds from licensees or programs receiving public funds that are in violation of the licensing or human rights regulations.
- * *Many of the possible sanctions have other requirements attached.*