



COMMONWEALTH of VIRGINIA

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MEMORANDUM

To: DBHDS Facility Directors

From: Taneika Goldman, State Human Rights Director

Re: Revision of Facility Peer-to-Peer Incident Reporting and Investigating Processes

Date: June 1, 2021

This memorandum is intended to revise and clarify the reporting and investigating requirements for Peer-to-Peer Incidents in state operated facilities. The impetus for revision and clarification is based on information collected through two years of facility look behinds and the requirement for state operated facilities to investigate all allegations of abuse and neglect in accordance with DI 201 and the Human Rights regulations.

The Office of Human Rights has identified over-reporting of Peer-to-Peer Incidents as neglect in some state facilities and under-investigating of Peer-to-Peer Incidents as an issue in other facilities. Of the 1,147 cases* reviewed in the recent past iteration of the Facility Look Behind study, there were 748 allegations coded by facilities as Peer-to-Peer Neglect that were reported in CHRIS but did not receive a DI 201 investigation (65%). In these cases, facilities completed an administrative review (555, 74%), filed an incident report (308, 41%), and/or took some other action (160, 22%). Because facilities are required to enter into CHRIS and investigate all allegations of abuse and neglect per DI 201 and the Human Rights regulations, it is important to identify criteria for determining when Peer-to Peer Incidents should be treated as allegations of abuse or neglect.

All Peer-to-Peer Incidents that meet the definition of peer-on-peer aggression in the Human Rights regulations are to be reported, at a minimum, in the Incident Tracker. That definition is as follows:

"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. [12VAC35-115-30]

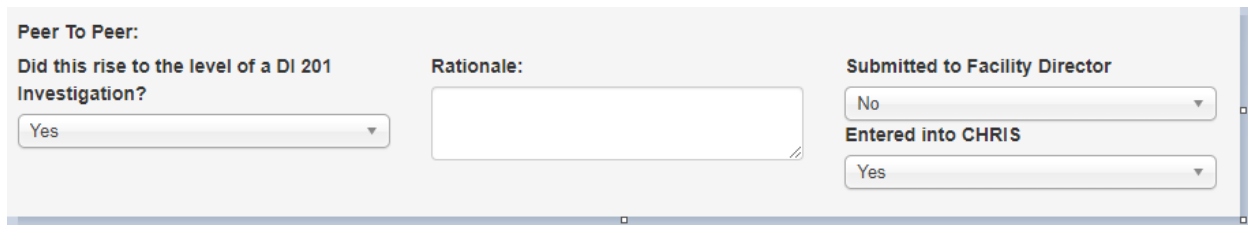
When it is determined that circumstances surrounding a Peer-to-Peer Incident meet the definition of Neglect, the Incident must also be entered into CHRIS and investigated per DI 201. That definition is as follows:

* cases had an incident date in FY19

"Neglect" means failure by a person, program, or facility operated, licensed, or funded by the department, excluding those operated by the Department of Corrections, responsible for providing services to do so, including nourishment, treatment, care, goods, or services necessary to the health, safety, or welfare of an individual receiving care or treatment for mental illness, intellectual disability, or substance abuse. See § 37.2-100 of the Code of Virginia. [12VAC35-115-30]

Incident Tracker

Peer-to-Peer Incidents that meet the aforementioned definition are required to be entered into the Incident Tracker within 48 hours. The following screen shot is an example of the review that the Risk Manager must do for all Peer-to-Peer Incidents entered into the Incident Tracker. Some facilities require that the Facility Director be notified of all Peer-to-Peer Incidents. When it is determined that a Peer-to-Peer Incident meets criteria for a 201 investigation, the Incident must also be entered into CHRIS within 24 hours.



The screenshot shows a form titled "Peer To Peer:" with the following fields:

- Did this rise to the level of a DI 201 Investigation?**: A dropdown menu with "Yes" selected.
- Rationale:**: An empty text input field.
- Submitted to Facility Director**: A dropdown menu with "No" selected.
- Entered into CHRIS**: A dropdown menu with "Yes" selected.

CHRIS

Peer-to-Peer Incidents that involve an allegation or suspicion of abuse or neglect must be entered into CHRIS within 24 hours of the date of discovery in accordance with the Human Rights regulations 12VAC35-115-230 Provider Reporting Requirements. Entries should be made using the CHRIS allegation category "Neglect Peer-to-Peer." These incidents must be investigated in full accordance with DI 201 and the Human Rights regulations. Peer-to-Peer Incidents requiring entry into CHRIS and a DI 201 Investigation should meet at least one of the following criteria:

- An Incident that clearly or allegedly occurred because staff were not engaged in appropriate supervision (e.g., staff not monitoring a room they are supposed to monitor; staff willfully ignoring bullying or aggression of one peer to another, staff intervene in peer aggression but not in accordance with policy); or
- An Incident involving an allegation or suspicion of sexual assault, and or other non-consensual sexual acting out (touching of another peer's private areas); or
- An Incident involving an allegation or suspicion of consensual and non-consensual sexual acts between minors; or
- An Incident involving an allegation or suspicion of sexual activity between adult peers in which at least one individual is deemed to lack capacity to make informed decisions; or
- Three or more Incidents involving one or more of the same peers within a 72 hour timeframe; or
- An Incident with a DI 401 outcome severity level of 04 or 05; or
- Any Incident the Facility Director or Advocate determines needs further investigation.

All Peer-to-Peer Incidents that are entered into CHRIS should receive a DI 201 investigation.

PAIRS

In addition to reporting Peer-to-Peer Incidents in the Incident Tracker, and potentially CHRIS, in accordance with DI 401, Peer-to-Peer Incidents must also be reported into PAIRS within 48 hours. Peer-to-Peer Incidents requiring entry into PAIRS should meet the following criteria:

- The Incident involves an injury to an individual receiving services with an outcome severity level of 03 or 04 associated with or reasonably believed to be associated with the incident **AND** an assessment was made by a physician or physician extender, **AND** a physician or physician extender took action or gave an order in response to the injury that was more than first aid treatment and intended to affect a cure or provide therapy for the injury; or
- The Incident involves an allegation of sexual abuse or sexual assault or rape; or
- The Incident involves loss of consciousness; or
- The Incident involves a death (05).

Facilities should follow their own policy and procedures related to Peer-to-Peer Incidents. The Office of Human Rights understands facility internal processes may need to be adjusted to align with these revised reporting and investigating processes; therefore, a compliance date of July 1, 2021 has been set. We also anticipate that through implementation, further configurations to the Incident Tracker may be necessary and we invite your patience and collaboration moving forward.

Please contact Taneika Goldman, State Human Rights Director, or Mary Clair O'Hara, Human Rights Associate Director for Facility Operations, if you have questions about this memorandum.

Cc: Angela Harvell, Deputy Commissioner for Facility Services
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