



LOCAL HUMAN RIGHTS COMMITTEE (LHRC) TRAINING

Virginia Department of Behavioral Health
and Developmental Services
Office of Human Rights - LHRC Training



Welcome

- Introduction of presenters
- Goal for the day:
 - To provide an overview of the human rights regulations as it relates to the role and responsibilities of the LHRC.



Hierarchy of Law

- United States Constitution
- Federal Law and regulation (only if it preempts state law)
- Virginia Constitution
- Code of Virginia-statutory law
- Virginia Administrative Code-regulations
- Policies, procedures



Revised Human Rights Regulations in Virginia

- 2017-Revised regulations
 - Significant changes in the role and responsibilities of the local human rights committees.
 - Significant changes in the complaint resolution process.
 - Provide additional requirements for the development of behavioral treatment plans.



12 VAC 35-115-10 Authority

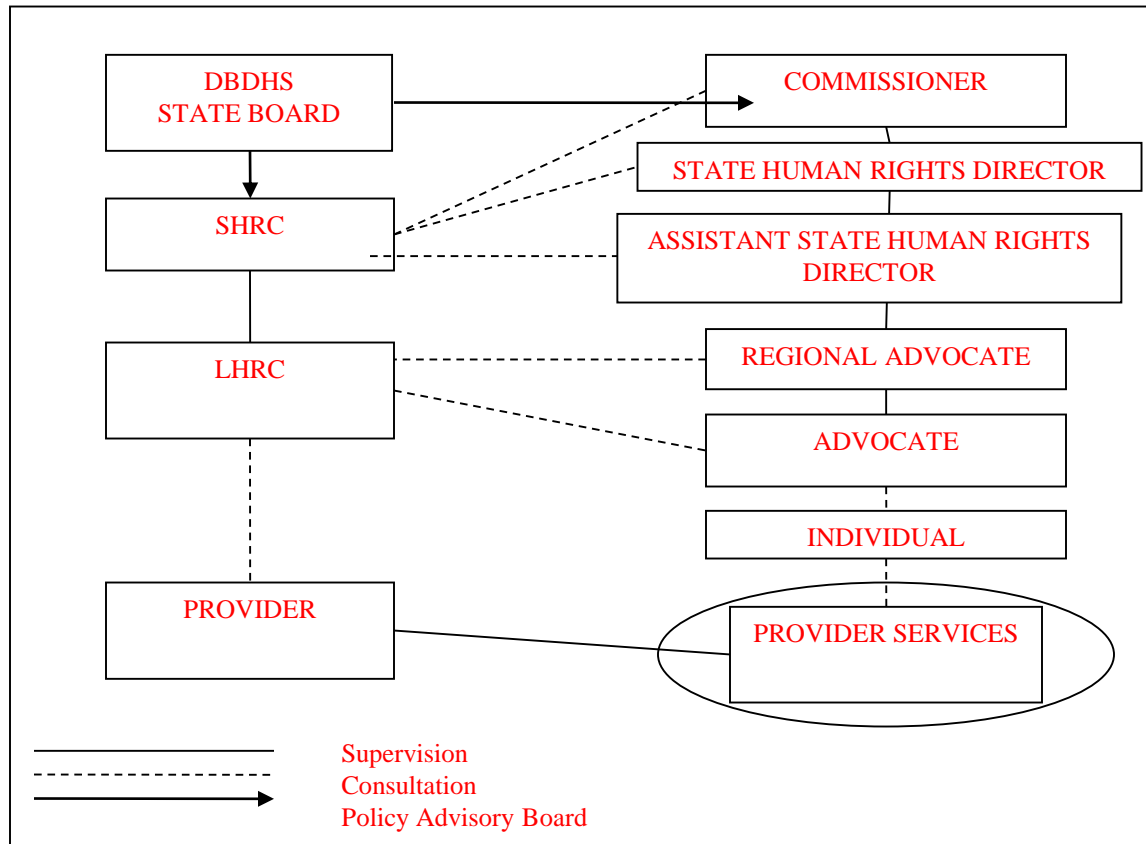
Section 37.2-400 of the Code of Virginia requires the State DBHDS Board to promulgate these regulations to further define and to protect the rights of individuals receiving services from providers of mental health, developmental, and substance abuse services in the Commonwealth of Virginia.



12 VAC 35-115-10 Applicability

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

Organizational Structure Human Rights Program





LHRC Composition:

- **12VAC35-115-270.A.6**

- Consists of five or more members
- Also consist of five alternate members who shall fill in for any absent members.
- Appointed by the State Human Rights Committee
- Membership should be broadly representative of consumer and professional



LHRC Composition-continued

At least one-third of the members shall be consumers or family members of consumers

- At least two members shall be individuals who are receiving or have received public or private mental health, developmental, substance abuse treatment or habilitation services within five years of their initial appointment.
- At least one member shall be a health care provider.
- No current employee of the department or a provider shall serve as a member of any LHRC that serves an oversight function for the employing facility or provider.
- Staggered Terms
- A member can serve two consecutive three-year terms. A person appointed to fill a vacancy may fill the current term and then be eligible for two additional consecutive terms.



Meeting Requirement of the LHRC

- **12VAC35-115-270.A.8**

LHRC is required to meet at least quarterly. The committee may choose more frequent meetings in order to adhere to timelines as set forth in the regulations



Bylaws of the LHRC

- **12VAC35-115-270.A.9**

LHRC should adopt written bylaws that address procedures for conducting business, electing officers, designating standing committees, and setting the frequency of meetings



Responsibilities of the LHRC

- **12VAC35-115-270.A**

A. Local human rights committees shall:

1. Review any restriction on the rights of any individual imposed pursuant to **12VAC35-115-50** or **12VAC35-115-100** that lasts longer than seven days or is imposed three or more times during a 30-day period

The LHRC should conduct reviews of the following items as they relate to Human Rights:

- Any restriction, over the regulatory time frames, of an individual's rights involving freedoms of everyday life
- Policies and procedures, program handbooks, or program rules for residential substance abuse service providers if freedoms are limited or restricted
- Individual behavioral treatment plans that utilize restrictive techniques (A.4)



Responsibilities of the LHRC

- LHRC should also review the following items as they relate to human rights:
 - Review Next Friend/ Capacity Determination (A.2)
 - Conduct Fact finding hearings (A.3)
 - Variances to the regulations (A.5)
 - Research (12VAC35-115-130)
 - Consent/Authorized Representatives (AR) (12VAC35-115-146)



12VAC35-115-50, Dignity

- C.4(a-b), C.6(a-c), C.7(a-b), & C.8(a-b)
 - **Services provided in residential and inpatient settings**, each individual has the rights to practice and participate in religious services; communicate privately with any person by mail, telephone, and visitation
 - Restrictions may be placed on these rights for the following reasons:
 - Presents a danger to self and others
 - Infringe on the freedom of others
 - Mail contains illegal material or anything dangerous
 - Intervening to prevent any criminal act
 - Communication with another person will result in demonstrable harm to the individual's mental health



12VAC35-115-50, Dignity

C.4(a-c), C.6(a-c), C.7(a-b) & C.8(a-b) continued

- Provider Duties
 - Discuss issue with the individual prior to implementation
 - Inform the human rights advocate of the reason for any restriction prior to implementation
 - Limits on mail, telephone and access to visitors maybe limited or supervised only when, in the judgement of a licensed professional*, the restriction is necessary to:
 - Prevent demonstrable harm to the individual's mental health or significantly affect the individual's treatment
 - Review and document monthly in the service record, the need for the restriction
 - Any restriction the last longer then seven (7) days or is imposed three (3) or more times during a thirty (30) day period, must be review and approved by the local human rights committee (see:12VAC35-115-100,B.5).



12VAC35-115-50, Dignity

■ **C.7(c) and C.8(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 and visitors during the initial phase of treatment and when sound therapeutic practice requires such restrictions, subject to the following conditions:

- Develop policies and procedures that limit the use of the telephone or access to visitors during initial phase of treatment:
 - (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 and individual applies for admission, the provider shall notify him of these restrictions.



12VAC35-115-50, Dignity

- Role of the LHRC:

- Review documentation of any individual restriction that last longer than (7) days or is imposed (3) or more times within a (30) day time period.
 - Determine if the restriction is being implemented in accordance 12VAC35-115-100 and 12VAC35-115-50
- Review and approve any existing or proposed policies or procedures prior to implementation
- Review and approve program handbooks prior to implementation
- Review and approve program rules prior to implementation
- Make recommendations as needed



12VAC35-115-50, Dignity

- Sample Questions:

- Does the proposed telephone or visitors limitation outweigh the individuals' rights involved?
- Are the individuals' rights adequately protected?
- Will the outcome be beneficial to the individual?
- Is there adequate documentation to support the need for limitation?
- Will the telephone or visitors limitation affect the individual's treatment?
- Is the restriction more than needed to achieve the therapeutic benefit?
- How do you handle alleged criminal activities that resulted in the restriction?



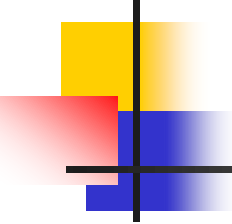
12VAC35-115-50, Dignity

- Important Note:

Applicable rights listed under 12VAC35-115-50 requires a “licensed professional” determination of the need for the restriction, whereas the rights listed under 12VAC35-115-110 requires a “qualified professional” determination of the need for the restriction.

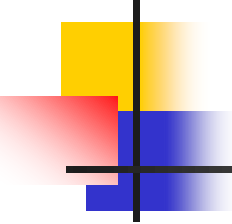
*A licensed professional is a licensed physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, licensed or certified substance abuse treatment practitioner or licensed psychiatric nurse practitioner.

***Source: 12VAC35-115-30. Definitions**



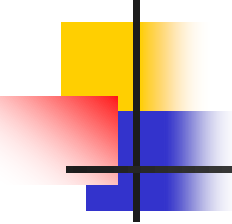
12 VAC35-115-70. Participation in decision making and consent

- Each individual has right to participate in decisions regarding all aspects of services affecting him/her. **This includes the right to:**
 - Consent or not consent to receive or participate in services.
 - The Individual Service Plan (ISP) and discharge plan shall incorporate the individual's preferences consistent with his condition and need for services and the provider's ability to address them;



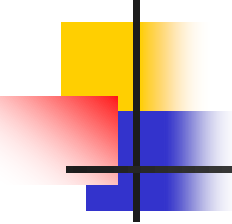
12VAC35-115-70. Participation in Decision Making and Consent

- The individual's services record shall include evidence that the individual has participated in the development of his ISP and discharge plan, in changes to these plans, and in all other significant aspects of his treatment and services; and
- The individual's services record shall include the signature or other indication of the individual's or his authorized representative's consent.



12VAC35-115-70. Participation in Decision Making and Consent

- Give or not give informed consent to receive or participate in treatment or services that pose a risk of harm greater than ordinarily encountered in daily life and to participate in human research except research that is exempt under 32.1-162.17 of the code of Virginia.
- Informed consent is always required for surgical procedures, electroconvulsive treatment, or use of psychotropic medication.

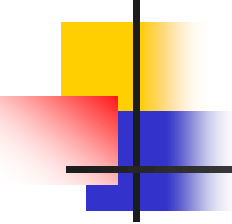


12VAC35-115-70. Participate in Decision Making and Consent

- To be informed, consent for any treatment or services must be based on disclosure of and understanding by the individual or his authorized representative of the following information:

An explanation and its purpose of

- treatment
- service, and or
- research



12VAC35-115-70. Participate in Decision Making and Consent

Sample Questions

- What was the individual's preference in the development of this plan?
- How was the individual's preference incorporated into their plan?
- How was consent for treatment, ISP, discharge or changes to plan obtained?
- Do you have documentation of consent?
i.e. (signature of individual, verbal notation, AR, guardian, or court).



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

- Providers shall not impose any restriction on an individual unless the restriction is justified and carried out according to this chapter or otherwise required by law.
- Providers shall obtain approval of the LHRC of any restriction imposed on an individual's rights under this subsection or 12VAC35-115-50 that last longer than seven days or is imposed three or more times during a 30-day time period. If the LHRC finds that the restriction is not being implemented in accordance with this chapter,
- The director shall be notified and the LHRC shall provide recommendations.



12 VAC 35-115-100

Restrictions of Freedoms of Everyday Life

Sample Questions

- What is the purpose, goal, objective of the restriction?
- What was the barrier in obtaining the goals/objectives of the restriction?
- Prior to this restriction what other less restrictive/alternative method were used?
- What is the criteria for removal?
- What is in place to ensure immediate removal of the restriction once criteria is met?



12 VAC 35-115-100

Restrictions of Freedoms of Everyday Life

- Providers shall in the development of program rules:
 - Get suggestions from all individuals who are expected to obey the rules;
 - Apply these rules in the same way to each individual;
 - Give the rules to and review them with each individual and his authorized representative in a way the individual can understand them,



12VAC35-115-100

Restriction on Freedom of Everyday Life

- Including explaining possible consequences for violating them;
- Post the rules in summary form in all areas to which individuals and their families have regular access;
- Submit the rules to the LHRC for review and approval upon the request of the human rights advocate or LHRC.



12VAC35-115-100

Restrictions on Freedom of Everyday Life

- 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



12VAC35-115-100

Restriction on Freedom of Everyday Life

Sample Questions

- What suggestions were made by individuals concerning the rules/changes?
- How were these suggestions incorporated into the rules?
- Did the AR, guardian or court appointed decision maker have an opportunity to review and comment on these rules/changes?



12VAC35-115-100

Restrictions on Freedom of Everyday Life

Questions Continued

- Were consequences for violations of these rules explained in a manner understood by the individuals, AR's, guardians?
- Please described location of rules posting?
(This will allow the LHRC to determine if rules are posted in an area accessible for anyone to see and review).



12VAC35-115-105

Behavioral Treatment Plans

- A behavioral treatment plan is used to assist an individual to improve participation in normal activities and conditions of everyday living, reduce challenging behaviors, alleviate symptoms of psychopathology, and maintain a safe and orderly environment.
- Providers may use individualized restrictions such as restraint or time out in a behavioral treatment plan to address challenging behaviors that present an immediate danger to the individual or others, only if:
 - A licensed professional has conducted a detailed and systematic assessment of the behavior and the situations in which the behavior occurs.
 - Individual's services record documents a lack of success or probable success of less restrictive procedures attempted or considered, and the risks associated with not treating the behavior, are greater than any risks associated with the use of the proposed restrictions.



12VAC35-115-105

Behavioral Treatment Plans

■ Provider Duties:

- Plans should be initiated, developed, carried out, and monitored by professionals who are qualified by expertise, training, education, or credentials to do so
- Plans should include nonrestrictive procedures and environmental modifications that address the targeted behavior
- Plans should be submitted to an independent review committee, prior to implementation, for review and approval of the technical adequacy of the plan and data collection procedures
- Seclusion should not be included in a behavioral treatment plan



12VAC35-115-105

Behavioral Treatment Plans

- Provider Duties Continued:
 - Intermediate care facilities for individuals with intellectual disabilities shall submit any behavioral treatment plan that involves the use of restraint or time out, and its independent review committee approval, to the specially constituted committee (SCC) under 42 CFR 483.440(f)(3) for the SCC's approval prior to implementation
 - Providers other than intermediate care facilities for individuals with intellectual disabilities shall submit any behavioral treatment plan that involves the use of restraint or time out, and its independent review committee approval, to the LHRC prior to implementation



12VAC35-115-105

Behavioral Treatment Plans

- LHRC Responsibilities:
 - If either the LHRC or SCC finds that the behavioral treatment plan violates the rights of the individual or is not being implemented in accordance with this chapter, the LHRC or SCC shall notify the director and provide recommendations.
 - Behavioral treatment plans involving the use of restraint or time out shall be reviewed quarterly by the independent review committee and the LHRC or SCC to determine if the use of restraint has resulted in improvements in functioning of the individual.



12VAC35-115-105

Behavioral Treatment Plans

■ Sample Questions

- Has the plan been presented and approved by an independent review committee or specially constituted committee?
- What are the credentials of person completing assessment of behaviors?
- Have less restrictive interventions been attempted? If yes, what were they and what was the outcome of the intervention?
- Is the risk of the behavior greater than the risk associated with the use of the proposed restriction?
- Who will implement and how often will the restriction be implemented?
- Are there non-restrictive procedures and environmental modifications that address the targeted behavior?



12VAC35-115-130, Research

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



12VAC35-115-130, 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).
 - Review and approval by an institutional review board or research review committee prior to participation in human research.
 - Prior to participation by individuals in any human research project, the provider shall inform and provide a copy of the institutional review board or research review committee approval to the LHRC.
 - Provide periodic updates on the status of the research to the LHRC.



12VAC35-115-130, Research

- **“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.

***Source: 12VAC35-115-30. Definitions**



12VAC35-115-130, Research

- Role of the LHRC
 - Review documentation of the following:
 - Signed consent of individual or authorized representative “AR”
 - Signed approval by an institutional review board or research review committee
 - Receive periodic updates on the status of the research. You will need to determine what to include in a status update and how often the program should provide the periodic updates.



12VAC35-115-130, Research

- Role of the LHRC continued
 - Make recommendations for information to be included in the periodic update.

Sample Questions:

How is the research going in general?

Does the client wish to continue to participant in the research? (any complaints?)

Does the program continue to comply with institutional review board (IRB) or research review committee (RRC) recommendations? (any changes in the original IRB/RRC research approval?)



12VAC35-115-146

Authorized Representatives

- **Next Friend (12 VAC35-115-146,B.2)**

- A person designated by a provider or his designee to serve as the authorized representative of an individual who has been determined to lack capacity to consent or authorize disclosure of identifying information.

- **Requirements:**

- No other person available and willing to serve.
- Provider may designate a next friend of the individual after review by the LHRC.
- Within the two years prior to designation, the next friend has shared a residence or had regular contact or communication with the individual and provided significant emotional, personal, financial, spiritual, psychological, or other support for a period of six months
- Had regular contact or communication and provided significant support.
- Individual has no objection to the proposed next friend being designated.
- Next friend agrees to accept responsibilities and acts in the individual's best interest.



12VAC35-115-146.B.2

Authorized Representatives – Next Friend

- Role of LHRC
 - Designate a next friend of the individual after review and finding
 - Has the discretion to waive personal appearance by the proposed next friend
 - Has the discretion to allow proposed next friend to appear by telephone, video, or other electronic means



12VAC35-115-146

Authorized Representative – Next Friend

- Sample Questions:
 - Ask the provider:
 - Are there any appropriate family members available that are willing to serve as authorized representative?
 - What have you done to find out if there are any family members to serve?
 - Did you have a capacity evaluation preformed?
 - Does the individual have any objections to this person helping with their decision making?
 - Ask the next friend designee:
 - How do you know the individual?
 - How long have you known or shared a residence with the individual?
 - How often do you speak with the individual?
 - Are you aware of and accept the responsibilities explained to you?
 - Are you willing to act in the individual's best interest?



12VAC35-115-220, Variances

- A variance is a change in provider operations, which constitutes an exception to the human rights regulations. Only the State Human Rights Committee (SHRC) can approve a variance to the human rights regulations, upon application by the Director of the program.
- Requirements

The application must be accompanied by the following documentation:

- Approval by provider
- Approval of governing body of the program, owner or Commissioner as appropriate
- Results of review by the LHRC
- State the reason for the variance and a substitute rule or procedure which accomplish the objectives of the regulations to which the variance is requested.



12VAC35-115-220, Variances

- Role of the LHRC
 - Invites oral and written statements by the advocate and other interested parties
 - Reviews application
 - Prepares written report of facts
 - Makes its recommendation for approval, disapproval or modification
 - Sends its report, recommendations and a copy of the original application to the State Human Rights Director, SHRC and the director making application for the variance.
- Note: The SHRC may request additional follow-up action, of the LHRC, if the variance is approved. (For example; The LHRC maybe asked to receive quarterly updates from the provider. The information from the provider update is used to assist the LHRC in any recommendations to the SHRC, for discontinuation or renewal of the variance).



12VAC35-115-220, Variances

- Sample Questions:
 - Do you have data to show why the variance is necessary?
 - What least restrictive alternative have you tried?
 - What is the overall impact on the targeted population. (positive/ negative)?
 - Did you seek input from the targeted population and their "ARs"?
 - What will you do if the SHRC disapproves your variance application?



Sample Agenda

Name of LHRC

AGENDA

Date

Time

Address

- 1. Welcome and Call to Order by Chair**
- 2. Introductions**
- 3. Approval of the Minutes**
- 4. Public Comments**
- 5. Advocate Update/Training**
- 6. Old Business**
- 7. New Business**
 - a. Program Requests**
 - A. Review of Next Friend Appointments**
 - B. Review of Restrictions (Provider Name) (Closed Session if necessary)**
 - b. Scheduled Hearings**
- 8. Adjournment**

Next Meeting Date:



Sample Minutes

NAME OF HUMAN RIGHTS COMMITTEE
STREET ADDRESS (INCLUDE ROOM # if one)
CITY, STATE, ZIP CODE
DATE (1/1/17) & TIME (5:00 PM)
APPROVED MINUTES OR DRAFTED MINUTES

LIST MEMBERS PRESENT:

LIST MEMBERS ABSENT:

CALL TO ORDER

Enter who (Chair) called meeting to order and time. Those in attendance make introductions. Welcome new committee members.

MINUTES

Enter date of minutes was motioned to be approved by (member's name), seconded by (member's name) and unanimously approved by committee members in attendance.

PUBLIC COMMENTS – Summary of the discussion on matters proposed, deliberated, or decided. Recording of any votes taken.

(Example)

- Committee Member Needs – Enter comments made. (Example – LHRC needs a member to fill health care provider role, consumer role, or addt/l members).
- Committee Elections – Vote to approve.
New Chair or Vice-Chair or Secretary
- Upcoming members terms expiring – 1st term invite to serve 2nd term. (Give them Reappointment Application). 2nd term thank them for their service.
- 2017 Proposed Meeting Schedule – Vote to approve.
Enter Dates, Times, and Location.



Sample Minutes continued

AGENDA ITEMS

Enter information presented or Enter none provided.

(Example)

- Restriction/s from freedoms of everyday life – Review and approve or make modification recommendations.

(Example)

- Variances – Provider's name
The LHRC reviewed this request and approved or made the following modification recommendations.

(Example)

- Provider has LHRC Business – Provider's name, reason for attending meeting, and the details of the information discussed.

(Example)

- LHRC New Applicant Interview – Interview, vote, if approved (submit to SHRC)
Enter applicant's name and role to be filled.
- Committee Reappts. – Enter name, vote, if approved (submit to SHRC)



Sample Minutes continued

CLOSED (EXECUTIVE) SESSION - Upon a motion made by (member's name), the committee entered closed session pursuant to Virginia Code §2.2-3711, a.15 and §2.2-37.05.5 for the purpose of discussion of medical record / treatment plans.

(Example)

- Consent & Authorization/Next Friend Appointments – Review and make decision. The LHRC reviewed this request and made the following decision.

(Example)

- Complaint Appeals to the LHRC – Review and make finding. Enter information discussed and finding.

(Example)

- LHRC Hearings – Review and make finding. Enter information discussed and finding.

(Example) – LHRC final review after the independent team approves before implementation determine if plan is in accordance with the chapter (new revisions in the regs).

- Restrictive behavior treatment plans – Provider's name
The LHRC reviewed this request and accepted or made the following modification recommendations.
- Restraints – Provider's Name
The LHRC reviewed this request and accepted or made the following modification recommendations.



Sample Minutes- continued

RETURN TO OPEN SESSION - Upon reconvening in open session, all members of the Local Human Rights Committee certified that to the best of each ones' knowledge, only public business matters lawfully exempt from statutory open meeting requirements, and only public business matters identified in the motion to convene the closed session were discussed in closed session.

ADVOCATE ANNOUNCEMENTS – Announce Newly Assigned Providers and Summarize Di LHRC Assignments are given to providers by Regional Advocate.

- Provider's name who have added new location/new service.
- Provider name who has received assignment to this LHRC.

NEXT MEETING – Enter date, time, and location.

MEETING ADJOURNED – Motion made to ADJOURN.
Enter meeting adjourned and time.

These Minutes were transcribed by (name of assigned advocate/intern).

Please note: No confidential information shall be included in the minutes, and all steps should be taken to maintain individuals' privacy.

This template has been updated to the new regulations effective 2/9/17.



Complaint Process

- A complaint is reported to either the human rights advocate or the director. The entity that receives the complaint reports it to the other entity within 24 hours.
- The director or designee will contact the individual regarding the complaint within 24 hours. (12VAC35-115-175.C.2)
- Within 10 working days, the director or designees will complete any investigation and provide the individual, their representatives, and the human rights advocate a letter outlining their findings and proposed action plan.
- The individual will be notified in writing of his right to, and the process for appealing, the director's decision or action plan to the LHRC.
- If the individual disagrees with director's decision or action plan, then they shall file an appeal to the LHRC within 10 working days.



SHRC Guidance on LHRC Hearings

General Guidance

- Hearings held in accordance to 12VAC35-115-180, 190, and 200 are informal administrative hearings. The purpose of each hearing is to provide another opportunity for resolution of a complaint filed through one of the processes in the regulations.
- The hearing should be conducted in a manner that promotes open, respectful communication and sharing of information. As this is an informal administrative proceeding, court and legal rules do not apply.
- The chairperson of the local human rights committee is in charge of the proceedings and should ensure that the parties are heard and respected throughout the proceedings.

In addition to the information provided in the regulations the following rules apply to all hearings:

- Audio taping is not required. Either party may request and arrange for the proceedings to be recorded.
- The hearing is a fact finding. The parties are to present the facts of the case as they know them.
- Cross examination by the other party is discouraged. The LHRC may ask questions of either party.
- Witnesses may give testimony if they have first hand information regarding an aspect of the case. The names of witnesses should be provided to the parties 5 days before the hearing.



SHRC Guidance on LHRC Hearings

Structure of the Hearing

- The chair will announce the purpose of the hearing. For example:
"The LHRC convenes today for the purpose of conducting a fact finding in accordance with 12 VAC 35-115-180 in the matter of VL vs. CSB."
- The chair will welcome the parties and ask for introductions.
- The chair will ask the individual if the hearing is to be open or closed session. If closed the rules for going into executive session will be followed.
- The chair will explain the structure of the hearing to the parties.



SHRC Guidance on LHRC Hearings

Structure of the Hearing continued

- Each party in turn, beginning with the individual, will be given 30 minutes to present the facts of the case including presentation of witnesses. *Remember that the LHRC will have received the background and documentation of the case prior to the hearing.*
 - LHRC members may ask questions of each party at the end of their presentation.
 - Each party will be given 10 minutes to provide additional information or clarify facts based upon the other parties presentation.
 - LHRC members may ask final questions.
- The chair will thank the parties and end the hearing.
- The chair will explain the time frame for the parties receipt of the decision.



Provider Role Fact-Finding Hearing

■ **Pre Hearing Tasks:**

- LHRC chair will forward a copy of the petition to the Director, Advocate, and the provider's governing body
- The Director shall submit a response and the entire written record of the complaint (CHRIS record) within 5 working days
- A date, time and place should be set for the hearing within 20 working days from when the petition was received.



Fact-Finding Hearing

- **Pre Hearing Tasks Continued**
 - Recording device (not a requirement)
 - Someone to run the recording device
 - Clerical person to mark exhibits, take minutes
 - Suitable room and space
 - Seating arrangement
 - Ensure parties have 5 working days' notice of the scheduled hearing.
 - An agenda



Fact-Finding Hearing

- **Things to Remember When Conducting a Hearing:**
 - These hearings are governed by the Code of Virginia §2.2-4019-Informal Fact Finding Proceedings
 - LHRC role is that of an Impartial Fact Finder
 - Hearing should be orderly, but not too formal.
 - Set a time limit for each party to present their entire case. (30 minutes each is recommended)
 - If an open hearing, there should be someone to take minutes.
 - The parties to the case are the individual and the program director
 - The Rights of the Parties
 - Model Agenda



Fact-Finding Hearing

■ Conducting the Fact-Finding Hearing

- Hearing should start on time
- Start Recorder (if applicable)
- State Date, Time & Place of the hearing for recording
- Explain Rights of the Individual to an Open or Closed Hearing
- If the hearing is to be a closed hearing, the following motion shall be made by a member of the LHRC:

“ I move that the LHRC go into executive session pursuant to the Code of Virginia, section 2.2-3711 (A) (15), for the protection of the privacy of individuals and their records in matters not related to public business, namely to conduct a hearing pursuant to the regulations.”

-The motion should be seconded by another member and voted on by the committee.

-When the motion carries, the room should be cleared of everyone, except for the parties and their representatives.



Fact-Finding Hearing- continued

If the hearing is to be open, then the Chair of the committee shall read the following statement:

"May it be noted for the record that the LHRC is concerned with the preservation of an individual's privacy and confidentiality of medical records. For this reason we wish to assure at this time that the right to a closed hearing pursuant to the Code of Virginia, section 2.2-3711 (A) (15), has been thoroughly reviewed with the complainant and the subject of the record, "Name of the Individual", and that he/she is authorizing the disclosure of information that would otherwise be exempt from public dissemination"

- The hearing is now open to the public.



Fact-Finding Hearing

- **Conducting the Fact-Finding Hearing-Receipt of Evidence**
 - State the rights of the parties
 - Have everyone introduce themselves for the record
 - State the order of presentation. The person who files the petition will go first
 - State that the LHRC will ask questions.
 - Explain how will the decision will be handled.
 - State the purpose of hearing, date and time of petition, and state the issues.



Fact-Finding Hearing

- **Conducting the Fact-Finding Hearing Receipt of Evidence –Continued:**
 - Opening Statements
 - Testimony of Witnesses (direct all questions to the LHRC rather than the other party)
 - Documentary Evidence
 - Closing Statements
 - Let the parties know what will happen next. When can they expect a finding, etc.



Fact-Finding Hearing

- **Conducting the Fact-Finding Hearing-Deliberations:**
 - Done in Executive (closed session)
 - An opinion is the result of the deliberations.
 - Once deliberations conclude, the committee should go into open session.
 - The written decision should be issued within 10 working days of the conclusion of the hearing.
 - Within five (5) working days of receiving the LHRC's findings and recommendations, the director shall give the individual, individual's chosen representative, human rights advocate, provider's governing body and LHRC a written action plan to address the aforementioned.



Drafting an LHRC Opinion

- **To:** Name of individual and family member (if applicable); Program Director
- **From:** Name of LHRC chairperson
- **Date:** (date of the opinion)
- **Subject:** Findings and Recommendations of the (name of) LHRC in response to a request for hearing by (name of individual).
- **Statement of Case:** Information about original complaint. Include date of original complaint and LHRC hearing. List those present for each party and the LHRC members.

-For example: This case came before the local human rights committee on March 01, 2017 as an appeal by V.L. of the decision of ESH, following a complaint filed on February 01, 2017. Mr. Bob Sam, Human Rights Advocate presented the case on behalf of V.L. Mr. John Doe, Director represented ESH. LHRC members present were...



Drafting an LHRC Opinion- continued

- **Background:** What is the complaint and for whom it was filed.
 - For example: VL filed a formal human rights complaint against ESH alleging her rights were violated under section 12 VAC 35-115-50 of the Rules and Regulations. List all regulations alleged to have been violated and the specific issue of each alleged violation. VL specifically contends that on February 01, 2017, nurse Jones verbally abused her by saying she was rude and inconsiderate.
- **Issues on Appeal:** What and why VL is appealing the case.
 - For example: VL disagrees with the ESH finding of no violation of 12 VAC 35-115-50 (should be the same as the statement and relief requested in the petition).
- **Summary of information presented:** List of verbal (who spoke) and documented information shared during the hearing and in the petition.



Drafting an LHRC Opinion- continued

- **Findings of Fact:** The LHRC should make a finding of fact on each matter before it. Each finding should be supported by evidence. The LHRC should then make a decision about whether the finding of fact is a violation of the regulations.
 - Finding #1:** On February 01, 2017, nurse Jones stated that VL was being rude and inconsiderate.*
 - Evidence to support finding #1:
 - February 01 2017 nursing notes.*
 - February 01, 2017 video tape*
 - Verbal information shared by both parties*
- **Conclusion:** *By a vote of 4-1 the LHRC finds no violation of 12 VC 35-115-Dignity as alleged in this complaint.*
- **Recommendations:** *In consideration of these findings the committee recommends:*



QUESTIONS ?
