



# THE HUMAN RIGHTS REGULATIONS: AN OVERVIEW

Office of Human Rights Training Series

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## PURPOSE

- Provide an overview of the Human Rights Regulations (HRR).
- Assist providers to better understand their responsibilities and individual's rights.
- Ensure contextual understanding so that providers may use the information presented to train employees on the HRR.

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Slide 2

## SECTION 10 – AUTHORITY & APPLICABILITY

- The HRR are enforced through the Code of Virginia (37.2-400)
  - 12VAC-35-115-###
  - *Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Behavioral Health and Developmental Services*
- Access through VA's Legislative Information System (LIS)
  - <https://law.lis.virginia.gov/admincode/title12/agency35/chapter115/>
- Recommendation for citation

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Slide 3

SECTION 20 – POLICY

- Each Individual receiving services is assured certain undeniable rights:
  - Protection to exercise legal, civil, and human rights
  - Respect for basic human dignity
  - Sound, therapeutic practice
  
- An Individual retains all legal rights:
  - Property
  - Vote
  - Marry, divorce, separate
  - Maintain professional licensure
  - Access lawyers, courts

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SECTION 30 – DEFINITIONS

- Supporting the foundation of the HRR are specific terms and definitions.
  
- While all of the terms are important, key terms are:
  - Abuse
  - Authorized Representative
  - Behavioral Treatment Plan
  - Complaint
  - Director
  - Exploitation
  - Independent Review Committee
  - Informed Consent
  - Licensed Professional
  - Neglect
  - Program Rules
  - Restraint (and the purposes)
  - Restriction
  - Serious injury
  - Treatment

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SECTION 40 – ASSURANCE OF RIGHTS

- Providers must:
  1. Display the rights in the manner best understood, including:
    - in areas most likely noticed
    - documenting the Regional Advocate's contact info on the poster
  2. Notify individuals about their rights and how to file a complaint. Notification must be:
    - in writing
    - at the time services begin and annually thereafter
    - made to the authorized representative (AR)
  3. Obtain individual and AR signature on the rights notification making sure to maintain the document in the services record

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SECTION 40 – ASSURANCE OF RIGHTS

- Providers must also:
  4. Provide a copy of the HRR to anyone who asks
  5. Display and give information about dLCV
- Individuals have the right to:
  - seek resolution of a complaint
  - make a human rights complaint
  - pursue any other legal right or remedy entitled under federal/state law

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SECTION 50 – DIGNITY

- Dignity is the cornerstone of the HRR
  - Respect, Safety, & Welfare
  - Health and safety is primary when considering all other rights
- Individuals must be protected from harm, including abuse, neglect, and exploitation.
- Retaliation is not tolerated for reports made to the director and/or their designee.
- Some restrictions are allowed, but there is a strict process in order to implement.

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SECTION 60 – SERVICES

- Implement policies & procedures that prohibit and regularly monitor for discrimination.
- Implement policies & procedures that address emergencies.
- Designate specific staff to:
  - screen, assess individuals at admission and throughout service provision
  - prepare, implement, and modify ISP based on ongoing need
  - prepare, implement discharge plan
  - review every use of seclusion, restraint
- Only provide services based solely on an individual's specifically tailored ISP

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SECTION 60 – SERVICES

- Write the ISP and discharge plan in clear, understandable language.
- Ensure all services on the ISP and the discharge plan are integrated.
- Entries in an individual's services record must be authentic, accurate, complete, timely, and pertinent, at all times.

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SECTION 70 – PARTICIPATION IN DECISION MAKING & CONSENT

Individual's Rights

- Consent or not consent to services
- Give or not give informed consent
  - Informed consent = disclosure **and** understanding of information concerning the treatment or service
  - Evidence = individual or AR signature
- Have an AR make decisions on their behalf
  - This is based on capacity
- Ask to be admitted or discharged

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SECTION 70 – PARTICIPATION IN DECISION MAKING & CONSENT

Provider's Duties

- Consider and respect the individual's preferences, including their ability to participate in decision making
- Help the individual, if needed, to meaningfully participate in their services
- Obtain permission prior to any treatment
  - Emergency treatment may be initiated without permission
    - Make sure to have policies & procedures in place
    - Immediately contact the AR
    - Document all aspects of the emergency in the services record within 24 hrs.

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SECTION 80 – CONFIDENTIALITY

- Maintain confidentiality of any identifying information
  - Exceptions exist [see subsection (B)(8)(a-o)]
  - also see Confidentiality of Alcohol and Drug Abuse Patient Records
- Obtain, document the individual's and/or AR's authorization prior to disclosure of any PII, PHI
  - Requirements [see subsection (B)(2)(a-d) & (6)]

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SECTION 90 – ACCESS TO & AMENDMENT OF SERVICES RECORDS

Individual's Rights

- See, read, have a copy
- Allow certain other people to see, read, have a copy
- Challenge, request amendment, get an explanation
- Regarding minors:
  - Must have parent's permission, except for:
    - STI, contagious disease
    - pregnancy
    - substance use tx
    - mental/emotional tx
    - inpatient psychiatric (14+)
  - Parents do not need permission, except when:
    - parental rights terminated
    - court order prevents
    - physician, clinical psychologist determine contraindicated

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SECTION 90 – ACCESS TO & AMENDMENT OF SERVICES RECORDS

Provider's Duties

- Must advise individual and AR of their rights
- Provide help to read, understand, request amendment to the record at no cost
- Access may be denied or limited
  - Contraindications as determined by treating physician or clinical psychologist
- Challenges, amendment requests must be investigated

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SECTION 100 – RESTRICTIONS ON FREEDOMS OF EVERYDAY LIFE

- Individuals are entitled to freedoms consistent with needs for:
  - services
  - protection of self
  - protection of others
  - uninterrupted services
- Services must be delivered in the least restrictive setting.

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SECTION 100 – RESTRICTIONS ON FREEDOMS OF EVERYDAY LIFE

- Freedoms of everyday life include the freedom to:
  - Move within the service setting, its grounds, and community
  - Communicate, associate, privately meet with anyone
  - Have and spend personal money
  - See, hear, or receive TV, radio, books, newspapers
  - Keep and use personal clothing, personal items
  - Use recreational facilities, enjoy the outdoors
  - Make purchases in canteens, vending machines, stores selling a basic selection of food and clothing

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SECTION 100 – RESTRICTIONS ON FREEDOMS OF EVERYDAY LIFE

- Restrictions must be justified and meet the following conditions:
  - pre-assessment, documentation by a qualified professional
    - possible alternatives
    - restriction necessary
    - reason for the restriction
    - restriction explained
    - written notice provided
      - reason
      - criteria for removal
      - right to fair review
- Restrictions which are court ordered, or required by law, must be documented in the services record.

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SECTION 100 – RESTRICTIONS ON FREEDOMS OF EVERYDAY LIFE

- Restrictions are context-dependent.
- A restriction for one person, may be support for another.
- Conversations about restrictions should be person-centered and take place with individuals, AR's, support coordinators, other treatment team members and the Advocate.
- Can a legal guardian override a provider and implement a restriction?

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SECTION 100 – RESTRICTIONS ON FREEDOMS OF EVERYDAY LIFE

- Use of restrictions must be reviewed and approved by the LHRC when:
  - the restriction lasts longer than 7 days
  - the restriction is imposed three or more times during a 30-day time period
- The *Restrictions to Dignity and Freedoms of Everyday Life Request for LHRC Review* form must be completed.
- The LHRC will provide recommendations for appropriate implementation of restrictions, according to the Regulations.

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RESTRICTIONS: DIGNITY VS. FREEDOMS

- |  |   |
|--|---|
| <ul style="list-style-type: none"> <li>• Dignity           <ul style="list-style-type: none"> <li>– Use of preferred or legal name</li> <li>– Residential &amp; Inpatient:               <ul style="list-style-type: none"> <li>• religious practices/services</li> <li>• mail</li> <li>• telephone use</li> <li>• visitation</li> </ul> </li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>• Freedoms           <ul style="list-style-type: none"> <li>– Movement</li> <li>– Private communication</li> <li>– Personal money</li> <li>– Personal items</li> </ul> </li> </ul> |
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SECTION 100 – RESTRICTIONS ON FREEDOMS OF EVERYDAY LIFE

Program Rules

- Do
  - Develop for safety and order
  - Get suggestions from individuals
  - Apply the rules the same for each individual
  - Give and review rules with individuals and AR
  - Post rules in all regularly accessed areas
  - Submit for LHRC review, if requested
  - Prohibit individuals from disciplining each other
- Do Not
  - Contradict the Regulations
  - Conflict with any individual's ISP



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SECTION 105 – BEHAVIORAL TREATMENT PLANS

- Regarding the use of restrictions or time out in a BTP, the plan must:
  - Be individualized.
  - Address maladaptive behaviors that pose immediate danger.
  - Have been developed after a systematic assessment by a **licensed professional** or **licensed behavior analyst**.
  - Be reviewed by an **independent review committee** before implementing.
- Be mindful to consider the behavior management program/protocol (e.g., TOVA, MANDT, etc.).



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SECTION 105 – BEHAVIORAL TREATMENT PLANS

- BTP's that involve the use of restraint or time out have additional review requirements:
  - Intermediate care facilities (ICF) for ID individuals require specially constituted committee (SCC) approval prior to implementation.
    - The independent review committee approval must be submitted to the SCC.
  - All other providers serving ID individuals must submit the BTP and independent review committee approval to the LHRC, prior to implementation.
  - Plans must be reviewed quarterly by the independent review committee, and the LHRC or SCC.
  - The use of seclusion is not permitted in a BTP.

**\*Behavioral Treatment Plan with Restraint or Time-Out Request for LHRC Review form**



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SECTION 110 – USE OF SECLUSION, RESTRAINT, & TIME OUT

- Community providers may not use seclusion, unless they are licensed as a children's residential facility or inpatient hospital, and only then, if they have approved polices.
- There should be no unnecessary use of seclusion, restraint, or time out.
- Mechanical supports for position, alignment, balance, and protective equipment are not considered restraints, if used voluntarily.

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SECTION 110 – USE OF SECLUSION, RESTRAINT, & TIME OUT

- What are the individual's preferred interventions?
- What, if any, are the contraindications?
- Have other less restrictive interventions been considered?
- Are your staff trained?
- Do you have congruent policies and procedures?
  - emergencies
  - review by qualified professional
- Not to be used as punishment, or for staff convenience
- No restraint should place individual in face down position

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SECTIONS 120 & 130: WORK & RESEARCH

Work

- Individuals have a right to work or not work
- Labor cannot be a requirement for services
- Employment consideration must be equal
- Cost of services cannot be deducted from wages

Research

- Individuals have a choice whether to participate
- Individual or AR must give informed consent
- Institutional review board (IRB) approval must be obtained
- Follow federal guidelines
- **\*Human Research – Notification/Update for LHRC Review Form**

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**SECTION 145 – DETERMINATION OF CAPACITY TO GIVE CONSENT ...**

- If capacity is in doubt, obtain an evaluation
  - Even if an AR is requested
- A capacity evaluation must be obtained:
  - when condition warrants
  - when an evaluation is requested
  - at least every 6 months
    - annually if capacity is not expected to be regained
  - at discharge
    - except acute inpatient care
- Evaluations must be performed by a licensed professional not involved in care
- Report objections to the OHR

**\*Request for LHRC Review of Consent and Authorization Form**



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**SECTION 146 – AUTHORIZED REPRESENTATIVES**

- If there is a lack of capacity, consent/authorization must be obtained from:
  - an attorney-in-fact
  - a health care agent
  - a legal guardian
- A family member can be designated as a substitute decision maker.
  - The individual's preference must be considered.
  - If there is no preference, the "best qualified" family member must be designated:
    - spouse
    - adult child
    - parent
    - adult brother, sister
    - other relative



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**SECTION 146 – AUTHORIZED REPRESENTATIVES**

- Designation of a next friend is appropriate if there is no qualified family member.
- The following requirements must be met:
  - shared residence
  - regular contact
  - individual must not object
  - must appear before the LHRC
  - accept responsibilities
- No provider can be the AR, unless they are a relative or legal guardian.
- Court authorization may be necessary.



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SECTION 175 – HUMAN RIGHTS COMPLAINT PROCESS

- Individuals have the right to:
  - make a complaint
  - have access to the OHR
  - be protected from retaliation & harm
  - timely review, investigation of the complaint
  - receive a report of the outcome of the investigation
- Complaints (against assured rights):
  - reported no later than the next business day
  - addressed with individual within 24 hours of receipt
  - individual must be protected throughout the investigation
  - initiate investigation no later than the next business day
  - results documented within 10 working days
    - make individual, AR aware

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SECTION 175 – HUMAN RIGHTS COMPLAINT PROCESS

- Complaints (involving abuse & neglect):
  - reported to the OHR, and the AR, within 24 hours
  - individual must be protected throughout the investigation
  - initiate investigation, by a trained investigator, no later than the next business day
  - results documented within 10 working days
    - make individual, AR aware

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SECTION 175 – HUMAN RIGHTS COMPLAINT PROCESS

- Individual and/or AR right to appeal:
  - Must be in writing within 10 days of the director's final decision
  - Typically provided through the "director's decision letter"
    - Brief overview of the complaint
    - Findings
    - Statement that appropriate action has been taken
    - Notification of right to appeal the decision and/or action plan
    - Process by which to appeal
    - Contact information for the Regional Advocate

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SECTION 180 – LOCAL HUMAN RIGHTS COMMITTEE ...

- Available to any individual, AR as a result of any decision or action plan related to the complaint resolution process
- LHRC will conduct a fact-finding hearing
- 12VAC35-115-210 documents the process for SHRC appeals

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SECTION 220 – VARIANCES

- Variances to the HRR may be approved, but only after due diligence is proved.
- Requires a formal application to be filed with the LHRC.
- The SHRC receives the LHRC's report for review.
- Variances are only approved for a specific time period and have to be reviewed at least annually.
- If approved, strict compliance is expected, and any affected individuals must be notified.

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SECTION 230 – PROVIDER REQUIREMENTS FOR REPORTING

- Collect, maintain, and report the following regarding abuse or neglect:
  - all allegations within **24 hours** of receipt of the allegation
  - the trained investigator must submit the written investigative report to the director, and OHR, within 10 working days from the date the investigation began, unless an extension has been granted
- If an Individual's serious injury or death is the result of potential abuse or neglect, report to OHR as a complaint involving ANE.

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### SECTION 230 – PROVIDER REQUIREMENTS FOR REPORTING

- Collect, maintain and report the following regarding seclusion and restraint:
  - each instance of seclusion or restraint
  - annual report by Jan. 15<sup>th</sup>
    - types of restraint, seclusion
    - rationale for use
    - duration

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### SECTION 260 – PROVIDER & DEPARTMENT RESPONSIBILITIES

- Provide OHR unrestricted access to individuals and their services record
- Require competency-based training of staff, at start of employment and at least annually thereafter
  - documentation must be maintained
- Provide proposed policies, procedures for review
- Cooperate with the OHR and LHRC to investigate and correct conditions concerning human rights
- Comply with SHRC, LHRC, OHR requests
- Be familiar with the HRR
- Protect individuals from abuse and neglect
- Cooperate with any investigation, meeting, hearing, or appeal

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### RESOURCES

DBHDS website  
[www.dbhds.virginia.gov](http://www.dbhds.virginia.gov)

- To access OHR, select
  - **Offices**
  - **Human Rights**
    - You can access the Peer-to-Peer Guidance and Human Rights Poster on the OHR page
- Sign up to join the Provider Network Listserv through Constant Contact at <https://bit.ly/2ZpumCx> by selecting the Licensing check box.

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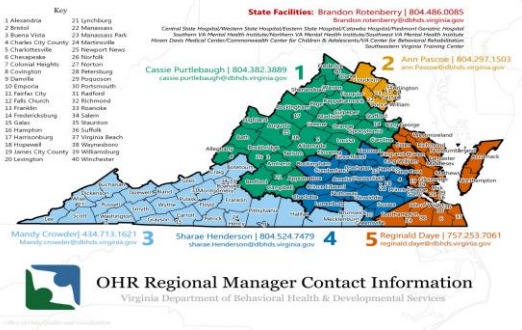
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