



COMMONWEALTH of VIRGINIA

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COMMISSIONER

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September 23, 2024

To: DBHDS Licensed Community providers
From: Taneika Goldman, State Human Rights Director
Re: DRAFT Noncontroversial Regulatory Reductions to Chapter 115.

In accordance with Governor Youngkin's [Executive Directive 1](#) to remove “regulations not mandated by federal or state statute, in consultation with the Office of the Attorney General, and in a manner consistent with the laws of the Commonwealth,” the DBHDS Office of Human Rights reviewed the Human Rights Regulations to identify noncontroversial amendments and developed a draft for consideration as fast track actions.

This notice is to inform you there is an open [public comment forum](#) for 30 days on the DRAFT Noncontroversial Streamlining, Clarifying, and Regulatory Reductions to Chapter 115. Please help to relay this information to individuals and their family members receiving services during this time.

Goals of the DRAFT revision to the Human Rights Regulations are to increase individuals’ access to due process and rights protection, to make the regulations easier to understand, and to improve administrative and program efficiencies to facilitate both provider compliance and increased availability of Human Rights advocates for direct involvement with individuals receiving services. Here is the link for the PDF [DRAFT Noncontroversial Regulatory Reductions to Chapter 115](#)

The purpose of the draft revisions of the Human Rights Regulations is to improve the ability of the Office Human Rights to perform its mandated responsibilities in a manner that promotes understanding of assured rights and access to rights protection and due process for all individuals receiving services.

High-Level Revisions:

Enhance user friendliness of the regulations and make them easier to understand:

- Expands definitions (coercion, investigation).
- Simplifies language (removed references to "allegation" and referred to everything as a complaint, added call-out of exploitation where there is mention of abuse and neglect, purposefully added "human rights" to advocate references to help individuals differentiate from provider and other protective agency advocate staff).

- Consistently labeled timeframes (working days = business days, clarified calendar days).
- Eliminates redundant references (-105 removed call-out of restraint and time-out as restrictions; -50, -175, and -230 reference each other by citation only).

Streamline administrative processes:

- Clarifies the relationship between the Office of Human Rights and human rights committees (-180, -200, -210 communication to LHRC is through OHR).
- Complaint investigation and resolution (timeframe for individual to file a complaint is within one year of receipt of services, clarifies complaints after discharge are allowable, clarifies provider has 10 business days to investigate and decide vs. 20 business days).
- Determination of capacity (-145 clarified person supervised by licensed professional can conduct capacity evaluation; added).
- Develops timeframes where there were none (-90 provides 10 calendar days to decide to deny records, - 145 provides 10 business days to refer review of independent capacity evaluation to the LHRC).

Emphasis on Individual's rights and expansion of access to due process:

- Reorganizes subsections to emphasize individual rights and provider duties (-90, -145: individuals presumed to have capacity, capacity evaluations are not competency determinations, evaluations must be specific about the type(s) of decision requiring a decision-maker -146 provider shall consider individuals preferences for decisions that do not require consent even if there is an AR),
- Eliminates legal terminology related to administrative review processes (hearing = fact-finding review, petition = statement of disagreement),
- Institutes advocate review of objections regarding AR appointment (this used to be delayed waiting for LHRCs to meet and simply required record review).
- Reinstates advocate ability to grant extensions to allow more time for a thorough investigation (accidentally removed in 2017 revision of the regulations).
- Emphasizes changes to previously approved provider policies must be submitted to the OHR for review (-100 program rules, -260).

Please reference the section or specific regulation, when possible, in your comments. Note that the public comment forum, designed for private citizens, will close for comment on this DRAFT Noncontroversial Regulatory Reductions to Chapter 115 on Monday October 21, 2024.