

# Human Rights Regulations Overview

Office of Human Rights Training Series

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[Office of Human Rights Training webpage](#)



- 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.



# Virginia Administrative Code – Office of Human Rights

<https://law.lis.virginia.gov/admincode/title12/agency35/chapter115/>

**12VAC35 -115 -###**

- Title: **12** = Health
- Virginia Administrative Code: **VAC**
- Agency: **35** = Department of Behavioral Health & Developmental Services (DBHDS)
- Chapter: **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
- Section: **###** = Topic

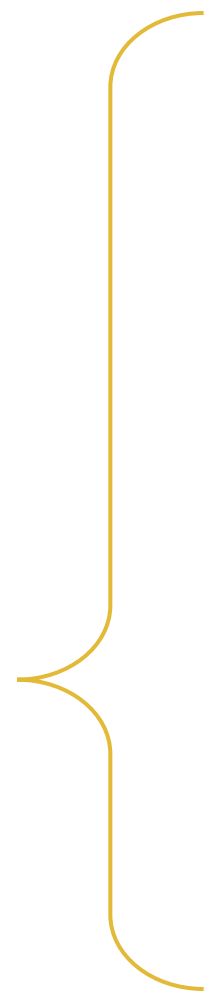

The screenshot displays the Virginia Legislative Information System (LIS) interface. The main heading is "VIRGINIA LAW" and "Administrative Code". The page title is "Chapter 115. Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Behavioral Health and Developmental Services". The page is organized into several parts:

- Part I. General Provisions:**
  - Section 10: Authority and applicability
  - Section 20: Policy
  - Section 30: Definitions
- Part II. Assurance of Rights:**
  - Section 40: Assurance of rights
- Part III. Explanation of Individual Rights and Provider Duties:**
  - Section 50: Dignity
  - Section 60: Services
  - Section 70: Participation in decision making and consent
  - Section 80: Confidentiality
  - Section 90: Access to and amendment of services records
  - Section 100: Restrictions on freedoms of everyday life
  - Section 105: Behavioral treatment plans
  - Section 110: Use of seclusion, restraint, and time out
  - Section 120: Work
  - Section 130: Research
  - Section 140: [Repealed]
- Part IV. Substituted Decision Making:**
  - Section 145: Determination of capacity to give consent or authorization
  - Section 146: Authorized representatives
- Part V. Complaint Resolution, Hearing, and Appeal Procedures:**
  - Section 150: General provisions
  - Section 160: [Repealed]
  - Section 170: [Repealed]
  - Section 175: Human rights complaint process
  - Section 180: Local human rights committee hearing and review procedures
  - Section 190: Special procedures for emergency hearings by the LHRC
  - Section 200: Special procedures for LHRC reviews involving consent and authorization
  - Section 210: State Human Rights Committee appeals procedures
- Part VI. Variances:**
  - Section 220: Variances
- Part VII. Reporting Requirements:**
  - Section 230: Provider requirements for reporting
- Part VIII. Enforcement and Sanctions:**
  - Section 240: Human rights enforcement and sanctions
- Part IX. Responsibilities and Duties:**
  - Section 250: [Repealed]
  - Section 260: Provider and department responsibilities
  - Section 270: State Human Rights Committee and local human rights committees responsibilities


- The HRR are enforced through the Code of Virginia (37.2-400)
  - 12VAC35-115-###
  - *Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Behavioral Health and Developmental Services*
- Non-Compliance with Human Rights Regulations
  - Recommendation for citation
    - Includes failure to respond to Corrective Action Plans

- All individuals receiving services are 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

- Supporting the foundation of the HRR are specific terms and definitions.
- While all the terms are important, *key terms* are:

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- 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
- 

## • 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
- 




- **Providers must also:**

4. Provide a copy of the HRR to anyone who asks
  - Individuals, Legal Guardians, Authorized Representatives, etc.
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



- 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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- 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.



- 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.





## 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





## 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.



- 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)]



## Individuals 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





## Providers' 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





- 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.





- 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





- 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.





- 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?





- 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.





## 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



- 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.).

- 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** 



- 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 policies.
- 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.





- 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




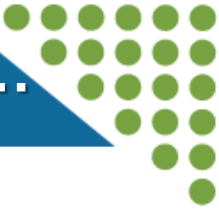
## Work

- 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

**\*Human Research – Notification/Update for LHRC Review Form**

- 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
- 




- **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**



- **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


- **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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- 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*):


- Commonly referred to as “Complaint Reports”
    - **NO** implication of Abuse, Neglect or Exploitation
  - 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
- 

- **Complaints** *(involving abuse & neglect)*:
    - Commonly referred to as “Abuse Reports”
    - 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
- 

- **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

- 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

- 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.
- 

- **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.**
  - **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
- 

- 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



Please refer to the Human Rights Staff Contacts list and the Regional Map in the Contact Information section of the OHR web page for up-to-date contact information.

<https://dbhds.virginia.gov/clinical-and-quality-management/human-rights/ohr-contact-information/>

