

**DBHDS
Office of Human Rights
Protocols, Procedures and Practices Manual**

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**DBHDS
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INTRODUCTION**

**This manual establishes operational protocols, procedures and practices for the
DBHDS Office of Human Rights staff.**

The Office of Human Rights is an internal advocacy system for the DBHDS but external to programs operated, funded or licensed by DBHDS. The Office of Human Rights, through a system of advocates with state facility and community assignments, provides protection and advocacy services to individuals receiving services from programs operated, funded or licensed by the Department.

MISSION:

The mission of the DBHDS Office of Human Rights is to monitor compliance with the *Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers of Mental Health, Mental Retardation and Substance Abuse Services (DBHDS)* by promoting the basic precepts of human dignity, advocating for the rights of persons with disabilities in our service delivery systems, and managing the DBHDS Human Rights dispute resolution program.

DUTIES AND RESPONSIBILITIES

State Human Rights Director

The SHRD is charged with the following duties:

- ◆ Lead the implementation of the statewide human rights program and make ongoing recommendations to the commissioner, the SHRC, and LHRCs for continuous improvements in the program.
- ◆ Advise the commissioner concerning the employment and retention of human rights advocates.
- ◆ Advise providers, directors, advocates, LHRCs, the SHRC, and the commissioner concerning their responsibilities under these regulations and other applicable laws, regulations, policies, and departmental instructions that protect individuals' rights.
- ◆ Organize, coordinate, and oversee training programs designed to promote responsible performance of the duties assigned under these regulations.
- ◆ Periodically visit service settings to monitor the free exercise of rights enumerated in these regulations.

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- ◆ Supervise human rights advocates in the performance of their duties under these regulations.
- ◆ Support the SHRC and LHRCs in carrying out their duties under these regulations.
- ◆ Review LHRC decisions and recommendations for general applicability and provide suggestions for training to appropriate entities.
- ◆ Monitor implementation of corrective action plans approved by the SHRC.
- ◆ Perform any other duties required under these regulations.

Human Rights Advocates

Each advocate is charged with the following duties:

- ◆ Represent any individual making a complaint or, upon request, consult with and help any other representative the individual chooses.
- ◆ Monitor the implementation of an advocacy system for individuals receiving services from the provider or providers to which the advocate is assigned.
- ◆ Promote and monitor provider compliance with these and other applicable individual rights laws, regulations, and policies.
- ◆ Investigate and try to prevent or correct, informally or formally, any alleged rights violations by interviewing, mediating, negotiating, advising, and consulting with providers and their respective governing bodies, directors, and employees.
- ◆ Whenever necessary, file a written complaint with the LHRC for an individual or, where general conditions or practices interfere with individuals' rights, for a group of individuals.
- ◆ Investigate and examine all conditions or practices that may interfere with the free exercise of individuals' rights.
- ◆ Help the individual or the individual's chosen representative during any meeting, hearing, appeal, or other proceeding under these regulations unless the individual or his chosen representative chooses not to involve the human rights advocate.

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- ◆ Provide orientation, training, and technical assistance to the LHRCs for which he is responsible.

- ◆ Tell the LHRC about any recommendations made to the director, the provider, the provider's governing body, the state human rights director, or the department for changes in policies, procedures, or practices that have the potential to adversely affect the rights of individuals.

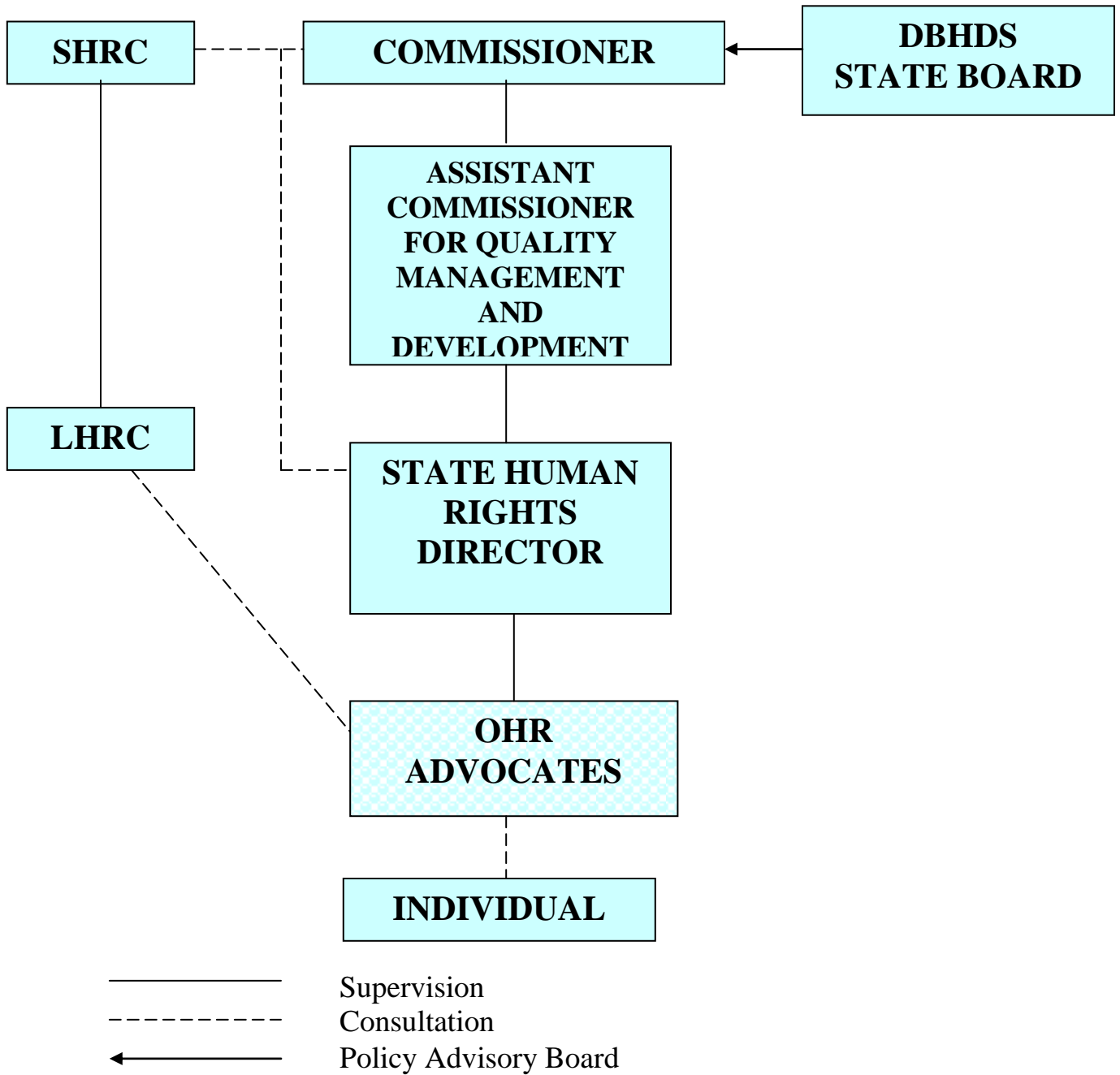
- ◆ Make recommendations to the state human rights director concerning the employment and supervision of other advocates where appropriate.

- ◆ Submit regular reports to the state human rights director, the LHRC, and the SHRC about provider implementation of and compliance with these regulations.

- ◆ Provide consultation to individuals, providers and their governing bodies, directors, and employees regarding individuals' rights, providers' duties, and complaint resolution.

- ◆ Perform any other duties required under these regulations.

DBHDS HUMAN RIGHTS PROGRAM



Standard 1: Advocates shall zealously represent the expressed wishes of individuals receiving service in accordance with the *Human Rights Regulations*

Examples of implementation:

- ◆ Enforces the affirmation of the individual receiving services right to be protected from abuse and neglect. Abuse/neglect allegations are managed as a first priority.
- ◆ Monitors restrictive interventions and behavioral programming.
- ◆ Conducts investigations of incidents, complaints, circumstances, conditions and practices.
- ◆ Assures communication with individuals receiving services and/or their designated representative throughout the human rights resolution process.
- ◆ Assures timely documentation [CHRIS] of individual receiving services complaints, allegations, and use of the human rights process.

Examples of Evidence of Performance:

- ◆ Documentation of abuse investigations, incidents, complaints, circumstances, conditions and practices.
- ◆ Documentation of review and analysis of reports/data relating to restrictive interventions and behavioral programming.
- ◆ Documentation of follow-up action(s).
- ◆ Evidence of CHRIS documentation.
- ◆ Representation of the individual throughout the human rights process.

Standard 2: Advocates shall manage an effective rights protection system within the assigned Facility/Region/Program, in accordance with the *Human Rights Regulations*.

Examples of Implementation:

- ◆ Monitors compliance of providers with the *Human Rights Regulations*.
- ◆ Conducts site visits to ensure accessibility and visibility of advocates.
- ◆ Ensures that complaints are managed in a timely manner and according to departmental protocol.
- ◆ Monitors the investigation of all allegations of abuse/neglect to ensure individual rights, protections and safety.
- ◆ Works with providers to provide technical assistance, training and consultation to LHRC(s), staff and program individuals.
- ◆ Participates in a non-voting capacity at provider meetings where human rights issues and protection are relevant to the agenda.

Examples of Evidence of Performance:

- ◆ Documentation of compliance reviews.
- ◆ Documentation of the timely progression of complaints through the human rights system.
- ◆ Documentation that the safety and rights of individuals are protected during the investigation of allegations of abuse/neglect.
- ◆ Documentation of site visits.

Standard 3: Advocates shall pro-actively promote the affirmation of human rights.

Examples of Implementation:

- ◆ Reviews provider policies, procedures and practices for adherence to the *Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers of Mental Health, Mental Retardation and Substance Abuse Services (DBHDS)*.
- ◆ Reviews provider information and statistics and individual receiving services records for adherence to the *Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers of Mental Health, Mental Retardation and Substance Abuse Services (DBHDS)* individual rights.
- ◆ Establishes a high level of visibility of the human rights program through frequent and regular interaction with individuals receiving service.

Evidence of Performance:

- ◆ Documentation of protocol, procedures and practice reviews and findings.
- ◆ Documentation of information, statistical and record reviews.
- ◆ Documentation of individual contacts.

Standard 4: Advocates shall identify systemic human rights issues and shall take steps to bring about corrective action.

Examples of Implementation:

- ◆ Collects and analyzes data.
- ◆ Identifies and documents issues including recommendations for action.
- ◆ Initiates complaints for resolution through the human rights process.
- ◆ Prepares for Human Rights Committee presentations.

Examples of Evidence of Performance:

- ◆ Documentation in reports.
- ◆ CHRIS documentation.
- ◆ Development of materials pertaining to Human Rights Committee presentation(s).

Standard 5: Advocates shall maintain professional independent judgement in representing the rights of individuals receiving service.

Examples of Implementation:

- ◆ Assesses each situation to determine and clarify the rights issues involved.
- ◆ Consults with the individual receiving services to clearly articulate the individual's requested relief.

Examples of Evidence of Performance:

- ◆ Documentation of complaint/advocacy issues and the specific right involved.
- ◆ Documentation of individual receiving services contacts and requests for resolution/relief.
- ◆ Memoranda or documentation of other communications with programs.

**PROTOCOL NO. 101 - 2014
MONITORING PROCEDURES**

Date: November 1, 2000
Revised: November 4, 2014

Protocol

The advocate shall monitor the provider's compliance with the *Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers of Mental Health, Mental Retardation and Substance Abuse Services (DBHDS)* and other applicable regulations, procedures and practices.

The advocate will communicate unresolved deficiencies noted to the director, the SHRD and the LHRC.

Procedure

1. In monitoring the assigned provider's compliance, the advocate is responsible for reviewing the following:
 - ◆ all facility investigations related to DI 201 [abuse];
 - ◆ resident records for provider protocol and procedural compliance;
 - ◆ incident reports to identify problems and/or trends;
 - ◆ provider buildings or living units to monitor environmental conditions of treatment or residential settings, and assess availability of individuals receiving service and staff for consultation;
 - ◆ utilization of time-out, seclusion, restraint, restrictive programming, psychotropic medications and other possible restrictive measures;
 - ◆ notification of authorized representative designations and the use of substitute consent;
 - ◆ consent procedures to assess protocol compliance and quality of documentation;
 - ◆ implementation of provider policies, procedures, practices and their impact on the individual;
 - ◆ the provider's rights notification process, remedies for violations and for compliance with regulations; and
 - ◆ provision of an effective and expeditious complaint review process.

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2. Rights violations or the potential for rights violations must be brought to the attention of the provider administration and handled as a human rights complaint.
3. The advocate shall document monitoring activities in required reports to the assigned supervisor.

Effective Date: November 4, 2014

Deborah M. Lochart

11/4/2014

Deborah M. Lochart, State Human Rights Director

Date

PROTOCOL NO. 102 - 2016
MANAGEMENT OF HUMAN RIGHTS COMPLAINTS

Date: November 1, 2000
Revised: February 11, 2002
Revised: April 14, 2003
Revised: November 4, 2014
Revised: February 4, 2016

Protocol

All complaints concerning alleged non-compliance with or violations of human rights regulations shall be managed in accordance with established procedures. Complaints include verbal or written allegations of rights violations or non-compliance as well as those situations in which the advocate proactively intervenes to avoid a violation of a individual's rights.

Individuals may choose to have their complaint managed in accordance with the provider's Complaint process in 12VAC35-115-170. Providers should have a policy describing their procedure for implementation of the Complaint process.

The DBHDS human rights advocate shall develop a system to monitor or audit the provider's Informal Complaint process.

The DBHDS human rights advocate is responsible for management of each Formal Complaint throughout the DBHDS human rights process regardless of the individual's choice for representation.

The DBHDS human rights advocate is responsible for initiating a complaint(s), in accordance with 12 VA 35-115-170, on behalf of an individual when a violation, potential violation, or human rights issue is apparent and the individual or his representative has not initiated a complaint.

The DBHDS advocate will take action to assure resolution of all complaints in a timely manner and at the lowest level possible. Timely refers to all time frames established by regulation, this manual, or reasonable progression of a complaint through the human rights process.

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Procedure

- ◆ In accordance with 12 VAC 35-115-170 The DBHDS advocate will inform the individual and/or his representative of the right to pursue his complaint(s) through the DBHDS human rights process. The individual's consent or concurrence is not required for the advocate to initiate a complaint. The individual or his representative may choose to remain anonymous.
- ◆ The DBHDS advocate will make an initial determination of whether or not serious and irreparable harm to the individual will result if the complaint is not resolved immediately. If it is determined that serious harm may be possible, the advocate shall inform the director and attempt to expedite a resolution of the complaint. If the complaint is not quickly resolved at the level of the director, or safeguards put in place for the safety of the individual(s), the advocate shall work with the LHRC to expedite a review of the complaint.
- ◆ The DBHDS advocate shall assist the individual by acting as his representative in the DBHDS process unless the individual selects other representation.
- ◆ The DBHDS advocate shall monitor and assist in moving the complaint through the DBHDS human rights process in a timely fashion.
- ◆ The DBHDS advocate shall meet with the individual and/or his representative at each stage of the process to provide information on decisions reached and any recommendations made. If the individual or his representative is not available for a meeting, the advocate should make every effort to convey information via telephone or email. **The role of the DBHDS advocate is to provide and clarify information not to justify or advocate for a particular point of view.**
- ◆ When a DBHDS advocate is serving as representative for a individual or providing technical assistance to a individual and his chosen representative at an LHRC appeal, the advocate shall ensure that another DBHDS advocate is present to provide technical assistance to the LHRC.
- ◆ In state operated facilities, when a complaint involves an alleged violation of the Privacy Rule (HIPAA) or the corresponding sections of the human rights regulations, the advocate will coordinate the resolution of the complaint with the facility privacy officer in

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accordance with the Department's Privacy Policies and Procedures for
the Use and Disclosure of Protected Health Information.

- ◆ All documents related to the complaint/allegation/issue shall be maintained in a secure file.

Effective: February 4, 2016

Deborah M. Lochart

2/4/16

Deborah M. Lochart, State Human Rights Director

Date

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PROTOCOL NO. 103 - 2016
STAFF ORIENTATION PROGRAM

Date: November 1, 2000
Revised: February 11, 2002
Revised: November 4, 2014
Revised: February 4, 2016

Protocol

Supervisors are responsible for arranging for each new advocate to be oriented in the areas listed below within a three-month period from the date of assignment. The supervisor may request the assistance of other advocates to serve as mentors for the orientation and training of the new advocate in some areas.

Procedure

The following orientation and training format is recommended, however may be reorganized to accommodate scheduling and individual needs. The material may be reorganized, however there must be documentation that the staff person has received all materials, and opportunities for learning as outlined below.

Week 1:

The supervisor will ensure that the new advocate is immediately provided copies of:

- ◆ position description;
- ◆ performance expectations;
- ◆ organizational charts – DBHDS, OHR , facility;
- ◆ Behavioral Health and Developmental Services Laws of Virginia Annotated (Current edition)
- ◆ Rules & Regulations;
- ◆ Office of Human Rights Protocol, Procedures & Practices Manual;
- ◆ LHRC Training and Resource Manual;
- ◆ CHRIS Manuals;
- ◆ Office of Human Rights Directory;

The supervisor will ensure that the new advocate who is assigned to provide advocacy services in a **state facility** is provided an opportunity for a general orientation to the facility where he/she will be located to include but is not limited to:

- ◆ Introductions to key staff
- ◆ Tour of facility grounds and buildings

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- ◆ Procedures for admission;
- ◆ Specific functions of each program including length of stay for each unit;
- ◆ Specific behavioral techniques employed by each unit;
- ◆ Ratio and accessibility of physicians to individuals;
- ◆ Procedures for documenting the utilization of seclusion/restraint;
- ◆ Procedures and protocols for individual records;
- ◆ Committees, meetings, and reviews which may involve rights issues;
- ◆ Unit procedures and chain of command; and
- ◆ Specific individual issues which involve human rights.

Week 2:

This week should be devoted to becoming familiar with the environment of the assigned facility or region.

- ◆ Spend at least one-half day on a individual unit or at a community program;
- ◆ Become familiar with the concept of ward rules/point & level systems/token economies;
- ◆ Conduct chart/medical record reviews for compliance with policies, consents, etc.;
- ◆ Visit at least one unit/program daily; attend a treatment team meeting, ward meeting, staffing, etc.; and,
- ◆ Review complaint procedures and documentation.

Week 3:

- ◆ The new advocate will be assigned to shadow an advocate (mentor) at a comparable facility/region for a minimum of one week.
- ◆ The new regional advocate will initiate visits with the Executive Directors, Program Directors and Programs within the assigned region.

Week 4:

The supervisor or mentor will review the following with the new advocate:

- ◆ Departmental Instruction 201 and Investigations Manual;
- ◆ Advocate's role in abuse investigations;
- ◆ Community Liaison programs;
- ◆ Making staff / individual contacts & handling complaints under supervision; and

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- ◆ Office of Human Rights reporting procedures and CHRIS data entry.

Week 5:

- ◆ The advocate shall engage in the following for a part of each day at the facility/program:
 - ◇ Meeting program staff and individuals;
 - ◇ Reviewing program policies;
 - ◇ Reviewing guidelines for restrictive programs
 - ◇ Observing unit / ward activities;
 - ◇ Handling complaints; and
 - ◇ Handling requests for information;
- ◆ Reviewing the advocate's role in judicial proceedings [commitment hearings]
- ◆ Meet/consult with supervisor and mentor.

Week 6:

The advocate shall establish a schedule of activities such as:

- ◆ Scheduling interviews with individuals;
- ◆ Handling complaints (including through the LHRC/SHRC process);
- ◆ Attending relevant meetings;
- ◆ Continuing familiarization with policies and procedures;
- ◆ Training for staff and LHRC; and,
- ◆ Meeting with supervisor as needed.

During the first six weeks of employment in the position, the supervisor and employee shall:

- ◆ Establish specific topics for additional training;
- ◆ Prioritize the topics; and,
- ◆ Establish time frames for meeting those identified needs within the six-month probationary period.

The supervisor prior to the conclusion of the probationary period shall make a determination of the advocate's level of skill and abilities.

Skills/Abilities

The following skills and abilities are required of an advocate:

- ◆ Hearing presentation LHRC/SHRC to include how to prepare/write a petition to LHRC/SHRC—demonstrating knowledge and understanding;

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- ◆ Investigation procedures—demonstrating knowledge and understanding;
 - ◇ Interviewing / assessment of credibility of witnesses;
 - ◇ Gathering facts;
 - ◇ Report writing;
 - ◇ The need to write a report; and,
 - ◇ Report format.

- ◆ CHRIS [or other computerized system] and necessary reports—demonstrating knowledge and utilization;

- ◆ Conflict resolution—demonstrating knowledge and skill;

- ◆ Systems
 - ◇ DBHDS—demonstrating knowledge and understanding of:
 - Who's who?
 - How does the system operate?
 - ◇ Relationships—demonstrating an understanding of who you can call and for what reason?
 - DSS
 - dLCV
 - Police
 - Courts

Effective: February 4, 2016

Deborah M. Lochart

2/4/16

Deborah M. Lochart, State Human Rights Director

Date

PROTOCOL NO. 104 - 2016
STAFF DEVELOPMENT

Date: November 1, 2000
Revised: February 11, 2002
Revised: November 4, 2014
Revised: February 4, 2016

Protocol:

The Office of Human Rights recognizes the need for continuing staff development and for individual professional growth and development. The Office of Human Rights is committed to ensuring each advocate is provided with fundamental/basic training and to the extent possible providing opportunities for individual professional growth.

Procedure:

The supervisor and the advocate share the responsibility for developing a plan for meeting requirements for training. The plan will include:

- ◆ Completion of mandated fundamental/basic training;
- ◆ Identification and prioritization for training/education [workshops, courses, seminars, etc.] to enhance professional growth and skill development;
- ◆ Maintenance of accurate documentation of the plan to include:
 - ◇ Dates of completion of training
 - ◇ Periodic review of the plan to assure progress toward goals;
- ◆ The plan will be:
 - ◇ updated annually as part of the performance evaluation process
 - ◇ documentation of the plan and progress shall be maintained by both the supervisor and the advocate.

Fundamental/ Basic:

Within the first year of employment and subsequently, evidence of completion of / competence in the following fundamental/basic training is required by the Human Resource Office.

Advocates will comply with annual mandatory training requirements or demonstrations of competency as required by the provider where their office is located.

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Recommended Training:

The following training is suggested for all advocates on at least a one time basis:

- ◆ Behavioral Treatment Planning—basics of behavior modification & learning theory as applied in individual treatment plans, point and level systems, token economies, etc.
- ◆ What constitutes “good” treatment—concepts of treatment for:
 - ◇ Admissions units
 - ◇ Continued care
 - ◇ Psychosocial programming
 - ◇ Geriatrics
 - ◇ Children & adolescents
 - ◇ Substance abuse services
 - ◇ Intellectual Disabilities
 - ◇ Forensics
 - ◇ Commitments
- ◆ Office Procedures & Management
- ◆ Supervisory Training [for all supervisors]
- ◆ Institute of Law Psychiatry & Public Policy Training
 - ◇ Consent
 - ◇ Civil commitment
 - ◇ Confidentiality
 - ◇ Substance abuse records
- ◆ Computer software training [intermediate skill level proficiency]:
Word processing and data base/spread sheet

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Deborah M. Lochart

2/4/2016

Deborah M. Lochart, State Human Rights Director Date

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PROTOCOL NO. 105-2014
SENSITIVE ISSUES

Date: November 1, 2000
Replaces: October 1990
Revised: February 11, 2002
Revised: November 4, 2014


Protocol:

The SHRD and Regional Advocate shall be notified immediately of issues, which may be sensitive in nature.

Procedure:

1. The SHRD shall be notified immediately of:
 - ◆ any unexpected death, including suicide;
 - ◆ serious injury to an individual receiving service;
 - ◆ an allegation of an individual's rape or sexual exploitation;
 - ◆ any incident which in the judgment of the advocate may be sensitive or result in involvement of the news media;
 - ◆ injury trends;
 - ◆ media alerts.
2. Notification should occur by telephone or e-mail.
3. The SHRD shall be kept informed of major developments until the issue is resolved.

Effective: Revised: November 4, 2014



11/4/2014

Deborah M. Lochart, State Human Rights Director

Date

PROTOCOL NO. 106 - 2014
GUIDELINES FOR INVESTIGATION OF HUMAN RIGHTS ISSUES

Date: November 1, 2000
Revised: February 11, 2002
Revised: November 4, 2014

Protocol

All Advocates will utilize accepted standards and practices when investigating human rights issues.

Procedure

- ◆ As appropriate, the investigative procedure shall consist of:
 1. interviews with:
 - ◇ witness(s);
 - ◇ individual receiving service;
 - ◇ staff; and
 - ◇ other persons who may provide relevant information.
 2. obtaining a written statement from each persons interviewed when such a statement is necessary to document oral interviews;
 3. a review of the relevant records of the individual involved;
 4. a visit to the site of an alleged incident;
 5. a review of pertinent statutes, administrative policies and procedures relative to the issue.
- ◆ The advocate shall maintain an accurate record of the investigation; documentation is to include persons contacted, conversations and results.
- ◆ When a complaint is resolved below the level of the program director, and the individual is satisfied with the remedy and wishes no further levels of appeal, the advocate must make a determination of whether or not a human rights violation occurred based on the facts of the situation.

Effective: Revised: November 4, 2014



11/4/2014

Deborah M. Lochart, State Human Rights Director

Date

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PROTOCOL NO. 107 - 2014
**USE OF AUDIO AND/OR VIDEO EQUIPMENT DURING
INDEPENDENT INVESTIGATIONS**

Date: November 1, 2000

Revised: November 4, 2014

Protocol

During the course of an independent investigation, the advocate should consider audio and/or video taping of witnesses and photographs of evidence when it appears that such records may be necessary to substantiate a violation of rights.

Procedure

The advocate shall:

- ◆ obtain permission from the witness to audio/video tape the session;
- ◆ when there is visible physical evidence pertinent to a rights investigation, the advocate should photograph the evidence and should complete the following documentation:
 - ◇ date, time and location taken;
 - ◇ name of person(s) in photograph; and
 - ◇ name of person who took photograph.
- ◆ audio and/or videotapes and photographs taken by the advocate shall remain in the possession of the advocate. These records may be shared with the program, central office or the Department of Social Services as deemed appropriate by the SHRD; and
- ◆ release of investigative material to other persons or agencies shall be made in accordance with Departmental Policies, state and federal laws.

Effective: November 4, 2014



11/4/2014

Deborah M. Lochart, State Human Rights Director

Date

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PROTOCOL NO. 108 - 2016
ROLE OF THE ADVOCATE IN THE ABUSE/NEGLECT
INVESTIGATION PROCESS

Date: November 1, 2000
Revised: February 11, 2002
Revised: November 4, 2014
Revised: February 4, 2016

Protocol

Each advocate shall monitor all individual abuse/neglect investigations, and protect the rights of the individual. Monitoring may in some cases include participation in the investigation. The advocate shall decide whether or not such monitoring includes sitting in on interviews or merely reviewing the written investigation reports.

Procedures in State Operated Facilities

- ◆ Upon notification from the Facility Director, the Facility Advocate will identify himself/herself and his/her role to the individual.
- ◆ The advocate may:
 - ◇ independently interview anyone involved in an abuse/neglect investigation;
 - ◇ submit a separate report of his/her findings to the Investigations Manager and SHRD; and
 - ◇ submit recommendations to the Facility Director for the prevention of future abuse/neglect and non-compliance;
- ◆ The advocate will:
 - ◇ discuss the findings of the investigation with the individual;
 - ◇ advise the individual of his right to request a review through the human rights process.
- ◆ The advocate will monitor the Facility Director's implementation of any recommendations(s).
- ◆ The advocate will follow procedures outlined in any Departmental Instruction regarding abuse/neglect investigations whenever those procedures conflict with this protocol.

In Community Programs

- ◆ Upon notification from the Community Program Director the advocate shall:
 - ◇ monitor the investigation and proper notification of DSS and local law enforcement agencies when appropriate;
 - ◇ provide technical assistance to the program if needed;
 - ◇ participate with the local DSS investigation if appropriate;

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- ◇ submit recommendations to the Program Director as appropriate;
- ◇ conduct an independent investigation relative to the alleged abuse/neglect incident when appropriate; and
- ◇ notify the Office of Licensing of the allegation within 24 hours of receipt of the allegation.

Effective: November 4, 2014

Deborah M. Lochart

11/4/2014

Deborah M. Lochart, State Human Rights Director Date

PROTOCOL NO. 109 – 2016
ROLE OF THE ADVOCATE AND LICENSING FOR THE
COORDINATION OF ABUSE AND NEGLECT ALLEGATIONS IN
LICENSED PROGRAMS

Date: November 1, 2000
Revised: February 11, 2002
Revised: November 4, 2014
Revised: February 4, 2016

Policy:

The Office of Licensing and Office of Human Rights will jointly coordinate, communicate, consult and monitor the investigations of abuse and neglect allegations in licensed programs

Procedure:

1. When the designated staff within the Office of Human Rights or the Office of Licensing receives information from a provider or any source that alleges that an individual receiving services might have been abused or neglected, staff will immediately notify the assigned staff person in the other office (licensing and/or human rights) by either phone or email.
 - o The program must continue to provide detailed information about the allegation/complaint/incident, as it becomes available.

2. Upon the receipt of the allegation of abuse or neglect the licensing specialist will make a determination of whether or not a site visit is necessary. The determination will be made according to Office of Licensing protocol.
 - a) Based on a review of the following criteria the licensing specialist will determine if a joint investigation with the human rights advocate is warranted.
 - the severity of the allegation,
 - the nature of the injury/harm to the individual(s) and/or
 - the potential for injury/harm to any or all individuals in the program.

 - b) When a joint investigation is warranted as determined by the criteria above the regional advocate will participate in the investigation or ensure that another OHR staff is available to participate in the investigation. In the event that the regional advocate has conflicting priorities, which make staffing the investigation impossible, the SHRD shall be notified.

 - c) Whenever the licensing specialist makes a site visit to a provider as part of an investigation of abuse or neglect the appropriate human rights advocate shall be notified of the date and time of the visit.

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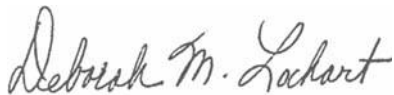
- d) When either office discovers during the course of an ongoing complaint investigation that the facts seem to support an allegation of abuse or neglect they will immediately phone their licensing or human rights counterpart.
- e) Each licensing specialist and human rights advocate that have similar assignments will review cases they are monitoring on a monthly basis or more frequently as the situation warrants.
- 3 Each office must document plans for follow-up or investigation on the written report of an incident or allegation by licensing and human rights. When the provider sends their internal investigation report or CAP, the licensing and human rights staff will share the provider/program's report.
 4. The licensing specialist, **in consultation with the human rights advocate**, shall make a determination of whether or not abuse/neglect occurred based on the definitions found in the VAC § 37.1-1. The Licensing Specialist will not cite human rights violation without prior consultation with the assigned advocate. Determinations made by the Office of Licensing staff shall be based on whether the facts support violations of the Licensing Regulations or the Human Rights Regulations. The standard used for the determination of abuse or neglect is "preponderance of evidence." Additional factors to consider include:
 - any DSS CPS or APS findings, however a DBHDS finding is not dependent upon and does not have to wait for the DSS finding; and
 - any findings by law enforcement agencies.
 5. When the human rights advocate has made an on-site investigation in conjunction with an incident, allegation or complaint of abuse or neglect, he/she will develop a written report of the facts with copies provided to the assigned licensing staff and to the SHRD. The advocate must indicate whether or not the facts support any violation of the Human Rights Regulations.
 6. The advocate will submit the report to the licensing specialist and the SHRD within ten (10) working days of the site visit. If circumstances related to health and safety warrant an immediate report, the advocate will submit the report as soon as possible.
 7. The licensing staff will include the stated human rights violations that are sufficiently supported by facts, in the report to the program/provider. The program/provider is then responsible for developing a corrective action plan to address the licensing and human rights violation(s).
 8. When there are questions or disagreement about the findings, the human rights and licensing staff shall resolve the differences through discussion involving supervisory staff when necessary.

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9. The licensing specialist will immediately share the program/provider's corrective action plan with the advocate. The advocate must provide feedback to the licensing specialist within five (5) working days of receipt of the CAP. The licensing specialist shall not delay in providing a response to the provider's CAP.

Quality Assurance activities to address coordination, consultation, communication and monitoring between the OHR and OL related to the investigation of abuse and neglect allegations will include ongoing review of investigation activities of OL and OHR staff by OL and OHR CO supervisory staff.

Effective: February 4, 2016



2/4/2016

Deborah M. Lochart, State Human Rights Director

Date

DBHDS
Office of Human Rights
Protocols, Procedures and Practices Manual
PROTOCOL NO. 110 - 2014
HUMAN RIGHTS NOTIFICATION

Date: November 1, 2000
Revised: February 11, 2002
Revised: November 4, 2014

Protocol:


The Advocate shall monitor the provider's compliance with the human rights regulations on informing individuals receiving service of their rights.

Procedure:

The Advocate shall:

- ◆ assure that rights notification posters are prominently displayed throughout the facility/program;
- ◆ interview individuals to ensure that they have been notified of their rights as appropriate;
- ◆ review individual's records to ensure written acknowledgment of notification of rights by the client or authorized representative.

Effective: November 4, 2014



11/4/2014

Deborah M. Lochart, State Human Rights Director

Date

PROTOCOL NO. 112 - 2014
THE ROLE OF THE OFFICE OF HUMAN RIGHTS
AT SHRC MEETINGS

Date: November 1, 2000
Revised: November 4, 2014

Protocol:

The Office of Human Rights provides administrative support and consultation to the SHRC. Administrative support includes, scheduling and arranging meetings, secretarial services and record keeping. Consultation is limited to guidance in procedural matters and providing information to the committee on the policies, procedures and operations of DBHDS. The Office of Human Rights does not participate in decisions or deliberations of the SHRC.

Procedures:

Meeting Attendance

Staff of the Office of Human Rights are expected to attend meetings of the SHRC in the following circumstances;

- ◆ The State Human Rights Director will attend all SHRC meeting,
- ◆ Regional advocates are expected to attend all SHRC meetings, which take place in their assigned region and those meetings where agenda items from their region are presented. When attendance in the above circumstances is not possible, the advocate shall arrange for appropriate coverage.
- ◆ Advocates assigned to facilities are encouraged to attend SHRC meetings which take place within a one hours drive of their assigned facility or those meetings where agenda items related to their assigned facility or community program(s) are presented.
- ◆ Newly hired advocates are encouraged to attend at least one SHRC meeting as an observer to become familiar with the operation of the SHRC.

Roles:

Staff of the Office of Human Rights serve in various capacities during meetings of the SHRC.

- ◆ The SHRD serves as consultant to the committee on procedures and provides information on DBHDS policies, procedures and operations as requested. The SHRD also assists the committee in developing policies and procedures to manage the business of the committee.
- ◆ The SHRD monitors the performance of Office of Human Rights staff in relation to the presentation of human rights plans, variances and individual representation before the SHRC.

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- ◆ Advocates (regional and facility based advocates) represent the rights of persons in facilities and programs covered by the regulations. This includes reviewing and making recommendations to the committee on human rights plans, variances, LHRC nominations and representing individuals before the committee.

Effective: November 4, 2014

Deborah M. Lochart

11/4/2014

Deborah M. Lochart, State Human Rights Director

Date

PROTOCOL NO. 113 - 2014
LHRC RECRUITMENT AND NOMINATION

Date: November 1, 2000
Revised: November 4, 2014

Policy:

Advocates shall assist LHRCs in recruiting and making nominations to the SHRC to promote a consistent and fair process across the State. When a provider is in the process of establishing or re-establishing an LHRC, the advocate shall actively participate in the interviewing of potential candidates.

Procedures:

Recruitment

The advocate shall assist the LHRC in the recruiting process by developing a public announcement.

- ◆ The announcement should include:
 - ◇ Definition of LHRC;
 - ◇ Purpose/Goals of LHRCs;
 - ◇ Meeting frequency of LHRCs;
 - ◇ Population invited to volunteer for membership;
 - ◇ Cutoff date;
 - ◇ Where to direct inquires/applications.

- ◆ The announcement may be provided to any of the following;
 - ◇ Local newspapers
 - ◇ TV and radio
 - ◇ Churches/religious organizations
 - ◇ Individual advocacy groups
 - ◇ Civic, senior citizen human service and professional organizations
 - ◇ DBHDS website
 - ◇ Other interested individuals and organizations.

- ◆ The sponsoring provider (s) is responsible for any costs associated with publicizing LHRC vacancies including;
 - ◇ newspaper ads,
 - ◇ printing flyers; and
 - ◇ mailing cost.

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- ◆ The sponsoring provider (s) may participate in the recruitment of applicants for the LHRC however have no role in the interviewing and selection of applicants.

Applications

- ◆ The LHRC, provider or the advocate may provide application forms to prospective applicants. Applications should be returned to the advocate or to the LHRC Chairperson.

Interviewing

- ◆ The advocate shall assist the LHRC in reviewing the applications and in interviewing new applicants.
- ◆ The advocate's role in the interview process is to determine if the individuals interviewed;
 - ◇ meet the criteria for LHRC composition,
 - ◇ present any conflicts of interest; or
 - ◇ demonstrate any compelling reason(s) to disqualify service on the LHRC.
- ◆ All applicants who meet the criteria for LHRC composition must be considered by the LHRC.
- ◆ When establishing a new LHRC or re-establishing a non-functioning LHRC, the advocate will review all applications and interview nominees.
- ◆ The advocate may solicit the assistance of LHRC members from other areas to participate in the interview process. The advocate will consult with the State Human Rights Director on all applications when there are no LHRC members to assist in the process.
- ◆ Applicants who are already known to the advocate/LHRC or individuals being considered for reappointment shall also be interviewed. They must also be evaluated according to requirements for LHRC composition, conflicts of interest or other compelling reasons to disqualify service on the LHRC.
- ◆ All members of the LHRC or a subgroup of the LHRC may conduct interviews. Interviews may be conducted over the telephone when a face-to-face interview is not possible. An interview sheet should be completed for each applicant by each interviewer, with a composite (summary) sheet to indicate the recommendation of the interview panel. The individual interview sheets as well as the composite sheets with recommendations must be submitted to the SHRC. A sample interview sheet is attached.
- ◆ The advocate shall ensure that the interview process includes general information on the functions and activities of LHRCs and that each applicant is given fair consideration.

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Recommendations

The advocate shall prepare a packet of information for submission to the SHRC. This packet shall include;

- A copy of the application for LHRC membership completed by each applicant,
- A copy of the interview sheet for each applicant completed by each member of the interview committee,
- A copy of the summary sheet completed by the panel or advocate for each applicant, and
- A cover letter to the Chair of the SHRC from the advocate summarizing the recommendations of the LHRC, and stating any known reasons to disqualify any applicant(s).
- The advocate shall submit the packet to be added to the agenda for the next scheduled SHRC meeting.
- The advocate or a substitute shall attend the SHRC meeting at which the membership appointments are considered and be prepared to address questions raised by the SHRC.

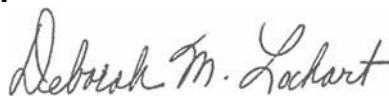
Notification to applicants

- The Office of the SHRD will handle on behalf of the SHRC notification to those individuals selected for appointment to an LHRC and those not selected for appointment.

Applicant Appeals

- Individuals who are not selected for appointment may request reconsideration by the LHRC.
- The request must be written and directed to the Chairperson of the LHRC with a copy to the Chairperson of the SHRC.
- If the LHRC is being established or re-established the written request should be directed to the assigned advocate.
- The LHRC should reconsider the applicant. A second interview may or may not be appropriate depending upon the reason for non-selection.
- The LHRC should forward a letter to the SHRC with a recommendation.
- The SHRC will review the recommendation from the LHRC and application information to make a decision. The individual will be notified in writing of the SHRC decision. If the individual is again not selected for appointment to an LHRC, there is no further appeal.

Effective: November 4, 2014



11/4/2014

Deborah M. Lochart, State Human Rights Director

Date

DBHDS
Office of Human Rights
Protocols, Procedures and Practices Manual
PROTOCOL NO. 114 - 2014
LHRC APPEALS

Date:: February 21, 2001
Revised: February 11, 2002
Revised: November 4, 2014

Protocol:

When complaints are not or cannot be resolved in a timely manner at the program or director level, or the individual is not satisfied with the director's decision or actions; the advocate shall petition the LHRC for review of the complaint. The individual has the option of choosing LHRC review without regard to the status of efforts or the outcome of resolving the complaint at a lower level.

Procedures:

Drafting the Petition

A petition for an LHRC hearing must be written and should be filed with the LHRC following the director's decision, action or inaction. The advocate is responsible for drafting the petition or providing consultation/assistance to the individual's chosen representative in drafting the petition. The petition should contain all facts and arguments surrounding the complaint but at minimum shall contain the following information:

- ◆ The specific right(s) violated, including specific citations from the Rules and Regulations;
- ◆ Specific information on the chronology of events including the date and time of the alleged violation;
- ◆ The individuals involved, the person(s) alleged to have committed the violation and those witnessing the violation or having knowledge of the violation;
- ◆ The informal resolution efforts attempted and, if known, why those efforts failed;
- ◆ The individual's requested relief;
- ◆ Copies of those portions of the individual record that document events and actions;
- ◆ Other supporting documentation, including letters, memos or other documents.

Multiple complaints may be filed in a single petition, however care should be taken to ensure that the facts and documentation for each complaint are clearly outlined.

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Review Process

- The advocate or chosen representative of the individual shall forward the petition to the Chairperson of the LHRC with a copy to the Director of the facility/program and to the SHRD.
- When the advocate has not drafted the petition or is not representing the individual, he/she shall serve as consultant to the individual's chosen representative. The advocate shall ensure that the DBHDS human rights process is followed, including timeframes and notification to all parties including the assigned licensing specialist when appropriate. It is appropriate to notify licensing of an LHRC appeal that may impact the status of a program's/provider's license.
- Within five working days of transmittal of the petition to the Director of the facility/program, the advocate shall follow up with the Director to determine if the facility/program will file written statements with the LHRC. The representative for the individual and the facility/program must present all written documentation prior to a review hearing.
- The advocate shall work with the LHRC to schedule a hearing within 10 working days of receiving the petition by the LHRC chairperson.
- The advocate shall provide at least 5 working days notice of the scheduled hearing to all parties and the SHRD.
- The advocate shall represent the individual at the hearing or serve as consultant to the individual and his chosen representative.
- The advocate shall arrange for a second advocate to provide consultation to the LHRC during the hearing.
- Following the proceedings, the advocate shall, where necessary, assist the LHRC in writing their findings/recommendations. It is not expected that the advocate write the findings.
- The advocate shall review with the individual and/or his representative the findings/recommendations and corrective actions taken or plans developed by the facility/program director.
- The advocate shall assist the individual to resolve conflicts around the corrective action plan and inform the individual of the availability of appeal to the SHRC if satisfaction/requested relief is not granted.

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Effective: November 4, 2014



11/4/2014

Deborah M. Lochart, State Human Rights Director

Date

**PROTOCOL NO. 115 - 2014
SUPERVISION**

Date: November 1, 2000
Revised: November 4, 2014

Protocol:

Supervisors are responsible for providing leadership, direction, and direct services where necessary to implement a facility and/or community based human rights program for individuals receiving mental health, mental retardation and substance abuse services through facilities/programs operated, licensed or funded by DBHDS.

Responsibilities:

- ◆ **Orientation and training of new staff.**
This responsibility shall be accomplished through adherence to the Office of Human Rights Protocol 103-2016. Under no circumstances will the assignment of a mentor to a staff person supplant the supervisor's role and responsibility in ensuring the orientation and training of new staff.
- ◆ **Face-to-face Supervisory Conferences.**
The supervisor is responsible for providing face-to-face supervision at least quarterly (every 90 days). These conferences shall be documented and shall address the following areas as needed:
 - ◇ Facility/community issues
 - ◇ Specific cases and problems
 - ◇ Training needs as identified by the supervisor and the staff person
 - ◇ Staff performance issues/personnel concerns
 - ◇ Review of written work (documentation, LHRC/SHRC presentations)
- ◆ **On-going consultation and direction.** Each supervisor is expected to provide on-going consultation, direction and follow-up with staff in advocating for individuals. Supervisors and staff are expected to maintain at least weekly contact for updating, schedule planning and ensuring advocacy coverage. Weekly or even daily consultation and follow-up do not substitute for direct face-to-face supervision of staff at least quarterly.
- ◆ **Evaluating and planning for staff development.**
As a part of the performance planning process, the supervisor must annually evaluate staff training needs and facilitate staff attendance

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at appropriate training events.

- ◆ **Ensuring appropriate staffing.**
Each supervisor is responsible for ensuring appropriate staff coverage for his/her assigned area. This includes appropriate office and telephone coverage at all times (daily, holidays, vacations, vacancies, etc.). Each supervisor is responsible for ensuring the schedules are posted weekly on the shared Office of Human Rights drive.

- ◆ **Documentation**
Each supervisor is responsible for ensuring that staff activities are reported and documented appropriately. This includes ensuring that staff input the appropriate information into the CHRIS system by the end of each month.

Each supervisor is responsible for developing a written performance plan and evaluation for each assigned staff person according to Office of Human Resources requirements.

- ◆ **Facilitating professional relationships with facility and community programs.** It is the responsibility of the supervisor to assist staff in developing and maintaining a professional working relationship with staff and administrators of facilities/programs such that mechanisms are in place for resolving individual complaints.

Effective: November 4, 2014

Deborah M. Lochart

Deborah M. Lochart, State Human Rights Director

11/4/2014

Date

**PROTOCOL NO. 116 - 2014
TRAINING OF LHRC MEMBERS**

Date: November 1, 2000
Revised: February 11, 2002
Revised: November 4, 2014

Protocol:

Each Local Human Rights Committee member shall receive orientation within 90 days of appointment and annual training on the human rights regulations and process during the course of his membership.

Procedure:

The advocate shall:

- ◆ provide each new LHRC member an orientation packet, to include at a minimum, a copy of the *Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers of Mental Health, Mental Retardation and Substance Abuse Services (DBHDS)*, the LHRC Training Manual, the LHRC bylaws, a copy of the roster of LHRC members and affiliated agencies,
- ◆ arrange for each sponsoring and/or affiliated program to provide a copy of the program description and to the extent possible, provide a tour of each program including an introduction to the Program Director and staff;
- ◆ provide an orientation session for new members prior to their attendance at a regular meeting
- ◆ develop and implement an annual training schedule for all LHRC members using the LHRC Training Manual; and
- ◆ document orientation and training of LHRC members

Effective: November 4, 2014



11/4/2014

Deborah M. Lochart, State Human Rights Director

Date

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**PROTOCOL NO. 117 - 2014
REPORTS TO THE LHRC**

Date: November 1, 2000
Revised: February 11, 2002
Revised: November 4, 2014

Protocol:

The Human Rights Advocate assigned to a state facility shall present a written report to the Local Human Rights Committee of human rights activities and issues relative to the facility at each regularly scheduled meeting. This report may include information to be included in reports to the central office however, shall not include information on specific individuals.


The advocate assigned to work with a community LHRC shall work with each sponsoring or affiliated provider to provide the information specified below at each regularly scheduled meeting of the LHRC. The advocate may cooperate with the providers in preparing and presenting these reports.

Procedure:

The content of the report shall include but is not limited to the following:

- ◆ number of abuse/neglect allegations received during the reporting period and the number of complaints founded and unfounded;
- ◆ changes in facility/program policies and procedures resulting from abuse/neglect investigations or other incidents;
- ◆ number of complaints by category, the number substantiated and the level of resolution;
- ◆ systemic rights issues; and
- ◆ human rights program updates and national issues

Effective: November 4, 2014



Deborah M. Lochart, State Human Rights Director

11/4/2014

Date

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**PROTOCOL NO. 118 - 2014
THE ROLE OF THE ADVOCATE
AT LHRC MEETINGS**

Date: February 21, 2001
Revised: November 4, 2014

Protocol:

The assigned advocate provides consultation to the LHRC. The advocate ensures that the sponsoring programs/providers provide administrative support including the scheduling and arranging of meetings, secretarial services and record keeping mechanisms. Consultation is limited to guidance in procedural matters and providing information to the committee on the policies, procedures and operations of DBHDS. The advocate does not participate in decisions or deliberations of the SHRC.

Procedures

Meeting Attendance

The advocate is expected to attend, either in person or by phone, all meetings of the LHRC. When the absence of the assigned advocate at the LHRC meeting is unavoidable, he/she shall arrange for another advocate to attend the meeting to provide consultation and guidance.

Roles

The advocate serves in various capacities during meetings of the LHRC.

- ◆ The advocate serves as consultant to the committee on procedures and provides information on DBHDS policies, procedures and operations as requested. The advocate also assists the committee in developing policies and procedures to manage the business of the committee.
- ◆ The regional advocate or another advocate may serve as consultant to the committee in the absence of the Advocate.
- ◆ The regional advocate is expected to monitor the performance of the advocate in relation to individual representation before the LHRC and the provision of consultation and technical assistance to the Committee in the development of variance requests, interviewing and recommending candidates for committee membership, etc..

Effective: November 4, 2014

Deborah M. Lochart

11/4/14

Deborah M. Lochart, State Human Rights Director

Date

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Office of Human Rights
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**PROTOCOL NO. 119 - 2016
OFFICE OF HUMAN RIGHTS REPORTS**

Date: November 1, 2000
Revised: November 4, 2014
Revised: February 4, 2016

Protocol:

Advocate activities shall be entered and tracked weekly in the appropriate regional folders on the OHR shared drive. These activities shall include: investigation and monitoring visits, LHRC hearings and any trainings provided.

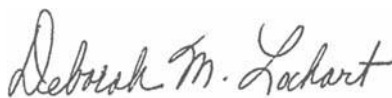
The Regional Advocates shall submit an annual report for the assigned region. The report shall include issues identified in the monthly reports of advocates assigned to facilities in the region and issues in community programs.

Procedure:

The annual reports shall consist of:

- ◆ A narrative report which shall address:
 - ◇ significant concerns regarding complaints and abuse allegations;
 - ◇ compliance issues;
 - ◇ systemic issues; and
 - ◇ special projects and activities.
- ◆ Reports should not contain client specific information, however information on a particularly significant or problematic case or situation may be included without identifying information.
- ◆ A narrative report which shall address:
 - ◇ significant concerns regarding complaints and abuse allegations for facilities and the community;
 - ◇ compliance issues (facility and community) ;
 - ◇ systemic issues (facility and community); and
 - ◇ special projects and activities of the regional advocate.
- ◆ Reports should not contain client specific information however; information on a particularly significant or problematic case or situation may be included without identifying information.

Effective: February 4, 2016



2/4/2016

Deborah M. Lochart, State Human Rights Director

Date

DBHDS
Office of Human Rights
Protocols, Procedures and Practices Manual
PROTOCOL NO. 120 - 2014
TIME, LEAVE AND WEEKLY ITINERARIES

Date: November 1, 2000
Revised: November 4, 2014

Protocol

Time and leave procedures for all human rights staff shall be in compliance with DBHDS policies.

Procedure

- ◆ Regular working hours are 8:15 a.m. to 5:00 p.m. with 45 minutes for lunch. All staff must make a written request to the State Human Rights Director for a modification of these hours on an on-going basis. Direct supervisors may approve requests for short-term (one week) modifications to work schedules or one-day changes to accommodate advocacy activities at a facility or program.
- ◆ Teleworking options may be available dependent on advocate responsibilities. All Teleworking requests must be completed in accordance with DBHDS policy on Teleworking.
- ◆ Leave requests [annual, sick, etc.] shall be submitted to the Advocate's supervisor for approval in a timely fashion. To the extent possible, leave requests shall be submitted on approved forms or verbally approved prior to taking leave.
- ◆ Weekly schedules:
 - ◇ The schedule should be entered on the Office of Human Rights shared drive but in an emergency may be faxed or e-mailed to the supervisor. This should include all staff supervised along with telephone and cell numbers.
 - ◇ The Facility Director shall also be informed when the advocate assigned to the facility will be away from the facility and any provisions for advocacy services in the assigned advocates absence.

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PROTOCOL NO. 121 - 2014
USE OF DBHDS PROPERTY

Date: November 1, 2000
Revised: November 4, 2014

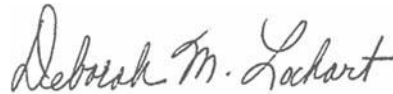
Protocol

All Office of Human Rights employees shall be held accountable for state property utilized in the performance of their assigned duties

Procedure

- * All state property shall be utilized in compliance with departmental and state regulations.
 - * Upon separation from employment with DBHDS, the staff shall return any state property used during tenure with DBHDS.

Effective: November 4, 2014



11/4/14

Deborah M. Lochart, State Human Rights Director

Date

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**PROTOCOL NO. 122 - 2014
CONTACT WITH THE MEDIA**

Date: November 1, 2000
Revised: November 4, 2014

Protocol

Requests for information from print or other news media shall be referred to the Office of the DBHDS Assistant Commissioner of Policy and Public Affairs, the Communications Director and the Facility/Program Director.


Procedure

- ◆ When contacted by a member of the news media, the human rights advocate shall refer the call to:
 - ◇ the facility/program director, and
 - ◇ DBHDS Assistant Commissioner of Policy and Public Affairs and the Communications Director

AND

- ◇ immediately notify the State Human Rights Director by telephone or e-mail.
- ◇ The SHRC will also notify the Assistant Commissioner for Quality Management and Development.

Effective: November 4, 2014



11/4/14

Deborah M. Lochart, State Human Rights Director

Date

DBHDS
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PROTOCOL NO. 123 - 2014
REQUESTS FOR DISCLOSURE OF PROTECTED HEALTH
INFORMATION (PHI)

Date: November 1, 2000
Revised: April 14, 2003
Revised: November 4, 2014

Protocol

- ◆ Advocates shall take affirmative steps to prevent the inappropriate use or disclosure of records and information, and to ensure the confidentiality of information in accordance with the *Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers of Mental Health, Mental Retardation and Substance Abuse Services* (DBHDS) and the Health Insurance Portability and Accountability Act (HIPPA).
- ◆ All uses and disclosures of Protected Health Information (PHI) shall be made in accordance with the Department's Privacy Policies and Procedures for Use and Disclosure of Protected Health Information.
- ◆ Reports and information, either in the possession of the program or the Human Rights Advocate shall not be disclosed or released by the Advocate to any third party.
- ◆ Any response to a request for disclosure regarding human rights or other information acquired in the course of providing rights services shall conform to the requirements set forth in Office of Human Rights policies/procedures, Department's Privacy Policies and Procedures for Use and Disclosure of Protected Health Information, and the Code of Virginia.

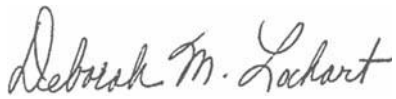
Procedure

- ◆ When a Human Rights Advocate receives a request for release of information, the Advocate shall refer the person requesting the information to the appropriate person:
 - ◇ if the request is for resident records, or other confidential information, the person making the request shall be referred to the facility/program director or appropriate designee;
 - ◇ if the request is for information from other records (under the Freedom of Information Act), refer the person making the request

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to either the Program's Freedom of Information Officer or the
DBHDS Freedom of Information Officer in the Commissioner's
Office;

◇ any unclear issue should be referred to the SHRD.

Effective: November 4, 2014



11/4/14

Deborah M. Lochart, State Human Rights Director

Date

PROTOCOL NO. 124 - 2014
PARTICIPATION BY HUMAN RIGHTS ADVOCATES IN
EXTERNAL ACTIVITIES IN AN OFFICIAL CAPACITY

Date: November 1, 2014

Protocol

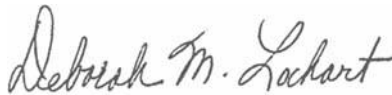
Human Rights Advocates shall obtain prior approval to participate in external activities in an official capacity.

Procedure

Prior to acceptance of any requests to speak publicly in an official capacity, the Advocate shall discuss the request in detail with their supervisor.

- ◆ Advocates should maintain an awareness of the sensitivity of many issues in which the Department is involved.
- ◆ Advocates should be prudent in presenting their personal opinions on departmental issues so as to avoid controversy, and misinterpretation by the press and others.
- ◆ A copy of the attached form, PUBLIC SPEAKING AUTHORIZATION must be completed in its entirety and approved by the SHRD before participating in any speaking engagement.

Effective: November 4, 2014



11/4/14

Deborah M. Lochart, State Human Rights Director

Date

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PROTOCOL NO. 125 – 2016

REQUESTS FOR LEGAL ASSISTANCE FROM THE ATTORNEY GENERAL

Date: November 1, 2000
Revised: January 22, 2002
Revised: November 4, 2014
Revised: February 4, 2016

Protocol:

All requests for advisory opinions and other legal advice or assistance that originate from Office of Human Rights staff or a member of the State or Local Human Rights Committee shall be initiated through the SHRD.

Procedure:

Office of Human Rights staff shall promptly notify the SHRD when the need for legal assistance from the Attorney General's office is identified. This includes any need for legal assistance that has been brought to the attention of the OHR staff by a member of the State or Local Human Rights Committee.

- ◇ The SHRD will make the request and will determine whether a written request is needed.
- ◇ The SHRD will communicate any response from the OAG to appropriate staff.
- ◇ Advice obtained is confidential and is for internal use only unless release is specifically authorized by the SHRD.
- ◇ The SHRD shall be immediately notified of any legal papers served on Office of Human Rights staff in their official capacity; or served on a State or Local Human Rights Committee member in their official capacity.
- ◇ A copy of the papers must be faxed, scanned or emailed to the SHRD the same day as they are received.
- ◇ The SHRD will notify the Office of the Attorney General of the receipt of the legal papers served on Office of Human Rights staff or State and Local Human Rights Committee members.
- ◇ The Office of the Attorney General will make a determination of the need for OAG involvement.

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**PROTOCOL NO. 128 - 2014
MANAGEMENT OF OFFICE OF HUMAN RIGHTS RECORDS and
CONFIDENTIAL COMMUNICATION**

Date: November 1, 2000
Revised: April 14, 2003
Revised: November 4, 2014

Protocol

- ◇ The Office of Human Rights is the custodian of records of complaints and aggregate abuse data.
 - ◇ All other records are the responsibility of the DBHDS, the facility, and/or program.
 - ◇ All Office of Human Rights records shall be managed in conformity with established DBHDS applicable policies and maintained in accordance with the Health Insurance Portability and Accountability Act (HIPAA).
 - ◇ OHR staff should make every effort to protect an individual's privacy when transmitting or communicating the individual's Protected Health Information (PHI).
 - ◇ When faxing PHI staff should ensure that the fax number is correct and that the party the fax is intended for is available to retrieve the fax.
 - ◇ OHR Staff should use initials instead of names in email messages when possible.
 - ◇ OHR staff should limit the use of PHI in voice mail messages.
 - ◇ All files should be maintained in a secured area [room with a lock on the door, locked drawers, etc.].
 - ◇ When destroying confidential material, shred or tear paper into a sufficient number of pieces to prevent recognition of data.

Procedure:

Before destruction of records, the advocate shall seek approval for destruction by completing and submitting Form RM-3, Rev.93 of the Commonwealth of Virginia State Library and Archives, Archives and Records Division.

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Retention Schedule

The following schedule establishes time frames for the retention of Office of Human Rights records. Purging of records and their destruction will occur within the noted time frames.

RECORD CATEGORY	OHR CENTRAL OFFICE	OHR FIELD OFFICES
Complaint Records	◇ 5 years	◇ hard copy/notes - 1 year ◇ computer reports - 3 years
Abuse Allegation Records	◇ 5 years	◇ hard copy/notes - 3 years ◇ computer reports - 3 years
SHRC/LHRC Records	◇ SHRC Minutes - permanent retention; original kept by OHR ◇ Meeting Tapes - erase after transcription ◇ LHRC Minutes - permanent retention ◇ Appointment letters - 6 years ◇ Memos & correspondence - 2 years ◇ By-laws - permanent retention	◇ LHRC Minutes - permanent retention; original kept by program; a copy maintained by advocate; a copy to OHR ◇ Hearing Tapes - erase after transcription or 3 years whichever comes first ◇ Membership applications & letters of appointment - 6 years ◇ Memos & correspondence - 1 year or until no longer pertinent ◇ Variances-permanent retention
Monthly Reports	◇ 3 years	◇ hard copy - 3 years
Correspondence/Memoranda	◇ 3 years	◇ 3 years
Restrictive treatment plans	◇ SHRC approved - 3 years or until client released from facility	◇ 1 year or until no longer pertinent
Seclusion/Restraint reports	◇ 3 years	◇ once data has been entered, worksheets can be destroyed ◇ computer reports - 3 years

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PROTOCOL NO. 130 - 2016
PROCESSING AND APPROVAL OF HUMAN RIGHTS POLICIES

Date: November 1, 2000
Revised: November 4, 2014
Revised: February 4, 2016

Protocol:

The State Human Rights Director (SHRD) shall review NEW provider Human Rights Policies for compliance with the Rules & Regulations; existing providers expansions into new regions and monitor provider modifications within regions.

Procedure:

1. For NEW Providers:

- ◆ The draft policy, along with the Compliance Verification Form (see attached) is submitted to the SHRD for review of compliance with the Rules & Regulations. The SHRD notifies the provider of any recommendations or changes to the submitted policies.
- ◆ Once approved, the SHRD sends a letter to the provider, with a copy to the Regional Advocate, with a referral for affiliation to an LHRC within the appropriate region.

2. For a provider expanding to a new region:

- ◆ The provider submits the Compliance Verification Form to the SHRC.
- ◆ The SHRD contacts the licensing specialist to assure that they are aware of, and support, the expansion.
- ◆ Once support is confirmed, both the provider and the Regional Advocate are notified to proceed with LHRC affiliation.

3. For existing providers either adding a location or a new service in an existing region:

- ◆ The SHRD will request that the provider notify the advocate and the LHRC of the new location or new services.

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Date

PROTOCOL NO. 131 - 2016
Emergency Preparedness Planning

Date: April 23, 2003
Revised: April 16, 2008
Revised: March, 2010
Revised: November 4, 2014
Revised: February 4, 2016

Protocol:

The Office of Human Rights (OHR) will ensure that critical operations will continue normal processing or, in the event of a major disruption, resume operations as quickly as possible.

The Office of Human Rights will promote staff and individual safety during emergencies by adhering to and supporting strict adherence to emergency plans.

The OHR contact list including names, addresses and phone numbers, is attached to this protocol.

Procedure:

1. Continuity of Operations and Communication during an emergency

- ◇ When after-hours communication is required the Director of the Office of Human Rights (hereafter referred to as Director) will contact the Regional Advocates who will contact their respective staff.
- ◇ Staff back up in the event of an emergency is as follows:
 - ◆ Director's back up is the Region 4 Human Rights Managers.
 - ◆ Region I-2 Regional Advocate back up is Region 4 Regional Advocate and vice versa.
 - ◆ Region 3 Regional Advocate back up is Region 4 Regional Advocate and vice versa.
 - ◆ Region 4 Human Rights Managers back up is Region 5 Regional Advocate and vice versa.
- ◇ All staff has remote access capabilities via email.
- ◇ The Director, and OHR Administrative Support and several other staff have lap top computers that can be used off site.

2. General plan and procedures

- ◇ All OHR staff will keep the following information at home:
 - ◆ OHR contact list
 - ◆ Central Office, State Facility and CSB contact list
 - ◆ Region or facility local human rights membership contact information

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- ◆ State Human Rights Committee (SHRC) contact information (Director and SHRC Secretary only)
- ◆ Other critical information as determined by staff
- ◇ OHR staff will adhere to emergency alerts and instructions from appropriate authorities
- ◇ In the event of an emergency that makes it impossible for staff to go to the office, staff will contact their respective Regional Advocate or Human Rights Manager for direction and assignments. If the Regional Advocate or Human Rights Manager is unavailable due to the emergency, then staff will contact the Regional Advocate or Human Rights Manager who provides backup coverage for their respective regions.
- ◇ In the event of an emergency that impacts their respective region, the Regional Advocates or Human Rights Manager will contact the Director for direction and assignments.
- ◇ In the event of an emergency that impacts any member of the OHR the Director will inform the Commissioner about the status of the employees and offices affected by the emergency.
- ◇ In the event that the Director is unavailable due to an emergency then the Region 4 Human Rights Manager will coordinate activities and assignments.
 - ◇ If offices are unavailable due to an emergency, staff may work from home with supervisory approval.

3. Protection of critical office files

- ◇ In the event of an impending emergency situation that might result in damage to an OHR office area, staff will vacate the premises in accordance with area alerts.
- ◇ Staff at each office location will consult with their respective supervisors and identify critical information to be moved to a safe location in such an event. Such information should only be removed if time permits. Samples of the type of information to consider for removal are as follows :
 - ◇ Any critical information that is not backed via computer; i.e. LHRC minutes, SHRC minutes, Variances, complaint files.
- ◇ If no location is determined to be safe then the information will not be removed from the office.

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Deborah M. Lochart

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Deborah M. Lochart, State Human Rights Director

Date

PROTOCOL NO. 132 - 2014
Healthcare Insurance Portability and Accountability Act
Compliance

Date: April 14, 2003
Revised: November 4, 2014

Protocol:

The Office of Human Rights (OHR) serves as a Health Oversight agency as defined by the Healthcare Insurance Portability and Accountability Act (HIPAA). All staff of the Office of Human Rights will become knowledgeable of, and comply with, all relevant aspects of the Department's Privacy Policies and Procedures for Use and Disclosures of Protected Health Information (PHI). Staff will adhere to the applicable accounting, minimum necessary, and use and disclosure rules.

Staff will promote compliance with HIPAA among providers in those areas where it aligns with the human rights regulations

Procedure:

Use and Disclosures

Providers may disclose PHI to staff of the Office of Human Rights, members of Local Human Rights Committees and the State Human Rights Committee, without authorization as long as the disclosure is necessary for appropriate oversight activities.

Staff of the Office of Human Rights, members of Local Human Rights Committees and the State Human Rights Committee, may use PHI to conduct their duties as defined by the human rights regulations.

Staff of the Office of Human Rights, members of Local Human Rights Committees and the State Human Rights Committee, shall not disclose any PHI used in conjunction with such oversight activities unless the disclosure complies with Department policy and procedures.

Minimum Necessary

All OHR staff will limit all uses and disclosures of PHI to the amount necessary to accomplish the purpose for which the use or disclosure is intended. The minimum necessary rule does not apply to disclosures to the individual, for treatment purposes, as required by law, or those made with an authorization.

Accounting

Accountings must be maintained by advocates for disclosures of PHI of individuals in State facilities.

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OHR staff must maintain the names of all sources to which PHI has been disclosed to anyone other than Department employees.

Although the following disclosures will rarely if ever be made by OHR staff, if such a disclosure were to occur the following additional elements are required for an accounting in the following circumstances:

- Disclosures required by law;
- Disclosures for public health activities (DOH);
- Disclosures regarding victims of abuse and neglect (DSS);
- Disclosures to health oversight agencies (dLVCV, JACHO)
- Disclosures for judicial and administrative proceedings;
- Disclosures for law enforcement purposes;
- Disclosures to avert serious threats to health and safety;
- Disclosures for protective services to the President or others; and
- Disclosures regarding public benefits programs.

OHR staff must maintain the following additional elements in the accounting for the above listed categories:

- Name of person who received PHI, if known;
- Date of disclosure,
- Brief description of the PHI disclosed,
- Purpose of disclosure.

OHR staff will maintain elements for an accounting in the Department HIPAA Record Tracking System (HRTS).

Monitoring Compliance

HIPAA applies to health care providers and other entities. A health care provider, as defined in HIPAA, means a provider of services (as defined in section 1861 (u) of the Act), a provider of medical or health services (as defined in section 1861(s) of the Act), and any other person or organization who furnishes, bills, or is paid for health care in the normal course of business. Many of the providers covered by the human rights regulations are indeed health care providers and thus must also comply with HIPAA. Each provider will have to determine for him, or herself, if the Privacy Rules apply to their program.

During the course of providing consultation to providers and monitoring compliance with the human rights regulations, OHR staff may provide information about HIPAA and may inform providers about the Department's policies and procedures regarding HIPAA. Staff shall, as needed, refer providers that have specific questions about HIPAA to the actual regulations (45 CFR parts 160-164), United States Department of Health and Human Services (USDHHS) .

Providers may view the applicability, relevancy and meaning of HIPAA differently than does the Department. When such differences impact the provider's compliance with the human rights regulations, OHR staff shall seek guidance from the SHRD. The SHRD

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will seek guidance from the Chief Privacy Officer and the Office of the Attorney General.

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PROTOCOL NO. 133 - 2014

Investigation of complaints against Office of Human Rights

Date: February 2006
Revised November 4, 2014

Protocol:

Complaints against Office of Human Rights staff will be investigated in accordance with applicable regulations, department and state procedures.

Procedure:

- ◇ Complaints alleging violations of the human rights regulations will be investigated consistent with the procedures established in the human rights regulations.
- ◇ Allegations of violations of 12 VAC 25-115-50 will be investigated consistent with Department policy (DI 201) and 12 VAC 35-115-50 and conducted by or under the supervision of the Investigations Manager.
- ◇ The investigation report will be sent to the “director” either the State Human Rights Director (SHRD) or in cases involving the SHRD the Assistant Commissioner for Quality Management and Development.
- ◇ The SHRD or the Assistant Commissioner for Quality Management and Development will follow all subsequent steps in 12 VAC 35-115-50.
- ◇ Allegations of violations of all other sections of the regulations will be investigated in accordance with 12 VAC 35-115-170 by or under the supervision of the State Human Rights Director. If the allegation is against the SHRD then complaint will be investigated by or under the supervision of the Assistant Commissioner for Quality Management and Development.
- ◇ The SHRD will direct an advocate not involved in the complaint to complete an investigation in accordance with VAC 35-115-170 and issue a report to the parties involved.
- ◇ The Assistant Commissioner for Quality Management and Development, or his designee will complete the investigation of allegations against the SHRD in accordance VAC 35-115-170 and issue a report to all parties involved.
- ◇ The SHRD or the Deputy Commissioner will follow all subsequent steps in 12 VAC 35-115-170.
- ◇ Any personnel action taken as a result of a violation of the human rights regulations will be conducted in accordance with HRDM policies.
- ◇ All other complaints will be referred to the appropriate supervisor and managed in accordance with applicable office, department and state policies and procedures.

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Deborah M. Lochart

Date

PROTOCOL NO. 134 - 2016

Procedures for the Role of the Office of Human Rights in the Monitoring of the Discharge Process for Individuals Involved with the DOJ Settlement Agreement

Date: December 11, 2012
Revised: June 9, 2013
Revised: November 4, 2014
Revised: February 4, 2016

Protocol:

The Office of Human Rights will provide oversight, monitoring and advocacy to individuals discharged from the training centers in response to the DOJ Settlement Agreement.

Procedure:

- ◆ **Pre-Visit Review:** During this step the Office of Human Rights will have the option to visit the provider.
 - ◇ The provider information request form (PIR) is received by the ID Team and forwarded to the appropriate Regional Advocate.
 - ◇ The Regional Advocate will decide whether or not a visit needs to be made by the regional team. The decision will be based on the Regional Advocate's current knowledge of the provider as well as the complexity of the needs of the individual being discharged.
 - ◇ The advocate will complete the provider information request form and forward back to the ID Team who then notifies the training center discharge team as to the appropriateness of the provider.
 - ◇ The following guidelines should be used to help you assess whether or not this provider would be a good match for the individual.
 - ◇ Assess the **physical environment** of the residential or day activity placement to include the items included under the dignity section of our regulations. How does the place look and smell, how big are the rooms, where is the house situated in the neighborhood, is there ready access to a bathroom, will the client have to share a bedroom, all the common sense questions one would ask.
 - ◇ Assess the **staff** by asking about the **ratio** of clients to staff, the **training** of the staff, the **experience** level and **qualifications** of staff and whether they have had experience with the particular issues presented by this client.
 - ◇ Assess the **other people living in the home** meaning the other group home residents or the other

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clients or family members in a sponsored residential placement. Is it likely that this individual would be compatible with those already living there.

- ◇ Assess the **community** to determine if **specialized medical services** are available if needed, if adequate **day activity programs** are available, or if **recreational services** are accessible.
- ◇ Assess how the **specific needs** (medical and behavioral) of the client being considered for placement relate to the above factors.
- ◇ Assess whether the **other important people** in the life of the individual (**family members, close friends, guardian/AR**) will have access to the client in this location.

◆ **Pre-Move Provider Meeting:**

- ◇ The facility based advocate should participate, to the greatest extent possible, in **all** the meetings that are held to discuss the individual's eventual transition into the community.
- ◇ The facility advocate **will** attend the **Pre-Move Provider meeting** that takes place during the 6th week of the discharge process. Previously, facility advocates were asked to attend the final meeting prior to discharge. Advocates may, of course, still attend the last meeting prior to discharge; however, the emphasis has shifted to the meeting at the sixth week point so that there is time to get the necessary paperwork completed for capacity decisions prior to discharge.
- ◇ Notifications of all **Provider Pre -Move** meetings will be sent via the Training Center Discharge Team. If the advocate cannot attend one of these meetings, an the OHR ID Team Manager should be notified so that arrangements can be made for another person to be there from OHR.
- ◇ At this **Pre-Move Provider meeting** the facility advocate will be on the agenda to provide guidance and answer questions on the issues specific to capacity evaluations, authorized represent and consent.

◆ **Checklist for Provider Pre-Move Meeting:**

- ◇ has a current capacity evaluation been completed?
- ◇ is the AR willing to continue as AR in the community?
- ◇ is the individual/provider/AR aware of the role and responsibility of the AR?
- ◇ is the individual/ provider/AR aware of the requirements for informed consent?

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- ◇ is the provider aware of the documentation that needs to be kept in the service record regarding designating an AR, capacity evaluations and informed consent?

Post Move Monitoring Visits (PMM)

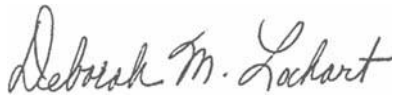
- ◇ The OHR ID Team will be conducting **PMM visits**. The ID advocate will notify the Regional Advocate when they will be visiting within that region. They will also keep the Regional Advocate informed if any concerns are identified. The PMM visits will typically take place within the first 30 days of an individual's discharge from the training center. The ID advocates will also visit again at 60 days and after a year, post discharge. If risk factors are identified, additional visits will be made if necessary. These visits will be in addition to visits from other DBHDS offices and will be completed at both the individual's residence, as well as their day support program. During these visits some of the areas looked at will include:
 - ◇ Essential supports identified at the time of discharge
 - ◇ Human Rights compliance
 - ◇ Current support plans
 - ◇ Nutritional guidelines
 - ◇ Physical environment
 - ◇ Staffing patterns
 - ◇ Behavioral concerns
 - ◇ Interactions with family and friends
 - ◇ Community activities
 - ◇ Other areas as appropriate
- ◇ After the initial PMM visit, the OHR ID Team will make return visits based on the following risk factors:
 - ◇ Individuals that are not attending any structure day program
 - ◇ Individuals where there was concern regarding capacity evaluations/AR appointment
 - ◇ Individuals with behavioral concerns
 - ◇ Individuals who are at risk for falls
 - ◇ Individuals with significant medical issues
 - ◇ Individuals that were part of any abuse /neglect/exploitation investigation
 - ◇ Individual where concerns were noted during prior visits.
- ◇ The OHR ID team will notify the Regional Advocate whenever a visit is being made into their region:
 - ◇ Any concerns, comments, suggestions and/or recommendations will be reported to the provider during the visit. If a health

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and/or safety issue is identified during the visit, the local advocate as well as the licensing specialist will also be notified.

- ◇ The PMM visit report will also be posted under the individuals' folder on the shared drive. The discharge list, which includes dates of PMM visits, is posted in the DOJ folder on the Human Rights internal drive.
- ◇ This does **NOT** change the role of the local advocate with the individual/provider. This is an additional layer of advocacy put in place to monitor the discharge process to help ensure a healthy and safe transition for the individual into the community. If any abuse/neglect/exploitation concerns are identified during these visits or if complaints are brought forward, the ID Advocate will immediately notify the Regional Advocate and the licensing Specialist for follow-up

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Deborah M. Lochart, State Human Rights Director

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