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Final Regulation Agency Background Document

Agency name	Department of Behavioral Health and Developmental Services (DBHDS)
Virginia Administrative Code (VAC) citation(s)	12 VAC 35-115-10 et seq.
Regulation title(s)	Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by DBHDS
Action title	Streamline the administrative process, improve program efficiencies and eliminate redundancies.
Date this document prepared	July 27, 2016

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The revisions to the Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by DBHDS (12 VAC 35-115-10 et seq., "Human Rights Regulations") were made to improve the ability of the DBHDS Office of Human Rights to perform its Code-mandated responsibilities and maximize resources in a manner that promotes the department's vision of recovery, self-determination, empowerment, and community integration for individuals receiving services. The intent of these proposed changes is to streamline the administrative process, improve program efficiencies, and eliminate redundancies.

Changes made since the proposed stage

Section number	Requirement at proposed stage	What has changed	Rationale for change
12VAC35-115-30	The proposed regulations added, but did not define, "administrative hearing bodies."	DBHDS agreed and added a definition of "administrative hearing."	DBHDS agreed that this section needed further clarification. Technical clarifying and corrective edits were made in six places.
12 VAC35-115-60. Services	The regulation included a list of what would be considered a basis for a discrimination complaint. <i>"On the basis of race, color, religion, ethnicity, age, sex, disability or ability to pay".</i>	The list was removed from the regulation.	It was brought to the attention of DBHDS that this list might limit complaints of discrimination if other identified protected categories are added to other laws at some point.
12 VAC35-115-100. Restrictions on Freedoms of Everyday Life (B)(5)	The proposed regulation required that the LHRC approve any restriction imposed on an individual's rights under this subsection or subsection 50 that lasts longer than seven days or is imposed <u>multiple</u> times during a thirty-day time period.	"Multiple times" was deleted and replaced with "three or more" times in a 30-day period.	DBHDS agreed that this section needed further clarification.
12 VAC 35-115-105. Behavioral treatment plans (E)	Providers would be required to submit any behavioral treatment plan that does not require SCC approval, and its independent review committee approval, to the LHRC.	DBHDS added language to (E) to clarify that only behavioral treatment plans that <u>involve the use of restraint or time out</u> shall be submitted for review.	Multiple comments were received requesting further clarification in the regulations that only restrictive plans should be reviewed. Without this clarification, this regulatory requirement would create a negative burden on the system.
12 VAC 35-115-145	Under 5.c., add "and 12 VAC35-115-210."		Corrective edit deleted the proposed new citation reference to section 210.
12 VAC 35-115-150 General provisions (A)	The proposed regulations added, but did not define, "administrative hearing bodies."	DBHDS agreed and added a definition of "administrative hearing" to section 12 VAC 35-115-30.	DBHDS agreed that this section needed further clarification.
12 VAC35-115-175. Human Rights Complaint Process (D)	This section stated that providers shall have complaint resolution policies and procedures that address " <u>all of the requirements of subsection C.</u> "	DBHDS changed this section to include, " <u>all of the requirements of subsections C and E.</u> "	DBHDS received comments that subsection E should be added to this section.
12 VAC 35-115-230. Provider requirements for reporting A(3)	The regulation required the investigating authority to provide a written report of the results of the investigation of abuse or neglect to the director <u>and human rights advocate</u> within 10 working days from the date the investigation began.	A change was made to indicate that reporting to the advocate will be via CHRIS.	DBHDS agreed with commenters that submitting the findings of an abuse investigation to the advocate in writing as well as entering it in CHRIS was redundant.
12 VAC 35-115-270. State and Local Human Rights Committee responsibilities (A)	As in 12 VAC 35-115-100, Restrictions on Freedoms of Everyday Life (B)(5), the proposed regulation required that the LHRC approve any restriction imposed on an individual's rights under this subsection or subsection 50 or 100 that lasts longer than seven days or is imposed <u>multiple</u> times during a thirty-day time period.	"Multiple times" was deleted and replaced with "three or more" times in a 30-day period.	DBHDS agreed that this section needed further clarification.