



COMMONWEALTH of VIRGINIA

ALISON G. LAND, FACHE
COMMISSIONER

DEPARTMENT OF
BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Post Office Box 1797
Richmond, Virginia 23218-1797

Telephone (804) 786-3921
Fax (804) 371-6638
www.dbhds.virginia.gov

MEMORANDUM

To: DBHDS Facility Directors

From: Taneika Goldman, State Human Rights Director

Re: Clarification of Human Rights processes related to Facility Violation Letters

Date: January 7, 2021

The purpose of the Violation Letter is to document the manner in which state operated facilities acknowledge Human Rights violation(s), and identify and implement appropriate corrective action(s), in accordance with timelines outlined in the Human Rights regulations. The work of correcting, mitigating and preventing abuse occurs after the identification of a violation. The assurance of this work is the responsibility of the Facility Advocate [12VAC35-115- 260] and is reflected in the substance of the Violation Letter process.

A Violation Letter will be issued for Human Rights violations identified through the following processes and for the following reasons (including but not limited to):

1. DI 201 investigations
 - All substantiated findings to include Abuse, Neglect and Exploitation, as well as any other regulatory violation. For example, violations related to [12VAC35-115-50 and 12VAC35-115-100].
 - Following an unsubstantiated finding, the advocate may issue a Violation Letter based on their independent review and determination of a violation.
2. During the course of routine policy reviews, AIM visits, and Facility Look-Behinds
 - Failure to properly display the Human Rights poster [12VAC35-115-40 (B)(1)]
 - Failure to disclose and provide the Individual and AR, in writing, information about the Individual's rights and how to file a complaint; and, to obtain the signature of the Individual and AR [12VAC35-115-40 (B)(2)(3)]
 - Failure to obtain and properly maintain evidence of informed consent [12VAC35-115-70 (A)(2)]
 - Failure to obtain and properly maintain evidence of authorization given by the Individual and/or AR to disclose information (release of information) [12VAC35-115-80 (B)(2)]
 - Failure to maintain current Human Rights policies and procedures [12VAC35-115-50 (D)(2)]
 - Failure to submit for review any proposed changes to the policies and procedures [12VAC35-115-260 (A)(9)]

- Failure to have a trained investigator to conduct DI 201 investigations [12VAC35-115-175 (F)(4)]
 - Failure to annually assess facility employee's knowledge of the Human Rights regulations and maintain evidence of competency-based training [12VAC35-115-260 (A)(7)]
 - Failure to follow, and maintain evidence of, the process of determining capacity [12VAC35-115-145]
3. Pursuant to the regulatory oversight and due process responsibility of the LHRC
- Failure to follow procedures concerning the approval of: Restrictions [12VAC35-115-100 (B)(3)(4)(5)]; Behavioral Treatment Plan's [12VAC35-115-105 (E)]; Human research [12VAC35-115-130 (B)(4)]; and Next friend designations [12VAC35-115-146 (B)(2)(4)(5)]
 - In accordance with Findings and Recommendations following a Fact Finding Hearing
4. Identified Trends Involving:
- Duplicate substantiated Human Rights complaints that point to a systemic failure or concern
 - Seclusion & Restraint
 - Late Reporting to include failure to report allegations of Abuse/Neglect in CHRIS within 24 hours of awareness [12VAC35-115-230 (A)(1)] and failure to update CHRIS with the results of the investigation within 10 business days from the start of the investigation [12VAC35-115-230 (A)(3)].

A Violation Letter will not be issued for peer-to-peer cases, unless the allegation has been substantiated through the DI 201 investigation process.

A Violation Letter will only be issued for Late Reporting following a pattern of three or more late entries/failures. The Facility Advocate will discuss the concern with the Facility Director prior to reaching this threshold, to allow the facility the opportunity to correct internal processes or address one-time occurrences.

For all substantiated DI 201 investigations, in lieu of a separate Violation Letter, the Facility Director will indicate actions to be taken and the date these actions will be completed directly on the Transmittal Memo.

Procedure for issuing a Violation Letter and process of acknowledgment, implementation and verification of corrective action(s):

Violation Letters will be emailed to the Facility Director within 5 business days of the date the violation is identified, for example, through notification in CHRIS or Facility Advocate observation. The Violation Letter will cite the regulation(s) violated and provide information about the facts used to make the determination of violation. The Violation Letter will also specify a due date of 10 business days for the submission of a plan of correction. The Facility Director may request an extension by providing a reason and a new proposed completion date to the Facility Advocate prior to the conclusion of the 10 business days. The Facility Director should sign and return the Violation Letter indicating the actions to be taken and the date these actions will be completed. The Facility Advocate will review the response for appropriate timeframes and corrective action(s) based on the severity of the violation.

The Facility Director may express disagreement with the identified violation(s) by providing information about the reason(s) for the disagreement on the Violation Letter. If the facility's response is not received by the required date, or the Facility Director has provided information

about their disagreement with the identified violation, the Facility Advocate will notify the Facility Advocate Manager, who will consult with the Associate Director for escalation to the State Human Rights Director and appropriate Deputy or Assistant Commissioner.

For violations not involving Abuse, Neglect or Exploitation, the LHRC may be asked to review the violation(s) and make recommendations, as outlined in 12VAC35-115-260(A)(11). For violations that involve Abuse, Neglect or Exploitation, the violation(s) may be submitted to the Central Office Advisory Panel for review per DI 201.

For violations identified through the DI 201 process, the Facility Advocate will verify evidence of completed corrective actions during the Facility Look Behind process. For all other violations, the Facility Advocate will request and review evidence of implemented corrective action within 30 business days of the completion date identified by the Facility Director. The Facility Advocate may verify implementation of corrective action(s) through additional interviews, onsite visits, phone calls, requests for and review of policies and/or other documentation. In all cases, if corrective action is not evident at the time of review, the Facility Advocate will notify the Facility Advocate Manager and Associate Director, who will consult with the State Human Rights Director for escalation to the appropriate Deputy or Assistant Commissioner.

Cc: Angela Harvell, Deputy Commissioner for Facility Services
Dev Nair, Assistant Commissioner, Quality Assurance and Government Relations
Walton Mitchell, Assistant Commissioner, Facility Services