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Periodic Review and Small Business Impact Review Report of Findings

Agency name	Department of Behavioral Health and Developmental Services
Virginia Administrative Code (VAC) Chapter citation(s)	12 VAC35-115
VAC Chapter title(s)	Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Behavioral Health and Developmental Services
Date this document prepared	February 14, 2022

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Acronyms and Definitions

Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.

DBHDS - Department of Behavioral Health and Developmental Services

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

	<p>leave a treatment facility, and it should not always result in a "Missing Person" as well as a "Neglect Allegation" against staff per the VA 115- regulations. These should be looked at case by case basis- situational and a determination will be made as it causes a regulatory burden.</p> <p>"Peer-on-peer aggression" means a physical act, verbal threat, or <i>demeaning expression</i> by an individual against or to another individual that causes physical or emotional harm to that individual. Examples include hitting, kicking, scratching, and other threatening behavior. <i>Such instances may constitute potential neglect.</i></p> <p>Comment: Can DBHDS define what "demeaning expression" entails. This is subjective statement & should be defined objectively. OHR defines peer on peer aggression as an automatic allegation of neglect against staff which causes a regulatory burden, and by this definition is contradictory.</p> <p>Part II Assurance of Rights 12VAC35-115-40. Assurance of rights. C. Every individual has a right to seek resolution of his complaint and make a human rights complaint. Any individual or anyone acting on his behalf who thinks that a provider has violated any of his rights under these regulations may make a complaint and get help in making the complaint in accordance with Part V (12VAC35-115-150 et seq.) of this chapter.</p> <p>Comment: It would be beneficial if additional guidance can be provided in reference to how many repeated complaints a person/ individual can file on the same topic/subject, again this can result in a regulatory burden.</p> <p>Part III Explanation of Individual Rights and Provider Duties</p>	<p>case basis to decide if it meets the threshold for making a report of a missing person or if it meets the threshold of an allegation of neglect. The Office of Licensing has regulatory language about when it is appropriate to file a missing person report. Concerns about that language and associated procedures should be directed to the Office of Licensing.</p> <p>Thank you for your comment. DBHDS will issue guidance on this in the near future.</p> <p>In developing draft amendments in response to periodic review, DBHDS has discussed the issue of duplicate complaints and is considering regulatory amendments to clarify and address.</p>
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	<p>Comment: Individuals have freedom of choice to leave treatment facilities, as they have the freedom to move in and out of treatment settings. There are situations where clients will leave against medical advice without notifying their provider. This contradicts when clients are "missing" it may result in "Allegation of Neglect" against staff. These cases should be reviewed on a case-by-case basis- Situational based as it creates a regulatory burden for the provider.</p> <p>Part V Complaint Resolution, Hearing, and Appeal Procedures 12VAC35-115-175. Human rights complaint process. A. Each individual has a right to: 1. Make a complaint that the provider has violated any of the rights assured under this chapter; Additional guidance is requested regarding the number of times an individual can file the same complaint for the same topic/subject</p> <p>Comment: Additional guidance is requested regarding the number of times an individual can file the same complaint for the same topic/subject</p> <p>Part VII Reporting Requirements 12VAC35-115-230. Provider requirements for reporting. A-3. -The investigating authority shall provide a written report of the results of the investigation of abuse or neglect to the director and human rights advocate via the department's web-based reporting application within 10 working days from the date the investigation began unless an extension has been granted (see 12VAC35-115-175).</p> <p>Comment: Dependent on the complexity of the Case of Allegation of Potential Abuse, Neglect of Exploitation, 10 working days is not sufficient to conclude the investigation. In certain situations,/cases-for example, sexual allegations, the complexity of these</p>	<p>Thank you for your comment. DBHDS agrees that each situation should be reviewed by the provider on a case by case basis to decide if it meets the threshold for making a report of a missing person or if it meets the threshold of an allegation of neglect. These determinations should take into consideration the individual's capacity and their need for services. The Office of Licensing has regulatory language about when it is appropriate to file a missing person report. Concerns about that language and associated procedures should be directed to the Office of Licensing.</p> <p>In developing draft amendments in response to periodic review, DBHDS has discussed the issue of duplicate complaints and is considering regulatory amendments to clarify and address.</p> <p>A provider is able to seek an extension to complete an abuse/neglect investigation in current regulation under Section 175. Also, in developing draft amendments in response to periodic review, DBHDS has discussed the issue</p>
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	<p>cases may require specialized training to conduct these types of investigations, in addition, there are external entities investigating, and providers are not able to investigate until they are given permission by these entities to initiate these investigations. In other jurisdictions, providers do not engage in "investigating" Sexual Allegation cases.</p>	<p>and is considering regulatory amendments to clarify.</p>
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Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

This regulation is necessary to carry out the human rights requirements of [Chapter 4](#) of the Code of Virginia, and meets the requirements of EO14 in that the regulation helps to protect the health, safety, and welfare of individuals receiving services as it provides clarity for individuals, providers, and other stakeholders about the structure for support of assured rights, and establishes procedures when these rights are violated or are in dispute. The structure of the regulation is straightforward and succinct and written to provide clarity for providers and individuals receiving services.

Decision

Explain the basis for the promulgating agency’s decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

There are amendments expected in an action to be brought for promulgation in 2022, to clarify processes and provide stakeholders with information necessary to help assure the rights of individuals receiving services from providers licensed, funded, or operated by DBHDS. The planned amendments will also identify and amend any incorrect, incomplete, or outdated legal references

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency’s decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

- (1) The regulation is needed to carry out the human rights requirements of [Chapter 4](#) of the Code of Virginia.
- (2) One comment was received concerning the regulation.
- (3) The regulation is straightforward and minimal while meeting requirements for establishing a structure for helping to assure the rights of individuals receiving services.

- (4) The regulation does not overlap, duplicate, or conflict with federal or state law or regulation.
- (5) It has been four years since the regulation was reviewed; technology, economic conditions, or other factors have not changed in the area affected by the regulation.

The agency's decision will have no economic impact on small businesses. Planned amendments are to make the regulations clearer to understand, which would help providers.

