

OHR Responsibilities



- Guarantee individual's rights protection
- Monitor provider compliance with the Human Rights Regulations (HRR)
 - The HRRs can be accessed through Virginia's Legislative Information System (LIS) at <https://law.lis.virginia.gov/admincode/title12/agency35/chapter115/>
- Provide education and guidance to providers



Human Rights Regulation: 12VAC35-115-30. Definitions



Abuse: Any act or failure to act by any employee or other person responsible for the care of an individual ... that was performed or was failed to be performed *knowingly, recklessly, or intentionally, and* that *caused or might have caused physical or psychological harm, injury or death* to a person receiving care or treatment for mental illness, intellectual disability or substance use disorder.



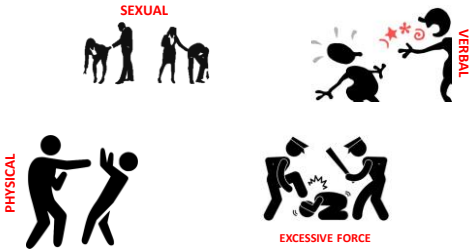
Examples of Abuse



- Rape, sexual assault, or other criminal sexual behavior
- Assault or battery
- Use of language that demeans, threatens, intimidates, humiliates
- Use of excessive force when utilizing a physical/mechanical restraint
- Use of physical or mechanical restraint that is noncompliant with laws, regulations, policies, standards of practice, or the ISP
- Use of more restrictive, intensive services, or denial of services, to punish or that are not consistent with the ISP



Categories of Abuse



More on Abuse



Exploitation: The misuse or misappropriation of the individual's assets, goods, or property; and, the use of a position of authority to extract personal gain from an individual.

Human Rights Regulation: 12VAC35-115-30. Definitions



Neglect: Failure by a person, program or facility operated, licensed, or funded by the department responsible for providing services to do so, including nourishment, treatment, care, goods or services necessary to the health, safety and welfare of a person receiving care or treatment for mental illness, intellectual disability or substance use disorder.

Examples of Neglect



- Failure to take actions that would have prevented an injury
- Failure to stop or try to stop an individual from an activity that could lead to harm
- Failure to report a co-worker not doing their job
- Failure to report inappropriate activity between individuals and staff
- Allowing two individuals to fight without intervening



Human Rights Regulation: 12VAC35-115-30. Definitions



Restraint: the use of a mechanical device, medication, physical intervention, or hands-on hold to prevent an individual from moving his body to engage in a behavior that places him or others at **imminent risk**.

There are three types of restraint:

- Mechanical
- Pharmacological
- Physical



Human Rights Regulation: 12VAC35-115-175. Complaint Process



- All allegations of abuse & neglect must be reported to the OHR, **and the AR**, within **24 hours**.
- Immediately ensure the individual's protection throughout the investigation.
- The **investigator must be trained** to conduct abuse/neglect investigations.
 - **However, the investigator must not be "involved in the issues under investigation."**



Human Rights Regulation:
12VAC35-115-175. *Complaint Process*



- The investigation should **begin as soon as possible**, but **no later than the next business day**.
- Document the results of the investigation in CHRIS within **10 working days**.
 - Refer also to 12VAC35-115-230. Provider Requirements for Reporting
- The director will make the final decision and submit the findings.
- Complaint resolution policies & procedures must "detail the program's complaint review or investigation process..."



Complaint Process:
Hearing & Review Procedures



- | | |
|---|--|
| <p>Local Human Rights Committee</p> <ul style="list-style-type: none"> ▪ 12VAC35-115-180 ▪ Provides due process for individuals under the <i>Regulations</i> ▪ Responsible for conducting fact-finding hearings in response to appeals ▪ Provides recommendations to the facility director | <p>State Human Rights Committee</p> <ul style="list-style-type: none"> ▪ 12VAC35-115-210 ▪ Provides oversight to the LHRC ▪ Hears and renders decisions on appeals for cases heard, but not resolved at the LHRC level |
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CHRIS



- The Department's web-based reporting system for allegations of abuse and human rights complaints.
- Human Rights Regulation 12VAC35-115-230. documents provider responsibilities for reporting "each allegation of abuse or neglect" in CHRIS.
- Allows for OHR staff to monitor investigations.



Knowledge Check:
Human Rights



**HUMAN
RIGHTS**





The Investigative Process

The nuts and bolts of conducting a successful investigation.

The Investigative Process:
Defining Investigation



- An investigation is a "systematic collection of facts" that assists in understanding an incident.
- Facts are pieces of information that contribute to some sense of certainty; and, help generate conclusions.
- Formation of the investigatory question helps the investigator determine which facts will be relevant to the investigation.
- Facts lead to the collection of evidence, or information that may help describe and/or explain what happened.
 - 4 forms of evidence
 - 2 types of evidence



The Investigative Process:
Investigation Timeframes



- Allegations of abuse and/or neglect must be investigated within **10 working days**.
 - Requests for extensions must be submitted to the Facility Advocate within 6 working days and should be maintained in the investigative file.
 - Investigations may be suspended at the direction of law enforcement.



The Investigative Process:
Internal Preparedness



- There should be an internal policy/protocol outlining the procedure for conducting effective investigations. Elements should include:
 - Reporting procedures
 - Investigator assignments
 - Organizational structure
 - Identification of staff responsibility and accountability
 - Timeline, or order in which investigative activities should happen



The Investigative Process: *Organizing the Investigation*



- Observe, review the scene at the time of arrival
- Interview the person making the report
- Collect physical evidence
 - Create demonstrative evidence if unable to preserve the physical evidence (e.g., diagrams, photos)
- **Interview the victim**
- Interview the other direct evidence (eyewitnesses)
- Interview the circumstantial evidence witnesses
- Interview the alleged target of the investigation
- Collect documentary evidence for review later



The Investigative Process: *Initiating the Investigation*



- Within 24 hours, the Director (or designee) must ensure:
 - A trained investigator initiates an impartial investigation.
 - The individual (and AR) is notified about the investigation and the investigatory process.
 - The allegation is reported to the OHR via CHRIS.
 - That the appropriate DSS is notified (as required by Va. Code).
 - Any other processes/procedures are followed per the internal policy.



The Investigative Process: *Initiating the Investigation*



- Consider building and maintaining an investigator tool kit:
 - Internal provider forms
 - Graph paper for drawing diagrams
 - Tape measure
 - Paper and writing utensils
 - Plastic and paper bags
 - Tags and/or labels
 - Tape
 - Latex/plastic gloves
 - Masks
 - Hand sanitizer



The Investigative Process:
The Investigatory Question



- It is imperative to develop the investigatory question as it is the compass of the investigation.
- Information obtained verbally and/or through the initial written report provide crucial elements for the construction of the investigatory question:
 - When the incident happened (**time**)
 - Where the incident happened (**space**)
- The investigatory question should be formed so that it describes the when (time) and where (space) of the allegation.



The Investigative Process:
The Investigatory Question



- Forming the question:
 - Make the question open-ended
 - If the time and space of the incident is not known, include an approximate reference to these factors
 - Verbiage should be concrete
 - Avoid concluding the facts
 - The question should not be disputable
 - It is acceptable to revise the question, if needed, when new information is obtained
- Allow the investigatory question to do its job – let it lead the investigation.



The Investigative Process:
Sample Allegation



- Individual Carlton alleged that Individual Annie and Individual Bob engaged in sexual relations on Thursday, 1/23/21.
- Bob has a bruise on his left arm.
- The act is alleged to have occurred around lunch time while all individuals were at the day support provider.
- Carlton reported that Employee 1 was playing games on a phone while Employee 2 was cleaning up.
- There were reportedly 8 individuals present.
- The day support building consists of a large, open common space, a male & female restroom, and a staff office.



The Investigative Process:
The Investigatory Question



Which is the best question?

- A. Did Employee 1 and Employee 2 fail to provide adequate supervision for Annie and Bob on Thursday?
- B. What did the supervision of Annie and Bob look like when Employee 1 and Employee 2 were on shift around lunch time on Thursday, Jan. 23, 2021?
- C. How did Annie and Bob have the opportunity to have sex in the men's restroom while at day support around lunch time on Thursday, Jan. 23, 2021?

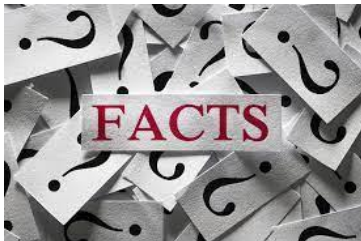
The Investigative Process:
Conducting the Investigation – Initial Steps



- The investigation must begin in a timely manner to ensure preservation of evidence.
- Knowing the order of the investigation, and who is responsible, will help with preservation of evidence.

Role of Designated Staff (present at time of alleged incident)	Role of Investigator
<ul style="list-style-type: none"> • Ensure appropriate first aid is administered 	<ul style="list-style-type: none"> • Observe injuries • Speak with witnesses about injuries
<ul style="list-style-type: none"> • Secure the scene 	<ul style="list-style-type: none"> • Collect physical evidence • Make diagrams; take photos
<ul style="list-style-type: none"> • Separate witnesses, if possible 	<ul style="list-style-type: none"> • Interview witnesses • Take written statements
<ul style="list-style-type: none"> • Secure documentary information 	<ul style="list-style-type: none"> • Collect documentary evidence

KNOWLEDGE CHECK:
Initiating the Investigation





**The Investigative Process:
*Defining Evidence***



- Preponderance of the Evidence
 - Based on the facts gathered, the allegation is more likely to have occurred than not.
 - 50.01% or greater
- Forms of Evidence
 - Testimonial
 - Documentary
 - Physical
 - Demonstrative
- Types of Evidence
 - Direct
 - Circumstantial

**The Investigative Process:
*Physical Evidence***



- It is important to collect and/or preserve early.
- Collect prior to interviewing witnesses.
- Collection procedures:
 - Ensure the chain of custody protocol is followed, as determined by your organization.
 - Begins at the time the scene is secured.
 - Tag/label all physical evidence collected.
 - Include the item description, date, place & time collected, who collected the item.
 - Number or letter each item collected. Consider including the CHRIS number, too.
 - Keep all physical evidence according to your organization's protocol.

The Investigative Process:
Physical Evidence



- Injuries are an important piece of physical evidence:
 - They should be seen, photographed (when possible).
 - The alleged victim should receive medical attention, or first aid depending on the seriousness of the injury.
 - The investigator should obtain and review any relevant medical records.
 - If there is an alleged perpetrator, check that person for injuries too.
 - Allow medical professionals to assess injuries and make a diagnosis.



The Investigative Process:
Demonstrative Evidence



- This is how physical evidence is preserved.
- Take pictures and draw a diagram of the scene.
- Make sure that all demonstrative evidence is labeled according to the provider's internal protocol.
- Ensure to review video footage, if available.



The Investigative Process:
Testimonial Evidence



- Testimonial evidence, or a witness's recollection of the allegation, is the most commonly available form of evidence.
- Effectively collecting testimonial evidence is important to the investigation.
- Interviews should not be aggressive or accusatory.
- Types of Interviews
 - Incident
 - Exploratory
 - Background
 - Follow-up



The Investigative Process:
Testimonial Evidence



- The investigator must be prepared to conduct each interview:
 - As much as possible, ensure the witnesses have been separated (or remain separated) until being interviewed.
 - Observe the scene of the alleged incident first.
 - Create an outline of the topics/areas to be discussed.
 - Do Not pre-write questions.
 - Check your attitude.
 - Identify the reason for the interview.
 - Identify an appropriate setting to conduct the interview.



The Investigative Process:
Testimonial Evidence



- In conducting an interview, the primary goal is for the interviewer (investigator) to elicit relevant information from the witness.
 - The goal is **not** to lead the witness to **confirm** the **investigator's beliefs**.
- A successful interview is like putting together pieces of a puzzle. Think of the following as the four corners of the puzzle:
 1. The investigator must be sure of, and be able to effectively communicate to the witness, the purpose of the interview.
 2. The investigator must ask relevant questions.
 3. The witness needs to understand the purpose and be a willing participant in the interview process.
 4. The investigator has to be willing to acknowledge and accept the information the witness presents, orally and nonverbally.



The Investigative Process:
Testimonial Evidence



- Factors to consider in conducting a successful interview:
 - Ensure privacy
 - Allow time for the interview
 - If possible, keep witnesses separated
 - Remain calm and avoid negative attitudes, tones
 - Be clear, concise, and direct
 - Ensure questions are open-ended
 - Do not ask leading questions, but ask follow-up questions as needed
 - Remain neutral



The Investigative Process:
Documentary Evidence



- Collect documentary evidence after collecting physical evidence.

- Types of documentary evidence include:
 - Witness statements
 - Agency protocols/procedures
 - Individual chart records



The Investigation Process:
Documentary Evidence



- Ensure the following related to witness statements:
 - Interview witnesses prior to taking a written statement.
 - Remain with the witness as they write their statement.
 - Do not edit a witness's statement for grammar, spelling.
 - If a witness is unable to read/write:
 - The investigator may write the statement as the witness provides their answer/account to questions;
 - Then, ask another individual (not involved in the investigation) to join the interview and read the statement to the witness, ensuring to ask the witness if the statement is accurate.



The Investigation Process:
Documentary Evidence



- Additional factors to ensure regarding witness statements:
 - Statements that are not legible should be typed.
 - After the witness reads their statement, obtain the witness's signature.
 - Make sure the witness initials and dates any changes they make to the statement.
 - Include when, where the statement was taken, who took the statement, the name/title of the witness, & investigator's signature.



KNOWLEDGE CHECK:
Evidence



The Investigative Process:
The Investigative Summary



- After concluding the investigation, a report of the findings must be written.
 - The report should be maintained.
 - A summary of the report is to be documented on the Investigation page in CHRIS (see 12VAC35-115-230(A)(3))
- Additionally, 12VAC35-115-230(A)(3)(a.-c.) states that the report should contain:
 - Whether abuse, neglect, or exploitation occurred;
 - The type of abuse; and
 - Whether the act resulted in physical or psychological injury.

The Investigative Process:
The Investigative Summary



- Additional components of the report include:
 - An introduction, description of the allegation.
 - The investigative process (i.e., timeline of the investigation, what was done).
 - Summary of all relevant evidence
 - Document the investigatory question first to iterate the purpose and reason for the specific collection of evidence.
 - Conclusion about whether the allegation is substantiated or unsubstantiated (*based on the facts and relevant evidence collected*).
 - This is the investigator's recommendation for finding.
 - The director makes the final decision.

The Investigative Process: *The Investigative Summary*



- To ensure the report is well written, make sure it is:
 - Factual
 - Accurate
 - Objective
 - Complete
 - Includes actions taken
 - Concise
 - Clear
 - Mechanically correct
 - Legible



The Investigative Process: *Types of Findings*



SUBSTANTIATED

- A preponderance of evidence is amassed.
- The finding does not have to reflect the reported allegation type, as the investigation may uncover a different type of allegation.

UNSUBSTANTIATED

- No preponderance of evidence, or insufficient evidence.
- However, it may be determined that there is a need for corrective action
 - Increase staffing
 - Revision of policies/procedures
 - Re-training of staff



Resources



- DBHDS website: www.dbhds.virginia.gov
 - To access the OHR, select *Offices*, then *Human Rights*
 - Supplemental materials
- The *Regulations* can be accessed through Virginia's Legislative Information System (LIS) at <https://law.lis.virginia.gov/admincode/title12/agency35/chapter115/>
- Join the DBHDS Provider Network Listserv by selecting the Licensing check box at <https://bit.ly/2ZpumCx>.