

PROTOCOL NO. 201
MANAGEMENT OF HUMAN RIGHTS COMPLAINTS

Issued:	November 1, 2000
Revised:	February 11, 2002; April 14, 2003; November 4, 2014; October 1, 2016; January 25, 2018; September 1, 2018; October 13, 2021; January 24, 2022; October 21, 2022; June 7, 2023
Effective:	November 1, 2022
Formerly:	Protocol No. 102
Protocol:	<p>To ensure the Office of Human Rights’ (OHR) compliance with its mandate to assure the rights and protection of individuals within our service delivery system, all human rights complaints, or issues, received by the OHR will be reviewed and processed according to established procedures.</p> <p>Human rights complaints, or issues, are any verbal or written notification concerning a violation against the HRR. Complaints include allegations of abuse, neglect, or exploitation (ANE), violations of an individual’s assured rights, and/or a provider’s non-compliance with the HRR. Notification of human rights complaints may be reported by individuals receiving services or persons acting on their behalf, including internal and external entities or stakeholders (e.g., Adult or Child Protective Services, disAbility Law Center of Virginia, Office of State Inspector General, etc.).</p> <p>A human rights complaint is only valid when such a complaint is against a facility or program operated, licensed or funded by DBHDS. Complaints shall be brought forward through the human rights complaint resolution process as stipulated in 12VAC35-115-175, including access to the Local Human Rights Committee (LHRC) appeal process.</p> <p>At all times, the rights and choices of the individual (or substitute decision maker) making the complaint, or for which the complaint is on the behalf of, will be respected.</p>
Procedure:	<p><u>Processing Human Rights Complaints and Issues Initiated by the Advocate</u></p> <p>The human rights complaint process (12VAC35-115-175) may be initiated by the Advocate, on behalf of an individual, when a violation, potential violation, or human rights issue is apparent and the individual or their representative has not initiated a complaint.</p> <p>The Advocate will:</p> <ol style="list-style-type: none"> 1. Monitor the provider’s compliance with the human rights complaint process, including: <ol style="list-style-type: none"> a. Assessing compliance with regulatory reporting timeframes (including notification to the authorized representative (AR), if applicable, when necessary). b. Ensuring an impartial investigation began no later than the next business day after receipt of the complaint. c. Ensuring the investigator of any abuse/neglect investigation is trained to conduct such investigations and that the investigator is not involved in the allegation, including appropriate alternative procedures when the accused is the provider owner and/or director. 2. Conduct an independent review when/if necessary. <ol style="list-style-type: none"> a. If needed, the independent review should include a review of the provider’s internal complaint resolution policies and procedures. 3. Inform the individual and/or their representative of the right to pursue any complaint(s) through the human rights complaint resolution process. <ol style="list-style-type: none"> a. The individual’s consent or concurrence is not required for the Advocate to initiate a complaint involving abuse, neglect, or exploitation. b. The individual or their representative may choose to remain anonymous. c. Only the individual or their authorized representative can request an LHRC hearing (see 12VAC35-115-180).

Specific to state operated facilities, when a complaint involves an alleged violation of the Privacy Rule (HIPAA) or the corresponding section of the HRR, the Facility Advocate will:

1. Coordinate the resolution of the complaint with the facility's Privacy Office.
 - a. Adhere to Departmental Instruction (DI) 1001 – Privacy Policies and Procedures for the Use and Disclosure of Protected Health Information.

Processing Human Rights Complaints and Issues Initiated by Protection Services

The human rights complaint process may also be initiated by Adult or Child Protective Services when the protection agency becomes aware of or is investigating allegations of abuse or neglect.

Reference Protocol No. 312 as a companion to this subsection of this protocol.

The OHR Administrative Assistant (AA) will:

1. Receive all human rights complaint referrals from the protection agencies.
2. Alert the OHR Data Coordinator (DC) of the human rights complaint referral.
3. Upload the human rights complaint referral to the appropriate folder in MS Teams.

The OHR Data Coordinator will:

1. Send an encrypted email to the assigned Manager with the SharePoint link to access the human rights complaint referral.
 - a. Indicate in the subject line:
 - i. Referral or disposition (if applicable).
 - ii. Provider's name.
 - iii. CHRIS number (if applicable).
 - b. Include in the body of the email:
 - i. SharePoint link to access the human rights complaint referral.
 - ii. Any notes relevant to the human rights complaint referral.
2. Track the human rights complaint referral upon receipt of the *Complaint Assignment Template* from the Advocate.

The Manager will:

1. Forward the DC's email to the assigned Advocate.
 - a. Attach the *Complaint Assignment Template*.
2. Adhere to the *Closing the Loop* subsection in Protocol No. 312.

The Advocate will:

1. Complete the *Complaint Assignment Template*.
2. Email the completed template to the assigned Manager.
 - a. Copy the DC.
3. Follow the procedures as established for the Advocate as established in the *Processing Human Rights Complaints and Issues Initiated by the Advocate* subsection of this protocol.

Engaging in the LHRC Appeal Process

As part of the OHRs system of due process, OHR staff may serve as an Individual's representative or provide technical assistance to an individual and their chosen representative during an LHRC appeal, if such representation or assistance is desired by the Individual or their representative.

The Advocate (or designated OHR staff) will:

1. Assist in the resolution of the complaint in a timely* manner at the lowest level possible.
 - a. Make an initial determination whether serious and irreparable harm will result to the Individual if the complaint is not resolved immediately.

- i. If it is determined that serious and irreparable harm is possible:
 1. Inform the program's Director and attempt to expedite a resolution of the complaint.
- ii. If the complaint is not quickly resolved at the Director's level, or safeguards put in place for the safety of the Individual(s):
 1. Initiate an expedited review of the complaint through the LHRC.
2. Confirm which other OHR staff is assigned to provide technical assistance to the LHRC.
3. Assist the Individual by providing technical assistance.
 - a. Provide clarifying information at each stage of the human rights complaint process to aid the Individual and their representative in understanding the process.
 - i. Make every effort to convey information in person, via telephone or any other approved technological means.
 - b. Remain neutral and unbiased.
4. Document the entire record of the human rights complaint in CHRIS (see Protocol No. 212).
5. Verify all corrective actions implemented by the provider.

* Timely refers to all time frames established by the HRR, these protocols, or reasonable progression of a complaint through the human rights process

The Manager will:

1. Confirm the Director has been provided with information about the appeal process.


THE FOLLOWING SECTION IS SPECIFIC TO FACILITY OPERATIONS ONLY

Processing Human Rights Complaints Initiated by the Office of State Inspector General (OSIG)

In addition to the Advocate and protection services, the human rights complaint process may be initiated due to complaints received through OSIG.

The Advocate will:

1. Review the OSIG Tracker, located in MS Teams, each Monday, Wednesday, and Friday, at minimum.
 - a. Should a scheduled review fall on a holiday, the review shall take place on the next business day.
 - b. This schedule shall be maintained as part of coverage duties when the assigned Advocate is absent.
2. Identify any OSIG complaint that should have been managed as a human rights complaint, including ANE, based on the description of the complaint.
 - a. Do not directly follow-up with the facility about the OSIG complaint at this stage in the process.
3. Email the Facility Operations Manager upon identification with the following:
 - a. A brief summary of the complaint, to include:
 - i. The type of investigation that should occur (ANE or non-ANE).
 - ii. Relevant regulation(s) to support the position.
4. Monitor all OSIG complaints in accordance with documented monitoring procedures (see Protocol No. 206).
5. Confirm the facility entered the OSIG complaint number into the appropriate CHRIS case prior to closing the case.
6. Consult with the Facility Operations Manager to follow-up and review incidents/complaints that appear to have a human rights impact.

	<p>The Facility Operations Manger will:</p> <ol style="list-style-type: none"> 1. Notify the Director of Quality and Risk Management (Facility Services Division), via email, about all OSIG complaints determined by OHR to be a human rights complaint that were not recorded on the Tracker or reported in CHRIS. <ol style="list-style-type: none"> a. The email should include the following: <ol style="list-style-type: none"> i. OSIG complaint number ii. Name of the Facility iii. Name of the individual(s) 2. Ensure the OHR portion of the Tacker is completed with information about the assigned Advocate, including, when applicable: <ol style="list-style-type: none"> a. A brief summary of the facts. b. Any relevant regulation(s) to support the determination that an OSIG complaint should follow the Human Rights Complaint process.
	<p>9/1/2018</p>
<p>Deborah M. Lochart, State Human Rights Director</p>	<p>Effective Date</p>