

PROTOCOL NO. 316

OHR Role in the Corrective Action Plan (CAP) Process

Issued:	June 2020
Revised:	January 28, 2021; April 2, 2021; August 1, 2021; October 7, 2021; March 8, 2022; April 1, 2022, March 16, 2023; July 26, 2023
Protocol:	The Office of Human Rights (OHR) will recommend citation(s) to the Office of Licensing (OL) and monitor the provider's corrective action response when human rights violations are identified. Pursuant to DOJ Settlement Agreement Compliance Indicators (V.C.6) 34.1 and 34.6, citation(s) will be recommended for all substantiated allegations of abuse and neglect (ANE) and incidents of late reporting.
Procedure:	<p>This protocol outlines the OHR role in the Corrective Action Plan (CAP) process related to recommending citations and accepting the CAP in the Licensing System. This is parallel to the Advocate's responsibility to ensure and document implementation and verification of all corresponding corrective actions in the Human Rights System, CHRIS. The acceptance of the pledged CAP can occur prior to the completion of the provider's proposed corrective actions. However, the CHRIS case should not be closed until the evidence of the proposed corrective action can be verified as complete.</p> <p>The OHR staff person (Advocate or Manager) entering the citation in the Licensing System, will log in, review their work queue and complete necessary actions every Monday, Wednesday and Friday to ensure timelines specified in this protocol are being met.</p> <p>The following procedure will be followed when OHR and OL both identify violations relative to a particular inspection, incident or case:</p> <p>CAPs Involving Human Rights and Licensing violations:</p> <ol style="list-style-type: none">1. The Advocate will submit the recommendation for citation(s) to the Licensing Specialist (LS), copying the OHR Manager, within 5 business days of the inspection/review being completed.<ol style="list-style-type: none">a. The Advocate will document the citation using the <i>Citation Recommendation Template</i>.b. If the citation is related to a CHRIS case, the Advocate will document the regulation(s) violated and the date the citation was submitted to the LS using the Advocate Report <i>Citation of Violation sent to Office of Licensing</i> drop down in CHRIS.2. The LS will issue the CAP to the provider, copying the Advocate and OHR Manager. The LS will request that the provider return the CAP response to both the LS and Advocate.<ol style="list-style-type: none">a. The Advocate and the LS are jointly responsible for monitoring the due date of the CAP.b. If no response is received from the provider by the due date, the Advocate will contact the LS to confirm next steps (reference step 6).3. Upon return of the CAP from the provider, the LS will review the provider's response to the licensing violation(s) and the Advocate will review the provider's response to the human rights violation(s).4. The Advocate will indicate on the CAP whether the pledged corrective action(s) for the human rights violation(s) are accepted, partially accepted or not accepted and send to the LS as soon as possible, within 5 business days of receipt.<ol style="list-style-type: none">a. If accepted, and corrective action has already been verified, no comment is needed.b. If accepted, and corrective action has not been verified, the Advocate should enter a comment requesting evidence of corrective action be sent to the Advocate by email.<ol style="list-style-type: none">i. <i>For example: "Provider's pledged corrective action plan indicates training will occur within 30 days." The Advocate can accept this plan and inform and direct the provider to send evidence of the completed training via email. Once this evidence is received, verified and documented in CHRIS, the CHRIS case can be closed.</i>c. If partially accepted or not accepted, the Advocate should enter a comment on the CAP providing an explanation regarding why the CAP was not accepted.

i. For example: "Provider's pledged corrective action plan does not address specific periods in which the trainings will occur."

5. The Advocate will document their receipt and review of provider's CAP response in the corresponding CHRIS case (if applicable) by using the Advocate Report *OL CAP Correspondence* drop down option.
6. If the CAP is not submitted to the LS by the due date, the LS will issue another citation to the provider for not responding to the initial licensing report and will copy the Advocate and OHR Manager.
7. The Advocate will document their receipt and review of the provider's CAP response in the corresponding CHRIS case (if applicable) by using the Advocate Report *OL CAP Correspondence* drop down option as soon as possible, within 45 business days from the date the CAP was issued.
8. Providers that have been unable to demonstrate effective implementation of corrective actions will have continued follow-up until the Advocate has verified that all actions have been implemented and documented in CHRIS by using the Advocate Report *Verified Corrective Action*. Advocates may monitor implementation through on-site visits or other means; verification may include an assessment of the safety of all individuals receiving services; review of policies, service records, or training documentation; and interviews with individuals and staff to assess their understanding and implementation of corrective actions.

The following procedure will be followed when only Human Rights violations are identified relative to an inspection, incident or case:

CAPs Involving Human Rights Violations, only:

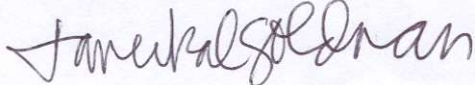
1. The Advocate will submit recommendation for citation(s) to the OHR Manager, as soon as possible, within 5 business days of the inspection/review being completed. The Advocate will document the citation using the Citation Recommendation Template. If the citation is related to a CHRIS case, the Advocate will document the regulation(s) violated and the date the citation was submitted to the OHR Manager using the Advocate Report *Citation of Violation sent to Office of Licensing* drop down in CHRIS.
2. Within 5 business days of the OHR Manager receiving the Citation Recommendation Template;
 - a. the OHR Manager will open the Inspection in CONNECT
 - b. the assigned Advocate will enter the citations in CONNECT.
3. As soon as possible within 5 business days of the citations being entered in CONNECT by the Advocate, the OHR Manager will issue the CAP to the provider. The OHR Manager will ensure all citations are entered accurately, that the CAP does not contain any PHI and the provider is notified to respond to the CAP within 15 business days to the assigned Advocate.
 - a. If the Advocate determines, in consultation with the OHR Manager and the assigned OL Licensing Specialist, that the violations pose a danger to the individuals receiving services, an immediate CAP response will be required. An **immediate** CAP shall be required if the department determines that the violations pose an imminent danger to individuals receiving the service.
4. The Advocate is responsible for monitoring the due date of the CAP in CONNECT and shall notify the OHR Manager if the CAP is not received by the due date.
 - a. Upon request of the provider, an extension, not to exceed 10 business days, may be granted by the Advocate after consultation with the OHR Manager. This request should occur prior to the due date of the CAP.
 - b. If the CAP is not received by the due date, the Advocate will send a citation request to the OHR Manager within 3 business days under 12-VAC-35-115-260(A)(11).
 - c. The Advocate will document the citation using the Advocate Report *Citation of Violation sent to Office of Licensing* drop down in CHRIS.

- d. The OHR Manager will copy the Advocate, OHR Manager and OL Licensing Specialist on this additional licensing report and OHR will monitor its due date.
- 5. Upon return of the CAP from the provider, the Advocate will review the provider's response to the human rights violation(s).
- 6. The Advocate will indicate on the CAP whether the pledged corrective action(s) are accepted, partially accepted or not accepted as soon as possible, within 5 days of receipt.
 - a. If accepted, and corrective action has already been verified, no comment is needed.
 - b. If accepted, and corrective action has not been verified, the Advocate should enter a comment requesting evidence of corrective action be sent to the Advocate by email.
 - i. *For example: "Provider's pledged corrective action plan indicates training will occur within 30 days." The Advocate can accept this plan and inform and direct the provider to send evidence of the completed training via email. Once this evidence is received, verified and documented in CHRIS, the CHRIS case can be closed.*
 - c. If partially accepted or not accepted, the Advocate should enter a comment on the CAP providing an explanation regarding why the CAP was not accepted.
 - i. *For example: "Provider's pledged corrective action plan does not address specific periods in which the trainings will occur."*
- 7. The Advocate will document their receipt and review of the provider's CAP response in the corresponding CHRIS case (if applicable) by using the Advocate Report *OL CAP Correspondence* drop down option as soon as possible, within 45 business days from the date the CAP was issued.
- 8. Providers that have been unable to demonstrate effective implementation of corrective actions will have continued follow-up until the Advocate has verified that all actions have been implemented and documented in CHRIS by using the Advocate Report *Verified Corrective Action*. Advocates may monitor implementation through on-site visits or other means; verification may include an assessment of the safety of all individuals receiving services; review of policies, service records, or training documentation; and interviews with individuals and staff to assess their understanding and implementation of corrective actions.

The following procedures will be followed when a provider disputes citations issued for CAPs involving human rights violations.

Dispute Process for CAPs Involving Human Rights Violations:

- 1. If a provider disagrees with a human rights citation prior to the CAP due date and is **able** to resolve the disagreement with the Advocate, the Advocate will update the original citation recommendation form to include the date and details of the action recommended, ie. to rescind or revise the citation. The Advocate will email the updated form to the OHR Manager to process and reissue or rescind the CAP.
- 2. If a provider is **unable** to resolve the disagreement with the Advocate, the CAP dispute resolution process will be initiated.
- 3. If a human rights citation is disputed, the OHR Manager will preside over the dispute meeting between the provider and Advocate, and will serve as a neutral party to the dispute.
 - a. If the citation dispute involves a joint CAP with the Office of Licensing, the primary LS will join the dispute meeting to clarify the dispute process and timelines.
 - b. For citation disputes involving CAPs with only Human Rights violations, the OHR Manager will be present to clarify the dispute process and timelines. If the OHR

	<p>Manager issued the citation, the AD for Community Operations will be present to clarify the dispute process and timelines.</p> <ol style="list-style-type: none"> 4. No decisions will be made at the time of this meeting. The OHR Manager will gather information from the meeting and discuss with the OHR AD for Community Operations. The OHR AD for Community Operations will share the details of the dispute meeting with the SHRD. 5. After the dispute meeting, the SHRD will issue a final decision in writing regarding the citation within 10 business days from the CAP dispute meeting. <ol style="list-style-type: none"> a. If an agreement is made to rescind the citation, the Advocate will send the CAP to the LS/OHR Manager requesting the citation be removed indicating the reason for the removal of the citation on the CAP. The LS or OHR Manager will remove the citation and re-issue the CAP, copying the Advocate. b. If the decision is made that the citation stands, the Advocate will enter on the CAP the date of the meeting and that the citation stands. The Advocate will send the CAP and draft decision letter to the OHR AD and SHRD within 5 business days of the CAP dispute meeting. The SHRD will issue the final written decision, along with the CAP to the OL AD and Director with a copy to the LS/OHR Manager. The LS/OHR Manager will send the CAP and written decision to the provider, Advocate and/or OHR Manager. The Provider will have 10 business days to submit the CAP.
	6/1/2020
Taneika Goldman, State Human Rights Director	Effective Date