

The Life of a Complaint

Human Rights Regulation Training
Fall 2007



The human rights regulations apply to:

- Providers licensed, operated or funded by DMHMRSAS...
 - State psychiatric hospitals
 - State operated training centers
 - Community Services Board, Behavioral Health Authorities
 - Private psychiatric hospitals, units
 - Private providers



They protect the rights of :

- Individuals receiving services from
 - State psychiatric hospitals
 - State operated training centers
 - Community Services Board, Behavioral Health Authorities
 - Private psychiatric hospitals, units
 - Private providers



What happens if I have a complaint?

- We may not be able to keep a complaint from being born-
 - But how long a complaint lives depends on the nature of the complaint and the efforts to resolve it at the earliest possible step.



What happens if I have a complaint? 12 VAC 35-115-140

- 1. If an individual makes a complaint, the provider shall make every attempt to resolve the complaint at the earliest possible step.
- 2. Providers shall not take, threaten to take, permit, or condone any action to retaliate against anyone filing a complaint or prevent anyone from filing a complaint or helping an individual to file a complaint.
- 3. Providers shall assist the complainant in understanding the full complaint process, the options for resolution including the formal and informal processes, and the confidentiality elements involved.



The provider must listen to the complaint protect my rights, and my rights to make a complaint? 12 VAC 35-115-140

- Yes, each individual has the right to:
 - 1. Complain that the provider has violated any of the rights assured under these regulations;
 - 2. Have a timely and fair review of any complaint according to the procedures in Part V (12VAC35-115-150 et seq.) of this chapter;
 - 3. Have someone file a complaint on his behalf;
 - 4. Use these and other complaint procedures; and
 - 5. Complain under any other applicable law, including complain to the protection and advocacy agency.



If I complain, who will help protect my rights?

- The provider must listen and help resolve the complaint
- The human rights advocate
- The LHRC and SHRC



The provider has specific things to do to protect my rights? 12 VAC 35115-250

- Yes The provider shall:
 - Identify a person or persons accountable for helping individuals to exercise their rights and resolve complaints regarding services.
 - Require competency-based training on these regulations upon employment and at least annually thereafter. Documentation of such competency shall be maintained in the employee's personnel file.



12 VAC 35-115-250 continued

- Take all steps necessary to assure compliance with these regulations in all services provided.
- Communicate information about the availability of a human rights advocate to individuals and authorized representatives.
- Assure one LHRC affiliation within the region as defined by the SHRC. The SHRC may require multi-site providers to have more than one LHRC affiliation within a region if the SHRC determines that additional affiliations are necessary to protect individuals' human rights.



The employee has a duty to listen, resolve and report the complaint to the provider? 12 VAC 35-115-250

- Yes, employees shall:
 - Become familiar with these regulations, comply with them in all respects, and help individuals understand and assert their rights.
 - Protect individuals from any form of abuse, neglect, or exploitation
 - Cooperate with any investigation, meeting, hearing, or appeal held under these regulations. Cooperation includes giving statements or sworn testimony.



What are the roles of the human rights advocate? 12 VAC-35-115-250

- The advocate shall:
 - Represent any individual making a complaint or, upon request, consult with and help any other representative the individual chooses.
 - Investigate and try to prevent or correct, informally or formally, any alleged rights violations by interviewing, mediating, negotiating, advising, and consulting with providers and their respective governing bodies, directors, and employees.
 - Whenever necessary, file a written complaint with the LHRC for an individual or, where general conditions or practices interfere with individuals' rights, for a group of individuals.



12 VAC-35-115-250 continued

- Help the individual or the individual's chosen representative during any meeting, hearing, appeal, or other proceeding under these regulations unless the individual or his chosen representative chooses not to involve the human rights advocate.
- Provide orientation, training, and technical assistance to the LHRCs for which he is responsible.



What's the LHRC and SHRC?

What can they do to help?

- The LHRC and SHRC:
 - may review any existing or proposed policies, procedures, practices, or behavioral treatment plans that could jeopardize the rights of individuals receiving services
 - may consult with any human rights advocate, employee of the provider, or anyone else.
 - Makes recommendations to the director concerning changes in policies, procedures and practices.



What's the LHRC and SHRC? What can they do to help?

- The LHRC and SHRC:
 - Receive complaints of alleged rights violations filed by or for individuals receiving services from providers
 - holds hearings according to the regulations
 - Conduct investigations and hold fact findings hearings
 - All providers are affiliated with an LHRC.



The LHRC...Who are they?

- The LHRC:
 - Consist of five or more members appointed by the SHRC. (2 consumers, 1 healthcare provider)
 - Membership shall be broadly representative of professional and consumer interests
 - None are employed by DMHMRSAS, the provider, or serve on the board of the provider for which the LHRC provides oversight
 - Is supervised by the SHRC



The SHRC...Who are they?

- The SHRC:
 - 9 members appointed by State Board
 - Same membership requirements as LHRC
 - Determine the appropriate number and geographical boundaries of LHRCs
 - Consolidate LHRCs serving only one provider into regional LHRCs whenever consolidation would assure greater protection of rights under these regulations



The SHRC...Who are they?

- Review decisions of LHRCs
- hold hearings and make recommendations to the commissioner, the board, and providers' governing bodies regarding alleged violations of individuals' rights according to the procedures specified in these regulations.
- Provide oversight and assistance to LHRCs in the performance of their duties



What is a human rights complaint?

- A Complaint means: an allegation of a violation of these regulations or a provider's policies and procedures related to these regulations.
- By an individual receiving services or by someone (employee, advocate, family member, peer) on behalf of the individual.



What happens next?

- The compliant process starts when an allegation is brought to the attention of the provider or human rights advocate.

12 VAC 35-115-170

Complaint Resolution Process

- Anyone who believes that a provider has violated an individual's rights under these regulations may report it to the director or the human rights advocate for resolution.
 - 1. If the report is made only to the director, the director or his designee shall immediately notify the human rights advocate. If the report is made on a weekend or holiday, then the director or his designee shall notify the human rights advocate on the next business day.



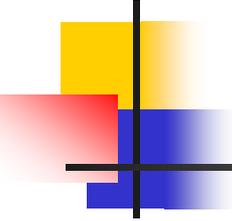
Complaint process continued

- 2. If the report is made only to the human rights advocate, the human rights advocate shall immediately notify the director. If the report is made on a weekend or holiday, then the human rights advocate shall notify the director on the next business day.
- 3. The human rights advocate or the director or his designee shall discuss the report with the individual and notify the individual of his right to pursue a complaint through the process established in these regulations. **The steps in the informal and formal complaint process established in these regulations shall be thoroughly explained to the individual.**



Complaint process continued

- The human rights advocate or the director or his designee shall ask the individual if he understands the complaint process and the choice that he has before asking the individual how he wishes to pursue the complaint. The individual shall then be given the choice of pursuing the complaint through the informal or formal complaint process. If the individual does not make a choice, the complaint shall be managed through the informal process.



Complaint process continued

- The following steps apply if the complaint is pursued through the **informal process**:
 - Step 1: The director or his designee shall attempt to resolve the complaint immediately. If the complaint is resolved, no further action is required.
 - Step 2: If the complaint is not resolved within **five** working days, the director or his designee shall refer it for resolution under the formal process. **The individual may extend the informal process five-day time frame for good cause.** All such extensions shall be reported to the human rights advocate by the director or his designee.



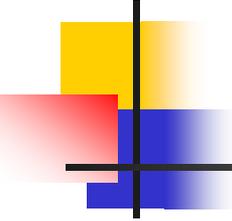
Complaint process continued

- The following steps apply if the complaint is pursued through the formal process:
 - Step 1: The director or his designee shall try to resolve the complaint by meeting with the individual, any representative the individual chooses, the human rights advocate, and others as appropriate within 24 hours of receipt of the complaint or the next business day if that day is a weekend or holiday. The director or his designee shall conduct an investigation of the complaint, if necessary.



Complaint process continued

- Step 2. The director or his designee shall give the individual and his chosen representative a written preliminary decision and, where appropriate, an action plan for resolving the complaint within 10 working days of receiving the complaint. **Along with the action plan, the director shall provide written notice to the individual about the time frame for the individual's response pursuant to Step 3 of this subdivision, information on how to contact the human rights advocate for assistance with the process, and a statement the complaint will be closed if the individual does not respond.**



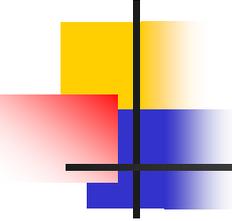
Complaint process continued

- Step 3: If the individual disagrees with the director's preliminary decision or action plan, he can respond to the director in writing within five working days after receiving the preliminary decision and action plan. If the individual has not responded within five working days, the complaint will be closed.



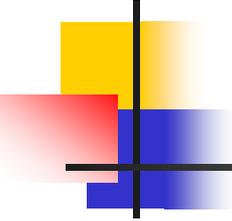
Complaint process continued

- Step 4: If the individual disagrees with the preliminary decision or action plan and reports his disagreement to the director in writing within five working days after receiving the decision or action plan, the director shall investigate further as appropriate and shall make a final decision regarding the complaint.



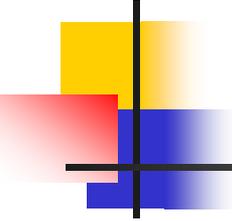
Complaint process continued

- The director shall forward a written copy of his final decision and action plan to the individual, his chosen representative, and the human rights advocate within five working days after the director receives the individual's written response. Along with the action plan, the director shall provide written notice to the individual about the time frame for the individual's response pursuant to Step 5 of this subdivision, information about how to contact the human rights advocate for assistance with the process, and a statement that if the individual does not respond that the complaint will be closed.



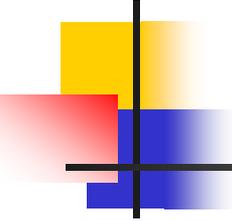
Complaint process continued

- Step 5: If the individual disagrees with the director's final decision or action plan, he may file a petition for a hearing by the LHRC using the procedures prescribed in 12VAC35-115-180. If the individual has accepted the relief offered by the director, the matter is not subject to further review.



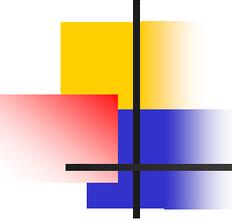
Complaint process continued

- B. If at any time during the formal complaint process the human rights advocate concludes that there is substantial risk that serious or irreparable harm will result if the complaint is not resolved immediately, the human rights advocate shall inform the director, the provider, the provider's governing body, and the LHRC. Steps 1 through 5 of subdivision A 5 of this section shall not be followed. Instead, the LHRC shall conduct a hearing according to the special procedures for emergency hearings in 12VAC35-115-180.



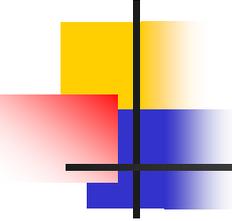
What if I disagree with the Directors decision or action plan? (12 VAC 35-115-180)

- Any individual or his authorized representative who does not accept the relief offered by the director or disagrees with (i) a director's final decision and action plan resulting from the complaint resolution; (ii) a director's final action following a report of abuse, neglect, or exploitation; or (iii) a director's final decision following a complaint of discrimination in the provision of services may request an LHRC hearing by following the steps provided in subsections B through I of this section



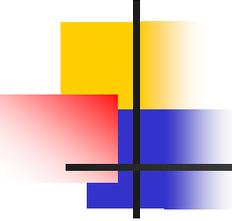
Appeal to LHRC (180)

- B. Step 1: The individual or his authorized representative must file the petition for a hearing with the chairperson of the LHRC within 10 working days of the director's action or final decision on the complaint.
 - 1. The petition for hearing must be in writing. It should contain all facts and arguments surrounding the complaint and reference any section of the regulations that the individual believes the provider violated.
 - 2. The human rights advocate or any person the individual chooses may help the individual in filing the petition. If the individual chooses a person other than the human rights advocate to help him, he and his chosen representative may request the human rights advocate's assistance in filing the petition.



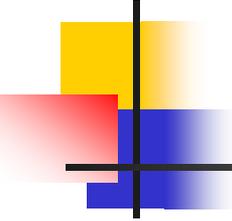
Appeal to LHRC (180)

- C. Step 2: The LHRC chair shall forward a copy of the petition to the director and the human rights advocate as soon as he receives it. A copy of the petition shall also be forwarded to the provider's governing body.
- D. Step 3: Within five working days, the director shall submit to the LHRC:
 - 1. A written response to everything contained in the petition; and
 - 2. A copy of the entire written record of the complaint.



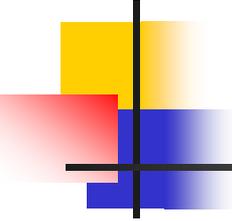
Appeal to LHRC (180)

- E. Step 4: The LHRC shall hold a hearing within 20 working days of receiving the petition.
 - 1. The parties shall have at least five working days' notice of the hearing.
 - 2. The director or his designee shall attend the hearing.
 - 3. The individual or his authorized representative making the complaint shall attend the hearing.



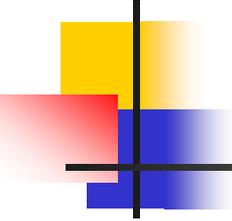
Appeal to LHRC (180)

- 4. At the hearing, the parties and chosen representatives and designees have the right to present witnesses and other evidence and the opportunity to be heard.
- F. Step 5: Within 10 working days after the hearing ends, the LHRC shall give its written findings of fact and recommendations to the parties and their representatives.



Appeal to SHRC (12 VAC 35-115-210)

- A. Any party may appeal to the SHRC if he is not satisfied with any of the following:
 - 1. An LHRC's final findings of fact and recommendations following a hearing;
 - 2. A director's final action plan following an LHRC hearing;
 - 3. An LHRC's final decision regarding the capacity of an individual to consent to treatment, services, or research or authorize disclosure of information; or
 - 4. An LHRC's final decision concerning whether consent or authorization is needed for the director to take a certain action.



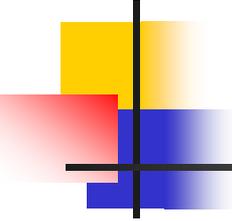
Sample Complaint #1

On the 22nd SJ reported the following to the advocate:

On the 16th I didn't know who to talk to to get help? I didn't see anything that said who the advocate was or where you worked or how to get in touch with you...

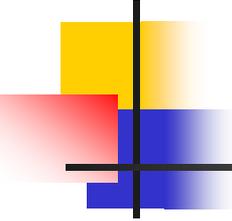
I asked 2 workers to help me keep DW from taking my snacks...DW bothers me all the time...

Ms. Jones said she was getting off soon so I should talk to Mr. Hughes...Mr. Hughes said I could talk to the nurse when she comes in...



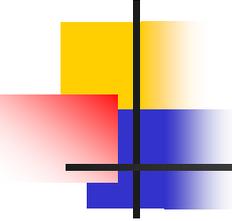
Sample Complaint #1

- The next day the nurse told me I could call the advocate..I guess that is you?? She gave me your phone number at 8:00 last nite.
- I called you first thing this morning..
- I cant take this!...
- DW is bothering me all the time...he takes my snacks and is always in my face....I cant get help here... DW eats all my sweets...nobody stops him...Cant he be locked up or moved to another unit...you know he is a diabetic...



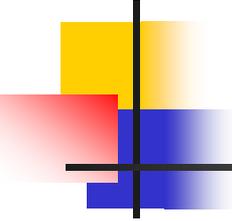
Sample Complaint #1

- What are the rights involved with this complaints?
- What actions should the provider/director take?
- What action should the advocate take?
- How about the treatment team?



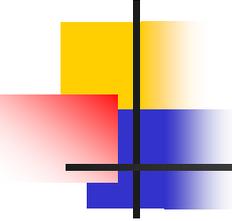
Sample Complaint #2

- On the 1st I came to work and TW came to me and said... “I like Ms. Jones but she is always getting in my way...she is always touching me..she says she is straightening my clothes...I like my clothes as they are...they don’t need straightening...I asked her to stop but she keeps doing it...when she does it I feel bad...I told the social worker and the treatment team...they all said that she (Ms Jones) means well...please make her stop!”



Sample Complaint #2

- What are the rights involved with this complaints?
- What actions should the provider/director take?
- What action should the advocate take?
- How about the treatment team?



Discussion

- Thank you!