

ARTICLE: 12VAC35-115-145 Substitute Decision Making (Continued)

independent evaluation pursuant to 12VAC35-115-200B. Traditional Care; LLC shall take no action to which consent or authorization is required, except in an emergency, pending the results of the independent evaluation. Traditional Care; LLC shall take no steps to designate an authorized representative until the independent evaluation is complete.

b. If the independent evaluation is consistent with Traditional Care; LLC's evaluation, Traditional Care; LLC's evaluation is binding, and Traditional Care; LLC shall implement it accordingly.

c. If the independent evaluation is not consistent with the Traditional Care; LLC's evaluation, the matter shall be referred to the LHRC for review and decision under 12VAC35-115-200.

ARTICLE: 12VAC35-115-150 Complaint Resolution, Hearing, and Appeal Procedures

POLICY: Traditional Care; LLC shall identify the complaint resolution, hearing and appeal procedures.

PROCEDURE:

A. Court orders or decisions entered after an administrative hearing are not subject to review under the human rights complain resolution process.

B. The parties to any complaint are the individual and the Director. Each party can also have anyone else to represent him/her during complain resolution. The Program Director shall make every effort to resolve the complaint at the earliest possible stage.

C. Reviews, and hearings will generally be closed to other people unless the individual making the complaint requests that other people attend or if an open meeting is required by the Virginia Freedom of Information Act (2.2-3700 et. seq. of the Code of Virginia). The LHRC and SHRC may conduct a closed hearing to protect the confidentiality of persons who are not a party to the complaint, but only if a closed meeting is otherwise allowed under the Virginia Freedom of Information Act (see 2.2-371 of the Code of Virginia).

D. In no event will a pending hearing, review or appeal prevent the director from taking corrective action based on the advice of Traditional Care; LLC's legal counsel that such action is required by law or if the director thinks such action is correct and justified.

E. The Local Human Rights Committee (LHRC) or State Human Rights Committee, (SHRC) on the motion of any party or on its own motion, may, for good cause, extend any time periods either before or after the expiration of that time period. The director may not extend any time periods for any actions he/she is required to take under these procedures without prior approval of the LHRC or SHRC.

ARTICLE: 12VAC35-115-150 Complaint Resolution, Hearing, and Appeal Procedures
(Continued)

F. Except in the case of emergency proceedings, if a time period in which action must be taken under this part is not extended by the LHRC or SHRC, the failure of a party to act within that time period will waive that party's further rights under these procedures.

G. In making recommendations regarding complaint resolution, the LHRC and the SHRC will identify any rights or regulations that Traditional Care: LLC violated and any policies, practices, or conditions that contributed to the violations. They shall also recommend appropriate corrective actions, including changes in policies, practices, or conditions, to prevent further violations of the rights assured under this chapter.

H. If it is impossible to carry out the recommendations of the LHRC or the SHRC within a Specified time, the LHRC or the SHRC, as appropriate, shall recommend any necessary interim action that gives appropriate and possible immediate remedies.

I. Any action plan submitted by the director or commissioner in the course of these proceedings will fully address both final and interim recommendations made by the LHRC or the SHRC and identify financial or other constraints, if any, which prevent efforts to fully remedy the violation.

J. All communication with the individual during the complaint resolution process shall be in the manner, format, and language most easily understood by the individual.

ARTICLE: 12 VAC 35-115-160 Informal Complaint Process

POLICY: Traditional Care; LLC shall have informal complaint resolution procedures.

PROCEDURES:

Anyone who believes that a provider has violated an individual's rights under these regulations may report the alleged violation to the Program Director or Program Director designee.

The Program Director or Program Directors will attempt to resolve the complaint immediately. If the complaint is resolved to the individual's or legally authorized representative's satisfaction, no further action is required.

1. The Program Directors will refer any complaint that is not resolved to the individual's or legally representative's satisfaction, within five working days, to the human rights advocate.
2. If the individual or his/her/authorized representative, as applicable, is not satisfied with the resolution then the Program Directors will immediately notify the human rights advocate.
3. The individual or the authorized representative, as applicable, may contact the human rights advocate at any time to pursue a formal complaint.

ARTICLE: 12 VAC 35-115-160 Informal Complaint Process (Continued)

4. Traditional Care; LLC will provide the human rights advocate access to information regarding all informal complaints upon request.

5. Complaints made under this/her section will not be reported to the department.

ARTICLE: 12VAC35-115-175 Human Rights Complaint Process

POLICY: Traditional Care; LLC shall follow the Local Human Rights Committee (LRHC) hearing and review procedures.

A. Each individual has a right to:

1. Make a complaint that Traditional Care; LLC has violated any of the rights assured under this chapter.
2. Have a timely and fair review of any complaint in accordance with this chapter and the program's human's rights complaint resolution policies and procedures;
3. Have someone file a complaint on his/her behalf:
4. Use these and other complaint procedures; and
5. Make a complaint under any other applicable law, including to the protection and advocacy agency.

B. The individual shall:

1. Be contacted by the director or the director's designee regarding the complaint within 24 hours;
2. Have access to a human rights advocate for assistance with the complaint;
3. Be protected from retaliation and harm;
4. Have the complaint reviewed, investigated, and resolved as soon as possible;
5. Receive a report with the director's decision and action plan within 10 working days; and
6. Be notified in writing of his/her right to and the process for appealing the director's decision and action plan to the LHRC.

C. Upon receipt of a complaint, Traditional Care; LLCs shall:

1. Notify the department of the complaint as soon as possible, but no later than the next business day.
2. Ensure that the director or the director's designee contacts the individual regarding the complaint within 24 hours.

ARTICLE: 12VAC35-115-175 Human Rights Complaint Process (Continued)

3. Initiate an impartial investigation into, or resolution of, the complaint as soon as possible, but no later than the next business day.
4. Take all steps necessary to ensure that individuals involved in the complaint are protected from retaliation and harm;
5. Assist the individual making a complaint in understanding the human rights complaint process, Traditional Care; LLCs complaint resolution policies and procedures, and the confidentiality of involved information;
6. Ensure that all communications to the individual are in the manner, format and language most easily understood by the individual;
7. Adhere to the reporting requirements in 12VAC35-115-230 and;
8. Report the director's decision and action plan within 10 working days to the individual, authorized representative, if applicable, and human rights advocate.

D. All Traditional Care; LLCs shall have complaint resolution policies and procedures that address all of the requirements of subsections C and E of this section.

E. Traditional Care; LLC complaint resolution policies and procedures shall be in writing and approved by the department prior to implementation. The policies and procedures shall:

1. Ensure that anyone who believes that Traditional Care; LLC has violated an individual's rights under this chapter can report it to the director or the human rights advocate for resolution;
2. Ensure that employees shall not take, threaten to take, permit, or condone any action (i) to punish or retaliate against anyone filing a complaint or (ii) to prevent anyone from filing or helping an individual file a complaint either under this chapter or with an outside entity;
3. Ensure that every attempt is made to resolve an individual's complaint as quickly as possible.
4. Provide opportunities for timely negotiation and resolution for all complaints, including the additional requirements related to abuse, neglect, or exploitation in subsection F of this section.
5. Establish a process for designating the director's responsibilities to ensure timely complaint reporting and resolution.

ARTICLE: 12VAC35-115-175 Human Rights Complaint Process (Continued)

6. Detail the program's complaint review or investigation process, including (i) specific actions the program will take to protect the individual and gather and document relevant information and (ii) how and when the individual and his/her authorized representative, if applicable, will receive updates on the progress of the review;
 7. Detail notification requirements and deadlines including procedures for providing:
 - a. The program's complaint policies and procedures to all individuals and authorized representatives at admission to service; and
 - b. Written notification to the individual regarding his/her right to and the process to appeal the director's decision and action plan to the LHRC; and
 8. Detail staff training requirements regarding the program's complaint resolution process and requirements.
- F. Additional requirements for complaints involving abuse, neglect, or exploitation;
1. The program director shall take immediate steps to protect the individual until the investigation is complete, including appropriate personnel actions.
 2. Any instance of restraint that does not comply with this chapter or an approved variance, or that results in injury to an individual, shall be reported to the authorized representative, as applicable, and the department in accordance with the requirements for reporting allegations of abuse.
 3. The program director shall notify the department and authorized representative, if applicable, of an allegation of abuse or neglect within 24 hours of the receipt of the allegation.
 4. The program director shall ensure that the investigation is conducted by a person trained to do investigations and who is not involved in the issues under investigation.
 5. The investigator shall provide a written report of the results of the investigation or abuse or neglect to the director and to the human rights advocate within 10 working days from the date the investigation began unless an extension has been granted.
 6. The program director shall decide, based on the investigator's report and any other available information, whether the abuse, neglect, or exploitation

ARTICLE: 12VAC35-115-175 Human Rights Complaint Process (Continued)

occurred. Unless otherwise provided by law, the standard for deciding whether abuse, neglect, or exploitation has occurred in preponderance of the evidence.

7. The program director shall submit the final decision and action plan, if applicable, to the individual, authorized representative, if applicable, and human rights advocate within 10 working days of its completion.

G. If 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, Traditional Care; LLC's governing body, and the LHRC. The LHRC shall conduct a hearing according to the special procedures for emergency hearings in 12VAC35-115-190.

H. The director shall cooperate fully with any abuse or neglect complaint investigation conducted by a local department of social services.

I. If at any time the director has reason to suspect that the abusive, neglectful, or exploitive act in a crime and that it occurred on the program premises, the director or designee shall immediately contact the appropriate law-enforcement authorities and cooperate fully with any investigation that may result.

ARTICLE: 12VAC35-115-180

Local Human Rights Committee Hearing and Review Procedures

POLICY: Traditional Care; LLC shall follow the Local Human Rights Committee (LRHC) hearing and review procedures.

PROCEDURES:

A. Any individual or authorized representative who disagrees with a director's final decision or action plan resulting from any complaint resolution process under this chapter may request a LHRC hearing by following the process described in this/her section.

B. The individual or his/her authorized representative shall file the petition for a hearing with the chairperson of the LHRC within 10 working days from receipt of the director's action plan or final decision on the complaint.

1. The petition for hearing shall be in writing. It shall contain all facts and arguments surrounding the complaint and reference any section of this/her chapter that the Individual believes Traditional Care; LLC.
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

ARTICLE: 12VAC35-115-180

Local Human Rights Committee Hearing and Review Procedures (Continued)

human rights advocate helping him, he/she and their chosen representative may request the human rights advocate's assistance in filing the petition.

C. 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 Traditional Care; LLC's governing body.

D. Within five working days, the director will 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.

E. The LHRC hearing procedures:

1. The LHRC shall hold a hearing within 20 working days of the hearing.
2. The parties shall have at least five working days notice of the hearing.
3. The program director or her chosen representatives shall attend the hearing.
4. The individual or authorized representative making the complaint shall attend the hearing.
5. The hearing is an informal process and, as such, the rules of evidence are not applicable.
6. At the hearing, the parties and their chosen representative and designees have the right to present witness and other evidence and the opportunity to be heard.
7. The hearing shall be conducted in a nonadversarial manner.
 - a. Each party shall be provided the opportunity to present its facts.
 - b. Each party shall direct questions to the LHRC rather than to the other party.
 - c. The LHRC shall ask questions, as appropriate, to each party.

F. Within 10 working days after the hearing ends, the LHRC shall give, it's written findings of fact and recommendations to the parties and their representatives. Whenever appropriate, the LHRC shall identify information that it believes the director shall take into account in making decisions concerning discipline or termination personnel.

ARTICLE: 12VAC35-115-180

Local Human Rights Committee Hearing and Review Procedures (Continued)

G. Within five working days of receiving the LHRC's findings and recommendations, the director shall give the individual, the individual's chosen representative, the human rights advocate, the governing body, and the LHRC a written action plan, he/she intends to implement to respond to the LHRC's findings and recommendations. Along with the action plan, the director shall provide written notice to the individual about the timeframe for the individual's response and a statement that if the individual does not respond then, the complaint will be closed. The plan will not be implemented for five working days after it is submitted, unless the individual receiving services agrees to its implementation sooner.

H. The individual, his/her chosen representative, the human rights advocate, or the LHRC may object to the action plan within five working days by stating the objection and what the director can do to resolve the objection.

1. If an objection is made, the program director may not implant the action plan, until the objection is resolved. Traditional Care; LLC may, however, implement any portion of the plan to which the individual making the complaint agrees.
2. If no one objects to the action plan, the director shall begin to implement the plan on the sixth working day after she submits it or as otherwise provided in the plan.

I. If an objection to the action plan is made and the director does not resolve the objection to the action plan to the individual's satisfaction within two working days following its receipt by the director, the individual may appeal to the SHRC under 12 VAC 35-115-210.

ARTICLE: 12VAC35-115-190 Special Procedures for Emergency Hearings by the LHRC

POLICY: Traditional Care; LLC shall follow the special procedures for emergency hearings by the LHRC.

PROCEDURES:

A. If the human rights advocate informs the LHRC of a substantial risk that serious and irreparable harm will result if a complaint is not resolved immediately, the LHRC shall hold and conclude a preliminary hearing within 72 hours of receiving this information.

1. The program director and the human rights advocate shall attend the hearing. The individual and the authorized representative may attend the hearing.

ARTICLE: 12VAC35-115-190 Special Procedures for Emergency Hearings by the LHRC (Continued)

2. The hearing shall be conducted according to the procedures in 12 VAC 35-115-180, but it shall be conducted on an expedited basis.

B. At the end of the hearing, the LHRC shall make preliminary findings and if a violation is found, shall make preliminary recommendations to the director, Traditional Care; LLC and its governing body.

C. The directors will formulate and carry out an action plan within 24 hours of receiving the LHRC's preliminary recommendations. A copy of the plan will be sent to the human rights advocate, the individual, his/her authorized representative, and the governing body.

D. If the individual or the human rights advocate objects within 24 hours to the LHRC's findings or recommendations or to the director's action plan, the LHRC shall conduct a full hearing within five working days of the objection, following the procedures outlined in 12 VAC 25-115-180. This objection shall be made in writing to the LHRC chairperson with a copy sent to the director.

E. Either party may appeal the LHRC's decision to the SHRC under 12 VAC 35-115-210.

ARTICLE: 12VAC35-115-200 Complaint Resolution, Hearing, and Appeal Procedures

POLICY: Traditional Care; LLC shall follow special procedures for LHRC reviews involving consent.

PROCEDURES:

A. The individual, his/her authorized representative, or anyone acting on the individual's behalf may request in writing that the LHRC review the following situations and issue a decision:

1. If an individual objects at any time to the appointment of a specific person as his/her authorized representative or any decision for which consent or authorization is required and has been given by his/her authorized representative, other than a legal guardian, he may ask the LHRC to decide whether his/her capacity was properly evaluated, the authorized representative was properly appointed or his/her authorized representative's decision was made based on the individual's basic values and any preferences previously expressed by the individual to the extent that they are known, and if unknown or unclear in the individual's best interest.

ARTICLE: 12VAC35-115-200 Complaint Resolution, Hearing, and Appeal Procedures (Continued)

- a. Traditional Care; LLC shall take no action for which consent or authorization is required if the individual objects, except in an emergency or as otherwise permitted by law, pending the LHRC review.
 - b. If the LHRC determines that the individual's capacity was properly evaluated, the authorized representative is properly designated, or the authorized representative's decision was made based on the individual's basic values and any preferences previously expressed by the individual to the extent that they are known, or if unknown or unclear in the individual's best interests, then Traditional Care; LLC may proceed according to the decision of the authorized representative.
 - c. If the LHRC determines that the individual's capacity was not properly evaluated or the authorized representative was not properly designated, then Traditional Care; LLC shall take no action for which consent is required except in an emergency or as otherwise required or permitted by law, until the capacity review and authorized representative designation are properly done.
 - d. If the LHRC determines that the authorized representative's decision was not made based on the individual's basic values and any preference previously expressed by the individual to the extent known, and if unknown or unclear, made in the individual's best interests, then Traditional Care; LLC shall take steps to remove the authorized representative pursuant to 12VAC35-115-146.
2. If an individual or his/her family member has obtained an independent evaluation of the individual's capacity to give any informed consent to treatment or services or to participate in human research or to authorize the disclosure of information under 12 VAC35-115-80, and the opinion of that evaluator conflicts with the opinion of Traditional Care; LLC's evaluator, the LHRC may be requested to decide which evaluation will control.
 - a. If the LHRC agrees that the individual lacks the capacity to consent, to treatment or services or authorize disclosure of information, the program director may begin or continue treatment or research, or disclose the information, but only with the appropriate consent or authorization of the authorized representative. The LHRC shall advise the individual of his/her right to appeal this determination to the SHRC under 12 VAC35-115-210.
 - b. If the LHRC does not agree that the individual lacks the capacity to consent to treatment or services or authorize disclosure of information, the program director shall not begin any treatment or research or disclose information without the individual's consent, or authorization

ARTICLE: 12VAC35-115-200 Complaint Resolution, Hearing, and Appeal Procedures (Continued)

of without consent or authorization of the individual shall take immediate steps to discontinue any actions that begun. The program director may appeal to the SHRC under 12VAC35-115-210 but may not take any further action until the SHRC issues its opinion.

3. If the program director makes a decision that affects an individual and the individual believes that the decision requires his/her personal consent or authorization or that of his/her authorized representative, he may object and ask the LHRC to decide whether consent or authorization is required.

Regardless of the individual's capacity to consent to treatment or services or to authorize disclosure of information, if the LHRC determines that a decision made by a program director requires consent or authorization that was not obtained, the program director shall immediately stop such the action unless and until such consent or authorization is obtained. The program director may appeal to the SHRC under 12 VAC 35-115-210 but may not take any action further until the SHRC issues its opinion.

B. Before making such a decision, the LHRC shall review the action proposed by the program director, any determination of lack of capacity, the opinion of the independent evaluator if applicable, and the individual's or his/her authorized representative's reasons for objecting to that determination. To facilitate its review, the LHRC may ask that a physician or licensed clinical psychologist not employed by Traditional Care; LLC and at Traditional Care; LLC's expense, evaluate the individual and give an opinion about his/her capacity to consent to treatment or to authorized disclosure of information.

The LHRC shall notify all parties and the human rights advocate of the decision within 10 working days of the initial request.

ARTICLE: 12VAC35-115-210 State Human Rights Committee Appeals Procedures

POLICY: All Traditional Care; LLC individuals or parties may appeal to the State Human Rights Committee if he disagrees with (1) an LHRC's final findings of fact, conclusions 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 to 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.

ARTICLE: 12VAC35-115-210 State Human Rights Committee Appeals Procedures (Continued)

PROCEDURES:

Steps for filing an appeal are provided in subsections B through C and D of this section.

A. Appeals shall be filed in writing with the SHRC by a party within 10 working days of receipt of the final decision or action plan.

1. The appeal shall explain the reasons for disagreement with the final decision or action plan.
2. The human rights advocate or any other person may help in filing the appeal. If the individual chooses a persona other than the human rights advocate to help him, he and his/her chosen representative may request the human rights advocate's help in filing the appeal.
3. The party appealing shall give a copy of the appeal to the other party, the human rights advocate and the LHRC.
4. If the program director is the party appealing, she shall first request and get written permission to appeal from the commissioner or governing body of Traditional Care; LLC, as appropriate. If the director does not get this written permission and note the appeal within 10 working days his/her rights to appeal is waived.

B. If the director is appealing, the individual may file a written statement with the SHRC within five working days after receiving a copy of the appeal. If the individual is appealing, the director will file a written statement with the SHRC within five working days after receiving a copy of the appeal.

C. Within five working days of noting or being notified of an appeal, the director will forward a complete record of the LHRC hearing to the SHRC. The record shall include, at a minimum:

1. The original petition or information filed with the LHRC and any statement filed by the director in response.
2. Parts of the individual's services record that the LHRC considered and any other parts of the services record submitted to, but not considered by the LHRC that either party considers relevant.
3. All written documents and materials presented to and considered by the LHRC, Including any independent evaluations conducted.
4. A tape or word-for-word transcript of the LHRC proceedings, if available.

ARTICLE: 12VAC35-115-210 State Human Rights Committee Appeals Procedures (Continued)

5. The LHRC's findings of fact, conclusion and recommendations.
 6. The director's action plan, if any, and
 7. Any written objections to the action plan or its implementation.
- D. The SHRC shall hear the appeal at its next scheduled meeting after the chairperson receives the appeal.
1. The SHRC shall give the parties at least 10 working days' notice of the appeal hearing.
 2. The SHRC shall notify the Office of the State Inspector General (2.2-308 of the Code of Virginia) of the appeal.
 3. The following rules govern appeal hearings:
 - a. The SHRC shall not hear any new evidence.
 - b. The SHRC is bound by the LHRC's findings of fact unless it makes a determination that those findings of fact are clearly wrong or that the hearing procedures of the LHRC were inadequate.
 - c. The SHRC shall limit its review to whether the facts, as found by the LHRC, establish a violation of this chapter and a determination of whether the LHRC's recommendations or the action plan adequately address the a alleged violation.
 - d. All parties and their representatives shall have the opportunity to appear before the SHRC to present their position and answer questions the SHRC may have.
 4. If the SHRC decides that the LHRC's findings of fact are clearly wrong or that the hearing procedures employed by the LHRC were inadequate, the SHRC may:
 - a. Send the case back to the LHRC for another hearing to be completed within a time period specified by the SHRC; or
 - b. Conduct its own fact-finding hearing. If the SHRC chooses to conduct its own fact-finding hearing, it may appoint a subcommittee of at least three of its members as fact finders. The fact-finding hearing shall be conducted within 30 days of the SHRC's initial hearing.

ARTICLE: 12VAC35-115-210 State Human Rights Committee Appeals Procedures (Continued)

In either case, the parties shall have 15 working days' notice of the date of the hearing and the opportunity to be heard and to present witnesses and other evidence.

F. Within 20 working days after the SHRC appeal hearing, the SHRC shall submit a decision containing its findings of fact, if applicable, and its conclusions and recommendations to the commissioner and to Traditional Care; LLC's governing body, with copies to the parties, the LHRC, and the human rights advocate.

G. Within 10 working days after receiving the SHRC's decision, in the case of appeals involving a state facility, the commissioner shall submit an outline of actions to be taken in response to the SHRC's recommendations. In the case of appeals involving CSB's and private Traditional Care; LLCs, Traditional Care; LLC's shall outline in writing the action or actions that will be taken in response to the recommendations of the SHRC. They shall also explain any reasons for not carrying out any of the recommended actions. Copies of their responses shall be forwarded to the SHRC, the LHRC, the director, the human rights advocate, and the individual.

H. If the SHRC objects in writing to the commissioner's or director's proposed actions, their actions shall be postponed. The commissioner or director shall meet with the SHRC at its next regularly scheduled meeting to attempt to arrange a mutually agreeable resolution.

I. Final determination regarding the action plan shall be as follows:

1. In the case of services provided directly by the department, the commissioner's action plan shall be final and binding on all parties. However, when the SHRC believes the commissioner's action plan is incompatible with the purpose of this chapter, it shall notify the board, the protection and advocacy agency, and the Office of the State Inspector General (2.2-308 of the Code of Virginia).

2. In the case of services delivered by all other providers the action plan of the director shall be reviewed by the commissioner. If the commissioner determines that the Traditional Care; LLC has failed to develop and carry out an acceptable action plan, the commissioner shall notify the protection and advocacy agency and shall inform the SHRC of the sanctions the department will impose against the Traditional Care; LLC.

J. Upon completion of the processed outlined in this section, the SHRC shall notify the parties and the human rights advocate of the final outcome of the complaint.