

DBHDS Office of Human Rights (OHR)
Reporting Peer-on-Peer Aggressions as Potential Neglect

Effective **??/??/2023**

This guidance is intended to clarify the reporting requirements to the Office of Human Rights (OHR) for peer-on-peer aggressions that occur in licensed or DBHDS-funded community provider settings based on *Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Behavioral Health and Developmental Services* [12VAC35-115] (“Human Rights Regulations”). It is intended to supersede guidance dated June 15, 2017, entitled “Office of Human Rights Peer-to-Peer Reportable Incidents.” The impetus for clarification was a comprehensive review of neglect data entered by providers in the DBHDS Computerized Human Rights Information System (CHRIS), and collaborative conversations with key stakeholders.

The Code of Virginia § 37.2-400 sets forth the protected human rights of individuals receiving services and mandates that the department have regulations regarding those human rights. DBHDS promulgated the Human Rights Regulations to further define and protect the rights of individuals receiving services from providers of mental health, developmental, or substance abuse services in Virginia. The regulations require providers of services to take specific actions to protect the rights of each individual. The regulations establish remedies when rights are violated or are in dispute and provide a structure for support of these rights.

Defined Terms (See [12VAC35-115-30.](#))

“Complaint” means an allegation of a violation of this chapter [the *Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Behavioral Health and Developmental Services* (Human Rights Regulations)] or a provider’s policies and procedures related to the Human Rights Regulations.

“Allegation” is not a defined term; however,

“**Neglect**” means failure by a person, program, or facility operated, licensed, or funded by the department, excluding those operated by the Department of Corrections, responsible for providing services to do so, including nourishment, treatment, care, goods, or services necessary to the health, safety, or welfare of an individual receiving care or treatment for mental illness, intellectual disability, or substance abuse. See § [37.2-100](#) of the Code of Virginia.

“**Peer-on-peer aggression**” means a physical act, verbal threat, or demeaning expression by an individual against or to another individual that causes physical or emotional harm to that individual. Examples include hitting, kicking, scratching, and other threatening behavior. Note: Incidents involving peer-on-peer aggression may constitute potential neglect when provider staff fail to follow internal policies and procedures, do not deliver supervision

consistent with an individual’s individualized services plan (ISP), or do not act to prevent an individual from being harmed during the incident.

“**Provider**” means any person, entity, or organization offering services that is licensed or funded by the department.

“**Serious injury**” means any injury resulting in bodily hurt, damage, harm, or loss that requires medical attention by a licensed physician.

“**Services**” means care, treatment, training, habilitation, interventions, or other supports, including medical care, delivered by a provider licensed, operated, or funded by the department.

Background

Historically, the standard for reporting incidents of peer-on-peer aggressions to the OHR in CHRIS emphasized the occurrence of the incident in combination with either an allegation or provider suspicion of neglect. The rationale was that requiring providers to report incidents of peer-on-peer aggressions where they “suspect” neglect, even in the absence of an actual complaint alleging neglect, increased the department’s ability to monitor provider trends and ensure appropriate actions to prevent and mitigate harm. However, the requirement to report on this basis did not fully validate the fact that incidents of peer-on-peer aggressions can and do occur when neglect is not present. It also deemphasized the fact that providers are ultimately responsible for identifying, monitoring, and mitigating risk patterns and trends. (See [12VAC35-105-520](#).)

In Fiscal Year 2022, licensed community providers reported a total of 8,708 complaints alleging neglect via CHRIS. Providers specifically coded 63% (5,542) of these complaints as alleged “Peer to Peer Neglect.” Of these “Peer to Peer Neglect” reports, less than 2% (121) were ultimately determined to be a violation of an individual’s right to be free from neglect while receiving services. The high volume of reports compared to the low number of substantiated neglect violations is an indication that the vast majority of peer-on-peer incidents of aggression are not the result of neglect. During the same time period, data on serious incidents reported via CHRIS to the DBHDS Office of Licensing indicate there were 513 incidents (out of 22,424) where the cause of the incident was peer-on-peer aggression. In addition to the above, the OHR became aware of another 300-plus complaints alleging neglect that were brought to its attention through means other than provider self-report.¹ Of these, 15% should have been reported by the provider as alleged “Peer to Peer Neglect” under the current reporting guidance. This illustrates additional concerns about provider compliance specific to the existing reporting requirements.

The goal of the oversight provided by the OHR and the reporting requirements in the Human Rights Regulations is to enable the department to monitor compliance with relevant laws and regulations, and to help ensure the rights and safety of individuals receiving services. While notification to the OHR is a function of CHRIS, additional purposes include: 1) documenting alleged abuse, neglect, or exploitation, and other human rights complaints; 2) documenting a summary of the provider’s investigation, findings, and any corrective action; and 3) allowing for review, monitoring, and verification of corrective action by the OHR.

¹ These additional reports came to OHR’s attention through local departments of social services, the Office of the State Inspector General, and via the Office of Licensing online complaint process.

Providers should therefore only report incidents to the OHR in CHRIS that are alleged to have resulted in a human rights violation, whether that complaint is by an individual receiving services, by provider staff, or by other people outside the agency. Even when the outcome is known or predictable to the provider, a CHRIS report and investigation of circumstances is required for all complaints. A review of an incident where there is no complaint, identified pattern, or determination that a human rights violation may have occurred is not reportable to the OHR in CHRIS; however, these may still be reportable to the Office of Licensing if they meet the definition of a serious incident.

Internal Review of Peer-on-Peer Aggression

All incidents that meet the definition of “peer-on-peer aggression” in the Human Rights Regulations are to be reviewed by the provider. This internal review of incidents involving peer-on-peer aggression is expected to consider, at a minimum, whether provider staff followed internal policies and procedures, delivered supervision consistent with individual needs and the ISP, and acted to prevent individuals from being harmed while receiving services. In addition, the provider is expected to identify any programmatic issues that may have contributed to the opportunity for peer-on-peer aggression (e.g., policies, protocols, etc.). Upon completion of this internal review, providers are expected to implement any identified proactive measures that may reduce the number of peer-on-peer aggressions and lessen the possibility of neglect, resulting in a safer treatment environment overall. (See also [12VAC35-105-160](#) and [12VAC35-105-520 of the Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services \[“Licensing Regulations”\]](#) that specify various review and reporting requirements.) Please note that the internal review refers to the provider’s standard processes to review incidents to determine any further actions needed to identify and address potential harms to an individual and to reduce the likelihood of reoccurrence. This is separate from the formal investigation that would occur if the review raised suspicion of abuse or neglect.

The OHR may request to review provider information specific to their review of incidents involving peer-on-peer aggression because of identified trends, the possibility of neglect, complaints discovered by the OHR that were known to the provider but not reported, or in any situation that the OHR deems necessary to protect the rights of individuals receiving services from providers of mental health, developmental, or substance abuse services in Virginia. (See [12VAC35-115-260.](#))

Reporting Peer-on-Peer Aggression as Potential Neglect

Providers must report to the OHR all incidents of peer-on-peer aggression that are alleged to have resulted in or from a human rights violation. These incidents of peer-on-peer aggression shall be entered in CHRIS in accordance with [12VAC35-115-230](#) and coded under the category “Neglect Peer-on-Peer Aggression.”

In addition, providers shall also report incidents of peer-on-peer aggression that, upon review by the provider, meet at least one of the following criteria:

- An incident that clearly occurred because staff were not engaged in appropriate supervision (e.g., provider staff willfully ignored aggression of one peer to another,

provider staff intervened but not in accordance with policy, provider staff failed to implement supervision or supports based on the specific needs identified in the ISP);

- Three or more incidents of peer-on-peer aggression involving the same peers within seven-day timeframe.

Incidents of peer-on-peer aggression that are determined to be reportable after a review by the provider shall be entered in CHRIS within 24 hours of this determination. These incidents should be coded under the category “Neglect Peer-on-Peer Aggression” and the description must indicate the reason for the report. For instance, when the report is concerning three or more incidents of peer-on-peer aggression within a seven-day timeframe, the provider must indicate this as the “description,” along with a brief account of the three incidents. When the complaint alleges involvement of a known provider staff person, the provider staff name must be entered in the description of the incident on the Accusation Tab in CHRIS. If the allegation indicates a possible programmatic failure, the provider should select “Other” and enter the provider’s name (e.g., ABC Residential) under the Accusation Tab in CHRIS. Reports of peer-on-peer aggression should be entered in CHRIS under the name of the individual who was the alleged victim of the aggression. If the aggression was mutual, a separate report must be entered for all individuals involved.

All incidents of peer-on-peer aggression that are reported in CHRIS must be investigated in full accordance with the Human Rights Regulations. (See [12VAC35-115-175](#).) The allegation shall be substantiated when the provider determines, as a result of its internal investigation, that the incident of peer-on-peer aggression: 1) was the result of acts or omissions by provider staff or a programmatic deficit; and 2) resulted in an individual’s physical or emotional harm. Physical harm may be evidenced by open wounds, bruises, black eyes, lacerations, or broken bones. Emotional harm may be evidenced by documented changes in the individual’s behavior (i.e., becoming more withdrawn, avoidance of peer(s), or clinical documentation from a qualified professional). Providers are expected to take and document appropriate corrective actions for all substantiated complaints.

If at any time the provider has reason to suspect that an incident may be a crime, or is otherwise reportable to another entity, the provider shall report the incident to all appropriate authorities in addition to its reporting requirements to the department. Such instances may include the following:

- An incident between peers involving sexual assault, which is a form of violence and includes forced groping and rape;
- An incident involving unwanted sexual activity between minors (e.g., intercourse, kissing, touching of private areas); or
- An incident involving sexual intercourse or other sexual activity between adult peers in which at least one individual is deemed to lack capacity based on an existing assessment that indicated the individual was at risk of exploitation.