

**OFFICE OF THE STATE INSPECTOR GENERAL**  
**Report to Interim Commissioner**  
**Dr. Jack Barber**

**FY 2015 Unannounced Inspection of the**  
**Virginia Center for Behavioral Rehabilitation**

**January 2016**



**June W. Jennings, CPA**  
**State Inspector General**  
**Report No. 2015-BHDS-003**



**COMMONWEALTH OF VIRGINIA**  
**Office of the State Inspector General**

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January 21, 2016

Jack Barber, MD, Interim Commissioner  
Virginia Department of Behavioral Health and Developmental Services  
1220 Bank Street  
Richmond, VA 23219

Dear Dr. Barber:

The Office of the State Inspector General (OSIG) performed an unannounced inspection at the Virginia Center for Behavioral Rehabilitation (VCBR), pursuant to the *Code of Virginia* § [2.2-309.1\(B\)\[1\]\[4\]](#), on June 16, 2015. The primary purpose of unannounced inspections is to review the quality of services and make policy and operational recommendations to state facilities in order to prevent problems, abuses, and deficiencies and improve the effectiveness of programs and services. The focus of this inspection was to review the modified resident complaint process approved by the State Human Rights Committee (SHRC) through variances to the Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Behavioral Health and Developmental Services (October 8, 2014) and to determine if exemptions to those regulations authorized by the Department of Behavioral Health and Developmental Services (DBHDS) Commissioner are consistent with program objectives. Attached, please find the final report and recommendations.

On behalf of OSIG, I would like to express our appreciation for the assistance the VCBR leadership team and staff provided during our inspection.

If you have any questions, please call me at 804-625-3255 or email me at [june.jennings@osig.virginia.gov](mailto:june.jennings@osig.virginia.gov). I am also available to meet with you in person to discuss this report.

Sincerely,

A handwritten signature in cursive script that reads "June W. Jennings".

June W. Jennings, CPA  
State Inspector General

CC: Paul J. Reagan, Chief of Staff to Governor McAuliffe  
Suzette P. Denslow, Deputy Chief of Staff to Governor McAuliffe  
William A. Hazel, Jr., M.D. Secretary of Health & Human Resources

# TABLE OF CONTENTS

- Executive Summary.....i
- Authority and Scope of the Review .....1
- Background.....2
  - Treatment Program.....2
  - The Application of Human Rights Regulations at VCBR.....3
    - VCBR Resident Complaint Process.....3
    - The Role of the State Human Rights Committee.....4
    - The Role of the VCBR Human Rights Advocate.....5
    - Variances and Exemptions.....5
- Review Methodology.....6
- Summary, Observations, and Recommendations .....7
  - Observation 1: Exemptions to the Human Rights Regulations at VCBR are aligned with program objectives for treating sexually violent predators. ....7
  - Observation 2: Membership of the VCBR Appeals Committee does not reflect the same level of independent review afforded the patients/residents of other DBHDS-operated facilities. ....7
    - Recommendation.....8
    - DBHDS Response.....8
  - Observation 3: The State Human Rights Director does not report to the DBHDS Commissioner as required by Section 12-VAC35-115-30 of the Human Rights Regulations. ....8
    - Recommendation.....8
    - DBHDS Response.....9
  - Observation 4: The role of the human rights advocate is inconsistent with the role defined by the Human Rights Regulations. ....10
    - Recommendation.....10
    - DBHDS Response.....10
- Appendix A – Exemptions/Variances .....12
- Appendix B – Facility Instruction No. 202.....24
- Appendix C – DBHDS Response.....31

## Executive Summary

The Office of the State Inspector General (OSIG) performed an unannounced inspection at the Virginia Center for Behavioral Rehabilitation (VCBR), pursuant to the *Code of Virginia* § [2.2-309.1\(B\)\(1\)\(4\)](#) on June 16, 2015. The purpose of the inspection was to:

1. Review the modified resident complaint process approved by the State Human Rights Committee (SHRC) through variances to the [Rules and 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) dated October 8, 2014, and
2. Determine if exemptions to the Human Rights Regulations authorized by the Department of Behavioral Health and Developmental Services (DBHDS) Commissioner are consistent with program objectives.

VCBR is the only facility operated by DBHDS that has a modified resident-complaint process, with multiple exemptions to the Human Rights Regulations. OSIG's Behavioral Health and Developmental Services Division received 16 complaints from VCBR residents in FY 2015, the largest number of complaints received from a single state-operated facility. The majority (75 percent) involved complaints of inconsistent application of property management policies and/or complaints relevant to the application of the Human Rights Regulations.

Literature relating to treatment of sexually violent predators (SVP) states that restrictions to the application of human rights regulations are most meaningful when they align with program objectives.<sup>1</sup> The literature also maintains that it is in response to these restrictions that sexually violent predators gain greater understanding that their rights in society must be balanced with the rights of others. When the restriction of rights occurs outside the context of clearly defined program objectives, the program is at risk of operating in a more punitive, less therapeutic, and less effective culture.

OSIG concludes that the exemptions to the Human Rights Regulations as applied to residents at VCBR are consistent with program objectives. However, the complaint and appeal process should be brought in line with the other DBHDS-operated facilities and the Human Rights Regulations by ensuring an impartial and independent review of resident complaints. In support of that goal OSIG makes the following recommendations:

**Observation 2 Recommendation:** The State Human Rights Committee review the current membership of the VCBR Appeals Committee to ensure residents at VCBR are afforded the same level of independent complaint review provided patients/residents in other DBHDS-operated facilities.

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<sup>1</sup> Ward, Gannon, and Birgden: *Human Rights and the Treatment of Sex Offenders* (Sex Abuse 2007) 19: 195-216; Springer Press.

**Observation 3 Recommendation:** DBHDS revise its organizational structure to comply with Code, ensuring the State Human Rights Director reports directly to the DBHDS Commissioner.

**Observation 4 Recommendations:** The State Human Rights Committee, in consultation with the State Human Rights Director, should review the current availability and role of the human rights advocate at VCBR and revise current practice to ensure consistency with the duties and responsibilities outlined by the Human Rights Regulations and are applied equally to residents and patients at all other DBHDS-operated facilities. Once this has been completed, the complaint policy should be updated to ensure that the role of the advocate is clearly addressed.

## Authority and Scope of the Review

The FY 2015 unannounced inspection at VCBR was performed by OSIG, pursuant to Code § [2.2-309.1\(B\)\[1\]\[4\]](#), whereby the State Inspector General shall have the power and duties to:

- 1. Provide inspections of and make policy and operational recommendations for state facilities and for providers, including licensed mental health treatment units in state correctional facilities, in order to prevent problems, abuses, and deficiencies in and improve the effectiveness of their programs and services. The State Inspector General shall provide oversight and conduct announced and unannounced inspections of state facilities and of providers, including licensed mental health treatment units in state correctional facilities, on an ongoing basis in response to specific complaints of abuse, neglect, or inadequate care and as a result of monitoring serious incident reports and reports of abuse, neglect, or inadequate care or other information received. The State Inspector General shall conduct unannounced inspections at each state facility at least once annually;*
  
- 4. Keep the General Assembly and the Joint Commission on Health Care fully and currently informed by means of reports required by § [2.2-313](#) concerning significant problems, abuses, and deficiencies relating to the administration of the programs and services of state facilities and of providers, including licensed mental health treatment units in state correctional facilities, to recommend corrective actions concerning the problems, abuses, and deficiencies, and report on the progress made in implementing the corrective actions.;*

This review was not intended to provide a comprehensive review of VCBR's overall policies and procedures or individualized active treatment programming. The focus of the review was VCBR's modified resident complaint process and exemptions to the Human Rights Regulations. The scope and objectives of the review were established through a review of relevant practices regarding the application of human rights regulations and treatment of SVP, nationally and in Virginia.

Review objectives included the following:

1. Determining if the exemptions to the human rights regulations are aligned with best practices for treating sexually violent predators.
2. Determining if the resident complaint procedures reflect the same level of independent review afforded patients/residents at other DBHDS-operated facilities.
3. Determining if the role of the human rights advocate at VCBR, as described in the Human Rights regulations corresponds to other DBHDS-operated facilities.

## Background

Programs designed to reduce or prevent recidivism of sexually violent predators have been the basis of academic and empirical research for approximately 30 years. Research in this specialized field has resulted in an evolution of treatment approaches designed to provide society with the means to protect its citizens from victimization while assisting sexual offenders in learning to modify their behaviors.<sup>2</sup> Virginia and 19 other states have enacted legislation and established programs designed to treat SVPs.<sup>3</sup>

Code § [37.2-904\[B\]](#) authorizes involuntary civil commitment of sexually violent predators following a thorough examination by a licensed psychiatrist or a licensed clinical psychologist skilled in the diagnosis, risk assessment, and treatment of sex offenders, and judicial authorization if the individual is determined to be a continued risk to society after serving his/her sentence. According to Code § [37.2-910\[A\]](#), “a hearing to assess the status of the involuntarily committed SVP is conducted 12 months after the date of the original commitment and is conducted at yearly intervals for five years and every two years thereafter. The hearing is scheduled as soon as possible after it becomes due because it is viewed as a priority over all pending matters before the court.” Readiness for release varies depending on the resident’s degree of motivation for change and the severity of the risk determined through clinical assessments. Public safety concerns and stigma associated with sexually violent predators may make locating an appropriate and accepting placement challenging even when the resident may be deemed “ready” for discharge.

### *Treatment Program*

VCBR’s treatment philosophy emphasizes that every interaction between staff and residents is potentially therapeutic. This includes interactions related to resident complaints. Current literature on working with sexually violent predators maintains that the goals of treatment are to (a) reduce risk to the community and (b) promote more socially acceptable behaviors. The ultimate goal for residents is the reduction of risk so they may be conditionally released to the community with proper supervision. Treatment that focuses on skills acquisition, emotional regulation, and value orientation yield more effective outcomes.

The predominant treatment approach with sexually violent predators nationally and at VCBR<sup>4</sup> is cognitive-behavioral therapy, “an action-oriented form of psychosocial therapy that assumes that

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<sup>2</sup> Ward, Gannon, and Birgden: *Human Rights and the Treatment of Sex Offenders* (Sex Abuse 2007) 19: page 196; Springer Press.

<sup>3</sup> Davey, Monica. [Minnesota’s Holding of Sex Offenders after Prison is Ruled Unconstitutional](#): Associated Press; June 17, 2015.

<sup>4</sup> Yates, Pamela. [Treatment of Sexual Offenders: Research, Best Practices and Emerging Models](#); *International Journal of Behavioral Consultation and Therapy*. 2013 Volume 8, No. 3-4

maladaptive, or faulty, thinking patterns cause maladaptive behavior. Treatment focuses on changing an individual's thoughts (cognitive patterns) in order to change his or her behavior.”<sup>5</sup>

Treatment at VCBR occurs in three phases, each with its own objectives that must be completed prior to advancing to the next phase:

- Phase I: Focus on the individual gaining control over sexual behavior and aggression and demonstrating accountability for their criminal offense.
- Phase II: Focus on the individual developing insight into risk factors, practicing adaptive coping responses, and introducing positive goals for lifestyle change.
- Phase III: Focus on the individual transitioning back to the community.

### *The Application of Human Rights Regulations at VCBR*

Code § [37.2-400](#) (Rights of individuals receiving services) mandates the rights of individuals receiving services “... in a hospital, training center, other facility, or program operated, funded, or licensed by the Department.” The Human Rights Regulations further define and protect those rights and includes procedures for residents or patients to make and seek resolution to complaints. There are two ways in which the application of Human Rights Regulations at VCBR differs from other DBHDS-operated facilities. VCBR utilizes a modified resident-complaint process approved by the State Human Rights Committee and has multiple exemptions to the Human Rights Regulations granted by the Commissioner of DBHDS.

#### **VCBR RESIDENT COMPLAINT PROCESS**

Residents at VCBR filed 1,442 complaints in FY 2015. Upon review by the facility compliance officer, 244, or 17 percent, were determined to be legitimate complaints. Fifty-two (21 percent) were deemed formal complaints and were forwarded to the facility director for review and 37 (15 percent) to the VCBR Appeals Committee. The goal of the complaint resolution process at VCBR is to resolve resident complaints at the lowest level possible. The formal complaint process is defined in policy and is multi-tiered with defined time frames for completing each stage. When complaints cannot be resolved informally, either by the resident’s treatment team or appropriate department, the resident can request a formal review of the complaint.

The first stage in the formal complaint process occurs with the complaint being forwarded to the facility director for review and determination. If unresolved following the facility director’s review, an appeal may be presented to the VCBR Appeals Committee. The decision of the VCBR Appeals Committee is final. Membership of the Appeals Committee includes the following:

1. Chair of the State Human Rights Committee (appointed by the State Board of Behavioral Health and Developmental Services),
2. State Human Rights Director (reports to the DBHDS Assistant Commissioner for Quality

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<sup>5</sup> "Cognitive-behavioral therapy." Farlex Partner Medical Dictionary. 2012. Farlex 29 Aug. 2015

- Management and Development), and
3. DBHDS Assistant Commissioner for Forensic Services (reports to the DBHDS Chief Deputy Commissioner).

The VCBR Appeals Committee was developed following a request for a variance to the Human Rights Regulations. Complainants in other DBHDS-operated facilities have access to regional Local Human Rights Committees (LHRC) and the full State Human Rights Committee (SHRC). According to the VCBR's facility director and clinical management team, the modified resident-complaint process provides a similar level of review but allows the facility to "streamline" the process. This variance was reportedly requested in order to address complaints in an efficient manner and to keep complaints from becoming a treatment distraction, while still ensuring access to a tiered formal review process. The VCBR facility director revealed that the review completed by the VCBR Appeals Committee is a review of the written complaint only and eliminates all opportunity for residents to address their concerns directly with the reviewing entity, a privilege afforded patients and residents in other DBHDS-operated programs.

According to the variance request VCBR submitted to the State Human Right Committee regarding the modified appeals process, "A resident's recovery and eventual safety in the community are enhanced by his ability to work collaboratively with service providers to resolve problems. This enhances self-esteem, supports healthy self-reliance, and helps the resident make a successful transition to community living. Effective problem-solving is an essential component of residents' treatment plans. Therefore, the complaint process shall support residents' healthy efforts to problem-solve and shall not reinforce attitudes of entitlement or criminogenic attitudes."

### **THE ROLE OF THE STATE HUMAN RIGHTS COMMITTEE**

The SHRC consists of nine members of varying backgrounds that represent professional and consumer experiences and interests. The SHRC members are appointed by the State Board of Mental Health and Developmental Services. The role of the SHRC for VCBR differs from that in other DBHDS-operated facilities in that it is not part of the resident complaint appeals process.

The SHRC reviews the application of the Human Rights regulations at VCBR through the following activities:

- Monitoring VCBR census management and individuals with extraordinary barriers to discharge,
- Periodic review of organizational policies and procedures,
- Regular meetings with the VCBR Resident Advisory Committee,
- Annual review of variances to the Human Rights Regulations, and
- Receipt of monthly variance reports.

## THE ROLE OF THE VCBR HUMAN RIGHTS ADVOCATE

According to information provided by DBHDS, “Advocates represent consumers whose rights are alleged to have been violated and perform other duties for the purpose of preventing rights violations. Each state facility has at least one advocate assigned, with regional advocates located throughout the State who provide a similar function for consumers in community programs. The DBHDS Commissioner in consultation with the State Human Rights Director appoints advocates. Their duties include investigating complaints, examining conditions that impact consumer rights and monitoring compliance with the human rights regulations.”

The role of the assigned human rights advocate at VCBR is the same as that for all other DBHDS-operated facilities. Among the duties defined in [12VAC35-115-250\(C\)](#) are to:

- Represent **any** individual making a complaint,
- Monitor the implementation of the advocacy system, and
- Investigate and try to prevent or correct, informally or formally, any alleged human rights violations.

## VARIANCES AND EXEMPTIONS

The granting of variances and the DBHDS Commissioner’s power to authorize exemptions to the Human Rights Regulations are explained in sections [12VAC35-115-220](#) and subsection D of [12VAC35-115-10](#) of the Human Rights Regulations, respectively.

According to the Human Rights Regulations, subsection A of 12VAC35-115-220, a variance to a regulation can be granted “... *when the provider has tried to implement the relevant requirement without a variance and can provide objective, documented information that continued operation without a variance is not feasible or will prevent the delivery of effective and appropriate services and supports to individuals*”. (See Appendix A for a list of current variances.)

Exemptions to the regulations are defined under subsection D of 12VAC35-115-10, which states, “*These regulations apply to individuals under forensic status and individuals committed to the custody of the department as sexually violent predators, except to the extent that the commissioner may determine these regulations are not applicable to them. The exemption must be in writing and based solely on the need to protect individuals receiving services, employees, or the general public. The commissioner shall give the State Human Rights Committee (SHRC) chairperson prior notice of all exemptions and provide the written exemption to the SHRC for its information. These exemptions shall be time limited and services shall not be compromised.*” (See Appendix A for exemptions to the Human Rights Regulations).

## Review Methodology

During the FY 2015 VCBR unannounced inspection, OSIG reviewed the application of the Human Rights Regulations relevant to resident complaints. The inspection design was created following an extensive literature review relevant to the application of human rights regulations and the treatment of sexually violent predators, nationally and in Virginia. The review included information from practice-setting organizations, such as the International Association for the Treatment of Sex Offenders (IATSO); the Center for Sex Offender Management-U.S. Department of Justice, Association for the Treatment of Sexual Abusers (ATSA); the Bureau of Justice-Center for Program Evaluation and Performance Measurement; and Virginia's Human Rights Regulations.

Quality indicators derived from the literature and Human Rights Regulations were used to facilitate the inspection included:

1. Exemptions are aligned with best practices for treating sexually violent predators.
2. Resident complaint procedures reflect the same level of independent review afforded patients/residents at other DBHDS-operated facilities.
3. The role of the human rights advocate at VCBR, as described in the Human Rights regulations corresponds to other DBHDS-operated facilities.

Inspection activities included the following:

- Interviews, including:
  - State Human Rights Director
  - Facility Director
  - Chief of Security
  - Human Rights Advocate assigned to VCBR
  - Clinical Director
  - Security and rehabilitation staff,
- Review of VCBR Human Rights Regulations exemptions,
- Review of utilization of the resident complaint process,
- Review of VCBR treatment program,
- Observations of staff and resident interactions,
- Interviews with residents, and

Review of VCBR policies and procedures related to, but not limited to: complaints, housing, property management, visitation, and Human Rights Regulations exemptions.

## Summary, Observations, and Recommendations

### *Observation 1: Exemptions to the Human Rights Regulations at VCBR are aligned with program objectives for treating sexually violent predators.*

OSIG staff found that the Human Rights Regulations exemptions established by DBHDS and VCBR were justifiable restrictions and consistent with sound therapeutic practice. This was confirmed through the following:

- Interviews and a review of Senior Leadership meeting notes reveal that members of VCBR's management and security staff frequently review the applicability of policies and practices to assure ongoing alignment with program objectives and consistency with the exemptions to the human rights regulations.
- Clinical rationale for the exemptions maintains that sexually violent predators have deeply entrenched beliefs that reinforce their thinking and behaviors, perpetuating their functioning outside of the acceptable norms of society in general. The management of access to persons, materials, and activities, and the management of resident behaviors provide residents with opportunities to learn to function within the imposed boundaries of policies and procedures.

### *Observation 2: Membership of the VCBR Appeals Committee does not reflect the same level of independent review afforded the patients/residents of other DBHDS-operated facilities.*

During the course of this inspection, OSIG reviewed the modified resident-complaint process at VCBR, including variances and exemptions to the Human Rights Regulations. *Code* § [37.2-400\(9\)](#) asserts that all individuals subject to this section of the code "Have the right to an impartial review of violations of the rights assured under this section..." OSIG's investigation found that two-thirds of the VCBR Appeals Committee, which rules over the second and last tier of review for resident complaints, consists of DBHDS Central Office employees, including the Assistant Commissioner of Forensic Services, who provides oversight and management of services at the facility, and the State Human Rights Director, who reports to the Assistant Commissioner for Quality Management and Development.

The direct involvement of two DBHDS Central Office employees in the appeals process is inconsistent with the intent of the Human Rights Regulations, does not provide the level of independence provided other residents/patients of DBHDS-operated facilities, removes independence and objectivity from the proceedings, and diminishes the review process as a result.

**RECOMMENDATION**

The State Human Rights Committee review the current membership of the VCBR Appeals Committee to ensure that VCBR residents are afforded the same level of independent complaint review afforded patients/residents in other DBHDS facilities.

**DBHDS RESPONSE**

DBHDS disagrees with the assertion that "The direct involvement of two DBHDS Central Office employees ... removes independence and objectivity from the proceedings and diminishes the review process as a result." Working in DBHDS Central Office is not a prose bar to staff acting independently and objectively when reviewing resident complaints. All DBHDS employees are charged to ensure patient/resident rights are protected and seasoned, professional staff are able to objectively review policies, practice, and programs; even those they oversee/supervise. That being said, DBHDS does appreciate that to the residents, family members, and outside entities there may be the appearance of a conflict of interest which could diminish the trust in the fairness and objectivity of the review process. DBHDS will work with the State Human Rights Committee to change the membership of the VCBR Appeals Committee. Specifically, the Assistant Commissioner for Forensic Services will no longer serve on the committee as this position does have direct administrative oversight of VCBR. A second member of the SHRC will be appointed to the Appeals Review Committee. DBHDS feels it remains vital for the State Human Rights Director to remain on the Appeals Committee given her unique knowledge and understanding of the Human Rights regulations and because the large volume of work would likely overwhelm a SHRC member, who serves the Commonwealth in a volunteer capacity.

*Observation 3: The State Human Rights Director does not report to the DBHDS Commissioner as required by Section 12-VAC35-115-30 of the Human Rights Regulations.*

Section 12-VAC35-115-30 defines the State Human Rights Director as "the person employed by and reporting to the commissioner who is responsible for carrying out the functions prescribed in 12-VAC35-115-250 F."

Interviews and a review of the DBHDS organization chart reveals that the State Human Rights Director reports to the Assistant Commissioner for Quality Management and Development.

**RECOMMENDATION**

DBHDS revise its organizational structure to comply with Code, ensuring the State Human Rights Director reports directly to the DBHDS Commissioner.

### DBHDS RESPONSE

DBHDS acknowledges that 12VAC35-115-30 defines the State Human Rights Director as the person *employed by and reporting to* the Commissioner who is responsible for carrying out the functions prescribed in 12VAC35-115-250. While the DBHDS Organizational Chart (attached)[See Appendix C] does show the Office of Human Rights falling under the supervision of the Assistant Commissioner of Quality Management & Development, there is notation (designated by asterisks) of a reporting relationship also directly to the Commissioner. In essence, the State Human Rights Director has dual supervision. The Assistant Commissioner for Quality Management & Development provides the daily, administrative supervision for the office, but the State Human Rights Director addresses more programmatic issues/concerns (e.g. Requests for Exemptions, facility concerns, etc.) directly with the Commissioner. The rationale for including the Office of Human Rights (OHR) within the Division of Quality Management & Development is in support of the Department's initiative to create and enhance the quality management system for providers of mental health, substance abuse, intellectual disability, and developmental disability services. OHR has developed a collaborative and symbiotic relationship with other Offices within the Division of Quality Management to maximize resources, decrease duplication of activities, and to enhance the overall quality oversight of the system(s). The work of the Office of Human rights dovetails into the work of the other offices thus it makes sense for the Office to remain within the Division of Quality Management. That being said, DBHDS appreciates the importance of the State Human Rights Director having a direct reporting relationship with the Commissioner. DBHDS will modify the existing Organizational Chart to make it abundantly clear that the State Human Rights Director does have a direct reporting relationship to the Commissioner. In addition, the State Human Rights Director will establish regular meeting times with the Commissioner to review any emerging, pending, or ongoing human rights concerns.

### OSIG Comment

During the course of OSIG's inspection, interviews and the posted DBHDS Organizational Chart confirmed the Office of Human Rights reported directly to the Assistant Commissioner of Quality Management & Development. In December 2015, DBHDS removed the Organizational Chart from their website. The DBHDS Organizational Chart provided in their response and dated January 1, 2016 shows the Office of Human Rights falling under the supervision of the Assistant Commissioner of Quality Management & Development with a notation designated by asterisks of a concurrent reporting relationship to the Commissioner.

***Observation 4: The role of the human rights advocate is inconsistent with the role defined by the Human Rights Regulations.***

The DBHDS Office of Human Rights has assigned VCBR a part-time human rights advocate. The assigned advocate splits time between VCBR and CVTC. Although there is a regional approach to addressing complaints among the area providers, the assigned advocate has primary responsibility for assisting residents with the complaint process and proactively addressing potential systemic rights violations within the facility setting. Interviews revealed that two additional advocates provide coverage for the assigned advocate during that individual's absence or when additional assistance is needed. The assigned human rights advocate reported to OSIG that phone contact is the primary means for communicating with residents regarding complaints.

While interviews revealed that the defined role of the assigned human rights advocate at VCBR is the same as it is at every other DBHDS facility, OSIG staff found the following inconsistencies in practice:

- The assigned advocate reported that the standard practice at VCBR is to represent only residents who could not represent themselves.
- The assigned advocate reported not visiting the units to observe resident and staff interactions or not being available to residents other than through scheduled phone contacts.
- The VCBR Complaint Policy does not indicate that the Facility Director is to immediately notify the assigned advocate once a compliant has been filed. This notification allows the advocate to communicate with the resident to ensure that the person understands the rights process.

**RECOMMENDATION**

The State Human Rights Committee, in consultation with the State Human Rights Director, should review the current availability and role of the human rights advocate at VCBR and revise current practice to ensure consistency with the duties and responsibilities outlined by the Human Rights Regulations and are applied equally to residents and patients at all other DBHDS-operated facilities. Once this has been completed, the complaint policy should be updated to assure that the role of the advocate is clearly addressed.

**DBHDS RESPONSE**

DBHDS acknowledges that the role and functions of the human rights advocate at VCBR should be consistent with the role at other DBHDS facilities. The human rights advocate should represent the interests of all residents, regardless of their ability to self-advocate. That being said, consistent with DBHDS practices, we do encourage and teach individuals to self-advocate as these skills are essential for the successful transition into the community where advocates are not readily present to help resolve complaints/disputes (for example with parole officers, with courts, with employers, with landlords). It appears that over time the human rights advocate had altered her practices and conceptualization of her functions resulting in practices

inconsistent with DBHDS practices. The Director of the Office of Human Rights has met with the advocate and educated her regarding her role, function, and practices. Her supervisor will continue to monitor her performance to ensure she is acting in a manner consistent with the practices of advocates in other DBHDS facilities to include making regular visits to housing units so as to allow her to observe resident/staff interactions, to provide ongoing guidance to staff, and to be more immediately available to residents. DBHDS will also have VCBR revise the Complaint Policy to ensure the timely notification of the advocate of lodged complaints.

## Appendix A - Exemptions/Variations

*Exemptions to the Rules and Regulations to Assure the Rights of Individuals Receiving  
Services from Providers Licensed, Funded, or Operated by the Department of  
Behavioral Health and Developmental Services*

*2014/2015*

*12 VAC 35-115-10 et seq.*

The population of individuals civilly committed as sexually violent predators (SVP) share a number of common character and behavior traits that are powerfully reinforced by the sexual excitement they produce when acted upon. This reinforcement creates strong patterns of thinking and abusing that continue throughout their lives.

Sexually violent predators are more prone to physical and sexual violence, more covertly manipulative and abusive, and more likely to abuse and exploit others, especially vulnerable individuals. Such behaviors may be directed towards staff and other residents within the care setting, or they may be directed towards individuals outside of the facility. These traits make these individuals different from other persons with mental illness served by the Department of Behavioral Health and Developmental Services (Department).

Sexually violent predators typically develop victim preferences based on age, gender, and appearance and they use various media including letters, gifts, telephones, fax machines, the internet, and even visitations to hunt for, select, engage, and abuse vulnerable persons who fit their preferences. SVP individuals routinely use sexually explicit material to support their deviant and aggressive fantasies and preferences. They tend to collect pornography, reading material, and photos that feed their deviant desires.

Many sexual predators have a preference for child victims and they may seek out, as companions, women with victim-aged children and manipulate them into bringing their children to the facility for visits. Other sexual predators will use various media to develop friendships with individuals who fit their victim preferences, then abuse or exploit them via media or in person, during visitation. In some cases, sexual predators will form gang- like groups with the intent of abusing other residents. In other cases, more predatory residents will select smaller, more vulnerable residents for abuse. In either case, the plan for abuse typically involves isolating the intended victim, either physically or emotionally.

For these reasons, it is prudent to implement precautions to protect other residents, staff, visitors, and the general public from abuse, exploitation, and harm. The provisions of the Rules and 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) listed below shall not be applied to the Virginia Center for Behavioral Rehabilitation (VCBR or facility). The VCBR shall develop policies and procedures, to the extent it has not already done so, to replace each

provision cited as quickly as possible. All such policies and procedures shall be reviewed by the State Human Rights Committee.

12 VAC 35-115-50 Dignity.

- C. 3. a., b. *Right to Reasonable Privacy and Private Storage Space and an Adequate Number of Private Operating Toilets, Sinks, Showers, and Tubs that are Designed to Accommodate Individuals' Physical Needs*

This exemption permits VCBR staff and law enforcement to perform searches of residents: (1) before and after group movement in the secure perimeter; (2) any time the resident leaves or returns to the secure perimeter; (3) any time the resident has physical access to a visitor who is not an employee of the VCBR; (4) any time there is reasonable suspicion the resident is in possession of contraband or any item that may breach safety and security. Furthermore, it shall permit routine and random searches of residents and resident bedrooms to identify contraband, inappropriate material, or breaches in safety and security.

This exemption permits VCBR staff to perform visual checks of resident rooms or showers in order to provide adequate sight supervision at all times. Staff shall respect resident privacy when residents are engaged in toileting or showering.

This exemption is requested for security purposes to ensure that residents do not:

- abuse other residents, visitors, or staff;
- have access to sexually explicit material and devices that undermine their clinical treatment by supporting their deviant and aggressive fantasies and preferences; or
- have access to weapons or devices that could be used as weapons to assault other residents, staff, or visitors, or cause harm to themselves.

Procedures for performing random wellness checks shall be outlined in Facility Instruction No. 121, Resident Routine Observation Checks.

Procedures for conducting searches shall be outlined in Facility Instruction No. 127, Searches and Contraband.

- C. 3. d. *Windows or Skylights in All Major Areas Used by Individuals*

This exemption permits VCBR to utilize the bedrooms within its Special Behavior Unit, which have no windows, to provide temporary services to residents displaying acute behavioral or psychiatric needs when those needs present a danger to the security of the facility or safety of residents or staff. The Special Behavior Unit's windowless bedrooms shall be used only when rooms in the Special Behavior Unit with windows are not available for use and only until such time that a room in the Special Behavioral Unit with a window is available for use. When it is determined that a resident is suffering

psychiatric distress due to being housed in a windowless bedroom, a bedroom with a window shall be made available immediately.

Procedures for the use of the Special Behavior Unit shall be outlined in Facility Instruction No. 126, Special Behavior Unit.

- *C. 6. Right to Communicate Privately with Any Person by Mail*

This exemption permits VCBR staff to open and read all incoming or outgoing sealed lettered mail in the presence of the resident with the exception of legal mail, which may be opened, but not read, and open packages outside the presence of the resident. Staff may also confiscate any material that is sexually explicit, symptomatic of predatory behavior, a threat to safety and security or contrary to treatment needs.

Closely monitoring residents' mail and packages is necessary to prevent weapons, sexually explicit materials, sexual devices, chemical agents, and other items of contraband from entering VCBR and to prevent sexually violent predators from preying upon vulnerable persons in the general public, such as children or former victims through the mail, telephone, or internet.

Procedures for handling residents' mail shall be outlined in Facility Instruction No. 207, Mail and Packages.

- *C. 7. Right to Communicate Privately With Any Person by Telephone*

This exemption permits VCBR staff to place limitations on a resident's use of the telephone if such use might result in harm to the public or continuation of predatory behavior.

In order to support a therapeutic milieu, ensure the orderly operation of VCBR, ensure individuals have equal access to the telephone, and ensure individuals can eat, sleep, or participate in an activity without being disturbed; VCBR staff may place time and location restrictions on telephone communication.

Procedures for resident access and use of telephones shall be outlined in Facility Instruction No. 214, Resident Telephone Access.

During a group disturbance at VCBR, this exemption permits the VCBR staff to suspend residents' access to telephones when telephone access may place residents, staff, or others at risk of harm, injury, or death.

During a group disturbance, suspending residents' access to telephones may be required to ensure residents do not make contact with individuals outside the facility and coordinate interference with the containment of the disturbance to the confines of VCBR, interfere with any response to the disturbance by external emergency personnel, or interfere with the timely resolution of the disturbance. The facility may suspend residents' access to telephones until the disturbance has ended and facility leadership has

determined that there is no longer an immediate risk of harm, injury, or death to the residents or staff.

Procedures for the suspension of residents' access to telephones shall be outlined in Facility Instruction No. 1201, Resident Group Disturbance Response Procedures.

- *C. 8. Right to Have or Refuse Visitors*

This exemption permits VCBR to place limitations on visits to residents if such visits may result in harm to the public; the continuation of sexually inappropriate, exploitative, or illegal behavior, including accessing sexually explicit or violent information or materials; or may disrupt the orderly operation of the facility.

Closely monitoring residents' visitors is necessary to protect the family and friends of sexual predators and to protect the general public. Even if accompanied by an adult, children shall be allowed to visit a resident only if that resident does not have a history of sexual abuse of children. Likewise, visitors who match a resident's victim preferences shall not be allowed to visit with that resident.

Procedures specifying the criteria and process used to grant or deny visitation shall be outlined in Facility Instruction No. 216, Resident Visitation.

**12 VAC 35-115-90 Access to and Amendment of Services Records.**

- *A. 1., 2., C. 2. Right to See, Read, and Get a Copy of His Own Record*

This exemption permits the exclusion of criminal investigation information, including victim's statements, victim impact statements, and sentencing reports from resident review.

This exemption is necessary to ensure the safety and security of victims of sexual predators. The records of civilly committed sexual predators may contain information that identifies and locates victims. It is in the best interest of these victims to protect their identity, telephone number, internet address, and home address; because sexual predators often will try to contact their victims in order to further abuse or threaten the victims.

Procedures for residents gaining access to and amending their service record shall be outlined in Facility Instruction No. 205, Resident Access and Amendment to Service Record.

**12 VAC 35-115-100 Restrictions on Freedoms of Everyday Life.**

- *A. 1. a. Freedom to Move Within the Service Setting, its Grounds, and the Community*

This exemption permits VCBR to limit the freedom of movement of residents and their access to others in order to ensure the safety and security of all residents and staff.

A cornerstone of treating civilly committed sexual predators is giving them the opportunity to learn internal control over their abusive social and sexual patterns. It is necessary to protect others from the residents' aggressive nature. In order to foster the development of internal control, it is important to limit their freedom of movement and access.

Procedures for ensuring residents' freedoms are maintained and how the facility may place restrictions on such freedoms shall be outlined in Facility Instruction No. 120, Restrictions on Freedoms of Everyday Life.

- A. 1. b. *Freedom to Communicate, Associate, and Meet Privately with Anyone the Individual Chooses*

This exemption permits VCBR to limit the ability of residents to communicate, associate, and meet privately with anyone they choose.

To ensure the safety of residents and staff, it is necessary to monitor closely the associations that emerge in the treatment program and, as necessary, develop individualized plans, in accordance with facility policies and procedures, to protect the more vulnerable residents, and to protect staff from highly predatory residents. Resident visitation shall be supervised.

Procedures for ensuring residents' freedoms are maintained and how the facility may place restrictions on such freedoms shall be outlined in Facility Instruction No. 120, Restrictions on Freedoms of Everyday Life.

- A. 1. c., g. *Freedom to Have and Spend Personal Money and Make Purchases*

This exemption permits VCBR to prohibit residents from retaining funds, including cash, personal checks, money orders, credit cards, and debit cards, within the secure perimeter, limit the outside vendors from which residents may purchase items, and place limitations on which items may be received within the secure perimeter of the facility.

SVP individuals may use money to procure sexual favors and sexually explicit materials. Such use of money by residents would undermine their clinical treatment by supporting their deviant and aggressive fantasies and preferences. This may pose a significant risk of exploitation of vulnerable residents or staff.

Residents shall not independently contact or purchase items from vendors located within the immediate area of VCBR. Prohibiting these vendors is required to ensure the safety of the surrounding community and to prevent residents from contacting potential victims or forming an alliance within the local community.

VCBR may limit the items purchased by a resident and prohibit items from being in the possession of a resident if the items purchased have the potential to cause a safety or security risk within the facility.

Procedures for residents gaining access to their funds and how the facility may place limitations on such access shall be outlined in Facility Instruction No. 210, Resident Fund Accounts.

VCBR's Rules for Resident Personal Property specify the limitations on which items may be received by residents and which vendors may be utilized by residents.

- A. 1. d. *Freedom to See, Hear, or Receive Television, Radio, Books, and Newspapers; and Freedom to Keep and Use Personal Clothing and Other Personal Items*

This exemption permits VCBR to restrict or limit residents' access to inappropriate, sexually explicit or violent materials, including but not limited to, books, magazines, radios, television, videos, DVD's, computers, and internet web sites. This exemption is necessary for safety and security purposes to ensure that residents do not have access to sexually explicit material and devices that support their deviant and aggressive fantasies and preferences.

Procedures for residents' access to media items including television, magazines, videos, DVDs, and video games shall be outlined in Facility Instruction No. 109, Resident Media.

Procedures for residents' access to personal computers and the internet shall be outlined in Facility Instruction No. 111, Resident Computer Use.

- A. 1. e. *Freedom to Keep and Use Personal Clothing and Other Personal Items*

This exemption permits VCBR to place limits on personal clothing and other personal items residents have in their possession. This exemption is necessary to maintain a safe, secure, and therapeutic environment, and to encourage residents to improve their basic management skills, which are necessary in order for residents to succeed in a behavioral healthcare setting. Items or clothing that may be considered offensive, advertise drugs and alcohol, promote gang activity, or promote other types of violence create safety and security risks, in addition to detracting from the facility's overall therapeutic environment. Excessive amounts of personal items or clothing pose a fire safety risk. Excessive amounts of items and clothing may lead to the creation of an underground economy, undermining behavioral management programs within the facility. Inappropriate clothing and other items may also promote or encourage inappropriate sexual behavior and undermine sex offender specific treatment and sexual self-regulation.

VCBR's Rules for Resident Personal Property specify the limitations on which items may be received by residents.

- B. 3. a. through e. *Requirements for the Imposition of Restrictions*

This exemption permits VCBR to place a resident on restrictions temporarily, without first meeting the criteria set forth in 12 VAC 35-115-100 B. 3. a. through e., if a resident displays behavior(s) that are determined to be an immediate threat to the safety and security of the facility or the community.

This exemption is necessary to ensure the safety of residents and staff of the facility and the community. Sexually violent predators may engage in behaviors that require an immediate response to ensure the safety of individuals in the facility and the community. An appropriate response may be an immediate restriction on the freedoms of everyday life as outlined in 12 VAC 35-115-100 A. 1. a. through g. The immediate need to protect the safety and security of the facility or the community should not be jeopardized by the process outlined in 12 VAC 35-115-100 B. 3. a. through e.

When immediate restrictions are imposed to ensure the safety and security of the facility or the community, such restrictions shall be in effect only until the next business day that the restricted resident's treatment team is able to meet, review the imposed restriction, and meet the requirements set forth in 12 VAC 35-115-100 B.3. a. through f.

Procedures for ensuring residents' freedoms of everyday life within VCBR and procedures for implementing restrictions on those freedoms shall be outlined in Facility Instruction No. 120, Restrictions on Freedoms of Everyday Life.

**12 VAC 35-115-110 Use of Seclusion, Restraint, and Time Out.**

- C. 3., 5., 6., 7. a., c., 13., 14., 15., 17. *Use of Seclusion, Restraint and Time Out*

This exemption permits the use of restraints as a security measure during the transport of VCBR residents outside the facility's secure perimeter.

This exemption is necessary for the safety of residents, staff, and the general public when residents are transported to public locations for court appearances or specialized medical treatment.

The DBHDS Commissioner has designated VCBR as a secure treatment facility for the control, care, and treatment of individuals committed as sexually violent predators under Virginia Code § 37.2-909. SVP individuals are committed to VCBR when a court or jury finds that there is not a suitable less restrictive alternative to involuntary inpatient treatment in a secure facility. Because of the residents' involuntary commitment and history of involvement in the criminal justice system due to their violent behavior, such transportation presents a risk for escape by residents and potentially a risk to public safety. While outside the secure perimeter of the facility, residents may attempt violent acts in an attempt to escape. Furthermore, if not secured while in the community, residents may attempt to identify potential victims of sexual crimes or perpetrate additional crimes while in the community.

Procedures for safely transporting residents outside the facility in restraints, following the guidelines set forth in DBHDS Departmental Instruction 215 (RTS) 11, shall be outlined in Facility Instruction No. 106, Resident Transportation.

This exemption permits the use of more secure restraint devices, in the form of metal cuffs and leather restraints. More secure restraint devices are needed to minimize the risk of residents' escape and harm to others during transport both within and outside the secure perimeter of VCBR.

This exemption permits the facility to extend the time limit for an authorization for seclusion and permits the use of administrative segregation.

Some sexually violent predators may assault other residents and staff or engage in other behaviors that are threats to the secure operation of the facility as part of a strategy to gain power in the facility. To ensure the physical safety and security of other residents and staff, it may be necessary to remove a resident from the facility's general environment and segregate him (hereafter referred to as "administrative segregation"). Unlike seclusion, which is implemented when a resident, due to mental illness, engages in behaviors that may harm himself or others, administrative segregation is implemented to prevent a resident from committing an intentional malicious, abusive, or aggressive act against another resident or staff. When administrative segregation is implemented: (a) the basis for the restriction shall be documented in the resident's clinical record; (b) the resident's treatment plan shall be modified to include strategies to reduce the level of restriction; and (c) the resident's mental and physical well being shall be monitored on a regular basis by qualified staff. This exemption permits the facility to take steps to ensure the safety and security of residents and staff.

Procedures for safely implementing administrative segregation shall be outlined in Facility Instruction No. 114, Administrative Segregation.

This exemption permits the facility to utilize restraint to prevent residents from engaging in behaviors that are a threat to the secure operation of the facility until such a time that the threat to the secure operation of the facility may be averted. Procedures for using restraint to prevent threats to the secure operation of the facility shall be outlined in Facility Instruction No. 114, Administrative Segregation, and Facility Instruction No. 105, Behavioral Restraint.

This exemption permits VCBR to require residents to enter and remain in their designated rooms during a violent disturbance at the facility that places residents, staff, or others at immediate risk of harm, injury, or death (e.g., hostage taking or resident altercations).

During a violent disturbance, residents may be required to return to their designated rooms in order to ensure:

- 1) Safety of residents: If residents return to their designated rooms during a violent disturbance, the residents are less likely to be injured by the actions of other residents.

- 2) Safety of staff: Requiring residents to remain in their designated rooms decreases the likelihood that additional residents will become involved in a disturbance and further endanger the safety of the staff.

The facility may require residents to remain in their designated rooms until the violent disturbance has ended and facility leadership has determined that there is no longer an immediate risk of harm, injury, or death to the residents or staff.

Procedures for requiring residents to enter and remain in their designated rooms shall be outlined in Facility Instruction No. 1201, Resident Group Disturbance Response.

This exemption permits VCBR to implement seclusion in an emergency. Seclusion means the involuntary placement of an individual alone in an area secured by a door that is locked or held shut by staff by physically blocking the door, or by any other physical or verbal means, so that the individual cannot leave the area. Emergency means a situation that requires a person to take immediate action to avoid harm, injury, or death to an individual or others.

VCBR serves a population that includes a small number of residents with mental illness who may benefit from the utilization of seclusion as a tool for de-escalation during emergencies. While VCBR does have the ability to implement administrative segregation, administrative segregation may be utilized only when the presented behaviors are not attributed to a psychiatric disorder. The availability of seclusion as a treatment option for residents with mental illness improves the safety of the treatment environment by providing treatment staff the ability to implement a technique that is documented to support de-escalation.

When VCBR uses seclusion as an individualized treatment technique to avoid harm, injury, or death to a resident or others, all requirements outlined in 12 VAC 35-115-110 other than C. 3. (as stated above) shall be followed. VCBR's use of seclusion shall be in accordance with all applicable federal and state laws and regulations.

Procedures for implementing seclusion shall be outlined in Facility Instruction No. 132, Seclusion.

*Variances to the Rules and Regulations to Assure the Rights of Individuals Receiving  
Services from Providers Licensed, Funded, or Operated by the Department of  
Behavioral Health and Developmental Services*

*12 VAC 35-115-10 et seq.*

In accordance with 12 VAC 35-115-220, VCBR has variances to the below regulations.

Variance to Complaint Procedures:

12 VAC 35-115-50 D. 3. e. (5): Abuse, Neglect, and Exploitation

12 VAC 35-115-60 B. 1. d.: Services

12 VAC 35-115-140 A. 2., 4.: Complaints and Fair Hearing

12 VAC 35-115-150: General Provisions

12 VAC 35-115-170: Formal Complaint Process

12 VAC 35-115-180: Local Human Rights Committee Hearing and Review Procedures

12 VAC 35-115-190: Special Procedures for Emergency Hearing by LHRC

12 VAC 35-115-200: Special Procedures for LHRC Reviews Involving Consent and  
Authorization

12 VAC 35-115-210: State Human Rights Committee Appeals Procedure

The Human Rights Regulations provide a comprehensive complaint resolution process that includes access to a Local Human Rights Committee and the State Human Rights Committee (SHRC). The population at VCBR requires a more structured and shorter complaint process in order to better protect the residents, employees, and the public. The clinical needs of the VCBR residents are better protected by a complaint process that moves at a more rapid pace than the process provided in the Human Rights Regulations.

A resident's recovery and eventual safety in the community are enhanced by his ability to work collaboratively with service providers to resolve problems. This enhances self-esteem, supports healthy self-reliance, and helps the resident make a successful transition to community living. "Effective problem-solving" is an essential component of residents' treatment plans. Therefore, the complaint process shall support residents' healthy efforts to problem-solve and shall not reinforce attitudes of entitlement or criminogenic attitudes.

For these reasons, the regulations listed above are not applicable to VCBR. VCBR Facility Instruction No. 202, Resident Complaint Resolutions, provides the procedures for addressing resident complaints. VCBR's variances to the above regulations are

reviewed by the SHRC at least annually with VCBR providing reports to the SHRC regarding the variance to the SHRC as requested.

Variance for rooms within medical unit with no windows:

12 VAC 35-115-50 C. 3. d. Live in a humane, safe, sanitary environment that gives each individual, at a minimum, windows or skylights in all major areas used by individuals.

VCBR has four bedrooms in its medical unit that do not meet the requirement of this regulation. VCBR has an approved variance to the above regulation as follows:

Live in a humane, safe, sanitary, environment that gives each individual, at a minimum:  
d. Windows or skylights in all major areas used by individuals including bedrooms. If a bedroom that meets this requirement is not available on a unit that meets an individual's needs, the individual may be housed in a bedroom that does not meet this requirement until such a time that a bedroom that meets this requirement is available. If a resident presents psychiatric distress as a result of being housed in a room that does not meet this requirement (i.e., claustrophobia), a room that meets this requirement shall be made available immediately.

Monthly, VCBR provides a report to the SHRC on how many times rooms with no windows within the medical unit of VCBR are used during the previous month.

Variance for double bunking:

12 VAC 35-115-50 C. 3. a., e.

- a) Reasonable privacy and private storage space
- e) Clean air, free of bad odors

Following the General Assembly's mandate, VCBR has implemented double-bunking (two individuals residing in a single room). VCBR Facility Instruction No. 124, Resident Housing Assignment, describes how residents' housing assignments are determined and shall substitute for these regulations. While VCBR has attempted to maintain residents' dignity and privacy during the double-bunking process (i.e. construction of privacy curtains and storage lockers installed in double-bunked rooms), VCBR is unable to assure the physical environment of the double-bunked rooms meets the expectations of the above regulations.

Monthly, VCBR provides a report to the SHRC on how many residents are double-bunked, complaints received by residents regarding double-bunking, and any medication sessions treatment staff hold with roommates to resolve concerns related to double-bunking.

The listed exemptions are approved, and approval is given to apply for renewals of the listed variances at time frames established by the State Human Rights Committee.

Debra Ferguson  
Debra Ferguson, Ph.D.  
DBHDS Commissioner

12/1/14  
Date

12/1/15  
Expiration Date

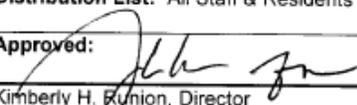
# Appendix B - Facility Instruction No. 202

Facility Instruction No. 202  
Resident Complaint Resolution

Page 1 of 5

## VIRGINIA CENTER FOR BEHAVIORAL REHABILITATION

### Facility Instruction No. 202 (RTS) Resident Complaint Resolution

<b>Date Issued:</b> 12/1/2012	<b>Page No.:</b> 1 of 5
<b>Effective Date:</b> 1/1/2013	<b>Distribution List:</b> All Staff & Residents
<b>Cancellation:</b> Facility Instruction No. 202 (RTS) Date Issued: October 4, 2010	<b>Approved:</b>  Kimberly H. Runion, Director
<b>Attachment(s):</b> Informal Complaint Form – Attachment A, Formal/Director Complaint Form – Attachment B, Appeal Complaint Form – Attachment C	

- Purpose:** To provide an administrative process for fair, prompt decisions and actions in response to complaints filed by Virginia Center of Behavioral Rehabilitation (VCBR) residents.
- Compliance:** This facility instruction shall be in compliance with applicable State and Federal Laws, Department of Behavioral Health & Developmental Services (DBHDS) Instructions, and the *Rules and Regulations (and related Exemptions or Variances) to Assure the Rights of Residents Receiving Services from Providers Licensed, Funded, or Operated by the Department of Behavioral Health and Developmental Services.*
- Procedure:**
- A. Each resident shall be notified upon admission how to access the Complaint Procedure.
  - B. If a resident makes a complaint, VCBR shall make every attempt to resolve the complaint to the resident's satisfaction at the earliest possible step.
  - C. Staff shall assist the complainant in understanding the full process and steps involved in the resolution process. All communication with the resident during the complaint resolution process shall be in the manner, format, and language most easily understood by the resident.
  - D. VCBR shall not take, threaten to take, permit, or condone any action to retaliate against or prevent anyone from filing a complaint or helping a resident to file a complaint.
  - E. Complaints that contain vulgar language, litigious threats, or threats of harm shall be returned to the resident without processing.
  - F. Residents who refuse to meet with staff to attempt to resolve the complaint cannot take their complaint to the next level. Two attempts shall be made to meet with the resident, after the second refusal to meet, the complaint shall be considered closed.
  - G. All residents have the right to file a complaint through this procedure.
  - H. If the complaint is an allegation of abuse and/or neglect, it must be **immediately** reported to the Facility Director or designee per Departmental Instruction 201(RTS).
  - I. If the complaint involves a criminal act, it shall no longer follow the complaint process and shall be handled under Criminal Investigation Procedures.
  - J. To ensure resident concerns are not overlooked, residents shall address only one issue per complaint form. If more than one issue is documented, the complaint shall be returned to the resident, requesting the resident to separate complaints to one per complaint form.
  - K. When filing a complaint, the resident shall document the requested resolution. Complaints shall not be processed when the resolution involves disciplinary action towards staff persons.

**Procedure  
(Cont'd):**

- 
- L. Residents should not file complaints on behalf of other residents, but may assist them in writing a complaint.
  - M. Matters in which the sole issue is disagreement with policies, rules, regulations, contract or law, operational schedules, or voluntary programs shall not be addressed through the complaint procedure.
  - N. Property appeals shall not be addressed through the Complaint Resolution Process. Residents must utilize the process outlined in *Rules for Resident Property* to appeal any property concerns.
  - O. Requests to challenge, amend, or correct services record shall not be addressed through the *Complaint Resolution Process*. Residents must utilize the procedure set forth in Facility Instruction No. 205(RTS) *Resident Access & Amendment of Service Record*.
  - P. Housing assignment appeals and requests for moves shall not be addressed through the *Complaint Resolution Process*. Residents must utilize the procedure outlined for housing assignments.

**Definitions:**

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**Abuse:** Any act or failure to act by an employee or other person, responsible for the care of a resident in a DBHDS facility that was performed or was failed to be performed knowingly, recklessly, or intentionally, and that caused or might have caused physical or psychological harm, injury, or death to a person receiving care or treatment for mental illness, mental retardation, or substance abuse.

**Duplicate Complaint:** A complaint that has been filed by the resident filing the current complaint on a previous occasion and the resident exhausted all levels of the complaint process during the previous complaint filing. A complaint shall not be determined duplicate if the resident is asserting that a resolution offered/agreed to during previous filings is not being followed or implemented.

**Neglect:** Failure by an employee, program, or facility responsible for providing services such as nourishment, treatment, care, goods or services necessary to the health, safety or welfare of a person receiving care or treatment for mental illness, mental retardation or substance abuse.

**Non-Good Faith Complaint:** A complaint that will not be processed using this complaint procedure because it meets at least one of the following:

- It is a duplicate complaint
- It is a frivolous complaint
- It contains vulgar, insolent, or threatening language
- There is a separate process to address the complaint (e.g. property, housing, amendment to service record)
- It is based solely on policy, rule, regulation, contract or law, operational schedule, or voluntary program.

**Good Faith Complaint:** A complaint that contains reasonable merit of unsatisfactory or unacceptable services or a violation of a facility policy or the human rights regulations.

**Frivolous Complaint:** A complaint that does not contain reasonable merit of unsatisfactory or unacceptable services or a violation of a facility policy or the human rights regulations, is insufficient, harassing or vulgar, or a repetition of complaints being filed. When a complaint has been deemed frivolous, it cannot be appealed further.

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**Informal  
Complaint  
Process:**

The below table explains the Informal Complaint resolution process:

<b>Who</b>	<b>Shall...</b>	<b>And...</b>
Resident	Document complaint and requested resolution on <i>Attachment A Resident Complaint Form</i> .	Place in Complaint Box.
Health Care Compliance	Receive complaints from Complaint Box daily, determine if complaint meets the criteria of a Good Faith Complaint.	Assign complaint to appropriate department.
Department Head or designee	Review the received Resident Complaint Form; determine who in the department is most appropriate to resolve the complaint.	Assign the complaint to the appropriate staff member of the assigned department.
Assigned department staff member	Within ten business days of the Department Head receiving the complaint, meet with the resident to attempt to resolve the complaint.	Make recommendations for corrective action when appropriate. Provide resident original complaint form with written response and yellow copy to Healthcare Compliance.
<b>If the complaint is...</b>		<b>Then...</b>
Not a "good faith complaint"	The resident shall be notified by the Department of Healthcare Compliance that his or her complaint shall not be processed, including the reason that it was not deemed a "good faith complaint". The complaint shall be closed and there shall be no right of appeal.	
Resolved	It shall be considered closed and cannot be processed further.	
Not resolved	The resident may submit their complaint to the Formal Level.	

**Formal Complaint Process:**

The below table explains the process for a Formal Complaint:

Who	Shall...	And...
Resident	Within five business days of receiving the response to the Informal Complaint, complete <i>Attachment B Formal/Director Appeal Complaint Form</i> indicating he/she wishes to pursue the complaint as a Formal Complaint. The resident must attach the <i>Attachment A Resident Complaint Form to Attachment B</i> .	Place in Complaint Box.
Healthcare Compliance	Assure that the Formal Complaint has already followed the Informal Complaint process and log the complaint into database.	Assign complaint to the appropriate department.
Department Head or designee	Within ten business days of receiving the Formal Complaint, review the resolution offered by staff at the Informal Complaint Level and <ol style="list-style-type: none"> <li>1) Investigate complaint.</li> <li>2) If, after investigation and review of the resolution offered at the Informal Complaint Level, the Department Head determines that the response given by staff at the Informal Level is appropriate, the Department Head may choose to provide no further resolution and only inform the resident that the Department Head agrees with the resolution offered at the Informal Level.</li> <li>3) If after investigation and review of resolution offered at the Informal Complaint Level the Department Head determines that the response given by staff at the Informal Level is not appropriate, the Department Head shall offer further resolution/corrective action.</li> </ol>	Meet with resident. Make recommendations for corrective action when appropriate. Document written response; submit to resident on original complaint form and yellow copy to Healthcare Compliance.
Healthcare Compliance	Enter findings of complaint into database.	

**Appeal:**

The below table describes what the resident may do if he/she disagrees with the preliminary decision or action plan offered at the Formal Level:

If the resident...	Then...
Disagrees with the preliminary decision or action plan	Within five working days after receiving the preliminary decision and action plan, the resident should document the request to re-submit the complaint to the Director's Level on <i>Attachment B Formal/Director Appeal Complaint Form</i> and attach Attachment A and place it in the Complaint Box.
Has not responded within five working days	The complaint shall be closed.
If the resident...	Then
Has submitted the appeal within five working days	Within ten working days, the complaint shall be investigated further if deemed necessary by the Director and the Director shall forward a written copy of his/her final decision and action plan to the resident.

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**Final Appeal to Appeal Committee:** If the resident is not satisfied with the VCBR Director's response, he/she may appeal the decision to the VCBR Appeals Committee **only for complaints that relate to the Human Rights Regulations**. Complaints that do not relate to Human Rights Regulations may not be appealed at this level.

The VCBR Appeals Committee consists of the Chairperson of the State Human Rights Committee, the DBHDS Director of Human Rights, and the DBHDS Deputy Commissioner.

The below table describes what the resident can do if he/she disagrees with the Director's decision or action plan:

<b>If the resident...</b>	<b>Then...</b>
Disagrees with the decision or action plan	Within five working days after receiving the Director's response, the resident should document their appeal on <i>Attachment C Resident Appeal Form</i> and place in the Complaint Box.
Has not responded within five working days	The complaint shall be closed.
<b>If the resident...</b>	<b>Then...</b>
Has submitted the appeal within five days	The VCBR Appeals Committee shall review the appeal and provide a written response within 21 days. If the complaint is determined by the Appeals Committee to be a founded complaint, the response, which includes recommendations outlining how the complaint should be resolved, shall be forwarded to the Director for resolution. A copy shall be sent to the Human Rights Advocate. This is the final level of appeal.

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**Consultation:** The role of the Human Rights Advocate is outlined in 12VAC35-115-250 C of The Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services and includes assisting the client in understanding the Resident Complaint Resolution Process, being available to the client for consultation, and monitoring the provider's compliance with the human rights regulations.

The Advocate for VCBR can be reached by calling 1-866-570-4197 or in writing by submitting a *Resident Correspondence Form* postage-free through the facility mail system.

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**Responsibility:** Department of Healthcare Compliance.

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**INFORMAL COMPLAINT FORM**

**FI 202 (RTS) 10 Resident Complaint Resolution**

TO BE COMPLETED BY INDIVIDUAL MAKING COMPLAINT

Resident Name: \_\_\_\_\_ Resident # \_\_\_\_\_ Date: \_\_\_\_\_

Building: \_\_\_\_\_ Unit: \_\_\_\_\_ Room: \_\_\_\_\_

Describe complaint:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Resolution Requested: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

*(DO NOT WRITE ON BACK OF PAGE. If additional information needs to be added, please attach a plain piece of paper or another form.)*

**THE FOLLOWING TO BE COMPLETED BY HEALTHCARE COMPLIANCE DEPARTMENT**

- Is this a "good faith complaint"? Yes  No  Reviewed by: \_\_\_\_\_ Date: \_\_\_\_\_
- If no, why: \_\_\_\_\_ Code: 1: Duplicate, 2: Frivolous, 3: Vulgar/insolent/threatening language, 4: Issue has a separate complaint procedure (e.g. property, housing), 5: Based solely on disagreement with policy, rule, regulation, contract or law, operational schedule, or voluntary program), 6: More than one issue listed, 7: Other: \_\_\_\_\_
- Is the complaint based on regulations covered by DBHDS Human Rights Regulations? Yes  No
- Human Rights Regulation Referenced: \_\_\_\_\_ COMPLAINT #: \_\_\_\_\_

**THE FOLLOWING TO BE COMPLETED BY DEPARTMENT STAFF:**

Was there a violation of policy, procedure, or regulation? Yes  No  Is the resolution requested by the resident granted? Yes  No

Other resolution offered? Yes  No  Document response and describe the action(s) taken for resolution:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Staff Signature: \_\_\_\_\_ Print Name: \_\_\_\_\_ Date: \_\_\_\_\_

Was issue resolved to resident's satisfaction?  Yes  No If no, resident has 5 working days to file a Formal Complaint.

Resident's Signature: \_\_\_\_\_ Date: \_\_\_\_\_



## Appendix C – DBHDS Response



### COMMONWEALTH of VIRGINIA

JACK BARBER, M.D.  
INTERIM COMMISSIONER

DEPARTMENT OF  
BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

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January 11, 2016

June Jennings  
Office of the State Inspector General  
P.O. Box 1151  
Richmond, VA 23218

**Re: FY '15 Unannounced Inspection of the Virginia Center for Behavioral Rehabilitation – Report No. 2015-BHDS-003**

Dear Ms. Jennings:

Thank you for sharing the draft copy of the FY '15 Unannounced Inspection of the Virginia Center for Behavioral Rehabilitation for our review and comment. I apologize that our responses are delayed, but due to the holiday schedule, coupled preparations for the upcoming General Assembly session we inadvertently missed the deadline you had set for our comments. Below are DBHDS's responses to the three OSIG Recommendations.

**Observation 2:** Membership of the VCBR Appeals Committee does not reflect the same level of independent review afforded the patients/residents of other DBHDS operated facilities.

**OSIG Recommendation:** The State Human Rights Committee review the current membership of the VCBR Appeals Committee to ensure that VCBR residents are afforded the same level of independent complaint review afforded patients/residents in other DBHDS facilities.

**DBHDS Response:** DBHDS disagrees with the assertion that "The direct involvement of two DBHDS Central Office employees....removes independence and objectivity from the proceedings and diminishes the review process as a result." Working in DBHDS Central Office is not a pro se bar to staff acting independently and objectively when reviewing resident complaints. All DBHDS employees are charged to ensure patient/resident rights are protected and seasoned, professional staff are able to objectively review policies, practice, and programs; even those they oversee/supervise. That being said, DBHDS does appreciate that to the residents, family members, and outside entities there may be the appearance of a conflict of interest which could diminish the trust in the fairness and objectivity of the review process. DBHDS will work with the State Human Rights Committee to change the membership of the VCBR Appeals Committee. Specifically, the Assistant Commissioner for Forensic Services will no longer serve on the committee as this position does have direct administrative oversight of VCBR. A second member of the SHRC will be appointed to the Appeals

Review Committee. DBHDS feels it remains vital for the State Human Rights Director to remain on the Appeals Committee given her unique knowledge and understanding of the Human Rights regulations and because the large volume of work would likely overwhelm a SHRC member, who serves the Commonwealth in a volunteer capacity.

**Observation 3:** The State Human Rights Director does not report to the DBHDS Commissioner as required by Section 12-VAC35-115-30 of the Human Rights Regulations.

**OSIG Recommendation:** DBHDS revise its organizational structure to comply with Code, ensuring the State Human Rights Director reports directly to the DBHDS Commissioner.

**DBHDS Response:** DBHDS acknowledges that 12VAC35-115-30 defines the State Human Rights Director as the person *employed by and reporting to* the Commissioner who is responsible for carrying out the functions prescribed in 12VAC35-115-250. While the DBHDS Organizational Chart (attached) does show the Office of Human Rights falling under the supervision of the Assistant Commissioner of Quality Management & Development, there is notation (designated by asterisks) of a reporting relationship also directly to the Commissioner. In essence, the State Human Rights Director has dual supervision. The Assistant Commissioner for Quality Management & Development provides the daily, administrative supervision for the office, but the State Human Rights Director addresses more programmatic issues/concerns (e.g. Requests for Exemptions, facility concerns, etc.) directly with the Commissioner. The rationale for including the Office of Human Rights (OHR) within the Division of Quality Management & Development is in support of the Department's initiative to create and enhance the quality management system for providers of mental health, substance abuse, intellectual disability, and developmental disability services. OHR has developed a collaborative and symbiotic relationship with other Offices within the Division of Quality Management to maximize resources, decrease duplication of activities, and to enhance the overall quality oversight of the system(s). The work of the Office of Human rights dovetails into the work of the other offices thus it makes sense for the Office to remain within the Division of Quality Management. That being said, DBHDS appreciates the importance of the State Human Rights Director having a direct reporting relationship with the Commissioner. DBHDS will modify the existing Organizational Chart to make it abundantly clear that the State Human Rights Director does have a direct reporting relationship to the Commissioner. In addition, the State Human Rights Director will establish regular meeting times with the Commissioner to review any emerging, pending, or ongoing human rights concerns.

**Observation 4:** The role of the human rights advocate is inconsistent with the role defined by the Human Rights Regulations.

**OSIG Recommendation:** The State Human Rights Committee, in consultation with the State Human Rights Director, should review the current availability and role of the human rights advocate at VCBR and revise current practice to ensure consistency with the duties and responsibilities outlined by the Human Rights Regulations and are applied equally to residents and patients at all other DBHDS-operated facilities. Once this has been completed, the complaint policy should be updated to assure that the role of the advocate is clearly addressed.

**DBHDS Response:** DBHDS acknowledges that the role and functions of the human rights advocate at VCBR should be consistent with the role at other DBHDS facilities. The human rights advocate should represent the interests of all residents, regardless of their ability to self-advocate. That being said, consistent with DBHDS practices, we do encourage and teach individuals to self-

advocate as these skills are essential for the successful transition into the community where advocates are not readily present to help resolve complaints/disputes (for example with parole officers, with courts, with employers, with landlords). It appears that over time the human rights advocate had altered her practices and conceptualization of her functions resulting in practices inconsistent with DBHDS practices. The Director of the Office of Human Rights has met with the advocate and educated her regarding her role, function, and practices. Her supervisor will continue to monitor her performance to ensure she is acting in a manner consistent with the practices of advocates in other DBHDS facilities to include making regular visits to housing units so as to allow her to observe resident/staff interactions, to provide ongoing guidance to staff, and to be more immediately available to residents. DBHDS will also have VCBR revise the Complaint Policy to ensure the timely notification of the advocate of lodged complaints.

While not addressed as a specific finding/recommendation, in the Executive Summary the OSIG staff did note that the OSIG had received 16 complaints from VCBR residents in FY 2015, the largest number of complaints received from a single state-operated facility. OSIG staff also noted, "The literature also maintains that it is in response to these restrictions (to the application of human rights regulations) that sexually violent predators gain greater understanding that their rights in society must be balanced with the rights of others." DBHDS staff has noticed a pattern of VCBR residents calling/writing to the OSIG directly as a means to circumvent the established rights protection processes and many see this as a viable venue in which to avoid using established procedures. Unfortunately, given the unique treatment needs of the VCBR residents, they have shared amongst themselves this alternative complaint resolution strategy, thus driving up the number of complaints. Unfortunately, allowing the residents to complain through this venue is counter-therapeutic as if/when they are released from VCBR to the community they will be required to strictly follow established rules/regulations without deviation or exception with few opportunities to invoke rights as an excuse for failing to follow established protocols. DBHDS would welcome the opportunity to meet with OSIG staff to develop a practice which allows the OSIG to accomplish its Code mandated functions and allows the OSIG to maintain sufficient oversight of services without inadvertently reinforcing behaviors/strategies which will not serve the residents' best interests when they reintegrate back into the community.

Thank you again for sharing this draft report. If you have any questions or concerns about our responses, please feel free to contact me.

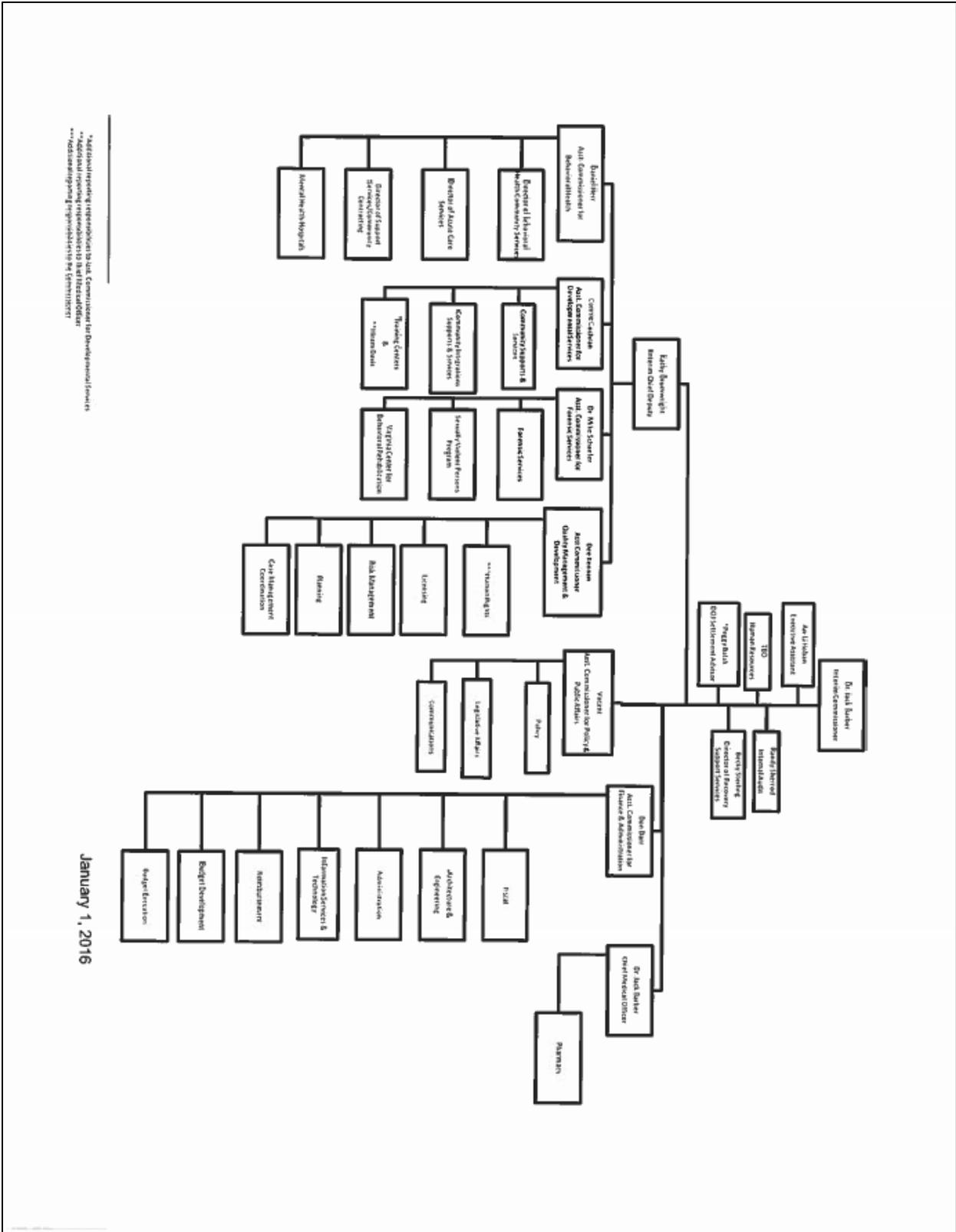
Sincerely,



Jack Barber, MD  
Interim Commissioner

Attachment

c: Kathy Drumwright  
Mike Schaefer  
Deb Lochart



\*\*Additional reporting responsibilities to the Commission for Developmental Services  
 \*\*\*Additional reporting responsibilities to the Health Services Division

January 1, 2016