

HARTWOOD FOUNDATION, INC.  
**HUMAN RIGHTS POLICIES**

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INTRODUCTION

Our vision at Hartwood Foundation, Inc. (Hartwood) is to support individuals with disabilities by providing specialized services that aid in maximizing their personal independence, choice, and participation in community life. Hartwood was founded and organized as a Virginia corporation in 1973, and has been a licensed service provider since 1981. Hartwood provides services in cooperation with the Fairfax-Falls Church (F-FCCSB) and Arlington Community Services Boards in Northern Virginia and in cooperation with the Henrico Area Mental Health and Developmental (HAMHD) Services in the central Virginia area. As of 1/01/17 Hartwood operates three group homes in cooperation with HAMHD. In the F-FCCSB service area Hartwood operates 14 group homes, two supported living programs, and a variety of community and respite programs including drop-in supports, in-home supports, and a facility-based residential and emergency respite program.

For purposes of this document, following descriptions apply to Fairfax-Falls Church area services and may or may not apply to other Hartwood operated services outside the catchment area.

### Who we Serve

Hartwood is a private, nonprofit organization that is dedicated to providing support to adults who have a primary diagnosis of intellectual disability. Persons served may also have accompanying challenges such as mental health, physical health, behavioral, seizure disorder, and/or other developmental disabilities and/or diagnoses. Hartwood policy precludes service admission, including continuation of service, to individuals that present a danger to self or others beyond the capacity of the Hartwood staff to safely manage.

### Mission Statement

Hartwood's aim is to empower its service participants in achieving their personal goals and to provide opportunities for participation in community life. The Board of Directors (governing body) has elected to pursue this mission primarily through the development and provision of residential services, including comprehensive full time services in group homes that have assistance available 24 hours per day. Service planning is person-centered and follows the Person-Centered Planning (PCP) process. The PCP includes service professionals, family, advocates, and the individual receiving services. This process assures that services are designed to meet demonstrated needs and personal goals important to and for the individual. Progress is reported and discussed routinely and plans are updated to meet changing needs.

Hartwood is licensed by the Virginia Department of Behavioral Health and Developmental Services (DBHD) Office of Licensure for residential and respite services for individuals with intellectual disabilities. Hartwood is enrolled with the Virginia Department of Medical Assistance Services as a provider of congregate residential, community support, and respite services.

**HARTWOOD FOUNDATION, INC.**

Hartwood Foundation, Inc.

# HUMAN RIGHTS POLICIES

## ARTICLE 1

### NOTIFICATION OF RIGHTS

#### POLICY

Hartwood Foundation, Inc. (Hartwood) recognizes the importance of individuals being informed of their rights as well as being encouraged to exercise the preservation of them.

#### PROCEDURES

Hartwood shall prominently post in each location where services are provided, a document setting forth the rights of individuals and the means by which they can contact an advocate should those rights be infringed upon. Hartwood shall also provide a copy of the written notice of the appeals procedure to any applicant who requests it or to any applicant for whom services have been denied.

Hartwood will ensure the following:

1. Each person and authorized representative / guardian as applicable, shall be given notice of the rights and the appeal process in writing upon admission. On an annual basis, the individual will again be notified of his/her rights.  
Written notices of these rights shall include:

- A. An abbreviated statement of the rights
- B. Procedures for filing a complaint or allegation
- C. The name of the advocate and how to contact the advocate
- D. A brief description of the role of the advocate

2. Receipt of this notice shall be acknowledged by each individual and authorized representative or legal guardian (as applicable) in writing and made part of the individual's record. If the individual refuses or is unable to acknowledge receipt of such notice, the person delivering such notice shall document the fact in the individual's record.
3. The rights of program participants are presented in language understandable to them. For individuals who do not speak English or are hearing impaired, translation in their native language or in sign language will be provided. Individuals will be encouraged to ask questions about their rights. If an individual is unable to read the written notice of these rights, the notice shall be read to them.
4. If there is reason to believe that the individual is unable to comprehend the written notice of these rights, then such notice shall be explained to him/her in so far as he/she is capable of understanding.

5. Copies of the Human Rights regulations will be provided to the individual and their authorized representative/ guardian (as applicable) upon request.
6. Information from the protection and advocacy agency will be displayed in the program upon that agency's request.
7. Records written shall be authentic, accurate, complete, timely, and pertinent.

## ARTICLE 2

### GENERAL PROVISIONS

#### POLICY

Hartwood adheres to the guidelines and provisions as set forth in the Department of Behavioral and Developmental Services' chapter on human rights for all individuals served.

#### PROCEDURES

1. Confirmation of authority and applicability.
  - A. Hartwood shall recognize the Code of Virginia's authorization of the human rights regulations and its purpose to further define and protect the individuals receiving services from providers of mental health, developmental, or substance abuse services in Virginia. Hartwood understands it is required to take specific actions as outlined to protect the rights of each individual and agrees to adhere to the established remedies when rights are violated or are in dispute.
  - B. Hartwood understands that, unless otherwise provided by law, the human rights chapter applies to all individuals receiving services funded by the Department of Behavioral Health and Developmental Services, except those operated by the Department of Corrections.

## ARTICLE 3

## SERVICES

### POLICY

Hartwood will make reasonable accommodations to serve the handicapped, aged, blind, etc. Individuals are provided services in accordance with their needs and every individual and the individual's authorized representative / guardian (as applicable) participates in the planning of his/her treatment based on his/her ability, need, and preference. It is Hartwood's policy not to deny services to any individual based on their race, national origin, sex, elderliness, religion, or disabilities.

### PROCEDURES

1. Fee schedule and reimbursement policies shall be set forth in writing and publicly posted.
2. These schedules and policies shall take into account the individual's need for services and their ability to pay.
3. The individual and authorized representative / guardian (as applicable) shall be encouraged to provide input in the development and review of the plan for supports, including an initial assessment plan and annual plans thereafter. Plans shall include medical, mental and behavioral screenings and assessments as may be applicable. Participation of the individual and authorized representative / guardian (as applicable) shall be documented in the case record.
4. Hartwood employs no medical/clinical staff. All applicable medical, mental and behavior screenings and assessments will be provided by qualified professionals upon admission and during the provision of service by Hartwood as may be needed to assure the health and safety and proper treatment of the individuals.
5. The initial assessment plan shall be developed prior to admission and the initial annual service plan will be developed within 60 days after admission.
6. Each individual service/treatment plan shall be designed to integrate to the maximum extent possible with all treatment being provided to the individual.
7. Each individual will be encouraged to participate in his/her services and discharge planning. All participation will be documented in the services and discharge summaries.
8. Each individual's service/treatment plan will be reviewed quarterly and modified to be responsive to the changing needs and expressed preferences of the individual and according to sound therapeutic practices. The individual will be encouraged to participate in service/treatment plan reviews.

9. Hartwood will not deny services to an individual or applicant because he/she asserts rights protected by these regulations or any other laws, nor shall the provision of services be conditioned on the waiver by an applicant or individual of these rights.
10. Hartwood shall develop, carry out, and regularly monitor policies and procedures governing discrimination in the provision of services. Hartwood shall comply with all state and federal laws, including any applicable provisions of the Americans with Disabilities Act (42 USC § 12101 et seq.), that prohibit discrimination on the basis of race, color, religion, ethnicity, age, sex, disability, or ability to pay. These policies and procedures shall require, at a minimum, the following:
  - A. An individual or anyone acting on his behalf may complain to the director if he believes that his services have been limited or denied due to discrimination.
  - B. If an individual makes a complaint of discrimination, the director shall assure that an appropriate investigation is conducted immediately. The director shall make a decision, take action, and document the action within 10 working days of receipt of the complaint.
  - C. A written copy of the decision and the director's action shall be forwarded to the individual, the human rights advocate, and any employee or employees involved.
  - D. If the individual or authorized representative / guardian (as applicable) is not satisfied with the director's decision or action, he or she may file a petition for an LHRC hearing.
11. Hartwood may restrict a particular service to individuals of the same gender, similar age, or handicap, where that restriction is reasonably related to treatment goals.
12. Individuals' plans for support shall be written in clear, understandable language.
13. All entries in the Service Recipient's records (written and digital) shall be authentic, accurate, and pertinent.

#### ARTICLE 4

## CONFIDENTIALITY

### POLICY

It is the policy of Hartwood to promote and ensure the confidentiality of all service recipients' treatment, including records. It is Hartwood's policy to inform individuals receiving or applying to receive services about their rights to confidentiality.

### PROCEDURES

1. Hartwood limits access to an individual's records to only those to whom consent has been given or for those whom the law allows, except in emergencies where failure to release pertinent information may negatively impact the health and safety of the individual or community. The decision to release information without consent will be made by the Executive Director.
2. Documentation of such action will be signed, dated and placed in the individual's record. When information is disclosed without consent, Hartwood shall adhere to the requirements set forth in the regulations. When requested, Hartwood shall inform the individual about the source of information in the record and those who have requested and received information from the record.
3. All staff shall have knowledge of the agency's policies and procedures related to confidentiality.
4. The individual and his/her authorized representative/ guardian (as applicable) may request to inspect and copy his/her record (except as specified in No. 5), make corrections (as acknowledged by the program) or additional statements in the record rectifying any alleged error. Hartwood shall provide assistance, without charge, to individuals as may be requested in reading, understanding and providing corrections to their service records.
5. Only upon review of the record and documentation by the treating physicians that release of the record would be injurious to the individual's physical health, mental health or general well-being, shall such information be withheld from the individual. When access is denied, Hartwood shall notify the advocate and inform the individual of others who may review the record. Hartwood will also document in the record and inform the individual of the reason for the denial, time limits, and conditions for removal of the limitations.
6. Hartwood shall comply with the Virginia Privacy-Protection Act of 1976.
7. Hartwood shall comply with the applicable federal regulations governing the release of information of substance abuse client treatment, pursuant to 42C.FR., Part 2.
8. Where disclosure to the individual is limited or denied, disclosure shall be made upon request, to the individual's authorized representative/ guardian (as applicable), or any lawyer, physician, or psychologist designated by that individual



## ARTICLE 5

### CONSENT

#### POLICY

It is the policy of Hartwood to make every effort to ensure that all treatment, treatment planning, and management of confidential information is carried out with the informed consent of service participants.

Except in emergencies, Hartwood shall not administer treatment or any other service presenting a significant risk to an individual without his/her informed consent. If the individual is incapable of giving informed consent, an authorized representative / legal guardian (as applicable) shall give the informed consent. All consent to such treatment shall be documented by the person obtaining the consent, with the treatment involved and the consent being specified in writing.

Hartwood shall involve service recipients to the extent of the individual's capacity in decision making regarding all aspects of services.

#### PROCEDURES

1. Policies regarding individuals' concerns of treatment, treatment planning, and confidentiality will be stated in clear language and readily accessible to individuals and their authorized representatives / guardians (as applicable).
2. Treatment decision-making will be documented in plans for supports. Individuals will be actively involved in the development, review and revision of their plans. Hartwood shall ask the individual to express his/her preferences and honor those preferences to the extent possible. Where treatment involves the administration of psychotropic medications, that specific medication and its potential side effects must be discussed with the individual by medical staff.
3. In cases where the capacity of the individual to give informed consent is in doubt, Hartwood will provide a review conducted by a qualified professional who is not otherwise engaged in providing or offering treatment to the individual
  - A. Hartwood shall make sure that an individual's capacity to consent is reviewed at least every six months or as the individual's condition warrants according to sound therapeutic practice to assess the continued need for a surrogate decision maker. Such reviews, or decisions not to review, shall be documented in the individual's service record and communicated in writing to the surrogate decision maker. Hartwood shall also consider an individual's request for review in a timely manner.
  - B. Hartwood shall inform the human rights advocate when the individual or family objects to the qualified professional's determination of capacity.

- C. Hartwood shall delay all actions which require consent until an independent evaluation is obtained.
4. In the event that the individual is determined incapable of giving informed consent, and does not have an appointed authorized representative or guardian, an authorized representative will then be appointed by the Executive Director, or in his absence an authorized designee. The authorized representative will be the person best situated by law and relationship to make a decision on behalf of that individual. The order of priority for designating the authorized representative will be as follows:
    - A. An attorney-in-fact currently authorized to give consent under the terms of a durable power of attorney, or a person designated in writing executed pursuant to Code Section 54.1-2984, if the individual has a terminal condition, or a legal guardian of the individual not employed by the residential program and currently authorized to give consent.
    - B. The individual's next of kin. In designating the next of kin, the director shall select the best qualified person, if available, according to the following order of priority unless, from all information available to the director, another person in a lower priority is clearly better qualified: spouse, an adult child, a parent, an adult brother or sister, any other relative of the individual. If the individual expresses a preference for one family member over another in the same category, the director shall appoint that family member.
    - C. If no other person specified in subdivisions a. and b. is available and willing to serve, a provider may appoint a "next friend" of the individual. After a review and finding that the proposed next friend has shared a residence with or provided support and assistance to the individual for a period of at least six months prior to the designation and the proposed next friend has agreed to accept these responsibilities, has been reviewed and approved by the LHRC, and the individual has no objection, the proposed "next friend" shall be appointed authorized representative.
  5. Where an authorized representative has been designated for an individual, such representative shall be informed whenever the individual objects to a proposed treatment, which presents a "significant risk" to the individual. The original plan, the individual's objection, and the stated reasons for such objection shall be made part of the service record.
  6. Hartwood will not administer treatment or any other service, which presents a significant risk to an individual without the informed consent of the individual except in cases of emergencies. An emergency is defined as "a situation in which an individual's condition has deteriorated to the point that there is a reason to believe that he/she presents an imminent danger of inflicting serious physical harm to self or others, or where that individual is so substantially unable to care for him/herself that there is imminent risk of serious harm or deterioration."
  7. Where an authorized representative is involved, the authorized representative will be informed of all emergencies as defined above, and kept apprised of the results of treatment. All facts

and circumstances of the emergency and any related treatment will be documented in the individual's record by appropriate staff and reviewed by the Executive Director or designee within one business day. Hartwood shall obtain and document the individual's informed consent to continue any emergency treatment that lasts longer than 24 hours after the emergency began. Hartwood staff will respond to such emergencies by contacting emergency services for immediate assistance as may be appropriate.

8. Consent forms authorizing the disclosure of confidential information to persons or agencies outside of Hartwood must be signed in the presence of a witness, bear the signature of the witness and the signature of the individual and his/her authorized representative / guardian (as applicable) prior to any release of information, except as otherwise permitted or required by law. The completed consent form must be specific with regard to:
  - A. The nature of the information to be disclosed, and the purpose for disclosure
  - B. The name of the organization and /or person(s) to whom disclosure to be made
  - C. The effective date of consent
  - D. The date of expiration of consent
  - E. The name of the organization making the disclosure.
9. When information is disclosed, Hartwood shall attach information regarding further disclosure.
10. Hartwood shall notify the human rights advocate when the individual or authorized representative/ guardian (as applicable) objects to the disclosure of specific information or a proposed treatment.
11. Hartwood shall respond to requests for discharge in accordance with regulations set forth by the Code of Virginia. Hartwood shall ensure that individuals requesting discharge are not subject to reprisal, punishment or reduction in services.

## ARTICLE 6

### DIGNITY

#### POLICY

Hartwood will operate its programs in such a manner that the dignity of each individual as a human being will be respected at all times, regardless of his/her need for treatment or services.

#### PROCEDURES

1. All individuals shall be called by their preferred or legal name.
2. All employees of Hartwood shall make all reasonable efforts to protect individuals from harm or abuse and exploitation.
3. All individuals have the right to apply for and to receive any reasonable assistance in applying for or making full use of any public services or benefits to which they may be entitled, including but not limited to educational or vocational services, housing assistance, welfare benefits, services or benefits under Title XI, XVI, XVIII and XIX of the Social Security Act, and services from legal and/or advocacy service agencies.
4. Hartwood will be responsible for ensuring that staff display appropriate respect for individuals in speaking with or about them, and that all individual preferences with regard to such things as menus, clothing, religious activities, and activity programs are taken into account to the degree possible in daily activities.
5. Procedures for reporting suspected instances of abuse, neglect or exploitation will be followed in accordance with state and federal law.
6. Rules and codes of conduct pertaining to all Hartwood programs shall be provided to individuals as appropriate.
7. The residential program will replicate as closely as possible a normalized living arrangement in a setting which is livable, defined as being safe, clean and with freedom of movement appropriate to the individual's condition and competence. Other minimum criteria of autonomy, such as the right to communicate in private with anyone outside of the facility, to include any lawyer, judge, legislator, clergyman, licensed health practitioner, authorized representatives / guardian, advocates, the Inspector General, and employees of the protection and advocacy agency will not be infringed. Religious and political opinions will be respected as well as the individual's right to privacy.
8. Hartwood will ensure that all service recipients have sufficient and suitable clothing for their exclusive use.

9. Each individual has the right to have paper, pencil and stamps provided free of charge for at least one letter every day upon request.
10. An individual, when necessary, shall receive assistance in writing and reading mail.
11. Whenever a staff member has probable cause to believe that mail received by an individual contains contraband or anything that could create a danger to him/her or others, the mail may be opened, but not read by the staff member in the presence of the individual.
12. Upon request and subject to appropriate management limitation, the individual shall have the right to make, without charge, local telephone calls from a telephone within the program.
13. To assure equal access to the telephone, individuals may have designated times to make personal telephone calls, so that others can eat, sleep, or participate in planned program activities. This restriction does not apply to emergency or business calls.
14. Individuals shall have the right to practice a religion and participate in religious services subject to their availability, provided that such services are not dangerous to self or others and do not infringe on the freedom of others.
15. Hartwood shall assure that individuals are provided with general information regarding program services and policies in a manner easily understood by the individual.
16. Hartwood shall assure that individuals receive a nutritionally adequate varied and appetizing diet prepared and served under sanitary conditions and served at appropriate times and temperatures.
17. Hartwood shall assure that residential settings are well maintained and assure that individuals residing in group homes live in a safe, sanitary and humane physical environment which provides each individual, at minimum;
  - A. Reasonable privacy and private storage space
  - B. An adequate number and design of private, operating toilets, sinks, showers and tubs
  - C. Direct outside air provided by a window that opens or by an air conditioner
  - D. Windows or skylights in all major areas used by individuals
  - E. Clean air, free of bad odors
  - F. Room temperatures that are comfortable year round and compatible with health requirements
18. Hartwood shall assure individuals have the right to have or refuse visitors.

19. As provider Hartwood shall:

- A. Recognize, respect, support, and protect the dignity rights of each individual at all times.
- B. Develop, carry out, and regularly monitor policies and procedures that assure the protection of each individual's rights.
- C. Assure the following relative to abuse, neglect, and exploitation:
  - i. Policies and procedures governing harm, abuse, neglect and exploitation of individuals receiving services from Hartwood shall require that as a condition of employment or volunteering, any employee, volunteer, consultant or student who knows of or has reason to believe that an individual may have been abused, neglected, or exploited at any location covered by these regulations, shall immediately report this information directly to the director. All staff / employees / volunteers shall be considered mandated reporters.
  - ii. The director shall immediately take necessary steps to protect the individual receiving services until an investigation is complete. This may include the following:
    - a. Direct the employee or employees involved to have no further contact with the individual
    - b. Temporarily reassign or transfer the employee or employees involved to a position that has no direct contact with the individuals receiving services
    - c. Temporarily suspend the involved employee or employees pending completion of an investigation

20. Exceptions and conditions to provider's duties:

- A. If an individual has funds for clothing and to buy paper, pencils, and stamps to send a letter every day, the provider does not have to pay for them.
- B. The provider may prohibit any religious services or practices that present a danger of bodily injury to any individual or interfere with another individual's religious beliefs or practices. Participation in religious services or practices may be reasonably limited by the provider in accordance with other general rules limiting privileges or times or places of activities.
- C. If a provider has reasonable cause to believe that an individual's mail contains illegal material or anything dangerous, the director or designee may open the mail, but not read it, in the presence of the individual. The director or designee shall inform the individual of the reasons for the concern. An individual's ability to communicate by mail shall be limited if, in the judgement of a licensed

physician or doctoral level psychologist (in the exercise of sound therapeutic practice), the individual's communication with another person or persons will result in demonstrable harm to the individual's mental health. The reasons for the restriction shall be documented in the individual's service record and the human rights advocate shall be notified prior to implementation.

- D. Hartwood may limit the use of the telephone in the following ways:
  - i. Limit use to certain times and places to make sure that other individuals have equal access to the telephone and that they can eat, sleep, or participate in an activity without being disturbed.
  - ii. Limit use by individuals receiving services for substance abuse, but only if sound therapeutic practice requires the restriction and the human rights advocate is notified.
  - iii. Limit an individual's access to the telephone if communication with another person or persons will result in demonstrable harm to the individual and is significantly impacting treatment in the judgement of a licensed physician or doctoral level psychologist. The reasons for the restriction shall be documented in the individual's service record and the human rights advocate shall be notified prior to implementation.
- E. Hartwood may limit or supervise an individual's visitors when, in the judgement of a licensed physician or doctoral level psychologist, the visits result in demonstrable harm to the individual and significantly impact the individual's treatment; or when the visitors are suspected of bringing contraband or are in any other way threatening harm to the individual. The reasons for the restriction shall be documented in the individual's service record and the human rights advocate shall be notified prior to implementation.
- F. Hartwood may stop, report, or intervene to prevent any criminal act.

## ARTICLE 7

### LEAST RESTRICTIVE ALTERNATIVE

## POLICY

Each program participant shall be offered services/treatment in a program setting, which is no more restrictive of the individual's physical or social liberties than is necessary to achieve a substantial therapeutic benefit or to significantly reduce a foreseeable risk to the individual or others when alternative kinds of treatment or treatment settings are reasonably available. Therapeutic restriction may be used only on the basis of therapeutic or administrative necessity demonstrated and documented in accordance with the Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers of the Department of Behavioral Health and Developmental Services.

## PROCEDURES

1. Each program participant's activities shall be reviewed at least quarterly by the appropriate staff to assure that his/her program placement is in accordance with his/her level of functioning.
2. Staff may determine that a therapeutic restriction is necessary when other less restrictive alternatives have been tried and have failed. Only then, a specific restriction will be documented as necessary, with provisions made for the review of the therapeutic need for the restriction every seven (7) days.
  - A. No restrictions shall conflict with provisions of the Human Rights Regulation, Hartwood policies implementing these regulations, or the individual's plan for supports.
  - B. Therapeutic restrictions shall be time limited, have appropriate consequences and be clearly documented in the service recipient's file, including reasons for restrictions.
  - C. Behavior criteria for imposing and /or removing a therapeutic restriction will be communicated in an appropriate manner to the individual and /or the authorized representative / guardian (as applicable).
  - D. Clear documentation of the attempt of less restrictive alternatives must be made.
3. From admission until discharge from a service, each individual is entitled to:
  - A. Enjoy all the freedoms of everyday life that are consistent with his/her need for services, protection, and the protection of others; and that do not interfere with his/her services or the services of others. These freedoms include the following:
    - i. Freedom to move within the service setting, its grounds and the community.
    - ii. Freedom to communicate, associate, and meet privately with anyone the individual chooses.



- iii. Freedom to have and spend personal money.
  - iv. Freedom to see, hear, or receive television, radio, books, and newspapers whether privately owned or in a library or public area of the service setting.
  - v. Freedom to keep and use personal clothing and other personal items.
  - vi. Freedom to use recreational facilities and enjoy the outdoors.
  - vii. Freedom to make purchases in canteens, vending machines or stores selling a basic selection of food and clothing.
- B. Receive services in that setting and under those conditions that are least restrictive of his/her freedom.
4. Hartwood's duties:
- A. Hartwood shall encourage each individual's participation in normal activities and conditions of everyday living and support each individual's freedoms.
  - B. Hartwood shall not limit or restrict any individual's freedom more than is needed to achieve a therapeutic benefit, maintain a safe and orderly environment, or intervene in an emergency.
  - C. Hartwood shall not impose any restriction on an individual unless the restriction is justified and carried out according to these regulations.
  - D. Hartwood shall make sure that a qualified professional regularly reviews every restriction and that the restriction is discontinued when the individual has met the criteria for removal.
  - E. Hartwood shall not place any restriction on the physical or personal freedom of any individual solely because criminal or delinquency charges are pending against that individual, except in the situation where the individual is transferred directly from jail or detention for the purpose of receiving an evaluation or treatment.
5. Exceptions and conditions on Hartwood's duties:
- A. Except as provided in 12 VAC 35-115-50 E, Hartwood may impose restrictions if a qualified professional involved in providing services to the individual has, in advance:
    - i. Assessed and documented all possible alternatives to the proposed restriction, taking into account the individual's medical and mental

condition, behavior, preferences, nursing and medication needs, and the ability to function independently;

- ii. Determined that the proposed restriction is necessary for effective treatment of the individual or to protect him or others from personal harm, injury or death.
  - iii. Documented in the individual's services record the specific reason for the restriction; and
  - iv. Explained, so the individual can understand, the reason for the restriction, the criteria for removal, and the individual's right to a fair review of whether the restriction is permissible.
- B. Hartwood may impose a restriction if a court has ordered Hartwood to impose the restriction or if Hartwood is otherwise required by law to impose such restriction. Such restrictions shall be documented in the individual's service record.
- C. Hartwood may develop and enforce written rules of conduct, but only if the rules do not conflict with these regulations or any individual's plan for support, and the rules are needed to maintain a safe and orderly environment.
- D. Hartwood shall, in the development of these rules of conduct:
- i. Get as many suggestions as possible from individuals who are expected to obey the rules.
  - ii. Apply these rules in the same way to each individual.
  - iii. Give the rules to and review them with each individual and his authorized representative / guardian (as applicable) in a way that the individual can understand them. This includes explaining possible consequences for violating the rules.
  - iv. Post the rules in summary form in all areas to which individuals and their families have regular access.
  - v. Submit the rules to the LHRC for review and approval before putting them into effect, before any changes are made to the rules, and upon request of the advocate.
  - vi. Prohibit individuals from disciplining other individuals, except as part of an organized self-government program conducted according to a written policy approved in advance by the LHRC.

## ARTICLE 8

### RESTRAINT / INTRUSIVE AVERSIVE THERAPY

#### POLICY

It is the policy of Hartwood that restraint shall not be permitted, except in emergency situations where an individual appears to present an immediate danger to him/herself or others.

It is also the policy of Hartwood to not use restraints in providing care. In circumstances where an adaptive device (helmet, bed railings, walkers, etc.) is needed for the health, safety, and /or welfare of any individual residing in a Hartwood operated program, a written doctor's order must be obtained for such device. The monitoring of the continued need for such device must be documented in the individual's record no less than quarterly and a new doctor's order must be obtained annually.

It is the policy of Hartwood that intrusive aversive therapy shall not be permitted.

#### PROCEDURES

1. Physical restraints are not permitted except in situations where there is reason to believe the individual presents an imminent danger of inflicting serious physical harm to him /herself or others.
2. When staff is unable to safely manage aggressive acting-out behavior without additional resources, they will contact law enforcement authorities. Except in emergency situations, only staff that maintain current certification in an approved behavior management program (which includes training in the appropriate use of physical restraints) are permitted to utilize physical restraints.
3. Physical restraints may be used in emergency situations for no longer than 30 minutes.
4. Providers shall obtain approval of the LHRC of any restriction imposed on an individual's rights under subsection 12VAC35-115-50 that lasts longer than seven days or is imposed three or more times during a 30-day time period. If the LHRC finds that the restriction is not being implemented in accordance with the regulation, the director shall be notified and the LHRC shall provide recommendations.
5. All applications of restraint will be documented on an incident report within four (4) hours by appropriate staff and will include:

A. Date and time of incident

- B. Staff involved
  - C. Circumstances and reasons for restraint, including any other less restrictive behavior management techniques attempted;
  - D. Duration of the restraint
  - E. Type of techniques used (i.e. One arm T restraint, etc.)
  - F. Outcome(s)
6. A copy of the incident report will be forwarded to the Senior Services Coordinator and Executive Director. The incident reports will be reviewed within 1 business day to ensure that the use and documentation of physical restraint is in accordance with program procedures.
  7. Any individual subjected to physical restraint will be given an opportunity to obtain an independent clinical review of the necessity and propriety of its use if so desired.
  8. Hartwood will monitor the program to ensure that intrusive aversive therapy is not used and will investigate any reports of its use. The Human Rights Advocate will be notified as required.
  9. Hartwood shall not use a restraint that places the individual's body in a prone (face down) position.
  10. Hartwood shall assure that less restrictive measures are considered and attempted prior to the use of restraint and assure that such measures are clearly documented in the individual's record.

## ARTICLE 9

### SECLUSION

#### POLICY

It is the policy of Hartwood that seclusion shall not be permitted.

#### PROCEDURES

1. Hartwood shall comply with all applicable state and federal laws and regulations, accreditation standards, and third party payer requirements as they relate to seclusion. Whenever an inconsistency exists between these regulations and federal regulations, accreditation standards, or the requirements of third party payers, the provider will be held to the higher standard.
2. Hartwood shall the department whenever a regulatory or accreditation agency or third party payer identifies problems in Hartwood's compliance with any applicable seclusion standard.

## ARTICLE 10

### TIME OUT

#### POLICY

It is the policy of Hartwood that time out shall not be permitted.

#### PROCEDURES

1. Hartwood shall comply with all applicable state and federal laws and regulations, accreditation standards, and third party payer requirements as they relate to time out. Whenever an inconsistency exists between these regulations and federal regulations, accreditation standards, or the requirements of third party payers, the provider will be held to the higher standard.
2. Hartwood shall notify the department whenever a regulatory or accreditation agency or third party payer identifies problems in Hartwood's compliance with any applicable time out standard.

## ARTICLE 11

### GENERAL RULES OF CONDUCT

#### POLICY

It is the policy of Hartwood that restrictions of individuals' rights shall be avoided unless there is documented evidence that a person's behavior or actions impose safety risks within the therapeutic environment or upon other program participants and staff.

#### PROCEDURES

1. The restriction shall not conflict with any of the other provisions of the regulations, the program's written policies implementing the regulations, or the individual's plan for supports.
2. The restriction shall be communicated to the individual and authorized representative / guardian (as applicable), and the use of and reasons for its use documented in the individual's record.
3. The restriction shall be fairly applied to other similarly situated individuals in Hartwood programs.
4. The restriction shall be defined and enforced with the maximum involvement of the individual.
5. The restriction of rights shall not involve the use of restraint, seclusion, time out, or intrusive aversive therapy.

## ARTICLE 12

### BEHAVIORAL TREATMENT PLANS

#### POLICY

It is the policy of Hartwood that behavioral treatment plans will be used as needed to support individuals in improving participate in normal activities and conditions of everyday living, reduce challenging behaviors, alleviate symptoms of psychopathology and maintain a safe and orderly environment.

#### PROCEDURES

1. Hartwood may use individualized restrictions such as restraint or time out in a behavioral treatment plan to address challenging behaviors that present an immediate danger to the individual or others, but only after a licensed professional has conducted a detailed and systematic assessment of the behavior and the situations in which the behavior occurs.
2. Hartwood shall document in the individual's services record that the lack of success or probable success of less restrictive procedures attempted or considered, and the risks associated with not treating the behavior, are greater than any risks associated with the use of the proposed restrictions.
2. Hartwood will ensure:
  - A. Behavioral treatment plans are initiated, developed, carried out, and monitored by professionals who are qualified by expertise, training, education, or credentials to do so;
  - B. Behavioral treatment plans include nonrestrictive procedures and environmental modifications that address the targeted behavior; and
  - C. Behavioral treatment plans are submitted to an independent review committee, prior to implementation, for review and approval of the technical adequacy of the plan and data collection procedures.
4. Hartwood shall submit any behavioral treatment plan to the LHRC, which shall determine whether the plan is in accordance with this chapter prior to implementation.



5. If either the LHRC or SCC finds that the behavioral treatment plan violates the rights of the individual or is not being implemented in accordance with the regulations, the LHRC or SCC shall notify the director and provide recommendations regarding the proposed plan.
6. Behavioral treatment plans involving the use of restraint or time out shall be reviewed quarterly by the independent review committee and the LHRC to determine if the use of restraint has resulted in improvements in functioning of the individual.
7. Providers shall not use seclusion in a behavioral treatment plan.

## ARTICLE 13

### WORK

#### POLICY

Individuals have a right to engage or not engage in work or work related activities consistent with their service needs while receiving services. Personal maintenance and personal housekeeping by individuals receiving services in residential settings are not subject to this provision. As a provider of residential services, Hartwood shall not require program participants to perform compensable work.

LEGAL RIGHTS

POLICY

It is the policy of Hartwood to ensure that all individuals are afforded the legal rights of all citizens of Virginia and the United States. Such rights include, but are not limited to, the following:

1. The right to dispose of property
2. The right to execute legal instruments
3. The right to buy or sell
4. The right to enter into contractual relationships
5. The right to register and vote
6. The right to marry and obtain a separation, divorce, or annulment
7. The right to hold a professional, occupational, or vehicle operator's license
8. The right to make a will
9. The right to access to legal counsel and to the courts

## RESEARCH

### POLICY

Hartwood does not involve any individual in research.

### PROCEDURES

1. Each individual has a right to choose to participate or not participate in human research outside of Hartwood.
2. Hartwood's duties:
  - A. Provided that Hartwood is informed of the individual's decision to participate in research, Hartwood shall inform the Local Human Rights Committee regarding the individual's decision to participate in any human research project and, as information may be made available to Hartwood, provide periodic updates on the status of the individual's participation to the committee.

## ARTICLE 16

### HUMAN RIGHTS COMPLAINT PROCESS

#### POLICY

Hartwood will ensure that individuals have access to an effective procedure by which complaints and grievances related to the alleged abridgement of human rights shall be fairly and objectively reviewed.

#### PROCEDURES

1. Complaint and fair hearing.

A. Each individual has a right to:

- i. Complain that Hartwood has violated any of the rights assured under the Human Rights regulations.
- ii. Have a timely and fair review of any complaint according the Human Rights chapter (regulations).
- iii. Have someone file a complaint on his/her behalf.
- iv. Use these and other complaint procedures.
- v. Complain under any other applicable law, including to the protection and advocacy agency.

B. The individual shall:

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

C. Upon receipt of a complaint, Hartwood shall:

- i. Notify the department of the complaint as soon as possible, but no later than the next business day.
  - ii. Ensure that the director or the director's designee contacts the individual regarding the complaint within 24 hours.
  - iii. Initiate an impartial investigation into, or resolution of, the complaint as soon as possible, but no later than the next business day.
  - iv. Take all steps necessary to ensure that individuals involved in the complaint are protected from retaliation and harm.
  - v. Assist the individuals making a complaint in understanding the human rights complaint process, Hartwood's complaint resolution policies and procedures, and the confidentiality of involved information.
  - vi. Ensure that all communications to the individual are in the manner, format, and language most easily understood by the individual.
  - vii. Adhere to the reporting requirement in 12VAC35-115-230.
  - viii. Report the director's decision and action plan within 10 working days to the individual, authorized representative / guardian (as applicable) and human rights advocate, if applicable.
- D. Hartwood shall have complaint resolution policies and procedures that address all of the requirements of the human rights subsections C and E under 12VAC35-115-175.
- E. Hartwood's complaint resolution policies shall be in writing and approved by the department prior to implementation. The policies and procedures shall:
- i. Ensure that anyone who believes Hartwood has violated an individual's rights under the human rights regulations chapter can report it to the director or the human rights advocate for resolution.
  - ii. Ensure that employees shall not take, threaten to take, permit or condone any action a) to punish or retaliate against anyone filing a complaint or b) to prevent anyone from filing or helping an individual file a complaint either under the human rights regulations chapter or with an outside entity.
  - iii. Ensure that every attempt is made to resolve an individual's complaint as quickly as possible.

- iv. Provide opportunities for timely negotiation and resolution for all complaints, including the additional requirements related to abuse, neglect or exploitation in 12VAC35-115-175 subsection F.
- v. Establish a process for designating the director's responsibilities to ensure timely complaint reporting and resolution.
- vi. Detail the program's complaint review or investigation process, including a) specific actions the program will take to protect the individual and gather and document relevant information and b) how and when the individual and his authorized representatives, if applicable, will receive updates on the progress of the review.
- vii. Detail notification requirements and deadlines including procedures for providing:
  - a. Hartwood's complaint policies and procedures to all individuals and authorized representatives at admission to service.
  - b. Written notification to the individual regarding his right to and the process to appeal the director's decision and action plan to the LHRC.
- viii. Detail staff training requirements regarding Hartwood's complaint resolution process and requirements.

F. Additional requirements for complaints involving abuse, neglect, or exploitation:

- i. Hartwood's director shall take immediate steps to protect the individual until the investigation is complete, including appropriate personnel actions.
- ii. Any instance of seclusion or restraint that does not comply with the human rights regulations or an approved variance, or that results in injury to an individual, shall be reported to the authorized representative / guardian (as applicable) and the department in accordance with the requirements for reporting allegations of abuse.
- iii. The director shall notify the department and authorized representatives / guardian (as applicable) of an allegation of abuse or neglect within 24 hours of the receipt of the allegation.
- iv. The director shall ensure that the investigation is conducted by a person trained to do investigations and who is not involved in the issues under investigation.
- v. The investigator shall provide a written report of the results of the investigation of abuse or neglect to the director and the human rights advocate within 10 working days from the date the investigation began unless an extension has been granted.
- vi. The director shall decide, based on the investigator's report and any other available information, whether the abuse, neglect, or exploitation occurred. Unless otherwise

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

- vii. The director shall submit the final decision and action plan, if applicable, to the individual, authorized representative/ guardian (as applicable) and human rights advocate within 10 working days of its completion.
- G. If the human rights advocate concludes that there is substantial risk that serious or irreparable harm will result if the complaint is not resolved immediately, the human rights advocate shall inform the director, Hartwood's governing body, and the LHRC. The LHRC shall conduct a hearing according to the special procedures for emergency hearings in 12VAC35-115-190.
- H. The director shall cooperate fully with any abuse or neglect complaint investigation conducted by a local department of social services.
- I. If at any time the director has reason to suspect that the abusive, neglectful, or exploitive act is a crime and that it occurred on the program premises, the director or designee shall immediately contact the appropriate law-enforcement authorities and cooperate fully with any investigation that may result.



## LOCAL HUMAN RIGHTS COMMITTEE HEARING AND REVIEW PROCEDURES

### POLICY

Hartwood will ensure that any individual and his/ her authorized representative / guardian (as applicable) has access to and understanding of the LHRC hearing, review, and appeal procedures.

1. Any individual or his authorized representative / guardian (as applicable) who disagrees with the director's final decision or action plan resulting from any complaint resolution process under the human rights chapter may request an LHRC hearing by following the procedures described in this section:
  - A. The individual or his authorized representative / guardian (as applicable) shall file the petition for a hearing with the chairperson of the LHRC within 10 working days from receipt of the director's action plan or final decision on the complaint.
    - i. The petition for hearing shall be in writing. It shall contain all facts and arguments surrounding the complaint and reference any section of the human rights chapter that the individual believes Hartwood violated.
    - ii. The human rights advocate or any person the individual chooses may help the individual in filing the petition. If the individual chooses a person other than the human rights advocate to help him/ her, he/she and the chosen representative may request the human rights advocate's assistance in filing the petition.
  - B. The LHRC chair shall forward a copy of the petition to the director and the human rights advocate as soon as he receives it. A copy of the petition shall also be forwarded to Hartwood's governing body.
  - C. Within five working days, the director shall submit to the LHRC:
    - i. A written response to everything contained in the petition.
    - ii. A copy of the entire written record of the complaint.
  - D. The LHRC hearing procedures:
    - i. The LHRC shall hold a hearing within 20 working days of receiving the petition.
    - ii. The parties shall have at least five working days' notice of the hearing.
    - iii. The director or his designee shall attend the hearing.
    - iv. The individual or his authorized representative / guardian (as applicable) making the complaint shall attend the hearing.

- v. The hearing is an informal process and as such, the rules [of evidence] are not applicable.
  - vi. At the hearing, the parties and chosen representatives and designees have the right to present witnesses and other evidence and the opportunity to be heard.
  - vii. The hearing shall be conducted in a non-adversarial manner.
    - a. Each party shall be provided the opportunity to present its facts.
    - b. Each party shall direct questions to the LHRC rather than to the other party.
    - a. The LHRC shall ask questions, as appropriate to each party.
- E. Within 10 working days after the hearing ends, the LHRC shall give its written findings of fact and recommendations to the parties and their representatives. Whenever appropriate, the LHRC shall identify information that it believes the director shall take into account in making decisions concerning discipline or termination of personnel.
- F. Within five working days of receiving the LHRC's findings and recommendations, the director shall give the individual, the individual's chosen representative, the human rights advocate, the government body, and the LHRC a written action plan he intends to implement to respond to the LHRC's findings and recommendations. Along with the action plan, the director shall provide written notice to the individual about the timeframe for the individual's response and a statement that if the individual does not respond, then the complaint will be closed. The plan shall not be implemented for five working days after it is submitted, unless the individual agrees to its implementation sooner.
- G. The individual, chosen representative, the human rights advocate, or the LHRC may object to the action plan within five working days by stating the objection and what the director can do to resolve the objection.
- i. If an objection is made, the director may not implement the action plan until the objection is resolved. The provider, may however, implement any portion of the plan to which the individual making the complaint agrees.
  - ii. If no one objects to the action plan, the director shall begin to implement the plan on the sixth working day after he submitted, or as otherwise provided in the plan.
- H. If an objection to the action plan is made and the director does not resolve the objection to the action plan to the individual's satisfaction within two working days following its receipt by the director, the individual may appeal to the SHRC under 12VAC35-115-210.
2. Special Procedures for Emergency Hearings by the LHRC.
- A. If the human rights advocate informs the LHRC of a substantial risk that serious and irreparable harm will result if a complaint is not resolved immediately, the LHRC shall hold and conclude a preliminary hearing within 72 hours of receiving this information.

- i. The director and the human rights advocate shall attend the hearing. The individual and the legally authorized representative may attend the hearing.
    - ii. The hearing shall be conducted according to the procedures in 12 VAC 35-115-180, but it shall be conducted on an expedited basis.
  - B. At the end of the hearing, the LHRC shall make preliminary findings and, if a violation is found, shall make preliminary recommendations to the director, Hartwood, and Hartwood's governing body.
  - C. The director shall formulate and carry out an action plan within 24 hours of receiving the LHRC's preliminary recommendations. A copy of the plan shall be sent to the human rights advocate, the individual, and the governing body.
  - D. If the individual or the human rights advocate objects within 24 hours to the LHRC findings or recommendations or to the director's action plan, the LHRC shall conduct a full hearing within five working days of the objection, following the procedures outlined in 12 VAC 35-115-180.
  - E. Either party may appeal the LHRC's decision to the SHRC under 12 VAC 35-115-210.
3. Special procedures for LHRC reviews involving consent and authorization.
  - A. The individual, his authorized representative / guardian (as applicable), or anyone acting on the individual's behalf may request in writing that the LHRC review the following situations and issue a decision:
    - i. If an individual objects at any time to the appointment of a specific person as his/her authorized representatives or any decision for which consent or authorization is required and has been given by his authorized representative, other than a legal guardian, he/ she may ask the LHRC to decide whether his/her capacity was properly evaluated, the authorized representatives was properly appointed, or his authorized representative's decision was made based on the individual's basic values and any preferences previously expressed by the individual to the extent that they are known, and if unknown or unclear in the individual's best interests.
      - a. The provider shall take no action for which consent or authorization is required if the individual objects, except in an emergency or as otherwise permitted by law pending the LHRC review.
      - b. If the LHRC determines that the individual's capacity was properly evaluated, the authorized representatives is properly designated, or the authorized representative's decision was made based on the individual's basic values and any preferences previously expressed by the individual to the extent that they are

known, or if unknown or unclear in the individual's best interests, then the provider may proceed according to the decision of the authorized representative.

- c. If the LHRC determines that the individual's capacity was not properly evaluated or the authorized representative was not properly designated, then the provider shall take no action for which consent is required except in an emergency or as otherwise required or permitted by law; until the capacity review and authorized representative designation are properly done.
  - d. If the LHRC determines that that authorized representative's decision was not made based on the individual's basic values and any preference previously expressed by the individual to the extent know, and if unknown r unclear, made in the individual's best interests, then the provider shall take steps to remove the authorized representative pursuant to 12VAC35-115-146.
- ii. If an individual or his family member has obtained an independent evaluation of the individual's capacity to consent to treatment or services or to participate in human research or to authorize the disclosure of information under 12VAC35-115-80, and the opinion of that evaluator conflicts with the opinion of the provider's evaluator, the LHRC may be requested to decide which evaluation will control.
- a. If the LHRC agrees that the individual lacks the capacity to consent to treatment or services or authorize disclosure of information, the director may begin or continue treatment or research or disclose information, but only with the appropriate consent or authorization of the authorized representative. The LHRC shall advise the individual of his right to appeal this determination to the SHRC under 12CVAC35-115-210.
  - b. If the LHRC does not agree that the individual lacks the capacity to consent to treatment or services or authorize disclosure of information, the director shall not begin any treatment or research, or disclose information without the individual's consent or authorization, or shall take immediate steps to discontinue any actions begun without the consent or authorization of the individual. The director may appeal to the SHRC under 12VAC35-115-210 but may not take any further action until the SHRC issues its opinion.
- iii. If a director makes a decision that affects an individual and the individual believes that the decision requires his personal consent or authorization or that of his / her authorized representative, he/ she may object and ask the LHRC to decide whether consent or authorization is required.

Regardless of the individual's capacity to consent to treatment or services or to authorize the disclosure of information, if the LHRC determines that a decision made

by a director requires consent or authorization that was not obtained, the director shall immediately stop such action unless and until such consent or authorization is obtained. The director may appeal to the SHRC under 12VAC35-115-210 but may not take any further action until the SHRC issues its opinion.

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

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

4. State Human Rights Committee appeals procedures:

A. Any party may appeal to the SHRC if he/she disagrees with any of the following:

- i. An LHRC's final findings of fact, conclusions, and recommendations following a hearing.
- ii. A director's final action plan following an LHRC hearing.
- iii. An LHRC's final decision regarding the capacity of an individual to consent to treatment, services, or research or to authorize disclosure of information.
- iv. An LHRC's final decision concerning whether consent or authorization is needed for the director to take certain action.

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

- i. The appeal shall explain the reasons for disagreement with the final decision or action plan.
- ii. The human rights advocate or any other person may help in filing the appeal. If the individual chooses a person other than the human rights advocate to help him/ her, he/she and the chosen representative may request the human rights advocate's help in filing the appeal.

- iii. The party appealing shall give a copy of the appeal to the other party, the human rights advocate and the LHRC.
  - iv. If the director is the party appealing, he/ she shall first request and get written permission to appeal from the commissioner or HFI's government body, as appropriate. If the director does not get this written permission and note the appeal within 10 working days, his/ her right to appeal is waived.
- C. If the director is appealing, the individual may file a written statement with the SHRC within five working days after receiving a copy of the appeal. If the individual is appealing, the director shall file a written statement with the SHRC within five working days after receiving a copy of the appeal.
- D. Within five working days of noting or being notified of an appeal, the director shall forward a complete record of the LHRC to the SHRC. The record shall include, at a minimum:
- i. The original petition or information filed with the LHRC and any statement filed by the director in response.
  - ii. Parts of the individual's service record that the LHRC considered and any other parts of the services record submitted to, but not considered by, the LHRC that either party considers relevant.
  - iii. All written documents and materials presented to and considered by the LHRC, including any independent evaluations conducted.
  - iv. A tape or transcript of the LHRC proceedings if available.
  - v. The LHRC's findings of fact, conclusions, and recommendations.
  - vi. The director's action plan (if any).
  - vii. Any written objections to the action plan or its implementation.
- E. The SHRC shall hear the appeal at its next scheduled meeting after the chairperson receives the appeal.
- i. The SHRC shall give the parties at least 10 working days' notice of the appeal hearing
  - ii. The SHRC shall notify the Office of the State Inspector General of the appeal.
  - iii. The following rules govern appeal hearings:
    - a. The SHRC shall not hear any new evidence

- b. The SHRC is bound by the LHRC's findings of fact unless it makes a determination that those findings of fact are clearly wrong or that the hearing procedures of the LHRC were inadequate.
  - c. The SHRC shall limit its review to whether the facts, as found by the LHRC, establish a violation of the human rights regulations and a determination of whether the LHRC's recommendations or the action plan adequately address the alleged violation.
  - d. All parties and their representatives shall have the opportunity to appear before the SHRC to present their positions and answer questions the SHRC may have.
- iv. If the SHRC decides that the LHRC's findings of fact are clearly wrong or that the hearing procedures employed by the LHRC were inadequate, the SHRC may:
    - a. Send the case back to the LHRC for another hearing to be completed within a time period specified by the SHRC or
    - b. Conduct its own fact-finding hearing. If the SHRC chooses to conduct its own fact-finding hearing, it may appoint a subcommittee of at least three of its members as fact finders. The fact-finding hearing shall be conducted within 30 working days of the SHRC's initial hearing.

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

- F. Within 20 working days after the SHRC appeal hearing, the SHRC shall submit a decision containing its findings of fact, if applicable, its conclusions and recommendations to the commissioner and to Hartwood's governing body, with copies to the parties, the LHRC, and the human rights advocate.
- G. Within 10 working days after receiving the SHRC's decision, in the case of appeals involving a state facility, the commissioner shall submit an outline of actions to be taken in response to the SHRC's recommendations. In the case of appeals involving CSBs and private providers, the director shall outline in writing the action or actions that will be taken in response to the recommendations of the SHRC. They shall also explain any reasons for not carrying out any of the recommended actions. Copies of their responses shall be forwarded to the SHRC, the LHRC, the director, the human rights advocate, and the individual.
- H. If the SHRC objects in writing to the commissioner's or director's proposed actions, their actions shall be postponed. The commissioner or director shall meet with the SHRC at its next regularly scheduled meeting to attempt to arrange a mutually agreeable resolution.
- I. Final determination regarding the action plan shall be as follows:
  - i. In the case of services provided directly by the department, the commissioner's action plan shall be final and binding on all parties. However, when the SHRC believes the

commissioner's action plan is incompatible with the purpose of the human rights regulations chapter, it shall notify the board, the protection and advocacy agency, and the Office of the State Inspector General.

- ii. In the case of services delivered by all other providers, the action plan of the director shall be reviewed by the commissioner. If the commissioner determines that the provider has failed to develop and carry out an acceptable action plan, the commissioner shall notify the protection and advocacy agency and shall inform the SHRC of the sanctions the department will impose against the provider.
- J. Upon completion of the process outlined above, the SHRC shall notify the parties and human rights advocate of the final outcome of the complaint.

## ARTICLE 18

### VARIANCES

#### POLICY

Hartwood shall request variances as may be necessary to assure the delivery of effective and appropriate services and supports to individuals served.



## PROCEDURES

1. Variances to these regulations shall be requested and approved only when Hartwood 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.
2. Only the director may apply for variances, and they must first be approved by the Board of Directors of Hartwood Foundation, Inc. or the commissioner, as appropriate, before consideration by an LHRC or the SHRC.
3. Upon receiving approval from the Board of Directors, and after notifying the human rights advocate and other interested persons, the director shall file a formal application for variance with the LI-RC. This application shall reference the specific part of these regulations to which a variance is needed, the proposed wording of the substitute rule or procedure, and the justification for seeking a variance. The application shall also describe time limits and other conditions for duration and the circumstances that will end the applicability of the variance.
  - A. When the LHRC receives the application, it shall invite, and provide ample time to receive, oral or written statements about the application from the human rights advocate and other interested persons.
  - B. Upon receipt of the report of the LHRC following their review of the application and preparation of a written report of facts, which shall include its recommendation for approval, disapproval, or modification the director shall review the report and recommend action to the Hartwood Board of Directors.
  - C. Provided that the application is forwarded to the SHRC, the director shall prepare a written and/or oral presentation for the SI-RC.
  - D. Upon receipt of the report of the SHRC following their review of the application and preparation of a written report of facts, which shall include its recommendation for approval, disapproval, or modification the director shall review the report and recommend action to the Hartwood Board of Directors.
  - E. All variances that may be approved shall be approved for a specific time period and will be reviewed at least annually.
4. The director shall review the SHRC report including conditions, time frames, circumstances for removal, and the reasons for the decision and shall implement any approved variance in strict compliance with the written application as amended, modified, or approved by the SHRC.
5. Hartwood shall monitor the implementation of any approved variances.
  - A. At no time will a variance approved for one individual be extended to general applicability.

- B. Hartwood shall assure the ongoing collection of any data relevant to the variance.
- C. Hartwood shall prepare and make any presentation or report concerning the variance as requested by the commissioner, the State Human Rights Director, the human rights advocate, the LHRC or the SHRC.
- D. Hartwood shall comply with the decision of the SHRC granting or denying a variance.

## ARTICLE 19

### REPORTING REQUIREMENTS

#### POLICY

Hartwood shall collect, maintain, and report information as may be required by regulation or law.

## PROCEDURE

### 1. Requirements for reporting to the department:

- A. Hartwood shall collect, maintain and report the following information concerning abuse, neglect and exploitation:
  - i. The director shall report each allegation of abuse or neglect via the department's web-based reporting application in accordance with all applicable operating instructions issued by the commissioner or his designee.
  - ii. The investigating authority shall provide a written report of the results of the investigation of abuse or neglect to the director and human rights advocate [via the department's web-based reporting application] within 24 hours of the receipt of the allegation.
  - iii. Hartwood's Investigator shall provide a written report of the results of the investigation of abuse or neglect to the director and human rights advocate [via the department's web-based reporting application] within 10 working days from the date the investigation began unless an extension has been granted. This report shall include but not be limited to the following:
    - a. Whether abuse, neglect or exploitation occurred;
    - b. Type of abuse; and
    - c. Whether the act resulted in physical or psychological injury.
- B. Hartwood shall collect, maintain and report the following information concerning deaths and serious injuries:
  - i. The director shall report deaths and serious injuries in writing to the department within 24 hours of discovery and by telephone to the authorized representative ./ guardian (as applicable) within 24 hours.
  - ii. All reports of death and serious injuries shall include but not be limited to the following:
    - a. Date and place of death/injury;
    - b. Nature of injuries and treatment required; and
    - c. Circumstances of death/serious injury.
- C. Hartwood shall collect, maintain and report the following information concerning seclusion and restraint:
  - i. The director shall submit an annual report of each instance of seclusion or restraint or both by the 15<sup>th</sup> of January each year, or more frequently if requested by the department.

- ii. Each instance of seclusion or restraint or both shall be compiled on a monthly basis and the report shall include but not be limited to the following:
  - a. Types
    - 1. Physical restraint (manual hold)
    - 2. Mechanical restraint
    - 3. Pharmacological restraint
    - 4. Seclusion
  - b. Rationale for the use of seclusion or restraint to include:
    - 1. Behavioral purpose.
    - 2. Medical purpose.
    - 3. Protective purpose.
  - c. Duration of the seclusion or restraint, as follows:
    - 1. The duration of seclusion and restraint used for behavioral purposes is defined as the actual time the individual is in seclusion or restraint from the time of initiation of seclusion or restraint until the individual is released.
    - 2. The duration of restraint for medical and protective purposes is defined as the length of the episode as indicated in the order.
- iii. Any instance of seclusion or restraint that does not comply with the human rights regulations chapter or approved variances, or that results in injury to an individual, shall be reported to the authorized representative / guardian (as applicable) and the department [via the web-based reporting applicable] within 24 hours.

D. Hartwood shall report to the human rights advocate and LHRC [when requested] information on each complaint of a human rights violation, including a description and its conclusions, and report on implementation of variances in accordance with the LHRC meeting schedule.

- i. The director shall provide to the human rights advocate, at least monthly, information on the type, resolution level and findings of each complaint of a human rights violation; reports shall be made to the LHRC upon request.
- ii. The director shall provide to the human rights advocate and the LHRC, at least monthly, reports regarding the implementation of any variances.
- iii. Reports required under this section shall be submitted to the department on forms or in an automated format or both developed by the department.
- iv. In the reporting, compiling and releasing of information and statistical data provided under this section, Hartwood shall take all measures necessary to ensure that any consumer-identifying information is not released to the public, including encryption of data transferred by electronic means.

- E. Nothing in this section is to be construed as requiring the reporting of proceedings, minutes, records, or reports of any entity that are identified as privileged pursuant to § 8.01 - 581.17 of the Code of Virginia.
- F. Hartwood shall report to the Department of Health Professions, Enforcement Division, violations of the human rights regulations chapter that constitute reportable conditions under state law.

## ARTICLE 20

### PROVIDER AND DEPARTMENT RESPONSIBILITIES

#### POLICY

Hartwood shall adhere to all requirements, responsibilities, and duties as outlined by the Human Rights regulations chapter and will ensure all individuals and their authorized representatives / guardians (as applicable) are aware of Hartwood's and the Department's responsibilities in protecting individual rights.

1. Harwood, through its director, shall:
  - A. Designate a person or persons responsible for helping individuals exercise their rights and resolve complaints regarding services;
  - B. Take all steps necessary to perform duties required by, and ensure compliance with, this chapter in all services provided;
  - C. Post information in program locations about the existence and purpose of the human rights program;
  - D. Communicate information about the availability of a human rights advocate to individuals and authorized representatives, in accordance with 12VAC35-115-40 B 1 and B 2;
  - E. Ensure access, as needed, to the LHRC for all individuals receiving services;
  - F. Provide the human rights advocate unrestricted access to an individual and his services records whenever the advocate deems access is necessary to carry out rights protection, complaint resolution, and advocacy on behalf of the individual;
  - G. Require competency-based training of employees on this chapter upon employment and at least annually thereafter. Documentation of such competency shall be maintained in the employee's personnel file;
  - H. Comply with all state laws governing the reporting of abuse and neglect and all procedures set forth in this chapter for reporting allegations of abuse, neglect, or exploitation;
  - I. Submit to the human rights advocate for review and comment proposed policies, procedures, or practices that may affect individual human rights;
  - J. Ensure appointment of a designated liaison to, and appropriate staff participation with, the LHRC, as required;
  - K. Cooperate with the human rights advocate and the LHRC to investigate and correct conditions or practices interfering with the free exercise of individuals' human rights and make sure that all employees cooperate with the human rights advocate, the LHRC, and the SHRC in carrying out their duties under this chapter;
  - L. Comply with requests by the SHRC, LHRC, or human rights advocate for information, policies, procedures, and written reports regarding compliance with this chapter;
  - M. Ensure the availability of records and employee witnesses upon the request of the LHRC or SHRC;
  - N. Submit applications for variances to this chapter only as a last resort; and

- O. Not influence or attempt to influence the appointment of any person to an LHRC affiliated with the provider or director.
- 2. Hartwood shall require their employees to:
    - A. Become familiar with the human rights regulations, comply with it in all respects, and help individuals understand and assert their rights;
    - B. Protect individuals from any form of abuse, neglect, or exploitation by:
      - i. Not abusing, neglecting, or exploiting any individual;
      - ii. Using the minimum force necessary to restrain an individual;
      - iii. Not permitting or condoning anyone else abusing, neglecting, or exploiting any individual; and
      - iv. Reporting all suspected abuse, neglect, or exploitation to the director; and
        - i. Cooperate with any investigation, meeting, hearing, or appeal held under this chapter. Cooperation includes giving statements or sworn testimony.
- 3. Department human rights advocates shall:
    - A. Represent any individual making a complaint or, upon request, consult with and help any other representative the individual chooses;
    - B. Provide training to individuals, family members, and providers on this chapter;
    - C. Investigate and try to prevent or correct any alleged rights violation by interviewing, mediating, negotiating, advising, or consulting with providers and their respective governing bodies, directors, and employees;
    - D. Provide orientation, training, and technical assistance to the LHRCs for which he is responsible; and
    - E. Investigate and examine all conditions or practices that may interfere with the free exercise of individuals' rights.
- 4. The department shall:
    - A. Employ the state human rights director to lead statewide implementation of the human rights program;
    - B. Determine, in consultation with the SHRC, the appropriate number and geographical boundaries of LHRCs;
    - C. Develop information, assistance, training tools, and other resources for individuals and constituents on this chapter;
    - D. Provide for regular monitoring and enforcement of this chapter, including conducting unannounced compliance reviews at any time;
    - E. Cooperate with and provide support to the SHRC and LHRCs, including:

- i. Training SHRC and LHRC members on their responsibilities, roles, and functions under this chapter;
  - ii. Providing access to topic area consultants as needed to support their fulfilling of their duties under this chapter; and
  - iii. Providing necessary support for SHRC and LHRC investigations, meetings, and hearings; and
- F. Maintain current and regularly updated data and perform regular trend analyses to identify the need for corrective action in the areas of abuse, neglect, and exploitation; seclusion and restraint; complaints; deaths and serious injuries; and variance applications.
5. State Human Rights Committee and local human rights committees responsibilities.
- A. Local human rights committees shall:
- i. Review any restriction on the rights of any individual imposed pursuant to 12VAC35-115-50 or 12VAC35-115-100 that lasts longer than seven days or is imposed [ ~~multiple~~ three or more ] times during a 30-day period for providers within the LHRC's jurisdiction in accordance with 12VAC35-115-100 B 5;
  - ii. Review next friend designations in accordance with 12VAC35-115-146 B 2;
  - iii. Hold hearings according to the procedures set forth in Part V (12VAC35-115-150 et seq.) of this chapter for any individual served by a provider under the LHRC's jurisdiction;
  - iv. Review behavioral treatment plans in accordance with 12VAC35-115-105;
  - v. Receive, review, and act on applications for variances to this chapter in accordance with 12VAC35-115-220;
  - vi. Consist of five or more members appointed by the SHRC.
    - a. Membership shall be broadly representative of professional and consumer interests as required in § 37.2-204 of the Code of Virginia.
    - b. At least one member shall be a health care provider.
    - c. No current employee of the department or a provider shall serve as a member of any LHRC that serves an oversight function for the employing facility or provider.
    - d. Members shall recuse themselves from all cases in which they have a financial or other conflict of interest.
    - e. Initial appointments to an LHRC shall be staggered, with approximately one-third of the members appointed for terms of three years, approximately one-third for terms of two years, and the remainder for a term or terms of one year. After that, all appointments shall be for terms of three years.



- f. A person may be appointed for no more than two consecutive three-year terms. A person appointed to fill a vacancy may serve out that term and then be eligible for two additional consecutive terms.
    - g. Nominations for membership to LHRCs shall be submitted directly to the SHRC through the state human rights director at the department's Office of Human Rights;
  - vii. Elect a chairperson from its own members who shall:
    - a. Coordinate the activities of the LHRC; and
    - b. Preside at regular meetings and hearings held pursuant to this chapter;
  - viii. Meet every quarter or more frequently as necessary to adhere to all timelines as set forth in this chapter; and
  - ix. Adopt written bylaws that address procedures for conducting business; electing the chairperson, secretary, and other officers; designating standing committees; and setting the frequency of meetings.
- B. Local human rights committees may delegate authority to a subcommittee when expedited decisions are required before the next scheduled LHRC meeting to avoid seriously compromising an individual's quality of care, habilitation, or quality of life. The decision of the subcommittee shall be reviewed by the full LHRC at its next meeting.
- C. The State Human Rights Committee shall:
  - i. Perform the following responsibilities with respect to the operation of LHRCs:
    - a. Appoint LHRC members with the advice of the respective LHRC, human rights advocate, and the state human rights director;
    - b. Review and approve the bylaws of LHRCs; and
    - c. Provide oversight to and assist LHRCs in the performance of their duties under this chapter, including the development of guidance documents;
  - ii. Review LHRC decisions when required by this chapter and, if appropriate, hold hearings and make recommendations to the commissioner, the board, and providers' governing bodies regarding alleged violations of individuals' rights according to the procedures specified in this chapter;
  - iii. Notify the commissioner and the state human rights director whenever it determines that its recommendations in a particular case are of general interest and applicability to providers, human rights advocates, or LHRCs and ensure that:
    - a. Its recommendations are communicated to providers, human rights advocates, and LHRCs as appropriate; and
    - b. The communication of its recommendations does not identify the name of individuals or employees in a particular case;

- iv. Grant or deny variances according to the procedures specified in Part VI (12VAC35-115-220) of this chapter and review approved variances at least once every year;
- v. Submit to the board and publish an annual report of its activities and the status of human rights in services licensed, funded, or operated by the department and make recommendations for improvement;
- vi. Evaluate the implementation of this chapter and make necessary and appropriate recommendations to the board, the commissioner, and the state human rights director concerning its interpretation and enforcement;
- vii. Review and make recommendations to the department and board, as appropriate, concerning:
  - a. The scope and content of training programs designed by the department to promote responsible performance of the duties assigned under this chapter;
  - b. Existing or proposed policies, procedures, or practices that could jeopardize the rights of individuals receiving services from any provider;
  - c. Proposed revisions to this chapter; and
  - d. Revisions to existing or proposed laws, regulations, policies, procedures, and practices that are needed to ensure the protection of individuals' rights;
- viii. Consist of nine members appointed by the board.
  - a. Members shall be broadly representative of professional and consumer interests as required in § 37.2-204 of the Code of Virginia;
  - b. Members shall recuse themselves from all cases in which they have a financial or other conflict of interest;
  - c. If there is a vacancy, interim appointments may be made by the board for the remainder of the unexpired term;
  - d. A person may be appointed for no more than two consecutive three-year terms. A person appointed to fill a vacancy may serve out that term and then be eligible for two additional consecutive terms; and
  - e. No current employee of the department, a CSB, or a behavioral health authority may serve as a member of the SHRC;
- ix. Elect a chairperson from its own members who shall:
  - a. Coordinate the activities of the SHRC;
  - b. Preside at regular meetings, hearings, and appeals; and
  - c. Have direct access to the commissioner and the board in carrying out these duties;
- x. Conduct at least eight regular meetings per year; and

- xi. Adopt written bylaws that address procedures for conducting business; making membership recommendations to the board; electing a chairperson, vice chairperson, secretary, and other officers; appointing members of LHRCs; designating standing committees and their responsibilities; establishing ad hoc committees; and setting the frequency of meetings.

## DEFINITIONS

The following words and terms when used in the previous text shall have the following meanings, unless the context clearly indicates otherwise:

"Abuse" means any act or failure to act by an employee or other person responsible for the care of an individual in a facility or program operated, licensed, or funded by the department, excluding those operated by the Department of Corrections, 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 intellectual disability, or substance abuse. Examples of abuse include acts such as:

1. Rape, sexual assault, or other criminal sexual behavior;
2. Assault or battery;
3. Use of language that demeans, threatens, intimidates, or humiliates the person;
4. Misuse or misappropriation of the person's assets, goods, or property;
5. Use of excessive force when placing a person in physical or mechanical restraint;
6. Use of physical or mechanical restraints on a person that is not in compliance with federal and state laws, regulations, and policies, professionally accepted standards of practice, or the person's individualized services plan; and
7. Use of more restrictive or intensive services or denial of services to punish the person or that is not consistent with his individualized services plan. See § 37.2-100 of the Code of Virginia.

"Administrative hearing" means an administrative proceeding held pursuant to Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Advance directive" means a document voluntarily executed in accordance with § 54.1-2983 of the Code of Virginia or the laws of another state where executed (§ 54.1-2993 of the Code of Virginia). This may include a wellness recovery action plan (WRAP) or similar document as long as it is executed in accordance with § 54.1-2983 of the Code of Virginia or the laws of another state. A WRAP or similar document may identify the health care agent who is authorized to act as the individual's substitute decision maker.

"Authorization" means a document signed by the individual receiving services or that individual's authorized representative that authorizes the provider to disclose identifying information about the individual. An authorization shall be voluntary. To be voluntary, the authorization must shall be given by the individual receiving services or his authorized representative freely and without undue inducement, any element of force, fraud, deceit, or duress, or any form of constraint or coercion.

"Authorized representative" means a person permitted by law to authorize the disclosure of information or to consent to treatment and services or participation in human research by an individual. The decision-making authority of an authorized representative recognized or designated under the human rights regulations is limited to decisions pertaining to the designating

provider. Legal guardians, attorneys-in-fact, or health care agents appointed pursuant to § 54.1-2983 of the Code of Virginia may have decision-making authority beyond such provider.

"Behavior intervention" means those principles and methods employed by a provider to help an individual to achieve a positive outcome and to address challenging behavior in a constructive and safe manner. Behavior management principles and methods must be employed in accordance with the individualized services plan / plan for supports and written policies and procedures governing service expectations, treatment goals, safety, and security.

"Behavioral treatment plan," "functional plan," or "behavioral support plan" means any set of documented procedures that are an integral part of the individualized services plan / plan for supports and are developed on the basis of a systematic data collection, such as a functional assessment, for the purpose of assisting an individual to achieve the following:

1. Improved behavioral functioning and effectiveness;
2. Alleviation of symptoms of psychopathology; or
3. Reduction of challenging behaviors.

"Board" means the Board of Behavioral Health and Developmental Services.

"Caregiver" means an employee or contractor who provides care and support services; medical services; or other treatment, rehabilitation, or habilitation services.

"Commissioner" means the Commissioner of the Department of Behavioral Health and Developmental Services.

"Community services board" or "CSB" means the public body established pursuant to § 37.2-501 of the Code of Virginia that provides mental health, mental retardation developmental, and substance abuse services to individuals within each city and county that established it. For the purpose of these regulations, community services board also includes a behavioral health authority established pursuant to § 37.2-602 of the Code of Virginia.

"Complaint" means an allegation of a violation of the human rights regulations or a Hartwood's policies and procedures related to the regulations.

"Consent" means the voluntary agreement of an individual or that individual's authorized representative to specific services. Consent shall be given freely and without undue inducement; any element of force, fraud, deceit, or duress,; or any form of constraint or coercion. Consent may be expressed through any means appropriate for the individual, including verbally, through physical gestures or behaviors, in Braille or American Sign Language, in writing, or through other methods.

"Department" means the Department of Behavioral Health and Developmental Services.

"Director" means the chief executive officer of any provider delivering services. In organizations that also include services not covered by the human rights regulations, the director is the chief executive officer of the services or services licensed, funded, or operated by the department.

"Discharge plan" means the written plan that establishes the criteria for an individual's discharge from a service and identifies and coordinates delivery of any services needed after discharge.

"Disclosure" means the release by a provider of information identifying an individual.

"Emergency" means a situation that requires a person to take immediate action to avoid harm, injury, or death to an individual or to others.

"Exploitation" means the misuse or misappropriation of the individual's assets, goods, or property. Exploitation is a type of abuse. (See § 37.2-100 of the Code of Virginia.) Exploitation also includes the use of a position of authority to extract personal gain from an individual. Exploitation includes violations of 12VAC35-115-120 (Work) and 12VAC35-115-130 (Research). Exploitation does not include the billing of an individual's third party payer for services. Exploitation also does not include instances of use or appropriation of an individual's assets, goods or property when permission is given by the individual or his authorized representative:

1. With full knowledge of the consequences;
2. With no inducements; and
3. Without force, misrepresentation, fraud, deceit, duress of any form, constraint, or coercion.

"Governing body of the provider" means the person or group of persons with final authority to establish policy. For the purpose of these regulations, the governing body of a CSB means the public body established according to Chapter 5 (§ 37.2-500 et seq.) or Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia, and shall include administrative policy community services boards, operating community services boards, local government departments with policy-advisory boards, and the board of a behavioral health authority.

"Habilitation" means the provision of individualized services conforming to current acceptable professional practice that enhance the strengths of, teach functional skills to, or reduce or eliminate challenging behaviors of an individual. These services occur in an environment that suits the individual's needs, responds to his preferences, and promotes social interaction and adaptive behaviors.

"Health care operations" means any activities of the provider to the extent that the activities are related to its provision of health care services. Examples include:

1. Conducting quality assessment and improvement activities, case management and care coordination, contacting of health care providers and patients with information about treatment alternatives, and related functions that do not include treatment;
2. Reviewing the competence or qualifications of health care professionals, evaluating practitioner and provider performance, and training, licensing or credentialing activities;

3. Conducting or arranging for medical review, legal services, and auditing functions, including fraud and abuse detection and compliance programs; and
4. Other activities contained within the definition of health care operations in the Standards for Privacy of Individually Identifiable Health Information, 45 CFR 164.501.

"Health plan" means an individual or group plan that provides or pays the cost of medical care, including any entity that meets the definition of "health plan" in the Standards for Privacy of Individually Identifiable Health Information, 45 CFR 160.103.

"Historical research" means the review of information that identifies individuals receiving services for the purpose of evaluating or otherwise collecting data of general historical significance. [See 12VAC35-115-80 B (Confidentiality).]

"Human research" means any systematic investigation, including research development, testing, and evaluation, utilizing human subjects, that is designed to develop or contribute to generalized knowledge. Human research shall not include research exempt from federal research regulations pursuant to 45 CFR 46.101(b).

"Human rights advocate" means a person employed by the commissioner upon recommendation of the State Human Rights Director to help individuals receiving services exercise their rights under this chapter. [See 12VAC35-115-250 12VAC35-115-260 C.]

"Independent review committee" means a committee appointed or accessed by a provider to review and approve the clinical efficacy of the provider's behavioral treatment plans and associated data collection procedures. An independent review committee shall be composed of professionals with training and experience in applied behavioral analysis who are not involved in the development of the plan or directly providing services to the individual.

"Individual" means a person who is receiving services. This term includes the terms "consumer," "patient," "resident," "recipient," and "client."

"Individualized services plan" or "ISP" means a comprehensive and regularly updated plan for supports that describes the individual's needs, the measurable goals and objectives to address those needs, and strategies to reach the individual's goals. An ISP is person-centered, empowers the individual, and is designed to meet the needs and preferences of the individual. The ISP is developed through a partnership between the individual and the provider and includes an individual's treatment plan, habilitation plan, person-centered plan, or plan of care.

"Informed consent" means the voluntary written agreement of an individual, or that individual's authorized representative to surgery, electroconvulsive treatment, use of psychotropic medications, or any other treatment or service that poses a risk of harm greater than that ordinarily encountered in daily life or for participation in human research. To be voluntary, informed consent

must be given freely and without undue inducement, any element of force, fraud, deceit, or duress, or any form of constraint or coercion.

"Inspector general" means a person appointed by the Governor to provide oversight by inspecting, monitoring, and reviewing the quality of services that providers deliver.

"Investigating authority" means any person or entity that is approved by the provider to conduct investigations of abuse and neglect.

"Licensed professional" means a [licensed] physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, licensed or certified substance abuse treatment practitioner, or certified [licensed] psychiatric nurse specialist practitioner.

"Local Human Rights Committee human rights committee" or "LHRC" means a group of at least five people appointed by the State Human Rights Committee. [See 12VAC35-115-250 D 12VAC35-115-270 A for membership and duties.]

"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 a person an individual receiving care or treatment for mental illness, mental retardation intellectual disability, or substance abuse. See § 37.2-100 of the Code of Virginia.

"Next friend" means a person designated in accordance with 12VAC35-115-146 B to serve as the authorized representative of an individual who has been determined to lack capacity to consent or authorize the disclosure of identifying information, when required under the human rights regulations.

"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. Such instances may constitute potential neglect.

"Person centered" means focusing on the needs and preferences of the individual, empowering and supporting the individual in defining the direction for his life, and promoting self-determination, community involvement, and recovery.

"Program rules" means the operational rules and expectations that providers establish to promote the general safety and well-being of all individuals in the program and to set standards for how individuals will interact with one another in the program. Program rules include any expectation that produces a consequence for the individual within the program. Program rules may be included in a handbook or policies and shall be available to the individual.



"Protection and advocacy agency" means the state agency designated under the federal Protection and Advocacy for Individuals with Mental Illness Act (PAIMI) Act and the Developmental Disabilities Assistance and Bill of Rights Act (DD) Act. The protection and advocacy agency is the Virginia Office for Protection and Advocacy disAbility Law Center of Virginia (dLVCV).

"Provider" means any person, entity, or organization offering services that is licensed, funded, or operated by the department.

"Psychotherapy notes" means comments, recorded in any medium by a health care provider who is a mental health professional, documenting and analyzing the contents of conversation during a private counseling session with an individual or a group, joint, or family counseling session that are separated from the rest of the individual's health record. "Psychotherapy notes" shall not include annotations relating to medication and prescription monitoring, counseling session start and stop times, treatment modalities and frequencies, clinical test results, or any summary of any symptoms, diagnosis, prognosis, functional status, treatment plan, or the individual's progress to date.

"Research review committee" or "institutional review board" means a committee of professionals that provides complete and adequate review of research activities. The committee shall be sufficiently qualified through maturity, experience, and diversity of its members, including consideration of race, gender, and cultural background, to promote respect for its advice and counsel in safeguarding the rights and welfare of participants in human research. [See § 37.2-402 of the Code of Virginia and 12VAC35-180.]

"Restraint" means the use of a mechanical device, medication, physical intervention, or hands-on hold to prevent an individual from moving his body to engage in a behavior that places him or others at imminent risk. There are three kinds of restraints:

1. Mechanical restraint means the use of a mechanical device that cannot be removed by the individual to restrict the freedom of movement or functioning of a limb or a portion of an individual's body when that behavior places him or others at imminent risk.
2. Pharmacological restraint means the use of a medication that is administered involuntarily for the emergency control of an individual's behavior when that individual's behavior places him or others at imminent risk and the administered medication is not a standard treatment for the individual's medical or psychiatric condition.
3. Physical restraint, also referred to as manual hold, means the use of a physical intervention or hands-on hold to prevent an individual from moving his body when that individual's behavior places him or others at imminent risk.

"Restraints for behavioral purposes" means using a physical hold, medication, or a mechanical device to control behavior or involuntarily restrict the freedom of movement of an individual in an instance when all of the following conditions are met: (i) there is an emergency, (ii) nonphysical interventions are not viable, and (iii) safety issues require an immediate response.

"Restraints for medical purposes" means using a physical hold, medication, or mechanical device to limit the mobility of an individual for medical, diagnostic, or surgical purposes, such as routine dental care or radiological procedures and related post-procedure care processes, when use of the restraint is not the accepted clinical practice for treating the individual's condition.

"Restraints for protective purposes" means using a mechanical device to compensate for a physical or cognitive deficit when the individual does not have the option to remove the device. The device may limit an individual's movement, for example, bed rails or a geri-chair, and prevent possible harm to the individual or it may create a passive barrier, such as a helmet to protect the individual.

"Restriction" means anything that limits or prevents an individual from freely exercising his rights and privileges.

"SCC" means a specially constituted committee serving an intermediate care facility [for individuals with intellectual disabilities] as described in the Centers for Medicare and Medicaid Services (CMS) Conditions of Participation (42 CFR 483.440(f)(3)).

"Seclusion" means the involuntary placement of an individual alone in an area secured by a door that is locked or held shut by a staff person, by physically blocking the door, or by any other physical or verbal means, so that the individual cannot leave it.

"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.

"Services record" means all written and electronic information that a provider keeps about an individual who receives services.

"State Human Rights Committee" or "SHRC" means a committee of nine members appointed by the board that is accountable for the duties prescribed in 12VAC35-115-250 E 12VAC35-115-270 C. [ See 12VAC35-115-250 E, 12VAC35-115-270 C 8 for membership and duties .]

"State Human Rights Director human rights director" means the person employed by and reporting to the commissioner who is responsible for carrying out the functions prescribed [for the position] in 12VAC35-115-250 F 12VAC35-115-260 D.

"Time out" means the involuntary removal of an individual by a staff person from a source of reinforcement to a different, open location for a specified period of time or until the problem behavior has subsided to discontinue or reduce the frequency of problematic behavior.

"Treatment" means the individually planned, sound, and therapeutic interventions that are intended to improve or maintain functioning of an individual receiving services delivered by providers

licensed, funded, or operated by the department. In order to be considered sound and therapeutic, the treatment shall conform to current acceptable professional practice.

Hartwood Foundation, Inc.