

104 CMR 30.00: FISCAL ADMINISTRATION

Section

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30.01: Evaluations of the Ability of Patients in Facilities to Manage Funds

(1) Authority. 104 CMR 30.01 is promulgated pursuant to M.G.L. c. 123, §§ 2, 4, 25, and 26(a).

(2) Scope. 104 CMR 30.01 shall apply only to Department facilities.

(3) Evaluation of Ability to Manage Funds.

(a) Unless a guardian or conservator has been appointed or the patient is a minor, as soon as possible after admission (but no later than 30 days after admission), at least once during the first six months after admission, at least every 12 months thereafter, and upon the patient's request, the patient shall be evaluated to determine his or her ability to manage and spend his or her funds. No patient shall be found unable to manage and spend his or her funds unless it is determined by a clinical evaluation that the patient is unable to manage and spend money to satisfy his or her needs and desires because:

1. he or she lacks a basic understanding of the value of money; or
2. his or her fiscal judgment is significantly impaired due to delusional thinking or due to a lack of appreciation of his or her needs and desires, as shown by actual past example or by strong medical evidence.

The evaluation shall be pursuant to any guidelines established by the Department. The evaluation shall be a part of the periodic review of the client pursuant to M.G.L. c. 123, § 4 and 104 CMR 27.00.

(b) The evaluation shall take into consideration the amount of the patient's present and future funds and shall determine:

1. whether a patient is able to manage and spend all of his or her funds;
2. if a patient is not able to manage and spend all of his or her funds, how much of such funds he or she is able to manage and spend and how much of such funds he or she is not able to manage and spend; and
3. in regard to funds the patient is not able to manage and spend himself or herself, how such funds can best be used to benefit the patient, consistent with 104 CMR 30.02(6).

(c) At least seven days prior to the evaluation, the patient shall receive both written and oral notice of the evaluation which includes a description of the evaluation process. At the evaluation, the patient shall have the right to present any information on his or her behalf, and shall have the right to be assisted by a person of his or her choice. The patient shall be informed that the facility's Human Rights Officer is available to assist him or her. In addition, the patient shall be informed of the availability of legal assistance. The patient shall be informed of the results of the evaluation, given a copy of the results, and informed of his or her right to appeal the results to the Area Director or designee. The results of the evaluation shall become a permanent part of the patient's record. The facility director or his or her designee, may waive the requirement of seven days written and oral notice to the patient of such evaluations only pursuant to the provisions of 104 CMR 30.01(3)(d).

(d) Emergency Evaluation. Facilities shall have procedures for situations where a patient's use of his or her funds present a significant risk to the patient, others, or the funds themselves. These procedures may include an emergency evaluation of the patient's ability to manage his or her funds by the facility's clinical staff, without prior notice as described in 104 CMR 30.01(3)(c) if the circumstances so require. The reasons for any such emergency evaluations shall be explained to the patient at the time of the evaluation and shall be documented in the patient's record. In addition, within 14 days of an emergency evaluation, the patient must be given another evaluation of his or her ability to manage funds with the notices and other protections described in 104 CMR 30.01(3)(c). Funds which are determined at an emergency evaluation to be dependent funds as defined in 104 CMR 30.02(3)(a) may be spent by the facility director only with the approval of the patient or his or her legally authorized representative.

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(4) Evaluation of Need for a Fiduciary.

(a) If a patient is determined to be unable to manage his or her funds, a determination shall be made as to whether or not the appointment of a fiduciary is indicated.

(b) If the appointment of a fiduciary is indicated, the patient's treatment team, in consultation with legal counsel if appropriate, must determine:

1. what kind of fiduciary is indicated;
2. who would be an appropriate fiduciary; and
3. whether or not the facility itself will be seeking an appointment of fiduciary.

The treatment team should ascertain whether the patient has a preference concerning who should act as his or her fiduciary and, if the patient has such a preference, whom it is that the patient prefers.

(c) Unless the team determines the individual preferred by the patient to be inappropriate or unwilling or unable to serve, the team shall recommend that individual as fiduciary. A summary of the reasons:

1. why a particular type of fiduciary is being recommended;
2. why a particular individual is or is not being recommended; and
3. why the facility will be seeking to have the facility director appointed as fiduciary, if this is the determination, shall be set forth in the patient's record.

(d) The patient, and in accordance with M.G.L. c. 123, § 25, the patient's nearest living relative, shall be informed of these determinations.

(e) The results of this evaluation shall become a permanent part of the patient's record.

(5) Training Patients to Manage Their Own Funds. A patient's treatment team shall have the responsibility for and give a high priority to the training of the patient in the management and use of his or her own funds.

30.02: Funds Belonging to Patients in Facilities

(1) Authority. 104 CMR 30.02 is promulgated pursuant to M.G.L. c. 123, §§ 2 and 26(a).

(2) Scope. 104 CMR 30.02 shall apply to Department facilities or facilities contracted for by the Department. 104 CMR 30.02 shall apply only to the maintenance and expenditure of a patient's funds which are located within the facility or which are deposited with the facility director or his or her designee.

(3) Definitions.

(a) Dependent funds: those funds belonging to a patient which are located at a facility or received by a facility are dependent funds if:

1. the patient is unable to manage these funds himself or herself as determined by an evaluation in accordance with 104 CMR 30.01(3);
2. the patient is unable to manage these funds himself or herself as determined by a court of competent jurisdiction in a guardianship or conservatorship proceeding;
3. the patient is unable to manage these funds himself or herself as determined by the Social Security Administration or Veterans Administration in accordance with their requirements;
4. the funds were received as dependent funds from a guardian, conservator or representative payee, or other representative of the patient; or
5. the funds belong to a patient who is a minor.

(b) Funds: cash, checks, negotiable instruments, or other income or liquid personal property such as stocks or bonds.

(c) Independent funds: all of a patient's funds which are located at the facility and which are not dependent funds.

(d) Representative payee: a person or organization selected to receive benefits payments on behalf of a Social Security Administration or Veterans Administration beneficiary.

(4) Upon Admission and Prior to Evaluation. With the exceptions listed in 104 CMR 30.02(3)(a), all of a patient's funds shall be deemed to be independent funds from the time of admission of the patient until such time as there has been an evaluation, in accordance with 104 CMR 30.01(3), of the patient's ability to manage his or her funds.

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(5) Use of Independent Funds by the Patient. The patient shall have an unrestricted right to manage and spend, at his or her sole discretion, all of his or her independent funds. Independent funds, at the patient's discretion, may be deposited with the facility director or his or her designee.

(6) Management and Expenditure of Dependent Funds.

(a) Facility Director. In accordance with M.G.L. c. 123, § 26(a) and federal regulations, the facility director shall bear ultimate responsibility for the management and expenditure of all dependent funds.

(b) Designated Staff. In order to carry out his or her responsibility as to the proper management and expenditure of dependent funds, the facility director shall designate staff within the facility who shall be directly responsible to the facility director and who shall determine on a day-to-day basis how to best manage and spend a patient's dependent funds, consistent with 104 CMR 30.02(6). These designated staff shall have sufficient contact with the patient to have first hand knowledge of the patient and to be responsive to the patient's day-to-day needs and desires. Designated staff shall consult with a patient prior to making a purchase for him or her. It is anticipated that those persons responsible for the direct care of the patient will be designated to exercise this responsibility, but the appointment of designated staff shall be within the discretion of the facility director. The facility director may establish a committee to make recommendations regarding the expenditure of funds.

(c) Appropriate Expenditures. Dependent funds shall be used only for purposes which directly benefit the patient. Generally, dependent funds should be used to facilitate the patient's earliest possible rehabilitation and discharge to the community, for personal needs to improve the patient's condition while in the facility, and to help the patient live as normal and comfortable a life as practicable. The patient's desires, as well as needs will be considered. Where the patient has unmet current needs, continued saving of dependent funds is not in the patient's best interest unless such saving is for a foreseeable and appropriate future purpose such as to pay for living expenses upon discharge. A patient's current needs include paying the facility's charge for care of the patient, as determined in accordance with 104 CMR 30.04 and other applicable law. Dependent funds shall not be expended for any item or service which the facility is obligated to supply the patient and which would already have been included with the usual and customary charge for care or which the patient is otherwise entitled to receive without charge.

(d) Group Purchases. Dependent funds of a patient may be used together with funds of other patients to allow for a group purchase. However, a group purchase may be made only if all patients in the group shall benefit from such purchase, and contribute a fair amount to the purchase. Patients and their fiduciaries, if any, should be consulted prior to any such group purchase.

(7) Patient Funds Accounts.

(a) Pursuant to M.G.L. c. 123, § 26(a), the facility director or his or her designee may maintain individual bank accounts on behalf of the facility's patients. Whenever possible, these accounts shall be interest bearing accounts. Interest earned in any such account shall be credited to the patient. Alternatively, the facility may deposit up to \$1,000 of a patient's funds in a group account so long as an individual record is maintained of each patient's deposits and withdrawals, and interest is appropriately apportioned among the patients in the group.

(b) The facility must have written policies and procedures concerning internal controls and accounting procedures for the management of patient funds on deposit with the facility. These written policies and procedures must be approved by the Commissioner or his or her designee.

(c) Record of Funds. All funds received from a patient or received on his or her behalf shall be accounted for, and a permanent record made showing the amount of funds received, date received and source of funds. All funds disbursed shall be accounted for, and a permanent record made showing the amount of funds disbursed, date disbursed, and to whom.

(d) Accounting for Funds. The following persons shall, upon their request, be provided a complete written account of all funds of a patient, or, if requested, a written or oral statement of the current balance of funds of the patient:

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1. the patient;
2. if the patient is determined unable to manage or spend all or part of his or her funds, the staff designated as responsible for expenditures for the patient under 104 CMR 30.02(6)(b);
3. the patient's guardian or conservator;
4. the patient's treatment team;
5. the patient's representative payee, if the facility director, is not the representative payee, or other person who has deposited funds with the facility for the patient's benefit, but, in this instance, the accounting will be limited to an accounting for the funds actually deposited with the facility by said person; and
6. if the facility director is the representative payee of the patient, the District Office of the Social Security Administration or the Veterans Administration concerning funds received from these agencies.

(8) Making Purchases on Behalf of Patients. The facility shall have an obligation to assist patients in making purchases, and to inform patients of the availability of a shopping service for those patients who are unable to leave the facility. The shopping service shall be responsive to the individual needs and tastes of the patient.

(9) Social Security and Veterans Administration Income. When the facility director is designated by the Social Security Administration or the Veterans Administration as the representative payee of a patient, federal regulations govern the use of such funds. Accordingly, the facility director must comply with any policy directives or letters from the Social Security Administration or the Veterans Administration in regard to the use of these funds and income. To the extent allowed by Social Security or Veterans Administration requirements, the facility director may delegate the actual management of such funds to appropriate facility staff in accordance with the facility's written policies and procedures as approved by the Commissioner or his or her designee. In addition, 104 CMR 30.02 shall be followed to the extent that it is not inconsistent with Social Security or Veterans Administration requirements.

30.03: Client Funds In Community Programs

- (1) Authority. 104 CMR 30.03 is promulgated under the authority of M.G.L. c. 19, §§ 1, 16, 18, and 19.
- (2) Scope. 104 CMR 30.03 shall apply only to community programs which are operated, contracted for, or licensed by the Department and at which a client earns or maintains funds.
- (3) No program subject to 104 CMR 30.03 shall interfere with the right of a client to acquire, retain and dispose of personally-owned funds, including the right to maintain an individual bank account, unless the client is a minor, under guardianship or conservatorship or has had a representative payee appointed, or unless otherwise ordered by a court of competent jurisdiction, or unless done in accordance with 104 CMR 30.00.
- (4) Every program managing client funds and subject to 104 CMR 30.03 shall develop procedures to assist clients and their legally authorized representatives in determining eligibility for and applying for financial benefits.
- (5) When the program manages client funds and is subject to 104 CMR 30.03, the program director may hold client funds given to him or her by a client or by a fiduciary for a client.
 - (a) Unless the client is a minor or unless a legal guardian, conservator, or representative payee has been appointed, the client shall have an unrestricted right to manage and spend deposited funds.
 - (b) If a determination is made pursuant to the clinical standards set forth in 104 CMR 30.01(3)(a) and (b) that a client is incapable of managing and spending a portion of such funds, a program subject to 104 CMR 30.03 shall develop and implement procedures to advise and assist the client in the management and expenditures of those funds, in accordance with the client's needs and interests.

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(c) Programs subject to 104 CMR 30.03 shall have written procedures in accordance with the requirements of 104 CMR 30.03 for the shared or delegated management of client funds. The purpose of such procedures is to advise and assist with money management those clients who do not have a fiduciary and who have been determined to be incapable of managing and spending all or part of their funds. Where the program has shared or delegated responsibilities for management of client funds, the program shall meet the following requirements:

1. The client's written authorization must be obtained for shared or delegated management of his or her funds. Where the client is incapable of giving such authorization and does not have a fiduciary and where the client is a minor, the program director may give written authorization for such an arrangement, explaining why it is needed. The written authorization shall be documented in the client's record.
 2. Client funds shall not be applied to goods or services which the program is obligated by law or funded by contract to provide to the client, which would already have been included in a charge for care, or which the patient is otherwise entitled to receive without charge.
 3. The program or program staff shall have no direct or indirect ownership or survivorship interest in the funds.
 4. Program staff shall not participate in arrangements for shared or delegated management of the client's funds except as representatives of the program.
 5. Any arrangements made to transfer a client from one program to another shall include provisions for transferring responsibility for shared or delegated management of client funds to the receiving program.
 6. The client shall be informed of all proposed expenditures and any expression of preference within reason shall be honored.
 7. Expenditures shall be made only for purposes which directly benefit the client in accordance with his or her interests and desires.
- (d) Programs which are subject to 104 CMR 30.03 may manage funds received from the fiduciaries of its clients so long as these funds are managed in a manner that is consistent with 104 CMR 30.02(7).
- (e) Where a program maintains client funds accounts, these accounts shall be maintained in accordance with the provisions of 104 CMR 30.02(7).

(6) In any situation where an employee of the department or an employee or agent of a program which is subject to this section, or the program itself, is acting as a representative payee for a client as part of his or her work duties, the employee or program shall follow the Social Security or Veterans Administration requirements for representative payees. In addition, 104 CMR 30.03 shall be followed to the extent that it is not inconsistent with Social Security or Veterans Administration requirements.

30.04: Charges for Care

- (1) Authority. 104 CMR 30.04 is promulgated under authority of M.G.L. c. 19, §§ 16 and 18, and M.G.L. c. 123, § 32.
- (2) Scope. 104 CMR 30.04 shall apply to facilities and programs operated by or contracted for by the Department. 104 CMR 30.04 shall apply only to those facilities, programs or services within programs for which the Department establishes a charge.
- (3) Purpose. The purpose of 104 CMR 30.04 is to establish that the Department may charge for the care of or services provided to any patient or client receiving services in facilities and programs operated by or contracted for by the Department and to allow for such charges to be adjusted depending on the financial resources of the patient or client.
- (4) Definitions.
 - (a) Approved rate: the charge for a service which is established by the Department and approved by the Division of Health Care Finance and Policy or other rate approving authority.

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(b) Fee payer: any of the following persons, each of whom may be liable for charges for care or services pursuant to M.G.L. c. 19, and c. 123: patient or client; the spouse of a patient or client, unless such spouse is legally separated, then only to the extent provided by a judicial order or separation agreement; a guardian, conservator, representative payee or other person who controls assets of a patient or client, or the patient or client's spouse, however, the guardian, conservator, representative payee, or other person is not a fee-payer with respect to his or her personal assets.

(c) Income: Moneys received as recurrent payments, payments in kind or lump sum payments. Income shall be defined as such moneys in the month received, and thereafter such moneys shall be defined as assets.

(d) Liquid assets: Cash and all property capable of ready conversion into cash notwithstanding whether such assets are held jointly or solely. Liquid assets do not include life insurance or its cash value, nor assets subject to an irrevocable trust with the client as named beneficiary, unless those assets are available to the patient or client on demand.

(5) Notification. Patients or clients receiving services operated or contracted for by the Department shall be given notice that they will be charged for the provision of the service whenever that service has a charge associated with it.

(a) A notice of the rights provided under 104 CMR 30.04 shall be given to each patient or client, fee-payer, legally authorized representative, or attorney or legal advocate:

1. at the time a patient or client, or his or her representative, requests service provision;
2. upon admission to a facility or program operated or contracted for by the Department;
3. upon initiation of any service operated or funded by the Department,
4. upon the request of any person; and
5. at any other time deemed appropriate by the Department.

(b) The notice shall be in a form approved by the Department and shall provide the following information, at a minimum:

1. the estimated amount of the charge and the approved rates for the service;
2. the right of the patient or client to request an adjustment to this charge based on his or her individual financial circumstances;
3. the name and telephone number of the Department office or employee available for further information; and
4. the right of the patient or client to appeal as established in 104 CMR 30.04(10).

(c) The facility or program shall offer to the patient or client the opportunity to have the notice explained to him or her by an appropriate representative of the facility or program.

(6) Charges for Services.

(a) The Department may charge for the care or treatment of any patient or client who receives services which are operated or contracted for by the Department, whenever any such service has a charge associated with it.

(b) The charge shall be at the approved rate.

(7) Establishment of Adjusted Charges. If the charges for care or treatment are not covered by any contract of insurance or entitlement, the charges shall be assessed to the individual patient or client, provided that the Department shall make adjustments to such charges based on the type of service provided, the patient's or client's individual financial circumstances, and the patient's or client's ability to pay. Such adjusted charges shall be determined according to written policies of the Department, but will in no case be higher than the charge associated with the service. In these policies, only the patient's or client's income and liquid assets, or those of his or her spouse, and if such spouse is legally separated, then only to the extent provided by the judicial order or separation agreement, will be considered when establishing adjusted charges. These policies shall establish deductions to allow the patient or client to exempt some income or liquid assets from the calculation of adjusted charges in order to support the patient's or client's ability to maintain a residence in the community, support dependents and/or maintain independence. Patients and clients, and their fiduciaries or other fee payers, shall receive notice of adjusted charges and shall have the appeal rights described in 104 CMR 30.04(10).

(8) Review of Ability to Pay. The Department shall provide for and shall review the ability to pay of the patient or client, or other fee-payer:

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- (a) annually;
- (b) on request of the patient or client, or his or her representative; and
- (c) whenever the Department has reason to believe that the ability to pay of the patient or client, or other fee-payer, has changed.

(9) Facility Director's Authority. If a patient has deposited funds with the facility director, or his or her designee, the facility director or designee shall deduct the appropriate adjusted charges from those funds provided, however, that:

- (a) The patient is capable and the facility director has requested in writing authority to deduct such charges and has received such authority from the patient.
- (b) The patient has a legally authorized representative and the facility director has requested in writing authority to deduct such charges and has received such authority from the legally authorized representative.
- (c) The funds have been entrusted to the facility director as the patient's representative payee. In this situation, the patient will receive notice of the adjusted charge and will have the appeal rights described in 104 CMR 30.04(10).
- (d) All notice provisions as specified above have been complied with.
- (e) No appeal of the adjusted charge has been filed by the patient, or his or her representative, or, if an appeal has been filed, it has been heard and decided.
- (f) The facility director has first addressed the need for expenditure of such funds pursuant to the provisions of 104 CMR 30.02, and after he or she has first made all deductions and expenditures from such patient's funds pursuant to the policies promulgated under the provisions of 104 CMR 30.04(7).

For the purposes of 104 CMR 30.04(9) (a), (b), (c) and (d), the facility director shall be deemed to have such authority if, within 30 days of requesting such authority in writing, the patient or legally authorized representative has not responded to such request so long as the facility director has documented that the patient or other person has received such request and so long as the facility has taken reasonable steps to assist the patient or other person to understand the nature of the request.

(10) Appeal of Charges.

(a) General Provisions.

1. 104 CMR 30.04(10) contains the standards and procedures for appeals by clients of charges for care.
2. To the maximum extent possible, disagreements among the parties should be informally resolved prior to utilizing this appeal mechanism.
3. Clients, and their legally authorized representatives, if any, shall be informed of their rights to appeal pursuant to the provisions of 104 CMR 30.04(10).
4. This appeals process has been established to comply with the State Comptroller's Office's requirements concerning debt collection, which are set out at 815 CMR 9.00, *et seq.*

(b) Subject Matter of an Appeal.

1. A client may appeal whether the client, in fact, received the service for which he or she is being billed. A client also may appeal whether the amount being charged was calculated in accordance with the Department's procedures for adjustment to charges.
2. A client may not appeal the rate that the Department charges for its services.

(c) Initiation of the Appeal.

1. An appeal may be initiated by any of the following individuals:
 - a. the client or his or her legally authorized representative, if any;
 - b. the client's legal advocate, if any;
 - c. the client's representative payee, if any; or
 - d. an individual designated by the client as the client's representative.
2. An appeal is initiated by submitting a written statement to the Area Director, or designee, indicating what is being appealed and the basis for the appeal.
3. An appeal must be initiated within 21 calendar days after the date of issuance of the bill being appealed. The Area Director or designee, however, may accept an appeal after 21 days for good cause.

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(d) The Appeals Process.1. Informal Conference.

a. The Area Director or designee shall hold an informal conference with the client, the client's legally authorized representative, if any, the client's designated representative, if any, a representative from the Department's revenue or billing office, and other invited persons, if appropriate, within 20 calendar days of notification of the appeal for the purpose of resolving the matter being appealed. At the informal conference, the parties will review the documentation and information that the Department is using to support the challenged portion of its charge. The client, or his or her representative, may provide additional documentation and information at the informal conference to support his or her position. To the extent that resolution satisfactory to all persons is not achieved, the Area Director or designee shall clarify issues for appeal.

b. Except to the extent that statements of the parties are reduced to an agreed statement of facts, all statements of the parties made during the informal conference shall be considered as offers in compromise, and shall be inadmissible in any subsequent hearing or court proceedings pursuant to the provisions of 104 CMR 30.04(10). However, documents which are produced at the informal conference may be admitted into evidence in any subsequent hearing or court proceedings pursuant to the provisions of 104 CMR 30.04(10) if otherwise admissible.

c. The parties may agree to have subsequent informal conferences prior to convening a fair hearing if the parties agree that this may result in the resolution of the issues under appeal. In addition, the parties may agree to share documents subsequent to the informal conference but prior to convening of a fair hearing if they agree that this may result in the resolution of the issues under appeal.

d. At the conclusion of the informal conference(s), the Area Director or designee shall prepare a written summary of the conference results, which clarifies the issues for appeal and includes an agreed statement of facts, if any. This summary shall be sent to the appealing party.

2. Fair Hearing.

a. If all issues under appeal are not resolved at the informal conference, within ten calendar days of his or her receipt of the written summary of the informal conference results, the appealing party may petition the Commissioner or designee in writing for a fair hearing. Within ten calendar days of receipt of such petition, the Department shall appoint a hearing officer, who shall schedule a hearing date which is agreeable to both parties. Said fair hearing shall be conducted in a manner consistent with M.G.L. c. 30A and 104 CMR 30.04(10)(d)2. Such hearing shall be governed by the informal fair hearing rules of the standard adjudicatory rules of practice and procedure, 801 CMR 1.02.

b. The fair hearing shall be conducted by an impartial hearing officer designated by the Commissioner or designee.

c. The client shall have the right to be represented at the hearing.

(i) The client shall have the right to be represented by an individual designated by the client, at the client's own expense;

(ii) If the client is unrepresented at the hearing but needs assistance, or if for any other reason the Commissioner or designee determines it to be in the client's best interest, the Commissioner or designee shall designate a client advocate to assist the client in the appeal.

d. The client or other appealing party and the Department shall have the right to present any evidence relevant to the issues under appeal, and shall have the right to call, examine, and cross-examine witnesses.

e. The client or other appealing party shall have the right to examine all records held by the Department upon which the adjusted charge for care is based.

f. The fair hearing shall not be open to the public. The hearing officer may allow other persons to attend if he or she deems such attendance to be in the best interest of the client.

g. The hearing officer shall render a written decision within 20 calendar days of the close of the hearing.

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- (i) The decision shall include a concise statement of the facts found, a summary of the evidence relied upon, the decision and the reasons for so deciding and a notice of the client's rights to petition the Commissioner or designee for a re-hearing pursuant to the provisions of 104 CMR 30.04(10)(d)3. and to appeal the decision to the Superior Court under M.G.L. c. 30A.
 - (ii) The decision shall be mailed to the client and to all parties appealing and their designated representatives.
 - (iii) Unless the Commissioner or designee orders a re-hearing, the decision of the hearing officer is the final decision of the Department on all issues.
3. Re-Hearing.
- a. Within ten calendar days of receipt of the decision of the hearing officer by the client, any party may petition the Commissioner or designee to order a re-hearing on one or more of the following grounds:
 - (i) that new evidence was discovered by the appealing party subsequent to the hearing, and that the new evidence is such that it would be likely to materially affect the issues being appealed;
 - (ii) that the hearing was conducted in a manner which was inconsistent with 104 CMR 30.04(10)(d)2. or prejudicially unfair to the client or other appealing party;
 - (iii) that the decision is based on inappropriate standards or contains other errors of law; or
 - (iv) that the decision is unsupported by any substantial evidence.
 - b. The failure of the Commissioner or designee to grant or deny a petition for re-hearing within ten calendar days of the submission of the petition shall be considered a denial of the petition.
 - c. Upon order for a re-hearing by the Commissioner or designee, a hearing shall be conducted and a decision rendered anew, pursuant to the provisions of 104 CMR 30.04(10)(d)2.
4. Judicial Review. A client aggrieved by a final decision of the Department pursuant to 104 CMR 30.04(10) may, within 30 calendar days of receipt of the decision or a decision after a re-hearing, seek judicial review of the decision, in accordance with the standards and procedures contained in M.G.L. c. 30A, § 14.
- (e) Standard and Burden of Proof.
- 1. The standard of proof on all issues shall be a preponderance of the evidence.
 - 2. The burden of proof on the issues specified in 104 CMR 30.04(10)(b)1. shall be on the Department.

30.05: Canteen Operations

- (1) Authority. 104 CMR 30.05 is promulgated pursuant to M.G.L. c. 19, §§ 1, 16 and 18, and pursuant to M.G.L. c. 123, §§ 2 and 23.
- (2) Scope. 104 CMR 30.05 shall apply to facilities operated by the Department.
- (3) General Provisions.
 - (a) A facility may conduct various activities and operations which are incidental to the mission of the facility and in which charges are made to patients, employees, or others for the goods or services sold. Activities and operations including vending machine proceeds, restaurant or snack bar operations, gift shops, concession stands, local fund raising drives, programs charging admission, and the like shall be known as Canteen Operations. The management of Canteen Operations shall be the responsibility of an employee or employees selected by the facility director. Such employee or employees may be assisted by patients and volunteers.
 - (b) The income from the Canteen Operations shall support the Canteen Operations. Income in excess of the cost of the Canteen Operations shall be called the Canteen Fund. The Canteen Fund shall be held by the financial manager of the facility. Donations may be made to the Canteen Fund. Canteen Funds shall be expended for the benefit of patients and employees. Expenditures for the benefit of employees shall not exceed 25% of the Canteen Fund in any one year. The Canteen Committee will determine the expenditure of all Canteen Funds.

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(c) The facility must have written policies and procedures concerning internal controls and accounting procedures for the management of the Canteen Operations, the Canteen Fund, and the inventory of goods kept in the Canteen. These written policies and procedures must be approved by the Commissioner or his or her designee.

(d) A Canteen Committee shall be selected by each facility. The facility director or his or her designee shall be the chairperson of this committee which will consist of members chosen as representatives of the following groups: facility staff, patients, and individuals concerned with the care and treatment of patients. At least two members of the Committee shall not be employees of the Department. The Canteen Committee shall provide advice on which goods to stock in the Canteen.

(e) Pursuant to M.G.L. c. 123, § 23, every patient shall have the right to keep and be allowed to spend a reasonable sum of his or her own money for canteen expenses and small purchases.

REGULATORY AUTHORITY

104 CMR 30.00: M.G.L. c. 19, §§ 1, 16, 18 and 19; c. 123, §§ 2, 4, 23, 25, 26(a) and 32.