

104 CMR 30.00: FISCAL ADMINISTRATION

Section

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

30.02: Funds Belonging to Patients in Facilities

30.03: Client Funds in Community Programs

30.04: Charges for Care

30.05: Canteen Operations

30.06: Charges for Room and Board in the Community

30.07: Disposition of Personal Property Abandoned at Facilities or Programs

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.

30.01: continued

(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.

30.02: continued

- (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:

30.02: continued

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.

30.03: continued

(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 Services

(1) Authority. 104 CMR 30.04 is promulgated under authority of M.G.L. c. 19, §§ 16 and 18, M.G.L. c. 123, § 32 and M.G.L. c. 6A, § 16.

(2) Scope. 104 CMR 30.04 applies to services for which the Department has an approved rate and that are provided by Department operated or contracted for facilities or programs. This includes the provision of room and board in a facility. Charges for room or board other than for that provided in a facility are governed by 104 CMR 30.06.

(3) Purpose. To maximize revenue for costs of services provided by Department operated or contracted for facilities and programs from federal and state benefits and private health insurance reimbursements as required by M.G.L. c. 6A, § 16, the Department must charge patients, clients or fee payers for the services it provides, contracts for, or otherwise funds. The purpose of 104 CMR 30.04 is to establish how the Department will charge for the services for which it has approved rates and to allow for such charges to be adjusted on an individualized basis based on the ability to pay of the patient, client, or fee payer as determined in accordance with 104 CMR 30.04(7).

30.04: continued

(4) Definitions. As used in 104 CMR 30.04 the terms listed below have the following definitions.

- (a) Approved Rate: the charge for a service which is established by the Department in accordance with applicable law.
- (b) Fee Payer: any of the following persons, each of whom may be liable for charges for services:
 1. 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;
 2. the parent(s) of a minor child who is not an emancipated minor or a mature minor;
 3. the legally authorized representative, representative payee or other person who controls assets of a patient or client, or the patient's or client's spouse or parent(s); provided however, the legally authorized representative, representative payee, or other person shall be responsible only to the extent he or she has control of a patient's or client's assets, or the assets of the patient's or client's spouse or parent(s), and only to the extent of such assets.
- (c) Income: monies received as recurrent payments, payments in kind or lump sum payments. Food stamps and other Supplemental Nutrition Assistance Program benefits, or like benefits provided through any successor program, are not income.
- (d) Liquid Assets: cash and all property capable of ready conversion into cash whether held jointly or solely. Liquid assets do not include life insurance or its cash value, nor assets subject to an irrevocable trust with the patient or client as named beneficiary, unless those assets are available to the patient or client or fee payer on demand.
- (e) Patient or Client: a person who receives services from a Department operated or contracted for facility or program.
- (f) Third Party Payer: an insurer, entitlement agency, or similar entity, which is obligated to pay for services provided to a patient or client.

(5) Charges for Services.

- (a) The Department shall charge a patient, client or fee payer for the services provided to the patient or client by a facility or program operated or contracted for by the Department if the Department has an approved rate for the services.
- (b) The charge shall be at the approved rate.
- (c) A client is responsible for a charge unless the charge is covered by a third party payer.
- (d) The Department shall adjust a charge based on a client's ability to pay in accordance 104 CMR 30.04(7).

(6) Notification of Charges for Services. The Department will give patients, clients and their fee payers, if known, notice that they will be charged for any services provided by a Department operated or contracted for facility or program for which the Department has an approved rate.

- (a) Such notice will be given to each patient or client, his or her legally authorized representative and fee payer, if different:
 1. at the time a patient or client, or his or her legally authorized representative, requests services;
 2. upon admission to a facility operated or contracted for by the Department;
 3. upon referral to any program operated or contracted for by the Department that provides a service for which the Department has an approved rate if not previously given;
 4. at any time the approved rate for an applicable service changes;
 5. annually thereafter as part of the patient's periodic review pursuant to 104 CMR 27.11; or the review of the client's individual service plan pursuant to 104 CMR 29.09; or if the client does not have an individual service plan, upon the annual review of the client's individualized action plan pursuant to 104 CMR 29.13;
 6. upon their request; and
 7. at any other time deemed appropriate by the Department.
- (b) The notice shall be on a form approved by the Department and shall provide the following information, at a minimum:
 1. the approved rate for all of the applicable services for which the Department has an approved rate;

30.04: continued

2. the right of the patient, client, his or her legally authorized representative or fee payer to request a reduction to a charge billed by the Department based on the patient's or client's financial circumstances and the fee payer's circumstances if the fee payer is either the spouse or parent(s) of the patient or client;
3. the name and telephone number of the Department office or employee available for further information; and
4. the right of the patient, client, or fee payer to appeal a charge as established in 104 CMR 30.04(9).

(c) The Department shall offer to the patient, client, or fee payer, the opportunity to have the notice explained to him or her by an appropriate representative.

(7) Billing a Patient, Client or Fee Payer.

(a) Determining Ability to Pay. Prior to billing charges that are the responsibility of a patient, client or fee payer, if the fee payer is the spouse or parent of a patient or client, the Department shall determine the ability to pay of the patient, client or fee payer. Based on the determination, the Department may reduce a charge or charges. The Department shall determine the ability to pay of a patient, client or fee payer and the amount by which charges may be reduced in accordance with the written policies of the Department. At a minimum, these policies must satisfy the following requirements:

1. In determining the ability to pay of a patient, client or fee payer, the Department will consider the patient's or client's income and liquid assets and those of a spouse or parent(s) if they are fee payers. If the spouse is legally separated from the patient or client, then the spouse's income and liquid assets will only be considered to the extent provided by a judicial order or separation agreement.
2. In calculating a patient's or client's income and liquid assets, or if applicable, the income and liquid assets of a spouse or parent(s), for the purpose of determining ability to pay, a certain amount of such income or liquid assets will be exempted to allow for the individual's support; the support of the individual's dependent(s) and, if applicable, spouse, and to permit the individual to maintain a residence in the community.
3. A reduction will not be permitted if the patient, client or fee payer requests that the Department not bill the charge to a third party payer or otherwise precludes the third party payer from paying the Department.
4. A reduction will not be permitted if the patient, client or fee payer does not provide the Department with the information needed to determine his or her ability to pay as specified by the Department's written policies regarding ability to pay.

(b) Review of Ability to Pay. The Department shall review the ability to pay of a patient or client, or if applicable, the patient's or client's spouse or parent(s) as follows:

1. when the patient or client first receives a service for which the Department has an approved rate;
2. annually;
3. on request of the patient or client, or his or her legally authorized representative;
4. on the request of the fee payer; and
5. whenever the Department has reason to believe that the ability to pay of the patient or client, or if applicable, the patient's or client's spouse or parent(s), has changed.

(c) Information. The patient or client, or if applicable, the patient's or client's spouse or parent(s), is responsible for providing or assisting the Department in obtaining the information needed to review his or her ability to pay. If the Department fails to receive such information, the Department may determine ability to pay based upon its best available information and proceed to bill and collect charges.

(d) Notice. Each patient and client and his or her legally authorized representative and other fee payers shall receive notice of the determination of the ability to pay and whether a charge or charges will be adjusted, and of the right to appeal such determinations in accordance with 104 CMR 30.04(9).

(e) Billing a Client, Patient or Fee Payer. A patient, client or fee payer will be billed any charge not reduced to zero in accordance with 104 CMR 30.04(7). The bill shall include a statement of the charge(s), the reduction amount, if any, and the right to appeal the charge(s) as set forth in 104 CMR 30.04(9). Any charge or charges shall be due and payable within the time specified in the bill.

30.04: continued

(8) Facility Director's Authority. If a patient who is billed for services has deposited funds with a facility director or designee of a Department facility such facility director or designee shall deduct the charges, or if appropriate, the reduced charges, from those funds; provided, however, that:

- (a) The patient has capacity and the facility director or designee has requested in writing authority to deduct such charges and has received such authority from the patient; or
- (b) The patient has a legally authorized representative and the facility director or designee has requested in writing authority to deduct such charges and has received such authority from the legally authorized representative; or
- (c) The funds have been entrusted to the facility director or designee as the patient's representative payee; provided, however that the patient will receive notice of the charge and any decision to reduce the charge and will have the appeal rights described in 104 CMR 30.04(9); and
- (d) All notice provisions as specified above have been complied with; and
- (e) No appeal of the charge or the Department's decision regarding a reduction of charge has been filed by the patient or representative, or if an appeal has been filed, it has been heard and decided; and
- (f) The facility director or designee 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(8)(a), (b), (c) and (d), the facility director or designee 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 or designee 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.

(9) Appeal of Charges.

(a) General Provisions.

- 1. 104 CMR 30.04(9) contains the standards and procedures for appeals by patients, clients or fee payers of charges for services.
- 2. To the extent possible, disagreements concerning a patient's or client's charge should be resolved informally with the Area Director or designee prior to utilizing this appeal mechanism.
- 3. This appeal 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.

(b) Subject Matter of an Appeal.

- 1. The following issues may be appealed:
 - a. Whether the client or patient, in fact, received the service for which he or she or the fee payer is billed; or
 - b. Whether the amount billed was calculated in accordance with the Department's policy for reducing charges.
- 2. The rate that the Department charges for its services is not subject to appeal.

(c) Initiation of the Appeal.

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

(d) The Appeals Process - Fair Hearing.

- 1. Within ten days or receipt of the written statement requesting an appeal, the Commissioner or designee 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(9)(d)1. Such hearing shall be governed by the informal fair hearing rules of the standard adjudicatory rules of practice and procedure, 801 CMR 1.02.

30.04: continued

2. The fair hearing shall be conducted by an impartial hearing officer designated by the Commissioner or designee. The hearing officer may be an employee of the Department; provided, however, that no person shall be designated as a hearing officer in a particular appeal who is subject to the supervision of any facility, program or office within the service area in which the patient or client received the service that is the basis of the charge in dispute.
 3. The appealing party shall have the right to be represented at the hearing at his or her expense.
 4. If the patient or 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 best interest of the patient or client, the Commissioner or designee may designate an advocate to assist the patient or client in the appeal.
 5. The 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.
 6. The appealing party shall have the right to examine all records held by the Department upon which the applicable charge is based.
 7. The fair hearing shall not be open to the public. The hearing officer may allow other persons to attend if he deems such attendance to be in the best interest of the patient or client.
 8. Within 20 days of the close of the hearing, the hearing officer shall prepare and submit to the Commissioner a recommended decision which shall include a summary of the evidence presented, findings of fact, proposed conclusions of law, the recommended decision and the reasons for the decision.
 9. The findings of fact in the recommended decision shall be binding on the Commissioner. The Commissioner may modify the conclusions of law and decision where the conclusions or decision are: in excess of the agency's statutory authority or jurisdiction; based on an error of law; or arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law.
 10. Within 15 days after receipt of the hearing officer's recommended decision, the Commissioner shall issue a decision which shall be the final decision of the Department on all issues.
 - a. The Commissioner's decision shall include a summary of the evidence presented, findings of fact, conclusions of law, a decision on each of the issues appealed and the reasons for such decision, and a notice of the individual's right to appeal the decision to the Superior Court pursuant to M.G.L. c. 30A.
 - b. The Commissioner's decision shall be mailed to the appealing party and his or her legally authorized representative.
- (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 shall be on the Department.
- (f) Judicial Review. A patient, client or fee payer aggrieved by a final decision of the Department pursuant to 104 CMR 30.04(9) may, within 30 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.

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

30.05: continued

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.

(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.

30.06: Charges for Room and Board in the Community

(1) Authority. 104 CMR 30.06 is promulgated under authority of M.G.L. c. 19, §§ 16 and 18, M.G.L. c. 123, § 32.

(2) Purpose and Scope. The purpose of 104 CMR 30.06 is to establish the rules for charging adult clients in the community for room or room and board provided by Department operated or contracted for programs. 104 CMR 30.06 does not apply to the following:

- (a) room or room and board provided to facility patients;
- (b) room or room and board provided to clients who are minors;
- (c) room or room and board provided as part of a shelter program as defined by the Department procurement activity codes;
- (d) room or room and board provided as part of a respite program as defined by the Department procurement activity codes; and
- (e) charges for services pursuant to 104 CMR 30.04.

(3) Definitions. As used in 104 CMR 30.06, the terms listed below have the following definitions:

Board means the provision of daily meals. A program that provides board to its clients regularly offers its clients at least two full meals (*i.e.*, breakfast, lunch, or dinner) a day. This includes meals that are prepared by clients with food provided by the program. The meals must be provided on a regular fixed basis.

Client's Charge means the monthly amount a client or his or her fee payer(s) is responsible for paying for room or room and board as determined in accordance with 104 CMR 30.06(6).

Fee Payer means any of the following persons who may be liable for a client's charge: a guardian, conservator, representative payee or other person who controls the funds of the client. A fee payer shall be responsible for the payment of a client's charge for room or room and board only if the fee payer controls the client's funds.

Income means monies received, including recurrent payments, payments in kind or lump sum payments. Such monies, payments in kind and lump sum payments will be counted as income in the month received and, thereafter, shall be defined as assets. Student financial assistance paid directly to the student or the educational institution and Food Stamps and Supplemental Nutrition Assistance Program benefits, or like benefits provided through any successor program, shall not be counted as income.

30.06: continued

Room means sleeping accommodations. Room may be provided directly by a DMH operated or contracted for program or a program may pay a third party (*e.g.*, rent to a local authority) for sleeping accommodations for a client. The sleeping accommodations must be provided on a regular fixed basis. Payments made by a Department operated or contracted for program that supplement rental payments made by clients (*i.e.*, clients are paying a portion of the rent) shall not be considered room for purposes of 104 CMR 30.06.

(4) Duty to Charge for Room or Room and Board. A Department operated or contracted for program that provides room or room and board to an adult client or otherwise pays for a client room or room and board must charge the client monthly for the room or room and board in accordance with the provisions of 104 CMR 30.06.

(5) Notification of Client's Charge. A Department operated or contracted for program that provides room or room and board to adult clients must provide each client and the client's legally authorized representative and fee payer(s), if any, with written notices that meet the requirements of 104 CMR 30.06(5).

(a) Initial Notice. Prior to receiving room or room and board a client, legally authorized representative and fee payer shall be provided with a notice that includes the following:

1. the client and the fee payer's responsibility for paying the client's charge;
2. the manner in which the amount of the client's charge will be calculated including that the client's charge may not exceed 75% of the client's average monthly income and that such charge shall be reduced by an amount necessary to assure that the client retains a minimum of \$200 of his or her average monthly income.
3. details as to when and how the client or fee payer is to pay the client's charge each month; and
4. the client's and fee payer's responsibility for reporting the client's income and expenses to the program and for notifying the program of any changes in income or expenses. The notice shall indicate the individual, the client, or fee payer is to contact at the program regarding changes in income and expenses, and the procedures for doing so.

(b) Charge Calculation Notice. Upon calculation of the client's charge, the client and the client's legally authorized representative and fee payer(s), if any, shall be provided with a notice that informs him or her of the amount of the client's charge and of the appeal process as set forth in 104 CMR 30.06(9). Arrearages that accrue during the time the client's charge is being calculated may be added to the client's charge until satisfied; provided, however, that in all cases the client shall be entitled to retain a minimum of \$200 of his or her average monthly income.

(c) Notice of Change to Client's Charge. If the client's charge is changed for any reason the client and his or her legally authorized representative and fee payer(s) shall be provided with notice of such change. At a minimum, the notice must be provided at least 30 days prior to an increase in the client's charge being implemented.

(6) Determination of Client's Charge.

(a) Determination of Client's Charge. Charges are to be determined per location where a program provides room or room and board. The client's charge shall be the Department or contracted program's monthly cost of providing the room or room and board to the client as determined by 104 CMR 30.06(6)(b), subject to the following limits:

1. The client's charge may not exceed 75% of the client's average monthly income as determined in accordance with 104 CMR 30.06(6)(c); provided, however, that such charge shall be reduced by an amount necessary to assure that the client retains a minimum of \$200 of his average monthly income.
2. If the client's average monthly income is \$200 or less, the client's charge shall be zero.
3. A Department operated or contracted for program that receives state or federal housing assistance for a particular site must, in determining a client's charge for that site, adhere to the applicable federal or state agency's rules regarding the amount a tenant may pay for rent and utilities and, if appropriate, must reduce the client's charge as is necessary to comply with those rules.

30.06: continued

(b) Determination of a Program's Monthly Cost for Room or Room and Board. A Department operated or contracted for program's cost of providing room or room and board to a client at a particular site shall be determined annually as follows:

1. The program's expected annual cost for room, and if applicable board, for that particular site is totaled. Costs that are non-reimbursable costs under 808 CMR 1.00 shall not be included in this calculation.
 - a. Costs for room include all costs associated with occupancy, including without limitation, rent; mortgage (not including the costs of principal or amortization); real estate taxes; insurance; utilities; consumables related to the occupancy; repair and maintenance of the residence; repair and replacement of furniture and equipment for client use; and general liability insurance.
 - b. Board costs include costs of food, cooking materials and other resources (other than payroll) required for the planning, preparation and serving of meals and snacks to clients at the site.
2. The total cost is then adjusted by subtracting the value of rent subsidies, food stamps (Supplemental Nutrition Assistance Program benefits or like benefits from any successor program), fuel assistance and other third party payments the program expects to receive in the year for the costs for room or room and board at the site.
3. The adjusted cost is then divided by 12 for a total monthly cost.
4. The total monthly cost is divided by the program's room or room and board capacity at that particular site.

The resulting sum shall be the Department operated or contracted for program's monthly costs for, as applicable, room or room and board at that site

(c) Determination of a Client's Average Monthly Income. A client's average monthly income is determined by the sum of all gross income expected to be received by the client, or the client's fee payer on his or her behalf, over the next 12 months, minus necessary expenses as defined in 104 CMR 30.06(6)(d), and dividing the sum by 12. Income includes, but is not limited to:

1. compensation for services;
2. net income derived from a business;
3. military pay;
4. interest;
5. net rental income;
6. dividends;
7. annuities;
8. pensions;
9. unemployment compensation;
10. worker's compensation;
11. Veterans Administration benefits;
12. Social Security retirement, Supplemental Security Income, and Social Security Disability Income benefits; and
13. trust benefits.

(d) Necessary Expenses. Necessary expenses for purposes of 104 CMR 30.06(6)(c) is the sum of the following amounts which the client or the client's fee payor on his or her behalf is expected to pay over the next 12 months:

1. the cost of premiums to enroll and maintain the client in a health insurance program;
2. medical and dental expenses, including medication costs provided that such expenses are not covered by insurance or other third party payor and excluding co-payments;
3. child support or alimony payments owed by the client;
4. transportation expenses related to the implementation of the client's individualized action plan that are not provided by a Department operated or contracted for program;
5. the cost of gas or electricity related to the room or room and board if the responsibility of client; and
6. other necessary expenses that are reflected in the client's individualized action plan.

(e) Monthly Amount. Charges for room or room and board shall be calculated in monthly amounts. Charges for clients who receive room or room and board for less than a month shall be adjusted *pro rata*.

30.06: continued

(f) Multiple Programs. If a client receives room or room and board from more than one Department operated or contracted for program on any given day, the client or fee payer(s) shall only be charged for room or room and board by the program that provided the room that is considered the client's more permanent residence. If there is any issue regarding which one of the different programs is to bill, the issue shall be resolved by the applicable Area Director or designee.

(7) Program Responsibilities Regarding Charges. A Department operated or contracted for program that provides adult clients with room or room and board must comply with the following requirements.

(a) When a Client's Charge Must be Established. The program must establish a client's charge as soon as is practicable after the client first receives room or room and board from the program and at least annually thereafter.

(b) Review of Client's Charge.

1. Notice of Change by Client. If a program is notified by a client, or the client's legally authorized representative or fee payer of a change in the client's circumstance that could result in a change in the client's charge by more than 5%, the program, within ten days of receipt of such notice and any necessary supporting documentation, must recalculate the client's charge in accordance with 104 CMR 30.06(6) to determine if the amount actually has changed by more than 5% and it shall notify the client and client's legally authorized representative and fee payer(s), if any, of its findings. The notice must inform the client and the client's legally authorized representative and fee payer(s), if any, of the appeal process as set forth in 104 CMR 30.06(9).

2. Change Based on Annual Review of Program Cost. If the program's cost for room or room and board changes more than 5% as a result of the annual determination conducted pursuant to 104 CMR 30.06(6)(b), the client's charge shall be recalculated as provided in 104 CMR 30.06(6).

(c) Procedures. The program must have written procedures and appropriate internal controls regarding the collection of client charges for room or room and board.

(d) Collection. The program must collect monthly from each client who receives room or room and board, or from his or her fee payer, the client's charge as determined in accordance with 104 CMR 30.06(6) and (7).

1. If a client fails to pay for his or her room and board, the program shall work with the client to establish a reasonable payment plan. Such repayment plan shall not be subject to the dollar limits set forth in 104 CMR 30.06(6)(a).

2. Failure to pay may be considered a violation of the program rules.

(e) Use. The amount collected for room or room and board from the client must be used to offset the Department's contract charges, if applicable, or distributed as determined by the Department in accordance with the Commonwealth's finance rules.

(f) Other Charges. Unless specifically authorized by the Area Director in writing or specifically authorized in the contract for the program, a program only may charge clients or ask clients for contributions for services and other program costs that are defined in 104 CMR 30.04 and 104 CMR 30.06 and for specific client caused damages that are above and beyond the usual expense of repair and replacement as described in 104 CMR 30.06(6)(b). Charges for such client caused damages shall not be subject to the dollar limits set forth in 104 CMR 30.06(6)(a).

(8) Responsibilities of the Client and Fee Payer for Reporting Income and Change in Circumstances.

(a) Payment of Charge. A client or his or her fee payer(s) who is charged for room or room and board by a Department operated or contracted for program is responsible for paying the client's charge monthly in a timely manner.

30.06: continued

(b) Provide Information.

1. A client who receives room or room and board from a Department operated or contracted for program, or the client's legally authorized representative or fee payer(s), if any, must provide the program with information on income and expenses upon the program's request. Additionally, the client or the client's legally authorized representative or fee payer(s), if any, must report a change in circumstances that could result in a change in the client's monthly charge for room or room and board, or a change in the party to be assessed. The client or the client's legally authorized representative or fee payer(s), if any, must report a change in circumstances within ten days from the date he or she first learns of the change, and shall provide necessary supporting documentation upon request from the program. Notwithstanding the provisions of 104 CMR 30.06(5)(b) Failure to report a change in circumstances in a timely fashion may result in a retroactive change in a client's charge.

2. If a client or the client's legally authorized representative or fee payer(s), if any, fails to provide the information required by 104 CMR 30.06(8)(b), the program may determine the client's charge in accordance with 104 CMR 30.06(6) and (7) based upon its best available information and the program shall proceed to assess and collect from the client or the fee payer the client's charge.

(9) Appeal of Charges.(a) General Provisions.

1. 104 CMR 30.06(9) contains the standards and procedures for appeals by a client or fee payer of a client's charge.

2. To the extent possible, disputes concerning a client's charge should be resolved informally within the program.

3. If the dispute cannot be resolved within the program, the program and client shall present the dispute to the Area Director or designee for review and resolution.

4. If the client, fee payer or client's legally authorized representative disagrees with the Area Director or designee's resolution, he or she may appeal to the Commissioner as provided in 104 CMR 30.06(9)(c).

5. During pendency of the appeal, the Department operated or contracted for program may continue to bill the client or fee payer for the client's charge.

(b) Subject Matter of an Appeal. The following issues may be appealed:

1. miscalculation of the charge;

2. misidentification of the client or fee payer; and

3. failure to adjust a client's charge due to a change in circumstances in accordance with 104 CMR 30.06(7).

(c) Initiation of an Appeal.

1. An appeal may be initiated by any of the following individuals:

a. the client, or his or her legally authorized representative;

b. the fee payer;

c. the client or fee payer's legal advocate, if any;

d. an individual designated by the client or fee payer as his or her representative.

2. An appeal is initiated by submitting a written statement to the Commissioner indicating what is being appealed and the basis for the appeal.

3. An appeal must be received by the Commissioner within 21 days of the client or fee payer being notified of the amount of the client's charge or, if applicable, upon the receipt of a decision regarding a request for adjustment under 104 CMR 30.06(7). The Commissioner may accept an appeal received after 21 days for good cause.

(d) Fair Hearing.

1. Within ten days of receipt of the written statement requesting an appeal, the Commissioner or designee 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 30.06(9)(d)1. Such hearing shall be governed by the informal fair hearing rules of the standard adjudicatory rules of practice and procedure, 801 CMR 1.02.

30.06: continued

2. The fair hearing shall be conducted by an impartial hearing officer designated by the Commissioner or designee. The hearing officer may be an employee of the Department; provided, however, that no person shall be designated as a hearing officer in a particular appeal who is subject to the supervision of any facility, program or office within the service area in which the applicable Department operated or contracted program is located.
 3. The client or appealing party shall have the right to be represented at the hearing at his or her expense.
 4. 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 best interest of the client, the Commissioner or designee may designate an advocate to assist the client in the appeal.
 5. 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.
 6. The client or other appealing party shall have the right to examine all records held by the Department upon which the applicable charge is based.
 7. 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.
 8. Within 20 days of the close of the hearing, the hearing officer shall prepare and submit to the Commissioner, a recommended decision which shall include a summary of the evidence presented, findings of fact, proposed conclusions of law, the recommended decision and the reasons for the decision.
 9. The findings of fact in the recommended decision shall be binding on the Commissioner. The Commissioner may modify the conclusions of law and decision where the conclusions or decision are: in excess of the agency's statutory authority or jurisdiction; based on an error of law; or arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law.
 10. Within 15 days after receipt of the hearing officer's recommended decision, the Commissioner shall issue a decision which shall be the final decision of the Department on all issues.
 - a. The Commissioner's decision shall include a summary of the evidence presented, findings of fact, a decision on each of the issues appealed and the reasons for such decision, and a notice of the individual's right to appeal the decision to the Superior Court pursuant to M.G.L. c. 30A.
 - b. The Commissioner's decision shall be mailed to the appealing party and his or her legally authorized representative, if any.
- (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 30.06(9)(b)1. shall be on the program establishing the charge
 3. The burden of proof on all other issues specified in 104 CMR 30.06(9)(b) shall be on the appealing party.
- (f) **Judicial Review.** A client or fee payer aggrieved by a final decision of the Department pursuant to 104 CMR 30.04(9) 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.

30.07: Disposition of Personal Property Abandoned at Facilities or Programs

- (1) **Authority.** 104 CMR 30.07 is promulgated under authority of M.G.L. c. 19, §18 and M.G.L. c. 123, §§ 2 and 26.
- (2) **Purpose.** To establish standard procedures for handling, controlling and disposing of personal property abandoned by patients at Department operated or contracted for facilities or by clients at residential sites that are operated by the Department or by a program contracted for by the Department.

30.07: continued

- (3) Scope. 104 CMR 30.07 applies to Department operated and contracted for facilities and Department operated and contracted for programs that operate residential sites as defined in 104 CMR 28.13.
- (4) Definitions. As used in 104 CMR 30.07, the terms listed below have the following definitions.
- (a) Abandoned Property means:
 - 1. personal property that belongs to a patient and which is left behind by the patient after the patient is discharged from the facility; or
 - 2. personal property that belongs to a client and which is left behind by the client at a program's residential site after the client leaves the residential site.
 - (b) Discharged means being formally discharged from a facility or being classified as absent without authorization (AWA) pursuant to 104 CMR 27.16, for six months.
 - (c) To Leave a Residential Site: means that the client has left a residential site with the intent to reside elsewhere on other than a short term basis.
- (5) Patients and Clients are Responsible for Their Personal Property.
- (a) Patients and clients are responsible for their personal property that they bring to or acquire while at a Department operated or contracted for facility or program. Facilities and programs are not responsible for damage to, loss of, or theft of the personal property of patients or clients.
 - (b) At the time of discharge from a facility, it is the patient's responsibility to remove or make arrangements for the removal of his or her personal property from the facility. Similarly, when a client leaves a residential site operated by a program, the client is responsible for removing or making arrangements for the removal of his or her personal property from the site.
- (6) Notification of Policies Concerning Abandoned Property.
- (a) Facilities. At the time of admission and again during the discharge planning process, or upon request, a facility must provide a patient and his or her legally authorized representative, if any, with written information on the facility's policies concerning the disposition of patients' personal property that is abandoned at the facility.
 - (b) Programs. When a client is initially provided with services at a residential site of a program and again ten or more days prior to a planned transition of the client from the residential site to another place of residence on a permanent basis, the program must provide the client and his or her legally authorized representative, if any, with written information on the program's policies concerning the disposition of personal property that is abandoned by clients at the program's residential sites. The information shall also be provided to clients or their legally authorized representatives upon their request.
- (7) Storage of Abandoned Personal Property.
- (a) A facility or program shall inventory and store abandoned personal property as soon as it is practical, but no later than ten days, after the patient is discharged from the facility or the client leaves the residential site of the program. A copy of the inventory shall be maintained in the record of the patient or client. The storage shall be appropriate for the nature and potential value of the abandoned property.
 - (b) Abandoned property shall be stored until such time as it is reclaimed by the patient or client or his or her personal representative, or it is disposed of in accordance with 104 CMR 30.07(9).
- (8) Reasonable Efforts to Contact the Patient or Client. The facility and program shall make reasonable attempts to contact the patient or client to facilitate the return of the abandoned personal property. Such efforts shall include:
- (a) Mailing a letter within ten days of the discharge of the patient from a facility or a client leaving the residential site operated by a program. The letter must be mailed to the last known address of the patient or client and to his or her personal representative, if any. A facility must also send a copy of the letter to patient's next of kin. The letter must:
 - 1. describe the abandoned property in sufficient detail so the patient or client will recognize it;

30.07: continued

2. advise the patient or client to contact the facility or program as soon as possible to reclaim the property; and
3. inform the patient or client how long the abandoned property will be kept before it is disposed of by the facility or program.

(b) 30 days prior to disposing of any abandoned property pursuant to 104 CMR 30.07(9), the facility or program must again mail a letter to the patient or client to the last known address of the patient and client and to his or her personal representative, if any. A facility must also send a copy of the letter to patient's next of kin. The letter must inform the patient or client that the facility or program intends to sell or otherwise dispose of the property in accordance with law if it is not reclaimed and removed from the facility or program within the next 30 days.

(c) When mailing the letters required by 104 CMR 30.07(8), the facility and program must, to the extent permitted by privacy and confidentiality statutes and regulations, check with other available resources to determine if a more recent address can be obtained. At a minimum, a Department operated program and facility shall ascertain if a more recent address for the patient or client exists in the Department's records. If a more recent address is obtained, a copy of the applicable letter shall also be sent to that new address.

(d) All efforts to contact the patient or client shall be documented in writing and kept in the record of the patient or client.

(9) Disposing of Abandoned Property. In disposing of abandoned property, a facility and program must abide by all applicable laws and regulations.

(a) Facilities.

1. A facility must retain abandoned property for at least one year after the patient's discharge prior to disposing of it.
2. Intangible personal property (*e.g.*, cash, checks, stocks, *etc.*) shall be disposed of by delivering it over to the State Treasurer in accordance with M.G.L. c. 123, § 26(b) and M.G.L. c. 200A.
3. Other personal property shall be disposed of as follows:
 - a. The facility director, or designee, shall determine if the property has sale value. If the property has sale value, the facility director or designee shall solicit offers for purchase from three reputable dealers in like property and shall sell the property to the highest bidder. The proceeds from the sale shall be given to the State Treasurer in accordance with M.G.L. c. 123, § 26(b) and M.G.L. c. 200A.
 - b. If the property is determined not to have sale value, or if no offer is received in response to solicitation for bids as described, the property may be disposed of in such a manner deemed appropriate by the facility director, or designee. This may include donating the property to charity or discarding the property.
 - c. A record of how a patient's abandoned property was disposed of shall be signed by the facility director or designee and filed with the former patient's facility records.
 - d. Staff of the facility shall not use, purchase or otherwise acquire the abandoned property.

(b) Programs.

1. A program must retain abandoned property for at least 60 days after the client leaves the program's residential site prior to disposing of it.
2. Intangible personal property shall be delivered to the State Treasurer in accordance with M.G.L. c. 200A.
3. Other personal property shall be disposed of as follows:
 - a. The program director or designee, shall determine if the property has sale value. If the property has sale value, the program director or designee shall solicit offers for purchase from three reputable dealers in like property and shall sell the property to the highest bidder. The proceeds from such sale shall be delivered to the State Treasurer in accordance with the procedures set forth in M.G.L. c. 200A.
 - b. If the property is determined not to have sale value, or if no offer is received in response to solicitation for bids as described, the property may be disposed of in such a manner deemed appropriate by the program director or designee. This may include donating the property to charity or discarding the property.
 - c. A record of how a client's abandoned property was disposed of shall be signed by the program director or designee and filed with the client's program records.

104 CMR: DEPARTMENT OF MENTAL HEALTH

30.07: continued

d. Staff of the program shall not use, purchase or otherwise acquire the abandoned property.

REGULATORY AUTHORITY

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