

## 110 CMR: DEPARTMENT OF CHILDREN AND FAMILIES

### 110 CMR 4.00: INTAKE

#### Section

##### Intake for Voluntary Service Delivery

- 4.01: Requests for Services
- 4.02: Review of Application
- 4.03: Response Time for Application
- 4.04: Eligibility to Receive Social Services
- 4.05: Decision to Provide Social Services to Eligible Applicants
- 4.06: Notification of Eligibility
- 4.07: Redetermination of Eligibility
- 4.08: Sliding Fee for Services
- 4.08A: Fees for Voluntary Substitute Care Services
- 4.08B: Fees for Nonvoluntary Substitute Care Services
- 4.08C: Fees for All Services Other Than Substitute Care
- 4.09: Parents of Children Who Are in Substitute Care and are Entitled to SSI/Soc. Sec./V.A./Other Benefits
- 4.10: Voluntary Placement Agreements -Execution
- 4.11: Voluntary Placement Agreements -Form
- 4.12: Voluntary Placement Agreements -Termination
- 4.13: Voluntary Placement Agreements -Mature Child
- 4.14: Voluntary Placement Agreements -Miscellaneous
- 4.15: Surrenders for Adoption

##### Intake for Protective Service Delivery

- 4.20: Receipt of Reports of Alleged Abuse or Neglect -Reporting Process
- 4.21: Screening of Reports of Alleged Abuse or Neglect
- 4.22: Screening -Collateral Contacts
- 4.23: Screening -Entry Into Central Registry
- 4.24: Screening -Notification to Mandated Reporters
- 4.24A: Screening- Identification of Family Members
- 4.25: Screening -Emergency and Non-emergency Responses
- 4.26: Investigation of Emergency Reports
- 4.27: Investigation of Non-emergency Reports
- 4.28: Screening and Investigation of Reports Involving Department Employees, Department Employee's Household or Family Members, Foster Parents, Pre-adoptive Parents or Area Board Members
- 4.29: Emergency Removal
- 4.30: Assignment of Second or Subsequent Reports for Investigation
- 4.31: Time Frames for Completion of Investigation
- 4.32: Decision to Support/Unsupport a Report
- 4.33: Perpetrator/Caretaker
- 4.34: Department's Custodial Powers -Miscellaneous
- 4.35: Access to the Central Registry
- 4.36: Registry of Alleged Perpetrators
- 4.37: Listing of Alleged Perpetrators
- 4.38: Access to the Registry of Alleged Perpetrators

##### Abuse or Neglect in an Institutional Setting

- 4.40: To Whom Reported
- 4.41: How Handled
- 4.43: Telephone Notice
- 4.44: Accompaniment of Department Investigator
- 4.45: Information Sharing
- 4.46: Testimony by Department Employees
- 4.47: Follow-up Actions
- 4.48: Information Requests from Day Care Facilities, Schools and Other Child Care Facilities

## 110 CMR: DEPARTMENT OF CHILDREN AND FAMILIES

4.00: continued

Reports and Referrals to the District Attorney

4.50: Reporting to the District Attorney and Law Enforcement Introduction

4.51: Mandatory Reporting to the District Attorney

4.52: Discretionary Reporting to the District Attorney

4.53: Procedures

4.54: Multi-disciplinary Service Team

Intake for CHINS Service

4.60: Scope of 110 CMR 4.60 through 4.67

4.61: General Provisions

4.62: Court Referral

4.63: Court-ordered Pre-trial Detention

4.64: Court-prescribed Services (No Custody to Department)

4.65: Court-ordered Commitment (Custody to Department)

4.67: Department Employees at CHINS Court Proceedings

Intake for Single Service Cases

4.70: Eligibility for Single Service Cases

4.71: Case Management

4.72: Application Information Required

4.73: Limited Assessment for Single Service Cases

4.74: Delivery of Service

4.75: Sliding Fee

4.76: Denial, Reduction, or Termination of Services

### 4.01: Requests for Services

(1) 110 CMR 4.01 through 4.15 do not apply to single service cases. For single service cases, see 110 CMR 4.70 et seq.

(2) Any person located within the Commonwealth may request social services from the Department. Persons requesting social services must complete a written application form. Persons needing assistance in completing the written application form shall be furnished with assistance by the Department.

### Commentary

The Department frequently receives requests for services from persons who, while physically located within the Commonwealth, might be classified as "transients" or "temporary residents". Examples include families who have stopped in Massachusetts while moving from Florida to Maine and who are living with relatives, families who are temporarily residing at the Ronald McDonald House while their child receives specialized care at Children's Hospital, etc. The Department will not exclude such families from eligibility for Department services on the basis of these residency characterizations. Instead, the Department will accept applications from any person who has a bona fide physical location within Massachusetts, and the Department will thereafter proceed to review and assess the application in accordance with 110 CMR.

### 4.02: Review of Application

(1) When the Department receives a written application for social services, it shall first review the application to determine:

- (a) the nature of the social service(s) requested,
- (b) whether the service(s) requested lie within the mandate of the Department, and
- (c) whether services are needed on an emergency basis.

## 110 CMR: DEPARTMENT OF CHILDREN AND FAMILIES

### 4.03: Response Time for Application

(1) If after review it is determined that the social service(s) requested lie within the mandate of the Department, and that the services are not needed on an emergency basis, then the Department (or provider) shall next conduct an assessment. See 110 CMR 5.00. The assessment shall be completed within 45 working days after receipt of the application by the Department. Thereafter, if the applicant is found eligible, the Department shall proceed in accordance with 110 CMR 6.00: Service Plans and Case Reviews.

(2) If after review it is determined that the social service(s) requested lie within the mandate of the Department, and that the services are needed on an emergency basis, the Department shall make a preliminary determination of the applicant's eligibility to receive social services. If the applicant is found eligible, the Department shall provide or authorize services within seven days from the date of receipt of the application; provided, however, that such determination of eligibility and provision or authorization of services will be made earlier if necessary to avoid serious and imminent risk to the health or safety of the applicant or a member of the applicant's family.

### 4.04: Eligibility to Receive Social Services

As part of the assessment or evaluation process (as well as during each case review -- see 110 CMR 6.00), the Department shall determine an applicant's eligibility to receive social services. The Department shall make this determination on the basis of whether the applicant is in need of the social service(s) requested, in that the service, if provided, will assist the applicant to reach at least one of the departmental goals enumerated in M.G.L. c. 18B.

### 4.05: Decision to Provide Social Services to Eligible Applicants

(1) The decision to provide voluntarily requested social services to eligible applicants shall take into consideration:

- (a) the availability of the service(s); and
- (b) the client's willingness to pay all or a portion of the cost of the service(s), according to a sliding fee scale established by the Department, unless the service(s) in question is/are not subject to sliding fee.

(2) If no Department (or provider) service resources are currently available, the eligible applicant shall be placed on a waiting list.

(3) If an eligible applicant has an assessed ability to pay the entire cost of the social service, the applicant shall be provided information and referral services only, unless the service in question is exempted from the sliding fee requirement.

### Commentary

M.G.L. c. 18B, § 4 states that "subject to appropriation, services of the Department shall not be denied to any person on the basis of such person's financial assets or income." Thus, the availability of the Department's services is always subject to sufficient appropriation of funds to the Department by the Legislature, in order to meet the amount of demand. Beyond that limitation, the availability of the Department's services is secondarily limited by a client's ability and willingness to pay a portion of the cost of those services -- for the Department is statutorily required to "establish a schedule of fees" in proportion to the client's ability to pay for the services. See M.G.L. c. 18B, § 4.

On the basis of these statutory provisions, the Department has developed 110 CMR 4.00, which draw the distinction between universal eligibility to receive social services, and the consideration of assets and income in the Department's decision to provide social services subject to a sliding fee requirement. Thus, while no applicant will be ineligible for services on the basis of assets or income per se, the Department may take assets or income into consideration in a subsequent decision to offer services subject to a sliding fee agreement.

## 110 CMR: DEPARTMENT OF CHILDREN AND FAMILIES

### 4.06: Notification of Eligibility

If the Department determines that an applicant is ineligible, then the Department shall give notice to said applicant. The notice shall be in writing and shall conform to the requirements set forth in 110 CMR 8.00.

### 4.07: Redetermination of Eligibility

(1) The Department shall redetermine each recipient's eligibility for services at the following times in connection with the case review process:

- (a) At least every six months; or
- (b) More often than every six months, when required on the basis of reliable information obtained by the Department or provider about actual or anticipated changes in an individual's circumstances and ability to pay for the service(s).

(2) Upon each redetermination of eligibility the Department (or provider) shall give notice to the recipient of the results of said redetermination. Whenever the recipient is found ineligible for services or whenever services are being reduced or terminated, the notice shall be in writing, and shall conform to the requirements set forth in 110 CMR 8.00.

### 4.08: Sliding Fee for Services

All Department services may be subject to a sliding fee as established by the Department, except for the following services:

- (1) Information and referral services.
- (2) Family planning services to persons under 18 years of age.

### 4.08A: Fees for Voluntary Substitute Care Services

(1) The Department will assess a fee when it determines that a child will be entering out-of-home care on a voluntary basis. The fee will include a portion based on the family's income and a portion based on an amount equal to 75% of the child's Supplemental Security Income (SSI) benefit, 75% of the child's Title II benefits, and/or an amount equal to 75% of the child's adoption or guardianship subsidy, if the child receives SSI benefits, Title II benefits, or an adoption or guardianship subsidy. Guardians will not be subject to the income based portion of the fee. The fee for services will never exceed the actual cost of services.

No fee will be charged to any family whose income is at or below 150% of the federal poverty level as revised annually and published by the United States Department of Health and Human Services in the Federal Register. When determining whether a family's income falls at or below 150% of the federal poverty level the federal poverty levels for each size family will be used.

The fee for substitute care services will be calculated as follows:

- (a) The Department will determine the family's gross income. Supplemental Security Income (SSI), Title II benefits, and adoption or guardianship subsidy for a child will not be included in calculating gross income.
- (b) If the family's gross income is at or below 150% of the federal poverty level for that size family unit, none of the fees listed in 110 CMR 4.08A will be charged.
- (c) If the family's income is above 150% of the federal poverty level, the family will be charged as a portion of the fee, a specified amount based upon their income as set forth in a sliding fee scale established by the Department. Guardians will not be subject to the income based portion of the fee.
- (d) If the family's income is above 150% of the federal poverty level and the child in placement receives SSI benefits, Title II benefits, or an adoption or guardianship subsidy, and the parent(s) is the representative payee of such benefits, the fee will also include an amount equal to 75% of the child's SSI benefit, 75% of the child's Title II benefits, and/or 75% of the child's adoption or guardianship subsidy. An amount equal to the remaining 25% will be retained by the parent or representative payee.

## 110 CMR: DEPARTMENT OF CHILDREN AND FAMILIES

### 4.08A: continued

- (2) The fee is computed on a daily rate and is due monthly.
- (3) The Department will provide written notice to the family of the procedures for requesting a full or partial waiver to the fee at the time that the fee is first imposed.
- (4) The Commissioner, or designee, may authorize a full or partial waiver of the fee if the family establishes:
  - (a) that the imposition of the fee would create an extreme financial hardship and/or;
  - (b) that the actual and reasonable monthly expenses directly attributable to the child in placement exceed 25% of the child's monthly SSI benefit. A waiver under 110 CMR 4.08A(4)(b) shall be in the amount by which the directly attributable reasonable expenses exceed the 25% figure.

Commentary. This commentary is to provide examples where the actual and reasonable expenses directly attributable to the child in placement exceed 25% of the child's SSI benefit.

Family A is composed of two parents and two children, a son and a daughter. The daughter is in residential care but returns to the family home on weekends and vacations. The family is able to demonstrate through bills, receipts; etc., that the actual expenses of the clothing, food and recreational activities for their daughter is \$ 200.00 per month and that those expenses are reasonable. The daughter's SSI benefit is \$ 350.00 per month. The family may receive a partial waiver of the fee by \$ 112.50, the difference between \$ 87.50 (an amount equal to 25% of the child's SSI benefit) and the actual cost of the child's care and expenses.

Family B is composed of a mother and her son. The son is placed in a residential program and spends weekends and vacations with his mother. When the son visits his mother a nurse is required to assist in the child's care. The nurse costs \$ 75.00 per weekend for a total cost of \$300.00 per month. The son receives \$400.00 per month in SSI benefits. Under the Department's regulations, the mother would have paid \$300.00 to DSS and would have retained an amount equal to \$100.00 for the child's expenses. Upon request, the mother would receive a partial waiver of her fee by \$200.00 as well as an amount equal to any other documented expenses which are reasonable and directly attributable to the child, such as those set forth in Family A.

Family C is composed of a father and a thirteen year old daughter. The daughter receives \$ 375.00 in SSI benefits per month. The father uses a portion of that money to pay for a two bedroom apartment for his daughter and himself. The daughter is placed in a residential program through the Department. The father must maintain a two bedroom apartment for those times when his daughter visits on weekends and holidays. The father is able to demonstrate that the rental difference between a one bedroom and a two bedroom apartment is \$150.00. Under the Department's regulations the father is requested to pay a fee of \$371.25. The fee is composed of \$90.00 based on the family gross income and \$281.25, an amount equal to 75% of the child's SSI benefit. Upon request, the father may receive a partial waiver in the amount of \$56.25, which is the difference between:

- (a) \$ 93.75, an amount equal to 25% of the child's SSI benefit; and
- (b) \$ 150.00, the rental difference between a one bedroom and a two bedroom apartment.

- (5) Any family may initiate a request for a full or partial waiver of the fee by filing a written request with the appropriate regional director and by providing appropriate documentation establishing that the fee would create an extreme financial hardship and/or that the actual and reasonable monthly expenses directly attributable to the child in placement exceed 25% of the child's monthly SSI benefit.

The Department's response to a request for a full or partial waiver shall be in writing. If the Department denies the request for a waiver in full or in part, the response shall include notice to the family of their right to request a fair hearing and the procedures for requesting such a hearing.

- (6) If a family fails to pay the assessed fee, the family shall receive a warning letter. If a family receives a warning letter for three consecutive months, the family may receive a notice of termination and the Department may refer the case for debt collection.

## 110 CMR: DEPARTMENT OF CHILDREN AND FAMILIES

### 4.08A: continued

(7) The family may request a fair hearing if:

- (a) The family requested a full or partial waiver to the fee for substitute care services and the family disagrees with the denial of a waiver or the amount of the partial waiver;
- (b) The family wants to dispute the computation of the fee or the termination of the service due to non-payment; or
- (c) The family maintains that the Department erroneously has determined that family's gross income exceeds 150% of the federal poverty level for that size family unit.

If the family requests a fair hearing, services shall not be terminated until a fair hearing is held as long as the family continues to pay all assessed fees. If the issue for the fair hearing is the denial of a request for a waiver or the amount of a partial waiver of a fee for substitute care services under 110 CMR 4.08A(7)(a) then only the undisputed portion of the fee must be paid pending the fair hearing. If the issue for the fair hearing is whether the family's income falls at or below 150% of the federal poverty level under 110 CMR 4.08(7)(b) no fee is required pending the outcome of the fair hearing. However, if the denial of the full or partial waiver or the determination that the family's income is above 150% of the federal poverty level is upheld at the fair hearing, the total fee will be applied retroactively to the date the sliding fee agreement was signed, and the family will be responsible for paying past due amounts.

Commentary. This commentary is to provide an example of a situation where a family would pay the undisputed portion of a fee pending a fair hearing on a denial of a partial waiver to the fee.

Example Family A is assessed a fee of \$ 250.00 for their child's placement. The family requests and is denied a partial waiver of the fee in the amount of \$ 50.00. During the pendency of the fair hearing the family would be required to pay a \$ 200.00 fee, which is the undisputed portion of the total assessed fee. If the denial of the partial waiver of the fee is upheld by the fair hearing, and it had been three months since the original fee was assessed, Family A would owe the Department \$150.00 for the past due amount of the fee.

### 4.08B: Fees for Nonvoluntary Substitute Care Services

(1) The Department will assess a fee when nonvoluntary substitute care services are provided to a child. The fee will include a portion based on the family's income and a portion based on an amount equal to 75% of the child's Supplemental Security Income (SSI) benefit, 75% of the child's Title II benefits, and/or 75% of the child's adoption or guardianship subsidy, if the child receives SSI benefits, Title II benefits, an adoption subsidy or a guardianship subsidy. Guardians will not be subject to the income portion of the sliding fee. The fee for services will never exceed the actual cost of services.

No fee will be charged to any family whose income is at or below 150% of the federal poverty level as revised annually and published by the United States Department of Health and Human Services in the Federal Register. When determining whether a family's income falls at or below 150% of the federal poverty level, the federal poverty levels for each size family will be used.

The fee for nonvoluntary substitute care services will be calculated as follows:

- (a) The Department will determine the family's gross income. Supplemental Security Income (SSI), Title II benefits, an adoption subsidy, or a guardianship subsidy for a child will not be included in calculating gross income.
- (b) If the family's gross income is at or below 150% of the federal poverty level for that size family unit, none of the fees listed in 110 CMR 4.08B will be charged.
- (c) If the family's income is above 150% of the federal poverty level, the family will be charged as a portion of the fee, a specified amount based upon their income as set forth in a sliding fee scale established by the Department. Guardians will not be subject to the income portion of the sliding fee.
- (d) If the family's income is above 150% of the federal poverty level, and the child in placement receives SSI benefits, Title II benefits, an adoption subsidy, or a guardianship subsidy and the parent is the representative payee of such benefits, the fee will also include an amount equal to 75% of the child's SSI benefit, 75% of the child's Title II benefits, and/or 75% of the child's adoption or guardianship subsidy. An amount equal to the remaining 25% will be retained by the parent or representative payee.

## 110 CMR: DEPARTMENT OF CHILDREN AND FAMILIES

### 4.08B: continued

(2) If a family fails to pay the assessed fee for nonvoluntary substitute care, the family shall receive a warning letter. If a family receives a warning letter for three consecutive months, the family may receive a notice of termination and the Department may refer the case for debt collection.

(3) The provisions of 110 CMR 4.08A(2) through 4.08A(5) and 4.08A(7) apply equally to 110 CMR 4.08B.

### 4.08C: Fees for All Services Other Than Substitute Care

(1) For all Department services subject to a sliding fee, other than substitute care services, the Department may assess a fee based solely on the family's income. Guardians will not be subject to this fee. The fee for services will never exceed the actual cost of services.

No fee will be charged to any family whose income is at or below 150% of the federal poverty level as revised annually and published by the United States Department of Health and Human Services in the Federal Register. When determining whether a family's income falls at or below the federal poverty level, the federal poverty levels for each size family will be used.

The fee for all services other than substitute care will be calculated as follows:

(a) The Department will determine the family's gross income. Supplemental Security Income (SSI), Title II benefits, an adoption subsidy, or a guardianship subsidy for a child will not be included in calculating gross income.

(b) If the family's gross income is at or below 150% of the federal poverty level for that size family unit, none of the fees listed in 110 CMR 4.08C will be charged.

(c) If the family's income is above 150% of the federal poverty level, the family will be charged as the fee, a specified amount based upon their income as set forth in a sliding fee scale established by the Department.

(2) If a family fails to pay the assessed fee, the family shall receive a warning letter. If a family receives a warning letter for three consecutive months, the family may receive a notice of termination and the Department may refer the case for debt collection.

(3) The provisions of 110 CMR 4.08A(2) through 4.08A(5) and 4.08A(7) apply equally to 110 CMR 4.08C.

### 4.09: Parents of Children Who are in Substitute Care and are Entitled to SSI/Soc.Sec./VA/Other Benefits

(1) The Department will require parents of children entitled to SSI/Soc. Sec./VA/Other Benefits to participate in the financial support of their children while in Department-funded substitute care. When children are placed in substitute care pursuant to either a Voluntary Placement Agreement or court-ordered custody, either;

(a) The parents will continue to serve as Representative Payee on behalf of their entitled children and pay the Department an amount equal to 75% of the monthly benefits towards, but not exceeding, the actual cost of each child's care provided by the Department. However, if the family's gross income as defined in 110 CMR 4.08A is at or below 150% of the federal poverty level, no payment will be requested; or

(b) The Department will apply for benefits and/or to be designated as Representative Payee on behalf of the entitled children. As Representative Payee, the Department will set aside in a Personal Needs Account (PNA) 10% of the benefits up to but not to exceed the amount of \$ 2,000, to be used only for the entitled child's personal needs. The remaining 90% of the benefits (100% of the benefits whenever the PNA reaches \$ 2,000) will be used to reimburse the Department for the cost of the entitled child's care. The Department periodically establishes a uniform "personal needs allowance" for children who receive third party benefits.

## 110 CMR: DEPARTMENT OF CHILDREN AND FAMILIES

### 4.09: continued

(2) The entitled child shall be allowed, subject to approval by the Representative Payee, to spend from his/her PNA for personal needs. Whenever money is spent from the PNA, the PNA will be refunded with 10% of the entitled child's future benefits until the PNA reaches an amount of \$ 2,000.

The Department will use a standard form of Voluntary Placement Agreement which will contain an express agreement between the Department and the parents that the parents will comply with requirement 110 CMR 4.09(a) or (b).

It should be noted, in contrast, that in cases of adoption or guardianship, the adoptive parent/legal guardian retains the child's entire SSI/Soc. Sector other payment, which is then supplemented by the Department, up to the full amount of the child's adoption or guardianship subsidy.

### 4.10: Voluntary Placement Agreements - Execution

Upon the request of one or both parent(s) or parent substitute(s) and when supported by an assessment of the needs of the child which has been conducted by the Department, the Department may agree to provide substitute care for a child. Every voluntary placement into substitute care shall be accomplished by completion of the Department's standard form of Voluntary Placement Agreement, between the parent(s) or parent substitute and the Department.

### 4.11: Voluntary Placement Agreements - Form

The Department shall utilize a standard form of Voluntary Placement Agreement, as established by the Department. This Voluntary Placement Agreement shall automatically expire after six months, and must be re-executed if the voluntary placement is to be continued. All Voluntary Placement Agreements shall be approved by, and then signed by, a departmental Area Director or Assistant Area Director or his/her designee. The Voluntary Placement Agreement is intended to be a flexible document adaptable to the individual needs and circumstances of the client or family thus the standard form may be modified as appropriate, so long as any such modifications are in writing and are approved by both the client and the Department.

### 4.12: Voluntary Placement Agreements - Termination

(1) Any Voluntary Placement Agreement may be terminated by one or both parent(s) who have legal custody of the child giving written notice to the Department, regardless of which parent has signed the Voluntary Placement Agreement (i.e., if mother signs the Voluntary Placement Agreement, father may terminate it so long as he has some form of legal custody of the child).

(2) In any case where a parent gives notice to the Department terminating a Voluntary Placement Agreement (including but not limited to cases where one parent has signed the agreement and the other parent gives notice to terminate it) the Department shall honor the Agreement for a period of 72 hours thereafter. If, during said 72 hour period, the Department determines that the child would be at risk of abuse or neglect if returned home, the Department may institute court proceedings to obtain custody of the child.

(3) If any child(ren), who was placed in substitute care as a result of a voluntary placement agreement, is returned home to live with her/his parent(s), the voluntary placement agreement shall automatically terminate. If the parent wishes to voluntarily place the child back into substitute care, a new voluntary placement agreement must be executed pursuant to 110 CMR 4.10. 110 CMR 4.12(3) does not apply if the child(ren) is visiting her/his parents.

### 4.13: Voluntary Placement Agreements - Mature Child

The Department may accept a Voluntary Placement Agreement from a mature child, without signature of any parent(s). However, such Voluntary Placement Agreements (signed only by the mature child) will only be accepted and honored by the Department for a period of 72 hours thereafter. During that 72 hour period, the Department shall notify the parent(s) of the child, verbally or in writing, that the child has signed a Voluntary Placement Agreement with the Department and is in substitute care. During that 72 hour period, parent(s) shall not have the right to revoke or terminate the Voluntary Placement Agreement.

## 110 CMR: DEPARTMENT OF CHILDREN AND FAMILIES

### 4.13: continued

nor shall they have the right to know the whereabouts of the child, unless the child specifically agrees and unless the Department determines that to so inform the parent(s) would not be contrary to the child's best interests. At the conclusion of the 72 hour period, the Department shall either return the child to his/her parent(s), or shall institute court proceedings to obtain custody of the child, or shall obtain a Voluntary Placement Agreement signed by the mature child's parent(s).

### 4.14: Voluntary Placement Agreements - Miscellaneous

In addition to the rights and duties enumerated in the standard form Voluntary Placement Agreement, the Department shall also exercise the following rights:

(1) Interviews of Children. The Department may receive requests from various sources to allow third parties to interview child(ren). Examples include: media, police officers, district attorneys, other social work professionals (however 110 CMR 4.14 does not apply to interviews of children conducted by social workers employed by the Department), etc.

(a) From a Police Officer or a Representative of the District Attorney's Office. The parent(s) retain the right to determine if their child will be available for an interview unless the child is a mature minor and consents on his/her own. If a child is a possible or known defendant in a criminal action, the Department, Department foster/pre-adoptive parents or other Department providers caring for children in the Department's care cannot consent to having the child interviewed irrespective of whether or not the child is considered by the Department to be mature. In this situation, the Department may go to court and request the appointment of a Guardian Ad Litem with authority to determine whether the child should/will consent to participate in any kind of police interrogation.

(b) All Other Requests. The Department, upon receipt of such requests, will make all reasonable efforts to consult with the parent(s) by telephone. If contact with the parent(s) is made, the Department will honor the parent(s) wishes. If the Department is unable to contact the parent(s), the Department shall not consent to such interviews, unless there are special circumstances under which the interview would further the best interests of the child, in which case the Department may consent.

(2) School Permissions. If the child is enrolled in any public school, private school, group care facility, day care facility, residential placement, or other such facility, the facility may request or require a variety of consent forms to be signed. Examples include: sports participation forms, field trip forms, driving forms, etc. The Department (including departmental foster parents) will exercise its clinical judgment to determine whether or not it is in the child's best interests to have the form signed, and the Department (including departmental foster parents) will consent or deny on that basis.

(3) Permits, Licenses. The child may wish to obtain various permits or licenses. Examples include: hunting and fishing permits, driver's licenses, motorcycle licenses, etc. Such permit(s) or license(s) may require parental consent or signature. If this occurs, the Department will make all reasonable efforts to consult with the parent(s) by telephone. If contact with the parent(s) is made, the Department will honor the parent's wishes. If the Department is unable to contact the parent(s), the Department will exercise its clinical judgment to determine whether or not it is in the child's best interests to obtain such permit or license, and the Department will consent or deny on that basis.

(4) Permission to Marry. The Department (including departmental foster parents) will not consent to the marriage of any minor child in its care pursuant to a Voluntary Placement Agreement.

(5) Enlistments to Military. Upon receipt of a request from a child to enlist into military services, the Department will make all reasonable efforts to contact the parent(s). If contact with the parent(s) is made, the Department will honor the parent(s) wishes. If the Department is unable to contact the parent(s), the Department will exercise its clinical judgment to determine whether or not it is in the child's best interests to enlist, and the Department will consent or deny on that basis.

## 110 CMR: DEPARTMENT OF CHILDREN AND FAMILIES

### 4.14: continued

(6) For all Issues Relative to Medical Authorizations. See 110 CMR 11.00.

(7) Religion. The Department (including departmental foster parents) will not procure or authorize any baptism or other religious ceremony for any minor child in its care pursuant to a Voluntary Placement Agreement.

### 4.15: Surrenders For Adoption

(1) The Department's social services are available to any birth parent(s) who voluntarily surrender their child(ren), to assist the parent(s) with the loss of their child(ren). Such services may include, but need not be limited to:

- (a) counseling on separation and loss;
- (b) involvement in a surrendering parent support group.

(2) The Department shall observe the following procedures prior to taking a voluntary Surrender from a birth parent:

- (a) Explore alternatives to voluntary surrender with the parent(s), including casework services to assist parent(s) and child(ren) to remain together.
- (b) If casework services are accepted, provide the services set forth in the service plan.
- (c) If services are declined, the social worker shall record in writing in the case record the offer and declination of services.
- (d) Before accepting a surrender, the social worker shall collect and record in the case record psycho-social and medical information about the child and the child's biological family.
- (e) When one of the birth parent(s) is not present, the social worker shall obtain information relevant to assisting in locating the parent, so that placement or surrender can be explored.

(3) All surrenders shall be taken in conformity with M.G.L. c. 210, § 2. In addition:

- (a) Parent(s) seeking to surrender their child(ren) shall be encouraged to bring two witnesses of their own choice in order to execute the surrender(s).
- (b) In the event parent(s) decline to bring two witnesses of their own choice, one or more department employees shall act as witness on the parents' behalf.
- (c) The Department will accept a voluntary surrender from any parent, including any parent who is a mature child, in conformity with 110 CMR 4.01 through 4.15. When a parent who is a mature child seeks to voluntarily surrender a minor child, the Department shall first explore with the mature child parent alternative family resources, including adoption by an extended family member.
- (d) Parents of Indian (Native American) heritage shall be informed of their rights pursuant to the Indian Child Welfare Act.

### 4.20: Receipt of Reports of Alleged Abuse or Neglect Reporting Process

(1) During Hours on Business Days. To report known or suspected abuse or neglect of children, telephone calls by mandated and non-mandated reporters should be directed to the Department. The caller should select the area or regional office which covers the residence of the parent(s) or caretaker(s) of the child(ren) in question. When the residence of the child's parent(s) or caretaker(s) is unknown or outside the Commonwealth, or if the child is located in a hospital, the report should be made to the area or regional office closest to the caller, but shall be accepted by the Department if made to any area or regional office of the Department. Each area and regional office of the Department shall have one or more employees designated to receive "51A" reports.

(2) During Evenings, Weekends, and Holidays. To report known or suspected abuse or neglect of children, telephone calls by mandated and non-mandated reporters should be directed to the statewide Child-At-Risk-Hotline (1-800-792-5200).

## 110 CMR: DEPARTMENT OF CHILDREN AND FAMILIES

4.20: continued

(3) Reports Not Constituting Child Abuse or Child Neglect. The Department sometimes receives reports of subject matter or events which clearly do not fall within the Department's mandate (i.e. abuse or neglect of children). Examples include: reports of abuse of young adults (over 18 years of age); reports of elder abuse; reports that a certain teenager is not being allowed to date or is not being given money for the high school prom; reports that a certain department store mail order catalogue contains pornographic pictures of children. If an individual attempts to report a matter which is not child abuse or neglect to the Department or to the Child-At-Risk-Hotline, the reporter shall be advised that the report is not appropriate. The Department shall treat such call not as a report of abuse or neglect, but rather as a request for information and referral services. See 110 CMR 3.00. The Department shall also treat incomplete reports as requests for information and referral services. Example: Caller reports seeing an unknown child struck by an unknown adult; but has neither name nor address nor other identifying information for either the child or the adult.

(4) Transcription of Information. For any calls received which report child abuse or child neglect, the Department or Hotline employee shall transcribe the information into a computerized data base maintained by the Department. The information entered into the database will be printable onto a "51A" standard report form, as established by the Department.

(5) Identity of Reporter/Anonymous Reports. The caller must give his/her name and address if s/he is a mandated reporter. The Department will accept anonymous reports from non-mandated reporters if the caller refuses to identify him/herself. However, if the reporter gives identifying information the name will in fact be recorded for later use by the investigator. Mandated reporters shall be informed that they are required by law to submit a written report to the Department within 48 hours after making the oral report. (See M.G.L. c. 119, § 51A).

### 4.21: Screening of Reports of Alleged Abuse or Neglect

Upon receipt of any oral or written "51A" report (whichever is received first), the Department shall immediately screen such report. The purpose of screening is to identify children at risk of abuse or neglect from a caretaker, and to distinguish the need for an emergency or non-emergency response. The screener may also provide the caller with information about other authorities (police, District Attorney, licensing agency, etc.) who should be called. Three examples of "screen out" situations are:

- (a) report where the identified alleged perpetrator is not a caretaker (but the Department shall not screen out reports on the sole basis that no alleged perpetrator is identified or that the perpetrator is unknown);
- (b) report where the incident or condition reported by the caller is so old that it should be screened out because of its outdated character;
- (c) demonstrably unreliable or counterproductive multiple reports.

Reports involving Department employees, household or family members of Department employees, foster parents, pre-adoptive parents or area board members shall be screened in accordance with 110 CMR 4.28.

### Commentary

This Commentary further explains the three screening decisions set forth in 110 CMR 4.21(a) through (c):

(1) The "caretaker" distinction is an important one, for the Department's primary duty is to protect children from abuse or neglect *inflicted by their parents or parent substitutes*. See, M.G.L. c. 119, § 1, paragraph 2: "The purpose of this chapter is to insure that the children of the Commonwealth are protected against the harmful effects resulting from the absence, inability, inadequacy or destructive behavior of *parents or parent substitutes*" (emphasis added). See also, 42 U.S.C. § 5102: "'Child abuse and neglect' means the physical or mental injury, sexual abuse or exploitation, negligent treatment, or maltreatment of a child under the age of 18 . . . by a person who is responsible for the child's welfare" (emphasis added).

For example, the rape of a small girl by a stranger in a vacant lot, while certainly an incident of "child abuse" in the broad sense, is not the type of child abuse which the Department's investigation process was created to address. The criminal justice system remains primarily responsible for the investigation of such acts.

## 110 CMR: DEPARTMENT OF CHILDREN AND FAMILIES

### 4.21: continued

Thus, if the Department receives a report where the alleged perpetrator is identified and is clearly a non-caretaker, the Department shall screen out such a report. However, Department employees shall refer the case to the District Attorney if the allegations contained in the report fall into one of the categories under M.G.L. c. 119, § 51B(4). The Department shall also provide the caller with the name, address, and telephone number of the local police and/or appropriate District Attorney. The Department can also offer voluntary services to the child-victim and his/her family, as appropriate. (See 110 CMR 4.50 through 4.54 for mandatory referral to the District Attorney).

(2) The Department sometimes receives reports of incidents which the caller identifies as very outdated (for example, a caller who reports an incident of a parent seen striking a child five years ago). The Department shall "screen out" reports for age where the reporter has no reasonably current information to convey, and where there is no reason to suspect that the child is still at risk of ongoing abuse. When a social worker determines that a call should be screened out, the screening information and recommendation to screen out shall be forwarded to the Area Director or his/her designee, who shall make the final decision.

(3) In extreme cases, reports may also be screened out for a demonstrated history of unreliability (i.e., a series of similar reports from the same reporter, which have on several occasions been investigated and found to be without merit.) The Department shall "screen out" reports for unreliability in cases where the repetitive and meritless nature of the reports is well established. When a social worker determines that a call should be screened out, the screening information and recommendation to screen out shall be forwarded to the Area Director or his/her designee, who shall make the final decision.

Reliable but repetitive reports may be "screened out" by the Department:

#### Multiple 51A's on the same incident:

It is not unusual for professionals and nonprofessionals to learn of an abusive incident over a broad range of time. Once learning of the incident, they quite appropriately file a 51A report.

Example: Child is brought to Hospital A by parents. Hospital A believes injuries were the result of abuse, and files a 51A. However, Hospital A is a small community hospital, and a large well-known hospital with more pediatric expertise is not far away. Hospital A refers or transfers the child to Hospital B the next morning, for further examination and testing. Hospital B, upon examining the child, also files a 51A.

Example: Mrs. H.'s daughter Tina was severely sexually abused while in the care of a babysitter. The doctor and police involved in the incident file their 51A reports. The Department investigates and supports the report. Nine days later, Tina begins to tell her story to her new therapist who is mandated to report. Six months later, a relative learns of the incident and calls to report sexual abuse. A year later, Mrs. H. changes therapists . . . etc.

Duplicate investigations are unnecessarily intrusive to a family and do not permit effective use of the Department's staff resources. In situations such as this, the screening decision shall be made by the Area Director, or his/her designee.

### 4.22: Screening - Collateral Contacts

In addition to consultation with the reporter, screening will include checking of Department files and the Department's Central Registry. Screening may also include collateral contacts with third parties. Any such collateral contacts made shall be documented in writing on the 51A form.

### 4.23: Screening - Entry Into Central Registry

Each 51A report (whether or not "screened out") shall thereafter be entered into the Department's Central Registry.

## 110 CMR: DEPARTMENT OF CHILDREN AND FAMILIES

### 4.24: Screening - Notification to Mandated Reporters

The Department shall notify mandated reporters in the event that it decides to screen out, or screen for follow up, a 51A report filed by said mandated reporter. Said notification of the Department's screen out decision shall be accomplished by means of a standard form letter established by the Department.

### 4.24A: Screening - Identification of Family Members

Prior to the initiation of an investigation, the screener shall identify all family members that are known to the screener. For the purpose of screening and investigation, family is defined as all family members and other individuals residing in the home, children in DCF placements, children residing out of the home, and any parent/parent substitute living out of the home.

### 4.25: Screening - Emergency and Non-emergency Responses

(1) If the screener determines:

- (a) that the report constitutes an event or subject matter within the Department's mandate; and
- (b) that the reported condition poses a threat of immediate danger to the life, health, or physical safety of the child, then the screener shall designate the report an "emergency report" and cause the matter to be assigned for an immediate investigation as provided hereafter in 110 CMR 4.26.

(2) If the screener determines:

- (a) that the report constitutes an event or subject matter within the Department's mandate; and
- (b) that the reported condition does not pose a threat of immediate danger to the life, health or physical safety of the child; then the screener shall designate the report a "non-emergency report" and cause the matter to be assigned for an investigation as provided hereafter in 110 CMR 4.27.

### 4.26: Investigation of Emergency Reports

(1) Once a report is designated an "emergency report", the Department shall immediately initiate an emergency response. The first priority of an emergency response is to view the child(ren) in question, and to determine the condition of any other children residing in the same household. The children are visited a minimum of one time within 24 hours after receipt of the report. This meeting should occur in the home; however, in certain situations the social worker and supervisor may decide that another location is more appropriate (e.g., the child is hospitalized, the injury/incident occurred outside the home, the child would be placed at greater risk if interviewed in the home).

Parents and other individuals living in the home are visited a minimum of one time, within 24 hours after the receipt of the report. The investigator and supervisor determine which family members will be contacted based on their determination of which individuals would be expected to provide significant information regarding the current allegations.

(2) If an emergency report is received by the Child-At-Risk Hotline during evenings, weekends or holidays, the Child-At-Risk Hotline staff may request the assistance of local law enforcement personnel if on-call investigation personnel cannot immediately respond. This will occur in circumstances where there is an apparent immediate threat to the safety of the child and where due to geographic distances the on-call social worker cannot respond as quickly as the situation demands. In these circumstances, the Hotline will contact the local police department and ask the police to verify the allegations (e.g., abandonment, intoxicated caretaker, violent domestic dispute) and if necessary to provide temporary protection for the child until the Department's on-call personnel can reach the child's location.

4.26: continued

(3) If an individual or family prevents an investigator from viewing a child who is the subject of the report or from determining the name, age or condition of other children in the same household that the investigator has determined should be viewed, the investigator shall, if the investigator has reason to believe that the child is in immediate danger of serious physical harm resulting from abuse or neglect, seek the aid of the local police in entering the home or otherwise viewing the child. The investigator shall, if practicable, obtain the approval of his/her supervisor, and may in addition choose to consult with a member of the legal staff to determine what legal action may be warranted. In the alternative, the investigator may use the 24-hour Judicial Hotline to obtain judicial assistance, with the approval of his/her supervisor. If the investigator remains unable to view the child, the investigator's supervisor will make the investigation decision based on his/her evaluation of the nature and contents of the 51A report and any collateral information.

(4) Once the child(ren) have been viewed and their condition determined, the Department must make an initial determination of the child(ren)'s safety and a determination whether to seek custody of the child(ren) within 24 hours of receipt of the report and may:

(a) determine that the child's condition presents an emergency, in which case the investigation of the emergency report shall be completed as soon as possible and in no event later than five working days from the time the report is received. The investigation shall be conducted in the same manner as investigations of non-emergency reports (set forth in 110 CMR 4.27).

(b) determine that the child's condition does not present an emergency, in which case the investigation of the emergency report shall be conducted in the same manner and in the same time frame as investigation of non-emergency reports (set forth in 110 CMR 4.27).

4.27: Investigation of Non-emergency Reports

(1) The investigation shall include a viewing of the child who is the subject of the report and a visit to the home of the child who is the subject of the report both of which shall occur within three working days after the screening decision. (See 110 CMR 4.27(3) for procedures when an individual or family refuses to permit a viewing of the child.) The investigator may waive the visit to the home of the child in appropriate circumstances (for example, if the abuse alleged occurred outside the child's home in a day care facility and if the child is viewed at the day care facility). The investigation shall include a determination of the name, age, and condition of other children in the same household. The Department will ensure that the investigation includes the linguistic capacity and cultural knowledge needed to perform a fair and comprehensive investigation of the reported child and family.

(2) The investigation shall include consulting with the reporter, checking Department files and the Central Registry, arranging medical examination(s) where appropriate, and making any collateral contacts necessary to obtain reliable information which would corroborate or disprove the reported incident and the child's condition. In the course of making such collateral contacts, Department social workers may disclose sufficient information about the child(ren) and the family as is reasonably necessary to investigate the allegations made in the 51A report. However, the parent(s) or caretaker(s) of the reported child, the reported child him/herself, and the reporter, are to be considered the primary sources of information. Parents and other individuals living in the home are visited a minimum of one time, the initial visit occurs in the home within three working days after the screening decision. Any parent or parent substitute living out of the home, who can be located, is contacted a minimum of one time. The nature of the contact is determined by the investigator and supervisor.

4.27: continued

(3) If an individual or family prevents an investigator from viewing a child who is the subject of the report or from determining the name, age or condition of other children in the same household that the investigator has determined should be viewed, the investigator shall, if the investigator does not have reason to believe that the child is in immediate danger of serious physical harm resulting from abuse or neglect, immediately inform his/her supervisor. The supervisor shall confer with a member of the legal staff to determine what legal action may be warranted. The Department may choose to waive a home visit if it is able to view the child in some other location. If the investigator remains unable to view the child, the investigator's supervisor will make the support/unsupport decision based on his/her evaluation of the nature and contents of the 51A report and any collateral information.

(4) The manner in which the investigator views the child who is the subject of a 51A report shall take into account and shall respect the child's age, sex, and other circumstances, particularly with respect to removal of the child's clothing.

(5) At the time of the first contact with parent(s) or caretaker(s), the investigator shall deliver to said individual a statement of rights which shall include written notice that a 51A report has been made, the nature and possible effects of the investigation, and that information given could and might be used in subsequent court hearings. Such notice shall be in a form prescribed by the Department.

(6) Based on the investigation, the investigator shall determine:

- (a) the existence, nature, extent and cause or causes of the alleged abuse or neglect;
- (b) the identity of the person or persons alleged to be responsible therefor, if possible;
- (c) the name, age and condition of all other children in the same household; and
- (d) all other pertinent facts or matters which in the opinion of the investigator are necessary to support or unsupport the allegation which was reported to the Department.

4.28: Screening and Investigation Household or Family Members. Foster Parents. Pre-adoptive Parents or Area Board Members

Whenever the Department receives a 51A report involving a Department employee, or a member of a Department employee's immediate household, the report shall immediately be referred to the Commissioner or designee. The Commissioner or designee will assign the report to the Central Office Special Investigations Unit or to an independent contracted agency for screening and/or investigation.

Whenever the Department receives a 51A report involving a Department employee's non-household family member, Department foster parent, pre-adoptive parent, or area board member, the report shall be screened by the area where the home is located and if the report is screened in, the matter shall thereafter be referred to the Central Office Special Investigation Unit, or to another Area or Regional Office of the Department (not the Area or Regional Office which has primary responsibility for the family member, foster home, pre-adoptive parent, or area board member) or to an independent, contracted agency (provider) for investigation. The Central Office Special Investigations Unit shall also investigate any other 51A report at the request of the Commissioner.

4.29: Emergency Removal

(1) Emergency removal pursuant to M.G.L. c. 119, § 51B is an extreme measure requiring dire circumstances. Before arriving at a decision to effect an emergency removal, the investigator shall consider the harm to the child that such removal inevitably entails.

(2) A child may be immediately taken into custody by the social worker if, after viewing the child, the social worker finds reasonable cause to believe:

- (a) that a condition of serious abuse or neglect (including abandonment) exists; and

## 110 CMR: DEPARTMENT OF CHILDREN AND FAMILIES

### 4.29: continued

- (b) that, as a result of that condition, removal of the child is necessary in order to avoid the risk of death or serious physical injury of the child; and
- (c) that the nature of the emergency is such that there is inadequate time to seek a court order for removal.

(3) If an emergency removal occurs, the removing social worker shall on the next working day make a written report which shall state the reason(s) for such removal, shall be counter-signed by the Supervisor, and shall thereafter be filed in court together with a petition pursuant to M.G.L. c. 119, § 24.

### 4.30: Assignment of Second or Subsequent Reports for Investigation

In the event that a second or subsequent report is received and screened in on an open case or any case which has been closed during the previous twelve months, the Department shall not assign such report for investigation to any social worker who has had any previous responsibility for the case, unless a second report is received and screened in during the investigation of the initial report (in which case the same social worker may be assigned to investigate both reports) or unless there is no social worker meeting the foregoing description among the staff of the office in question.

### 4.31: Time Frames for Completion of Investigation

(1) The investigation of all "emergency reports" shall commence within two hours of initial contact and shall be completed within five working days after the receipt of the report by the Department. The results of the investigation shall be in writing, transcribed onto a "51B" standard investigation form, as established by the Department.

(2) The investigation of all "non-emergency reports" shall commence within two working days of initial contact and shall be completed within 15 working days following the receipt of the report by the Department. The results of the investigation shall be in writing, transcribed onto a "51B" standard investigation form, as established by the Department.

### 4.32 Decision to Support/Unsupport a Report

(1) After completion of its 51B investigation, the Department shall make a determination as to whether the allegations in the report received are "supported" or "unsupported".

(2) To support a report means that the Department has reasonable cause to believe that an incident (reported or discovered during the investigation) of abuse or neglect by a caretaker did occur. To support a report does not mean that the Department has made any finding with regard to the perpetrator(s) of the reported incident of abuse or neglect. It simply means that there is reasonable cause to believe that some caretaker did inflict abuse or neglect upon the child in question. "Reasonable Cause to believe" means a collection of facts, knowledge or observations which tend to support or are consistent with the allegations, and when viewed in light of the surrounding circumstances and credibility of persons providing information, would lead one to conclude that a child has been abused or neglected.

Factors to consider include, but are not limited to, the following: direct disclosure by the child(ren) or caretaker; physical evidence of injury or harm; observable behavioral indicators; corroboration by collaterals (e.g., professionals, credible family members); and the social worker and supervisor's clinical base of knowledge.

(3) Each determination by the Department that the allegations of a 51A report are "unsupported" shall be communicated to the parent(s) or parent substitute(s), or, in the case of divorced parents, to both parents if both have some form of court-ordered custody, and if not, then only to the parent with court-ordered custody, within 48 hours after the determination that the allegations are unsupported, in a form letter established for use by the Department. All collaterals who were contacted by the investigator, shall be notified in writing of the decision to unsupport the report, unless the target of the investigation requests that such notification not occur. If the 51A report in question was filed by a mandated reporter, the mandated reporter is notified of the decision

## 110 CMR: DEPARTMENT OF CHILDREN AND FAMILIES

### 4.32: continued

on a form established by the Department. If the 51A report in question contained an allegation of institutional abuse or neglect which occurred at a facility owned, operated, or funded, in whole or in part, by any department or office listed in 110 CMR 4.43, or at a facility operated by a person or entity subject to licensure or approval by any department or office listed in 110 CMR 4.43, then the director or owner of such facility shall also be sent a copy of said letter.

(4) Each determination by the Department that the allegations of a 51A report are "supported" shall be communicated to the parent(s) or parent substitute(s), or, in the case of divorced parents, to both parents if both have some form of court-ordered custody, and if not, then only to the parent with court-ordered custody, within 48 hours after the determination that the allegations are supported, in a form letter established for use by the Department. If the 51A report in question was filed by a mandated reporter, a copy of the letter shall also be provided to the mandated reporter. In addition, upon request by any mandated reporter of a supported 51A report, the Department shall inform the mandated reporter of the social service(s), if any, that the Department intends to provide to the child and/or the child's family. If the 51A report in question contained an allegation of institutional abuse or neglect which occurred at a facility owned, operated, or funded, in whole or in part, by any department or office listed in 110 CMR 4.43, or at a facility operated by a person or entity subject to licensure or approval by any department or office listed in 110 CMR 4.43, then the director or owner of such facility shall also be sent a copy of said letter.

(5) Whenever the Department, after an investigation, supports a 51A report on a child under the age of three, the family shall be referred for early intervention services. The department will provide the early intervention program with the minimum information needed to contact the family, utilizing a form developed by the Department.

### 4.33: Perpetrator/Caretaker

(1) Perpetrator: For any investigated and supported report of abuse or neglect, the Department shall record the identity(ies) of alleged perpetrator(s) when:

The incident of child abuse or neglect has been supported and referred to the District Attorney pursuant to M.G.L. c. 119, § 51B(k) and there is substantial evidence indicating that the alleged perpetrator was responsible for the abuse or neglect. See 110 CMR 4.37.

(2) Perpetrator: For any investigated and unsupported report of abuse or neglect, the Department's Central Registry shall automatically record perpetrator "not applicable".

(3) Perpetrator: Whenever the Department "supports" a 51A report and whenever the name(s) of alleged perpetrator(s) are recorded as such on the Registry of Alleged Perpetrators, the Department shall 20 working days after the referral is made to the District Attorney notify each alleged perpetrator that his/her name will be maintained on the Registry of Alleged Perpetrators. The Department shall utilize a form letter established for use by the Department. The form letter shall include notification to the alleged perpetrator(s) of the right to a fair hearing to appeal said listing. If the alleged perpetrator is a child under age 18, the letter shall be directed to the child, with a copy to the child's parent(s) and/or guardian. (See 110 CMR 10.06(9)(c) for a stay of fair hearing proceeding at request of the District Attorney.)

(4) Caretaker: Where the Department has no reasonable cause to believe that a caretaker was the perpetrator of abuse or neglect, the Department will unsupported the report. (Note, however, that the Department may voluntarily refer or be required to refer the matter to appropriate law-enforcement agencies. See 110 CMR 4.50 et seq. Note also that the Department may offer voluntary services as appropriate.)

### Commentary

The meaning of a supported or unsupported report is often misunderstood, primarily because the Department sometimes unsupported a report where a child has clearly suffered an injury. While at first blush this can appear contradictory, it is in fact most often the result of the application of the important distinction between caretakers and non-caretakers.

## 110 CMR: DEPARTMENT OF CHILDREN AND FAMILIES

### 4.33: continued

The caretaker distinction is an important one, for the Department's primary duty is to protect children from abuse or neglect inflicted by their parents or parent substitutes. See M.G.L. c. 119, § 1, paragraph 2: "The purpose of this chapter is to insure that the children of the Commonwealth are protected against the harmful effects resulting from the absence, inability, inadequacy or destructive behavior of *parents or parent substitutes*." (emphasis added).

The following examples may serve to clarify.

Example A: The Department receives a report of a small boy with bumps around his lips and nose. It is screened in. It is investigated. The investigator determines that the injury occurred when the small boy pulled a heat lamp from his parents' bathroom onto his face. There is no evidence that the accident occurred as a result of either parents' neglect. The report is unsupported, as no incident of abuse or neglect is determined to have occurred. Note that if the facts were slightly different (for example, if the Department determined that the injury occurred because the small boy had been left alone at home all day) then the Department could have supported the report as neglect.

Example B: Teenaged girl reports that father has been sexually molesting her. In these circumstances, the Department will list the father as the alleged perpetrator. Since he is a caretaker, the Department will support the report, if the Department determines it has reasonable cause to believe the reported incident(s). The Department will also refer the matter to the District Attorney (See 110 CMR 4.50 et seq.) and offer services as appropriate.

Example C: A school nurse reports that a 16 year old female high school student has been sexually molested. After investigation, the Department determines that the perpetrator is the girl's 16 year old boyfriend. Since he is not a caretaker, the Department will unsupported the report. Note that the Department may refer the case to the District Attorney (See 110 CMR 4.50 et seq.) and offer voluntary services as appropriate.

Example D: Infant is brought to pediatrician by mother with numerous fresh facial bruises. Pediatrician characterizes them as non-accidentally inflicted. Mother claims infant was in bruised condition when returned by her ex-husband (infant's father) from weekend visitation. Father claims infant was unblemished when returned to mother by him. Both mother and father state no other caretakers had child recently. In this circumstance, mother and father may both be listed as alleged perpetrators on the Department's records if in addition to support the report, the report is referred to the District Attorney. Once again, the Department's supported decision in no way reflects a determination by the Department of the identity of the perpetrator. Note that the Department will offer voluntary services as appropriate.

Example E: 12-year old boy is taken to hospital emergency room with broken ribs. Parent(s) cannot be located. Boy tells doctor he was attacked by gang of neighborhood youths he does not know, and robbed. Hospital files 51A report, and report is screened in to investigate possible neglect. Parents are thereafter located and it is determined they were not neglectful with regard to the boy's injury. The Department will unsupported the report, because even though the young boy suffered a clear incident of physical injury, the abuse was not caused by caretaker(s), and there was no neglect by his caretakers. Note that the Department will offer voluntary services as appropriate.

Example F: The Department receives a report of a young teenager currently in foster care who has had several front teeth knocked out. It is screened in. It is investigated. The investigator determines that the young teenager has at various times given divergent explanations for his injury: sometimes he says his biological father punched him, sometimes he says his grandfather punched him. Both father and grandfather deny punching him. There are no witnesses to the event. There is no suggestion that the injury was accidental and a dental examination confirms this. The report is supported. Both father and grandfather are listed as alleged perpetrators. The Department's supported decision means the Department has determined it has reasonable cause to believe an incident of abuse by a caretaker occurred to the young teenager. The supported decision in no way reflects a determination by the Department of the identity of the perpetrator.

### 4.34: Department's Custodial Powers - Miscellaneous

If the Department seeks and obtains court-ordered custody of a child, in addition to the rights and duties enumerated in M.G.L. c. 119, § 21 pertaining to the definition of "custody", the Department shall also exercise the following rights with respect to any child in the court-ordered custody of the Department:

## 110 CMR: DEPARTMENT OF CHILDREN AND FAMILIES

### 4.34: continued

(1) Interviews of Children. The Department may receive requests from various sources to allow third parties to interview child(ren). Examples include: media, police officers, district attorneys, other social work professionals (however 110 CMR 4.34 does not apply to interviews of children conducted by social workers employed by the Department), etc.

(a) From a Police Officer or a Representative of the District Attorney's Office: the Department will exercise its clinical judgment to determine whether or not it is in the child's best interest to be interviewed, and the Department will consent or deny on that basis. If a child is a possible or known defendant in a criminal action, the Department, Department foster/pre-adoptive parents or other Department providers caring for children in the Department's custody cannot consent to having the child interviewed irrespective of whether or not the child is considered by the Department to be mature. In this situation, the Department may go to court and request the appointment of a Guardian Ad Litem with authority to determine whether the child should/will consent to participate in any kind of police interrogation.

(b) All Other Requests: The Department, upon receipt of such requests, will make all reasonable efforts to consult with the parent(s) by telephone. If contact with the parent(s) is made, the Department will honor the parent(s)' wishes, unless the Department believes that the parents' wishes are contrary to the best interests of the child. If the Department is unable to contact the parent(s), the Department shall not consent to such interviews, unless there are special circumstances under which the interview would further the best interests of the child, in which case the Department may consent.

(2) School Permissions. If the child is enrolled in any public school, private school, group care facility, day care facility, residential placement, or other such facility, the facility may request or require a variety of consent forms to be signed. Examples include: sports participation forms, field trip forms, driving forms, etc. The Department (including departmental foster parents) will exercise its clinical judgment to determine whether or not it is in the child's best interests to have the form signed, and the Department (including departmental foster parents) will consent or deny on that basis.

(3) Permits, Licenses. The child may wish to obtain various permits or licenses. Examples include: hunting and fishing permits, driver's licenses, motorcycle licenses, etc. Such permit(s) or license(s) may require parental consent or signature. The Department will exercise its clinical judgment to determine whether or not it is in the child's best interests to obtain such permit or license, and the Department will consent or deny on that basis.

(4) For all Issues Relative to Medical Authorizations: See 110 CMR 11.00 et seq.

(5) Religion: The Department (including departmental foster parents) will not procure or authorize any baptism or other religious ceremony for any minor child in its custody.

### 4.35: Access to the Central Registry

(1) Department staff may have access to the Central Registry for the purpose of:

- (a) screening applicants for employment, including volunteers and student interns, by the Department, or one of its contracted providers, in a position with direct contact with clients or children;
- (b) screening applicants to become foster or adoptive parents;
- (c) screening a report filed under M.G.L. c.119, § 51A;
- (d) conducting an investigation under M.G.L. c.119, § 51B;
- (e) assisting in providing appropriate services to any child in the care or custody of the Department;
- or
- (f) assisting in providing appropriate services to any family having an open case with the Department

(2) State child welfare agencies of another state may, upon request, receive information from the Central Registry for the purpose of:

- (a) determining whether to approve a prospective foster or adoptive parent; or
- (b) to carry out the agencies responsibilities under the law to protect children from abuse and neglect.

## 110 CMR: DEPARTMENT OF CHILDREN AND FAMILIES

### 4.35: continued

(3) The Department may enter into agreements with other state agencies to permit access to the Central Registry for the purpose of screening applicants for employment, volunteers, interns, foster or adoptive parents or other entities licensed by the agency who may have unsupervised contact with children.

(4) No other individual, group, agency or department, including law enforcement, child welfare or educational agencies, may have access to the Central Registry without the written approval of the Commissioner, an order of a court of competent jurisdiction, or as authorized by M.G.L. c.119, § 51F.

(5) Upon request, the Child Advocate shall have access to information contained in the Central Registry in order to fulfill the responsibilities of the Office of the Child Advocate.

### 4.36: Registry of Alleged Perpetrators

The Department shall pursuant to M.G.L. c. 18B, § 7(b) create and maintain a Registry of Alleged Perpetrators as a component of the Central Registry maintained pursuant to M.G.L. c. 119, § 51F. The Registry of Alleged Perpetrators shall be indexed by the name of the alleged perpetrator. The Registry of Alleged Perpetrators shall contain the following information on the alleged perpetrator:

- (a) Name;
- (b) Date of birth;
- (c) Social Security Number;
- (d) Sex;
- (e) Address;
- (f) Date of Listing;
- (g) Allegation;
- (h) Cross reference to victim;
- (i) Relationship to victim.

### 4.37: Listing of Alleged Perpetrators

The name of the alleged perpetrator shall be added to the Registry of Alleged Perpetrators if:

- (a) the allegation of child abuse or neglect has been supported and referred to the District Attorney pursuant to M.G.L. c. 119, § 51B(k); and
- (b) there is substantial evidence indicating that the alleged perpetrator was responsible for the abuse or neglect. Pursuant to M.G.L. c. 30A, § 1(6) substantial evidence is defined as "such evidence as a reasonable mind might accept as adequate to support a conclusion."

The name of the alleged perpetrator shall remain on the Registry of Alleged Perpetrators for 75 years or until the decision to list the name of the alleged perpetrator is reversed pursuant to 110 CMR 10.00 et seq., or by a court of competent jurisdiction.

### 4.38: Access to the Registry of Alleged Perpetrators

(1) Department staff may have access to the Registry of Alleged Perpetrators for the purpose of:

- (a) screening applicants for employment, including volunteers and student interns, by the Department, or one of its contracted providers, in a position with direct contact with clients or children;
- (b) screening applicants to become foster or adoptive parents;
- (c) screening a report filed under M.G.L. c.119, § 51A;
- (d) conducting an investigation under M.G.L. c.119, § 51B;
- (e) assisting in providing appropriate services to any child in the care or custody of the Department;
- or
- (f) assisting in providing appropriate services to any family having an open case with the Department

(2) State child welfare agencies of another state may, upon request, receive information from the Registry of Alleged Perpetrators for the purpose of:

## 110 CMR: DEPARTMENT OF CHILDREN AND FAMILIES

4.38: continued

- (a) determining whether to approve a prospective foster or adoptive parent; or
- (b) to carry out the agencies responsibilities under the law to protect children from abuse and neglect.

(3) Any data subject or duly authorized representative may obtain official confirmation or denial of the fact that the data subject's name appears on the Registry of Alleged Perpetrators and a copy of the information maintained on the Registry of Alleged Perpetrators by making a specific written request to the Fair Hearing Unit, pursuant to this provision, accompanied by sufficient proof of identity. The data subject may direct that the information be provided to another individual, or agency. Pursuant to the Fair Information Practices Act (FIPA) M.G.L. c. 66A, § 2(j), a data subject or duly authorized representative may contest the accuracy of the data maintained in the Registry of Alleged Perpetrators.

(4) No other individual, group, agency or department, including law enforcement, child welfare or educational agencies, may have access to the Registry of Alleged Perpetrators without the written approval of the Commissioner, or an order of a court of competent jurisdiction or as authorized by M.G.L. c.119, § 51E and 51F. A state agency may have access to the Registry of Alleged Perpetrators for purposes of conducting an investigation of an allegation of child abuse or neglect pursuant to a duly promulgated regulation.

(5) The Department may enter into agreements with other state agencies to permit access to the Registry of Alleged Perpetrators for the purpose of screening applicants for employment, volunteers, interns, foster or adoptive parents or other entities licensed by the agency who may have unsupervised contact with children.

(6) Upon request, the Child Advocate shall have access to information contained in the Registry of Alleged Perpetrators in order to fulfill the responsibilities of the Office of the Child Advocate.

(7) Upon a written request to the Fair Hearing Unit, the Department may release aggregate data for research purposes. All identifying information will be removed.

### 4.40: To Whom Reported

All reports of abuse or neglect of children in an institutional setting shall be made to the Department pursuant to the provisions of M.G.L. c. 119, §§ 51A through F.

### 4.41: How Handled

All reports of abuse or neglect of children in an institutional setting shall be handled by the Department in the same manner as all other reports (see 110 CMR 4.20 et seq.) except that the Department's investigator shall also visit the institution in question in connection with the investigation.

### 4.43: Telephone Notice

The Department may, in appropriate circumstances, notify the Department of Early Education and Care (EEC), Department of Elementary and Secondary Education (DESE), Department of Mental Health (DMH), Department of Developmental Services (DDS), Department of Public Health (DPH), or Department of Youth Services (DYS) by telephone in an instance where the Department has received and screened in a report alleging that abuse or neglect of a child has occurred at a facility owned, operated, or funded, in whole or in part, by any of said departments or office, or at a facility operated by a person or entity subject to licensure or approval by any of said departments or office. Said telephone notice may be given in appropriate cases where coordination between agencies during the investigation would minimize interviews of and trauma to any child-victim, or would otherwise be beneficial.

## 110 CMR: DEPARTMENT OF CHILDREN AND FAMILIES

### 4.44: Accompaniment of Department Investigator

During the Department's investigation process, the Department's investigator may be accompanied by an employee of EEC, DMH, DDS, DPH, or DYS, if said department or office is responsible for the institution in question, and if the Department and said department or office have previously entered into an Interagency Agreement which details procedures for such joint activities including but not limited to procedures to minimize the number of interviews of and trauma to any child-victim.

### 4.45: Information Sharing

(1) After completion of its investigation, the Department shall notify EEC, DESE, DMH, DDS, DPH, or DYS in writing by transmitting to the commissioner or director of that office or department a copy of the report received by the Department under M.G.L. c. 119, § 51A and a copy of the report prepared by the Department under M.G.L. c. 119, § 51B, if:

- (a) the Department has supported said report; and
- (b) the Department has reason to believe that abuse or neglect may have occurred at a facility owned, operated, or funded, in whole or in part, by any of said departments or office, or at a facility operated by a person or entity subject to licensure or approval by any of said departments or office. In the event that EEC shares with one or more other state department(s) (DMH, DDS, DPH, or DYS) responsibility for licensing, funding or approving a facility as set forth in 110 CMR 4.45(a) and (b), the Department shall always notify EEC and may at the Regional Director's discretion also notify DMH, DPH, DYS, or DDS.

(2) In any investigation in which the Department has notified EEC, DMH, DMR, DPH, DYS or DESE in accordance with the previous paragraph, the Department shall also notify the OCA in writing by transmitting a copy of the 51A report and 51B investigation report to the Office of the Child Advocate.

(3) If as a result of any 51A report or 51B investigation, the Department discovers information or circumstances which might indicate poor quality of care provided to children, or licensing violations, in any facility operated by a person or entity subject to licensure or approval by EEC, DESE, DMH, DDS, DPH, or DYS; that information shall be recorded by the Department's investigator on the 51B form; and

- (a) if supported, the 51B form shall be sent to the department or office in question; or
- (b) if unsupported, the information regarding poor quality of care or possible licensing violation shall be communicated to the department or office in question.

### 4.46: Testimony by Department Employees

Department employees shall be made available to testify at administrative hearings held by EEC, DESE, DMH, DDS, DPH, or DYS in connection with matters reported by the Department to any of said departments or office pursuant to 110 CMR 4.00.

### 4.47: Follow-Up Actions

After the Department has provided a copy of the 51A/51B report to any department or office pursuant to 110 CMR 4.00, the department or office in question will be responsible for any further action to insure that adequate steps have been or will be taken to prevent reoccurrence of incidents of abuse and/or neglect of children in the institution in question. The Department will maintain the responsibility for monitoring the quality of services for any children who are in the care or custody of the Department and who are placed by the Department at the institution in question.

### 4.48: Information Requests from Day Care Facilities, Schools, and Other Child Care Facilities

Each determination by the Department to "support" or "unsupport" a report of abuse or neglect in an institutional setting shall be communicated to the director or owner of the institution in question, in a form letter established for use by the Department. See, 110 CMR 4.32.

## 110 CMR: DEPARTMENT OF CHILDREN AND FAMILIES

4.48: continued

If a request for copies of a 51A/51B report, pursuant to M.G.L. c. 119, § 51E, is made to the Department by any owner or operator or director of a day care facility, or any superintendent or director of a public or private school, or any director of any other child care facility (such as group care facilities, etc.) said owner or operator or director of a day care facility or superintendent or director of a public or private school or director of any other child care facility may, subject to the approval of the Commissioner or his/her designee, receive a copy of the 51A/51B report regardless of whether the report has been "supported" or "unsupported", if said report contains an allegation that an incident of abuse or neglect occurred on the premises of the day care facility, school, or other child care facility. However, before copies of the reports are released, the name of the reporter shall be redacted. See, 110 CMR 12.08.

### 4.50: Reporting to the District Attorney and Law Enforcement Introduction

M.G.L. c. 119, §§ 51B(k) requires that the Department notify and provide information to the appropriate District Attorney concerning certain enumerated conditions caused by child abuse or neglect. The Department is permitted to notify the District Attorney of other matters involving possible criminal conduct.

### 4.51: Mandatory Reporting to the District Attorney

(1) The Department shall immediately notify the district attorney and the local law enforcement when early evidence, either during the receipt of the 51A report or during the investigation conducted under 51B indicated that there is reasonable cause to believe that one of the conditions listed in 110 CMR 4.51(2) resulted from abuse or neglect. Notification may include transmitting a copy of the 51A report.

(2) If, after an investigation pursuant to M.G.L. c. 119, § 51B, the Department supports a 51A report, the Area Director shall, no later than five working days after the supported decision is made, mail or deliver a copy of the completed 51A report and a copy of the completed 51B investigation to the District Attorney and the local law enforcement authorities for the county in which the child resides and for the county in which the offense occurred, if:

- (a) a child has died;
- (b) a child has been sexually assaulted;
- (c) a child has suffered brain damage, loss or substantial impairment of a bodily function or organ, or substantial disfigurement;
- (d) a child has been sexually exploited;
- (e) a child has suffered serious physical abuse or injury that includes, but is not limited to:
  - 1. a fracture of any bone, severe burn, impairment of any organ, or any other serious injury;
  - 2. an injury requiring the child to be placed on life-support systems;
  - 3. any other disclosure of physical abuse involving physical evidence which may be destroyed;
  - 4. any current disclosure by the child of sexual assault; or
  - 5. the presence of physical evidence of sexual assault.

(3) If a report is either screened out, or unsupported, on the basis that the alleged perpetrator did not meet the definition of caretaker, but the allegations fall within one of the categories under M.G.L. c. 119, § 51B(k), as listed in 110 CMR 4.51(2), the Area Director shall, no later than five working days after the screen out, or unsupported, decision, mail or deliver a copy of the completed 51A report and the completed 51B report, if applicable, to the District Attorney, and the local law enforcement authorities, for the county where the child resides and for the county in which the offense occurred.

## 110 CMR: DEPARTMENT OF CHILDREN AND FAMILIES

### 4.52: Discretionary Reporting to the District Attorney

The Department may refer other matters involving possible criminal conduct (including but not limited to cases of abuse or neglect resulting in conditions other than those listed 110 CMR 4.51(2) to the District Attorney for investigation, regardless of whether the 51A report is supported or unsupported by the Department. Decisions as to which matters to refer to a District Attorney as a discretionary report shall be made by the Area Director. Such referral shall be accomplished by mailing or delivering to the District Attorney for the county in which the child resides a copy of the completed 51A report and the completed 51B investigation.

### 4.53: Procedures

(1) After a mandatory or discretionary referral has been made to a District Attorney, a social worker or other Department employee may discuss with the District Attorney any information obtained by the social worker in connection with the 51A report or 51B investigation. Further documents (other than the completed 51A report and 51B investigation already furnished to the District Attorney) from the Department's files shall be released to the District Attorney upon request, if the Commissioner or his/her designee determines that such documents are directly relevant to the investigation or prosecution of the matter referred to the District Attorney, and that release would not be contrary to the best interests of the child(ren) in question.

(2) After a mandatory or discretionary referral to a District Attorney, the Regional Director shall advise the family that their case has been referred to the District Attorney, unless within six working days after the Regional Director notifies the District Attorney, the District Attorney, in writing, requests that such notification not occur.

(3) Any documents provided to a District Attorney in accordance with 110 CMR 4.00, which are thereafter subpoenaed from the District Attorney or otherwise requested from the District Attorney by any party to any pending criminal matter, shall be released or not released by the District Attorney solely in accordance with the applicable rules or procedures governing the District Attorney, and no notice to or consent from the Department shall be required.

(4) Any documents from Department files which are subpoenaed directly from the Department by any party to a criminal matter to which the Department is not a party, is governed by the procedures set out in Commonwealth v. Dwyer, 448 Mass. 122 (2006). M.G.L. c. 119, §§ 51E through 51F and M.G.L. c. 66A and M.G.L. c. 112, §§ 135 through 135B apply to Department records and a specific order is required to produce Department records in a criminal manner.

### 4.54: Multi-disciplinary Service Team

(1) Following each referral made to a District Attorney pursuant to 110 CMR 4.00, the Regional Director shall, in cooperation with the District Attorney and the Area Director, select the members of a multi-disciplinary team which will be assigned to review the service plan, unless the Regional Director and the District Attorney mutually agree to waive the multi-disciplinary team procedure. The multi-disciplinary service team shall consist of the social worker responsible for servicing the family, a representative of the District Attorney, and at least one other member who is not employed by either the Department or the District Attorney. This other member shall be appointed by the Regional Director and shall have experience and training in the field of child welfare and criminal justice.

(2) Members of the multi-disciplinary service team shall have full access to the service plan and any information from the family's social service file which is directly related to the implementation of the plan. The data shared with the members of the multi-disciplinary team shall be confidential and shall be utilized by the members solely to carry out the responsibilities of the team.

(3) Within 30 working days of the selection of the service team, the service team shall meet:

- (a) to discuss the current status of the child and family and any intervention initiated;
- (b) to discuss any existing service plan for the family;
- (c) to make recommendations as to the advisability of prosecuting any members of the family; and

## 110 CMR: DEPARTMENT OF CHILDREN AND FAMILIES

4.54: continued

(d) to discuss the possible effects of prosecution on the child and attempt to minimize the possibility of multiple interviews of the child.

(4) Within 55 working days of the referral of any case to the District Attorney, the Regional Director will forward a copy of the Department's service plan for the child and family to the District Attorney.

(5) If the multi-disciplinary service team finds that the service(s) identified in the service plan is/are not being provided due to unavailability, the team shall refer the case to the Commissioner.

(6) The multi-disciplinary service team may notify the District Attorney when a family has failed to participate or cooperate in the service plan.

(7) The Regional Director, in consultation with the District Attorney, shall determine when the multi-disciplinary team's involvement with a case is no longer warranted, and the Regional Director may thereafter authorize the dissolution of the team.

### 4.60: Scope 110 CMR 4.60 through 4.67

110 CMR 4.60 through 4.67 set forth the Department's responsibilities to children and their families under the Children In Need of Services (CHINS) statute found at M.G.L. c. 119, §§ 39E through 39J.

### 4.61: General Provisions

After an application for a CHINS petition is filed with any court, the child may come to the attention of the Department in four different ways:

- (a) court referral;
- (b) court-ordered pre-trial detention;
- (c) court-prescribed services; and
- (d) court-ordered commitment of the child to the custody of the Department.

### 4.62: Court Referral

(1) A probation officer of a court in which a CHINS petition has been filed may refer the child or his/her family to the Department for provision of social services by instructing the child or his/her family to contact the Department and apply for services.

## 110 CMR: DEPARTMENT OF CHILDREN AND FAMILIES

### 4.62: continued

(2) If the child, or the child and his/her parents, apply for services, the application shall be treated in the same manner as a voluntary application for services.

(3) A referred child who reasonably appears to be mentally ill and in danger of serious harm if not hospitalized should be the subject of an application for a commitment hearing before a district court under M.G.L. c. 123, § 12. No Department employee shall make such an application. The referring probation officer shall be informed immediately by the Department that in the Department's opinion the referred child is mentally ill and that without hospitalization serious harm is likely.

(4) If any child is referred to the Department for services under circumstances which indicate that the child may to be in need of care and protection, a case conference shall be held to determine if legal action is warranted, and thereafter the Department may initiate court proceedings under M.G.L. c. 119.

### 4.63: Court-ordered Pre-trial Detention

(1) If a court finds that a child alleged to be in need of services is not likely to appear at the trial of the CHINS petition, the court may set bail or other terms and conditions for the child's release, or may order the Department to secure the child in lieu of bail and to hold the child in pre-trial detention.

(2) Detention is a period of custodial deprivation of liberty between the issuance of a CHINS petition and the trial on the merits. The only legally permissible purpose of detention is to secure the presence of the child at trial.

(3) Court-ordered detained children shall be placed by the Department in a setting which, consistent with humane practice and the requirements of law, reasonably appears to be able to ensure the child's availability on the trial date. Such children shall be placed in the least restrictive setting possible, including placement in the child's own home.

### 4.64 Court-prescribed Services (No Custody to Department)

(1) Following a trial on a CHINS petition, if the court finds that the allegations have been proved beyond a reasonable doubt, it may adjudicate the child in need of services.

(2) Once the child has been adjudicated, the court may order provision of specified services (without committing the child to the custody of the Department).

(3) The Department may provide such court-prescribed services if the services are available, and the Department determines in its clinical judgment that the services are appropriate for the child and her/his family, and to the extent the Department is reasonably able to comply.

(4) A child receiving court-prescribed services (but not in the court-ordered custody of the Department) who reasonably appears to be mentally ill and in danger of serious harm if not hospitalized should be the subject of an application for a commitment hearing before a district court under M.G.L. c. 123, § 12. No Department employee shall make such an application. A probation officer or other employee of the Court which ordered the provision of services shall be informed immediately by the Department that in the Department's opinion the child is mentally ill and that without hospitalization serious harm is likely.

(5) If the court orders the Department to provide particular services or treatment, the Department shall carefully review the order. The Department may only be ordered to provide those services that it is legally required to provide. (Charrier v. Charrier, 416 Mass. 105 (1993)) Until such time as a court's order is vacated, changed or dismissed, the court's order shall nevertheless be complied with, if the services are available and to the extent the Department is reasonably able to comply but at the same time the Department's legal counsel shall be contacted, so that an appeal may be considered.

## 110 CMR: DEPARTMENT OF CHILDREN AND FAMILIES

### 4.65: Court-Ordered Commitment (Custody to Department)

- (1) After a trial on a CHINS petition, a child may be adjudicated to be in need of services. The court may then commit the child to the custody of the Department for a period of up to six months.
- (2) Following such a commitment order, the child shall be considered to be in the temporary custody of the Department.
- (3) A child committed to the temporary custody of the Department shall be placed in the home of his/her parents unless substitute care would better serve the child's interests.
- (4) Children may only be committed to the custody of the Department by a court after a CHINS adjudication has been entered.
- (5) A CHINS child committed to the custody of the Department who reasonably appears to be mentally ill and in danger of serious harm if not hospitalized should be the subject of an application for a commitment hearing before a district court under M.G.L: c. 123, § 12. Department social workers, after consultation with a member of the Department's legal staff, shall be responsible for making such applications.
- (6) If the court orders the Department to provide particular services, treatment or placement, the Department shall carefully review the order. The Department may only be ordered to provide those services that it is required by law to provide. *Charrier v. Charrier*, 416 Mass 105 (1993). In addition, a court in a CHINS matter may recommend out-of-home placement of a child. If such placement is recommended the Department may not refuse the out-of-home placement, but the Department shall direct the type and length of the out-of-home placement. The Department shall also give consideration to a request of the child that s/he be placed outside the home of a parent or guardian when there is a history of abuse and neglect in the home of the parent or guardian. Until such time as the order is vacated, changed or dismissed the court's order shall nevertheless be complied with, to the extent the services are available and to the extent the Department is reasonably able to comply but at the same time the Department's legal counsel shall be contacted, so that an appeal may be considered.
- (7) After any order committing a child to the custody of the Department after a CHINS adjudication, the Department shall complete a service plan in accordance with 110 CMR 6.00.
- (8) When preparing the service plan, the Department's social worker shall involve other interested persons such as relatives, friends, or community agencies who may be willing to provide helpful services.
- (9) Where a child's service plan will affect the child's educational placement, the Department social worker shall consult with the child's school system in the development of such plan. This consultation shall occur prior to placement except in emergencies. Whenever the Department social worker has reason to believe that a child is in need of special education, the Department social worker shall initiate a request for an evaluation of the child under procedures set forth in 110 CMR 7.400.

### 4.67: Department Employees at CHINS Court Proceedings

Members of the Department's social work staff may attend all CHINS court proceedings if informally requested to do so by a Court, or if formally subpoenaed. Members of the Department's legal staff shall attend pre-adjudication CHINS court proceedings, in those cases where a request is made by an Area or Regional Director.

#### Commentary

Traditionally, Department attorneys have not appeared at any pre-adjudication CHINS court proceedings because technically the Department is not a party to such actions. However, recognizing that some pre-adjudication CHINS matters present difficult or complex legal problems for the social work staff, the Department will make members of the legal staff available on an as-needed basis.

## 110 CMR: DEPARTMENT OF CHILDREN AND FAMILIES

### 4.70: Eligibility for Single Service Cases

A family receives a single service when the family is assessed to need only one service purchased in whole or in part by the Department. A single service is provided when, in the judgment of the Department, the service is needed to maintain or support the family, and comprehensive case management is not needed.

Limitation upon hours of service and duration of service are set forth in each service-specific chapter of 110 CMR.

Any person located within the Commonwealth may request social services from the Department. Persons requesting social services must complete a written application form. Persons needing assistance in completing the written application form shall be furnished with assistance by the Department.

#### Commentary

The Department frequently receives requests for services from persons who, while physically located within the Commonwealth, might be classified as "transients" or "temporary residents". Examples include families who have stopped in Massachusetts while moving from Florida to Maine and who are living with relatives, families who are temporarily residing at the Ronald McDonald House while their child receives specialized care at Children's Hospital, etc. The Department will not exclude such families from eligibility for Department services on the basis of these residency characterizations. Instead, the Department will accept applications from any person who has a bona fide physical location within Massachusetts, and the Department will thereafter proceed to review and assess the application in accordance with 110 CMR 4.70 through 4.76.

### 4.71: Case Management

Requests for a single service, and case management of single service cases, shall be in accordance with the applicable chapters of 110 CMR 4.00, including: 110 CMR 4.00: Intake; 110 CMR 5.00: Assessment; 110 CMR 6.00: Service Plans and Case Reviews; and 110 CMR 7.000: Services.

In particular, the need for single service provision shall be reviewed every six months, in conjunction with review of the service plan.

### 4.72: Application Information Required

Any client seeking a single service shall be required to provide sufficient information to allow the Department to assess the applicant's need and eligibility for a single service. In addition, an individual applying for a single service may be required to provide such authorization(s) for collateral contacts as are necessary for the Department to verify or assess the individual's need for a single service.

### 4.73: Limited Assessment for Single Service Cases

Single service cases shall require a limited assessment only. See, 110 CMR 5.00 (Assessment). The limited assessment shall determine the applicant's need for the single service and whether the service is appropriate.

### 4.74: Delivery of Service

After completion of the limited assessment, if the applicant is determined to need the single service and if the single service is determined to be appropriate, the Department shall provide the single service, or authorize provision of the single service, within ten working days of completion of the limited assessment. If no Department (or provider) service resources are currently available, the applicant shall be placed on a waiting list.

### 4.75: Sliding Fee

All single services may be subject to a sliding fee.

## 110 CMR: DEPARTMENT OF CHILDREN AND FAMILIES

### 4.76: Denial, Reduction, or Termination of Services

Any client aggrieved by the denial, reduction, or termination of a single service may request a fair hearing on the matter pursuant to 110 CMR 10.00 et seq.

All Department clients who receive a single service (such as chore, homemaker, respite, etc.) shall, upon attaining 60 years of age, be transferred to the Department of Elder Affairs. The transfer of a client's case, at 60 years of age, to the Department of Elder Affairs is not appealable.

### REGULATORY AUTHORITY

- 110 CMR 4.01: M.G.L. c. 18B, § 4 and 7(i); c. 119, § 23(A) and c. 210, § 2;
- 4.20: M.G.L. c. 119, §§ 51A, 51B;
- 4.40: M.G.L. c. 119, §§ 51A through F; M.G.L. c. 66A;
- 4.50: M.G.L. c. 119, §§ 51A, B, and D;
- 4.60: M.G.L. c. 119, §§ 39E through 39J;
- 4.70: M.G.L. c. 18B.