

PROGRAM INSTRUCTION

EOEA-PI-04-17

TO: Aging Service Access Points
Area Agencies on Aging
Designated Elder Protective Service Agencies
Municipal Councils on Aging

FROM: Jennifer Davis Carey

SUBJECT: **Emergency Regulation – Effective October 21, 2004**
Elder Abuse Reporting & Elder Protective Service Programs
651 CMR 5.00 *et seq.*

DATE: November 17, 2004

The Executive Office of Elder Affairs (“Elder Affairs”) has adopted Emergency Regulations to comport with changes in the Elder Abuse Reporting and Protective Services Programs (MGL. c. 19A, ss. 14 - 26) recently enacted by the legislature (St.2004, c. 149, s. 36) . The regulation defines Elder Abuse; describes the responsibilities of Elder Affairs and others to make, receive and investigate reports of Elder Abuse; sets forth the procedures for providing notice to – and obtaining informed consent from – each Elder who is the subject of an Abuse report; and prescribes administrative procedures that may compel investigations and protective services where an Elder is unable to give informed consent.

Effective October 21, 2004 the Emergency Regulation *redefines* Abuse to include mandated reporting of – and protective services for – "self-neglecting" elderly individuals who are unable to safely meet their own essential needs for physical or emotional well-being.

Elder Affairs proposes to adopt Final Regulations that incorporate the changes adopted as Emergency Regulations and will convene a public hearing to receive public comments on Tuesday, December 7, 2004 at 10:00 a.m. in Conference Rooms 2 and 3 on the 21st floor of 1 Ashburton Place, Boston, MA. A copy of these regulations will be made available online at <http://www.ma.gov/elders>, for inspection at the public hearing, and during regular business hours at the legal unit of Elder Affairs. Written comments may be directed to Peter A. Antonellis, Esq., Assistant General Counsel, Executive Office of Elder Affairs, 1 Ashburton Place, 5th floor, Boston MA 02108 before Friday, December 10, 2004 at 5 p.m.

For your information, a list of the proposed changes is attached herewith, along with the Notice of Public hearing – Public Comment period. If you have questions about this Program Instruction, the proposed Final Regulation or Public Hearing, please call Peter Antonellis at 617-222-4796.

651 CMR: DEPARTMENT OF ELDER AFFAIRS

**651 CMR: ELDER ABUSE REPORTING
AND PROTECTIVE SERVICES PROGRAM**

651 CMR 5.00 is amended as follows:

[1] 651 CMR 5.02 Definitions: Abuse is amended by deleting the first paragraph and inserting in place thereof the following:

Abuse: An act or omission which results in a serious physical or emotional injury to an elderly person or financial exploitation of an elderly person; or the failure, inability or resistance of an elderly person to provide for himself or herself one or more of the necessities essential for physical and emotional well-being without which the elderly person would be unable to safely remain in the community; provided, however, that no person shall be considered to be abused or neglected for the sole reason that such person is being furnished or relies upon treatment in accordance with the tenets and teachings of a church or religious denomination by a duly accredited practitioner thereof.

[2] 651 CMR 5.02 Definitions: Abuse is further amended by inserting at the conclusion thereof the following:

(6) Self-neglect: The failure or refusal of an Elder to provide for himself or herself one or more necessities essential for physical or emotional well-being, including food, clothing, shelter, personal care, supervision and medical care, which has resulted in, or where there is a substantial reason to believe that such failure or refusal will immediately result in serious harm, and prevents the Elder from remaining safely in the community.

Self-neglect shall be determined by considering the following factors:

- (a) the presence of mental or physical impairments, substance abuse, and cultural or linguistic barriers;
- (b) the Elder's capacity to make informed decisions and knowingly appreciate the consequences of such decisions;
- (c) the involvement or availability of other service providers to meet one or more of the Elder's essential needs when acting within the scope of their responsibility;
- (d) the willingness and capability of family members and friends to meet one or more of the Elder's essential needs; and
- (e) the Elder's physical and mental condition, and the potential for the situation to escalate to the point where the Elder would be seriously harmed without intervention.

**COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ELDER AFFAIRS
NOTICE OF PUBLIC HEARING-PUBLIC COMMENT PERIOD
PROPOSED FINAL REGULATION – ELDER ABUSE REPORTING AND ELDER
PROTECTIVE SERVICES PROGRAM**

The Executive Office of Elder Affairs (“Elder Affairs”) administers the Elder Abuse Reporting and Protective Service program pursuant to authority set forth at MGL c. 19A, ss. 14 – 26, as amended (St.2004, c. 149, s. 36). Effective October 22, 2004, Elder Affairs filed Emergency Regulations (651 CMR 5.00 et seq.) to comport with recently enacted statutory amendments. Elder Affairs proposes to adopt Final Regulations and is soliciting public comments about the Emergency Regulations currently in effect.

The Elder Abuse Reporting Law (MGL c. 19A, ss. 14 – 26) mandates that health, public safety and human services personnel timely report suspected Elder Abuse to Elder Affairs. Such reporting is immune from civil and criminal liability. In turn, protective services may be provided to elderly persons suffering Physical, Sexual or Emotional Abuse, Neglect by a Caregiver, or Financial Exploitation. Recent amendments also authorize Elder Affairs to provide protective services for elderly individuals whose Self-neglect makes him or her unsafe in the community. This change in eligibility was recently implemented by Emergency Regulations and is incorporated into the Final Regulations that are being proposed.

A public hearing will be held on Tuesday, December 7, 2004 at 10:00 a.m. in Conference Rooms 2 and 3 on the 21st floor of 1 Ashburton Place, Boston, MA to receive public comments on the proposed Final Regulation. A copy of these regulations will be made available online at <http://www.ma.gov/elders>, for inspection at the public hearing, and during regular business hours at the legal unit of Elder Affairs. Written comments may be directed to Peter A. Antonellis, Esq., Assistant General Counsel, Executive Office of Elder Affairs, 1 Ashburton Place, 5th floor, Boston MA 02108 before Friday, December 10, 2004 at 5 p.m.

Jennifer Davis Carey, Secretary of Elder Affairs.