

DMH POLICY

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I. PURPOSE.

This policy establishes standards and procedures to ensure that the Department of Mental Health (DMH or Department) and its Programs and Facilities respect, support and protect the fundamental human, civil, constitutional and statutory rights of Clients. It repeals and replaces DMH policies #90-3, #95-4 and #95-5R.

The Human Rights framework of DMH is set forth in various statutes and regulations, including, among others, M.G.L. c. 123, §23 and 104 CMR 27.00 and 104 CMR 28.00. This policy explains and further defines the terms, standards and principles relevant to Human Rights, as set forth in those statutes and regulations. It is not an exhaustive description of all Human Rights, but shall serve as guide for respecting all Human Rights, even if not specifically mentioned herein.

DMH expects all staff to work together in a cooperative and collaborative manner to ensure that Human Rights standards are understood and respected, and are integrated within the treatment and philosophy of care of DMH and each Facility or Program. Although this policy articulates the special role of Human Rights Officers and Human Rights Committees to protect the Human Rights of Clients, the protection and enhancement of Human Rights is a common objective to be shared by all. Senior staff and managers have a responsibility to provide the leadership and model the values necessary to proactively implement this policy, and to ensure that DMH maintains a service environment that promotes respectful and responsive interactions with Clients.

II. SCOPE

This policy applies to DMH and its Facilities and Programs, as those terms are defined in Part III below. When special requirements apply only to Facilities or only to Programs or only to a particular kind of Facility or Program, or only to Minors, this is noted explicitly. This policy does not create an obligation to provide services or to create rights that are inconsistent with the type of service provided in a given setting. For example, a work program not designed to provide meals is not obligated by this policy to provide for such. Nothing herein shall be construed to require DMH or its Facilities and Programs to permit or facilitate Client behavior that is dangerous or illegal.

III. DEFINITIONS

Client: a person who receives case management from DMH or a service from a DMH Facility or Program. This definition is broader than the regulatory definition of Client in that it includes individuals in DMH Facilities who may receive services from DMH who are not DMH clients.

Facility: a hospital, inpatient unit, inpatient unit of a community mental health center, psychiatric unit within a public health hospital or intensive residential treatment program for adolescents (including Behaviorally Intensive Residential Treatment programs), that is operated or contracted for by DMH.

Facility Director: the superintendent, chief operating officer or other head of a Facility.

Human Rights: values and fundamental principles intended to support and promote the worth, full respect and dignity of each individual. In addition to constitutional and statutory rights, Human Rights include the standards and rights set forth in DMH regulations (e.g., 104 CMR 27.13, 104 CMR 28.02 and 28.03) and this Policy.

Legally Authorized Representative (LAR): a guardian or other fiduciary granted applicable authority by a court of competent jurisdiction, or, in the case of a Minor, the parent(s) or other individual or entity with legal custody of the Minor.

Minor: a person under the age of 18 years.

Program: an organization or other entity that provides one or more community-based services that are contracted for or operated by DMH, including, but not limited to, outpatient, supported housing, residential, staffed apartments, day, emergency, respite and Clinically Intensive Residential Treatment programs. Program does not include case management, which is a DMH function.

Program Director: the person with day-to-day responsibility for a Program.

IV. HUMAN RIGHTS STANDARDS

DMH, and its Facilities and Programs, shall provide services that promote:

- A. human dignity;
- B. humane and adequate care and treatment;
- C. self-determination and freedom of choice to an individual's fullest capacity;
- D. the opportunity to receive services which are to the maximum extent possible consistent with the individual's needs and desires, and least restrictive of the individual's freedom;
- E. the opportunity to move toward independent living;
- F. the opportunity to undergo normal experiences, even though such experiences may entail an element of risk; provided, however, that the individual's safety or well-being or that of others shall not be unreasonably jeopardized;
- G. the opportunity for individuals from all cultural backgrounds or with particular linguistic needs to participate to the maximum extent possible in activities and services, with the assistance of staff who possess appropriate cultural understanding and language skills or interpreters in accordance with applicable federal and state laws and DMH regulations;
- H. the opportunity for individuals with physical disabilities to participate in activities and services;

- I. an environment that protects individuals from physical, verbal and sexual abuse; and
- J. the opportunity for individuals to engage in activities or styles of living according to individual desires and consistent with requirements of safety and the consideration of the Human Rights of others.

V. HUMAN RIGHTS AND RESPONSIBILITIES OF CLIENTS

A. Human Rights - General

Clients enjoy the same federal and state constitutional and statutory rights as any other person residing in Massachusetts, except insofar as the exercise of such rights has been limited by a court of competent jurisdiction, or is otherwise limited by the Client's legal status (for example, as a Minor, non-citizen or convicted felon). These rights, encompassed within the definition of Human Rights, include the right to manage one's own affairs, to contract, to hold professional, occupational or vehicle operator's licenses, to pursue judicial actions, to make a will, to marry, to hold or convey property and to vote in local, state and federal elections. Human Rights cannot be abridged solely by virtue of admission or commitment to an inpatient psychiatric hospital or because an individual is a Client. In cases where there has been an adjudication that a Client is incompetent and a guardian or conservator has been appointed for such Client, such appointment limits the Client's Human Rights only to the extent of the guardian or conservator's legal authority.

All Clients have the right to be free from any unlawful discrimination, including, but not limited to, discrimination on the basis of race, creed, national origin, religion, gender, sexual preference, language, age, veterans status, disability, HIV status or ability to pay. Where certain Human Rights may be restricted, they may be restricted only as enumerated in this policy, or as provided in an applicable statute or regulation.

B. Human Rights - Massachusetts General Law Chapter 123 (M.G.L. c.123), DMH Regulations (104 CMR) and Policies

M.G.L. c.123 and DMH regulations and policies enumerate some, but not all, of Clients' Human Rights. The following is a list of some of the Human Rights that are often inquired about, and their sources in the statute, regulations and policies. Attachment I contains a more comprehensive list of Human Rights covered by DMH regulations, other state and federal statutes and regulations, DMH policies, and other legal sources. Some Human Rights may be applicable only in a Program or only in a Facility.

<p>NOTE: The regulations set forth in 104 CMR 28.00 et seq. are not applicable to Programs serving Minors licensed by the Office for Child Care Services (OCCS). Applicable OCCS regulations are set forth in 102 CMR 3.07. These Programs, however, are subject to the provisions of M.G.L. c.123, §23, and Section VII of this policy.</p>

TOPIC	FACILITY	COMMUNITY
Access to Attorney or Legal Representative	M.G.L. c.123 §23 104 CMR 27.13(5)(e) and (f)	M.G.L. c.123 §23 104 CMR 28.03(1)(d)3 and (e)
Client Funds	M.G.L. c.123 §§4, 23 and 26 104 CMR 27.13(2) and 30.00 DMH Policy #97-6	M.G.L. c.123 § 23 104 CMR 28.10 and 30.00
Clothing	M.G.L. c.123 §23	M.G.L. c.123 §23
Commercial Exploitation	This Policy, Section V.C., below	104 CMR 28.03(1)(f)
Complaints	104 CMR 27.13(5)(f) and 32.00	104 CMR 28.03(1)(i), 28.04(2) and 32.00
Contract, to enter into	M.G.L. c.123 §24 104 CMR 27.13(1)	104 CMR 28.10(1)
Court Hearings (Commitments)	M.G.L. c.123 §§5-12 and 15-18 104 CMR 27.13(9)	
Diet	This Policy, Section V.C., below	This Policy, Section V.C., below
Discrimination	This Policy, Section V.A.	104 CMR 28.03(a) This Policy, Section V.A.
Education	M.G.L. c.123 §29 104 CMR 27.13(4)	
Habeas Corpus	M.G.L. c.123 §9 104 CMR 27.13(8)	
Health Care Proxy	This Policy, Section V.C., below	This Policy, Section V.C., below
Hold and Convey Property	104 CMR 27.13 (1) This policy, Section V.A.	
Humane Psychological and Physical Environment	M.G.L. c.123 §23 104 CMR 27.13(5)(d)	M.G.L. c.123 §23 104 CMR 28.03(1)(h)
Informed Consent	104 CMR 27.10(1) and (3) 104 CMR 31.02 and 31.05(5) DMH Policy #96-3R	104 CMR 28.03(1)(j) and 28.10 104 CMR 31.02 and 31.05(5) DMH Policy #96-3R
Interpreter Services	M.G.L. c.123 §23A 104 CMR 27.18	
Labor	M.G.L. c.123 §29	104 CMR 28.07

TOPIC	FACILITY	COMMUNITY
Licenses, Professional, Occupational or Vehicle	M.G.L. c.123 §24 104 CMR 27.13(1) This Policy, Section V.A.	104 CMR 28.10(1) This Policy, Section V.A.
Mail	M.G.L. c.123 §23 104 CMR 27.13(5)(b)	M.G.L. c.123 §23 104 CMR 28.03(1)(d)2
Marriage	104 CMR 27.13(1)	This Policy, Section V.A.
Mistreatment	This Policy, Section V.C., below	104 CMR 28.04
Personal Possessions	M.G.L. c.123 §23	M.G.L. c.123 §23 104 CMR 28.08
Physical Exercise and Outdoor Access	This Policy, Section V.C., below	This Policy, Section V.C., below
Record Access	M.G.L. c.123 §36 104 CMR 27.17 For HIV/AIDS See DMH Policy #99-2	104 CMR 28.09 For HIV/AIDS See DMH Policy #99-2
Research Subject	104 CMR 31.05(3) (4) and (5)	104 CMR 31.05(3) (4) and (5)
Religion	This Policy, Section V.C., below	104 CMR 28.03(1)(b)
Searches	104 CMR 27.13(7) DMH Policy #98-3	104 CMR 28.08(2) and (3)
Seclusion and Restraint	M.G.L. c.123 §21 104 CMR 27.12 DMH Policy #93-1	104 CMR 28.05
Storage Space	M.G.L. c.123 §23	M.G.L. c.123 §23
Telephone Access	M.G.L. c.123 §23 104 CMR 27.13(5)(a) and (6)	M.G.L. c.123 §23 104 CMR 28.03(1)(d)1 and (d)3

TOPIC	FACILITY	COMMUNITY
Treatment and Services <ul style="list-style-type: none"> • Behavior Management Plan (Children and Adolescents only) • Development and appeals of Treatment and Service Plans • Periodic/Annual Review of Treatment/Service Plan • Receipt of Treatment and Services • Privileges 	M.G.L. c.123 §4 104 CMR 27.10, 11 and 13 This Policy, Section V.C., below	104 CMR 29.00 This Policy, Section V.C., below DMH Policy #96-1
Visitors	M.G.L. c.123 §23 104 CMR 27.13(5)(c) and (e) and (6)	M.G.L. c.123 §23 104 CMR 28.03(1)(d) 3. and (g)
Vote	104 CMR 27.13(1)	104 CMR 28.03(1)(c) and 28.10(1)
Wills	M.G.L. c.123 §24 104 CMR 27.13(1)	104 CMR 28.10(1)

C. Human Rights – Extension of Certain Human Rights

Some Human Rights are specifically addressed in DMH's regulations for Community Programs but not for Facilities. Through this policy, DMH extends certain of these Human Rights to Clients in Facilities as set forth below. In addition, certain Human Rights are not specifically covered by DMH's regulations. Through this policy, DMH clarifies that these additional Human Rights extend to Clients as set forth below.

1. **Commercial Exploitation.** As in Programs, utmost care shall be taken by Facilities to protect Clients from commercial exploitation.
2. **Mistreatment.** As in Programs, no Facility shall mistreat or permit the mistreatment of a Client by its staff. Mistreatment, as defined in 104 CMR 28.04, includes any intentional or negligent action or omission that exposes an individual to a serious risk of physical or emotional harm. Mistreatment includes but is not limited to:
 - a) Corporal punishment or any unreasonable use or degree of force or threat of force or coercion;
 - b) Infliction of mental or verbal abuse such as abusive screaming or name calling;
 - c) Incitement or encouragement of Clients or others to mistreat a Client;
 - d) Transfer or the threat of transfer of a Client for punitive reasons;
 - e) The use of restraint as punishment or primarily for the convenience of staff;
 - f) Any act in retaliation against a Client for reporting any violation of the provisions of 104 CMR to DMH.

The Facility Director shall investigate or report to DMH allegations of mistreatment in accordance with the requirements of 104 CMR 32.00.

3. **Participation in Treatment Planning.** When clinically and age-appropriate, all Clients, including those with a LAR, shall have the opportunity to participate in and contribute to their treatment planning to the maximum extent possible. As in Programs, Clients in Facilities may request individuals of their choosing, including their attorney, to attend treatment and service planning meetings. Facilities shall make reasonable efforts to accommodate such requests.
4. **Religion.** As in Programs, Clients in Facilities have the right to religious freedom and practice without compulsion according to the preference of the Client.
5. **Physical Activities and Access to the Outdoors.** To the maximum extent possible, all Clients have the right to an opportunity for physical exercise and access to the outdoors consistent with requirements for safety.
6. **Health Care Proxy.** All adult Clients have the right to execute a Health Care Proxy consistent with and subject to the provisions of M.G.L. c.201D.
7. **Diet.** A Client in a Facility, or in a Program that is required to furnish meals, has the right to an appropriate and nourishing diet consistent with medical requirements and the Client's religious and cultural beliefs and, to the extent possible, in accordance with personal preferences.
8. **Changes to Treatment or Service Plans.** All Clients and their LAR, if any, have the right to request changes to their treatment and service plans (including a request for a change in their Facility, Program, treating physician or other clinician, or case manager). Best efforts shall be made to accommodate the request, consistent with (i) the clinical appropriateness of the request, (ii) the ability of the Facility or Program to grant the request, (iii) the need to provide treatment in an emergency situation, and (iv) the Client's eligibility for admission to another service provider or agency (e.g., Veterans Administration or Massachusetts Rehabilitation Commission). Under certain circumstances, the DMH Area of Responsibility Policy #99-1, or any successor policy, may also apply. See also, Inpatient 104 CMR 27.10(1)(Consent to Treatment), Community 104 CMR 29.03, 29.06-29.11 (Service Planning).
9. **Voting.** Facilities shall provide reasonable assistance to Clients to register and vote, similar in manner to Programs' responsibilities under 104 CMR 28.03 (1)(c).

D. Human Rights - Responsibilities

1. Every Client shall be responsible for respecting the Human Rights of staff and other Clients.
2. Every Client shall be responsible for following the operational rules and procedures applicable to DMH and its Facilities and Programs.

3. Every Client shall be responsible for respecting the property of other Clients, staff, DMH and its Facilities and Programs.

VI. RESPONSIBILITIES OF DMH, FACILITIES AND PROGRAMS

A. Support and Protect Human Rights

1. It is the responsibility of DMH and its Facilities and Programs to ensure that Clients may exercise their Human Rights without harassment or reprisal, including the denial of appropriate and available treatment and services. DMH and its Facilities and Programs must ensure that their staffs comply with all applicable regulations, policies and procedures.
2. Every DMH staff person and all staff in Facilities and Programs are responsible for supporting and protecting Clients' Human Rights. This responsibility includes, but is not limited to, identifying a Client's need for assistance regarding his/her Human Rights, taking appropriate steps to ensure that Human Rights are fully respected, and assisting Clients in gaining access to Human Rights resources outside DMH.

B. Requirements When Restricting Human Rights

In limited circumstances it may be necessary for a Facility or Program to restrict a Client's exercise of a right. A right may be restricted only if permitted by, and in accordance with, law, regulation or policy. Furthermore, no right shall be restricted unless less restrictive alternatives have been tried and have failed or would be futile to attempt. Some Human Rights cannot be restricted; for instance, pursuant to M.G.L. c.123, §23, visits and phone calls from or to a Client's attorney, legal advocate, physician, psychologist, clergy member or social worker cannot be restricted. Questions as to whether a right can be restricted and under what standard should be addressed to the applicable HRO or legal counsel. For children in the custody of the Department of Social Services (DSS), see Commissioner's Directive #16.

Note: In Facilities only, rights to telephone or visitor access may be restricted pursuant to 104 CMR 27.13(6). In determining if the standard for restricting a right is met with respect to a Minor, a Facility may take into consideration the age and developmental level of such Minor, as well as family and cultural issues relevant to his or her treatment, and may rely on information supplied by the Client's LAR, records and information from prior treatment providers, or other sources of reliable information.

If any right is restricted, the following procedures must be followed:

1. Review. All restrictions are considered temporary and, at a minimum, shall be reviewed at least at the time of the treatment plan modification or review.

Note: If the restriction concerns telephone or visitor access in a Facility, then it must be reviewed and approved by the Facility Director or designee and documented daily by clinical staff for the first 14 days of the restriction. If the restriction is continued for more than 14 days, the Facility Director must review and approve the continuation and, if continued, then the reasons for the restriction shall be considered a treatment issue and must be incorporated into the Client's treatment plan. The Facility Director shall review all such restrictions monthly. In all instances where telephone or visitor access has been restricted, access shall be restored immediately when determination is made that the risk no longer justifies the restriction.

2. Time Period. The length of a restriction of any right must be related to an identified risk of harm or an identified good cause.
3. Notification. The Human Rights Officer and the Client's LAR, if any, shall be notified of the restriction as soon as possible, but not later than 24 hours after it is imposed.
4. Documentation. Imposition of the restriction shall be documented with specific facts as to the reason for the restriction in the Client's record. If a restriction is made due to a restraining order or other court order, then a copy of the restraining or other court order shall be retained in the Client's record.

Note: Where the restriction concerns telephone or visitor access in a Facility, such documentation also shall include the less restrictive alternatives that were tried and failed or would be futile to attempt, as well as criteria for lifting the restriction.

C. Informing Clients of Human Rights and Responsibilities.

1. **Postings.**
Pursuant to M.G.L. c.123, §23, 104 CMR 27.13(12) and 28.03(2), DMH shall provide, and each Facility, Program, DMH Area and Site Office shall post, a summary of Clients' Human Rights and responsibilities, a notice of availability of the HRO (and how to contact him or her), an explanation of how to access legal representation, DMH's toll-free information and referral line (1-800-221-0053), and an explanation of the applicable DMH, Disabled Persons Protection Commission (DPPC), DSS and Executive Office of Elder Affairs (EOEA) complaint processes, where applicable.

The required postings shall be placed in appropriate and conspicuous locations to which Clients and LARs have access, including in each Facility's admitting room and inpatient unit and at outpatient and day activity programs. However, a Client living independently and receiving services from a DMH supported housing Program may decide not to have such postings displayed.

2. **Written Materials.**

In addition to the postings, every Facility and Program shall distribute written materials to each Client and LAR, if any, upon admission of the Client to the Facility or entrance into a Program, at least annually thereafter and upon request, that contains:

- a summary of Clients' Human Rights and responsibilities;
- the role, responsibilities and availability of the HRO and HRC and how to contact the applicable HRO;
- notice of the Client's right to an interpreter at no cost to the Client (Facility only);
- contact information for legal assistance (e.g., Massachusetts Mental Health Protection and Advocacy Project, the Mental Health Legal Advisors Committee, the Committee for Public Counsel Services, and other legal services agencies funded by the Massachusetts Legal Assistance Corporation);
- the toll-free number for the DMH information and referral line (1-800-221-0053);
- the procedures for filing a DMH complaint under 104 CMR 32.00;
- the procedures for filing a complaint of abuse or neglect with the DPPC (for persons aged 18 through 59), DSS (for persons under the age of 18) and EOEA (for persons over the age of 59).

If a Client receives only case management from DMH, the Site Office shall be responsible for providing the above referenced written materials.

In addition, every Facility, Program, Area and Site Office shall ensure that DMH complaint forms are readily available to Clients and LARs.

3. **Language.**

The postings and written materials shall be in words understandable and age-appropriate to Clients and LARs and, to the extent possible, translated into appropriate languages. They also shall be made accessible to individuals who are visually impaired.

D. Develop and Implement a Human Rights Training Plan

1. Each Area, Facility and Program shall develop and fully implement a training plan to ensure that staff, HROs, HRCs, Clients and LARs are informed about Clients' Human Rights. The training plan shall be in writing and updated as needed. The plan shall include a description of the training, how frequently it will be offered, and the intended audience. At a minimum, the plan must ensure that:
 - a) All staff are trained at orientation and annually thereafter on:
 - the value of Human Rights;
 - the DMH Human Rights policy;
 - the role of the LAR in relationship to the Human Rights of Minors and others under guardianship; for staff responsible for Minors, this also

shall include (as appropriate) applicable DSS, OCCS and Department of Education regulations;

- the role and responsibilities of the HROs, HRCs and Area Human Rights Coordinator;
 - all applicable complaint procedures;
 - mental illness and stigma;
 - the role of culture, language and religion in the provision of services; and
 - the role of staff in promoting and protecting Clients' Human Rights.
- b) Clients are given materials and/or instruction designed to help them understand and protect their Human Rights.
- c) LARs are given materials and/or instruction aimed at helping them understand Clients' Human Rights.
- d) HRC members are given materials and/or instruction so they can understand the Human Rights of the Facility's or Program's Clients, and their role in the protection of these Human Rights.

To the extent possible, Facilities and Programs shall include Clients, former Clients, family members and Human Rights staff in developing the plans and in the training.

2. The Office for Human Rights shall develop a plan for training all Central Office staff at orientation and annually on the structure and content of the DMH's Human Rights program.

E. Law Enforcement Investigations

Each Facility and Program shall establish a protocol that provides for advance notice, when possible, to the HRO or other designated staff, of any police interview or investigation of a Client so that appropriate assistance can be offered to the Client. No such protocol shall be construed to interfere with the conduct of a lawful police investigation.

VII. HUMAN RIGHTS INFRASTRUCTURE.

A. Create and Maintain a Human Rights Infrastructure.

1. DMH and its Facilities and Programs must create and maintain an infrastructure for protecting Clients' Human Rights that includes, where applicable, the appointment of a Human Rights Advisory Council (HRAC) pursuant to 104 CMR 26.04(6), and Human Rights Officers (HROs) and Human Rights Committees (HRCs) as set forth in 104 CMR 27.14 and 28.11, this Subsection C of Section VI. and Section VII. of this Policy.
2. DMH and its Facilities and Programs must provide support for Area Human Rights Coordinators, HROs and HRCs. Each Area, Facility and Program must provide its Area Human Rights Coordinator or HRO(s), respectively, with adequate time, resources and support from senior staff to carry out their

responsibilities. If Human Rights responsibilities are assigned to a staff person in addition to his/her principal duties, these other duties shall be modified to accommodate the Human Rights responsibilities. No duties shall conflict with the Human Rights staff person's primary Human Rights responsibilities. For example, the Human Rights staff person should not be responsible for conducting fact-finding activities pursuant to 104 CMR 32.00. Each staff person with specific Human Rights responsibilities shall have a job description that includes all duties (including Human Rights responsibilities) the person is expected to perform.

Furthermore, each Area, Facility and Program shall ensure an environment where Area Human Rights Coordinators, HROs, members of a HRC and other staff who pursue Human Rights complaints on behalf of a Client can function without fear of retaliation from any individual employed by the Area, Facility or Program. Any person who believes that this standard has been violated should first seek to resolve the issue within the Area, Facility or Program unless the person believes that such a process will not satisfactorily address the issue. Any alleged violation of this standard may then be reported to the applicable Area Director or designee, who shall take appropriate action, including considering whether the issue is a licensing or contract violation. If resolution is not achieved, the matter shall be referred to the DMH Office for Human Rights for further review.

3. Where appropriate, DMH and its Facilities and Programs shall solicit input from Human Rights personnel (i.e., HROs, and HRAC and HRC members) when developing policies or procedures that may impact Clients' Human Rights.

Note: When a Program operates more than one site with multiple HROs, the Program shall appoint a staff person, who may be one of the Program's HROs, who shall train, support and coordinate the work of the Program's various HROs. This individual shall ensure the availability of HRO assistance to Clients.

B. Office for Human Rights

There shall be an Office for Human Rights within the DMH Central Office to oversee the protection of Human Rights. The Commissioner shall determine the staffing complement, which generally will include a Director of Human Rights for Adults and a Director of Human Rights for Children and Adolescents. The Director of Human Rights for Adults shall supervise DMH-operated hospital HROs, and support and assist other Facility and Program HROs. The Director of Human Rights for Children and Adolescents shall support and assist child and adolescent Facility and Program HROs. The Office for Human Rights shall support and assist the Area Human Rights Coordinators and provide ongoing training and curriculum development and support for the DMH Human Rights Advisory Committee.

C. Area Human Rights Coordinators

Each Area Director shall designate a staff person to be the Area Human Rights Coordinator to assist the Area in implementing this policy. The Area Human Rights Coordinator shall

provide or arrange regular training and information-sharing meetings, as necessary, for the Area and Site Offices, for HROs from Programs and DMH-operated CMHCs, and for HRC members. The Area Human Rights Coordinator also shall serve as a consultant concerning Human Rights issues to staff at the Area and Site Offices, Programs and DMH-operated CMHCs. In addition, the Area Human Rights Coordinator shall address Human Rights issues as they relate to case management.

D. Human Rights Officers (HRO)

1. **In General.** Each Facility or Program shall have a HRO. A HRO shall have no duties, such as acting as a fact-finder as part of the complaint process, that conflict with his or her responsibilities as a HRO. The HRO may not be the head of the Facility or Program, or the head of a local service site (e.g., a residence or day Program).

Facility:

- a) Each state hospital, including the psychiatric units located within a public health hospital, shall employ a person full-time to serve as a HRO. The HRO shall be appointed by the Commissioner or designee, and shall be supervised by the Director of Human Rights for Adults.
- b) Each Community Mental Health Center shall employ a person either full-time or part-time to serve as a HRO. The HRO shall be appointed by the Commissioner or designee, shall be supervised by a staff person from that Facility and shall receive support from the DMH Office for Human Rights. An alternate HRO shall be appointed to assist any Client for whom the principal HRO has direct clinical responsibility.
- c) Each Intensive Residential Treatment Program (IRTP) and Behaviorally Intensive Residential Treatment program (BIRT) and the Western Massachusetts Area adult contracted inpatient unit shall employ a person either full-time or part-time to serve as a HRO. The HRO shall be appointed by the Facility Director and supervised by a staff person from that Facility. The HRO for IRTPs and BIRT programs shall receive support from the DMH Director of Human Rights for Children and Adolescents, and the HRO for the contracted inpatient unit shall receive support from the DMH Office for Human Rights. An alternate HRO shall be appointed to assist any Client for whom the principal HRO has direct clinical responsibility.

Program:

Each Program shall have a person employed by or affiliated with the Program to serve as a HRO. The HRO shall be appointed by the Program Director, supervised by a staff person from the vendor or Program and receive support from the DMH Office of Human Rights. The HRO's schedule shall allow sufficient time for regular and frequent contact with Clients. An alternate HRO shall be appointed to assist any Client for whom the principal HRO has direct clinical responsibility.

2. **Role and Responsibilities of a Human Rights Officer:**

The HRO must demonstrate a commitment to the protection and advocacy of Clients' Human Rights. He or she must be able to work collaboratively and effectively with Facility or Program staff and the HRC to promote respect for the Human Rights of Clients. The HRO shall make affirmative efforts to assist Clients who may not be capable of making a request to the HRO for assistance.

a) Duties. Facility HROs are responsible for those duties set forth in 104 CMR 27.14(1) and Program HROs for those duties set forth in 104 CMR 28.11(7).

b) Qualifications. It is preferable that a HRO meet one of the following experience requirements prior to appointment as a HRO by a Facility or Program:

(i) the HRO has been employed by the Facility or Program for at least three months; or

(ii) the HRO has been an advocate for Clients' Human Rights for at least three months in any Program or Facility.

c) Training. Prior to assuming his or her duties as a HRO, the person shall receive training by the Program, Facility or DMH, designed around a set of basic competencies established by DMH. HROs also shall participate in any applicable training programs for HROs offered by DMH.

d) Representing the perspective of the Client. The HRO should clearly and consistently act to ensure that the points of view of the Clients served by the Facility or Program are understood and respected, whether addressing a policy issue or assisting an individual Client. The expectation is not that a particular Client's perspective will always prevail since, for example, what the Client wants might be impossible to achieve or might conflict with the Human Rights of another Client. However, the goal of the HRO is continually to seek resolution of Human Rights issues consistent with the Client's perspective.

e) Law enforcement investigations. In the event of any police interview or investigation of a Client, the HRO or staff person designated by the Facility or Program shall contact the Client to determine whether the Client wants or needs assistance in accordance with the Facility's or Program's protocol.

f) Monitoring Clients' Human Rights. The HRO, with the assistance of the HRC, shall monitor the Facility's or Program's compliance with its Human Rights practices and procedures and with this policy. The HRO shall ensure that complaints are filed as necessary to address any illegal, dangerous or inhumane incident or condition. The HRO also shall review and monitor the complaint process (including all complaints and written decisions), any searches for contraband (see DMH Policy # 98-3 or any successor policy), incident reports, treatment plans, citizen monitoring reports and any other policies or practices which may infringe upon Clients' Human Rights.

g) Monitoring of Restraint and Seclusion.

(i) In a Facility, areas to be monitored include individual incidents of restraint and seclusion (R/S). The HRO shall:

- promptly review a copy of each R/S form, including the Client comment sheet, and follow through with Clients and/or staff to address Human Rights concerns identified on R/S forms and Client comment sheets;
- monitor extended use of R/S for individual Clients and follow through with clinical and/or administrative staff to address any particular concerns;

- participate in the multidisciplinary team review of the assessments and treatment plans of Clients who have experienced R/S;
- provide the HRC with the Facility's aggregate data regarding R/S;
- participate in efforts to reduce R/S.

(ii) In a Program licensed by DMH, the HRO shall review a copy of each restraint form, including the Client comment sheet and assist the HRC in reviewing each incident of physical restraint.

E. Human Rights Advisory Committee

The Commissioner shall appoint a statewide Human Rights Advisory Committee (HRAC), pursuant to 104 CMR 26.04(6), whose duty it shall be to advise the Commissioner on all matters pertaining to the Human Rights of Clients served by the Department.

F. Human Rights Committees

1. **In General.** Each Facility or Program shall maintain a HRC. The general responsibility of the HRC shall be to monitor the Facility or Program with regard to the exercise and protection of the Human Rights of Clients and to advise the Facility or Program regarding how it might improve the implementation of Human Rights. The HRC shall:

- a) Meet regularly, but not less often than quarterly, to understand the Facility's or Program's support of Human Rights and advise the Facility or Program Director on Human Rights. The HRC shall make recommendations to the Facility or Program and to DMH to optimize the degree to which the Human Rights of Clients are understood and upheld.
- b) Monitor Human Rights Processes and Procedures. The HRC shall review and make inquiry into complaints and allegations of Client mistreatment, harm or violation of a Client's Human Rights and may act on behalf of a Client pursuant to 104 CMR 32.00. The HRC also shall review and monitor the use of restraint and seclusion and review, where applicable, incident reports and other relevant documents, such as treatment plans, that limit or allegedly violate a Clients' Human Rights. The HRC shall review and monitor the methods utilized to inform Clients and staff of Clients' Human Rights, train Clients in the exercise of their Human Rights, and provide Clients with opportunities to exercise their Human Rights to the fullest extent of their capabilities and interests. The HRC shall be familiar with the written information provided to Clients.

The HRC shall collaborate with the HRO and have access to Clients and their LARs, Client records, incident reports, Facility and Program policies, and staff in order to carry out their responsibilities. The HRC shall respect the privacy and confidentiality of any information it receives that identifies a particular Client.

- c) The HRC may file a complaint or an appeal on behalf of an individual Client or group of Clients. By filing a complaint, the HRC becomes a party to that complaint. The

HRC may become a party to an existing complaint by filing a notice to intervene in the complaint process pursuant to 104 CMR 32.02.

- d) Visit the Facility or Program: The HRC shall visit the Facility or Program at least once per year with prior notice, or without notice provided good cause exists. The purpose of the site visit is to familiarize HRC members with the Facility or Program and to monitor the protection of Human Rights within the Facility or Program.
 - e) Review and provide feedback to DMH, the Facility or Program concerning relevant policies and procedures.
2. **Membership:** In addition to meeting the HRC membership requirements set forth in 104 CMR 27.14(3) and 28.11(5) concerning consumers, family members and advocates, membership of the HRC should reflect the diversity of the communities served by the applicable Facility and Program and, if possible, include other interested parties, such as clinicians, attorneys and guardians.

No member shall have any direct or indirect financial or administrative interest in the Facility or Program or in DMH. For purposes of this policy, membership on a DMH citizen advisory board or the board of trustees or board of directors of a Facility or Program shall not constitute such a financial or administrative interest. Neither shall receiving services from the Facility or Program or being a family member of a Client of the Facility or Program constitute such a financial or administrative interest.

A family member, guardian or attorney who represents one or more Clients served by the Facility or Program may be a member of the HRC. However, neither the family member nor guardian may participate as a committee member in any discussions or decisions regarding his/her family member or ward, and the attorney may not participate as a committee member in any discussions or decisions regarding his/her client's Human Rights which are the subject of the attorney's representation.

3. **Appointment of Members.**

- (a) Facility: The Commissioner or designee appoints members of HRCs. When vacancies occur, the Commissioner or designee shall appoint successors from nominations forwarded by both the HRC and the Facility Director. This includes the child and adolescent HRC that covers adolescent inpatient, IRTP, BIRT and CIRT programs.
- (b) Program: The Program Director appoints members of HRCs. When vacancies occur after the initial appointments, the Program Director shall appoint successors from nominations made and approved by both the HRC and the Program Director.

4. Pursuant to 104 CMR 27.14 and 28.11, each HRC shall develop operating rules and procedures that include specific reference to: quorum requirements; respecting client confidentiality; and dismissal of members. The term of office for the HRCs is three years. No member shall be appointed to serve more than two consecutive three-year terms. A person must wait for at least one year after completing a second consecutive three-year term before becoming eligible for reappointment.

VIII. POLICY IMPLEMENTATION

The Commissioner or designee shall ensure that the Central Office meets the requirements within this policy.

The Area Director or designee shall monitor the Area and Site Offices as well as each Facility and Program in its Area to ensure that it meets the requirements within this policy regarding its Area Human Rights Coordinator, HRO(s), HRC, Human Rights practices and procedures and Human Rights training plan, except as provided below.

The Assistant Commissioner for Child and Adolescent Services or designee shall monitor the statewide child and adolescent Facilities and Programs to ensure they meet the requirements of this policy.

Any Program subject to this policy that is licensed by DMH shall be monitored for its compliance with this policy as part of the DMH licensing process.

IX. REVIEW OF THIS POLICY

This policy and its implementation shall be reviewed at least every three years.

ATTACHMENT #I
References to Statutes, Regulations, Accreditation Standards and Relevant Policies

The following references are presented as a guide to facilitate the identification of relevant standards and policies. Each reference cited below should be consulted to determine its exact scope and content, and to determine whether any revision has been issued after the issuance of this policy. If any reference has been replaced with a successor provision, the successor provision should be used.

A. Statutory References

Massachusetts General Laws, Department of Mental Health Statutes:

- M.G.L. c.123, §4 (Periodic Review)
- M.G.L. c.123, §9 (Review of Matters of Law; Application for Discharge)
- M.G.L. c.123, §12(b) (Hospital Admission)
- M.G.L. c.123, §23 (Rights and Privileges of Patients)
- M.G.L. c.123 §23A (Interpreter Services)
- M.G.L. c.123, §24 (Commitment as Affecting Legal Competency of Persons)
- M.G.L. c.123, §26 (Deposit of Funds Held in Trust for Inpatients or Residents)
- M.G.L. c.123, §29 (Education and Work Programs)

Other State and Federal Statutes:

- M.G.L. c.19A, §15 (Mass. Executive Office of Elder Affairs - Abuse of Elderly Persons Reporting)
- M.G.L. c.19C (Mass. Disabled Persons Protection Commission - Enabling Act)
- M.G.L. c.66A (Mass. Fair Information Practices)
- M.G.L. c.71B (Mass. Dept. of Education - Children with Special Needs)
- M.G.L. c.111, §70E (Mass. Dept. of Public Health - Patients' and Residents' Rights)
- M.G.L. c.119, §51A (Mass. Dept. of Social Services -Child Abuse Reporting)
- M.G.L. c.151B (Mass. Anti-Discrimination Laws)
- M.G.L. c.201D (Health Care Proxies)
- 20 USC 1400 et seq. (Federal Special Education Act)
- 29 USC 201, et seq. (Federal Fair Labor Standards Act)
- 42 USC 12101, et seq. (Federal Americans with Disabilities Act)
- 42 USC 10801, et seq. (Federal Protection and Advocacy for Persons with Mental Illness)
- 42 USC 1320d-1329d-8 (Federal Privacy - Health Insurance Portability and Accountability Act of 1996)

B. Regulatory References

Massachusetts Department of Mental Health Regulations:

- 104 CMR 27.05 (General Admission Procedures)
- 104 CMR 27.06 (Voluntary and Conditional Voluntary Admission)
- 104 CMR 27.07 (Four Day Involuntary Commitment)
- 104 CMR 27.08 (Transfer of Patients)
- 104 CMR 27.09 (Discharge)

104 CMR 27.10 (Treatment)
104 CMR 27.11 (Periodic Review)
104 CMR 27.12 (Restraint and Seclusion)
104 CMR 27.13 (Human Rights)
104 CMR 27.14 (Human Rights Officer; Human Rights Committee)
104 CMR 27.15 (Visit)
104 CMR 27.16 (Absence Without Authorization)
104 CMR 27.17 (Records)
104 CMR 27.18 (Interpreter Services)
104 CMR 28.02 (Standards to Promote Client Dignity)
104 CMR 28.03 (Legal and Human Rights of Clients)
104 CMR 28.04 (Protection from Mistreatment)
104 CMR 28.05 (Physical Restraint)
104 CMR 28.06 (Medication)
104 CMR 28.07 (Labor)
104 CMR 28.08 (Possessions)
104 CMR 28.09 (Access to Records and Record Privacy)
104 CMR 28.10 (Legal Competency, Guardianship and Conservatorship)
104 CMR 28.11 (Human Rights Committee; Human Rights Officer)
104 CMR 28.12 (Termination from Program)
104 CMR 29.00 (Service Planning)
104 CMR 30.02 (Funds Belonging to Patients in Facilities)
104 CMR 30.03 (Client Funds in Community Programs)
104 CMR 30.04 (Charges for Care)
104 CMR 32.00 (Investigation and Reporting Responsibilities)

Other State and Federal Regulations:

102 CMR 1.01 et seq. (Mass. Office of Child Care Services)
110 CMR 11.04(2) (Mass. Dept. of Social Services - Routine Medical Care, Consent)
603 CMR 28.00 (Mass. Dept. of Education - Special Education)
42 CFR 51.41 (Federal Regulations Applicable to Protection and Advocacy Programs)
45 CFR Parts 160 and 161 (Federal Regulations Applicable to Privacy)

C. Judicial Decisions

Rogers v. Commissioner of Mental Health, 390 Mass. 489 (1983) and other related decisions of the Massachusetts Supreme Judicial Court regarding special treatment decisions and patients' rights to refuse treatment.

D. Accreditation Standards

JCAHO Accreditation Manual for Mental Health Chemical Dependency, and Mental Retardation/Developmental Disabilities Services Rights and Responsibilities
JCAHO Accreditation Manual for Hospitals, Patient Rights

E. Department of Mental Health Policies

DMH Policy 93-1 (Seclusion and Restraint)

DMH Policy 99-2 (HIV/AIDS)

DMH Policy 96-1 (Patient Privileges)

DMH Policy 96-3R (Informed Consent)

DMH Policy 97-6 (Patient Funds)

DMH Policy 98-1 (Charges for Care)

DMH Policy 98-3 (Searches)