

104 CMR 32.00: INVESTIGATION AND REPORTING RESPONSIBILITIES

Section

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32.01: Scope, Authority and Purpose

(1) Scope.

(a) 104 CMR 32.00 applies to the Department and to all programs, and facilities licensed, ~~or~~ contracted for, ~~or operated~~ by the Department.

(b) Any decision made pursuant to 104 CMR 32.00 shall be consistent with collective bargaining agreements, civil service law and other provisions of labor law then in effect.

(c) 104 CMR 32.00 does not provide for an adjudicatory hearing within the meaning of M.G.L. c. 30A, § 1(1). 104 CMR 32.00 is not intended to provide an administrative remedy under the doctrine of exhaustion of administrative remedies or otherwise.

(2) Authority. 104 CMR 32.00 is adopted by the Department pursuant to M.G.L. c. 19, § 1 and 18; and M.G.L. c. 123, § 2.

(3) Purpose. The purpose of 104 CMR 32.00 is to establish a framework for the swift resolution of certain complaints and the reporting, investigation and resolution of certain(a) complaints brought pursuant to 104 CMR 32.00 and (b) other complaints which are matters of a very serious nature ~~or which that~~ have broad significant implications for persons receiving who provide or receive mental health services within the Commonwealth and that are referred to the Office of Investigations at the discretion of the Commissioner.

32.02: Definitions

For purposes of 104 CMR 32.00, the following terms shall have the following meanings:

~~Assistant Commissioner means Assistant Commissioner for Child and Adolescent or Forensic Services with responsibility for Department operated or contracted for programs or facilities.~~

Client means a person who is alleged to have been subjected to an incident or condition that is dangerous, illegal, or inhumane and who is receiving services from the Department or a program or facility licensed, ~~or~~ contracted for, ~~or operated~~ by the Department at the time of the alleged incident or condition or who received such services ~~no more than~~ within 30 days ~~prior to~~ of the alleged incident or condition.

Clinically Intensive Residential Treatment Program (CIRT) means a staff-secure service for children ages 6-12 years old managed by the Department and licensed as a group care program by Department of Early Education and Care pursuant to 102 CMR 3.00.

Commissioner's Investigation means an investigation ordered by the Commissioner to address a matter that does not fall within the scope of a Complaint, but which, nonetheless, has significant implications for persons who provide or receive mental health services within the Commonwealth.

Complainant means any person who files a complaint ~~under~~pursuant to 104 CMR 32.~~0004~~.

Complaint means ~~an allegation communicated to an employee or Person in Charge about a report of~~ an incident or condition ~~which meets the criteria set forth in~~ pursuant to 104 CMR 32.~~00;04(1)~~, regardless of whether the ~~allegation incident or condition~~ is also required to be reported to any other entity pursuant to law or policy.

Dangerous means ~~poses or posed~~ posing a danger or the potential of danger to the health or safety of a client.

Day means Monday through Friday excluding any legal holiday observed -by the state.

Deputy Commissioner means the Deputy Commissioner for ~~Program Operations Mental Health Services, or Deputy Commissioner for Child/Adolescent Services, unless otherwise specified.~~

Director of Licensing means the person(s) responsible for the Department's facility or community licensing activities.

~~32.02: continued~~

Director of Program Management for Child/Adolescent Services means the person responsible for management of Intensive Residential Treatment Programs (IRTPs) and Clinically Intensive Residential Treatment Programs (CIRTs).

Employee means an individual working for the Department or at a program or facility subject to 104 CMR 32.00.

~~Form means an official complaint or appeal form which has been approved by the Commissioner.~~

Human Rights Committee means a committee ~~which is established~~ to protect the rights of clients at a program or facility.

Human Rights Officer means the person designated as the Human Rights Officer for a program or facility.

Illegal means a violation of state or federal statute, regulation, court decision or other law.

Inhumane means ~~without~~ demeaning to a client or inconsistent with the proper regard for ~~client~~ human dignity.

Intensive Residential Treatment Program (IRTP) means a locked residential facility for adolescents licensed as a Class VII facility pursuant to 104 CMR 27.04

Medicolegal death means either or both of the following:

- (a) any death required by M.G.L. c. 38, § 3, to be reported to the Medical Examiner;
- (b) a death in which the Medical Examiner takes jurisdiction.

Next of kin means the closest living relative in the following order: current spouse, child (or guardian of any minor child), parent, sibling.

Office of Investigations means the office within the Department responsible for conducting certain investigations under 104 CMR 32.00.

Party means:

- (a) ~~the complainant;~~
- (b) ~~a client, if the complaint is filed on behalf of the client;~~
- (c) ~~any person complained of or found to be responsible for any incident or condition subject to review under 104 CMR 32.00;~~
- (d) ~~the legally authorized representative of the complainant or the person complained of, if any; client;~~
- (e) the Person in Charge of the ~~involved~~ Department office or contracted for or licensed program or facility, as applicable;
- (f) the Human Rights Officer of the involved program or facility;
- (g) the Human Rights Committee of the involved program or facility, if it files the original complaint or files a notice to intervene with the Person in Charge; and
- (h) in the event of a client death, the duly appointed administrator, ~~administratrix,~~ or executor, ~~executrix or, if any, or none,~~ the next of kin upon satisfactory proof of kinship and judicial authority to access the investigation record.

Person in Charge means the person having the day-to-day responsibility for the management and operation of the applicable Department operated or contracted for or licensed program ~~or,~~ facility ~~subject to~~ office, or the person's designee.

Responsible Person means the individual with responsibility for issuing a decision on a complaint pursuant to 104 CMR 32.04 (3), (4) or (5) or on a request for reconsideration pursuant to 104 CMR 32.04(7). Depending on the nature of the complaint, the Responsible Person may be the Area Director, Director of Program Management for Child/Adolescent Services, Director of Licensing, Senior Manager or the Person in Charge.

Senior Manager means the Person in Charge of a Department office not within the control of an Area.

32.03: Notice of Complaint Process and Availability of Complaint Forms

(1) The Person in Charge shall ensure that notice of the complaint process is conspicuously posted at the program, facility or Department office for which he or she is responsible. If a program or facility or Department office has more than one location, the posting must be done at all locations. In addition, each program and facility shall provide a notice of the complaint process to a client and legally authorized representative, if any, upon the client's commencement of the program or admission to the facility.

(2) The Person in Charge shall ensure that copies of complaint and appeal forms and of 104 CMR 32.00, ~~or his or her designee,~~ are available at conspicuous locations and are provided to individuals upon request.

32.0304: Complaint ~~and Appeal~~ Process

(1) ~~Filing a Complaint.~~ Any person may make a complaint to the Person in Charge regarding ~~any an~~ incident or condition involving a client which he or she believes to be dangerous, illegal, or inhumane ~~to the Person in Charge or to an~~.

(a) An employee, who ~~shall~~ is notified or who becomes aware that a client wants to file a complaint shall provide the client with a complaint form and offer the client assistance in completing and filing the complaint, and shall provide such assistance if requested.

(b) An employee who becomes aware of any condition or incident which he or she has reason to believe is dangerous, illegal or inhumane shall immediately complete and file a complaint with the Person in Charge or verbally notify the Person in Charge or designee, who shall be responsible for filing the complaint.

(c) The Human Rights Officer shall assist clients, as necessary, in filing complaints.

(d) The Human Rights Officer shall use best efforts to refer a client who lacks, or who appears to lack capacity, or upon request, to an attorney or advocate, if necessary or appropriate, to ensure that the client's interests are protected.

(e) No Retaliation. There shall be no retaliation against any individual who files a complaint in good faith pursuant to 104 CMR 32.00.

(f) Any employee who receives a complaint shall immediately forward ~~the~~such complaint to the Person in Charge~~—~~, who, if necessary, shall document it on a complaint form.

(2) ~~In accordance with 104 CMR 32.05(2),~~When a Complaint Is Received.

(a) Upon receipt of a complaint, the Person in Charge shall ~~determine how to proceed.~~

(3) ~~A complaint referred to the Department's Central Office pursuant to 104 CMR 32.05 shall be sent to the Office of Investigations if it~~ the complaint involves one of the following:

1. medicolegal death;

2. sexual assault or abuse;

3. ~~a Department operated or contracted for program~~ physical assault or abuse which results in serious physical harm;

4. attempted suicide which results in serious physical harm;

5. commission of a felony;

6. serious physical injury resulting from restraint or seclusion practices; or

7. ~~facility,~~ and an incident that the Person in Charge in his or discretion believes is sufficiently serious or complicated as to ~~the~~ require investigation by the Office of Investigations or Director of Licensing even though it does not otherwise involve one of the categories listed in 104 CMR 32.04(2)(a)1-6.

(b) If the complaint comes under one of the categories specified above in 104 CMR 32.04(2)(a) the following actions shall be taken.

1. The Person in Charge shall forward the complaint to the following individuals who shall be the Responsible Person of the complaint:

a. the applicable Director of Licensing if ~~it~~the complaint involves a program ~~that~~ is or facility licensed by but not contracted ~~for~~ ~~by the~~ by the Department., or

b. the Director of Program Management for Child/Adolescent Services, if the

complaint involves an IRTP or CIRT; or  
c. the Area Director, if the complaint involves a child and adolescent program other than an IRTP or CIRT or an adult program or facility operated or contracted by the Department or a Department office within the control of the area.

~~(4) The~~ d. the Chief of Staff if the complaint involves a Department office not within the control of an area.

d. the senior manager of a Department office other than one controlled by an Area.

The Responsible Person shall (a) immediately assign a public log number to the complaint; (b) refer it to the Office of Investigations; and (c) notify the parties and the appropriate Human Rights Officer that the complaint has been referred to the Office of Investigations for investigation and resolution in accordance with 104 CMR 32.05

(c) If the complaint does not come under one of the categories specified in 104 CMR 32.04(2)(a), the Person in Charge shall be the Responsible Person who shall assign a public log number to the complaint and determine whether the complaint shall be resolved by administrative resolution or 10-day fact-finding in accordance with 104 CMR 32.04(3) or 104 CMR 32.04(4).

(d) Health, Safety or Welfare. If the Person in Charge or the Responsible Person concludes at any time during the course of resolution of the complaint that immediate action is necessary to protect the health, safety, or welfare of a person, he or she shall take steps to ensure that such action is taken and shall document the action taken.

(e). If the complaint alleges a violation of a client's rights under the Department's Privacy Handbook in a Department operated program or facility, the Responsible Person must notify and consult with the Department's Director of Privacy and Data Access.

### (3) Administrative Resolution.

(a) If the Responsible Person has a reasonable basis to believe that a complaint meets one of the following conditions, the complaint may be resolved administratively in accordance with this Section 104 CMR 33.04(3):

1. concerns an allegation of an incident or condition that is not dangerous, illegal or inhumane within the scope of 104 CMR 32.00;

2. makes allegations that are objectively impossible;

3. repeats allegations of fact that have previously been investigated and a decision shall be given to the parties; decided in accordance with 104 CMR 32.00;

~~(4. alleges a violation of regulation, policy or procedure that does not present a health or safety risk to a client or other individual and which may be resolved or corrected without need for additional fact finding;~~

5. ) is withdrawn by the client or complainant, provided the complaint does not concern the health or safety of a client or other individual; or

6. presents undisputed facts which allow the Person in Charge to determine that the complaint can best be resolved through the administrative process.

(b) In resolving a complaint pursuant to 104 CMR 32.04(3), the Person in Charge or designee must meet with the client and the complainant, if different, to review the specific allegations in the complaint, unless the client and/or complainant declines to meet with the Person in Charge or designee, or despite reasonable efforts, cannot be located.

(c) The Responsible Person shall provide the parties with a written notice that includes a statement of the grounds for administrative resolution, the actions, if any, that will be taken by the Responsible Person, the right to request reconsideration, and the client's right of appeal in accordance with 104 CMR 32.04(7).

(d) If at any time during the course of ten-day fact finding or investigation pursuant to 104 CMR 32.04(4) or 32.04(5), the Responsible Person determines that the criteria for administrative resolution are met, the Responsible Person may elect to stop the fact finding or investigation and proceed under 104 CMR 32.04(3).

### (4) Responsible Person Ten-Day Fact Finding.

(a) Unless a complaint is resolved pursuant to 104 CMR 32.04(3), or is referred to the Office of Investigations pursuant to 104 CMR 32.04(2)(b), the Responsible Person shall undertake or within ~~ten~~two days of receipt of the complaint; ~~or~~, assign the matter for fact finding in accordance with 104 CMR 32.06 which shall be completed within ten days of assignment.

The Responsible Person may authorize an extension of up to ten days if the complaint is sufficiently complicated or if the parties or essential witnesses cannot be interviewed within the initial ten day period. The Responsible Person shall document in the case file the reasons for any extension.

(b) Unless the Responsible Person conducts the fact finding, the individual conducting such fact finding shall provide a written report of findings of fact and recommended conclusions to the Responsible Person.

(c) The Responsible Person shall issue a written decision within five days following completion of the fact finding.

(d) The written decision shall contain findings of fact and conclusions, and any actions to be taken. The decision shall also notify the parties of the right to request reconsideration and the client's right of appeal in accordance with 104 CMR 32.04(7).

(e) If at any time during formal fact finding or investigation it is determined that the criteria for administrative resolution pursuant to 104 CMR 32.04(3) are met, the fact finder may recommend to the Responsible Person that the matter be resolved in accordance with 104 CMR 32.04(3). The recommendation shall be in writing and shall include the factual basis for the recommendation. If the Responsible Person elects to proceed under 104 CMR 32.04(3), the investigation shall cease.

(5) Complaints Referred to the Office of Investigations.

(a) Responsibilities of the Office of Investigations

1. Whenever a complaint is forwarded to the Office of Investigations pursuant to 104 CMR 32.04(2), the Director of Investigations, or designee, shall, within two days, complete the following:

a. confirm ~~that~~ the complaint has been logged into the Office of Investigations' database and assigned a public log number, update log as necessary and open a case file;

b. determine and document whether or not ~~another~~ ~~some other~~ entity has jurisdiction to conduct an investigation and if so, ~~determine~~ whether that entity is aware of the incident or condition complained of and is undertaking an investigation;

c. if another entity is undertaking an investigation, determine in accordance with 104 CMR 32.04(6) ~~and document~~ whether the Department shall defer investigating the matter to that entity and document the determination;

d. ~~assign an investigator.~~

2. If the Director of Investigations does not believe ~~that~~ an investigation by the Office of Investigation is necessary or appropriate, the Director shall consult with the applicable Responsible Person, who shall determine the appropriate process for resolution of the complaint.

3. The Office of Investigations shall coordinate investigatory activity with the appropriate ~~liable~~ Responsible Person.

(b) Responsibilities of the Investigator.

1. Within 30 days from the assignment of the investigation pursuant to 104 CMR 32.04(5)(a), the investigator shall conduct an investigation and file a report containing written findings of fact and recommended conclusions with the Responsible Person.

2. ~~(b) when referred to the Department's Central Office, by the~~ The investigator may request in writing an extension of the time required for filing the report, which may be granted for good cause by the Director of Investigations, in consultation with the Responsible Person.;

3. If such an extension is granted, the investigator shall give written notice of the revised due date to the parties and the Area Director, ~~Assistant Commissioner, or Director of Program Management for Child/Adolescent Services,~~ Director of Licensing, ~~no later than 40~~ or Chief of Staff, as applicable.

(c) Responsibilities of the Responsible Person.

1. Within ~~ten~~ days- after receipt of the complaint, ~~or such later date as is permitted by extension,~~ investigator's report or the report of an investigation by another legally authorized entity, the Responsible Person shall:

~~32.03: continued~~

~~The a. issue a decision under 104 CMR 32.03(4)(a) accepting the findings of fact and recommended conclusions, identifying corrective actions to be taken, if any, and designating who is responsible for carrying out such actions;~~

~~b. Conduct or (b) shall notify the refer the matter for further fact finding, to be completed within a specified time period, on matters identified by the applicable Responsible Person; or~~

~~c. issue a decision making his or her own conclusions, including an explanation of the rationale for not accepting the investigator's recommended conclusions, and identifying corrective actions to be taken, if any, and designating who is responsible for carrying out such actions.~~

~~2. Subject to redaction of Protected Health Information (PHI) or other information, which the recipient is not legally authorized to receive, the decision shall be provided to the parties with and include notice of the right to request reconsideration pursuant and the client's right to appeal in accordance with 104 CMR 32.04(7).~~

~~(6) 03(5) and Deferred Investigations.~~

~~(a) Notwithstanding any other provision of 104 CMR 32.00 to the contrary, the investigation of the complaint may be deferred if another legally authorized entity is conducting an investigation of the allegations set forth in the complaint.~~

~~1. If an investigation is deferred upon the request of law enforcement or the DPPC, the Office of Investigations shall notify the Responsible Person of any such deferral.~~

~~2. The Director of Licensing or Director of Program Management for Child/Adolescent Services may defer an investigation to the Department of Children and Families, in which case he or she shall notify the client of his or her right to appeal the decision pursuant to 104 CMR 32.03(6) and with whom the appeal must be filed Office of Investigations.~~

~~(5)(b) Any investigation deferred for more than 60 days shall be reviewed by the Office of Investigations in consultation with the Responsible Person to determine whether some fact finding and corrective action should be pursued notwithstanding deferral; provided, however, that the case shall remain active pending completion of the investigation.~~

~~(7) Request for Reconsideration; Appeal.~~

~~(a) Request for Reconsideration. Any party to the complaint has the right to request reconsideration of the decision by the person who issued the decision pursuant to 104 CMR 32.04(3), (4) or (5). Reconsideration is not a prerequisite to a client's filing of an appeal.~~

~~1. (a) The party must A request for reconsideration must be submitted in writing to the Responsible Person within ten days of receipt of the decision; which time period may be waived by the person to from whom the request for reconsideration is being made Responsible Person requested, upon request and for good cause shown. The Responsible Person shall forward a copy of the request for reconsideration to all other parties.~~

~~2. A request for reconsideration must be based on one or more of the following factors, which shall be set forth with specificity in the request:~~

~~a. The fact-finder failed to interview an essential witness or to consider an important fact or factor.~~

~~b. The decision is not reasonably supported by the facts.~~

~~c. The decision is based on an erroneous interpretation of applicable law or policy.~~

~~3. Response to request for reconsideration:~~

~~a. Unless the Responsible Person determines that additional fact-finding is required, he or she shall within ten days from receipt of the request for reconsideration affirm or amend the initial decision, and issue a final decision. The final decision shall be in writing and shall inform the client of the right to appeal pursuant to 104 CMR 32.04(7)(b).~~

~~b. If the Responsible Person determines that additional fact-finding is required, he or she shall conduct or refer the matter for such fact-finding, which shall be completed within ten days of receipt of the request for additional fact-finding, but which time~~

period may be extended for good cause.

c. Within ten days of receipt of the results of any additional fact-finding, the Responsible Person shall issue a final decision affirming or amending the initial decision. The final decision shall be in writing, distributed to all parties, and shall also notify the client of the right to appeal pursuant to 104 CMR 32.04(7)(b).

d. A party adversely affected by a reconsideration decision that substantially alters the initial decision may request further reconsideration pursuant to 104 CMR 32.04(7)(a).

(b) Appeal Process

1. General Provisions

a. A client, a client's Legally Authorized Representative, or an individual or entity authorized to act on behalf of a client or a client's estate may appeal decisions issued pursuant to 104 CMR 32.04 (3), (4), (5) or (7)(a). In the case of a client's death, in the absence of an individual or entity authorized to act on behalf of the client's estate, an appeal may be pursued by the client's next of kin upon satisfactory proof of kinship.

b. All appeals must be in writing and filed within ten days of receipt of the applicable decision, which time period may be waived by the person responsible for deciding an appeal, upon request and, for good cause shown. The person responsible for deciding an appeal shall forward a copy of the appeal to all other parties.

c. Subject matter of appeal. Appeals shall be based on one or more of the following factors, which shall be set forth with specificity in the appeal:

i. The fact-finder failed to interview an essential witness or to consider an important fact or factor.

ii. The decision is not reasonably supported by the facts.

iii. The decision is based on an erroneous interpretation of applicable law or policy.

d. Additional fact finding. The person responsible for deciding an appeal pursuant to 104 CMR 32.04(7)(b)(2) or (3) may, within ten days of receipt of the appeal, direct that additional fact-finding be undertaken. Such fact-finding shall be undertaken by the Person in Charge, Office of Investigations or other individual designated by the person responsible for deciding the appeal within a time-frame as directed by such person, not to exceed 20 days, which time period may be extended for good cause.

e. Decisions on appeals shall be issued within 30 days of receipt of the appeal, unless further fact-finding is required, in which case the decision shall be issued within 10 days of the report of the additional fact-finding, which time periods may be extended for good cause.

f. Decisions on appeals shall also provide notice of applicable rights of further appeal.

2. Appeal from a Decision issued pursuant to 104 CMR 32.04(3) or (4) .

a. A decision concerning a complaint ~~that involv~~es a Department office or operated or contracted program or facility, issued pursuant to 104 CMR 32.04(3) or (4) may be appealed to the respective Area Director, Director of Program Management for Child/Adolescent Services or applicable senior manager.

b. A decision concerning a complaint involving a program or facility licensed but not contracted for by the Department issued pursuant to 104 CMR 32.04(3) or (4) may be appealed to the appropriate ~~lieable~~ Director of Licensing.

c.. The appeal decision shall:

i. Affirm the decision or, if not supported by the facts, modify or reverse the decision.

ii. Be sent to the parties. The decision shall include corrective actions, if any, to be carried out by the Person in Charge; and

iii. Notify the client of his or her right to further appeal ~~theis~~ decision within ten days to: ~~to~~ the Deputy Commissioner for Mental Health Services in the case of a decision by Area Director; ~~to~~ the Deputy Commissioner for Child and Adolescent Services in the case of a decision by the Director of Program Management for Child/Adolescent Services; ~~to~~ the Chief of Staff of the Department, or designee, in the case of a decision by a senior manager; or ~~to~~ the Commissioner in the case of a decision by the appropriate ~~lieable~~ Director of

Licensing.

c. The decision of the Deputy Commissioner, Chief of Staff or the Commissioner shall be final.

3. Appeal from Decision after Investigation by the Office of Investigations

a. After an investigation by the Office of Investigations pursuant to 104 CMR 32.04(5);

1. The decision of the Area Director, Director of Program Management for Child/Adolescent Services –may be appealed to the Deputy Commissioner for Mental Health Services;

2. The decision by the Director of Program Management for Child/Adolescent Services may be appealed to the Deputy Commissioner for Child and Adolescent Services.

3. The decision of a Senior Manager may be appealed to the Chief of Staff of the Department, or designee.

4. The decision of the Deputy Commissioner or Chief of Staff may be appealed to the Commissioner, whose decision shall be final.

b. The decision of the Director of Licensing or of a senior manager, after an investigation by the Office of Investigations pursuant to 104 CMR 32.04(7), may be appealed to the Commissioner, whose decision shall be final.

c. The appeal decision shall:

i. Affirm the decision or, if not supported by the facts, modify or reverse the decision.

ii. Be in writing and sent to the parties. The decision shall include corrective actions, if any, to be carried out; and

iii. Notify the parties that the decision is the final decision of the Department.

32.05 Commissioner's Investigation.

The Commissioner may, in his or her discretion, order the Office of Investigations to conduct an investigation into any matter that does not fall within the scope of a complaint, but which, nonetheless, has significant implications for persons who receive or provide mental health services in the Commonwealth.

(1) Upon receipt of an order for a Commissioner's investigation, the investigation shall be assigned a public log number and conducted by the Office of Investigations in accordance with the Commissioner's instructions.

(2) Upon receipt of the investigation report, the Commissioner shall issue a decision and may order such corrective action that he or she deems necessary.

(3) Any person or entity subject to a finding or order resulting from a Commissioner's Investigation may request reconsideration of such finding or order.

(a) The request for reconsideration must be in writing and filed within ten days of receipt of the decision.

(b) The request must assert, with specificity, ~~assert~~ the failure to interview an essential witness or the failure to consider an important fact or factor; or misinterpretation of applicable law or policy.

(c) ~~The final decision shall issue within ten days of receipt of the request for reconsideration.~~

(6) ~~Appeal.~~ A client or an individual or entity acting on behalf of a client or a client's estate has the following appeal rights. All appeals must be in writing within ten days of receipt of the applicable decision.

(a) ~~Appeal from Decision after Investigation by the Person in Charge.~~

1. ~~The client or an individual or entity acting on behalf of a client or a client's estate may appeal to the respective Area Director or Assistant Commissioner, if the complaint involves a Department operated or contracted program or facility, or to the Director of Licensing, if the complaint involves a program or facility licensed but not contracted for by the Department. The decision on appeal shall be given to the parties within 30 days from the receipt of the appeal, unless further fact finding is required, in which case the decision shall issue within 40 days.~~

2. ~~The client or an individual or entity acting on behalf of a client may further appeal the decision of the Area Director or Assistant Commissioner to the Deputy Commissioner, who shall issue a decision within 30 days from the receipt of the appeal and whose decision shall be final.~~

- ~~3. The client or an individual or entity acting on behalf of a client may further appeal the decision of the Director of Licensing to the Commissioner, who shall issue a decision within 30 days and whose decision shall be final.~~
- ~~(b) Appeal from Decision after Investigation by the Office of Investigations or the Director of Licensing:~~
- ~~1. If the Person in Charge, Area Director, or Assistant Commissioner issued a decision after an investigation by the Office of Investigations, the client or an individual or entity acting on behalf of a client may appeal to the Deputy Commissioner, who shall issue a decision within 30 days from the receipt of the appeal.~~
  - ~~2. The client or an individual or entity acting on behalf of a client may further appeal the Deputy Commissioner's decision to the Commissioner, who shall issue a decision within 30 days from the receipt of the appeal and whose decision shall be final.~~
  - ~~3. If the Director of Licensing issued a decision after an investigation by the Office of Investigations or after his or her own investigation, the client or an individual or entity acting on behalf of a client may appeal the Director of Licensing's decision to the Commissioner, who shall issue a decision within 30 days from the receipt of the appeal and whose decision shall be final.~~

~~(7) No Retaliation. There shall be no retaliation against, after reconsideration, if any individual who files a complaint pursuant to 104 CMR 32.00., shall be final.~~

32.0406: Requirements for All Fact-Finding Activities

- (1) At a minimum, any fact-finding activity relative to a complaint must include the following:
  - (a) interviews with the complainant, the client, if the client is not the complainant, and each individual complained of. All reasonable efforts must be made to interview each of these parties;
  - (b) interviews with each witness witnesses and other individuals, including family members, who may have information related to the complaint; and necessary for determination of essential facts. A good faith effort to interview each witness and other individuals who may have such information will satisfy this requirement;

~~32.04: continued~~

- (c) ~~—~~ review of all incident reports and other records related to the complaint including, but not limited to, the client's medical record, if applicable. Records which are part of a peer review process under M.G.L. c.111, § 204 are exempt from this review.
- (2) ~~The~~To the extent practicable, and without unreasonably delaying the fact-finding process, the complainant ~~must~~should be interviewed before any other interviews take place.
- (3) Clients who are to be interviewed shall be permitted to have a designated representative or a Human Rights Officer present.
- (4) Employees who are to be interviewed shall, subject to applicable collective bargaining rights, cooperate with the investigation, and shall be permitted to have a designated representative present.

~~32.05: Responsibilities~~(5) ~~Files of Individuals in the Investigation~~all fact-finding activities conducted pursuant to ~~104 CMR 32.04 and Reporting Process~~

- ~~(1) Employee.~~
- ~~(a) If an employee is notified or becomes aware of a client's complaint, the employee shall provide the client with a complaint form and shall assist the client in completing this form if requested to do so.~~
- ~~(b) The completed complaint form~~32.06 ~~shall be immediately filed~~maintained by the employee with the Office of Investigations, or Responsible Person in Charge.
- ~~(c) An employee who becomes aware of any condition or incident which he or she has reason to believe is dangerous, illegal or inhumane shall immediately complete a complaint form and give it to the Person in Charge or shall verbally notify the Person in Charge, who shall complete a complaint form.~~conducted the fact-finding activities.

32.07: Department Case File and Public Log

- (1) Department Case File. ~~(2) Person in Charge.~~
- ~~(a) The Person in Charge shall ensure that notice of the availability and general provisions of 104 CMR 32.00 is conspicuously posted at the program or facility and is provided upon admission to each client and legally authorized representative, if any.~~
- ~~(b) The Person in Charge shall ensure that copies of complaint and appeal forms are available at well identified locations and are~~
- (a) A file, known as the Department case file, shall be kept for each complaint and appeal received by the Department or its contracted programs or facilities and for each Commissioner's Investigation conducted pursuant to 104 CMR 32.06. The Department case file shall consist of the complaint, any fact finding report, the decision letter, requests for reconsideration, appeals, and decisions on requests for reconsideration and appeals.
- (b) Department case files are public records pursuant to the Massachusetts Public Records Law (M.G.L. c. 66, § 10), including all applicable state and federal exemptions to disclosure.
- (c) Notwithstanding the provisions of 104 CMR 32.07(1)(b) and subject to redaction of protected health information consistent with the requirements of federal and state privacy laws, including but not limited to, the provisions of the federal Health Information Portability and Accountability Act (HIPAA) and M.G.L. c. 123, §36:
1. any person who is mentioned in the Department case file will have access to a copy of that portion of the case file in which he or she is mentioned, consistent with the Fair Information Practices Act, M.G.L. c. 66A, § 2;
  2. the client or the client's attorney or Legally Authorized Representative may receive a copy of the decision letter and investigator's report;
  3. in the case of a client death, the duly appointed administrator or executor of the deceased's estate may receive a copy of the decision letter and investigator's report. In the absence of an executor or administrator, the decedent's next of kin may receive a copy of these documents in accordance with 104 CMR 32.07(1)(b).
  4. Any other party as defined in 104 CMR 32.02 may receive a copy of the decision letter and investigator's report.
- (d) The Department case file for investigations conducted pursuant to 104 CMR 32.04(5) shall be maintained by the Office of Investigations.

(e) The Department case file for fact finding activities conducted pursuant to 104 CMR 32.04(4) shall be maintained by the Responsible Person.

(2) Public Log. The Department shall maintain a public log of all complaints received by the Department or its contracted for programs or facilities and for each Commissioner's Investigation pursuant to 104 CMR 32.00, in such form as the Commissioner may from time to time prescribe. Each complaint and appeal shall be assigned a public log number which shall be referenced in the case file. The log shall be kept by the Office of Investigations.

(a) The log will not include personal identities or any other information that is exempt from disclosure as a public record, and will be a public record, available for inspection and copying by members of the public as provided in M.G.L. c. 66, § 10.

(b) The log shall include the public log number, type of complaint, whether the complaint was substantiated, whether any requests for reconsideration or appeals were filed, and the outcome of such requests for reconsideration or appeals.

(c) Data necessary to maintain the public log shall be provided to individuals upon request.

(e) Upon receipt of a complaint, or at any time the Person in Charge becomes aware of any condition or incident which he or she believes to be dangerous, illegal or inhumane, he or she shall:

1. Undertake any necessary fact finding:-

2. Give a written decision to the parties within ten days containing findings of fact and conclusions and any actions to be taken. The decision shall also notify the parties of the right to request reconsideration. The Person in Charge will have ten days from receipt of the request for reconsideration to consider the request, conduct any additional fact finding, reaffirm or amend his or her initial decision, and issue a final decision. The written decision shall also notify the client of his or her right to appeal to the Department's Central Office and to whom it should be appealed; or

(d) If the Person in Charge has reason to believe that the event comes under one of the following categories:

1. medicolegal death;

2. sexual assault or abuse;

3. physical assault or abuse;

4. attempted suicide which results in serious physical injury;

5. a felony has been committed;

6. restraint or seclusion practices not in accordance with Department regulations which result in serious physical injuries; or

7. if the Person in Charge believes that the complaint is sufficiently serious or complicated as to require an investigation by the Office of Investigation even though it does not involve one of the categories listed at 104 CMR 32.05(2)(d)1. through 6;

he or she shall notify the complainant, if any, and the Human Rights Officer that he or she will forward the complaint to the Department's Central Office. In the case of a program or facility operated or contracted for by the Department, the report will be forwarded to the Office of Investigations which will be responsible for follow up as set forth in 104 CMR 32.05(4). In the case of a licensed program or facility not under contract with the Department, the complaint will be forwarded to the Director of Licensing who will coordinate investigatory activity with the Office of Investigations in a manner and form prescribed by it.

### 32.08: Monitoring Responsibilities

(1) Each Area Office will monitor area based Department operated and contracted for programs, services, facilities and offices in -its area to ensure compliance with 104 CMR 32.00.

~~32.05: continued~~

~~(e) Maintain a file containing each complaint referenced in 104 CMR 32.03 to demonstrate compliance with 104 CMR 32.04(1) and provide this file to the Office of Investigations or Director of Licensing upon request.~~

~~(f) File a written report monthly with the Commissioner or designee on a form provided by the Department giving the numbers and the types of complaints reported under 104 CMR 32.03 and provide such information as is determined necessary to maintain the public log pursuant to 104 CMR 32.08(3).~~

~~(g) If the Person in Charge concludes at any time during the course of the investigation that immediate action is necessary to protect the health, safety, or welfare of a person, he or she shall take steps to ensure that immediate action is taken and shall document the action taken.~~

~~(3) Human Rights Officer:~~

~~(a)(2) The Human Rights Officer shall assist clients as necessary in filing complaints.~~

~~(b) The Human Rights Officer shall use best efforts to see that an incapable client is represented by an independent attorney or advocate, if necessary or appropriate. Division of Child and Adolescent Services will monitor IRTPs and CIRTs to ensure that the client's interests are protected. compliance. — with 104 CMR 32.00.~~

(3) As part of its licensing activity, the Department's Licensing Office will monitor licensed programs or facilities not under contract with the Department to ensure compliance. — monitor to ensure compliance with 104 CMR 32.00.

~~((4) Office of Investigations:~~

~~(a) Whenever a complaint is forwarded to 4) The Director of the Office of Investigations pursuant to 104 CMR 32.05(2)(d), the Office will have two days to complete the following:~~

~~1. keep statistical data relative to 4. — Log in each complaint received under 104 CMR 32.05(2)(d), open a case file, and assign a reference number to it.~~

~~2. Determine and document whether or not some other entity has jurisdiction to conduct an investigation and whether that entity is aware of the incident or condition complained of and is undertaking an investigation.~~

~~3. If another entity is undertaking an investigation, determine and document whether the Department shall defer investigating the matter to that entity or undertake investigation on the other entity's behalf or whether it would be in the best interest of the Department to also undertake a Department investigation.~~

~~4. For complaints which have been referred to the Office under 104 CMR 32.05(2)(d)7, determine whether or not to proceed to investigate the complaint. If the Office does not believe that a Department investigation is necessary or appropriate, the complaint and investigations and will be referred back to the Person in Charge for investigation pursuant to 104 CMR 32.00.~~

~~5. If the office will be undertaking an investigation, prepare reports on a regular basis for the assign an investigator.~~

~~(b) The Office of Investigations will give a written status report to the Person in Charge, the complainant, the Human Rights Officer and the Area Director, Assistant Commissioner, or Director of Licensing, as applicable, within ten days of the receipt of the complaint. will keep statistical data relative to and investigations and prepare reports on a regular basis for the.~~

~~(5) Investigator:~~

~~(a) The investigator will have 30 days from the assignment of the investigation in which to conduct an investigation and to file written findings of fact and conclusions with the Area Director, Assistant Commissioner or Director of Licensing, as applicable, containing his or her findings of fact and conclusions.~~

~~(b) The investigator may make a written request for an extension beyond 30 days to the Director of Investigations who may grant such an extension for good cause, which shall be documented.~~

~~(c) If such an extension is granted, it will be the investigator's responsibility to give written notice of the revised due date to the parties and the Area Director, Assistant Commissioner, or Director of Licensing.~~

~~6) Area Director, Assistant Commissioner, and Director of Licensing:~~

~~(a) Appeals from Decisions Made by Persons in Charge:~~

~~1. If a client or an individual or entity acting on behalf of a client appeals and the Area Director, Assistant Commissioner, or Director of Licensing determines that no further fact finding is necessary, he or she shall, within 30 days:~~

~~a. Affirm the decision or, if not supported by the facts, modify or reverse the decision in writing and send it to the parties. The decision shall include actions, if any, to be carried out by the Person in Charge; and~~

~~32.05: continued~~

~~b. Notify the client of his or her right to further appeal this decision within ten days to the Deputy Commissioner for Program Operations, or, in the case of a client receiving services at a licensed program or facility not under contract with the Department, to the Commissioner.~~

~~Mental Health Services will receive reports on a regular basis from the Area Directors relative to each area's activities under 2. If a client or an individual or entity acting on behalf of a client appeals and the Area Director, Assistant Commissioner or Director of Licensing determines that further fact finding is necessary, he or she shall within ten days:~~

~~a. Refer the matter to the Office of Investigations for further fact finding. The investigator shall have 20 days in which to conduct an investigation and file written findings of fact and conclusions.~~

~~b. Within ten days of the receipt of the investigator's findings of fact and conclusions, issue a written decision letter to the parties which shall include actions, if any, to be carried out by the Person in Charge.~~

~~c. Notify the client or an individual or entity acting on behalf of a client of his or her right to appeal this decision to the Deputy Commissioner or, in the case of a client receiving services at a licensed program or facility not under contract with the Department, to the Commissioner.~~

~~(b) Decisions on Investigations Conducted Pursuant to 104 CMR 32.05(2)(d). Within ten days of the receipt of the investigator's findings of fact and conclusions, issue a written decision to the parties, which shall include actions, if any, and who is responsible for carrying out such actions. The decision letter shall notify the parties of the right to request reconsideration. The Area Director, Assistant Commissioner, or Director of Licensing will have ten days from receipt of the request for reconsideration to reconsider the decision and issue his or her final decision to the parties. This written decision shall notify the client of his or her right to appeal this decision to the Deputy Commissioner for Program Operations or, in the case of a client receiving services at a licensed facility or program not under contract with the Department, to the Commissioner 00.00.~~

~~(7) Deputy Commissioner:~~

~~(a) The Deputy Commissioner shall review an appeal and issue a decision.~~

~~1. The decision shall affirm, modify, or reject the decision being appealed.~~

~~2. The decision must issue within 30 days of receipt of the appeal.~~

~~(b) In the case of an appeal from a decision of a Person in Charge, the Deputy Commissioner's decision shall be final.~~

~~(c) In the case of an appeal from a decision of an Area Director, Assistant Commissioner, or the Director of Licensing, the Deputy Commissioner's decision shall notify the client of his or her right to appeal to the Commissioner.~~

~~(8) Commissioner. The Commissioner shall review an appeal and issue a decision within 30 days of receipt of the appeal.~~

32.0609: Additional Reporting Requirements

In addition to the reporting requirements contained in 104 CMR 32.00, any person who is mandated to make a report must also fulfill the following statutory reporting responsibilities under the following statutes, as applicable:

(1) M.G.L. c. 19, § 10, Reports of Felonies Committed by or Upon Persons Under Care of the Department.

(2) M.G.L. c. 19A, § 15, Abuse of Elderly Persons.

(3) M.G.L. c. 19C, The Disabled Persons Protection Commission.

(4) M.G.L. c. 38, § 3, Persons Having Knowledge of a Death to Notify Medical Examiner.

(5) M.G.L. c. 119, § 51A, Persons Required to Report Cases of Injured, Abuse or Neglected Children.

~~32.07: Monitoring Responsibilities~~

- ~~(1) Each Area Office will monitor area based Department operated and contracted for programs, services, and facilities in its area to ensure compliance with 104 CMR 32.00.~~
- ~~(2) The Division of Child and Adolescent Services will monitor statewide child and adolescent services and programs to ensure compliance with 104 CMR 32.00.~~
- ~~(3) The Division of Forensic Mental Health will monitor statewide forensic mental health services to ensure compliance with 104 CMR 32.00.~~
- ~~(4) As part of its licensing activity, the Department's Licensing Office will monitor licensed programs and facilities not under contract with the Department to ensure compliance with 104 CMR 32.00.~~
- ~~(5) The Director of the Office of Investigations will keep statistical data relative to complaints and investigations and will prepare reports on a regular basis for the Commissioner.~~
- ~~(6) The Deputy Commissioner for Program Operations will receive reports on a regular basis from the Area Directors relative to each Area's activities under 104 CMR 32.00.~~

~~32.08: Department Case File and Public Log~~

- ~~(1) Department Case File. A file, known as the Department case file, shall be kept for each complaint and appeal received by the Department or its contracted programs or facilities. The contents of the file shall include but not be limited to the complaint, the investigator's report, the decision letter, any requests for reconsideration, any appeals, and any decisions on appeals. Each complaint and appeal will be assigned a public log number which will be referenced in the case file.~~
- ~~(2) Confidentiality.~~
- ~~(a) The contents of the Department case file are subject to the Massachusetts Public Records Law, including all the statutory exemptions to disclosure.~~
- ~~(b) Notwithstanding 104 CMR 32.08(2)(a):~~
- ~~1. any person who is mentioned in the Department case file will have access to and may have a copy of that portion of the record in which he or she is mentioned, consistent with the Fair Information Practices Act, M.G.L. c. 66A, § 2.~~
  - ~~2. the client or an individual or entity acting on behalf of a client or in the case of a client death, the administrator, administratrix, executor, executrix of the deceased's estate may receive a copy of the investigator's report.~~
  - ~~3. any other party as defined in 104 CMR 32.02 may receive a copy of the investigator's report upon the signing of a non disclosure statement, where the report includes client specific information.~~
- ~~(3) Public Log. The Department shall maintain a public log of all complaints and appeals received by the Department or its contracted for programs or facilities pursuant to 104 CMR 32.00, in such form as the Commissioner may from time to time prescribe. The log shall be kept at the Central Office.~~
- ~~(a) The log will not include personal identities and will be a public record, available for inspection and copying by members of the public as provided in M.G.L. c. 66, § 10.~~
- ~~(b) The log shall include a statement as to whether the complaint was substantiated, whether any appeals were filed and the outcome of the appeals~~
- ~~The Department shall maintain at the Central Office the written reports filed by the Person in Charge pursuant to 104 CMR 32.05(2)(f).~~

32.09: Transitional Provision

. Complaints ~~that were initiated~~ submitted to the Department prior to ~~January 1, 1998~~, pursuant to ~~the former Department investigation~~ the effective date of these regulations, ~~104 CMR 24.00~~, are ~~shall be~~ subject to the ~~procedures, including appeal rights, provisions~~ of 104 CMR ~~24.00~~. ~~Complaints initiated on or after January 1, 1998, are subject to 104 CMR 32.00~~ as they were in effect on the date of submission of the complaint.

REGULATORY AUTHORITY

104 CMR 32.00: M.G.L. c. 19, §§ 1 and 18; c. 123, § 2.