

104 CMR 28.00: LICENSING AND OPERATIONAL STANDARDS FOR  
COMMUNITY PROGRAMSSERVICES

Section

28.01: Legal Authority to Issue and Scope

SUBPART A: ~~OPERATIONAL AND PROGRAM~~ STANDARDS FOR COMMUNITY  
PROGRAMSSERVICES

- 28.02: Standards to Promote ~~Client~~ Recovery and Resiliency
- 28.03: Legal and Human Rights ~~of Clients~~
- 28.04: Protection from Mistreatment
- 28.05: ~~Physical Restraint~~ Prohibition of Medication and Mechanical Restraint or Seclusion; Prevention of Physical Restraint; and Requirements for Emergency Physical Restraint When Necessary
- 28.06: Medication
- 28.07: Labor
- 28.08: Possessions
- 28.09: Records and Record Privacy
- 28.10: Legal Capacity, Guardianship and Conservatorship
- 28.11: Human Rights Committee; Human Rights Officer
- 28.12: Standards Applicable to All ~~Programs~~Services

SUBPART B: ~~LICENSING REQUIREMENTS~~ STANDARDS FOR RESIDENTIAL SERVICE SITES

- 28.13: ~~Licensing: General Provisions~~ Physical Standards
- 28.14: ~~Site Requirements~~ Self Preservation Standards

SUBPART C: LICENSING REQUIREMENTS AND COMPLIANCE WITH STANDARDS

- ~~28.13: Licensing:~~ 15: General Provisions
- ~~28.14: Site Requirements~~
- 28.16: Process for Obtaining or Renewing a License
- 28.17: Licensing, Compliance and Enforcement

28.01: Legal Authority to Issue and Scope

- (1) Legal Authority. 104 CMR 28.00, is promulgated under authority of M.G.L. c. 19, §§ 1, 12, 16, 18 and 19 ~~and M.G.L. c. 123, § 2.~~
- (2) Scope. ~~104 CMR 28.00 applies to all community mental health programs which are operated, licensed, or contracted for by the Department; provided, however, that programs that are subject to licensure by the Department of Early Education and Care pursuant to M.G.L. c. 28A, are not subject to licensure or regulation under 104 CMR 28.00. A person who receives mental health services from a program subject to 104 CMR 28.00 shall be a client for purposes of 104 CMR 28.00.~~
  - (a) Subpart A applies to all community mental health services which are operated, licensed or contracted for by the Department and establishes standards for such services.
  - (b) Subpart B applies to all residential sites which are subject to licensing pursuant to 104 CMR 28.15 and state operated residential sites and establishes standards for such sites.
  - (c) Subpart C specifies the residential sites that are subject to licensure, and the provisions for enforcement of Subparts A and B as to all community mental health services which are operated, licensed or contracted for by the Department.
  - (d) Services and residential sites that are subject to licensure by the Department of Early Education and Care pursuant to M.G.L. c. 15D are not subject to licensure under the provisions 104 CMR 28.00; provided, however, that provisions of 104 CMR 28.00 that do not conflict with licensing requirements of the Department of Early Education and Care shall apply to such services and residential sites if operated or contracted for by the Department.
  - (e)The Department may exempt by contract certain provision of 104 CMR 28.00 that have no practical application to a particular service, such as services purchased for a specific single individual.
- (3) Definitions. For purposes of 104 CMR 28.00, the following definitions shall apply:

Director means the senior administrator(s) for a provider who has overall responsibility for a service. Except where otherwise specified, a Director’s responsibilities under 104 CMR

28.00 may be delegated by the Director to appropriate designated administrator(s) within the service.

Office of Community Licensing means the Departmental unit charged with oversight and enforcement of 104 CMR 28.00.

Person means an individual who receive mental health services subject to 104 CMR 28.00.

Provider means the entity responsible for the provision of a service, including ~~without limitation~~ the operation of a residential site.

Service means a community mental health service that is operated, licensed, or contracted for by the Department.

Service Site means the location where services are provided, including residential sites. The term shall include the provider's administrative offices where applicable.

## SUBPART A: ~~OPERATIONAL AND PROGRAM~~ STANDARDS FOR COMMUNITY ~~PROGRAMS~~SERVICES

### 28.02: Standards to Promote ~~Client~~ Recovery and Resiliency

The Department establishes the following standards to promote recovery and resiliency, and to support and increase ~~clients~~the capacity of persons who receive services subject to 104 CMR 28.00 for independent living in the community. ~~Programs~~Providers shall provide services which promote:

- (1) Human dignity and respect;
- (2) Humane and adequate care, treatment and treatment environments;
- (3) ~~Self~~Person-centered planning, self-determination and freedom of choice and personal responsibility;
- (4) The opportunity to receive services which are, to the maximum extent possible, culturally competent, adequate, responsive to ~~the clients'~~a person's needs, and least restrictive of ~~the clients'~~a person's freedom;
- (5) The opportunity to move toward independent living; and
- (6) The opportunity for normal life experiences, even if such experiences may entail an element of risk; provided, however, that a ~~client's~~person's safety or well-being or that of others shall not be unreasonably jeopardized.

### 28.03: Legal and Human Rights ~~of Clients~~

(1) The utmost care shall be taken to protect the legal and human rights of all ~~clients in programs subject to 104 CMR 28.00~~persons who receive services. These rights shall not be exercised in a manner as to infringe on the rights of other ~~clients~~persons and staff. ~~No person shall be subjected to retaliation as a result of the exercise of any right under any the provision of the Department's regulations or other provisions of law.~~ These rights include, but are not limited to, the following:

- (a) The right to be free from unlawful discrimination on the basis of race, creed, national origin, color, ethnicity, religion, sex, sexual ~~preference~~orientation, gender identity, age, physical or mental disability or degree of disability, or such other bases as may be prohibited by law. However, classifications based on age, sex, or category or degree of disability shall not be considered discriminatory if based on written criteria ~~of client selection~~ developed by a ~~program~~provider and approved by the Department;
- (b) The right to religious freedom and practice without compulsion according to the preference of the ~~client~~person;
- (c) The right to vote, unless a minor or under guardianship which expressly restricts such right. ~~Clients~~Persons shall receive reasonable assistance when desired in registering and voting, and accessing voter registration information. Such assistance shall be provided in a non-partisan and non-coercive manner;
- (d) The right to communicate, including:
  1. The right to have reasonable access to a telephone and to make and receive confidential calls and to assistance, when desired and necessary to implement this right,

- provided that such calls do not constitute a criminal act or represent an unreasonable infringement of another person's rights to make and receive telephone calls;
2. The unrestricted right to send and receive uncensored and unopened mail, to be provided with writing materials and postage in reasonable amounts and to reasonable assistance when desired and necessary in writing, addressing and posting letters and other documents; and
  3. The right to receive or refuse visits and telephone calls from an attorney or legal advocate, physician, psychologist, clergy or social worker at any reasonable time, regardless of whether the clientperson initiated or requested the visit or telephone call;
- (e) The right to be represented by an attorney or advocate of the clientperson's own choice, including for persons receiving services in a residential site, the right to meet in a private area at the programresidential site with an attorney or advocate;
- (f) The right to be protected from commercial exploitation;
- (g) The right to be visited and visit with others, daily and in private, provided that reasonable restrictions may be placed on the time and place of the visit but only to protect the privacy of other clientspersons or to avoid serious disruptions in the normal functioning of the programservice. Hours during which visitors may be received shall be sufficiently flexible as to accommodate individual needs and desires of clientspersons and their visitors;
- (h) The right to a humane psychological and physical environment. Where applicable to the program—model, clientservice, persons shall be provided living quarters and accommodations which afford privacy and security in resting, sleeping, dressing, bathing and personal hygiene, reading and writing, and in toileting. 104 CMR 28.03 shall not be interpreted as requiring individual sleeping quarters;
- (i) The right to file complaints and to have complaints responded to in accordance with 104 CMR 32.00;
- (j) The right to informed consent. Informed consent means knowing consent, voluntarily given by a clientperson who has the capacity to weigh the risks and benefits of the particular treatment being proposed. If a clientperson does not have the capacity to provide informed consent, authorization for medical—treatment may be obtained from a court of competent jurisdiction or the clientperson's legally authorized representative, with the following exceptions:
1. Extraordinary medical care as it is defined by statute or court decision, including but not limited to, treatment with antipsychotic medication and electroconvulsive treatment (ECT), shall only be provided pursuant to a court order or upon the consent of a legally authorized representative who has been granted specific authority to authorize such medical care.
    - a. pursuant to a court order; or
    - b. in the case of a minor, upon the consent of a legally authorized representative with authority to authorize such medical care; or
    - c. in the case of a duly activated health care proxy, upon the consent of the health care agent acting within the scope of such proxy.
  2. If the clientperson has no legally authorized representative, the programdirectorDirector may consent to routine or preventive medical care, including standard medical examinations, clinical tests, standard immunizations and treatment for minor illnesses and injuries. However, such medical care shall only be authorized upon recommendation of the treating physician that such care is necessary and appropriate, and provided the clientperson agrees to such care, the clientperson is not a minor or under guardianship, and has been found to lack capacity to make informed decisions about his or her medical care at his or her last service planning review.
- ~~28.03: continued~~
3. Prior to an adjudication of incapacity, and court approval of a treatment plan, if applicable, a clientperson retains the right to accept or refuse treatment as prescribed.
- (k) The protections afforded under the Community Residence Tenancy Law, M.G.L. c.186 §17A, as applicable.
- (2) A notice of the clienthuman rights as set forth in 104 CMR 28.03(1)(a) through (jk) shall be posted in appropriate and conspicuous places to which clientspersons and family members have access in the programeach service site, and available to any person upon request. The notice shall be written in language that is easy to understand and, to the extent practicable, shall be translated into the requesting person's preferred language.

#### 28.04: Protection from Mistreatment

- (1) No programsubject to 104 CMR 28.00provider shall mistreat a clientperson or permit the mistreatment of a clientperson by staff subject to its direction. Mistreatment includes any

intentional or negligent action or omission which exposes ~~an individual~~ a person 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;
- (b) Infliction of mental or verbal abuse, such as abusive screaming or name calling;
- (c) Incitement or encouragement of ~~clients~~ persons or others to mistreat a ~~client~~ person;
- (d) Transfer or the threat of transfer of a ~~client~~ person for punitive reasons;
- (e) The use of restraint as punishment or for the convenience of staff;
- (f) Any act in retaliation against a ~~client~~ person for reporting any violation of the provisions of ~~104 CMR~~ the Department regulations or other provisions of law.

(2) The ~~program director~~ Director or designee shall ~~investigate or~~ report to the Department allegations of mistreatment in accordance with ~~the requirements of~~ 104 CMR 32.00: *Investigation and Reporting Process*.

- (a) ~~Program~~ Provider staff shall cooperate with ~~Department~~ investigations of incidents or allegations of mistreatment in accordance with 104 CMR 32.00.
- (b) ~~Program~~ Provider staff shall ~~also~~ comply with **all** applicable reporting requirements as required by law including reporting allegations of abuse or neglect to the Disabled Persons Protection Commission in compliance with M.G.L. c. 19C, the Executive Office of Elder Affairs in compliance with M.G.L. c. 19A, ~~and~~ the Department of Children and Families in compliance with M.G.L. c. 119.

(3) The identity of persons making reports under 104 CMR 28.04 shall not be disclosed by the ~~program director~~ Director or designee or by the Department, except as necessary to investigate the subject matter of the report.

#### 28.05: ~~Prohibition of Medication Restraint and Mechanical Restraint or Seclusion; Prevention of Physical Restraint~~ and Requirements for Emergency Physical Restraint When Necessary

(1) ~~Programs subject to 104 CMR 28.00 shall not employ the use of medication~~ Medication restraint, mechanical restraint or seclusion ~~shall not be used~~. **Physical restraint may only be used if the requirements of 104 CMR 28.05(4) are met.**

(2) Physical restraint ~~and other limitations of movement may only be utilized in cases of emergency. For purposes of 104 CMR 28.05, physical restraint means the use of bodily physical force to limit an individual's~~ occurs when a manual method is used to restrain a person by restricting the person's freedom of movement or normal access to his or her body. Physical restraint does not include taking reasonable steps to prevent a person at imminent risk of entering a dangerous situation from doing so with a limited response to avert injury, such as blocking a blow, breaking up a fight, or preventing a fall, a jump, or a run into traffic.

7

~~(a) Physical restraint does not include the holding of a client for less than five minutes by a staff person in a firm but gentle manner for the protection of the client or other persons.~~

~~(b) Physical restraint may only include bodily holding of a client with no more force than is necessary to limit the client's movement.~~

~~(c) Physical restraint shall be utilized to the minimum extent and for the minimum duration necessary and then only after less restrictive means of protection have failed.~~

~~1. Each program shall maintain appropriate documentation of restraint, including all less restrictive means attempted and the reasons for their failure.~~

~~2. If a client requires the repeated or prolonged use of physical restraint, or more than one incident of a firm but gentle hold of less than five minutes duration, within a 24 hour period, the residence or program director shall immediately initiate a review of the client's individualized action plan or treatment plan as applicable to evaluate the need for appropriate clinical interventions.~~

~~3. Physical restraint shall be employed to allow the client the greatest possible comfort, and to avoid physical injury and mental distress.~~

~~(d) An emergency situation justifying the use of physical restraint shall be limited to:~~

- ~~1. Substantial risk of serious self-destructive behavior;~~
- ~~2. Occurrence of serious self-destructive behavior;~~
- ~~3. Substantial risk of serious physical assault; or~~
- ~~4. Occurrence of serious physical assault.~~

~~Substantial risk shall be interpreted to include only the serious, imminent threat of bodily harm, where there is the present ability to enact such harm.~~

~~(e) Physical restraint shall not be used without the prior written authorization of the program director or a designated physician. Where neither person is available, restraint may be used, provided that the authorization of the program director or the designated physician is obtained as soon as possible, and in no event later than four hours after the initial occurrence. For all programs, the program director may appoint a designee for the purpose of authorization of physical restraint between the hours of 10:00 P.M. and 8:00 A.M.~~

~~(f) All use of physical restraint shall be noted in the client's record. This notation shall include:~~

- ~~1. The nature of the restraint;~~
- ~~2. The reason for the restraint;~~
- ~~3. The types of less restrictive alternatives, if any, which were utilized and their effect;~~
- ~~4. The person authorizing the restraint;~~
- ~~5. The time or times the restraint was administered;~~
- ~~6. The duration of the restraint.~~

~~(g) No person may write a "PRN" or "as required" authorization of physical restraint.~~

(3) Prevention of the Use of Physical Restraint. Each provider shall develop and implement a plan to reduce, and wherever possible eliminate, the use of physical restraint in its service. A provider's plan shall include, at a minimum, the following:

- (a) policies and procedures supporting the prevention of physical restraint;
- (b) staff training focusing on:
  1. crisis prevention and de-escalation; and
  2. the safe and appropriate use of physical restraint;
- (c) the development of a supportive environment that incorporates the teaching of and use of coping strategies to reduce the need for physical restraints;
- (d) the development and use of individual crisis prevention plans when appropriate;
- (e) the development and use of debriefing procedures following an episode of restraint to address, at a minimum, what led to the incident, what might have prevented or curtailed the incident, and how to prevent future incidents;
- (f) documentation requirements that will ensure an adequate record of the authorization, the less restrictive means attempted, if any, and the reason for their failure and all debriefing activities. These requirements must, at a minimum, meet the documentation requirements set forth in 104 CMR 28.05(4);
- (g) requirement that debriefings documentation be reviewed by appropriate staff for the purpose of identifying and addressing opportunities to prevent or eliminate future occurrences of restraint;
- (h) appropriate administrative review of the use of physical restraint by the Director or designee;
- (i) the process for addressing any person's concern or complaint about the use of physical restraint;
- (j) the use of data to monitor and improve quality and prevent and minimize the use of restraint, such as identifying times or shifts with a high incidence of restraint, and to modify the plan as indicated; and
- (k) the identification and utilization of support measures after a restraint, including debriefing activities which may include peer support, advocacy, Human Rights Officer participation and inclusion of family and friends designated by the person.

~~was utilized in a program, the program director shall submit a report to the Human Rights Committee on the nature and frequency of physical restraint in the program during that month.~~

~~(a) A copy of this report shall be kept on file at the program;~~

~~(b) The Human Rights Committee shall review such reports to determine if there has been an inappropriate reliance on the use of restraint, either as to the program as a whole or as to any individual client(s) in the program, and to determine if restraint may be used in a more effective or appropriate manner;~~

~~(c) The Human Rights Committee may make recommendations concerning necessary technical assistance or modification of the program to the program director and the appropriate Area Director.~~

(4) Emergency Physical Restraint.



- (a) Physical restraint may be used only under the following conditions:
  - 1. In the presence of an emergency where there is a substantial risk of, or the occurrence of, serious self-destructive behavior, or serious physical assault. A substantial risk includes only the serious imminent threat of bodily harm, including instances where property damage may result in bodily harm.
  - 2. Less restrictive alternatives, including strategies identified in the person's crisis plan, have been tried and failed, or a determination has been made that such alternatives would be inappropriate or ineffective under the circumstances; and
  - 3. Written authorization for the use of physical restraint has been obtained from the Director or an administrator designated to act on his or her behalf.
    - a. Where neither person is available, physical restraint may be used, provided the authorization of the Director or the designee is obtained immediately thereafter, and in no event later than four hours after the initial occurrence.
    - b. The authorization shall be dated and recorded in the person's record.
  - 4. The Director, or designee, may not write an "as needed," or "as required" (PRN) authorization for physical restraint.
- (b) If physical restraint is used:
  - 1. It may only include bodily holding of a person with no more force than necessary to limit an individual's movement.
  - 2. It may be used only for the purpose of preventing the continuation or renewal of such emergency condition and only to the minimum extent and duration necessary.
  - 3. It shall be employed to allow the person the greatest possible comfort and to avoid physical injury and mental distress.
  - 4. A staff debriefing shall be conducted in accordance with the provider's plan for prevention of the use of physical restraint. The person who was subject to physical restraint shall separately be asked to debrief. These debriefings shall occur as soon as possible after the restraint.
- (c) The use of physical restraint shall be noted in the person's record. This notation shall include:
  - 1. A description of the restraint;
  - 2. The reason for the restraint;
  - 3. The types of less restrictive alternatives, if any, which were utilized and failed;
  - 4. The name of the person authorizing the restraint;
  - 5. The time or times the restraint was used;
  - 6. The duration of the restraint; and
  - 7. A summary of the debriefing activities.
- (d) If physical restraint is used, the Director or designee shall ensure there is a timely review of the person's individualized action plan and crisis prevention plan as applicable to evaluate the need for appropriate clinical interventions. If the person requires the prolonged use of physical restraint or more than one physical restraint within a 24-hour period, the Director or designee shall initiate the review immediately.
- (e) Notifications; Monthly Reports; Human Rights Committee Review.
  - 1. The person's legally authorized representative, if any, shall be notified of the physical restraint as soon as possible but no later than the next business day.
  - 2. The service's Human Rights Officer shall be notified of the physical restraint as soon as possible, but no later than the next business day.
  - 3. At the end of any month in which physical restraint was utilized in a service, the Director shall submit a report to the Human Rights Committee on the nature and frequency of physical restraint in the program during that month.
    - a. A copy of this report shall be kept on file at the applicable service site or at the provider's administrative office;
    - b. The Human Rights Committee shall review the report to determine if there has been an inappropriate reliance on the use of restraint, either as to the service as a whole or as to any individual person(s) at a service site;
    - c. The Human Rights Committee may make recommendations concerning necessary technical assistance or modification of the service to the Director and the appropriate Area Director.

(45) The Human Rights Committee shall review all complaints concerning the threat or use of restraint and, where appropriate, refer complaints for investigation in accordance with the requirements of 104 CMR 32.00: *Investigation and Reporting Process*.

~~(5) Programs subject to 104 CMR 28.05 shall also comply with the supplementary requirements established by 104 CMR 27.12 concerning definitions applicable to restraint and the requirements concerning authorization, use and documentation of restraint.~~

(1) ~~(1)~~—The following terms as used in 104 CMR 28.06 shall be interpreted as follows:

Certified Staff means unlicensed staff members who are certified to administer medications pursuant to the Medication Administration Program. Certified staffs are authorized to administer medications at MAP registered service sites. These individuals have successfully completed the training and examination requirements established in 105 CMR 700.003(F) and 104 CMR 28.06(13) to be certified.

~~(a)~~—Non-self AdministeringMedicating means personally consuming and applying medication in the manner directed by the prescribing practitioner with more than minimal assistance or direction by ~~provider program~~ staff. ~~, in accordance with Department policy and criteria.~~

~~(b)~~—Self-~~administering medicating~~ or Self-administration of Medication means personally consuming or applying medication in the manner directed by the prescribing practitioner, without or with less than minimal assistance, or direction by ~~provider program~~ staff. ~~, in accordance with Department policy and criteria.~~

MAP Registered Service Site means the service site has been issued a MAP Massachusetts Controlled Substance Registration by the Department of Public Health to administer medications pursuant 105 CMR 700.003 at the site.

Medication Administration Program (MAP) means a program administered by the Department of Public Health (DPH) in conjunction with the Department, the Department of Developmental Disabilities and the Department of Children and Families pursuant to 105 CMR 700.003(F).

(2) ~~Prescription~~ For prescription medication to be administered ~~in~~by a ~~program~~provider, the medication- shall be prescribed by a licensed physician, ~~or~~ a licensed psychiatric nurse clinical specialist, licensed nurse practitioner, or licensed physician assistant, acting within the scope of applicable authority.

(3) ~~Psychotropic Medication shall be prescribed by a psychiatrist, a licensed physician trained or experienced in the use of psychotropic medication, or a licensed psychiatric nurse clinical specialist, licensed nurse practitioner, or licensed physician assistant acting within the scope of applicable authority and trained or experienced in the use of psychotropic medication, who has seen the client and is familiar with the case history or, in an emergency, is at least familiar with the case history.~~

~~(a)~~—Each ~~client~~person receiving ~~psychotropic~~ medication shall be ~~seen~~encouraged to see his or her prescribing practitioner at clinically appropriate intervals, ~~but no less than every three months,~~as determined by the prescribing practitioner ~~prescribing the medication, who.~~ The prescription shall ~~note~~be included in the ~~client's~~person's record, ~~at a minimum,~~ together with the following: information, if provided by the prescribing practitioner:

- ~~1.~~(a) The ~~appropriateness of the~~ current dosage;
- ~~2.~~—~~All~~ and a reconciliation of all medications being taken by the ~~client and the~~ ~~appropriateness of the mixture of medications~~person;

3.

- (b) Any signs or complaints of neurologic side effects including tardive dyskinesia, metabolic syndrome, or other side effects;
- ~~4.~~(c) The reason for the use of the medication;
- ~~5.~~(d) The effectiveness of the medication.

~~(b)~~  
(4) Each ~~client receiving psychotropic~~person administered medication shall by a provider shall be encouraged and offered assistance, if needed, to receive a yearly physical examination, ~~with consent.~~The- and to authorize the sharing of the results ~~of the examination shall be reviewed by~~with the practitioner prescribing psychotropic medication, ~~who shall note his or her observations in the client's medical record.~~

~~(4) In the case of persons under the age of 18, psychotropic drugs shall be prescribed by a child psychiatrist, a licensed physician who is experienced with the treatment of emotionally disturbed children, or a licensed psychiatric nurse clinical specialist, licensed nurse practitioner, or licensed physician assistant acting within the scope of applicable authority who is experienced with the treatment of emotionally disturbed children.~~

~~(5) Information~~(5) A provider administering medication must have information relating to common risks and side effects of the ~~medication~~medications used by the persons it served, the procedures to be taken to minimize such risks, and a description of any clinical indications that might require suspension or termination of ~~the drug therapy~~a medication shall be available to ~~clients~~persons and staff ~~in~~at every ~~program~~service site. Such information shall also be available to a ~~client~~persons' legally authorized representative, if applicable.

(6) Medication shall not be arbitrarily withheld, or used as punishment, or administered in quantities that are excessive in relation to the amount necessary to attain the ~~client~~person's best possible functioning.

(7) Medication shall not be used for the convenience of staff or as a substitute for programming.

(8) Administration. Prescription medication shall be administered in accordance with the written prescription of a practitioner and the provisions of M.G.L. c. 94C, ~~the Controlled Substances Act, and~~ 105 CMR 700.003 and 104 CMR 28.06. ~~, for non-self medicating clients, by licensed professional staff or by other community program staff who have successfully completed the Department approved medication administration training program and have been certified by the Department for such activities.~~

(a) Medications administered to an individual who is non-self-administering must be done by a licensed practitioner, registered nurse or a licensed practical nurse, in accordance applicable licensing requirement, or if the individual is at a MAP registered site, by certified staff in accordance with applicable MAP regulations and policies.

(b) Prescribed medications shall only be administered to or taken by the individual for whom the prescription has been written.

(c) The provider shall have a policy which specifies the administrative procedures to be followed in the event of a medical emergency. This shall include: the staff persons to be notified, the person(s) responsible for decision-making and the physician, clinic, emergency room or comparable medical back-up to be contacted. Such policy shall include provisions for ensuring the list of names and telephone numbers of staff persons and medical personnel to be contacted in an emergency is current. This information must be readily available to staff, and must clearly indicate who is to be contacted on a 24-hour-a-day, seven-days-a-week basis. The medical personnel to be contacted shall include the prescribing practitioner or, if unavailable, another licensed practitioner or appropriate emergency room personnel.

(d) Certified staff may only administer prescription medications which are oral, topical, ophthalmic, otic, intranasal, suppository or products which are administered by inhalation.

(e) Parenteral drugs generally intended for self-administration or drugs administered by gastric tube may be administered by certified staff who have successfully completed a specialized training program in such technique taught by a physician, physician assistant, pharmacist, registered nurse, or nurse practitioner and approved by the Department and the Department of Public Health. Such technique shall be used only with the written authorization and in accordance with the written instructions of the prescribing practitioner.

(f) Whenever possible, a prescription for medication shall be limited to a 30 day supply with refills specified by the prescriber.

(g) For an over-the-counter drug to be administered by certified staff to a non-self administering person requires the prior approval of a physician and must be done in accordance with MAP regulations and policies.

(h) Providers shall permit and encourage self-administration of medication by individuals capable of self-administering, provided that:

1. the risks of misuse or abuse to the individual and other persons within the service site are minimal; and
2. the provider provides the individual with adequate training assistance and supervision.

(i) All persons who are non-self-administering shall be offered training to obtain or enhance self-medication skills consistent with the individual's assessed goals.

(j) Medication may not be administered PRN for restraint purposes, but may be administered PRN for treatment purposes. For individuals who are prescribed medication PRN for treatment, the provider shall obtain from the prescribing practitioner a statement of specific criteria, in the form of observable symptoms, for determining when medication is needed.

~~(9) Certified program staff of community programs may administer prescription medications to non-self medicating clients, provided that the community program is registered with the Department of Public Health in accordance with 105 CMR 700.004 and meets the following requirements:~~



~~(a) No medication shall be administered by unlicensed program staff unless they have successfully completed the training requirements established in 105 CMR 700.003 and 104 CMR 28.06 and have been certified by the Department as having successfully completed such training. The original documentation of completion shall be provided to and maintained by the program.~~

~~(b) The training program shall be taught by a registered nurse, nurse practitioner, physician assistant, pharmacist, or physician who meets applicable requirements for a trainer established jointly by the Department of Public Health and the Department. The Department of Public Health and, as appropriate, the Department shall have the authority to monitor the training program for compliance with established standards.~~

~~(c) Certification will be valid for two years and may be renewed upon the person meeting the standards for retraining and/or retesting established by the Department. For anyone who holds a valid certification from the Department of Developmental Services, the Department may certify that person to administer medication without having to undergo the full training program required of all other applicants for certification.~~

~~(d) Certification may be withdrawn or rejected if the Department finds, after an informal hearing, any of the following regarding the holder of the certification:~~

- ~~1. has been convicted of a crime involving controlled substances; or~~
- ~~2. furnished or made any misleading or false statement in the application for, or renewal of, certification; or~~
- ~~3. has failed to exercise proper regard for the health, safety and welfare of community program residents; or,~~

~~4. is unfit to perform the duties for which the certification was granted.~~

~~The hearing is not an adjudicatory proceeding within the meaning of M.G.L. c. 30A and the decision of the Department is final.~~

~~(e) The program shall establish, maintain, and operate in accordance with policies that ensure that prescription medication is administered only by properly trained and certified staff.~~

~~(f) The program shall maintain a current listing of those staff who have successfully completed the Department approved training program and who are authorized by the program to administer prescription medications.~~

~~(g) The Department of Public Health is permitted by the program to inspect program and clients' records pertaining to the use and administration of medication and is permitted announced or unannounced on-site visits or inspections of common areas and such other inspections as the Department of Public Health is authorized to make in order to monitor the program's compliance with 104 CMR 28.06.~~

~~(h) The Division of Food and Drugs within the Department of Public Health shall be promptly notified by the program of any suspected shortages or diversion of prescription medications. The program shall also promptly report to the Department on a form approved jointly by the Department and the Department of Public Health any suspected misuse of prescription medication arising from the administration of medication in a manner inconsistent with the practitioner's prescription or in violation of 104 CMR 28.00 which staff has reason to believe created a risk of harm to the client. Such form shall be provided, upon request, to the Department of Public Health.~~

~~(i) The program shall provide or arrange for technical assistance and advice to be provided as needed by a Registered Nurse, Registered Pharmacist or other Licensed Practitioner when questions arise regarding appropriate medication administration practices or the effects of medications. The program shall establish policies and procedures which ensure reasonable access to such assistance and advice.~~

**(940) Storage.** In accordance with 105 CMR 700.005, drug security and storage requirements of federal and state laws shall be enforced at all storage ~~sites~~ **locations where medications are stored**. The following requirements shall also be followed:

(a) Medications shall be stored under proper conditions of sanitation, temperature, light, moisture, ventilation, segregation and security.

(b) Medications for all ~~person~~**clients** who are not self-administering ~~medicating~~, shall be labeled and stored in a locked container or area, in which nothing except such medications are stored. Medications required to be refrigerated must be stored in a locked container within the refrigerator. The ~~provider~~ **program** shall have a written policy describing the persons and the conditions under which persons may have access to such container or area and restrictions for access to the locked container.

(c) Medications for clients who are self-administering ~~medicating~~ shall be stored in such a way as to make them inaccessible to all other ~~person~~**clients**. Such medications shall be stored in a locked container or area in which nothing except such medications are stored, unless the ~~Director~~**head of the program** makes a determination that unlocked storage of the medication poses no threat to the health or safety of the ~~person~~**client** taking the medication or other ~~person~~**clients**, provided, however, that all narcotics, tranquilizers and barbiturates shall

be stored in a locked container or area.

28.06: continued

(d) Outdated medications, medications which have not been administered due to a change in the prescription or a stop order, and medications with worn, illegible or missing labels shall be disposed of and the disposal shall be documented in accordance with policies established by the ~~provider program~~, provided, that prescription medications are disposed of through incineration or other acceptable means in the presence of at least two witnesses and in accordance with any directives of the Department of Public Health.

~~(e) Prescription pads may be kept only at psychiatric day treatment programs and partial hospitalization programs, and shall be stored in a locked area or container with access only by the prescriber or other authorized person.~~

(ef) Medications or ointments used externally shall be stored separately from medications taken internally.

(104) Packaging and Labeling. All medications shall be properly packaged and labeled in accordance with M.G.L. c. 94C, § 21 and the following requirements:

(a) ~~Provider Program~~ staff shall not repack or relabel prescription medications which are taken or applied at any ~~service site location or program~~ regularly or frequently attended by the ~~person~~ client. All such medications shall be packed and labeled by a pharmacist or, in the case of medication dispensed for immediate treatment, by the dispensing practitioner.

(b) Where prescription medication is taken or applied by a ~~person~~ client at two or more locations on a regular or frequent basis, the medication shall be stored in a separate, properly packaged and labeled medication container at each location. In circumstances where this is not practical or feasible, the Department shall establish an alternative procedure approved by the Department of Public Health.

(c) The ~~provider program~~ shall have policies for obtaining a properly labeled container where there is a change in prescription or where the ~~person~~ client frequently or regularly receives medication at two or more locations.

(134) Documentation and Communication. All prescriptions for, and administration of, medication shall be documented in accordance with 105 CMR 700.003 and the following requirements:

(a) All prescriptions for medication shall be noted in the ~~client's~~ person's record on medication and treatment forms ~~developed by the Department and approved by the Department of Public Health~~ that meet the requirements of this regulation. The forms shall specify for each ~~client~~ person, the type and dosage of medication, the condition for which the medication is prescribed, when and how the medication is to be administered, instructions for self-~~medication administration~~, if applicable, any contraindications or possible allergic reactions, common risks and side effects and appropriate staff responses and special instructions, including steps to be taken if a dose is missed.

(b) The ~~program provider~~ shall establish appropriate policies and procedures to address how ~~provider program~~ staff ~~may shall~~ obtain relevant prescription information as set forth in ~~accordance with the requirements of~~ 104 CMR 28.06(13)(a2), (3) and (5). In addition such policies and procedures shall ensure that telephone medication orders and/or medication changes are received from licensed practitioners and properly documented in the ~~client's~~ person's record.

(c) The ~~program provider~~ shall ensure that staff have ready access to the information specified in 104 CMR 28.06(13)(a5) by maintaining ~~on-site an appropriate reference approved by the Department of Public Health or, for~~ each ~~drug site~~ where medications are administered, a copy of ~~the pertinent section of such reference or~~ a medication-specific drug information sheet which states in plain language generally why the drug is used, when it is to be administered, how it should be administered, any special instructions or precautions, proper storage conditions, possible side effects and what is to be done if a dose is missed.

(d) To ensure proper communication among all ~~programs providing services to providers serving the same~~ ~~client~~ person, a ~~program provider~~ that is responsible for a non-self ~~medicating client's~~ administering person's medication shall, with necessary authorization, ensure that ~~all the other service providers~~ are appropriately informed of any prescription or non-prescription medications which the ~~client~~ person is taking on a regular basis, and are provided with a copy of the approved medication and treatment forms meeting the requirements of 104 CMR 28.06(1311)(a) for each medication which the ~~client~~ person

receives.

(e) The ~~program provider~~ shall ensure that the appropriate consent or court order for medication is ~~obtained in accordance with 104 CMR 28.03(1)(j) and is~~ documented in the ~~client's person's~~ record. ~~in accordance with 104 CMR 28.03(1)(j).~~

(f) The administration of medication for non self-~~medicating clients administering~~ persons, including practitioner ordered over-the-counter drugs, shall be documented in the ~~client's person's~~ record as follows:

1. The time that the medication is administered to the ~~client person~~.
2. Any off-site administration of medication which would normally be administered at the ~~program service~~ site.
3. Any inconsistencies from the ~~physician's prescribing practitioner's~~ prescription regardless of whether such inconsistencies resulted in harm or a risk of harm.

~~Clients Persons~~ who are self-~~medicating administering~~ shall not be required to document their own self-administration of medication.

(g) Any change in medications or dosage levels of a medication shall be treated as a new medication order for the purposes of documentation.

(h) The ~~program provider~~ shall establish procedures to document the date that a ~~client's person's~~ prescription is filled and the quantity of medication dispensed by the pharmacy.

(i) Except for persons who are self-~~medicating administering~~, the ~~program provider~~ shall maintain a documented accounting of the quantities of narcotics, tranquilizers, and barbiturates stored ~~by the program at each service site~~, which shall be updated at the end of each shift unless otherwise approved by the Department of Public Health.

(j) Whenever a non-self-~~administering person medicating client~~ is taking an over-the-counter medication ~~by a certified staff, the approval of the in addition to a prescription medication or another over the counter medication, the consultation with the~~ appropriate practitioner, ~~as~~ required under 104 CMR 28.06(812)(gh), shall be documented in the ~~person's client's~~ record.

(12) Compliance. A provider shall:

- (a) ensure that each service it provides establishes, maintains, and operates pursuant to, policies that ensure that prescription medication is administered only by a Massachusetts licensed nurse or properly trained and certified staff and is in compliance with the requirements of 104 CMR 28.06;
- (b) maintain a current listing of all licensed nurses and certified staff and who are authorized by the service to administer prescription medications;
- (c) permit the Department, and where applicable the Department of Public Health, to inspect provider and persons' records pertaining to the use and administration of medication and to make announced or unannounced on-site visits or inspections of common areas and such other inspections as deemed necessary by the Department to monitor the provider's compliance with 104 CMR 28.06;
- (d) promptly notify the Department and, where applicable, the Department of Public Health, of any suspected shortages or diversion of prescription medications;
- (e) promptly report to the Department and, where applicable, the Department of Public Health, any suspected misuse of prescription medication arising from the administration of medication in a manner inconsistent with the practitioner's prescription or in violation of 104 CMR 28.00 which the provider has reason to believe created a risk of harm to the person;
- (f) for registered sites, provide or arrange for technical assistance and advice to be provided as needed by a registered nurse, registered pharmacist or other licensed practitioner when questions arise regarding appropriate medication administration practices or the effects of medications. The provider shall establish policies and procedures which ensure reasonable access to such assistance and advice.

(13) Requirements Applicable to MAP Certification; Training, Duration, Suspension, Revocation and Denial.

(a) MAP Certification. Certification will be awarded to individuals who complete the training program and pass the examination requirements as established by the Department of Public Health in concert with the Department, the Department of Developmental Services, and the Department of Children and Families (~~collectively~~, "the Departments").

1. The training program for certification shall be taught by a registered nurse, nurse practitioner, physician assistant, pharmacist, or physician who meets applicable

requirements for a trainer jointly approved by the Department of Public Health, and the Departments. The Department of Public Health and, as appropriate, the Departments shall have the authority to monitor the training program for compliance with established standards.

2. Certification will be valid for two years and may be renewed upon the person meeting the standards for retraining and/or retesting approved established by the Department of Public Health and the Departments.

(b) Suspension, Revocation and Denial of MAP Certification. Certification may be suspended, revoked or denied if the Department finds that there is reasonable cause to believe the holder of, or the applicant for, the certification:

1. has been charged with or convicted of a crime involving controlled substances; or
2. has furnished or made any misleading or false statement in the application for, or renewal of, certification; or
3. ~~poses a risk to the~~ health, safety and welfare of persons; or,
4. is unfit to perform the duties for which the certification was granted.

No suspension, revocation or denial of certification will be made by the Department until it has given the holder or applicant notice of its intent to suspend, revoke or deny certification and the opportunity for an informal hearing before the Department to consider whether reasonable cause exists, and ~~a hearing has been held, if timely~~ requested. The hearing shall not be an adjudicatory proceeding within the meaning of M.G.L. c. 30A. The decision of the Department to suspend, revoke or deny a certification shall be final. Notwithstanding the foregoing, the Department may in its sole discretion immediately suspend an individual's certification pending delivery of notice and results of the hearing, if one has been requested.

(c) Notification. The Department shall notify the training program and all other Departments of any suspensions, revocations or denials of certification.

(d) Reinstatement. An individual whose certification has been suspended, revoked or denied may apply for recertification upon a showing that the conditions that led to such suspension, revocation or denial have been remediated. If the Department determines that such conditions have been remediated, the Department may approve such individual's application under terms of retraining and supervision as the Department may impose.

#### 28.07: Labor

- (1) No ~~client~~person, other than an employee or ~~contractor~~ of the service, shall be required to perform labor which involves the essential operation and maintenance of ~~the program~~a service site or the regular care, treatment or supervision of other ~~clients~~persons; provided, however, that:
  - (a) ~~client~~Persons who resides at a ~~program~~residential site may be required to perform labor involving normal housekeeping and home maintenance functions;
  - (b) ~~Clients~~Persons may perform labor in accordance with a planned and supervised program of vocational and rehabilitation training as set forth in the ~~client's~~person's individual service plans or individualized action plans.

- (2) The requirements of federal and state laws relating to wages, hours of work, worker's compensation and other labor standards shall be met to the extent that such laws apply to such required and voluntary labor.

#### 28.08: Possessions

- (1) No ~~program subject to 104 CMR 28.00~~provider shall interfere with the right of a ~~client~~person to acquire, retain and dispose of personally-owned property unless:
  - (a) the ~~client~~person is a minor, under guardianship or conservatorship, or has had a representative payee appointed; or
  - (b) in accordance with the provisions of 104 CMR 30.~~0302~~ or 30.07; or
  - (c) the ~~client~~person possesses contraband or any item prohibited by law; or
  - (d) ordered by a court of competent jurisdiction; or
  - (e) possession of such property poses an imminent threat of serious physical harm to the ~~client or others. If the program takes possession of the property on the grounds of imminent and serious physical harm, the program shall issue a receipt to the client and place the object in safekeeping~~person or others.

If the provider takes possession of a person's personally-owned property for the purposes of



storage, the provider shall issue a receipt to the person and place the property in safekeeping.

(2) Any restriction on the possession of personally-owned property shall be documented in the ~~client's~~person's record, and reviewed and monitored by the ~~human rights officer~~Human Rights Officer and Human Rights Committee.

(3) ~~Clients~~Persons have the right to be free from unreasonable searches of their person or property.

(4) ~~Each program subject to 104 CMR 28.00A~~ provider shall ~~develop a~~ensure that its service establishes, maintains and operates pursuant to written policy, consistent with applicable law and the requirements of 104 CMR 28.08, regarding ~~client~~personal possessions and the implementation of searches and seizures at service sites. ~~Clients~~Persons shall be informed of the policy prior to their ~~admission to~~enrollment into the ~~program~~service. The policy shall ~~require~~, at a minimum, ~~that, in all~~except emergency circumstances, ~~that~~ ~~clients~~persons and their legally authorized representative, if applicable:

- (a) be informed of a search prior to the search;
- (b) be provided an opportunity to consent to the search; and
- (c) be present during the search of their property.

All searches, including the reasons for the search, must be documented. If a search of a ~~client's~~person's room or property ~~needs to be performed in an emergency, in order~~ to avoid imminent risk of harm, and the ~~client~~person is not present during the search, the nature of the emergency and the reasons the ~~client~~person is not present should be documented in the record. The person and ~~the person's~~ legally authorized representative, if applicable, shall be notified of the emergency and search as soon afterwards as practicable.

#### 28.09: Records and Record Privacy

(1) A ~~program~~provider shall ~~maintain~~ensure that each of its services maintains an individual record of services provided to each ~~client who receives services from the program~~person served. Such records shall contain accurate, complete, timely, and relevant information, and shall be sufficiently detailed to enable a person to identify the types of services the ~~client~~person receives.

- (a) Records shall be maintained in a consistent format that facilitates information retrieval. Records may be handwritten, printed, typed or in electronic digital format, or any combination thereof of such.
- (b) A ~~program~~provider shall employ reasonable physical, technical and administrative safeguards to ensure the confidentiality, integrity and availability of records, and shall comply with all applicable federal and state laws and regulations.
- (c) A ~~client~~person who is the subject of a record, or the ~~client's~~person's legally authorized representative, who believes that the record contains inaccurate or misleading information, may request that it be amended. A service shall respond to such request in accordance with applicable state and federal requirements.

(2) Records of a ~~client~~person who is currently receiving or has received services from a ~~program~~provider shall be ~~confidential~~ private and not open to inspection except as provided in 104 CMR 28.09.

(3) Inspection by ~~Client~~Person, Legally Authorized Representative or ~~Client's~~Person's Attorney.

- (a) A ~~client~~person and the ~~client's~~person's legally authorized representative shall be permitted to inspect the ~~client's~~person's records unless the Commissioner or designee, being a licensed health care professional, determines that:
  - 1. inspection by the ~~client~~person is reasonably likely to endanger the life or physical safety of the individual or another person;
  - 2. the record makes reference to another person (other than a health care provider) and its inspection is reasonably likely to cause substantial harm to such other person; or
  - 3. inspection by the legally authorized representative is reasonably likely to cause substantial harm to the ~~client~~person or another person.
- (b) If access to any portion of a record is denied based on the criteria in 104 CMR 28.09(3)(a), the ~~client~~person or ~~the person's~~ legally authorized representative may appeal

such denial, and shall be informed of the right to appeal. The determination on appeal must be made by a licensed health care professional, other than the person who made the initial decision to deny access, and such determination shall be final.

(c) The ~~client's~~person's attorney shall be permitted to inspect the ~~person's~~ record upon request. The Commissioner or designee may require that the request be in writing and may further require appropriate verification of the attorney-client relationship.

(d) Staff may offer to read or interpret the record when necessary for the understanding of the ~~client~~person or his or her legally authorized representative. However, in no circumstance may an individual be denied access to a record solely because he or she declines the offer of staff to read or interpret the record.

(e) The records of emergency medical or dental treatment of a ~~client~~person under 18 years of age who consented to such care in accordance with M.G.L. c. 112, § 12F shall be confidential between the minor and physician or dentist and shall not be released except upon the written authorization of the ~~client under 18 years of age~~person or a proper judicial order.

(4) Inspection by Other Persons.

(a) Records of a ~~client~~person shall be open to inspection upon proper judicial order, whether or not such order is made in connection with pending judicial proceedings.

1. For the purpose of 104 CMR 28.09, "proper judicial order" shall mean an order signed by a justice or special justice of a court of competent jurisdiction, or a clerk or assistant clerk of such court acting upon instruction of such a justice. A subpoena shall not be deemed a "proper judicial order."

2. Whenever practicable, a ~~client~~person and the ~~client's~~person's legally authorized representative shall be informed of a court order for the production of the ~~client's~~person's record.

(b) Records or parts thereof shall be open to inspection by other third parties, upon receipt of written authorization from the ~~client~~person or the ~~client's~~person's legally authorized representative, provided that such written authorization ~~shall meet~~s the requirements set forth in 45 CFR 164.508.

(c) The Commissioner or designee may permit inspection or disclosure of the records of a ~~client~~person without written authorization as provided in 104 CMR 28.09(4)(b) where he or she has made a determination that:

1. such inspection or disclosure would be in the best interest of the ~~client~~person; and
2. such disclosure is permitted by the privacy regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA) at 45 CFR Parts 160 and 164, including that the records to be released are the minimum necessary to accomplish the purpose of such release; and-

3. it is not possible or practicable to obtain the written authorization of the person, if he or she has capacity, or the person's legally authorized representative.

~~Prior to authorizing any release of records pursuant to 104 CMR 28.09(4)(c) or (d), the Commissioner or designee must make a determination that it is not possible or practicable to obtain the written authorization of the client, if he or she has capacity, or the client's legally authorized representative.~~

(d) Without limiting the discretionary authority of the Commissioner or designee to identify other situations where inspection or disclosure is in the ~~client's~~person's best interest, ~~if it is not possible or practicable to obtain the informed written authorization of the client, if he or she has capacity, or the client's legally authorized representative,~~ such inspection or disclosure may be made in ~~in the following cases, if the requirements of the client's best interest~~accordance with 104 CMR 28.09(4)(d) ~~in the following cases~~are met:

1. to a physician or other health care provider who requires such records in the treatment of a medical or psychiatric emergency; provided, however, that the individual is given notice of such access as soon as possible;
2. to a medical or psychiatric facility currently caring for the ~~client~~person, where the disclosure is necessary for the safe and appropriate treatment and discharge of the ~~client~~person;
3. where the ~~client~~person has provided consent for a particular treatment or service, to those persons involved in such treatment or service;
- ~~4. between the Department and a contracted vendor regarding clients being served by the vendor for purposes related to services provided under the contract;~~
- ~~5. to enable the client~~4. to enable the person or someone acting on his or her behalf, to obtain benefits, protective services, or third party payment for services rendered to such individual;

- ~~6. to persons conducting an investigation involving the individual pursuant to 104 CMR 32.00: *Investigation and Reporting Process*;~~
  - ~~7. to persons authorized by the Department to monitor the quality of services being offered to the individual;~~
  - 85. to persons engaged in research if such access is approved by the Department pursuant to 104 CMR 31.00: *Research Authorization and Monitoring*;;
  - 96. to The Joint Commission or other accrediting bodies;
  - ~~10. reports of communicable and other infectious disease to the Department of Public Health and/or local board of health consistent with 105 CMR 300.000 *et seq.*;~~
  - 117. in the case of death, to coroners, medical examiners, or funeral directors.
- (e) Records may be disclosed as required by law. In addition to the laws and regulations of the Department, such laws include, but are not limited to:
- 1. M.G.L. c. 6, §§ 178C through 178Q (the Sex Offender Registry Law);
  - 2. M.G.L. c. 19A, § 23 (Executive Office of Elder Affairs - abuse of elderly persons, 60 years of age or older);
  - 3. M.G.L. c. 19C, § 10 (Disabled Persons Protection Commission – abuse of disabled persons 18 years of age through 59 years of age);
  - 4. M.G.L. c. 119, § 51A (Department of Children and Families – abuse or neglect of children younger than 18 years of age);
  - 5. 42 U.S.C. 10806 (Protection and Advocacy for Mentally Ill Individuals);
  - 6. M.G.L. c. 221, § 34E (Mental Health Legal Advisors Committee).
- ~~(f7. Reports of communicable and other infectious disease to the Department of Public Health and/or local board of health consistent with 105 CMR 300.000.~~
- (f) Pursuant to M.G.L. c. 6A, § 16, the Department must offset the costs of the services which it provides directly or through contract by maximizing all Title XIX and other federal, state, and private health insurance reimbursement which might be available for such services. Accordingly, records may be disclosed by the Department and/or its agents for the purpose of:
- 1. benefits/insurance coverage/availability inquiries;
  - 2. for obtaining third party reimbursement;
  - 3. for appeals of reimbursement denials; and
  - 4. for charging fee payers as set forth in 104 CMR 31.04.
- (g) Any disclosure under the exceptions enumerated in 104 CMR 28.09(4)(c) through (hf) shall be limited to the ~~minimum~~ information necessary to achieve the purpose of the exception.

(5) Notwithstanding the provisions of 104 CMR 28.09(3) and (4), inspection or disclosure of records or information shall not be permitted in the following circumstances:

~~28.09: continued~~

- (a) if the record or information was obtained from someone other than a health care provider on a promise of confidentiality, and the requested disclosure would likely reveal the source;
- (b) on a temporary basis only, during the course of research involving treatment, where the subject of the research agreed to such temporary suspension of access when consenting to participation in the research study;
- (c) if the subject of the record is in the custody of a correctional institution and the correctional institution has requested that access not be provided for health and safety reasons;
- (d) if the records are restricted under the Federal Clinical Laboratory Improvement Amendments;
- (e) if the records are created in anticipation of litigation.

#### 28.10: Legal Capacity, Guardianship and Conservatorship

- (1) No person shall be deemed to be incapacitated to manage his or her affairs, to contract, to hold a professional, occupational or vehicle operator's license, to make a will, to vote or to exercise any other civil or legal right solely by reason of ~~admission to enrollment in a program~~ service.
- (2) All ~~clients~~ persons who are 18 years of age or older shall be presumed to have the legal capacity to conduct their personal and financial affairs, unless otherwise determined by a court of

competent jurisdiction.

(3) In any assessment of capacity, an individual's need for a guardian, conservator, or for other ~~protective services~~ ~~fiduciary~~, shall be based on the following considerations:

(a) Generally, an individual shall be determined to be in need of guardianship, conservatorship, or other ~~protective~~ ~~fiduciary~~ services only if the individual's capacity to make ~~reasonable~~ ~~informed~~ decisions concerning his or her life, property, or both is so limited that the ~~absence of an individual with legal authority~~ ~~lacks the ability to make such decisions~~ ~~meet~~ essential requirements for ~~him or her~~ ~~creates a serious risk to the individual's~~ ~~physical~~ health, ~~welfare or~~ safety. ~~The fact that or self-care. That~~ an individual may even routinely make what others consider to be ~~bad~~ ~~poor~~ decisions is not a proper basis for recommending guardianship, conservatorship or ~~protective services~~; ~~only if the individual is not capable of making important decisions such that his or her health, welfare, or safety will be adversely impacted should a guardianship, conservatorship or protective services recommendation be made;~~ ~~other~~ fiduciary.

(b) Although the capacity of the individual to make important decisions is the central benchmark for determining the individual's need for guardianship, conservatorship or other ~~protective services~~ ~~fiduciary~~, the capabilities of the individual's family and other persons with whom the individual is associated, particular strengths and weaknesses in the individual's living circumstances, and the availability and utility of non-judicial alternatives to guardianships such as trusts, representative payees, citizen advocacy programs, or community support services should also be considered and may increase or lessen the degree of the individual's need;

(c) The assessment should identify the specific areas of the individual's functioning which are the basis of the recommendation relative to the need for a guardian, conservator or other ~~protective services~~ ~~fiduciary~~, such as inability to respond appropriately to health problems or consent to medical care, or inability to ~~handle~~ ~~manage~~ savings or routine expenses.

(4) If at any time a ~~client~~ ~~person~~ is determined to lack capacity to make informed decisions with regard to his or her health, welfare, or property and if non-judicial less restrictive alternatives such as trusts, representative payees, co-signatory bank accounts and citizen advocates are inadequate, the ~~client's~~ ~~person's~~ nearest living relatives shall be notified, if appropriate, and the ~~program~~ ~~provider~~ shall assist in the appointment of a conservator or guardian ~~or other fiduciary~~, as appropriate.

(5) If at any time a ~~client~~ ~~person~~ is determined to have regained the capacity to make informed decisions with regard to his or her health, welfare, or property-, the ~~program~~ ~~provider~~ shall assist in the removal of the ~~client's trustee, representative payee, advocate,~~ ~~person's~~ guardian, conservator or ~~guardian,~~ ~~other~~ fiduciary, as applicable.

(6) The ~~program~~ ~~provider~~ shall implement procedures to ensure that suspected improprieties of a guardian, conservator, trustee, representative payee or other fiduciary are reported to the Department and other appropriate authorities.

#### 28.11: Human Rights Committee; Human Rights Officer

(1) The ~~program director~~ ~~provider~~ of a ~~program subject to 104 CMR 28.00~~ ~~service~~ shall establish, appoint and empower ~~at least one~~ Human Rights Committee in accordance with the provisions of 104 CMR 28.11. ~~A provider shall establish more than one Human Rights Committee if -the total number of persons served, or the number, geographical separateness, or programmatic diversity of the service is so great as to limit the effectiveness of a single Committee in meeting the requirements of 104 CMR 28.11 and subject to the approval of-~~ as determined by the Department.

(2) ~~Subject to the approval of the Department, A~~ ~~a~~ ~~single~~ Human Rights Committee may be established ~~jointly by to cover~~ more than one ~~program director~~ ~~service~~; provided, ~~however~~, that the total number of ~~clients~~ ~~persons~~ served, or the number, geographical separateness, or programmatic diversity of the ~~program~~ ~~services~~ is not so great as to limit the effectiveness of the Committee in meeting the requirements of 104 CMR 28.11, ~~as approved by the Department~~.



- (3) The general responsibility of the Committee shall be to monitor the activities of the ~~programservice~~ with regard to the human rights of ~~clientspersons~~ served by the ~~programprovider~~. The specific duties of the Committee shall include:
- (a) Reviewing and making inquiry into complaints and allegations of ~~client~~ mistreatment, harm or violation of a ~~client'sperson's~~ rights and referral of such complaints for investigation in accordance with the requirements of 104 CMR 32.00: ~~Investigation and Reporting Process~~.
  - (b) Reviewing and monitoring the use of physical restraint and other limitations on movement in accordance with 104 CMR 28.05.
  - (c) Reviewing and monitoring the methods utilized by the ~~programprovider~~ to inform ~~clientspersons~~ and staff of ~~the clients'persons'~~ rights, to train ~~clientspersons~~ served by the ~~programprovider~~ in the exercise of their rights, and to provide ~~clientspersons~~ with opportunities to exercise their rights to the fullest extent of their capabilities and interests.
  - (d) Making recommendations to the ~~programprovider~~ and to the Department to improve the degree to which the human rights of ~~clientspersons~~ served by the ~~programprovider~~ are understood and enforced.
  - (e) Visiting the ~~programservice~~ sites of the applicable service, including all staffed residential sites as defined in 104 CMR 28.13, at least once per year, with prior notice, or without notice, provided good cause exists.
- (4) ~~Each~~The Human Rights Committee shall be composed of a minimum of five members, a majority of whom shall be ~~current or former~~ consumers of mental health services, family members of ~~current and former~~ consumers, or advocates; provided, however, that ~~noany~~ member ~~shall have~~who has any direct or indirect financial or administrative interest in the ~~programprovider~~ or in the Department ~~must comply with any applicable disclosure or other requirements under M.G.L. c.286A and related regulations~~.
- (5) The Human Rights Committee shall meet as often as necessary upon call of the Chairperson, or upon request of any two members, but no less often than quarterly. Minutes of all Committee meetings shall be maintained and provided to the Department upon request. The Committee shall develop operating rules and procedures, ~~as necessary~~which include specific reference to: quorum requirements, ~~respecting persons' confidentiality,~~ and removal of members. The Committee shall review and/or update its operating rules and procedures at least once per year.
- (6) The Human Rights Committee may delegate its duties to one or more subcommittee(s) comprised of members of the Committee; provided, however, that any recommendation for action by such subcommittee(s) must be ratified by the Human Right Committee.
- (7) The ~~program director of service~~ shall have a ~~program subject to 104 CMR 28.00~~ designate Human Rights Officer.
- (a) The Director shall designate and empower a person or persons employed by or affiliated with the program to serve as ~~a~~ Human Rights Officers, taking into consideration the number of ~~clientspersons~~ served ~~and, or~~ the number, geographical separateness ~~and, or~~ diversity of the ~~programservice~~ sites. The number of Human Rights Officers so designated shall be sufficient to ensure that ~~clientspersons~~ have timely access to a Human Rights Officer. ~~Each Human Rights Officer must, as a formal component of his or her job description for the program:~~
  - (b) If more than one Human Rights Officer is designated, ~~then~~ the Director shall also designate and empower a person or persons employed by the provider to serve as Human Rights Coordinator. The Human Rights Coordinator, who may also be a Human Rights Officer, is responsible to provide or arrange regular training, support, and coordinate the work of the Provider's various Human Rights Officers. This individual shall ensure the availability of Human Rights Officer assistance to persons. Each Human Rights Coordinator must participate in training programs for Human Rights Officers, including training provided by the Department.
  - (c) Each Human Rights Officer must, as a formal component of his or her job description:
    - 1. Participate in training programs for Human Rights Officers, including training provided by the Department;
    - ~~(b)~~2. Serve as staff to the ~~program's~~provider's Human Rights Committee;
    - ~~(e)~~3. Under the general direction of the Human Rights Committee and with the technical assistance of the Department, inform, train and assist ~~clientspersons~~ served ~~by the program~~ in the exercise of their rights, ~~including providing clients in~~



- accordance with ~~a copy of, or access to,~~ 104 CMR 28.00 and providing information about the availability of legal advocacy assistance;
- ~~(d)~~4. Assist ~~clients~~persons in obtaining legal information, advice and representation through appropriate means, including referral to independent attorneys or legal advocates;
- ~~(e)~~5. Provide information to ~~program~~provider staff regarding ~~clients'~~persons' rights.

28.12: Standards Applicable to All ~~Programs~~Services

- (1) Written Policies and Procedures. Each ~~program subject to 104 CMR 28.00~~provider shall ~~have ensure that each service it provides has~~ and ~~implement~~implements written policies and procedures which are consistent with the requirements of 104 CMR 28.00 and which address:
- ~~Program~~Provider philosophy and objectives;
  - ~~Admission~~Enrollment, intake and discharge, including criteria for ~~admission~~enrollment into and discharge from the ~~program~~service;
  - Maintenance of ~~client~~person records, consistent with the provisions of 104 CMR 28.09 ~~as well as and~~ all other applicable state and federal laws and regulatory requirements;
  - Development, implementation and review of individualized action plans, ~~or treatment plans consistent with 104 CMR 29.00,~~ as appropriate;
  - Quality and utilization management;
  - Medication, for those ~~program~~sservices prescribing or administering medications, consistent with 104 CMR 28.06;
  - Protection of ~~client~~human rights ~~consistent with 104 CMR 28.03;~~
  - Searches of ~~client~~ property, ~~consistent with 104 CMR 28.08;~~
  - Use of physical restraints, ~~consistent with 104 CMR 28.05;~~
  - Billing third party payers and ~~clients,~~persons for residential services and supports and Department charges, when applicable, ~~;~~ cancellation procedures, fee reductions, and abandoned ~~of~~ property consistent with 104 CMR 30.00: *Fiscal Administration* and any agreements with the Department;
  - Personnel, including job descriptions and minimal staff qualifications, staff supervision, and training;
  - Fire safety and other emergencies and disasters, including at least:
    - Procedures for evacuating ~~clients~~persons and staff;
    - Provision for first aid, through the availability of first-aid supplies, and appropriate staff training;
    - Provision for notification of fire, police, and hospital facilities for assistance;
    - Training for ~~clients~~persons and staff in emergency procedures and regular fire drill procedures;
    - Ensuring the provision of transportation, when necessary;
    - The identification of ~~ana~~ a minimum of two alternate ~~sites~~ites for relocation, when necessary; and
    - Notification and coordination with the Department and other state or federal agencies as applicable, ~~;~~
  - Implementation of appropriate protocols for when a ~~client~~person is missing;
  - ~~Risk management and mitigation;~~
  - Procedures for compliance with the Community Residence Tenancy Law, G.L. c.186 §17A, as applicable.
- (2) Staffing, Supervision and Consultation.
- ~~Program~~Director. The ~~program director~~Director shall be responsible for the direction and control of all staff and ~~services~~operation of the ~~program~~service. The ~~program director~~Director shall possess sufficient training, education, and professional experience.
  - The ~~program~~service shall have adequate staffing and staff shall have relevant work, personal and educational qualifications to enable the ~~program~~service to satisfy the requirements of 104- CMR 28.00.
  - Staff shall receive an orientation to all relevant provider policies and procedures, ~~including, but not limited to, those required by 104 CMR 28.12(1).~~
  - All staff, ~~including and~~ volunteers shall receive on-going training as appropriate to their responsibilities, including training on ~~clients'~~human rights.
  - Staffing patterns must be appropriate to meet the linguistic and cultural needs of ~~program~~clientspersons within the service.
  - Staff positions and qualifications shall be documented in writing through:

1. An ~~organization~~organizational outline detailing the working relationships and responsibilities of staff.
  2. Documentation of individual staff training, education and experience.
  3. Individual job descriptions.
  4. Individual work schedules.
  - (g) The ~~program~~provider shall provide regular supervision and/or consultation for all staff as appropriate to their responsibilities.
    1. The ~~program~~provider shall provide adequate supervision of staff and shall maintain records concerning supervised staff.
    2. The supervisor shall have adequate training, knowledge and experience to supervise any service performed by the supervised staff member.
- (3) Location and Physical Plant.
- (a) ~~Programs~~Services shall be located in areas and among other buildings which are appropriate to the services provided, the general design of which does not emphasize the ~~program's~~service's separateness or differences from the surrounding community in such a way as to stigmatize or devalue ~~clients~~persons.
  - (b) ~~Programs~~Service sites shall comply with applicable state and federal laws including physical accessibility for individuals with disabilities.
  - (c) Buildings shall meet all applicable fire, health, building, and safety codes.
  - (d) Requirements for fire drills. ~~The provider shall conduct fire drills at each service site at least quarterly and shall maintain written records of such fire drills.~~
    - ~~1. The program shall conduct fire drills at least quarterly and shall maintain written records of such fire drills.~~
    - ~~2. Programs that operate after 6:00 P.M. shall conduct at least two fire drills at night annually.~~
    - ~~3. The program shall maintain sufficient staff to ensure safe egress of all clients within 2½ minutes.~~
    - ~~4. The requirements of 104 CMR 28.12(3)(d) shall not apply to a residential site for up to four persons in which all of the residents are capable of self-preservation as provided in 104 CMR 28.14(4)(a).~~
  - (e) As appropriate, a ~~program~~service shall provide adequate space for administration needs, privacy in evaluation, and treatment. For programs that serve distinct ~~client~~groups, *e.g.*, children, separate space shall be provided for use by the distinct groups, consistent with their ~~program~~needs.
- (4) Notification of Legal Proceedings. Every ~~program~~provider shall report in writing to the Commissioner any legal proceeding, ~~within ten days of initiation of such proceeding,~~ brought against the ~~program~~provider or any person employed by the ~~program~~provider, if such proceeding arises out of circumstances related to the ~~provision of services or would impact the provider's ability to provide such services.~~ Such report shall be made as soon as practicable after the provider has received notice of the initiation of such legal proceeding.
- ~~care, treatment, training, supervision or, if applicable, living environment, of clientspersons utilizing a licensed site.the service.~~
- (5) Emergency Procedures. ~~Each program~~For each service, a provider shall:
- (a) Have the capacity to access staff as appropriate to provide or arrange crisis intervention and stabilization support to meet the individual needs of ~~clients~~persons.
  - (b) Have a written plan for providing or arranging emergency services during all hours of the ~~program's~~service's operation.
  - (c) Be responsible for providing or arranging transportation in an emergency situation.
  - (d) Maintain an emergency fact sheet(s) for each ~~client~~person which shall be readily available to staff and held in more than one location. The emergency fact sheet shall include, to the extent available:
    1. Name (and nicknames, if any);
    2. Age;
    3. General physical characteristics, including ~~sex~~gender identity, weight, height, build, hair and eye color;
    4. A recent photograph;
    5. General nature of abilities and physical disabilities;
    6. Strengths and limitations;

7. Location of ~~client's~~person's crisis plan, if any;
8. Special medical problems, including allergies and the names and doses of medications used;
9. Preferred language, and contact information for an interpreter, if available;
10. Pattern of movement, if missing previously;
11. Current addresses of family members, previous residence, place of employment, school, or day programs, and places frequented; and
12. Name, telephone, and address of ~~client's~~person's treating physician.
13. The person's legally authorized representative contact information, if applicable.

SUBPART B: ~~LICENSING REQUIREMENTS~~ STANDARDS FOR RESIDENTIAL SERVICE SITES28.13: ~~Licensing: General Provisions~~ Physical Standards(1) ~~-General Provisions.~~

~~(1) Programs Subject to Licensure. A program is required to obtain a license or licenses as follows:-~~

~~(a) Residential Site License. A site license is required for each residential site a program operates. A residential site is a site at which one or more clients reside, or are provided with sleeping accommodations, and service site in which the program has a direct or indirect ownership interest, or which the program leases or co-leases. If a program is a guarantor of a client's residential lease, the program is not required to obtain a residential site license for the leased property; provided, however, the program director shall provide the Area Director or designee with a letter attesting that the leased property meets applicable health, safety and fire codes. The Department may require a site inspection, providing good cause exists, to assess the general condition of the residence or unit.~~

~~(b) Program License. A program license is required for any program not operated or contracted for by the Department which operates a residential site and is organized primarily to provide treatment, rehabilitation, support and supervision for mentally ill persons.~~

~~(2) General Requirements for Licensure.~~

~~(a) To receive a residential site license, a program a service must be in compliance with the provisions of 104 CMR 28.13 and 28.14 (Subpart B).~~

~~(b) To receive a program license, a program must be in compliance with the provisions of Subpart A.~~

~~(c) Compliance with the provisions of 104 CMR 28.02 through 28.12 (Subpart A) by programs operated or contracted for by the Department is not subject to licensing, but to supervision or contract monitoring by the Area Director or designee.~~

~~(3) Operation of Unlicensed Programs. When the Department has reason to believe that a program is operating without all required licenses being valid and current, and the program has failed to apply for a license within ten days after notice by the Department, the Department may:~~

~~(a) Notify the District Attorney with jurisdiction over the program that the program appears to be operating in violation of M.G.L. c. 19, § 19;~~

~~(b) Petition the Superior Court with jurisdiction over the program to restrain its operation or to take such other actions as may be necessary in the interest of the clients utilizing the program;~~

~~(c) Undertake to provide alternative placements with the most adequate and appropriate alternative service arrangement available for clients as needed.~~

~~(4) meet ~~Reports and Notices.~~ For programs that are licensed by the Department, but which are not contracted for or operated by the Department, reports or notices to the Area Director or the Department under 104 CMR 28.00 shall be submitted to the Department's Office of Community Licensing.~~

~~(5) Duration of License. Licenses issued under 104 CMR 28.13 shall be valid for a term of two years and may be renewed for like terms, subject to revocation for cause.~~

~~(6) Provisional License. A provisional license shall be used for a residential site or program subject to licensure under 104 CMR 28.00 which is not currently in operation or for which compliance cannot fully be determined without an evaluation of the site or program in operation. After the granting of a provisional license the Department shall conduct a timely evaluation to determine what action regarding licensure should be taken.~~

~~(1) (7) Application Process for License or Renewal.~~

~~(a) Any program seeking to obtain a license specified in 104 CMR 28.00 Subpart B shall file an application in writing with the Department in a manner and on a form prescribed by the Department. Any program seeking to renew a license shall file an application for such renewal in writing with the Department, in a manner and on a form prescribed by the Department, not less than 90 days prior to the date of expiration of its current license. It shall be the responsibility of the Department to act upon an application within the 90 day period.~~

~~Failure to do so shall not invalidate a previously existing license.~~

~~(b) A program shall maintain the following documentation which shall be made available to the Department upon request:~~

28.13: continued

- ~~1. For business corporations, a copy of an Administration and Finance Form 4-A which can be obtained from a Department Area Office, together with any special or periodic reports submitted in amendment or supplementation to the annual report. In addition, for corporations incorporated within the previous year, a copy of the Articles of Incorporation and by laws.~~
  - ~~2. For non-profit corporations, a certified copy of the last annual report filed with the Secretary of State pursuant to M.G.L. c. 180, § 26A, together with any special or periodic reports submitted in amendment or supplementation to the annual report, and a certified copy of the last annual report filed with the Office of the Attorney General pursuant to M.G.L. c. 12, § 8F; or for non-profit corporations incorporated within the previous year, a copy of the Articles of Incorporation and by laws.~~
  - ~~3. A list of the names of all persons with any financial interest in the program including, but not limited to, persons with ownership interests in the building or buildings used by the program, paid or unpaid directors, shareholders, partners, loan creditor mortgagees, salaried employees and consultants. The financial interest statement shall be updated as necessary to accommodate changes.~~
  - ~~4. On forms provided by the Department and subject to audit or inspection by the Department, financial or other information to determine the qualifications of the program for licensure.~~
- ~~(c) The Department may visit the site or program for which license application is made and shall determine the compliance of the program with the requirements of 104 CMR 28.00 and any other applicable Department regulations.:~~
- ~~(8) Departmental Action on License Application. Upon receipt and review of all required documentation to the satisfaction of the Department, and after any site visit and review pursuant to 104 CMR 28.13(6) and (7), the Department may take one of the following actions:~~
- ~~(a) Issue the license if no deficiencies are outstanding;~~
  - ~~(b) Issue the license, subject to demonstrated progress by the program applicant in implementing a plan of correction approved by the Department;~~
  - ~~(c) Deny the license until such time as deficiencies are corrected;~~
  - ~~(d) Issue the license provisionally, subject to such conditions as the Department deems necessary.~~
- ~~(9) Visits by the Department. Any employee of the Department, including a consultant providing services for the Department, authorized by the Commissioner, may visit and inspect any program subject to 104 CMR 28.13 to determine whether such program is being operated in compliance with law, including the regulations of the Department.~~
- ~~(10) Departmental Inspection. The Department shall inspect each licensed residential site or program at least annually and more frequently if deemed necessary.~~
- ~~(a) Inspections should ordinarily be made with prior notice and at reasonable times, giving due regard to the privacy of the clients and the interruption that inspection may cause. However, the Department shall have the right to inspect any site at any time without prior notice providing good cause exists.~~
  - ~~(b) Generally, inspections will be conducted under the supervision of the Commissioner or designee, who may designate such persons as he or she deems necessary to accomplish the purposes of the inspection; provided, however, that:~~
    - ~~1. The Department may exercise reasonable discretion in limiting the number of participants in any inspection;~~
    - ~~2. Confidential information concerning clients shall not be disclosed except in accordance with the confidentiality requirements of 104 CMR 28.09.~~
  - ~~(c) Refusal to permit an inspection in accordance with 104 CMR 28.13 shall be grounds for suspension, termination, or revocation of a license.~~
  - ~~(d) The personal belongings, clothing and storage spaces of clients, such as, but not limited to, closets, dressers and trunks, shall not be subject to inspection by the Department without the consent of the client.~~
  - ~~(e) The scope of the Department's inspections shall include any aspect of the operation of~~



the residential site or program, and may include, but is not limited to confidential interviews with clients and staff, and examination and review of all records.

28.13: continued

~~(f) The Department shall provide a copy of the inspection report to the program director.~~  
~~(b)(a) (g) The contents of a Department inspection report are subject to the Massachusetts Public Records law, including all exemptions to disclosure.~~

~~(11) Waiver of Requirements.~~

- ~~(a) The requirements of 104 CMR 28.00 shall be strictly enforced and shall be waived by the Department only in accordance with the provisions of 104 CMR 28.13(11).~~
- ~~(b) No waiver shall be granted by the Department without a petition by the program and a determination by the Department that:
 
  - ~~1. The health, safety or welfare of either clients or staff of the program shall not be adversely affected by granting the waiver;~~
  - ~~2. In petitioning for the waiver, the program has stated a substitute provision or alternative standard which is deemed by the Department to result in comparable services to the clients and to which the program agrees to be held accountable to the same degree and manner as any applicable provision of 104 CMR 28.00.~~~~
- ~~(c) Waivers shall be granted for the duration of a license period and may be renewed.~~
- ~~(d) The granting of a waiver for any single program or license period, shall not guarantee the granting of a waiver for any other program or license period.~~

~~(2)(1) (12) Deficiency Identification and Correction.~~

- ~~(a) Whenever the Department finds upon inspection or through information that a program is not in compliance with any applicable law or regulation, other than in accordance with a waiver approved by the Department, the Department shall order the correction of the deficiency or the suspension or termination of the license.~~
- ~~(b) Every such correction order shall be in writing and shall include a statement of the deficiencies found, the period within which the deficiency must be corrected, and the provision of law and regulation relied upon.~~
- ~~(c) Within seven days of receipt of the correction order, the program may file a written request with the Department for administrative reconsideration of the findings or any portion thereof, which shall be granted forthwith.~~
- ~~(d) If the program director fails to correct any deficiency within the period prescribed for correction, the Department shall enforce its correction order under 104 CMR 28.13 or in accordance with M.G.L. c. 19.~~

~~(13) Suspension, Revocation and Refusal to Issue or Renew Licenses. After a hearing conducted pursuant to M.G.L. c. 30A, the Department may revoke, suspend, limit, refuse to issue or refuse to renew a license if it finds any of the following:~~

- ~~(a) The program failed to comply with any applicable regulation or any applicable deficiency correction order;~~
- ~~(b) The program refused to admit at any time any person authorized by the Commissioner to inspect the program in accordance with 104 CMR 28.13;~~
- ~~(c) The program refused to submit any report or to make available any records required under 104 CMR 28.00 or other Department regulations;~~
- ~~(d) The program made misleading or false statements or failed to furnish information or reports required under 104 CMR 28.00 or other Department regulations.~~
- ~~(e) Staff or persons subject to the direction of a program subjected a client to mistreatment as outlined in 104 CMR 28.04(1).~~

~~(3)(1) (14) Suspension in Emergencies.~~

- ~~(a) The Department may refuse to issue or renew or may suspend any license without a hearing if the failure of the program to comply with any applicable regulations appears to have resulted in an emergency situation which endangers the life, health or safety of clients or staff.~~
- ~~(b) Immediately upon such refusal or suspension, the program shall notify the affected clients and their families, when appropriate, and clients' legally authorized representatives, and shall immediately provide or arrange for the most adequate and appropriate alternative service arrangements available for such clients, or take such other action as may be directed by the Department, including but not limited to placing Department employees within the~~

~~program, as the Department deems necessary to protect the clients.28.13: continued~~

~~(c) The Department shall hold a conference with the program and, if it has not done so before, provide a written statement as to its reasons for its action within three days of suspension or refusal to issue or renew a license.~~

~~(a)(d) Upon written request of an aggrieved party to the Commissioner, a hearing shall be held within a reasonable amount of time after the license is refused or suspended, in accordance with the requirements of M.G.L. c. 30A.~~

~~(2)(1) (15) Change of Name, Ownership, Location or Services.~~

~~(a) Licenses shall not be transferable from one licensee to another individual or agency, or from one location to another.~~

~~(b) The program shall provide prior notification in writing to the Department of any change in ownership or of any change in the financial interests of persons associated with the program or with a residential site.~~

~~(c) The program shall notify the Department in writing of any change in the directorship of the program.~~

~~(d) The program shall notify the Department in writing of any changes in the physical plant of the program or of any other changes in the program which place the program out of compliance with any requirement of licensure within ten days of such change.~~

~~(e) The failure of a program to notify the Department of any change of name, ownership, location or services shall be grounds for suspension or termination of the program's license.~~

28.14: Site Requirements

~~(1) General Provisions. 104 CMR 28.14 sets forth licensing standards for programs requiring a residential site license.~~

~~(2) General Physical Requirements.~~

~~(a) Sites~~The site shall be located on state property or in a residential neighborhood or among other buildings which are setting appropriate to the services provided, the general design of which does not emphasize the site's separateness or differences from the surrounding community in such a way as to stigmatize or devalue clientspersons.

~~(b) Sites~~The site shall meet all applicable building, and sanitary, and safety requirements, as appropriate, including without limitation standards for persons who are classified as impaired or partially impaired in accordance with 104 CMR 28.14.

~~(c) Each~~The site shall provide space for all the residential functions characteristic of a comfortable and homelike environment, including cooking, dining, recreation, socializing, sleeping, bathing and storing belongings.

~~(d) Each~~The site, including its heating, plumbing, lighting and ventilation systems, furnishings and equipment shall be maintained in good repair to ensure safety and physical comfort.

~~(e) Major environmental controls, including those for lighting, plumbing, windows and shades, shall be operable by and accessible to clientspersons.~~

~~(f) Each~~The site shall store medication in accordance with 104 CMR 28.06(910).

~~(g) ClientsPersons~~ shall be provided with bedroom space adequate for sleeping, dressing, personal care, and caring for personal possessions.

1. No more than two persons may occupy one bedroom.

2. Smoking shall be prohibited in resident sleeping rooms.

3. Each bedroom must meet minimum space requirements. Closet space shall not be included when calculating square footage:

a. aA bedroom to be occupied by one clientperson must be at least 100 square feet

b. aA bedroom to be occupied by two persons must be at least 120 square feet.

4. Every bedroom shall have sufficient space to accommodate comfortably a bed, dresser, and closet space for each clientperson.

5. Bedroom may not have security chains, night latches, double cylinder dead bolts, flush bolts or surface bolts; and an allowable lock on a bedroom door must be able to be opened by means of a master key.

~~(h) Each site shall provide bathroom facilities adequate for all clientspersons and staff to carry out normal bathroom functions, including bathing and personal care, with staff assistance as needed.~~

~~(i) Each site shall have one means of egress and one escape route serving each floor and~~

leading to grade. Any proven useable path to the open air outside at grade shall be deemed acceptable as an escape route, including, but not limited to, connecting doors, porches, windows within six feet of grade, ramps, fire escapes, and balcony evacuation systems. ~~There shall not be locks which prevent unimpeded exit on any doors which lead to a means or egress or escape route.~~

(j) Each site shall have smoke detectors and carbon monoxide detectors ~~and fire extinguishers~~ in accordance with the following:

1. A minimum of one smoke detector shall be provided for each 1200 square feet of area, or part thereof; provided however, one smoke detector shall be located outside each bedroom;
  2. Carbon monoxide detectors shall be provided in accordance with the requirements of 527 CMR ~~31.001.05~~.
  3. ~~Programs~~ A minimum of one portable fire extinguisher tagged and inspected shall be provided for each level of the site including the attic and the basement, if any.
  4. Providers are responsible for ensuring that smoke and carbon monoxide detectors ~~and fire extinguishers~~ are in good working condition at all times.
- ~~(k)~~ All doors leading to areas where ~~clients~~persons are not allowed under applicable building codes shall be maintained locked by ~~program~~provider staff.

~~(32)~~ Capacity. The capacity of ~~each~~a residential site shall be ~~determined~~subject to approval by the Department, ~~and which may vary depending on the~~consider such factors as size, location, and other characteristics of the residence, the ages and needs of the ~~clients~~persons, the experience and capability of the ~~program~~service, and the requirements of the State Building Code ~~(780 CMR):~~  
*State Board of Building Regulations and Standards*.

#### 28.14: Self Preservation Standards

##### (1) Classification of ~~Clients~~Persons.

(a) ~~For purposes of 104 CMR 28.14, self~~Self-preservation means the capability both mentally and physically to take action to preserve one's own life, specifically to egress the building in which one resides unassisted within 2½ minutes.

(b) ~~Programs~~The Department and Providers shall classify ~~clients~~persons residing at each ~~licensed~~residential site as follows:

1. Impaired. An impaired ~~client~~person is a ~~client~~person who is not capable of self-preservation, who requires physical assistance to exit the building within 2½ minutes.
  2. Partially Impaired. A partially impaired ~~client~~person is a ~~client~~person who is not capable of self-preservation, who is capable of exiting the building within 2½ minutes without physical assistance, but with supervision and/or instruction.
  3. Unimpaired. An unimpaired ~~client~~person is a ~~client~~person who is capable of self-preservation, who is capable of exiting the building within 2½ minutes without physical assistance and/or supervision or instruction.
- (c) Procedures and documentation requirements for ~~client~~person classification.
1. The ~~program~~provider shall conduct a test of the ~~client's~~person's ability to exit the building from the ~~client's~~person's sleeping quarters, and common areas if more remote, prior to placement into the ~~program~~service; except that a ~~program~~provider may classify a ~~client~~person as impaired without such a test.
  2. Test documentation shall include the time required to exit the building, the type of assistance required, if any, either physical or verbal, date of testing, and name of the person(s) conducting the test.
  3. Test results shall be documented in the ~~client's~~person's record.
  4. The ~~program~~provider shall keep a central record of the classification of each ~~client~~person in the residential site.
  5. Except for a residence or apartment for up to four persons in which all of the residents are capable of self-preservation, testing for ~~client~~person classification shall be conducted at least quarterly, and may be part of the quarterly fire drill. ~~Where quarterly fire drills are not required self~~–preservation testing shall be conducted at least annually.
  6. No ~~client~~person shall have his or her status changed to a less restrictive classification without substantiating documentation for at least two consecutive tests, which shall be conducted at least one week apart.

~~(d) The program~~(2) Self-Preservation Training. The provider shall provide or arrange for

provision of training in self-preservation, including knowledge of fire safety. The ~~program~~provider shall maintain documentation of such training.

(~~e~~)—3) Staffing Requirements. If a ~~client~~person is classified under 104 CMR 28.14(~~41~~) as impaired or partially impaired, the ~~program~~provider must develop and maintain a staffing pattern to ensure the safety of the ~~client~~person and egress of all ~~clients~~persons within 2½ minutes.

(~~f~~)—(4) Evacuation Training. All staff shall be trained in evacuation procedures for impaired and partially impaired ~~clients~~persons.

(5) ~~Inspection by the Department. Sites within the scope of 104 CMR 28.14 are subject to inspection by the Department in accordance with the Fire Drills.~~ The following are requirements of ~~104 CMR 28.13. The scope of the Department's inspection of~~ for fire drills at residential sites.

(a). The provider shall conduct fire drills at each residential site ~~may include, but~~ at least quarterly, and at least two of which shall be after 6:00 P.M. and shall maintain written records of such fire drills.

(b) The provider shall maintain sufficient staff to ensure safe egress of all persons within 2½ minutes.

(c) The requirements of 104 CMR 28.14(5) shall not ~~be limited,~~ apply to a ~~review~~ residential site for up to four persons in which all of the residents are capable of self-preservation as provided in 104 CMR 28.14(1)(a).

## SUBPART C: LICENSING REQUIREMENTS AND COMPLIANCE WITH STANDARDS

28.15: General Provisions

This section describes the residential sites that are subject to licensure, and the provisions for enforcement of Subparts A and B as to all community mental health services which are operated, licensed or contracted for by the Department.

(1) Licensing Requirements. In accordance with M.G.L. c. 19, §19, the Department shall issue and renew a license to operate residential sites to providers under contract with the Department and providers of private residential programs if the residential sites meet the requirements set forth in 104 CMR 28.15. For purposes of 104 CMR 28.15, a private residential program is a program not operated by or under contract to the Department that is organized primarily to provide treatment, of mental illness to persons in a residential environment that operates one or more residential sites. Treatment includes, but is not be limited to, rehabilitation, support or supervision

(a) A license is required for providers under contract with the Department for each residential site where one or more persons reside, or are provided with sleeping accommodations, and the provider has a direct or indirect ownership interest, or leases or co-leases. If the provider is a guarantor of a person's residential lease, the provider is not required to obtain a residential site license for the leased property; provided, however, the Director of the service shall provide the Area Director or designee with a letter attesting that the leased property meets applicable health, safety and fire codes. For good cause the Department may require a site inspection to assess the ~~general condition of the building, apartment, furnishings and grounds and the adequacy and sanitary conditions of bathrooms, toilets, and mattresses, as~~ leased property. A license is not required for residential sites located outside of the state or licensed by another state agency.

(b) A license is required for a provider of a private residential program for each residential site where one or more persons reside and the provider has a direct or indirect ownership interest, or leases or co-leases with a party other than the person residing at the residential site.

(c) To obtain or retain a license for a residential site a licensing applicant shall satisfy the Department that the residential site meets all applicable requirements of 104 CMR 28.00, Subpart B and that the service or program of which the site is a part of meets all applicable requirements of 104 CMR 28.00, Subpart A.

(d) Operation of an Unlicensed Residential Site. -When the Department has reason to believe that a provider is operating without a required residential site license; and the provider has failed to apply for a license within ten days after notice by the Department, the Department may:

1. Notify the District Attorney with jurisdiction over the provider that the provider appears to be operating in violation of M.G.L. c. 19, § 19;
2. Petition the Superior Court with jurisdiction over the provider to restrain its operation or to take such other actions as may be necessary in the interest of the persons utilizing the service;
3. Undertake to provide alternative placements with the most adequate and appropriate alternative service arrangement available for persons as needed; or
4. Take such other action as it deems appropriate to ensure person health, safety or welfare.

(2) Compliance With 104 CMR 28.00 Subparts A and B.

(a) Services and Private Programs Operating Residential Sites Subject to Licensure. Compliance with the provisions of 104 CMR 28.02 through 28.12 (Subpart A) and 104 CMR 28.13 through 28.14 (Subpart B)- by all services and private programs operating residential sites subject to licensure shall be enforced by the Office of Community Licensing, pursuant to 104 CMR 28.17. Nothing in this section shall preclude the Department from also taking enforcement action under a contract when appropriate.

(b) Department Operated Services with Residential Sites. Compliance with the provisions of 104 CMR 28.02 through 28.12 (Subpart A) and 104 CMR 28.13 through 28.14 (Subpart B) by services operated by the Department that include residential sites shall be subject to audit by the Office of Community Licensing and enforcement by the applicable Area Director or designee.

(c) Services Not Having Residential Sites Subject to Licensure. Compliance with the provisions of 104 CMR 28.02 through 28.12 (Subpart A) by services operated or contracted



for by the Department that do not have a residential site subject to licensing or otherwise subject to 104 CMR 25.15(2)(b), shall be subject to audit and enforcement by the applicable Area Director or designee.

(d) For the purpose of carrying out audit and enforcement responsibilities under 104 CMR 28.15(2), Area Directors or designees shall have the same right to inspect service sites as the Department has the right to inspect residential sites under 104 CMR 28.17.

(3) Waiver of a Standard for Community Services or for Residential Service Sites.

(a) The requirements of 104 CMR 28.00 shall be strictly enforced and shall only be waived by the Department upon approval of a written request of a provider in accordance with the provisions of 104 CMR 28.15(3).

(b) A provider's written request for a waiver of one more of the provisions of 104 CMR 28.00 must:

1. Demonstrate that the health, safety or welfare of either persons or staff of the service shall not be adversely affected by granting the waiver; and
2. Provide a substitute provision or alternative standard that will result in comparable services to the persons and to which the provider agrees to be held accountable to the same degree and manner as any applicable provision of 104 CMR 28.00.

(c) The Department may grant a provider's request for waiver upon a determination that the petition meets the requirements of 104 CMR 28.15(3).

(d) Waivers shall be granted for a specified period of time which if applicable to a licensed residential site shall not to exceed the duration of the license. A waiver may be renewed upon subsequent petition.

(e) The granting of a waiver shall not guarantee the granting of a waiver for a subsequent period or service.

(f) The Department may determine that one or more of the provisions of 104 CMR 28.00 is not applicable to a particular service, and may grant a waiver of such provision(s) to all such services.

28.16: Process for Obtaining or Renewing a License

(1) Application Process for License or Renewal.

(a) Any applicant seeking to obtain a license for a residential site as specified in 104 CMR 28.00 Subpart C shall file an application in writing with the Department in a manner and on a form prescribed by the Department. The applicant must be the agency or person with principal legal responsibility for the administration and operation of a residential site.

(b) If any agency or individual operates more than one residential site, such agency or individual must apply for a separate license for each such residential site.

(c) Any agency or person seeking to renew a license shall file an application for such renewal in writing with the Department, in a manner and on a form prescribed by the Department, not less than 90 days prior to the date of expiration of its current license. It shall be the responsibility of the Department to act upon an application for renewal within the 90-day period. Failure to do so shall not invalidate a previously existing license.

(d) A licensing applicant shall maintain the following documentation which shall be made available to the Department upon request:

1. For business corporations that are for profit, a copy of an Administration and Finance Form 4-A, together with any special or periodic reports submitted in amendment or supplementation to the annual report, as well as a copy of the Articles of Incorporation and by-laws.
2. For non-profit corporations, a certified copy of the last annual report filed with the Secretary of State pursuant to M.G.L. c. 180, § 26A, together with any special or periodic reports submitted in amendment or supplementation to the annual report, and a certified copy of the last annual report filed with the Office of the Attorney General pursuant to M.G.L. c. 12, § 8F; as well as, a copy of the Articles of Incorporation and by-laws.
3. A list of the names of all persons with any financial interest in the provider including, but not limited to, persons with ownership interests in the building or buildings used by the provider, paid or unpaid directors, shareholders, partners, loan creditor mortgagees, salaried employees and consultants. The financial interest statement shall be updated as necessary to accommodate changes.

(2) Departmental Action on Application for License or Renewal. Upon receipt and review by the Department of all required documentation, and after any inspection made pursuant to 104

CMR 28.17, the Department shall take one of the following actions:

- (a) Issue a license if no deficiencies are outstanding.
- (b) Issue a license subject to implementation by the applicant of a plan of correction approved by the Department. Failure to implement a corrective action plan in accordance with its terms may result in suspension, revocation of the license as provided in 104 CMR 28.17.
- (c) Issue a provisional license for residential sites not currently in operation or for which the Department cannot fully determine compliance with the requirements of 104 CMR 28.00 without an evaluation of the residential site in operation. No later than 90 days after a service begins operation of a residential site under a provisional license, the Department shall conduct an inspection to determine whether to issue a license in accordance with 104 CMR 28.16.
- (d) Suspend, revoke or deny a license until such time as deficiencies are corrected.

(3) Duration of License. Licenses issued under 104 CMR 28.16 shall be valid for a term of two years and may be renewed for like terms, subject to revocation or suspension pursuant to 104 CMR 28.17.

(4) Change of Name, Ownership, Location or Services.

- (a) Except as approved by the Department, licenses shall not be transferable from one licensee to another individual or agency, or from one location to another.
- (b) The provider shall provide prior notification in writing to the Department of any change in name or ownership of the provider agency or program or of a licensed residential site.
- (c) The provider shall notify the Department in writing of any change in the director of the provider or service affiliated with a licensed residential site within ten days of such change.
- (d) The provider shall notify the Department in writing of any changes in the physical plant of the residential site, or of any other changes in the service or program of which the residential site is a part which is contrary to any requirement of licensure within ten days of such change.
- (e) The failure of a provider to notify the Department of any change of name, ownership, director, location or services shall be grounds for suspension or revocation of the license.

28.17: Licensing, Compliance and Enforcement

(1) Departmental Inspection.

- (a) Any employee or agent of the Department, including a consultant providing services for the Department, authorized by the Area Director or the Office of Community Licensing, may visit and inspect residential sites subject to 104 CMR 28.00, and any service site of the service or program of which the residential site is a part, to determine whether such sites are in compliance with law, including the regulations of the Department.
- (b) The Department shall inspect each licensed residential site at least annually and more frequently if deemed necessary.
- (c) Inspections should ordinarily be made with prior notice and at reasonable times, giving due regard to the privacy of the persons and the interruption that inspection may cause. However, the Department shall have the right to inspect any site at any time without prior notice providing good cause exists.
- (d) Refusal to permit an inspection in accordance with 104 CMR 28.17 shall be grounds for suspension or revocation of a license.
- (e) The personal belongings and clothing of persons shall not be subject to inspection by the Department; provided, however that storage spaces, including, but not limited to closets and storage areas may be inspected for purposes of determining compliance with applicable health and safety standards and the structural integrity of the site.
- (f) The scope of the Department's inspections shall include any aspect of the operation of the residential site or provider, and may include, but is not limited to confidential interviews with persons and staff, and examination and review of all records.
- (g) The Department shall provide a copy of the inspection report to the provider; provided, however, that confidential information concerning persons shall not be disclosed except in accordance with the confidentiality requirements of 104 CMR 28.09.
- (h) The contents of a Department inspection report are subject to the Massachusetts Public Records law, including all exemptions to disclosure.

(2) Deficiency Identification and Correction.

- (a) Whenever the Department finds that a service is not in compliance with any applicable law or regulation, other than in accordance with a waiver approved by the Department, the Department shall, if it deems the deficiency remediable, issue a corrective action order.
- (b) A correction order shall be in writing and shall include a statement of the deficiencies found, the period within which the deficiency must be corrected, and the provision of law and regulation relied upon.
- (c) Within seven days of receipt of the correction order, the provider may submit a written request to the relevant Department Area Director for administrative reconsideration of the findings or any portion thereof, which shall be granted forthwith.
- (d) If the provider fails to correct any deficiency within the period prescribed for correction, the Department may enforce its correction order under 104 CMR 28.17 or in accordance with M.G.L. c. 19.
- (e) Nothing in this section shall preclude the Department from also taking enforcement action under a contract when appropriate.

(3) Suspension, Revocation and Denial of Licenses.

- (a) The Department may revoke, suspend or deny issuance or renewal of a license if it finds any of the following:
  - 1. The provider failed to comply with any applicable regulation or any applicable deficiency correction order;
  - 2. The provider refused to admit at any time any person authorized by the Commissioner to inspect the service in accordance with 104 CMR 28.13;
  - 3. The provider refused to submit any report or to make available any records required under 104 CMR 28.00 or other Department regulations;
  - 4. The provider made misleading or false statements or failed to furnish information or reports required under 104 CMR 28.00 or other Department regulations.
  - 5. Staff or persons subject to the direction of a provider subjected a person to mistreatment as defined in 104 CMR 28.04(1).
- (b) When the Department determines to suspend, revoke, or deny a license, it shall provide written notice to the applicant or licensee, notifying it of the intended action, of the grounds therefore, and of the applicant or licensee's right to request of the Commissioner a hearing regarding the matter conducted pursuant to M.G.L. c. 30A.

(4) Suspension in Emergencies.

- (a) The Department may refuse to issue or renew or may suspend any license without providing the opportunity for a prior hearing if the failure of the provider to comply with any applicable regulations appears to have resulted in an emergency situation which endangers the life, health or safety of persons or staff.
- (b) Immediately upon such refusal or suspension, the provider shall notify the affected persons and their families, when appropriate, and persons' legally authorized representatives, and shall immediately provide or arrange for the most adequate and appropriate alternative service arrangements available for such persons, or take such other action as may be directed by the Department, including but not limited to placing Department employees within the service, as the Department deems necessary to protect the persons.
- (c) The Department shall hold a conference with the provider and, if it has not done so before, provide a written statement as to its reasons for its action within three days of suspension or refusal to issue or renew a license.
- (d) Upon written request of an aggrieved party to the Commissioner, a hearing shall be held within a reasonable amount of time after the license is refused or suspended, in accordance with the requirements of M.G.L. c. 30A.

(4)(5) Reports and Notices. Reports and Notices. Private residential programs that have a residential site license(s) shall submit all reports or notices required under 104 CMR 28.00 to the Department's Office of Community Licensing.

REGULATORY AUTHORITY

104 CMR 28.00: M.G.L. c. 19, §§ 1, 16, ~~and 18 and 19~~; ~~M.G.L. c. 123, § 2.~~

(PAGES 381 AND 382 ARE RESERVED FOR FUTURE USE.)