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104 CMR 29.00: APPLICATION FOR DMH SERVICES, REFERRAL, SERVICE PLANNING AND APPEALS

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29.01: ~~Legal Authority~~, Scope and Purpose

~~(1) Legal Authority. 104 CMR 29.00 is promulgated under authority of M.G.L. c. 19, §§1 and 16, and M.G.L. c. 123, § 2.~~

~~(2) Scope.~~ 104 CMR 29.00 applies to the application for and the provision of DMH services in community programs and services that are contracted for, or operated by the Department.

~~(3) Purpose.~~ 104 CMR 29.00 is issued to provide a framework by which DMH services are provided in the community to adults with serious and long term mental illness and children and adolescents with serious emotional disturbance.

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29.02: Definitions

~~Adult. -For purposes of 104 CMR 29.00, an individual who is 22 years of age or older.~~~~means~~
~~aAn individual over the age of 22.~~

~~Area Director. -means tThe individual responsible for -Area Director with the administration and operation of -responsibility for~~Department activities in the ~~DMH Area community~~ where the individual or, in the case of a minor, where his or her legally authorized representative, resides.

Comment [LDB1]: Note: Area is defined in 104 CMR 25.00

~~Area Medical Director. - means tThe senior psychiatrist with clinical oversight of Department activities in the DMH Area community where the individual or, in the case of a minor, where his or her legally authorized representative, resides; the role of Area Medical Director may be delegated to a child psychiatrist with clinical oversight of services provided to youth in the Area.~~

~~Case Management, Including eCritical nNeed eCase mManagement. - means a-A~~ service operated by the Department, which is performed in accordance with the provisions of 104 CMR 29.00. The scope of Case Management is set forth at 104 CMR 29.05.

~~Client. - means aAn individual for whom DMH services have been authorized and -whose application for DMH services has been approved and~~who is enrolled in a DMH service._

~~DMH. -means~~ Department of Mental Health.

~~DMH Community Services. -means eCommunity-based services contracted for or operated by the Department, but which do not include: eCase mManagement, or~~ short term services provided

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pursuant to 104 CMR 29.04(1)(~~hg~~), outpatient clinic services, forensic or court ordered evaluations, or acute mental health services, such as crisis intervention or emergency screening. DMH Community Services do not include services provided in facilities licensed pursuant to 104 CMR 27.00.

DMH Services~~s~~ ~~means~~ DMH Community Services~~s~~ and/or Case Management.

Youth. An individual~~child or adolescent~~ under the age of 22.

29.03: General Provisions

(1) The Department is responsible for providing or arranging for DMH services to adults with serious and long term mental illness, and children and adolescents with serious emotional disturbance, who are determined to meet clinical criteria and to need DMH services.

(2) To receive a DMH service an individual must meet the clinical criteria set forth in 104 CMR 29.04(2) and be determined to need a DMH service in accordance with 104 CMR 29.04(3); an individual will only be authorized to receive a DMH community service, if the Department must have~~has~~ the available capacity and resources to provide the DMH ~~community~~ service.

(3) An individual requesting DMH services from the Department shall be informed:
~~(a)~~ that provision of DMH services is contingent upon the availability of services and funding; and of the:

- ~~(b)~~ need to apply and be approved for DMH services;
- ~~(e)~~ the obligation to provide authority of the Department with to require necessary and relevant information about the individual's needs and resources, including access to entitlements, insurance and other services, as determined by the Department;
- ~~(d)~~ individual's right to participate in DMH services planning activities as set forth in 104 CMR 29.06;
(d) expectation that DMH services are time limited and that service planning includes development of a transition plan;
- ~~(e)~~ authority of the Department or its providers to charge for and, if applicable, adjust charges for services pursuant to 104 CMR 30.04 and for services and support~~room or room and board pursuant~~ to 104 CMR 30.06;
- ~~(f)~~ right to appeal:
 - 1. a denial of an application for DMH services based on clinical criteria ~~or a determination regarding that an individual's does not have a~~ need for DMH services in accordance with 104 CMR 29.16~~(3)~~; and
 - 2. a DMH services planning activity or implementation decision as included in an individual service plan or individualized ~~action plan~~plan in accordance with 104 CMR 29.16(4); and
- ~~(g)~~ authority of the Department to maintain the name of the individual and other personal information in a confidential record keeping system, including by electronic means; obligation of the Department to keep the individual's personal health information confidential in accordance with state and federal law, as described in the Department's Notice of Privacy Practices, which shall be provided to the individual upon application for DMH services.

(4) All information given to individuals pertaining to the application and DMH services planning activities pursuant to 104 CMR 29.00, including notifications, comprehensive assessment of needs, clinical and other assessments, individual service plans and individualized ~~action plan~~plans shall be conveyed or written in language that is easy to understand, and to the extent practicable, in the individual's preferred language.

(5) DMH services are intended to promote resiliency, facilitate recovery and support individuals to live, attend school, work and participate in their communities. It is expected that most individuals authorized for DMH services will achieve a degree of recovery such that they will no longer need DMH services.

(6) To the maximum extent feasible, individuals authorized to receive DMH services will receive services that are age and developmentally appropriate.

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~~(57) Unless otherwise specified, computation of time—Time for any action required to be taken under 104 CMR 29.00 shall be in accordance with 104 CMR 25.04. Unless otherwise specified, all computation of days within 104 CMR 29.00 shall be in accordance with the following:~~

- ~~(a) when the time period is less than seven days, Saturdays, Sundays, and legal holidays are not counted;~~
- ~~(b) when the time period is seven days or longer, the time is counted in calendar days, except when the last day is a Saturday, Sunday, or legal holiday, in which case the final day counted is the next business day;~~
- ~~(c) the day on which action or event is initiated is not counted.~~

29.04: Application for DMH Services; Clinical Criteria and Determination of Need

(1) Application for DMH Services.

- (a) An application for DMH services for an individual shall be submitted to the DMH Area Office ~~Department office with responsibility for the community~~ where the individual or, in the case of a minor, where his or her legally authorized representative, resides.
- (b) An application may be submitted by:
 - 1. An individual or his or her legally authorized representative. An individual may be assisted by another person in completing the application.
 - 2. A facility or program on behalf of an individual:
 - a. if the facility or program submitting the application has obtained the necessary authorization from the individual or his or her legally authorized representative to do so ~~if the individual, or his or her legally authorized representative, after being notified, does not object to the submission of an application;~~ or
 - b. ~~if~~ if the facility or program believes an individual lacks the capacity to apply for services, ~~and~~ and has filed a petition with the Probate and Family Court for guardianship for the individual.

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~~29.04: continued~~

- (c) An application shall include the following:
1. a completed application form;
 2. supporting documentation of psychiatric evaluations and clinical records that are available to the individual. The individual or his or her legally authorized ~~representative, representative~~ may be asked to authorize the Department to obtain additional information which it deems necessary to support the application.
- (d) The Department may, ~~at-in~~ its discretion, require a personal interview and/or a clinical evaluation of the individual to gather additional information to support the application.
- ~~(e) An application shall be deemed considered complete when the Department has received the completed application form and such additional information which it deems necessary to support the application.~~
- (fe) Time frame for actions to be taken on an application ~~shall be:~~
1. ~~Within 5 business days of receipt of the an application form, the Area Director or designee shall review the application to determine whether additional information is required, and shall notify the applicant that the application has been received and request any additional information identified.~~
 2. ~~Within 20 business days of receipt of an application form, the Area Director or designee shall determine whether the application is complete, and if any additional information requested has not been received, shall so notify the applicant or take other appropriate steps to obtain such information.~~
- ~~43. Within 20 days of receipt of the completed application, including any supporting documentation additional information requested by the Department, the Area Director or designee shall determine whether the individual meets clinical criteria set forth in 104 CMR 29.04(2).~~
- ~~34. If within 90 days of receipt of the application, any supporting documentation additional information, personal interviews and/or clinical evaluations have not been received or completed, the Area Director or designee shall make a determination on the application based upon such information as is then available; provided, however, that if the applicant refuses to provide such additional information or to participate in a personal interview and/or clinical evaluation, the application may be deemed withdrawn. The Area Director or designee may extend this time period for good cause~~
- ~~25. Within 20 business days of an individual being determined to meet clinical criteria for DMH services as set forth in 104 CMR 29.04(2), the Area Director or designee shall determine whether the individual needs DMH services as set forth in 104 CMR 29.04(3).~~
- ~~The Area Director or designee may extend this time periods within 104 CMR 29.04(1)(fe) for good cause.~~
- ~~3. if within 90 days of receipt of the application, any supporting documentation, personal interviews and/or clinical evaluations have not been received or completed, the Area Director or designee shall make a determination on the application based upon such information as is then available. The Area Director or designee may extend this time period for good cause.~~
- (gf) The Department may redetermine whether a client continues to meet the criteria for DMH Services pursuant to 104 CMR 29.04(2) and (3) annually ~~or~~ when a client's circumstances have changed ~~or when information becomes available that may affect the Department's decision regarding service authorization.~~
- (hg) If during the application process the Area Director or designee determines that the individual is in need of short-term services, ~~including short-term critical need case management pursuant to~~, the Area Director or designee may authorize such services for up to 60 days, ~~which time may, in the Area Director's discretion, be extended for additional 60-day periods.~~ During this period, the individual's application shall be considered "pending." Provision of such services does not indicate whether an application will be approved, and shall not be subject to appeal pursuant to 104 CMR 29.16.
- (ih) ~~The Department may develop and provide limited services that, in the Department's sole discretion, may be approved without requiring the applicant to submit a full application or to meet the clinical and service need requirements set as provided in 104 CMR 29.04.~~
1. ~~Requests for and approval of such limited services shall be based on criteria determined by the Department to be applicable to such services~~
 2. ~~An individual who receives such limited services shall not be considered a DMH client for purposes of 104 CMR 29.00; provided, however, a provider of such services may be required by contract to comply with service planning provisions of 104 CMR~~

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29.00.

3. ~~Denial of a request for such limited services shall not be subject to appeal pursuant to 104 CMR 29.16.~~

(2) Clinical Criteria for DMH Services.

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(a) ~~Adult Services~~Individuals 22 years and older: To meet the clinical criteria to receive DMH services, individuals 22 years and older, must have a serious, and persistent mental illness that, except as provided in 104 CMR 29.04(2)(c), meets the criteria for the following diagnostic categories specified within the current edition of the -Diagnostic and Statistical Manual of Mental Disorders (DSM); which indicates that the individual has a serious, long term and functionally impairing mental illness:-

Individuals 22 years and older: To meet the clinical criteria to receive DMH services, Individuals 22 years and older, must have a serious and persistent mental illness that:

1. ~~except as provided in 104 CMR 29.04(2)(b), meets the criteria for the following diagnostic categories specified within the current edition of the -Diagnostic and Statistical Manual of Mental Disorders (DSM) which indicates that the individual has a serious, long term and functionally impairing mental illness:-~~

1. ~~—~~a. Schizophrenia Spectrum and other Psychotic Disorders

2. ~~—~~b. Bipolar and Depressive Disorders

3. ~~—~~c. Anxiety Disorders

4. ~~—~~d. Dissociative Disorders

5. ~~—~~e. Feeding and Eating Disorders

6. ~~—~~f. Borderline Personality Disorder-

7. ~~—~~g. Obsessive-Compulsive and Related Disorders

8. ~~—~~h. Trauma and Stressor Related Disorders; and

2. ~~which mental illness is the primary cause of -functional impairment that substantially interferes with or limits the individual's performance of one or more major life activities, and is expected to do so in the succeeding year. which is the primary cause of -functional impairment that substantially interferes with or limits the individual's performance of one or more major life activities, which impairment is expected to persist in the succeeding year.-~~

(b) ~~Children and Youth Services: Individuals younger than 22 at the time of application:~~ To meet the clinical criteria to receive DMH services, individuals younger than 22 at the time of application, must have a serious emotional disturbance that, except as provided in 104 CMR 29.04(2)(c)(2), meets diagnostic criteria for a diagnosis specified within the current edition of the -Diagnostic and Statistical Manual (DSM), which is the primary cause of functional impairment that substantially interferes with or limits the individual's performance of one or more major life activities, and is expected to do so in the succeeding year.

(c) Non-Qualifying Disorders

{1}. The following are not qualifying disorders as the diagnosis which is the primary cause of functional impairment for adult service authorization:

a. Under Bipolar and Depressive Disorders: Persistent Depressive Disorder (Dysthymia), Disruptive Mood Dysregulation Disorder and Premenstrual Dysphoric Disorder;

b. Under Anxiety Disorders: Separation Anxiety Disorder and Selective Mutism;

c. Under Feeding and Eating Disorders: Binge Eating DO

d. Under Obsessive Compulsive and Related Disorders: Hoarding DO

e. Under Trauma and Stressor Related Disorders: Adjustment Disorders;

Other diagnoses identified in interpretive guidelines that may be issued by the Department.

f. ~~—~~

{2.} The following are not qualifying as the diagnosis which is the primary cause of functional impairment for any individual of any age:

a. Neurodevelopmental Disorders;

b. -Neurocognitive Disorders;

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- c. Mental Disorders Due to a Another Medical Condition (e.g., traumatic brain injury);
 - d. Substance-Related/Induced and Addictive Disorders; or
 - e. Disruptive, Impulse Control and Conduct Disorders;
 - f. Other diagnoses identified in interpretive guidelines that may be issued by the Department.
- (b) The following diagnoses are not qualifying disorders as the primary diagnosis causing functional impairment for adult service authorization:
 - Under Bipolar and Depressive Disorders: Persistent Depressive Disorder (Dysthymia); Disruptive Mood Dysregulation Disorder and Premenstrual Dysphoric Disorder;
 - Under Anxiety Disorders: Separation Anxiety Disorder and Selective Mutism;
 - Under Feeding and Eating Disorders: Binge Eating DO
 - Under Obsessive Compulsive and Related Disorders: Hoarding DO
 - Under Trauma and Stressor Related Disorders: Reactive Attachment Disorder; Disinhibited Social Engagement Disorder and Adjustment Disorders;
 - Other diagnoses identified in interpretive guidelines that may be issued by the Department.
- (c) Individuals younger than 22 at the time of application: To meet the clinical criteria to receive DMH services, individuals younger than 22 at the time of application, must have a serious emotional disturbance that:
 - 1. Except as provided in 104 CMR 29.04(2)(d) meets diagnostic criteria for a diagnosis specified within the current edition of the Diagnostic and Statistical Manual (DSM); and
 - 2. is the primary cause of functional impairment that substantially interferes with or limits the individual's performance of one or more major life activities, which impairment is expected to persist in the succeeding year;
- (d) The following are not qualifying disorders as the primary diagnosis causing functional impairment any individual of any age:
 - Neurodevelopmental Disorders;
 - Neurocognitive Disorders;
 - Mental Disorders Due to a Another Medical Condition (e.g., traumatic brain injury);
 - Substance Related/Induced and Addictive Disorders; or
 - Disruptive, Impulse Control and Conduct Disorders;
- (d) Individuals 18 to 21+ Years Old at the Time of Application: For transition planning purposes, the determination of whether an individual who is age 18 to 21+ at the time of application meets clinical criteria for youth pursuant to 104 CMR 29.04(2)(be) shall also include a determination consideration of whether the individual is likely to meet also meets the clinical criteria for adults pursuant to 104 CMR 29.04(2)(a).
 - 1. If it is determined appears that the individual is likely to meets clinical criteria for adults pursuant to 104 CMR 29.04(2)(a), then the determination of need conducted pursuant to 104 CMR 29.04(3) shall include consideration of services the individual may need after his or her 22nd birthday.
 - 2. If it is determined appears that the individual meets clinical criteria for youth pursuant to 104 CMR 29.04(2)(be), but is not likely to does not meet clinical criteria for adults pursuant to 104 CMR 29.04(2)(a), then the determination of need conducted pursuant to 104 CMR 29.04(3) shall include planning and consideration of transitional services and support that may be offered to assist the individual in his or her transition out of DMH services.
- (ef) No later than 12 months before his or her 22nd birthday, a youth who was determined to meet clinical criteria pursuant to 104 CMR 104 29.04(2)(be), and is enrolled in a DMH service shall be referred for determination of whether the youth meets clinical criteria under 104 CMR 29.04(2)(a).
 - 1. If the youth is determined to meet clinical criteria under 104 CMR 29.04(2)(a), he or she shall continue to receive the DMH service previously authorized until such time as his or her service needs are reviewed in accordance with 104 CMR 29.04(3) and it

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is determined that his or her service needs have changed.

2. If the youth is determined not to meet clinical criteria under 104 CMR 29.04(2)(a), then the youth will be engaged in planning and will be offered transitional services and support to assist in his or her transition out of DMH services.

Individuals who meet clinical criteria to receive DMH services prior to the age of 22 in accordance with 104 CMR 29.04(2)(c) will require a re-assessment at age 22 to determine if they meet clinical criteria to receive DMH services as adults in accordance with 104 CMR 29.04(2)(a).

(a) ~~To meet the clinical criteria to receive DMH services, an adult must have a mental illness that:~~

~~1. includes a substantial disorder of thought, mood, perception, which grossly impairs judgment, behavior, capacity to recognize reality or the ability to meet the ordinary demands of life; and~~

~~2. is the primary cause of a functional impairment that substantially interferes with or limits the performance of one or more major life activities, and is expected to do so in the succeeding year; and~~

~~3. meets diagnostic criteria specified within the most recent edition of the *Diagnostic and Statistical Manual of Mental Disorders*, (4th ed., text revision) American Psychiatric Association, Washington, DC (2000), which indicates that the individual has a serious, long term mental illness that is not based on symptoms primarily caused by:~~

~~a. developmental disorders usually first diagnosed in infancy, childhood or adolescence, such as mental retardation intellectual or developmental disability; autism spectrum disorder or pervasive developmental disorders; or~~

~~b. cognitive disorders, including delirium, dementia or amnesia; or~~

~~c. mental disorders due to a general medical condition not elsewhere classified;~~

~~d. traumatic brain injury; or~~

~~e. substance related disorders.~~

~~A youth who was determined to meet clinical criteria pursuant to 104 CMR 104 29.04(2)(b), and is enrolled in a DMH community services, who turns 22 may be deemed to meet clinical criteria pursuant to 104 CMR 29.04(2)(a) (but for how long and what triggers a review??)...~~

(b) ~~To meet the clinical criteria to receive DMH services, a child or adolescent youth must be younger than 19 22 years old at the time of application and have a serious emotional disturbance that:~~

~~1. has lasted, or is expected to last, at least one year; and~~

~~2. has resulted in functional impairment that substantially interferes with or limits the child's adolescent's role or functioning in family, school or community activities; and~~

~~3. meets diagnostic criteria specified within the most recent edition of the *Diagnostic and Statistical Manual of Mental Disorders*, (4th ed., text revision) American Psychiatric Association, Washington, DC (2000), but is not solely within one or more of the following categories:~~

~~a. developmental disorders usually first diagnosed in infancy, childhood or adolescence, such as mental retardation or pervasive developmental disorders; or~~

~~b. cognitive disorders, including delirium, dementia or amnesia; or~~

~~c. mental disorders due to a general medical condition not elsewhere classified; or~~

~~d. substance related disorders.~~

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~~29.04: continued~~

(fge) Result of Determination Relative to Clinical Criteria.

1. If an individual is found to meet the clinical criteria for DMH services as set forth in 104 CMR 29.04(2), then the Area Director or designee ~~must~~ shall determine whether the individual needs DMH services as provided in 104 CMR 29.04(3).

2. If an individual does not meet the clinical criteria set forth in 104 CMR 29.04(2), a notice denying the application for DMH services will be sent to the individual and his or her legally authorized representative and, if appropriate, to the facility or program that submitted the application in accordance with 104 CMR 29.04(1)(b)2. The notice shall:

- a. set forth the reasons for the denial;
- b. inform the individual and his or her legally authorized representative of the right to appeal the denial of the application for DMH services based on clinical criteria pursuant to 104 CMR 29.16(3); and
- c. inform the individual and his or her legally authorized representative of other community services that may be available to meet his or her needs.

If after reasonable efforts, neither the individual nor his or her legally authorized representative can be located, the denial shall be noted in the individual's application file and no further action will be required.

(3) Determination of Need for DMH Services. The determination of whether an individual who has been found to meet the clinical criteria for DMH services as set forth in 104 CMR 29.04(2) needs DMH services will be based on the following:

- (a) contact with the applicant and his or her legally authorized representative to review the individual's request for services and his or her current status;
- (b) determination of whether the individual's needs, personal goals, and service preferences can be met by a DMH service;
- (c) assessment of the individual's current ~~medical~~ entitlements, and insurance that allow for provision of appropriate services in the community; and
- (d) assessment of the availability of appropriate services from other public or private entities.

(4) Result of Determination of Need for DMH Services.

(a) If it is determined that the individual needs DMH Services, and that there is existing capacity in an appropriate service, the application will be approved. The Area Director or designee will notify the individual and his or her legally authorized representative, and, if appropriate, the facility or program which submitted the application on the individual's behalf pursuant to 104 CMR 29.04(1)(b)2. The notice shall:

1. state that the application has been approved;
2. ~~identify~~ state the DMH services identified as needed; and
3. offer the individual a referral to such appropriate service(s) as are available.

(b) If it is determined that an individual needs DMH services, but there is no capacity in such service(s), the Area Director or designee will so notify the individual and his or her legally authorized representative, and, if appropriate, the facility or program which submitted the application on the individual's behalf pursuant to 104 CMR 29.04(1)(b)2.

1. The Area Director or designee will thereafter periodically contact the individual or his or her legally authorized representative regarding the ~~individual's~~ individual's status and continued need for DMH service(s).

2. At such time ~~that~~ when the DMH service(s) becomes available, the individual will be offered a referral to such service(s); provided, however, that:

- a. the Department may request updated information to determine whether the client still needs the particular DMH service being offered;
- b. if it has been more than 12 months since the individual was determined to meet clinical criteria pursuant to 104 CMR 29.04(2)(a), the Area Director or designee may refer to individual for redetermination of whether the individual continues to meet such clinical criteria.

~~2(c).~~ If the individual or his or her legally authorized representative indicates that the individual no longer needs or wants DMH services, a notice will be sent to the individual and his or her legally authorized representative that the application is considered withdrawn.

~~3(d).~~ If after reasonable efforts, neither the individual nor his or her legally authorized representative can be located, the application will be ~~considered~~ deemed withdrawn;

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provided however, if the applicant ~~may~~ reapplies for services within 612 months of his or her application being deemed withdrawn, he or she shall be presumed to continue to meet the clinical criteria for DMH services; and provided further, ~~however that the Department may require updated clinical information to conduct service planning.~~

~~(e) Decisions regarding the available capacity of DMH services are not subject to appeal pursuant to 104 CMR 29.16.~~

~~(de)~~ If it is determined that the individual does not need DMH services, the application will be denied and the Area Director or designee will so notify the individual and his or her legally authorized representative, and, if appropriate, the facility or program which submitted the application on the individual's behalf pursuant to 104 CMR 29.04(1)(b)2. The notice shall:

~~29.04: continued~~

1. set forth the reasons for the denial;
2. inform the individual and his or her legally authorized representative of the right to appeal the denial of the application for DMH services based on need pursuant to 104 CMR 29.16(4); and
3. inform the individual and his or her legally authorized representative of other community services that may be available to meet his or her needs.

If after reasonable efforts, neither the individual nor his or her legally authorized representative can be located, the denial shall be noted in the individual's application file and no further action will be required.

~~(fe)~~ If an individual whose application was denied because of a determination that the individual ~~does~~ not need DMH services reapplies due to a change in circumstances within ~~six~~ 12 months of such denial, he or she shall be presumed to continue to meet the clinical criteria for DMH services; provided however, that the Department may require updated clinical information to conduct service planning.

29.05: Case Management

(1) Individuals who are determined to need Case Management shall be referred to the appropriate case management office.

(2) Case Management. ~~Case Management -including short term Case Management-~~ shall include:

- (a) arranging for and completing comprehensive assessments of service needs;
- (b) convening service planning meetings;
- (c) developing and reviewing individual service plans;
- (d) reviewing individualized ~~action plan~~ plans, when applicable, to ensure compatibility with clients' individual service plans;;
- (e) assisting clients in obtaining other available services from public or private entities as are identified in clients' individual service plans;; including behavioral health and medical benefits available through private and public health plans and programs;
- (f) coordinating services for clients, and/or monitoring the coordination of DMH and non DMH services;
- (g) providing outreach, as needed;
- (h) providing intensive support and advocacy, as needed;;
- (i) reviewing private and public health plan entitlements and options to assist the client in selecting third party benefits that best match needs and maintain continuity of care;
- (j) other services approved by the Area Director or designee within the scope of the Medicaid service known as targeted case management.

(3) Critical Need Case Management.

(a) The Area Director or designee may authorize critical need case management for an individual during the pendency of a service authorization application, as provided in 104 CMR 29.04(1)(g), or after an individual has been authorized for DMH services, if a specific critical need is identified within the scope of Case Management Services.

(b) Critical need case management shall include assessment of needs; and service planning activities required for eCase ~~m~~Management pursuant to 104 CMR 29.06 and 29.07 and may include other activities as provided in 104 CMR 29.05(2); provided, however, the assessment of needs and specific activities and time frames for such activities may be modified in the sole discretion of the Area Director or designee as necessary to meet the identified critical

need.

29.06: General Provisions for all DMH Services Planning Activities

- (1) Planning activities incorporate strengths, preferences and needs of clients, and where appropriate, of their families ~~or caretakers,~~ and include assessments and the development and review of individual service plans and individualized ~~action plan~~plans. Clients who receive Case Management will have individual service plans developed in accordance 104 CMR 29.06 and 29.07. Clients who receive DMH community services will have individualized ~~action plan~~plans developed in accordance with 104 CMR 29.06 and 29.11.
- (~~1~~2) DMH Services planning activities are:
- (a) ~~trauma informed, person centered, strength based, and for children and adolescents youth are also, also, youth guided and family driven; conducted in the client's preferred language by staff fluent in the language or through competent interpreters;~~
 - ~~(b) strength based, person and when appropriate, family, centered;~~
 - (~~b~~e) sensitive and responsive to a client's cultural, ethnic, linguistic background, sexual orientation, gender ~~difference~~identity, parental status, and other individual ~~and where appropriate, family~~ needs; ~~of the client;~~
 - (~~c~~e) based on the results of assessments which are reviewed and modified as the client's needs, preferences or circumstances change; ~~and~~
 - (~~d~~e) informed by information obtained through interactions with the client, when appropriate the client's family, other natural supports, ~~or caretakers,~~ and the client's ~~other~~ service providers with the appropriate authorizations, as well as previous records as available; ~~;~~
 - (~~e~~b) conducted in the client's preferred language by staff fluent in the language or through competent interpreters; and
 - (~~g~~f) coordinated with the client, the client's legally authorized representative, current and potential service providers, other Department staff, and any other person, including family members, whose participation is requested or consented to by the client or the client's legally authorized representative.
- ~~(2)~~
- (3) The goals of DMH Services planning activities are to:
- (a) promote client recovery and resiliency;
 - (b) identify the services and other community supports ~~that~~ a client needs, including services that are age and developmental-stage appropriate;
 - (c) facilitate or provide access to those services and supports, including strategies to ensure client engagement in such services; and
 - (d) ensure that the provision of services is consistent with the client's needs, strengths ~~and~~ preferences and goals, is provided in the least restrictive setting possible, and promotes community participation and independence to the fullest extent possible.
 - (e) identify goals demonstrating successful completion of service and plans for transition.

~~Add something about transitional planning for the TAY aged group identifying services appropriate for the youth as they age....~~

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- (43) All planning activities will be conducted in partnership with clients, their families when appropriate, and their legally authorized representatives. Clients will be:
- (a) engaged and supported to participate actively in the planning processes to the maximum extent possible;
 - (b) present at all applicable planning and review meetings, unless they are unwilling or unable to attend;
 - (c) encouraged to invite family members or other persons of the client's choice to participate; and
 - (d) encouraged to identify and discuss their goals and preferred services and programs during planning meetings and shall otherwise be supported to participate in a meaningful way in the discussions and decision-making process.
- (54) When clients are unable or ~~unwilling choose not~~ to take part in a meaningful way in planning activities, ~~steps shall be taken action is taken~~ to minimize obstacles to such participation. ~~Such steps This shall may~~ included, but ~~are~~ not be limited to:
- (a) developing plans for increasing the ability of clients to participate;
 - (b) modifying the schedule or structure of the meetings or making other accommodations designed to increase client participation;
 - (c) educating ~~clients to clients to~~ facilitate and increase their participation; and
 - (d) continuing to engage clients in ways that assist them to make choices regarding their services to the maximum extent possible.

29.07: Individual Service Plans

- ~~(4)~~ Each client who receives Case Management shall have a written individual service plan based on a comprehensive assessment of service needs conducted in accordance with 104 CMR 29.07(2) and developed in accordance with 104 CMR 29.07; provided however, -
- (1) Critical Need Case Management for individuals who receive critical need case management the content and time frame for conducting the assessment of service needs and development of an individual service plan may be modified consistent with the reasons for which critical need case management was approved pursuant to 104 CMR 29.05(3).
- For clients approved for short term Case Management:
- (a) what does a comprehensive assessment does short term CM look like?
 - (b) ISP for Critical Need CM timelines?
- (3) Case Management
- ~~(23)~~ Comprehensive Assessment of Service Needs. The individual service plan shall be based on a comprehensive assessment of the client's service needs and preferences.
- (a) The case manager shall arrange for and complete a comprehensive assessment of the client's service needs within 20 business days of assignment, unless an extension is granted by the Area Director or designee.
 - (b) The comprehensive assessment of service needs shall include review of the documents submitted with the client's application and other records, as needed; a personal interview with the client that will include, but not be limited to, identification of the client's service preferences and recovery goals; an interview with the client's legally authorized representative; and interviews with other persons as agreed upon by the case manager and the client or his or her legally authorized representative, and shall be documented using a Department approved report form.
 - (c) The comprehensive assessment of service needs shall be updated at least once each year before the completion of the annual individual service plan review provided in 104 CMR 29.09.
- ~~(34)~~ Development of Individual Service Plans.
- (a) General Provisions.
 - 1. The individual service plan shall identify the strengths, ~~and needs and goals~~ of the client, ~~and family, as appropriate, the goals of and for the client,~~ and ~~all the~~ services and programs which address the identified strengths, needs, and goals, of the client, including DMH services and those available from other public and private entities. The plan shall be developed together with the client, and family members if appropriate, and in

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collaboration with other services provides as applicable.

2. Services included on an individual service plan shall be, to the maximum extent possible, consistent with the client's service needs, strengths and preferences, and shall be provided in the least restrictive setting.

3. The individual service plan shall be developed with the fullest possible coordination with the client's other services, including educational services and special education services, where applicable.

4. The individual service plan shall include specified services, programs, service providers and goals, ~~based on:~~

~~a. the client's needs and preferences as identified in the comprehensive assessment of service needs report; and~~

~~b. the availability of specific services.~~ If specified services are not available, the individual service plan shall detail other available services which are, to the maximum extent possible, consistent with the client's identified needs and preferences and provided in the least restrictive setting.

29.07:—continued

5. In developing the individual service plan, the case manager shall try to informally resolve any differences that may occur between service providers. If the case manager is unable to informally resolve any such differences, within five days after identification of the dispute, the Area Director or designee shall be notified of the need for intervention.
- (b) Preparation of the Individual Service Plan.
 1. Within ten days of the completion of the comprehensive assessment of service needs, ~~report,~~ the case manager, together with the client, shall convene a meeting ~~of all interested parties~~ to prepare the individual service plan. ~~—, ÷ In addition to the case manager and the client, Persons—persons~~ invited to attend the meeting ~~shall~~ may include:
 - ~~a. the client;~~
 - ba. the client's legally authorized representative;
 - eb. current and potential service providers;
 - ec. other Department staff;
 - ed. any other person, including family members, whose participation is requested or consented to by the client or the client's legally authorized representative.
 2. Preparation of the ~~At the~~ individual service plan ~~shall include a meeting the parties shall discuss~~ discussion of the ~~following—following~~ as part of the development of the individual service plan:
 - a. the client's goals;
 - b. the preferences of the client and the client's legally authorized representative regarding services;
 - c. the client's needs in the context of his or her assessed strengths;
 - d. recommended services for the client;
 - e. currently available services, including those provided through private and public health plans and programs ~~—by~~ or available from other agencies or entities, and including, where appropriate, services available to support the client's family in assisting the client to meet his or her goals;
 - f. potential and present service providers;
 - g. dates, actual or anticipated, for commencement of each service;
 - h. the steps necessary to complete, and implement the individual service plan, and to achieve the client's goals;
 - i. criteria for completion of services and plan for transition;
 - ij. a description of the financial assistance and services from federal, state and local agencies available to the client, including any benefits to which the client may be entitled but is not currently receiving;
 - jk. the client's need for a guardian or a financial fiduciary.
- (c) Authorization for DMH services recommended in the individual service plan that have not been previously authorized shall be obtained from the Area Director or designee within five days of the individual service plan meeting.
- (d) After ~~authorization for~~ DMH services are authorized, ~~that have not been previously authorized is obtained,~~ the individual service plan will be ~~given~~ given to the client and his or her legally authorized representative for acceptance or rejection, in accordance with 104 CMR 29.08.

29.08: Acceptance or Rejection of the Individual Service Plan

- (1) Once the written individual service plan is complete, it shall be given to the client ~~or and, if applicable,~~ his or her legally authorized representative for acceptance or rejection.
 - (a) Upon acceptance by the client or his or her legally authorized representative the individual service plan shall be implemented.
 - (b) If the client or his or her legally authorized representative does not object to the individual service plan within 20 days of receipt, the plan shall be deemed to be accepted.
 - (c) If the client, or his or her legally authorized representative rejects some or all of the services identified in the individual service plan, the case manager shall record this rejection in the client's record and shall inform him or her of the right to meet with the case manager within five business days of the rejection to discuss the individual service plan and ~~to discuss~~ possible modifications. If agreement regarding any such modifications is not reached and the client or his or her legally authorized representative continues to reject the proposed plan, the client, or his legally authorized representative may appeal the individual service plan pursuant to 104 CMR 29.16.

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- (2) The parts of the individual service plan that are accepted by the client or the client's legally authorized representative may be implemented immediately, if appropriate.

29.09: Annual Review of the Individual Service Plan

- (1) No later than 12 monthsone year from the date of the last completed or substantially modified individual service plan, the case manager and the client shall initiate-complete a review of the client's individual service plan. The purpose of this review is to:

29.09: continued

- (a) to decide whether the client should be referred for redetermination of whether the client continues to meet the criteria for DMH services pursuant to 104 CMR 29.04(2) and (3);
(b) to ensure that services continue to be consistent with the client's strengths and needs as identified in the comprehensive assessment of needs, as it may have been revised;
(bb) to determine whether there has been progress toward attainment of goals and objectives stated in the client's individualized action plans;
(cb) to ensure that services continue to be, to the maximum extent possible, consistent with the client's needs, strengths and preferences, and where appropriate, the needs, strengths and preferences of the client's family, and with the goals of the individual service plan and are provided in the least restrictive setting;
(b) to ensure that services continue to be consistent with the client's needs and strengths as identified in the comprehensive assessment of needs;
(ed) to reassess, if appropriate, the client's need for a guardian, or a financial fiduciary; and
(de) to ensure that the client's individualized action plans, if any, continue to be compatible with the individual service plan and to determine if service goals have been met.

- (2) Within ten days of the completion of the annual review, the case manager, together with the client, shall convene a meeting to prepare an updated individual service plan. In addition to the case manager and the client, persons invited to attend the meeting may include:

- (a) b. the client's legally authorized representative;
(b) e. current and potential service providers;
(c) d. other Department staff;
(d) e. any other person, including family members, whose participation is requested or consented to by the client or the client's legally authorized representative.

Preparation of the updated individual service plan shall include discussion of the factors outlined in 104 CMR 29.07(34)(b)2.

- (3) At least 15 business days prior to the date of the annual review, the case manager shall contact the following persons to inform them of the proposed meeting to discuss the review of the individual service plan, and to schedule the meeting at a time convenient to all persons:

- (a) the client;
(b) the client's legally authorized representative;
(c) a representative of each of the client's service providers;
(d) other Department staff, as appropriate;
(e) any other persons, including family members, whose participation is requested by or consented to by the client or the client's legally authorized representative.

- (3) At the meeting or, if a meeting has been waived, by other means, the case manager shall consider and also inquire of each person:

- (a) whether the client continues to meet the criteria for DMH services pursuant to 104 CMR 29.04(2) and (3);
(b) whether the services being provided to the client continue to be consistent with his or her needs and the goals of the individual service plan;
(c) whether there has been progress toward attainment of goals and objectives stated in the client's individualized action plans.

Authorization for DMH services recommended in the individual service plan that have not been previously authorized shall be obtained from the Area Director or designee within five days of the individual service plan meeting.

(2) —;

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~~(3) — (4) Completion of Individual Service Plan after the Annual Review.~~

~~(a) Within ten business days after the annual review meeting, the case manager shall prepare an individual service plan.~~

~~(b) Once the individual service plan is completed, the case manager shall obtain authorization for DMH community services identified in the individual service plan from the Area Director or designee.~~

~~(4) e) Once After~~ DMH ~~community~~ services are authorized, the case manager shall give the written individual service plan to the client or his or her legally authorized representative for acceptance or rejection as provided in 104 CMR 29.08.

~~1. Upon acceptance by the client or his or her legally authorized representative the individual service plan shall be implemented.~~

~~2. If the client or his or her legally authorized representative does not object to the individual service plan within 20 days of the date of receipt, the plan shall be deemed to be accepted.~~

~~3. If the client or his or her legally authorized representative rejects some or all of the individual service plan, he or she shall be informed of the right to meet with the case manager within five days of the rejection to discuss the individual service plan and to discuss any changes. He or she shall also be informed of the right to appeal the individual service plan, pursuant to 104 CMR 29.16. The parts of the individual service plan that are accepted by the client or his or her legally authorized representative may be implemented immediately, if appropriate.~~

(5) If at the time of the annual review it appears that the client may no longer meet the criteria for DMH services, the client will be referred for redetermination in accordance with the provisions of 104 CMR 29.04. Action on any such redetermination shall be subject to 104 CMR 29.04 and 104 CMR 29.13 or 29.14, as applicable, and shall be subject to appeal pursuant to 104 CMR 29.16.

29.10: Modification of the Individual Service Plan

(1) Requests for modification of an individual service plan may be initiated by the client, his or her legally authorized representative, the client's DMH community service provider(s), or the client's case manager.

(2) Modifications shall be made in an individual service plan whenever it is determined at an annual review or at any other time, in accordance with the service planning procedures required by 104 CMR 29.00, that such a change will permit the client to receive more appropriate or less restrictive services consistent with the client's needs, strengths and preferences, or that the client no longer needs a service or services.

(3) No modification of an individual service plan shall be made without the acceptance of the client or his or her legally authorized representative unless it is determined that the modification is required:

(a) to comply with state contracting requirements (*e.g.*, that compliance with state purchase of service regulations or other applicable contracting requirements requires a change in a service provider); or

(b) to avoid a serious or immediate threat to the health, mental health or safety of the client or other persons.

(4) The client or his or her legally authorized representative may reject and appeal a proposed or denied modification pursuant to 104 CMR 29.16. No modification under appeal may be implemented before the appeal is decided without the consent of the client, or his or her legally authorized representative, unless it is determined that the modification is required for the reasons stated in 104 CMR 29.10(3)(a) or (b).

(5) Clients may have additional remedies, including the protections enumerated under the Community Residence Tenancy Law, M.G.L. c. 186, § 17A.

(6) If the modification involves a substantial change in assessment of the client's needs, situation, as determined by the case manager and the client or his or her legally authorized representative ~~LAR~~, the modification may follow the procedures outlined in 104 CMR 29.09, and

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serve as the client's annual review. In such case, the date of the next annual review shall be calculated from the date of acceptance of the modified plan. If the modification is minor, as determined by the case manager and the client or his or her legally authorized representative~~LAR~~, the individual service plan will be reviewed no later than 12 months from the last time the individual service plan was completed or reviewed.

29.11: Individualized Action Plans

(1) Each client who receives one or more DMH community services shall have an written integrated~~integrated~~ individualized action plan~~plan~~ that is consistent with applicable service standards. The plan shall be developed by the program that provides the service, together with the client, and family members if appropriate, and in collaboration with other service providers, if applicable. If a client is receiving more than one DMH community service, the Department ~~will~~ may designate ~~the a~~ primary DMH community service provider which will be responsible for developing the individualized action~~plan~~.

(2) General Provisions.

(a) In accordance with applicable service standards:-

~~(1.a)~~ Individualized action plan~~plans~~ are based on assessments, including clinical assessments, conducted or arranged for by the program that provides the community service, as appropriate.

~~(2.)~~ To the maximum extent possible, individualized plans should reflect the strengths, needs, goals and preferences of the client, and family as appropriate.

~~(2b)(3.)~~ Individualized plans contain measurable criteria for the completion of the service and anticipated transition plan.

~~)- Individualized action plans contain measurable goals, objectives, and interventions, with timelines for completion that reflect the results formulation resulting from the assessments.~~

~~(eb)~~ Upon acceptance, individualized action plan~~plans~~ and reviews are signed by the client or legally authorized representative.

~~(ec)~~ Copies of the individualized action plan~~plans~~ and reviews are given to the client or legally authorized representative, and to the client's other service providers as authorized by the client.

~~(ed)~~ If a client receives Case Management, the case manager is included in the planning activities, and a copy of the client's individualized action plan~~plan~~ and modifications thereto are submitted to the case manager. The individualized action plan~~plan~~ is compatible with the client's individual service plan.

~~(fe)~~ If a client is not receiving Case Management, the client's individualized action plan~~plan~~ and modifications thereto are provided to the Department upon request.

29.12: Acceptance or Rejection of the Individualized Action Plan~~Plan~~

(1) Once the written individualized action plan~~plan~~ is complete, it shall be given to the client or his or her legally authorized representative for acceptance or rejection.

(a) Upon acceptance by the client or his or her legally authorized representative, the individualized action plan~~plan~~ shall be implemented.

(b) If the client or his or her legally authorized representative does not object to the individualized action plan~~plan~~ within 20 days of receipt, the plan shall be deemed to be accepted.

(c) If the client, or his or her legally authorized representative rejects some or all of the individualized action plan~~plan~~, the program shall inform him or her of the right to meet within five days of the rejection to discuss the individualized action plan~~plan~~ and to discuss possible modifications.

(d) If agreement regarding any such modifications is not reached and the client or his or her legally authorized representative continues to reject the proposed plan, he or she may appeal the plan pursuant to 104 CMR 29.16.

(2) The parts of the individualized action plan~~plan~~ that are accepted by the client or the client's legally authorized representative may be implemented immediately, if appropriate.

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29.13: Review of the Individualized ~~Action Plan~~Plan

(1) All individualized ~~action plan~~plans are reviewed by the provider together with the client, ~~etc.~~ at intervals determined by the applicable service standards; ~~three months, six months, and~~ but at least annually, thereafter as needs change, or upon the request of the client or the client's legally authorized representative.

(a) The purpose of this review is to:

1. ~~to~~ evaluate the client's progress and current status in meeting the goals set forth in the individualized ~~action plan~~plan; and
2. ~~to~~ evaluate whether the services, goals, objectives, and interventions continue to be consistent with the client's needs, strengths and preferences and individual service plan, if any, and to modify the individualized ~~action plan~~plan as appropriate, and to determine if service goals have been met.

(2) If an individualized ~~action plan~~plan is modified as a result of a review conducted pursuant to 104 CMR 29.13, the modified individualized ~~action plan~~plan will be given to the client and his or her legally authorized representative for acceptance or rejection as provided in 104 CMR 29.12.

(3) If ~~as a result of~~ after reviewing the individualized plan, the DMH community service provider recommends ~~that~~ the client no longer receive a DMH community service, including attainment of the goals of the service as reflected in the individualized Pplan, ~~the service provider will notify the Area Director or designee for appropriate action, which may include a redetermination of whether the client continues to meet the clinical criteria for DMH services in accordance with 104 CMR 29.04. Action on any such redetermination shall be subject to 104 CMR 29.04 and 104 CMR 29.13 or 29.14, as applicable, and shall be subject to appeal pursuant to 104 CMR 29.16.~~

~~(4) The Department may conduct utilization review activities at intervals to be determined by the Department in order to determine if the individual continues to meet the criteria to remain in the service and the individualized Pplan is meeting the needs and addressing the goals of the client.~~

~~(5) If at any time, the DMH community service provider determines that the client has not met his or her responsibility, to the extent of his or her ability, to respect the rights of other clients and staff in the program or residential site of the program, or to conform to reasonable operational rules of the program or residential site of the program, there shall be a review of the client's individualized action plan, and in connection therewith, the program director, or designee, shall document the situation, including any known precipitating factors and efforts at resolutions; and in conjunction with the client and his or her legally authorized representative, shall develop a plan to address the situation;~~

(a) If the plan does not resolve the situation, the client may be asked to leave the program or residential site of the program; provided, however, that any modification of an individualized ~~action plan~~plan necessitated by such request shall be governed by the provisions of 104 CMR 29.13;

(b) No client shall be discriminated against or asked to leave a program due to the exercise of any right set forth in 104 CMR 28.00;

(c) The program director shall notify the Department before ~~if~~ a client is asked to leave a program or residential site of a program;

(d) A client who is asked to leave a program or residential site of a program may request a review of that decision by the Human Rights Committee or by the Area Director or designee;

(e) Clients may have additional remedies, including the protections enumerated under the Community Residence Tenancy Law, M.G.L. c. 186, § 17A.

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29.14: Discharge from DMH Services

(1) If upon redetermination in accordance with 104 CMR 29.04, the Area Director or designee determines that the client no longer meets the clinical criteria for DMH services or no longer needs such services, a date will be set for discharge from DMH services. The Area Director or designee shall:

- (a) notify the client and his or her legally authorized representative of the basis for discharging from DMH services and, the date that DMH services will end;
- (b) notify the client and his or her legally authorized representative of the right to appeal discharge from DMH services based on clinical criteria pursuant to 104 CMR 29.16(3) or based on need for DMH services pursuant to 104 CMR 29.16(4);
- (c) note the discharge from DMH services in the applicable community record, modify his or her individual service plan, if applicable, to indicate discharge from DMH services;
- (d) identify to the fullest extent possible and state on the individual service plan, if applicable, a transition plan with appropriate follow-up services. ~~the name and address~~ contact information of the agency or person, if any, responsible for the provision of future services to the individual, or state that no further ~~services~~ are currently needed.

(2) If an appeal is filed pursuant to 104 CMR 29.16, the client shall not be discharged until the appeal is completed.

(3) With the consent of the individual or his or her legally authorized representative, the Department will, for 30 days after the date ~~that~~ DMH services end, ~~attempt to~~ continue to ~~monitor~~ engage the individual to determine ~~that if~~ he or she is connected to appropriate services and to provide assistance in securing such services, as necessary. Such 30 day period may be extended by the Area Director or designee. At the conclusion of ~~that 30 day~~ the engagement period the individual will no longer be a client.

(4) If a client who has been discharged from services pursuant to 104 CMR 29.14, because the client no longer needs a DMH service, reapplies due to a change in circumstances within 12 months of such discharge, he or she shall be presumed to meet clinical criteria pursuant to 104 CMR 29.04; provided however, the Department may require updated information to conduct service planning. Resumption of services shall be contingent upon a determination the client needs DMH services as provided in 104 CMR 29.04(3). Put in language like next section for somebody who was discharged because no longer needs, but comes back within 12 months because he does.--

29.15: Requests for Discharge from Services; Disengagement from Services

(1) If a client, or his or her legally authorized representative requests discharge from DMH services, the request will be referred to the Area Director or designee for review.

- (a) If the Area Director or designee concurs with the request, the client shall be discharged and shall no longer be a client.
- (b) If such request is against the advice of the Area Director or designee, the Department shall direct efforts, for a period up to 30 days, to encourage the client or his or her legally authorized representative to continue such services. The 30-day period may be extended by the Area Director or designee. If, notwithstanding such efforts, the client or his or her legally authorized representative still requests discharge, the client shall be discharged and will no longer be a client. Efforts to encourage continued participation and discharge from services shall be documented in the client's record.

(2) If a client disengages from DMH services without formal request or notification, the Department shall direct efforts to re-engage the client. The mechanisms and time frame for such re-engagement efforts shall be determined by the Area Director or designee, a clinical decision.

- (a) When a clinical decision is made that re-engagement efforts have failed and are unlikely to succeed in the foreseeable future, the Area Director or designee shall be notified.
- (b) If the Area Director or designee concurs, the client shall be discharged and shall no longer be a client. Efforts to reengage the client and discharge from services shall be documented in the client's record.

(3) If a client who has been discharged from services, pursuant to 104 CMR 29.14,5 because the

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client no longer needs a DMH service, reapplies due to a change in circumstances within 12 months of such discharge, he or she shall be presumed to meet clinical criteria pursuant to 104 CMR 29.04; provided; however, the Department may require updated information to conduct service planning. Resumption of services shall be contingent upon a determination the client needs DMH services as provided in 104 CMR 29.04(3). A client who has been discharged from services pursuant to 104 CMR 29.15 may request resumption of services, and shall, within 12 months of discharge shall be deemed to meet clinical criteria pursuant to 104 CMR 29.XX. Resumption of services shall be contingent upon a determination of needs and means.,.,.,.

29.16: Appeals of Denials of DMH Services and Services Planning

(1) General Provisions.

- (a) 104 CMR 29.16(3) contains the standards and procedures for appeals of determinations relative to clinical criteria pursuant to 104 CMR 29.04(23).
- (b) 104 CMR 29.16(4) contains the standards and procedures for appeals of a determination of need pursuant to 104 CMR 29.04(34), of major individual service planning and implementation decisions, and of discharges from DMH services pursuant 104 CMR 29.14.
- (c) To the maximum extent possible, disagreements should be informally resolved prior to utilizing this appeal mechanism.
- (d) An appeal may be initiated by any of the following individuals:
 - 1. an individual whose application for DMH services has been denied, or his or her legally authorized representative;
 - 2. a client or his or her legally authorized representative;

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3. a person designated by the individual or client to act as his or her representative, if there is no legally authorized representative.

(2) Subject Matter of an Appeal.

(a) The following issues may be appealed pursuant to 104 CMR 29.16:

~~(a)1.~~ whether denial of an application for DMH services, based on clinical criteria pursuant to 104 CMR 29.04(23), or the determination that an individual no longer meets clinical criteria pursuant to 104 CMR 29.04(3), has a reasonable basis;

~~(b)2.~~ whether denial of an application for DMH services as the result of a determination of need pursuant to 104 CMR 29.04(4) has a reasonable basis;

~~(c)3.~~ whether the comprehensive assessment of service needs and the individual service plan, or any modifications thereof, have a reasonable basis and were developed and reviewed and implemented in accordance with the requirements of 104 CMR 29.06 through 29.10;

~~(d)4.~~ whether assessments and the individualized action plan, or any modifications thereof, have a reasonable basis and were developed and reviewed and implemented in accordance with the requirements of 104 CMR 29.06 and 29.11 through 29.13;

~~(e)5.~~ whether discharge from DMH services pursuant to 104 CMR 29.14 has a reasonable basis.

(b) The following issues are not subject to appeal pursuant to 104 CMR 29.16:

1. Decisions regarding the available capacity of DMH services;

2. Decisions regarding whether DMH will offer a service outside of its customary operated or contracted service system (e.g. specialized residential services);

3. Decisions based on whether DMH has available resources to pay for or provide a particular service; and

4. Decisions regarding the provider available to provide a particular service.

(3) Appeal of Denial of an Application for DMH Services Based on Clinical Criteria. Denial of an individual's application, or a redetermination, for DMH services based on clinical criteria may be appealed as follows:

(a) Request for Informal Resolution Conference. Within ten days of receipt of the notice of the denial of application based on clinical criteria, the individual or his or her legally authorized representative may request an informal resolution conference with the Area Director or designee.

~~(1.)~~ The Area Director may accept a request for a resolution conference received after 10 days for good cause shown.

~~(2.)~~ Such The informal resolution conference may be waived by agreement between the individual or his or her legally authorized representative and the Area Director or designee, in which case the individual or his or her legally authorized representative may submit a request for reconsideration pursuant to 104 CMR 29.16(3)(c).

(b) Within ten business days of receipt of the request for a an informal resolution conference, or at such later date as the individual or the client's legally authorized representative and the Area Director-LAR and AD may agree, the Area Director or designee shall hold an informal resolution conference with the individual and his or her legally authorized representative.

1. The individual or his or her legally authorized representative may include-bring other persons to this conference, if he or she wishes.

2. After such meeting, if the issues are not resolved, the individual or his or her legally authorized representative shall be notified that a written notice of appeal request for reconsideration may be submitted to the Area Medical Director.

(c) Request for Reconsideration Area Clinical Appeal. The individual or his or her legally authorized representative may submit a written notice of appeal request for reconsideration to the Area Medical Director within 10ten days after conclusion of the informal conference or the agreement to waive such conference. The Area Medical Director may accept a notice of appeal received after 10 days for good cause shown.

AMD can accept late filed for good cause...

1. The request for reconsideration notice of appeal must indicate the basis of the request

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for ~~reconsideration~~ appeal of the denial of the application, and shall include any additional information which might support a reversal of the denial of the application.

~~2. The Area Medical Director may request a face-to-face assessment and/or such additional assessments or information as may be necessary to supplement the service authorization file.~~

~~32. The Area Medical Director shall render a written decision within 20 business days of receipt of the request for reconsideration notice of appeal, face-to-face assessment, or receipt of such additional assessment or information as Area Medical Director may have requested, unless the time is extended by mutual consent of the Area Medical Director and the person filing the request for reconsideration notice of appeal. If the individual declines to participate in a requested face-to-face assessment, or declines to provide such additional information or assessment within a reasonable period of time, then the appeal shall be considered withdrawn.~~

~~43. If the denial of the application is sustained by the Area Medical Director, a written decision letter shall be sent to the individual and his or her legally authorized representative. The decision letter shall include notice of the right to request a fair hearing pursuant to 104 CMR 29.16(5).~~

~~54. If the denial of the application is reversed by the Area Medical Director, a written decision letter shall be sent to the individual and his or her legally authorized representative, and the Area Director or designee shall proceed with a determination of need for DMH services pursuant to 104 CMR 29.04. A decision by the Area Medical Director to reverse the denial of an application is not subject to appeal.~~

~~65. In appropriate cases, the Area Medical Director may designate another psychiatrist, including the Area Child, Youth and Family Division and Adolescent Psychiatrist to act as Area Medical Director pursuant to 104 CMR 29.16 this section ren under the age of 18 Area Medical Director, Youth and Family Division Area Medical Director.~~

(4) Appeal on all Other Appealable Matters.

(a) An appeal on matters listed in 104 CMR 29.16(2)(a) ~~through (e)~~ is initiated by submitting a written statement to the Area Director, indicating what is being appealed and the basis for the appeal.

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- (b) An appeal must be initiated within ~~30-10~~ days after the occurrence of the action or inaction which forms the basis for the appeal. The Area Director may, however, accept an appeal after ~~30-10~~ days for good cause.
- (c) Informal Resolution Conference.
1. The Area Director or designee shall hold a an informal resolution conference with the client; ~~and his or her the client's~~ legally authorized representative within 10 business days of notification of the appeal for the purpose of resolving the matter being appealed.
 2. Participants in the resolution conference may also include, as applicable and appropriate, the client's designated representative, the client's case manager, if applicable, the program director, if appropriate, and other invited persons, if appropriate, within 20-10 business days of notification of the appeal for the purpose of resolving the matter being appealed.
 3. The individual or his or her legally authorized representative may include bring other persons to this conference, if he or she wishes.
 4. If resolution of the appeal is not achieved, To the extent that resolution satisfactory to all persons is not achieved, the Area Director or designee shall clarify issues for appeal and shall determine the agreement, if any, of the parties as to the material facts of the case.
 25. Except to the extent that statements of the parties are reduced to an agreed statement of facts, all statements of the parties made during the informal resolution conference shall be considered as offers in compromise, and shall be inadmissible in any subsequent hearing or court proceedings pursuant to the provisions of 104 CMR 29.16.
 36. The Area Director ~~or designee~~ and the appealing party may agree to waive the informal resolution conference; in which case, the appeal shall be forwarded to the Commissioner as a petition for a fair hearing pursuant to 104 CMR 29.16(5).~~;~~
 7. The results of any resolution conference in which the Area Director does not personally participate shall be subject to the Area Director's review and approval.

Area Director Appeal

- (5) Fair Hearing.
- (a) An appealing party may petition the Commissioner for a fair hearing regarding any appealable issue not resolved pursuant to 104 CMR 29.16(3) or -104 CMR 29.16(4)(e).~~;~~
1. ~~to appeal the Area Medical Director's decision with regard to clinical criteria pursuant to 104 CMR 29.16(3); or~~
 2. ~~if other appealable issues are not resolved at the informal conference pursuant to 104 CMR 29.16(4)(e), or if there is a waiver of such conference.~~
- (b) A petition for fair hearing must be submitted to the Commissioner within 20 days after receipt of decision pursuant to XX ~~the Area Medical Director's decision with regard to clinical criteria pursuant to 104 CMR 29.16(3), or the completion or the waiver of the informal resolution conference pursuant to 104 CMR 29.16(4)(e).~~
1. Within ten days of such petition, the Commissioner or designee shall appoint a hearing officer, who shall schedule a hearing date which is agreeable to both parties. Said fair hearing shall be conducted in a manner consistent with M.G.L. c. 30A and 104 CMR 29.16(5) and shall be governed by the informal fair hearing rules of the standard adjudicatory rules of practice and procedure at 801 CMR 1.02.
 2. While the appeal is pending, the parties may agree to implement any part of the individual service plan or individualized action planplan, or other matter under appeal without prejudice.
 3. The fair hearing shall be conducted by an impartial hearing officer designated by the Commissioner or designee. The hearing officer may be an employee of the Department; provided, however, that no person shall be designated as a hearing officer in a particular appeal who is subject to the supervision of any facility or office within the service area in which the individual applying for services is currently served or is proposed to be served.
 4. The appealing party shall have the right to be represented by an individual designated by him or her, at his or her own expense.~~;~~
 5. If a client is unrepresented at the hearing, but requests assistance, or if for any other reason the Commissioner or designee determines it to be in the client's best interest, the Commissioner or designee shall designate a client advocate to assist the client in the appeal.

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- 6.—The appealing party and the Department shall have the right to present any evidence relevant to the issues under appeal, and shall have the right to call and examine witnesses.
- 67. The appealing party shall have the right to examine all records held by the Department pertaining to the individual or client and all records upon which an individual service plan or individualized ~~action plan~~plan that is being appealed is based.
- 78. The fair hearing shall not be open to the public. The appealing party may invite persons of his or her choosing to attend. Invited persons may attend the hearing, as long as they do not disturb the hearing.

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~~29.16: continued~~

~~89.~~ Within 20 days of the close of the hearing, the hearing officer shall prepare and submit to the Commissioner a recommended decision which shall include a summary of the evidence presented, findings of fact, proposed conclusions of law, the recommended decision and the reasons for the decision.

~~94.~~ The findings of fact in the recommended decision shall be binding on the Commissioner. The Commissioner may modify the conclusions of law and ~~recommended~~ decision where the conclusions or decision are: in excess of the agency's statutory authority or jurisdiction; based on an error of law; arbitrary, capricious, an abuse of discretion; or otherwise not in accordance with law.

~~104.~~ Within 15 days after receipt of the hearing officer's recommended decision, the Commissioner shall issue a decision.

a. The Commissioner's decision shall include a summary of the evidence presented, findings of fact, a decision on each of the issues appealed and the reasons for such decision, and a notice of the individual's right to appeal the decision to the Superior Court pursuant to M.G.L. c. 30A.

b. The Commissioner's decision shall be mailed to the appealing party and his or her legally authorized representative.

c. Unless the Commissioner or designee orders a re-hearing pursuant to 104 CMR 29.16(6), the decision of the Commissioner is the final decision of the Department on all issues.

(6) Re-hearing.

(a) Within ten days of receipt of the decision of the Commissioner by the client or his or her legally authorized representative, a party aggrieved by the decision may petition the Commissioner to order a re-hearing on one or more of the following grounds:

1. that new evidence was discovered by the appealing party subsequent to the hearing; and that the new evidence is such that it would be likely to materially affect the issues being appealed;
2. that the hearing was conducted in a manner which was inconsistent with 104 CMR 29.16(5) or was prejudicially unfair to the client or other appealing party;
3. that the decision is based on inappropriate standards or contains other errors of law;
4. that the decision is unsupported by any substantial evidence.

(b) The failure of the Commissioner to grant or deny a petition for re-hearing within ten days of the submission of the petition shall be considered a denial of the petition.

(c) Upon order for a re-hearing by the Commissioner, a hearing shall be conducted and a decision rendered anew, pursuant to 104 CMR 29.16(5).

(7) Standard and Burden of Proof.

(a) The standard of proof on all issues shall be a preponderance of the evidence.

(b) Burden of pProof.

1. The burden of proof on the issue of denial of an application for DMH services shall be on the individual whose application has been denied.

2. The burden of proof on the issues of whether the provisions of 104 CMR 29.06 through 104 CMR 29.11 have been complied with, and whether the comprehensive assessment of service needs, individual service plan, and individualized ~~action plan~~ plans are reasonable and consistent with the needs of the client shall be on the Department or on the DMH community service provider responsible for developing the individualized ~~action plan~~ plan.

3. The burden of proof on issues relating to a discharge from DMH Services pursuant to 104 CMR 29.14 shall be on the Department.

4. The burden of proof may be met only by evidence known to the Department at the time the Department's decision was made. Evidence, whether verbal or written, not known to the Department at the time the Department's decision was made may be admitted only upon leave of the Hearing Officer and must be provided to the other party no later than 5 business days prior to the date of hearing.

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~~29.16: continued~~

(8) Judicial Review. A client or his or her legally authorized representative aggrieved by a final decision of the Department pursuant to 104 CMR 29.16 may, within 30 days of receipt of the decision or a decision after a re-hearing, seek judicial review of the decision, in accordance with the standards and procedures contained in M.G.L. c. 30A, § 14.

REGULATORY AUTHORITY

104 CMR 29.00: M.G.L. c. 19, §§ 1 and 16; M.G.L. c. 123, § 2.

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(PAGES 399 THROUGH 424 ARE RESERVED FOR FUTURE USE).