

104 CMR 32.00: INVESTIGATION AND REPORTING RESPONSIBILITIES

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32.01: Scope and Purpose

(1) Scope.

- (a) 104 CMR 32.00 applies to the Department and to all programs, and facilities licensed or contracted for by the Department.
- (b) Any decision made pursuant to 104 CMR 32.00 shall be consistent with collective bargaining agreements, civil service law and other provisions of labor law then in effect.
- (c) 104 CMR 32.00 does not provide for an adjudicatory hearing within the meaning of M.G.L. c. 30A, § 1(1). 104 CMR 32.00 is not intended to provide an administrative remedy under the doctrine of exhaustion of administrative remedies or otherwise.

(2) Purpose. The purpose of 104 CMR 32.00 is to establish a framework for the reporting, investigation and resolution of:

- (a) complaints brought pursuant to 104 CMR 32.00; and
- (b) other matters of a serious nature that have significant implications for persons who provide or receive mental health services within the Commonwealth and that are referred to the Office of Investigations at the discretion of the Commissioner.

It is not the purpose of 104 CMR 32.00 to establish a process for investigating complaints against recipients of a service from the Department or a program or facility operated, licensed, or contracted for, by the Department, except insofar as an incident complained of may involve conduct, errors or omissions by staff members that create or contribute to a dangerous, illegal or inhumane condition.

32.02: Definitions

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

Authorized Individual. An individual authorized, in writing, by a client or a client's legally authorized representative to act on behalf of the client in relation to an identified complaint. Such written authorization regarding a complaint shall include allowance for release of protected health information to the individual (consistent with the provisions of the federal Health Information Portability and Accountability Act), allowance for release of the Department case file to the individual, and authorization for the individual to request reconsideration and/or appeal of any decision.

Client. A person who is alleged to have been subjected to an incident or condition that is dangerous, illegal, or inhumane and who is receiving services from the Department or a program or facility operated, licensed or contracted for by the Department at the time of the alleged incident or condition or who received such services within 30 days of the alleged incident or condition.

Clinically Intensive Residential Treatment Program (CIRT). A staff-secure service for children six through 12 years of age managed by the Department and licensed as a group care program by Department of Early Education and Care pursuant to 606 CMR 3.00: *Standards for the Licensure or Approval of Residential Programs Serving Children and Teen Parents.*

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

Complainant. Any person who files a complaint pursuant to 104 CMR 32.04.

Complaint. A report of an incident or condition filed pursuant to 104 CMR 32.04(1), regardless of whether the incident or condition is also required to be reported to any other entity pursuant to law or policy.

Dangerous. Posing a danger or the potential of danger to the health or safety of a client.

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

Deputy Commissioner. The Deputy Commissioner for Mental Health Services, or Deputy Commissioner for Child/Youth and Family Services, unless otherwise specified.

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

Director of Statewide Program Management. The person responsible for management of Intensive Residential Treatment Programs (IRTPs) and Clinically Intensive Residential Treatment Programs (CIRTs) and any Department contracted inpatient unit for facility for children or adolescents.

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

Human Rights Committee. A committee established to protect the rights of clients at a program or facility.

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

Illegal. A violation of state or federal statute, regulation, case law or other law.

Inhumane. Demeaning to a client or inconsistent with the proper regard for human dignity.

Intensive Residential Treatment Program (IRTP). A locked residential facility for adolescents licensed as a Class VII facility pursuant to 104 CMR 27.04: *Licensing; Intensive Residential Treatment Programs (IRTP)*.

Legally Authorized Representative. As provided in 104 CMR 25.02, the legally authorized representative (LAR) is a guardian, or other fiduciary acting pursuant to and under a properly invoked healthcare proxy or, in the case of a minor, the parent(s) or other individual or entity with legal custody of the minor. The authority of a LAR is limited to the scope of such LAR's appointment or designation.

Medicolegal Death. Either or both of the following:

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

Office of Inpatient Management. The office within the Department responsible for management of DMH's state operated adult inpatient facilities, except for its Community Mental Health Centers with inpatient units, and for setting standards of practice for all such facilities, including its Community Mental Health Centers with inpatient units and contracted inpatient facilities and units.

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

Party means:

- (a) a client;
- (b) any person complained of or found to be responsible for any incident or condition subject to review under 104 CMR 32.00; provided however, that for purposes of 104 CMR 32.00, a recipient of a service from the Department or a program or facility contracted for, by the Department shall not be deemed a party by virtue of being complained of or found to be responsible for any such incident or condition;
- (c) the legally authorized representative of the client, but only to the extent of the legally authorized representative's legal authority;
- (d) an Authorized Individual;
- (e) the Person in Charge of the Department office or contracted for or licensed program or facility, as applicable;
- (f) the Human Rights Officer of the involved program or facility;
- (g) the Human Rights Committee of the involved program or facility, if it files the original complaint or files a notice to intervene with the Person in Charge; and
- (h) in the event of a client death, the duly appointed personal representative of the decedent's estate or other individual with legal authority to access the Department case file and to act on behalf of the decedent.

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

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

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

Unless otherwise specified, other terms used in 104 CMR 32.00 that are defined in 104 CMR 25.02 shall have the meaning as they are so defined.

32.03: Notice of Complaint Process and Availability of Complaint Forms

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

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

32.04: Complaint Process

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

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

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

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

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

(e) The Human Rights Committee may file a complaint on behalf of a client or group of clients and may intervene as a party to a complaint by submitting a notice of intervention to the Person in Charge.

(f) No Retaliation. There shall be no retaliation against any individual who files a complaint or otherwise participates in fact finding or investigation activities in good faith pursuant to 104 CMR 32.00.

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

(2) When a Complaint is Received.

(a) Upon receipt of a complaint, the Person in Charge shall determine if the complaint involves one of the following:

1. medicolegal death;
2. sexual assault or abuse;
3. physical assault or abuse which results in serious physical harm;
4. attempted suicide which results in serious physical harm;
5. commission of a felony;
6. serious physical injury resulting from restraint or seclusion practices; or
7. an incident that the Person in Charge in his or her discretion believes is sufficiently serious or complicated as to require investigation by the Office of Investigations or Director of Licensing even though it does not otherwise involve one of the categories listed in 104 CMR 32.04(2)(a)1. through 6.

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

1. The Person in Charge shall forward the complaint to the following individuals who shall be the Responsible Person of the complaint:
 - a. the Area Director, if the complaint involves a program or community mental health center operated or contracted for by the Department, an adult inpatient unit contracted for by the Area, or a Department office within the control of the Area;
 - b. the Director of the Office of Inpatient Management if the complaint involves an DMH operated adult inpatient facility other than a community mental health center operated or contracted by the Department;
 - c. the Director of Statewide Program Management, if the complaint involves an IRTP or CIRT or a Department contracted inpatient unit for children or adolescents;
 - d. the Senior Manager of a Department office other than one controlled by an Area; or
 - e. the applicable Director of Licensing if the complaint involves a program or facility licensed, but not contracted for, by the Department.
2. The Responsible Person shall:
 - a. immediately assign a public log number to the complaint;
 - b. refer it to the Office of Investigations; and
 - c. notify the parties and the appropriate Human Rights Officer that the complaint has been referred to the Office of Investigations for investigation and resolution in accordance with 104 CMR 32.05.

(c) Privacy Complaints.

1. If the complaint alleges a violation of a client's privacy rights in a Department operated program or facility, the Responsible Person must notify the Department's Director of Privacy and Data Access and the complaint shall be resolved in accordance with the procedures set forth in the Department's Privacy Handbook.

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2. If the complaint alleges a violation of a client's privacy rights in a Department-contracted for or licensed program or facility, the complaint shall be resolved in accordance with the program or facility's privacy complaint resolution procedures.
 - (d) If the complaint does not come under one of the categories specified in 104 CMR 32.04(2)(a) or (c) the Person in Charge shall be the Responsible Person who shall:
 1. a. in the case of a Department operated program or facility, enter the complaint into the Department's complaint recording system;
 - b. in the case of a Department contracted for program or adult inpatient facility, provide a copy of the complaint to the Area Director, or Statewide Director of Program Management, as applicable, and to the applicable Director of Licensing, if any, who shall have the complaint entered into the Department's complaint recording system;
 - c. in the case of a Department licensed, but not Department contracted for, program or facility, such program or facility shall create and maintain an internal log of complaints and the Responsible Person shall assign an internal log number; and
 2. determine whether the complaint shall be resolved by administrative resolution or ten-day fact-finding in accordance with 104 CMR 32.04(3) or (4).
 - (e) Health, Safety or Welfare. If the Person in Charge or the Responsible Person concludes at any time during the course of resolution of the complaint that immediate action is necessary to protect the health, safety, or welfare of a person, he or she shall take steps to ensure that such action is taken and shall document the action taken.
- (3) Administrative Resolution.
- (a) If the Responsible Person has a reasonable basis to believe that a complaint meets one of the following criteria, the complaint may be resolved administratively in accordance with 104 CMR 32.04(3):
 1. concerns an allegation of an incident or condition that is not dangerous, illegal or inhumane within the scope of 104 CMR 32.00;
 2. makes allegations that are objectively impossible;
 3. repeats allegations of fact that have previously been investigated and decided in accordance with 104 CMR 32.00;
 4. alleges a violation of regulation, policy or procedure that does not present a health or safety risk to a client or other individual and which may be resolved or corrected without need for additional fact finding;
 5. is withdrawn by the client or complainant, provided the complaint does not concern the health or safety of a client or other individual; or
 6. presents undisputed facts which allow the Responsible Person to determine that the complaint can best be resolved through the administrative process.
 - (b) In resolving a complaint pursuant to 104 CMR 32.04(3), the Responsible Person or designee must meet with the client and the complainant, if different, unless the client and/or complainant declines to meet with the Responsible Person or designee, or despite reasonable efforts, cannot be located.
 1. The Responsible Person shall notify client and the complainant, if different, of the availability of the Human Rights Officer to attend the meeting at the client's or complainant's request.
 2. Unless the client or complainant declines to meet or cannot be located, this meeting shall take place within three business days of the determination that the complaint meets the criteria of administrative resolution pursuant to 104 CMR 32.04(3)(a).
 3. The purpose of this meeting shall be to:
 - a. review the specific allegations in the complaint;
 - b. determine whether there are disagreements concerning the facts underlying the allegations that require further fact-finding; and
 - c. discuss and, if possible, agree upon actions, if any, that may be taken by the Responsible Person or designee to address the concerns raised by the complaint.
 - (c) If at any time the Responsible Person determines that the criteria for administrative resolution are not met, including without limitation, that there is disagreement concerning the facts underlying the allegations in the complaint that require formal fact-finding in order to resolve, the Responsible Person shall refer the complaint for fact-finding or investigation in accordance with 104 CMR 32.04(4) or 34.04(5).

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(d) Within five business days of the filing of the complaint, or two business days of the meeting held pursuant to 104 CMR 32.04(3)(b), whichever is later, the Responsible Person shall provide the parties with a written decision that includes a statement of the applicable criteria for administrative resolution, the grounds upon which the determination for administrative resolution has been made, the actions, if any, that will be taken by the Responsible Person, the right to request reconsideration, and the client's right of appeal in accordance with 104 CMR 32.04(7).

(e) In the case of a Department contracted for program or adult inpatient facility, a copy of the written decision shall be provided to the Area Director, or an IRTP or CIRT or a Department contracted inpatient unit for children or adolescents to the Director of Statewide Program Management.

(f) If at any time during the course of ten-day fact finding or investigation pursuant 104 CMR 32.04(4) or (5), respectively, the Responsible Person determines that the criteria for administrative resolution are met, the Responsible Person may elect to stop the fact finding or investigation and proceed under 104 CMR 32.04(3). The determination shall be in writing and shall include the factual basis for the election.

(4) Responsible Person Ten-day Fact-finding.

(a) Unless a complaint is resolved pursuant to 104 CMR 32.04(3), is referred to the Office of Investigations pursuant to 104 CMR 32.04(2)(b), or is a Privacy Complaint pursuant to 104 CMR 32.04(2)(c), the Responsible Person shall undertake or within two days of receipt of the complaint, assign the matter for fact-finding in accordance with 104 CMR 32.06 which shall be completed within ten days of assignment. The Responsible Person may authorize an extension of up to ten days if the complaint is sufficiently complicated or if the parties or essential witnesses cannot be interviewed within the initial ten day period. The Responsible Person shall document in the file the reasons for any extension.

(b) In the case of a Department contracted for program or adult inpatient facility, a copy of such documentation shall be provided to the Area Director, or for an IRTP or CIRT or a Department contracted inpatient unit for children or adolescents to the Director of Statewide Program Management.

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

(d) In the case of a Department contracted for program or adult inpatient facility, a copy of the written report of findings of fact shall be provided to the Area Director, for an IRTP or CIRT or a Department contracted inpatient unit for children or adolescents to the Director of Statewide Program Management.

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

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

(g) In the case of a Department contracted for program or facility, a copy of the written decision shall be provided to the Area Director, or for statewide contracted for programs, to the responsible Central Office contract manager.

(5) Complaints Referred to the Office of Investigations.

(a) Responsibilities of the Office of Investigations.

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

- a. confirm the complaint has been logged into the Office of Investigations' database and assigned a public log number, update log as necessary and open a case file;
- b. determine and document whether or not another entity has jurisdiction to conduct an investigation and if so, whether that entity is aware of the incident or condition complained of and is undertaking an investigation;
- c. if another entity is undertaking an investigation, determine in accordance with 104 CMR 32.04(6) whether the Department shall defer investigating the matter to that entity and document the determination; and
- d. assign an investigator.

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2. If the Director of Investigations, or designee, does not believe an investigation by the Office of Investigation is necessary or appropriate, the Director, or designee, shall consult with the applicable Responsible Person, who shall determine the appropriate process for resolution of the complaint.
 3. The Office of Investigations shall coordinate investigatory activity with the appropriate Responsible Person.
- (b) Responsibilities of the Investigator.
1. Within 30 days from the assignment of the investigation pursuant to 104 CMR 32.04(5)(a), the investigator shall conduct an investigation and file a report containing written findings of fact and recommended conclusions with the Responsible Person.
 2. The investigator may request in writing an extension of the time required for filing the report, which may be granted for good cause by the Director of Investigations, in consultation with the Responsible Person.
 3. If such an extension is granted, the investigator shall give written notice of the revised due date to the parties and the Area Director, Director of the Office of Inpatient Management, Director of Statewide Program Management, Director of Licensing, or Senior Manager, as applicable. In the case of an investigation involving a Child, Youth and Family Services program, a copy of such notice shall also be provided to the Area Director of Child, Youth and Family Services.
- (c) Responsibilities of the Responsible Person.
1. Within ten days after receipt of the investigator's report or the report of an investigation by another legally authorized entity, the Responsible Person shall:
 - a. issue a decision accepting the findings of fact and recommended conclusions, identifying corrective actions to be taken, if any, and designating who is responsible for carrying out such actions;
 - b. conduct or refer the matter for further fact-finding, to be completed within a specified time period, on matters identified by the Responsible Person; or
 - c. issue a decision making his or her own conclusions, including an explanation of the rationale for not accepting the investigator's recommended conclusions, and identifying corrective actions to be taken, if any, and designating who is responsible for carrying out such actions.
 2. The decision shall be provided to the parties with notice of the right to request reconsideration and the client's right to appeal in accordance with 104 CMR 32.04(7).
- (6) Deferred Investigations.
- (a) Notwithstanding any other provision of 104 CMR 32.00 to the contrary, the investigation of the complaint may be deferred if another legally authorized entity is conducting an investigation of the allegations set forth in the complaint.
 1. If an investigation is deferred upon the request of law enforcement or the DPPC, the Office of Investigations shall notify the Responsible Person of any such deferral.
 2. The Director of Licensing or Director of Statewide Program Management may defer an investigation to the Department of Children and Families, in which case he or she shall notify the Office of Investigations.
 - (b) Any investigation deferred for more than 60 days shall be reviewed by the Office of Investigations in consultation with the Responsible Person to determine whether some fact finding and corrective action should be pursued notwithstanding deferral; provided however, that the case shall remain active pending completion of the investigation.
 - (c) Nothing in 104 CMR 32.04(6) shall preclude the Responsible Person from taking or ordering any corrective action deemed necessary during the pendency of the deferral.
- (7) Request for Reconsideration; Appeal.
- (a) Request for Reconsideration.
 1. General Provisions. Any party to the complaint has the right to request reconsideration of a decision issued pursuant to 104 CMR 32.04(3), (4) or (5). Reconsideration is not a prerequisite to a client's filing of an appeal.
 - a. A request for reconsideration must be submitted in writing to the Responsible Person within ten days of receipt of the decision, which time period may be waived by the Responsible Person, upon request and for good cause shown. The Responsible Person shall forward notice of the request for reconsideration to all other parties.

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- b. A request for reconsideration must be based on one or more of the following factors, which shall be set forth with specificity in the request:
 - i. The fact-finder failed to interview an essential witness or to consider an important fact or factor.
 - ii. The decision is not reasonably supported by the facts.
 - iii. The decision is based on an erroneous interpretation of applicable law or policy.
- 2. Response to Request for Reconsideration:
 - a. Unless the Responsible Person determines that additional fact-finding is required, he or she shall within ten days from receipt of the request for reconsideration issue a final decision affirming, modifying or reversing the initial decision. The final decision shall be in writing and shall inform the client of the right to appeal pursuant to 104 CMR 32.04(7)(b).
 - b. If the Responsible Person determines additional fact-finding is required, he or she shall conduct or refer the matter for such fact-finding, which shall be completed within ten days of receipt of the request for additional fact-finding, but which time period may be extended for good cause.
 - c. Within ten days of receipt of the results of any additional fact-finding, the Responsible Person shall issue a final decision affirming, modifying or reversing the initial decision. The final decision shall be in writing, distributed to all parties, and shall also notify the client of the right to appeal pursuant to 104 CMR 32.04(7)(b).
 - d. A party adversely affected by a reconsideration decision that substantially alters the initial decision may request further reconsideration pursuant to 104 CMR 32.04(7)(a).
- (b) Appeal Process.
 - 1. General Provisions.
 - a. A client, a client's legally authorized representative, or an Authorized Individual may appeal decisions issued pursuant to 104 CMR 32.04(3) through (5) or (7)(a). In the case of a client's death, an appeal may be pursued or authorized by the duly appointed personal representative of the decedent's estate or other individual with legal authority to act on behalf of the decedent.
 - b. All appeals must be in writing and filed within ten days of receipt of the applicable decision, which time period may be waived by the person responsible for deciding an appeal, upon request and for good cause shown. The person responsible for deciding an appeal shall forward notice of the appeal to all other parties.
 - c. Subject Matter of Appeal. Appeals shall be based on one or more of the following factors, which shall be set forth with specificity in the appeal:
 - i. The fact-finder failed to interview an essential witness or to consider an important fact or factor.
 - ii. The decision is not reasonably supported by the facts.
 - iii. The decision is based on an erroneous interpretation of applicable law or policy.
 - d. Additional Fact-finding. The person responsible for deciding an appeal pursuant to 104 CMR 32.04(7)(b)(2) or (3) may, within ten days of receipt of the appeal, direct that additional fact-finding be undertaken. Such fact-finding shall be undertaken by the Responsible Person, Office of Investigations or other individual designated by the person responsible for deciding the appeal within a time-frame as directed by such person, not to exceed 20 days, which time period may be extended for good cause.
 - e. Decisions on appeal shall be issued within 30 days of receipt of the appeal, unless further fact-finding is required, in which case the decision shall be issued within ten days of the report of the additional fact-finding, which time period may be extended for good cause.
 - f. Decisions on appeal shall also provide notice of applicable rights of further appeal.
 - 2. Appeal from a Decision Issued Pursuant to 104 CMR 32.04(3) or (4).
 - a. A decision concerning a complaint issued pursuant to 104 CMR 32.04(3) or (4) may be appealed as follows:

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- i. A decision involving an adult Department operated or contracted for community mental health center, or program, a Department contracted adult inpatient unit, or a Department office within the control of an Area may be appealed to the applicable Area Director;
 - ii. A decision involving an adult Department operated or contracted for inpatient facility may be appealed to the Director of the Office of Inpatient Management;
 - iii. A decision involving an IRTP, CIRT, or Department contracted child or adolescent inpatient unit, may be appealed to the Director of Statewide Program Management;
 - iv. A decision involving a Child, Youth and Family Services program operated or contracted for by the Department may be appealed to the applicable Area Director who shall decide the appeal in consultation with the Area Director of Child, Youth and Family Services; or
 - v. A decision involving a Department office other than one controlled by an Area may be appealed to the applicable Senior Manager; or
 - vi. A decision involving a licensed program or facility may be appealed to the applicable Director of Licensing.
- b. The appeal decision shall:
- i. Affirm, modify or reverse the decision.
 - ii. Be in writing and sent to the parties. The decision shall include corrective actions, if any, to be carried out by the Person in Charge; and
 - iii. Notify the client of his or her right to further appeal the decision within ten days to:
 - (i) the Deputy Commissioner for Mental Health Services in the case of a decision by an Area Director or Director of the Office of Inpatient Management;
 - (ii) the Deputy Commissioner for Child, Youth and Family Services in the case of a decision by the Director of Statewide Program Management;
 - (iii) the Chief of Staff of the Department, or designee, in the case of a decision by a Senior Manager;
 - (iv) the Deputy Commissioner for Mental Health Services in the case of a decision by the Director of Community Licensing; or
 - (v) the Deputy Commissioner for Clinical Professional Services in the case of a decision by the Director of Inpatient Licensing.
- c. The decision of the Deputy Commissioner or Chief of Staff shall be final.
3. Appeal from Decision after Investigation by the Office of Investigations.
- a. After an investigation by the Office of Investigations pursuant to 104 CMR 32.04(5);
- i. A decision made by an Area Director or the Director of the Office of Inpatient Management may be appealed to the Deputy Commissioner for Mental Health Services, who, in the case of a decision involving a Department operated or contracted for Child, Youth and Family program, shall decide the appeal in consultation with the Deputy Commissioner for Child, Youth and Family Services.
 - ii. A decision made by the Director of Statewide Program Management Services may be appealed to the Deputy Commissioner for Child, Youth and Family Services.
 - iii. A decision made by a Senior Manager of a Department office other than one controlled by an Area may be appealed to the Chief of Staff of the Department, or designee.
 - iv. A decision made by the Director of Community Licensing may be appealed to the Deputy Commissioner for Mental Health Services.
 - v. A decision made by the Director of Inpatient Licensing may be appealed to the Deputy Commissioner for Clinical Professional Services.
- b. The appeal decision shall:
- i. Affirm, modify or reverse the decision.
 - ii. Be in writing and sent to the parties. The decision shall include corrective actions, if any, to be carried out; and
 - iii. Notify the client of his or her right to further appeal the decision within ten days to the Commissioner, whose decision shall be final.

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(8) Release of Decision Letters and Written Notice. Any decision or written notice issued pursuant to 104 CMR 32.00 that is to be released to a party or any other individual shall be subject to redaction of Protected Health Information (PHI) or any other information that the recipient is not legally authorized to receive consistent with the requirements of federal and state privacy laws including, but not limited to, the provisions of the federal Health Information Portability and Accountability Act (HIPAA), Fair Information Practices Act (FIPA), M.G.L. c. 66A, M.G.L. c. 123, § 36, and applicable exemptions under M.G.L. c. 4, § 7(26).

32.05: Commissioner's Investigation

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

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

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

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

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

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

(c) The Commissioner's decision, after reconsideration, if any, shall be final.

32.06: Requirements for All Fact-finding Activities

(1) At a minimum, any fact-finding activity relative to a complaint must include the following:

(a) interviews with the complainant, the client, if the client is not the complainant, and each individual complained of. All reasonable efforts must be made to interview each of these parties;

(b) interviews with witnesses and other individuals, including family members, who may have information related to the complaint and necessary for determination of essential facts. A good faith effort to interview each witness and other individuals who may have such information will satisfy this requirement;

(c) review of all incident reports and other records related to the complaint including, but not limited to, the client's medical record, if applicable. Records which are part of a peer review process under M.G.L. c. 111, § 204 are exempt from this review.

(2) To the extent practicable, and without unreasonably delaying the fact-finding process, the complainant should be interviewed before any other interviews take place.

(3) Clients who are to be interviewed shall be permitted to have a designated representative or a Human Rights Officer present.

(4) Employees who are to be interviewed shall, subject to applicable collective bargaining rights, cooperate with the investigation, and shall be permitted to have a designated representative present.

(5) Files of all fact-finding activities conducted pursuant to 104 CMR 32.04 and 32.06 shall be maintained by the Office of Investigations, or Responsible Person who conducted the fact-finding activities.

32.07: Department Case File and Public Log

(1) Department Case File.

(a) A file, known as the Department case file, shall be kept for each complaint and appeal received by the Department or its contracted for programs or facilities and for each Commissioner's Investigation conducted pursuant to 104 CMR 32.06. The Department case file shall consist of the complaint, any fact-finding report, the decision letter, requests for reconsideration, appeals, and decisions on requests for reconsideration and appeals.

(b) Release of any portion of the Department case file shall be subject to redaction of protected information consistent with the requirements of federal and state privacy laws, including but not limited to, the provisions of the federal Health Information Portability and Accountability Act (HIPAA), Fair Information Practices Act (FIPA), M.G.L. c. 66A, M.G.L. c. 123, § 36, and applicable exemptions under M.G.L. c. 4, § 7(26).

(c) Subject to redaction of protected information to which a person does not have a right of access, upon written request:

1. Any person who is mentioned in the Department case file will have access to a copy of that portion of the case file in which he or she is mentioned.

2. Any party, as defined in 104 CMR 32.02, may receive a copy of the Department case file.

3. If a complaint involves a client of the Department, the client's attorney may receive a copy of the Department case file, which pursuant to M.G.L. c. 123, § 36 may contain such client's protected information.

4. If a complaint involves an individual that is not otherwise a client of the Department, such client's attorney may receive a copy of the Department case file, which if such client's authorization is provided may contain such client's protected information.

(d) Subject to the redaction of all protected information set forth in 104 CMR 32.07(1)(b), a complainant who is not otherwise a party, shall receive a summary of the decision.

(e) The Department case file for investigations conducted pursuant to 104 CMR 32.04(5) shall be maintained by the Office of Investigations.

(f) The Department case file for administrative reviews conducted pursuant to 104 CMR 32.04(3) and for fact-finding activities conducted pursuant to 104 CMR 32.04(4) shall be maintained by the Responsible Person.

(2) Public Log. The Department shall maintain a public log of all complaints concerning Department operated or contracted for programs or facilities, complaints concerning Department licensed programs or facilities investigated pursuant to 104 CMR 32.04(5), and for each Commissioner's Investigation pursuant to 104 CMR 32.00, in such form as the Commissioner may from time to time prescribe. Each complaint and appeal shall be assigned a public log number which shall be referenced in the case file. The log shall be kept by the Office of Investigations.

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

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

(c) Data necessary to maintain the public log shall be provided to the Office of Investigations in a manner and form prescribed by it.

32.08: Monitoring Responsibilities

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

(2) The Division of Child, Youth and Family Services will monitor IRTPs and CIRTs to ensure compliance with 104 CMR 32.00.

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

32.08: continued

- (4) The Director of the Office of Investigations will keep statistical data relative to complaints and investigations and will prepare reports on a regular basis for the Commissioner.
- (5) The Deputy Commissioner for Mental Health Services will review on a regular basis each area's activities under 104 CMR 32.00.
- (6) The Deputy Commissioner for Child, Youth and Family Services will review on a regular basis each area's activities under 104 CMR 32.00 that involve Child, Youth and Family Services.
- (7) Senior Managers will review on a regular basis their respective office's activities under 104 CMR 32.00

32.09: Additional Reporting Requirements

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

- (1) M.G.L. c. 19, § 10: *Reports of Felonies Committed by or Upon Persons Under Care of the Department.*
- (2) M.G.L. c. 19A, § 15: *Abuse of Elderly Persons.*
- (3) M.G.L. c. 19C: *The Disabled Persons Protection Commission.*
- (4) M.G.L. c. 38, § 3: *Persons Having Knowledge of a Death to Notify Medical Examiner.*
- (5) M.G.L. c. 119, § 51A: *Persons Required to Report Cases of Injured, Abuse or Neglected Children.*

32.10: Transitional Provision

Complaints submitted to the Department prior to November 26, 2021, shall be subject to the provisions of 104 CMR 32.00 as they were in effect on the date of submission of the complaint.

REGULATORY AUTHORITY

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