

110 CMR: DEPARTMENT OF CHILDREN AND FAMILIES

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7.001: Introduction to Purchase of Services

The Department provides services in two basic ways: through its own direct service staff and from a wide variety of private social service providers. The Department purchases a wide array of social services. Most of these services are purchased only for the referral of Department clients, but several are open to any eligible citizen of the Commonwealth without direct Departmental contact.

7.002: Providers - Procedures for the Purchase of Services

(1) The purchase of services by the Department is governed by the Regulations of the Executive Office of Administration and Finance at 801 CMR 25.00: *Procurement Procedures Governing the Purchase of Social and Rehabilitative Services* and 801 CMR 4.00 *Service Contract Regulations* and any administrative bulletin(s) issued in connection thereto.

(2) All written contracts between the Department and any provider shall include and incorporate the General Conditions, as required by the Executive Office of Human Services, for the fiscal year in which the services are to be provided.

(3) All written contracts between the Department and any provider shall obligate the provider to comply with all of 110 CMR, service delivery standards, and policies. This requirement shall expressly include, but is not limited to, observance by the provider of the requirements for special provisions relating to linguistic and cultural minorities (*see* 110 CMR 1.06), for Native Americans (*see* 110 CMR 1.07), handicapped clients (*see* 110 CMR 1.08), and nondiscrimination (*see* 110 CMR 1.09). Failure to conform to such obligations shall be grounds for terminating any provider's contract.

(4) All purchases of services by the Department are subject to the proposal review of the Department's area boards as mandated by M.G.L. c. 18B, § 15, and of the local councils for children recognized by the Office for Children, as mandated by M.G.L. c. 28A, § 7.

7.003: Providers - Delivery of Services

(1) Every provider shall deliver services in conformance with the provisions of the contract.

(2) Every provider shall utilize the eligibility criteria as set forth in the contract or the Department's regulations in determining whether an applicant is eligible for the services enumerated in the provider's contract with the Department.

(3) No provider shall require a recipient of services to sign any agreement which purports to limit the provider's liability with respect to the provision of those services.

(4) The Department, in conformance with the provisions of the contract, may conduct periodic monitoring activities of the provider's programmatic and fiscal performance and status.

7.004: Providers - Contract Termination

Termination of any contract between the Department and a provider shall be in conformance with the terms of the contract.

7.005: Public Private Partnership Program (PPPP)

The Public Private Partnership Program (PPPP) is the program established annually by the Legislature in the budget appropriation of the Department, whereby the Department is authorized to purchase services from providers jointly with entities known as "partners".

7.006: PPPP - Eligible Partners

- (1) The following entities are eligible to participate as partners:
 - (a) Political subdivisions of the Commonwealth (including but not limited to, cities, towns, counties, boards, commissions, school districts, and housing authorities).
 - (b) Not-for-profit organizations whose purposes are among those listed in Sections 501(c)(3), 501(c)(4), and 502(c)(6) of the Internal Revenue Code, and who are incorporated under state law as not-for-profit corporations (including but not limited to corporations, foundations, trusts and federated fund-raising organizations).
 - (c) For-profit organizations (including but not limited to corporations, partnerships, trusts, and sole proprietorships).
 - (d) Providers already participating in the Public Private Partnership Program (PPPP) or potential providers submitting proposals for funding under this program.
- (2) The following entities are ineligible to participate as partners:
 - (a) Other state agencies, or departments, or branches of state government or federal agencies or branches of federal government. However, these parties may make financial contributions to eligible partners.
 - (b) Individuals. However, individuals may make financial contributions to eligible partners.

7.007: PPPP - Administration

- (1) The Commissioner shall appoint an advisory committee which may make recommendations on issues such as the services to be eligible for funding under this program, the priorities for services to be provided, the target populations to be served through the program, and composition of the partner share.
- (2) The Department retains final authority to determine priorities and eligible services.

7.008: PPPP - Procurement Procedures

- (1) All procurements under the PPPP shall be subject to the requirements set forth in 110 CMR 7.001 through 7.009.
- (2) Potential providers seeking to procure a contract with the Department funded through this program shall obtain and complete an "Expression of Intent to Participate" form from a potential partner, unless the potential provider has already obtained a Partner Commitment as described in 110 CMR 7.008(3).
- (3) The Expression of Intent to Participate form shall be in writing and shall include, at a minimum:
 - (a) the total proposed amount to be contributed by the partner;
 - (b) the period (date from and date to) for which the services will be provided;
 - (c) the signature of an officer of the partner organization authorized to express such intent; and
 - (d) the date of the written statement and date of expiration of the intent to participate, if any.
- (4) An eligible partner may designate the following in its Expression of Intent to Participate:
 - (a) the service to be provided under a proposed Purchase Agreement; and
 - (b) the geographic area(s) where the services will be delivered.

7.009: PPPP - The Partner Commitment

- (1) Once a provider has been selected by the Department, the provider shall be responsible for submitting, or causing the partner to submit, to the Department, a written commitment from the partner to provide the partner's share.

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- (2) The Partner Commitment may be in the form of a contract, note, letter or other document and shall contain, at a minimum:
 - (a) the dollar amount to be contributed by the partner;
 - (b) the period (date from and date to) for which the services will be provided;
 - (c) a schedule of installments and amount of each installment;
 - (d) the name and address of the provider intended to be the recipient of the funds;
 - (e) the full name and business address of the partner and the name and title of the person signing the commitment; and
 - (f) the signature of an officer of the partner confirming the Commitment.
- (3) The Department retains the authority to request further information and documents from the partner in addition to those set forth in 110 CMR 7.009(2).
- (4) An executed Partner Commitment shall be attached to but not incorporated into the Purchase Agreement and such execution and attachment shall be a condition precedent to a binding Purchase Agreement.
- (5) The partner may participate in the program monitoring and auditing of the provider pursuant to the provisions of the Executive Office of Human Services General Conditions and the contract.

7.010: Services of Other Agencies

- (1) When appropriate or necessary, the Department may make referrals to, or provide services in conjunction with, local education agencies (LEAs), the Department of Elementary and Secondary Education, the Department of Early Education and Care, and/or other agencies within the Executive Office of Human Services such as: the Department of Mental Health, Department of Public Welfare, Department of Youth Services, Department of Public Health, Commission for the Blind, Massachusetts Rehabilitation Commission.
- (2) Referrals to other agencies will be made if a service requested or needed by an individual or family is not provided by the Department, or if the service requested or needed is within the mandate of another agency or Department of the Commonwealth.

7.011: Interagency Childrens' Services Team

- (1) Whenever a dispute arises between or among the Department and another agency or department as to which agency or department is responsible for the appropriate provision of services, the matter shall be referred to the Office for Children (OFC) for resolution by the interagency childrens' services team, pursuant to M.G.L. c. 28A, § 6A, for resolution.
- (2) In any case where such a dispute has arisen between or among agencies or departments, the Department shall inform any client seeking services from the Department of the procedures for referring the case to the interagency children's service team.
- (3) Referral of a case to the interagency children's service team shall not preclude the Department from providing immediate placement, or services, to the child in question, when the child is determined by the Department to be at risk of suffering abuse or neglect.
- (4) Referral of a case to the interagency children's service team shall not preclude any client from exercising any other rights he or she may have to either a fair hearing or a grievance consistent with 110 CMR 10.00.

7.012: Interagency Agreements

At the direction of the Commissioner, the Department may enter into written agreements with other departments or agencies, concerning matters of mutual interest. Such agreements shall be signed by the Commissioner on behalf of the Department.

7.020: Introduction to Homemaker Services

Homemakers provide support, assistance and training to families in the activities of daily functioning. Homemakers provide a monitoring and teaching function within a family. Homemakers help care for children, act as a role model for parents, assist in family budgeting, etc.

7.021: Eligibility

In order to be eligible for homemaker services paid for in whole or in part by the Department, there must be an assessed need for homemaker services. The Department will assess a need for homemaker services when:

- (1) Emergency Services: During a period of temporary crisis or injury to the parent or primary caretaker, if a caretaker is needed to maintain children in their own home, homemaker services may be authorized.
- (2) Ongoing Services: If in the judgment of the Department homemaker services are necessary to assist the parent in meeting the goals of the service plan, homemaker services may be authorized. Such needs may include:
 - (a) assisting the parents in home management skills;
 - (b) assisting and teaching the parents when the special needs of the child(ren) in the home so require, in order to meet the child's needs; or
 - (c) assisting the family in ensuring that abuse and neglect are not occurring in the home.

7.022: Limitation

- (1) Emergency Services: Emergency homemaker services may be authorized for a maximum of 24 hours per day, for a maximum of 30 consecutive days.
- (2) Ongoing Services: Ongoing homemaker services may be provided for a maximum of six months at a maximum rate of ten hours per week. Homemaker services will be reviewed during each case review, and a six month extension may be authorized. If homemaker services are to be provided for a period longer than one year, or for a maximum rate of more than ten hours per week, such services must be authorized in writing by the Area Director or his/her designee. If homemaker services are to be provided for a period longer than two years, or for a maximum rate of more than 30 hours per week, such services must be authorized in writing by the Regional Director.

7.023: Application Information Required

Any client seeking homemaker services shall be required to provide sufficient information to allow the Department to assess the applicant's need and eligibility for homemaker services. In addition, an individual applying for homemaker services may be required to provide such authorization(s) for collateral contacts as are necessary for the Department to verify or assess the individual's need for homemaker services.

7.024: Sliding Fee

Homemaker services which are, in the judgement of the Department, provided on a protective basis, shall not be subject to any sliding fee requirement. All other homemaker services provided by the Department may be subject to a sliding fee requirement.

7.025: Denial, Reduction, or Termination of Services

Any client aggrieved by the denial, reduction, or termination of homemaker services may request a fair hearing on the matter pursuant to 110 CMR 10.00 *et seq.* However, the transfer of a client's case, at 60 years of age, to the Department of Elder Affairs is not appealable.

7.030: Introduction to Family Support Services

Family support services is a spectrum of services that supports maintenance of the family unit, and enables adults or children to meet the goals of a service plan. Family support services include active home management (*e.g.* chore services) and the purchase of items or services that provide social and developmental opportunities for a family or for individual family members.

7.031: Eligibility

- (1) Family support services are used to strengthen the family unit, and eliminate the need for placement of children into substitute care.
- (2) Family support services may be approved for families who are receiving other Department services, and when, in the judgment of the Department, the family support services will strengthen the family unit and thereby eliminate the need for placement of children into substitute care.

7.032: Limitation

- (1) Specific family support services to be provided, or items to be purchased, and the reasons therefor, shall be stated in the service plan.
- (2) Family support services of active home management (*e.g.* chore services) may be provided for a maximum of six months at a maximum rate of ten hours per week. Family support services will be reviewed during each case review, and a six month extension may be authorized. If family support services are to be provided for a period longer than one year, or for a maximum rate of more than ten hours per week, such services must be authorized in writing by the Area Director or his/her designee. If family support services are to be provided for a period longer than two years, or for a maximum rate of more than 30 hours per week, such services must be authorized in writing by the Regional Director.
- (3) All Department clients who receive chore services as a single service (*see* 110 CMR 4.70) shall, upon attaining 60 years of age, be transferred to the Department of Elder Affairs.
- (4) Any items to be purchased must be authorized in writing by the Area Director or his/her designee.

7.033: Application Information Required

Any client seeking family support services shall be required to provide sufficient information to allow the Department to assess the applicant's need and eligibility for family support services. In addition, an individual applying for family support services may be required to provide such authorization(s) for collateral contacts as are necessary for the Department to verify or assess the individual's need for family support services.

7.034: Sliding Fee

Family support services which are, in the judgment of the Department, provided on a protective basis, shall not be subject to any sliding fee requirement. All other family support services provided by the Department may be subject to a sliding fee requirement.

7.035: Denial, Reduction, or Termination of Services

Any client aggrieved by the denial, reduction, or termination of family support services may request a fair hearing on the matter pursuant to 110 CMR 10.00 *et seq.* However, the transfer of a client's case, at 60 years of age, to the Department of Elder Affairs is not appealable.

7.040: Introduction to Babysitting Services

Babysitting services provide direct care, protection and supervision to children during some portion of a day. Babysitting services are provided to parents (including foster parents) on either an occasional, short-term basis or, under certain circumstances, on a regular, ongoing basis. Babysitting services shall not be authorized on an overnight basis. Babysitting services may be authorized on a night shift basis, but shall not be authorized on an overnight basis.

7.041: Eligibility

In order to be eligible for babysitting services paid for in whole or in part by the Department, there must be an assessed need for babysitting services. The Department may assess a need for babysitting services:

(1) Occasional, Short-term Babysitting Services.

(a) Non-emergency. When the client needs babysitting services to participate in other services contained in the client's service plan.

(b) Emergency. When the client needs babysitting services to correct a temporary emergency situation or during a period of injury of the parent and primary care giver.

(2) Regular Ongoing Babysitting Services. The Department may provide regular ongoing babysitting services when:

(a) in the judgment of the Department, the provision of babysitting services will aid in protecting a child who is the subject of a supported 51A report from further abuse and/or neglect; or

(b) in the judgment of the Department, the provision of babysitting services will aid in preventing the occurrence of abuse and/or neglect, in preventing the placement of children in substitute care, and/or in reuniting families as children return home from substitute care; or

(c) in the judgment of the Department, the need for babysitting services is caused by a physical, mental or emotional disability of the child; or

(d) in the judgment of the Department, day care services (through the Department or otherwise) are unavailable or inappropriate.

7.042: Limitation

(1) Emergency: Emergency babysitting services may be authorized for a maximum of ten hours per day for a maximum period of 30 days.

(2) Non-emergency: Non emergency babysitting services may be authorized for a maximum of ten hours per week for a maximum period of six months. Babysitting services will be reviewed during each case review, and six month extensions may be authorized as often as is, in the judgment of the Department, necessary.

7.043: Application Information Required

Any client seeking babysitting services shall be required to provide sufficient information to allow the Department to assess the applicant's need and eligibility for babysitting services. In addition, an individual applying for babysitting services may be required to provide such authorization(s) for collateral contacts as are necessary for the Department to verify or assess the individual's need for babysitting services.

7.044: Sliding Fee

Babysitting services which are, in the judgment of the Department provided on a protective basis, shall not be subject to any sliding fee requirement. All other babysitting services provided by the Department may be subject to a sliding fee requirement.

7.045: Babysitting Providers

- (1) Providers utilized by the Department to provide out-of-home babysitting services shall comply with OFC regulations for licensure. Babysitters providing services in the child(ren)'s home need not be registered, licensed, or approved by the Office for Child Care Services (OCCS); however, such babysitters must meet the standards of the Department, as established from time to time.
- (2) Babysitters shall not provide services for more than six children at a time, including the babysitter's own children (if any). No more than two children under two years of age shall receive babysitting services at the same time from the same babysitter unless the babysitter is aided by an approved assistant.
- (3) In-home babysitters shall be at least 16 years of age.
- (4) If, in the judgment of the Department, a relative or other alternative individual becomes available as a babysitter, babysitting services shall be terminated.
- (5) No approval for payment shall be given to relatives or other adults living in the home of the family requesting babysitting services. No parent shall be approved for babysitting services to his or her child or children even if the parent is not living in the home of the child or children. Other relatives approved to provide babysitting who are living outside the home where care is to be provided must comply with 110 CMR 7.045(1) through (3).

7.046: Denial, Reduction or Termination of Services

Any client aggrieved by the denial, reduction, or termination of babysitting services may request a fair hearing on the matter pursuant to the provisions of 110 CMR 10.00 *et seq.*

7.050: Respite Care for Families with Developmentally Disabled Members

Families with developmentally disabled children may be eligible to receive respite services from the Department of Mental Retardation, under the auspices of an Interagency Agreement between the Department and DMR. (This Interagency Agreement, as of July 1, 1988, transferred the responsibility for providing those respite care services for developmentally disabled persons that were previously defined in 110 CMR 7.000, (specifically 7.050 through 7.057), to the Department of Mental Retardation.)

7.051: Other Respite Care

The Department may develop and make available other forms of respite care for other populations of families and/or children served by the Department.

7.060: Introduction to Parent Aide Services

Parent Aide services provide a consistent relationship between a trained and supervised individual and a parent or primary caretaker whose family is at risk of or is currently experiencing problems with child abuse or neglect. Parent Aide services provide support and encouragement; build self-esteem; assist in ability to mobilize personal resources; enhance parenting skills; and reduce isolation. The objectives of Parent Aide services are to assist in the prevention of child abuse and neglect and its recurrence; improve self-esteem and promote the emotional growth and independent functioning of the parent or primary caretaker; strengthen parent-child relationships and enhance parenting skills; promote the effective and appropriate use of community resources; enable the parent or primary caretaker to develop appropriate relationships with others; enable the parent or primary caretaker to cope with normal periods of stress and adjust to changes associated with developmental stages of growth; reduce or eliminate stress leading to the abuse or neglect of children; support efforts

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to prevent placement of children or to assist in the acceptance of placement when necessary; prepare a parent or primary caretaker for eventual reunification when substitute care has been used and assist when reunification occurs; and reduce isolation resulting from cultural and linguistic barriers.

7.061: Target Population

The Department may offer or authorize Parent Aide services when, in the judgment of the Department, the individual(s) in question are members of the target population. The target population for Parent Aide services shall consist of parents, expectant parents, or primary caretakers whose families are at risk of or are currently experiencing problems with child abuse or neglect, which may include situations of:

- (1) Physical abuse/neglect
- (2) Emotional abuse/neglect
- (3) Inexperience in parenting
- (4) Inadequate support systems
- (5) Isolation resulting from cultural or linguistic barriers
- (6) Marital difficulties
- (7) Family dysfunction resulting from a variety of situational or social factors
- (8) Risk due to physical, developmental and/or emotional disability
- (9) Sexual Abuse
- (10) Substance Abuse

7.062: Purchased Parent Aide Services

The Department purchases parent aide services directly or through providers, who in turn may utilize volunteer or paid employees. In either case, parent aides must meet the following criteria:

- (1) Training. Prior to matching a Parent Aide with a client, the Parent Aide shall receive from the provider or volunteer organization a minimum of 12 hours of initial training, which shall include the following topics:
 - (a) Overview of child abuse and neglect including the protective service delivery system and M.G.L. c. 119.
 - (b) Community resources.
 - (c) Basic Parent Aide skills including: communicating, listening, problem solving, relationship building, values clarification, identifying and understanding parental stress factors and preparing for an initial home visit.
 - (d) Roles and responsibilities of the Parent Aide in relation to the clients, his/her agency, and the Department.
 - (e) The purpose of supervision.
 - (f) Crisis intervention procedures.
 - (g) Confidentiality and ethics.
- (2) Supervision. The Parent Aide shall receive supervision at regular intervals, which shall include:
 - (a) The integration of training with practice.

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- (b) The support of the Parent Aide in carrying out his/her roles and responsibilities.
- (c) The assessment of client needs and the establishment of goals and plans for service provision in the context of the developmental stages of the case (*i.e.* engagement, ongoing, termination).
- (d) The monitoring and assessment of the Parent Aide's performance.

(3) Confidentiality. The Parent Aide must demonstrate that the client's right to privacy, autonomy and self-determination shall be safe-guarded, and that no information obtained during Parent Aide visits will be divulged without the client's prior notification and consent, except as may be required by law.

(4) Recognition of Cultural and/or Linguistic Differences. Whenever possible the Parent Aide should be of the same racial, ethnic or linguistic background as the client to be served; or at a minimum must demonstrate the ability to recognize and respect the diverse racial, ethnic and linguistic minority groups within the target populations.

7.063: Limitation

Parent Aide services will be provided to a family for a maximum period of 12 months. This limitation may be extended for a maximum total of 18 months, but only with the written approval of the Area Director.

7.064: Denial, Reduction, or Termination of Services

Any client aggrieved by the denial, reduction, or termination of Parent Aide services may request a fair hearing on the matter pursuant to 110 CMR 10.00 *et seq.*

7.070: Introduction to Supportive Child Care Services

Supportive child care is a program of transportation and supportive social services providing direct child care to children who have open cases with the Department.

7.071: Supportive Child Care

Supportive child care is offered to protect a child who has an open case with the Department. Supportive child care subsidies are administered by the Department of Early Education and Care (EEC) in accordance with 102 CMR 10.00: *Subsidized Child Care* and policies. The Department or its designee, a contracted partnership agency, will determine appropriateness and authorize all referrals for supportive child care.

7.072: Eligibility - Need

In order to be authorized for child care services by the Department, there must be an assessed need for child care services. The Department will assess a need for child care services when, in the judgment of the Department, the provision of child care will aid in protecting a child who has an open case with the Department.

7.073: Intake for Supportive Child Care Services

When child care is requested, the Department social worker and supervisor shall assess whether supportive child care is required as part of the family's service plan. Utilization and continuation of child care services shall be reviewed as needed, but not less than every six months, to determine the appropriateness of continuing supportive child care. Area director approval is required for continuation of supportive child care services beyond 12 months.

7.074: Sliding Fee

- (1) A family with a documented need for protection from abuse or neglect must meet income requirements unless waived on a case by case basis by the Department

7.074: continued

(2) Families of children who are approved by the Department to receive supportive child care services may be required to contribute to the cost of the child care services they receive in accordance with a sliding fee established by the EEC.

7.075: Denial, Reduction or Termination of Services

Any client aggrieved by the denial, reduction, or termination of supportive child care services may request a fair hearing from the Department on the matter pursuant to the provisions of 110 CMR 10.00 *et seq.*

7.076: Exceptions to Sliding Fee

Families of children with a need as documented by the Department for protection from abuse and/or neglect, may have fees assessed or waived on a case by case basis. Teen parents enrolled in services for teen parents and their children may have fees waived for the first year at the discretion of the provider, and subsequent years, if they have no income. In lieu of fees, a work contribution must be documented. Children placed in foster care and children living with relatives not legally responsible for them are exempt from the sliding fee requirements of 110 CMR 7.070 through 7.076.

7.077: Redetermination

The Department shall redetermine the fee status of each family receiving child care services at least once every six months. In addition, the Department may redetermine the fee status at any time it learns of a change in family size or income which may dictate a new fee. The Department may require a family to submit appropriate income verification to support the income reported, and to report any change in income or circumstances.

7.078: Delinquent Payments - Termination of Basic Child Care Services

(1) All child care fees must be paid no later than the last business day of the week prior to the week being paid for.

(2) A fee is delinquent if it is not received by the Department or provider agency by the end of the day on which it is due.

(3) Clients who fail to pay a weekly fee on time will be sent a notice that their services will be terminated unless the delinquent fee is paid. Payment must be made by the 14th calendar day after the notice is issued or the services will be terminated the following service day. Families who are habitually late and therefore receive five such notices in a fiscal year will be terminated on the fifth notice even though they pay their late fee. However, a client may appeal any termination notice via the fair hearing process. In order to have services continue pending the outcome of the fair hearing, the client must pay any delinquent fees by the date stated and must continue to pay all current fees as they become due. If this is not done, the fair hearing may still be held but services will be terminated and will only be reinstated if the decision is favorable to the client.

7.079: Denial, Reduction or Termination of Services

Any client aggrieved by the denial, reduction, or termination of child care services may request a fair hearing on the matter pursuant to the provisions of 110 CMR 10.00 *et seq.*

7.080: Introduction to Counseling and Case Management Services

Counseling and case management services are services provided by a trained individual of support, intervention and/or treatment services, through a range of methods, to an individual or family, on an individual, family, or group basis.

7.081: Eligibility

Counseling and case management services are provided both directly by the Department's direct service staff and by purchase of services. Purchased counseling and case management services are available on both an open referral and closed referral basis. Closed referral case management services are required to conform to the Department's policies, practices, procedures, and regulations, as reflected in the provider's contract. Counseling services are provided to meet a wide variety of needs, including:

- (1) to prevent placement of children in substitute care;
- (2) to reduce or eliminate stress leading to abuse or neglect of children or adults;
- (3) to assist victims of abuse, neglect, sexual abuse, and domestic violence to cope with and respond to these experiences;
- (4) to prepare families for eventual reunion when substitute care has been used and to assist families when reunions occur;
- (5) to assist families or individuals to achieve a higher level of independent functioning;
- (6) to assist families or individuals to cope with normal periods of stress and adjusting to changes caused by the developmental stages of growth;
- (7) to assist parents and foster parents to strengthen their parenting skills;
- (8) to assist families, foster families or individuals to cope with crisis and develop ways to resolve the crisis;
- (9) to prepare children in the Department's care and all members of permanent alternative families for their new living experience;
- (10) to assist individuals and their families and foster families in coping with developmental disabilities;
- (11) to prepare children and adolescents, as well as their families and foster families, for substitute care placement;
- (12) to assist children and adolescents in substitute care, and their families and foster families, to attain agreed upon service goals;
- (13) to prevent families and individuals from becoming homeless, and to assist the homeless and those living in inadequate or substandard housing to locate and retain appropriate housing; and
- (14) to assist recently immigrated and refugee families and individuals in adjusting to living in a new culture.

7.082: Application Information Required

Any individual applying for counseling services directly to the Department shall be required to provide sufficient information to allow the Department to assess the applicant's need and eligibility for counseling. In addition, an individual applying for counseling services may be required to provide such authorization(s) for collateral contacts as are necessary for the Department to verify or assess the individual's need for counseling.

7.083: Sliding Fee

Case management services are not subject to any sliding fee requirement. Counseling services which are, in the judgment of the Department, provided on a protective basis, shall not be subject to any sliding fee requirement. All other counseling services provided by the Department may be subject to a sliding fee requirement.

7.084: Denial, Reduction, or Termination of Services

Any client aggrieved by the denial, reduction, or termination of counseling services may request a fair hearing on the matter pursuant to the provisions of 110 CMR 10.00 *et seq.*

7.090: Introduction to Emergency Shelter Services

Emergency Shelter is a service which provides short-term residential placement for women, children, families, and adolescents who are in crisis because they have suffered or are at substantial risk of suffering serious physical or emotional injury as a result of abuse, neglect or abandonment; or who are, due to financial constraints, unable to obtain housing.

Services to Women in Transition is a program of services which offers safety, protection, and support to women (with or without children) who have been threatened with or have experienced harassment, intimidation, or assault by someone within their household.

7.091: Scope of Services

(1) Emergency shelter for adolescents shall be provided by agencies or individuals under contract to the Department and licensed by EEC, and shall be available on a 24-hour-a-day, seven-day-a-week basis. These shelters may be either self-contained facilities or foster homes designated as emergency shelters.

(2) Emergency shelter for homeless women with children shall be provided at the Department's New Chardon Street Shelter in Boston or by referral to other appropriate facilities or agencies on a 24-hour-a-day, seven-day-a-week basis.

(3) Services to women in transition shall be provided by agencies or individuals under contract to the Department. Shelters shall be located in facilities that provide a safe, temporary residence in an anonymous location and shall be accessible on a 24-hour-a-day, seven-day-a-week basis.

7.092: Application for Emergency Shelter Services

Clients may apply for emergency shelter services in the following manner:

- (1) by applying directly to the Department;
- (2) by applying directly to an emergency shelter service provider under contract with the Department; or
- (3) by applying to another agency, which may refer the client to the Department or to an emergency shelter service provider under contract with the Department.

7.093: Approval of Application for Emergency Shelter Services

Emergency shelter service may be provided if one or more of the following conditions exist at the time of application:

- (1) children have suffered or are in immediate danger of suffering physical or emotional injury as a result of abuse or neglect.
- (2) children have been abandoned and are in need of temporary placement pending completion of an assessment and a search for parents and family.

7.093: continued

- (3) children are placed into the Department's custody by a court pending a hearing on a CHINS petition.
- (4) children have had difficulty with previous placements and need a short-term placement pending resolution of the immediate crisis and development of a new service plan.
- (5) children have run away from home.
- (6) women have been threatened with or have experienced harassment, intimidation or abuse by a member of their household.
- (7) families with children are homeless.

7.094: Sliding Fee

- (1) Emergency shelter services, if approved by the Department, are available without regard to income, and are not subject to a sliding fee.
- (2) Shelter services to families temporarily placed at the New Chardon Street Home shall be subject to a sliding fee for services, as determined by the Department.
- (3) Services to women in transition are available without regard to income, and are not subject to a sliding fee.

7.095: Limits on Use of Emergency Shelter Services

- (1) Emergency shelter for an individual child shall be provided for a maximum period of 30 days in a six month period. Those 30 days may be consecutive or may accumulate. In the event of a court order for out-of-home placement of a child, emergency shelter for an individual child shall be utilized for a maximum period of 45 days in a six-month period.
- (2) Emergency shelter to women in transition shall be provided for a maximum period of six consecutive weeks.
- (3) Emergency shelter facilities may provide placement for children without parental consent for up to 72 hours, during which time either the parents' consent must be obtained or a court order allowing continued placement must be obtained. If the client is a mature child, he/she may be required to sign a Voluntary Placement Agreement with the Department in order for the Department to provide placement for 72 hours without parental consent or court order.

7.100: Eligibility and Recruitment of Foster/Pre-adoptive Parent Applicants

- (1) Whenever the Department needs foster parents or adoptive parents, it shall recruit individuals who meet the standards set forth at 110 CMR 7.100 through 7.105. The Department may, in appropriate circumstances, use resources outside the Department to assist in such recruitment, including, but not limited to: private foster care and adoption agencies, foster parent associations, media-assisted recruitment, recruitment by culture based and faith based organizations.
- (2) Whenever an individual contacts the Department for the purpose of applying to be a foster or pre-adoptive parent, the Department shall conduct an initial screening process to determine if the individual and any household member meets the Department's initial eligibility criteria as set forth at 110 CMR 7.100(3) and (4).
- (3) An individual will be eligible to apply to be a foster or pre-adoptive parent if she/he, or a member of their/her/his household,
 - (a) does not have a criminal record which, in the judgment of the Department bears adversely upon the individual's ability to assume and carry out the responsibilities of a foster or pre-adoptive parent, as established by Department Policy on background record check and 110 CMR 18.00 *et seq.*; and

7.100: continued

(b) has not an open case with the Department during the 12 months immediately preceding the initial screening process except:

1. The individual/household member has an open case to receive services following an adoption legalization;
2. The individual/household member has an open case to receive services on behalf of a child for whom they are a guardian;
3. The individual is a prospective Kinship placement and the household member with the open case is the teen parent of a child to be placed, the teen parent is not alleged to be responsible for the physical or sexual abuse of any child in a supported child abuse/neglect investigation under M.G.L.c. 119, § 51B, and it is considered to be in the child's best interest for the teen parent to be a member of the kinship household;
4. Were the household member with an open case is a biological parent, but not an applicant, who is unable to parent their child due to a disability and the foster parent is approved by the commissioner after a recommendation by a central office clinical review team.
5. Any circumstance other than those listed above when approved by the Assistant Commissioner over foster care and adoption, upon the recommendation of a Regional clinical review team; and

(c) is not identified by the Department as alleged to be responsible for abuse or neglect of a child in a screened out report of child abuse/neglect under M.G.L. c. 119, § 51A or supported 51B investigation which was referred to the District Attorney pursuant to M.G.L. c. 119, § 51B(k), unless approved by the Regional Director, upon the recommendation of a Regional clinical review team; and

(d) does not have a history of involvement with the Department, including but not limited to, being the victim or the perpetrator of child abuse or neglect, which in the judgment of the Department would bear adversely on the person's ability to assume and carry out the responsibilities of a foster or pre-adoptive parent; and

(e) is a resident of the Commonwealth. If the individual is a resident of another state, they will be referred to the child welfare agency in the state where they reside. This does not preclude the Department from utilizing, or paying foster care payments to, foster/pre-adoptive homes outside of the Commonwealth if that home has been approved by the resident state.

In making the determination under 110 CMR 7.100(4)(b), (c) and (d), the Department will check its Central Registry and its computerized data system to determine if there is current, or has been previous, involvement with the Department and the nature of that involvement.

For any applicant who has lived outside the Commonwealth in the five years prior to applying to become a foster/pre-adoptive parent, the Department will check the central registry of child abuse and neglect in each state or other jurisdiction the applicant has lived in.

(4) An individual will not be eligible to apply to be a foster or pre-adoptive parent if:

- (a) the individual's home, which will be used to provide foster or pre-adoptive care, does not meet the physical standards as set forth at 110 CMR 7.105 or does not currently have space sufficient to accommodate one additional household member,
- (b) the individual's schedule would not require that a foster child of pre-school age spend in excess of 50 hours per week in child care, or that a foster child in the first grade or beyond spend more than 25 hours in child care each week,
- (c) the individual has a stable source of income sufficient to support his/her current household members,
- (d) the individual has a stable housing history,
- (e) the individual possesses the basic ability to read and to write in English or in his/her primary language or unless another household member who is requesting consideration as a foster/pre-adoptive parent can meet this criteria.
- (f) the individual has a working telephone in his/her home for both incoming and outgoing calls,
- (g) the individual has reached his/her 18th birthday,
- (h) the individual is not the parent of the child for whom she/he seeks to provide foster or adoptive care, and

7.100: continued

- (i) is a citizen of the United States or been granted legal permanent resident status, asylum, refugee or other indefinite legal status by the U.S. Immigration officials.
- (j) the premises of the individual's home are free of any animal that would pose a danger to a foster/pre-adoptive child.

This initial eligibility process will include at least one visit to the foster/pre-adoptive home, an interview with at least one of the potential foster/pre-adoptive parents and an assessment of the physical requirements for foster/pre-adoptive homes set forth at 110 CMR 7.105. The Department will provide the potential foster/pre-adoptive parent with the Department's Family Resource Application.

(5) If the Department determines that an individual is ineligible to apply to be a foster or adoptive parent it shall notify the individual in writing and shall include the reason(s) for the ineligibility.

(6) If as a result of the Department's initial screening process an individual is determined to be ineligible to apply to be a foster or adoptive parent, that determination shall be final and the individual shall not have a right to have that decision reviewed through the Department's fair hearing process.

However, if the sole basis for ineligibility is based on the individual's, or a household member's, criminal record, the individual has the right to submit information demonstrating the inaccuracy of, or the lack of relevance of, the criminal record.

(7) If as a result of the Department's initial screening process an individual decides to withdraw from consideration as a foster/pre-adoptive parent, the Department will confirm the individual's decision in writing and document the decision in the foster/pre-adoptive parent file.

7.101: Out-of-home Placements

(1) All out-of-home placement decisions shall be made in the best interests of the child, based upon safety, well-being and permanency of the child and the child's individual needs. Placement decisions should be made in a manner conducive to permanency planning and the safe and timely return of children to their homes or their placement into a new permanent setting. The following factors shall be taken into consideration:

- (a) the least restrictive setting for the child;
- (b) close proximity to the home of the child's family and/or the child's school;
- (c) ability for frequent visits between child and his/her family;
- (d) the child's individual needs including those related to his/her physical, mental, and emotional well-being and the capacity of the prospective foster or pre-adoptive parents to meet those needs;
- (e) a placement that can serve as the placement for any of the child's siblings in the Department's care or custody; and
- (f) a mature child's choice of residence.

(2) The Department shall consider, consistent with the best interests of the child, the following placement resources in the following order:

- (a) placement with a kinship family;
- (b) placement with a child-specific family;
- (c) placement in a family foster care home where the child was previously placed;
- (d) placement in family foster care;
- (e) placement in a shelter/short term program or group home;
- (f) placement in community residential care.

Every reasonable effort should be made to place a child in accordance with 110 CMR 7.101(1) and (2).

(3) Whenever the Department places a child in foster care, the Department shall seek from the child's parents the names of relatives or other kin who may be available to become a foster placement for the child(ren). The Department shall also begin a search for other relatives of the child or for other adult persons who have played a significant positive role in the child's life in order to determine whether the child may appropriately be placed with a relative or person if, in the judgment of the department, that placement would be in the best interest of the child.

7.101: continued

- (4) The Department shall place a child with the child's full or half sibling(s) unless doing so would be contrary to the safety or well-being of the child or sibling(s), or otherwise not in the child's best interest. If siblings are not placed together, reasonable efforts will be made to provide for visitation with siblings, unless such visitation would be harmful to the child or sibling.
- (5) Within 30 days after the child is removed from the custody of the parent(s), the Department shall provide notice to the kin and other adults identified under 110 CMR 7.101(3), unless the kin or other adult could not be approved as a foster parent due to known family or domestic violence. The notice shall include the following information:
 - (a) The child has been removed from the custody of the parents;
 - (b) The process for applying to become the child(ren)'s foster parent and the standards for becoming a foster parent;
 - (c) The child is placed with kin, if applicable;
 - (d) The availability of DCF foster care payments and Mass Health medical insurance for the child;
 - (e) The Department's process for considering kin placements when more than one kin applies at the same time;
- (6) When considering a kinship or child-specific placement, the Department shall require that the relative or extended family member or individual chosen by parent(s) meet the Department's requirements, as set forth at 110 CMR 7.104 and 7.105.
- (7) If more than one kinship or child-specific family is available and willing to be considered as a placement for the same child at the same time the Department reserves the right to prioritize which family(s) will be studied and in which order in accordance with factors set forth in the Department's family resource policy.
- (8) If placement is not made in a kinship home, the child's service plan shall indicate in writing:
 - (a) which kinship placements were given consideration; and
 - (b) the reason(s) why said persons were not utilized by the Department.
- (9) The Department will promote early permanency decisions and outcomes for children in substitute care. The Department will seek to have no more than $\frac{1}{3}$ of all children (under the age of 18) who have been in foster care for over 24 months that remain in foster care at any given time during the fiscal year.

7.102: Applicability of 110 CMR 7.100 through 7.303

- (1) 110 CMR 7.100 through 7.199 apply to foster and pre-adoptive homes, foster and pre-adoptive parents, and foster and pre-adoptive parent applicants; as well as children placed in community residential care.
- (2) 110 CMR 7.200 contains special provisions relating to pre-adoptive placements.
- (3) 110 CMR 7.300 applies to persons who wish to become legal guardians of children in the Department's care or custody.
 - (a) When used in 110 CMR 7.100 through 7.303, the term custody shall mean child in either the care or custody of Department unless otherwise specified.
 - (b) When used in 110 CMR 7.100 through 7.303, the term days shall mean calendar days unless otherwise specified.

7.103: Application to Become a Foster Parent/Pre-adoptive Parent

Whenever an individual who has contacted the Department for the purpose of applying to be an unrestricted, kinship or child-specific foster or pre-adoptive parent has been deemed eligible under 110 CMR 7.100 the following procedures shall be observed:

- (1) The Department shall open a file for the foster/pre-adoptive parent applicant, if not previously opened, with either the Department or a Department contracted provider of foster care.

7.103: continued

(2) The Department shall provide the foster/pre-adoptive parent applicant with the following materials: an application form if not previously provided during the initial screening process, and information regarding the evaluation process and the standards for licensing foster/pre-adoptive applicants, in addition to the information required by 102 CMR 5.10(1).

(3) Application forms shall require at least the following information and consent:

- (a) the name, date of birth, social security number, address, out of state addresses in the five years prior to application date, telephone number, sex, sexual preference/orientation, ethnicity, and occupation of the applicant;
- (b) the name, date of birth, social security number, sex and relationship to the applicant of all household members;
- (c) the current physical, mental and emotional condition of the applicant and all household members;
- (d) the name, address and telephone number of the applicant's employer and the employer of the head of the household, if the applicant is not the head of the household;
- (e) the name, address and telephone number of the last physician who has examined or treated the applicant;
- (f) the name(s), address(es) and telephone number(s) of any physician(s), psychologist(s) or other professional(s) who has treated the applicant or other household member for any serious or chronic illness, drug abuse, or alcohol abuse;
- (g) any crimes of the applicant or other household member who have been charged with or convicted of;
- (h) any current or previous applications to become a foster or pre-adoptive parent submitted by the applicant or other household member, and the results thereof;
- (i) whether the applicant or any other household member has ever been identified as allegedly responsible for an incident of child abuse or neglect in a 51B investigation supported by the Department or other child protective agency;
- (j) the names and addresses of at least two personal references;
- (k) languages spoken in the household, and the language predominantly used in the household;
- (l) whether the applicant is seeking placement of a specific child in the home, and, if so, the name, date of birth, address, sex and relationship to the applicant and other household members' relationship to the child;
- (m) the consent of the applicant, and other household members if appropriate, for the Department to make collateral contacts with any individuals named in response to requests for information under 110 CMR 7.103(3)(d), (e), (f), (g) and (j) and any other individuals seen by the Department as useful to the evaluation of the application; and
- (n) an agreement to allow the Department to conduct an examination of the applicant's status with the criminal offender information system as defined by M.G.L. c. 6, §§ 167 through 172.

(4) The Department shall record in the foster parent/pre-adoptive applicant file opened pursuant to 110 CMR 7.103(1) the date when the foster/pre-adoptive parent applicant contacted the Department for the purpose of applying to become a foster/pre-adoptive parent, and the date when application materials were given or mailed to the foster/pre-adoptive parent applicant.

(5) If the Department does not receive a completed application form from the foster/pre-adoptive applicant within 30 days after giving or mailing the application materials to the applicant, the Department shall attempt to contact the applicant to determine whether the applicant still wishes to become a foster/pre-adoptive parent. If, after the Department has contacted the foster/pre-adoptive parent applicant, the Department does not receive the completed application form within another 30 days, or the Department determines that the applicant no longer wishes to become a foster/pre-adoptive parent, the Department shall note that fact in the foster/pre-adoptive parent applicant file and close the file. If the Department was unable to contact the foster/pre-adoptive parent applicant, the Department will send written notice of the foster/pre-adoptive parent applicant that their file will be closed if the Department does not receive a completed application form within 30 days after mailing the notice to the applicant if the Department does not receive a completed application after the 30th day passes the Department shall note that fact in the foster/pre-adoptive parent applicant file and close the file.

In either case, if the individual later determines that she/he desires to be a foster/pre-adoptive, she/he shall recommence the process in accordance with 110 CMR 7.100.

7.103: continued

(6) After the Department receives the completed foster/pre-adoptive application, the Department shall, arrange for the foster/pre-adoptive applicant to attend the Department's approved foster/pre-adoptive service orientation, education and support training program for the type of foster care they seek to provide. The training program will include, but not be limited to, the information required by 102 CMR 5.10(2). The training is designed to ensure that the foster/pre-adoptive family will provide adequate foster care (including health care), abide by the foster/pre-adoptive parent agreement, and comply with applicable state and federal laws and regulations. The foster/pre-adoptive applicant's participation will be recorded in the foster/pre-adoptive applicant's record.

7.104: Standards for Licensure as a Foster/Pre-adoptive Parent

In order to be licensed as a foster/adoptive parent, a foster/pre-adoptive parent applicant must meet the following requirements:

(1) A foster/pre-adoptive parent applicant must demonstrate, to the satisfaction of the Department the ability:

- (a) to assure that a child placed in his or her care will experience a safe, supportive, nurturing and stable family environment which is free from abuse or neglect;
- (b) to assure that a child placed in his or her care will be provided with adequate food, clothing, shelter, supervision and other essential care at all times;
- (c) to assure that a child placed in his or her care will be provided with routine and emergency medical and dental care;
- (d) to promote the physical, mental, and emotional well-being of a child placed in his or her care, including supporting and respecting a child's sexual orientation or gender identity;
- (e) to respect and make efforts to support the integrity of a child's racial, ethnic, linguistic, cultural and religious background;
- (f) to manage the stressful situations which are frequently associated with the placement of a child in substitute care, such as the temporary nature of such placement, the integration of a child in crisis into the foster/adoptive family, and the potential return of the child to his/her family;
- (g) to respect and be bound by the same standards of confidentiality as the Department and its employees;
- (h) to accept and support the child's relationship with his/her parents, siblings and other family members and with the Department;
- (i) to assist a child in handling his/her situations such as removal from the home of their parent(s), placement in a new home environment, placement in a new school (when applicable), visits with parents and siblings, and possible return to the home of the parent(s) or placement in other substitute care;
- (j) to assure that a child placed in his /her care will be expected to attend school regularly and will have the opportunity to participate in an educational program and in extracurricular activities that meet the child's educational and social needs;
- (k) to work with the Department and the foster child's parents in implementing the child's service plan in order to meet development goals and outcomes;
- (l) in collaboration with the Department, to develop and participate in an annual plan for trainings, education and support that will assist the foster/pre-adoptive parent in meeting the needs of the child(ren) to be placed in his/her care.
- (m) to draw upon community and professional resources as needed;
- (n) to transport children safely, within the standards set by state law;
- (o) to deal with difficult issues in the child's background, and be able to talk with the child comfortably and constructively about his/her birth parents and family;
- (p) to have reasonable expectations of a child's behavior and potential growth; and
- (q) to assume and carry out all other responsibilities of a foster/pre-adoptive parent as detailed in the standard written agreement between the Department and foster/pre-adoptive parents.

(2) A foster/pre-adoptive parent applicant or any member of her/his household must be free of any physical, mental or emotional illness or handicap which, in the judgment of the Department, would impair his or her ability to assume and carry out the responsibilities of a foster/pre-adoptive parent. However, no illness or handicap in and of itself shall disqualify an individual from becoming a foster/pre-adoptive parent.

7.104: continued

- (3) A foster/pre-adoptive parent applicant or any member of his/her household must have a record which is free of criminal conduct which, in the judgment of the Department, bears upon his/her ability to assume and carry out the responsibilities of a foster/pre-adoptive parent, as established by Department Policy on background checks and 110 CMR 18.00 *et seq.*
- (4) A foster/pre-adoptive parent applicant shall maintain a household that has sufficient income and appropriate fiscal management to maintain stability and security without foster or adoptive parent reimbursement or subsidies provided under 110 CMR 7.130 and 110 CMR 7.209. Foster/adoptive reimbursement and subsidy shall be used to meet the individual needs of the child.
- (5) A foster/pre-adoptive parent applicant must live in a home which meets the requirements for foster/pre-adoptive homes set forth in 110 CMR 7.105.
- (6) A foster/pre-adoptive applicant must be a citizen of the United State or been granted legal permanent resident status, asylum, refugee or other indefinite legal status by U.S. Immigration officials, unless a waiver is granted under 110 CMR 7.105A.
- (7) A foster/pre-adoptive applicant must meet the initial eligibility criteria set forth at 110 CMR 7.100.

7.105: Standards for Licensure of Foster/Pre-adoptive Homes

In order to be licensed as a foster/pre-adoptive parent, a foster/pre-adoptive parent applicant must live in a home which meets the requirements of 102 CMR 5.10(4) and the following requirements:

- (1) The home must be clean; safe; free of obvious fire and other hazards; and of sufficient size to accommodate comfortably and appropriately all members of the household and the approved number of foster/pre-adoptive children.
- (2) The home must have safe and adequate lighting, ventilation, hot and cold water supply, plumbing, electricity, and heat.
- (3) The home must be furnished with a refrigerator and cooking stove in safe, working condition.
- (4) No foster child over one year of age shall share a bedroom with an adult, except if the foster children had been sharing a bedroom in the foster home prior to their 18th birthday and one of the children turns 18 years of age.
- (5) The home must have sufficient furniture to allow each child to sleep in a separate bed and to have adequate storage space for his or her personal belongings.
- (6) No foster child over four years of age, except for siblings up to age eight, shall share a bedroom with a child of the opposite sex.
- (7) The home must have bedrooms which provide at least 50 square feet per child, except the Department may waive this requirement for kinship homes if the bedrooms provide at least 35 square feet per child, and shall accommodate no more than four children per bedroom.
- (8) No bedroom to be used by foster children shall be located above the second floor unless any such floor has two safe means of egress.
- (9) No bedroom to be used by foster children shall be located below the first floor unless it contains a ground level, standard door exit and at least one operable window.
- (10) Each floor of the home, including the basement, shall be equipped with smoke detectors in working order.
- (11) If the home uses well water, it shall be tested and determined safe, and a report of the test shall be furnished to the Department.

7.105: continued

(12) No more than four foster children shall reside in the foster/pre-adoptive home at any one time, and at no time shall the total number of children residing in the foster/pre-adoptive home exceed six. Of the total of six children being cared for in the foster/pre-adoptive home, up to two children may be age 24 months or younger; however, only one child may be age one month or younger, provided, however:

(a) The Regional Director whose area office oversees the foster/pre-adoptive home may authorize additional children to be placed in a foster/pre-adoptive home under the following circumstances, as long as the total number of foster children in the foster home does not exceed six and the total number of children in the home does not exceed eight:

1. in the event of a multiple birth to allow siblings under the age of one month to be placed together; or
2. for an emergency short-term placement in a Hotline, respite, or family child care home; or
3. to place siblings together; or
4. for the replacement of a foster/pre-adoptive child in a foster/pre-adoptive home where she or he previously resided; or
5. to place siblings together where one sibling is already residing in the foster/pre-adoptive home; or
6. to place siblings together where one or more of the siblings has a previously established relationship with the foster/pre-adoptive home.

A capacity waiver for reasons 110 CMR 7.105(12)(a)1., 2., or 3. is not permitted unless there are no more than three foster children in the home and no more than five children in the home at the time the waiver is granted.

(b) The Commissioner/designee may authorize the placement of additional children in a foster/pre-adoptive home over the 4/6 limits outlined above for any reason other than the reasons listed in 110 CMR 7.104(12)(a) when the placement of a child(ren) is in the best interest of the child(ren) and the Commissioner/designee has received a recommendation of a Department clinical review team and consulted with professionals or others involved with the child(ren).

The Department may limit the number of children placed in a foster/pre-adoptive home during the first six months a home is licensed.

For the purpose of 110 CMR 7.000, the Department includes in the four/six limits any youth over the age of 18 who is in the Department's care or custody unless the youth receives care and maintenance payments directly.

Commentary: The Department establishes capacity limits regarding the maximum number of foster/pre-adoptive children a family can accept for a number of reasons. By limiting the number of children placed with a foster/pre-adoptive family, the Department seeks to ensure that the family is able to meet each placed child's needs as well as those of other household members. The Department is particularly concerned that the family is able to meet these needs on the sustained, intensive level required when caring for children who have been abused or neglected, while carrying out their other responsibilities in this important partnership role.

(13) Any home which is used for family childcare must be in compliance with the requirements of the EEC, as set forth in 102 CMR 8.07 through 8.09.

(14) The home may not have any household member, frequent visitor or alternative caretaker, who would, in the judgment of the Department, pose a threat of abuse or neglect to foster children placed in the home, or who would impede or prevent the provision of adequate foster care in the foster home.

(15) The home must be equipped with a telephone in working order for both incoming and outgoing calls.

(16) Any firearm located in the home shall be licensed and registered in accordance with state law and shall be trigger-locked or fully inoperable, and stored without ammunition in a locked area. Ammunition shall be stored in a separate locked area.

(17) Any pet/animal maintained on the premises of the foster/pre-adoptive home must have up to date vaccinations, rabies shots, and be licensed in accordance with the municipality in which the pet/animal is maintained.

7.105: continued

(18) If the safety or well-being of foster children may be impacted by an animal's presence in the foster/pre-adoptive home, the Department shall follow M.G.L. c. 119, § 26D.

7.105A: Waiver of Standards for Approval of Foster/Pre-adoptive Parents or Homes

The requirement set forth in 110 CMR 7.104(6) may be waived for an applicant for a child specific or kinship home as set forth in 110 CMR 7.108, provided the applicant otherwise meets the eligibility criteria set forth for child specific and kinship applicants and a determination is made that it would be in the child's best interest to be placed in the applicant's home.

In determining whether a waiver is in the child's best interest, the decision maker(s) shall consider the nature and length of the applicant's relationship with the child(ren), the applicant's ability to support and maintain the child's connection to family, community and culture and the child's anticipated length of stay in placement.

The decision whether to waive the requirement shall be made by a Regional Clinical Review Team (RCRT), or in an emergency placement situation, by the Regional Director who shall then arrange for a final decision by the RCRT after the comprehensive assessment under 110 CMR 7.107. Waiver decisions made in connection with an emergency placement may be changed as a result of information obtained or reassessed during the comprehensive assessment under 110 CMR 7.107. There shall be no appeal from a decision not to waive the requirement for an emergency placement.

7.106A: Non-department State Employees as Foster/Pre-adoptive Parents

Any state employee, including a special state employee, full or part time who is licensed as a foster/pre-adoptive parent, must file with the State Ethics Commission a disclosure of financial interest on a form prescribed by the Ethics Commission. The disclosure of financial interest form must be filed with the Ethics Commission prior to the placement of a child in the foster/pre-adoptive home.

7.106B: Department Employees as Foster/Pre-adoptive Parents

(1) Encouraging individuals to become foster or pre-adoptive families is a critical Department priority. The Department shall therefore support its own employees who wish to become foster or pre-adoptive parents by providing opportunities for them to do so.

7.106B: continued

(2) Upon written request to and written approval by the Deputy Commissioner for Field Operations, a Department employee may be referred to a private agency for foster/pre-adoptive parent purposes through an existing Department contract, to obtain a foster/pre-adoptive parent home study and/or monitor the home if approved. The Deputy Commissioner may also choose to refer the Department employee to a Department area office or regional office where the employee does not currently work, nor has previously worked, to obtain a foster/pre-adoptive parent home study and/or to monitor the home if approved.

(3) Prior to the placement of a child in Department care or custody in a Department employee's home, including a Department special state employee, the Department employee must file with the State Ethics Commission a disclosure of financial interest on a form prescribed by the Ethics Commission.

(4) Prior to the initiation of contact for the purposes of placement, or prior to the placement of a child in the care or custody of the Department with a Department employee, or a Department special state employee, a committee consisting of the Deputy Commissioner for Field Operations, the General Counsel and the Assistant Commissioner for Foster Care, Adoption and Adolescent Services, must grant written approval of the placement.

(5) (a) A child in the care or custody of the Department and whose case is managed by the Department may be placed in a Department employee's home (approved and supervised by a private agency or by a Department area office or regional office where the employee does not currently work, nor has previously worked) unless the child is from the employee's own area if the employee works in an area office or the employee's region if the employee works in a regional office. For the purpose of this regulation, Department legal staff is deemed regional employees. For employees in the Department's Central Office, placements will be limited based on the employee's area of responsibility and oversight.

(b) The Department may permit a placement that would not be permitted under 110 CMR 7.106B(5)(a) under the following circumstances:

1. A voluntary or involuntary termination of parental rights has issued, there are no available kin willing and able to care for the child and it is in the child's best interest to be placed with the Department employee;
2. The Department employee is a kin of the child to be placed and it is in the child's best interest to be placed with the Department employee;
3. The child's parent or the child has identified the Department employee as a potential placement, the child's parents do not object to the placement, and it is in the child's best interest to be placed with the Department employee.

(c) In any case in which an exception is granted under 110 CMR 7.106B(5)(b), the parent's and child's Department clinical and adoption case will be transferred to another Department area office or to a contracted agency.

Commentary: If a department employee is a kin of the child, a placement may occur on an emergency basis in accordance with 110 CMR 7.108(1) as long as 110 CMR 7.106B(3) and (4) are complied with prior to placement.

(6) Any Department employee wishing to be approved as a pre-adoptive parent for a child not in the Department's care or custody may make application to any private, licensed placement agency, regardless of whether that agency has a contract with the Department, in accordance with the procedures and fee schedule of that agency.

7.106C: Department Employees as Mentor, Visiting Resource or Other Significant Adult to Child in Department Care or Custody

The Department is committed to developing opportunities that will provide youth in its care or custody with positive, sustainable adult connections. In some cases, this adult connection may be a Department employee. A Department employee, or Department special state employee, who seeks to continue or establish a relationship with a child in Department care or custody outside of the employee's duties must obtain prior written permission of the Deputy Commissioner for Field Operations, Assistant Commissioner for Foster Care, Adoption and Adolescent Services and the General Counsel in accordance with the Department family resource policy.

7.106D: Employees of Department Contracted Agencies as Foster/Pre-adoptive Parents

Any employee of an agency on contract with the Department, who is providing services under the Department contract who wishes to become a foster/pre-adoptive parent, mentor, or visiting resource for a child in Department care or custody, must inform, and obtain the permission of, the Department prior to initiating a license study process and the placement of a foster/pre-adoptive child by writing to the Deputy Commissioner for Field Operations. The Deputy Commissioner will consult with the General Counsel and the Assistant Commissioner for Foster Care, Adoption and Adolescent Services to ascertain that there are no ethical or other conflicts with the proposed home-study or placement, in accordance with the Department's Family Resource Policy.

7.106E: Department Contracted Foster/Pre-adoptive Parents

The Department may utilize foster or adoptive care agencies licensed under the laws of the Commonwealth to provide foster/pre-adoptive services to children in Department care or custody. When it does so, the contracted foster/pre-adoptive homes must comply with the standards set forth at 110 CMR 7.100(3) and (4), 7.103 and 7.104. The Department reserves the right, through its procurement and contracting process, to further define standards that the contracted foster/pre-adoptive homes must meet, such as further limiting the number of children that may be placed in a foster/pre-adoptive home, or requiring additional skills of the foster/pre-adoptive parents.

7.107: Assessment and Licensing of Foster/Pre-adoptive Parent Applicants

- (1) All applicants seeking licensure as an unrestricted foster/pre-adoptive parent are required to complete the Department's foster/pre-adoptive parent pre-service training program. Within 30 working days after the applicant completes the training, or approval of a pre-service training waiver, the Department shall complete a comprehensive assessment of the foster/pre-adoptive applicant, unless the foster/pre-adoptive applicant requests, and the Department approves, an extension of time to complete the assessment.
- (2) The comprehensive assessment will be performed by the Department in accordance with 102 CMR 5.10(5) and shall include at least the following:
 - (a) an interview with each household member as appropriate to her/his age and verbal capacity including an individual interview with each applicant.
 - (b) Home visit(s); and
 - (c) Contact(s) with personal references supplied by the applicant and other individuals seen by the Department as useful to the assessment.
 - (d) Contact(s) with a licensed physician who has conducted a current medical examination of the applicant and each household member; and
 - (e) contact with the employer for each employed applicant; and
 - (f) contact with the school for the school age children living in the home and younger children who participate in pre-school or a child care program; and
 - (g) a check of the Department's Central Registry, and the Department's Computerized data system; and
 - (h) for any applicant who has lived out of state within the five years prior to application, a check of the Central Registry of child abuse and neglect of each state in which the applicant lived in the prior five years; and
 - (i) a check of the state criminal offender record information as defined pursuant to M.G.L. c. 6, §§ 167 and 172; and
 - (j) a fingerprint-based check of the national crime information databases for each foster/pre-adoptive parent during the initial license study. This requirement will begin October 1, 2008 for new applicants only; and
 - (k) A specific assessment of the applicant's ability to meet the special needs of children the Department will be placing; and
 - (l) Successful completion of the Department's training program, unless waived; and
 - (m) confirmation that the applicant(s) and the home meet the standards established by 110 CMR 7.104 and 7.105.

7.107: continued

(3) The Department shall enter all information obtained as a result of its comprehensive assessment [except for any information obtained as a result of any check required by 110 CMR 7.107(2)] in the foster parent file, which may be a combination of an electronic file and a hardcopy file.

Any information obtained as a result of any check required by 110 CMR 7.107(2)(i) and (j) shall be stored separately in a locked file cabinet, as required by the Criminal History Systems Board.

(4) If at any time during the application or comprehensive assessment process the Department obtains information, which if known at the time of the initial eligibility screening process, would, for any of the reasons set forth in 110 CMR 7.100(3) and (4), have excluded the individual from applying to become a foster/pre-adoptive parent, as set forth at 110 CMR 7.100, the Department shall discontinue the comprehensive assessment process and notify the individual that she/he is ineligible to apply to be a foster/pre-adoptive parent. This may include events which occur after the initial eligibility screening process, such as a report of child abuse/neglect is supported after an investigation under M.G.L. c. 119, § 51B or the individual is charged with a crime which poses a risk to a child's safety. This determination shall be final and the individual shall not have a right to appeal this decision through the Department's fair hearing process.

(5) Within ten working days after completing the comprehensive assessment, the Department shall reach one of the following decisions:

- (a) The foster/pre-adoptive parent applicant shall be licensed.
- (b) The foster/pre-adoptive parent applicant shall not be licensed.

(6) Within ten working days after reaching a decision to license or not to license a foster/pre-adoptive parent applicant as a foster parent, the Department shall give written notice of its decision to the foster/pre-adoptive parent applicant. The written notice shall include:

- (a) if the decision reached is to license the age, sex or other characteristics of the children who may be placed in the foster/pre-adoptive home; or
- (b) if the decision reached is not to license the reason(s) for the decision, notice of the foster/pre-adoptive parent applicant's right to appeal the decision, and the procedure for requesting such an appeal.

A copy of the written notice shall be entered in the foster/pre-adoptive parent file. Upon written request, the foster/pre-adoptive applicant is entitled to receive a copy of the completed assessment.

(7) Either together with or subsequent to the notice of the decision to license, the Department shall issue a foster/pre-adoptive license.

(8) The duration of a foster/pre-adoptive license shall be two years but, in any event, shall be subject to the provisions of 110 CMR 7.107 (9), 110 CMR 7.113, 7.113A, 7.113B, 7.113C and 7.116. In any case in which the Department is delayed in completing its re-assessment of the foster/pre-adoptive license, the foster/pre-adoptive license shall continue in effect until such time as the Department completes its re-assessment process and sends notice of its decision to the foster/pre-adoptive parent(s). If a foster/pre-adoptive home files for a fair hearing to challenge the Department's decision to terminate their license, the license shall remain in effect until the fair hearing decision is issued.

(9) A license applies only to the home in which the foster/pre-adoptive parent(s) resides at the time of the comprehensive assessment. Except in the case of an emergency, a foster/pre-adoptive parent(s) must notify the Department of any planned change of residence at least 60 days in advance. If a change of residence is necessitated by an emergency, the foster/pre-adoptive parent(s) must notify the Department within 24 hours after the change. If a foster/pre-adoptive parent(s) changes his/her residence without providing the required notice to the Department, or if the foster/pre-adoptive parent(s)' new home does not meet all of the standards set forth in 110 CMR 7.105, the license shall be revoked. In the latter circumstance, there shall be no right to appeal from the revocation of the license.

7.108: Kinship or Child-specific Placements

Kinship or child-specific placements may occur when a specific child is to be placed into a specific home and that home is not available for other foster children.

(1) **Emergency Placements.** If the Department determines that an emergency kinship or child-specific placement is necessary for a child(ren), the Department will first conduct an initial eligibility screening of the individual(s) seeking to become the child(ren)'s foster parent(s), all household members and the home which shall include the following:

- (a) background checks (CORI and Department history) on all household members 14 years and older, and on those younger about whom concerns exist;
- (b) a home visit;
- (c) a determination that the home meets the physical standards set forth at 110 CMR 7.105;
- (d) an initial interview is completed on all household members present, as appropriate to age and verbal capacity, including an individual interview with at least one potential foster/pre-adoptive parent and that person has committed to completing the full assessment and approval process;
- (e) completion of the Family Resource Application;
- (f) if a Department employee, the placement has been approved in accordance with 110 CMR 7.106B(4)

If the proposed placement meets the requirements in 110 CMR 7.108, the Department may place the child(ren). If the proposed placement does not meet the requirements in 110 CMR 7.108, the placement shall be deemed ineligible for an emergency placement, and the Department shall not place the child(ren). A determination of ineligibility under 110 CMR 7.108(1) is final, and is not subject to appeal.

Nothing in 110 CMR 7.108 precludes the kinship/child specific home from being considered as a non-emergency placement as set forth in 110 CMR 7.108(2).

If an emergency kinship or child-specific placement is made, the individual who has been deemed eligible to apply to become the approved family for the child(ren) shall submit to the Department a completed foster/pre-adoptive application. The Department shall complete a comprehensive assessment of the foster/pre-adoptive application within 40 working days after placement.

If the comprehensive assessment reveals compliance with the standards set forth at 110 CMR 7.100, 7.104 and 7.105, the placement shall be approved, solely for the child(ren) for whom an emergency placement had been made. If the assessment reveals that the requisite standards are not met, the placement shall not be approved, and the child(ren) for whom an emergency placement had been made shall be removed forthwith. The kinship or child-specific placement resource shall be notified in writing, of the outcome of the comprehensive assessment, within ten working days after completion of the comprehensive assessment. There is no right of appeal from the removal of a child(ren) from an unapproved home, but the denial of a foster/pre-adoptive application may be appealed via the Department's fair hearing process, set forth at 110 CMR 10.00 *et seq.*

(2) **Non-emergency Placements.** Where the Department is not considering the kinship or child-specific home for an emergency placement, the Department shall conduct an initial eligibility screening of the proposed caregivers in accordance with 110 CMR 7.100(3) and (4). If as a result of the initial eligibility screening the proposed caregivers are determined to be ineligible, that determination shall be final, and there shall be no right of appeal. (*See* 110 CMR 7.100(6).) If the proposed caregivers are determined to be eligible, they shall submit a completed foster/pre-adoptive application to the Department, and the Department shall complete a foster/pre-adoptive assessment within 40 working days after receiving the completed application.

If the assessment reveals compliance with the standards set forth at 110 CMR 7.100, 7.104 and 7.105, the applicant shall be licensed as a kinship or child-specific placement for the child(ren) named in the foster/pre-adoptive application, and the child(ren) may be placed in the home. The kinship or child-specific placement parent(s) shall be notified in writing, of the outcome of the comprehensive assessment, within ten working days after completion of the comprehensive assessment. Applicants may appeal the denial of a foster/pre-adoptive application via the Department's fair hearing process, set forth at 110 CMR 10.00 *et seq.*

7.108: continued

(3) Miscellaneous Provisions.

(a) Kinship or child-specific parent(s) shall be paid at the Department's regular foster care rates for the care of the children placed pursuant to 110 CMR 7.108.

(b) A foster/pre-adoptive applicant licensed pursuant to 110 CMR 7.108 may not be used as a placement for any child(ren) not named in the foster/pre-adoptive application, unless the comprehensive assessment and training program, as set forth in 110 CMR 7.107(2), is completed, and the applicant is thereafter licensed as an unrestricted foster/pre-adoptive parent in accordance with 110 CMR 7.107.

(c) All new kinship or child-specific foster/pre-adoptive parent(s) will be notified of the approval and payment requirements of 110 CMR 7.100 *et seq.* either before or at the time they submit a completed foster/pre-adoptive application to the Department.

(d) When the child(ren) for whom the kinship or other child specific family was licensed leaves the placement, the kinship or other child specific family shall cease to be licensed. In these circumstances, there shall be no right to appeal the fact that the family is no longer licensed. However, depending upon the reason for the child(ren)'s departure from the placement and as more fully set forth in 110 CMR 7.116, there may be a right to appeal the fact of the child(ren)'s departure from the placement.

Comment. An emergency kinship or child specific placement may be made on the basis of an initial eligibility screening, but the Department must license the placement as a kinship or child-specific family within 40 working days after the emergency placement. Because the Department is prohibited by law from keeping a child(ren) in an unapproved placement (*See* M.G.L. c. 150), the child(ren) must be removed upon a determination that the applicant/home will not be licensed and, in these circumstances, there is no right of appeal from the removal of the child(ren). Similarly, because a kinship or child specific family is licensed solely for a specific child(ren), the departure of that child(ren) from the placement automatically terminates the license of the family, and there is no right of appeal from the loss of license.

7.109: TAFDC Grantee Relative vs. Department Foster Care Payments

If a home is approved or licensed as a foster/pre-adoptive home by the Department, and if the family is or could be receiving TAFDC Grantee Relative payments from the Department of Transitional Assistance, the family must choose to receive either TAFDC Grantee Relative payments or foster care payments. The family may not receive payments from both programs simultaneously.

7.111: Written Agreement Between Department and Foster/Pre-adoptive Parents

Once a foster/pre-adoptive parent applicant has been licensed by the Department as a foster/pre-adoptive parent and has completed pre-service foster/pre-adoptive parent training, the Department and the foster/pre-adoptive parent shall enter into a written agreement. The written agreement shall be signed by each foster/pre-adoptive parent and the Department's authorized agent, shall be renewed annually, and shall include at least the following terms:

(1) a statement of the responsibilities of the foster/pre-adoptive parent, including a recognition that foster care is a temporary arrangement which envisions the eventual reunification of the child with his/her birth family and the obligation of the foster/pre-adoptive parent to support that reunification;

(2) a statement of the Department's responsibilities to the foster/pre-adoptive parents;

(3) a prohibition against the use of any form of corporal punishment by foster/pre-adoptive parents upon any foster child(ren);

(4) a statement of any limitations on the identity or individual characteristics of children who may be placed in the foster/pre-adoptive home;

(5) any other terms required by the EEC under its regulations at 102 CMR 5.10(7)(a); and

(6) a statement that the foster/pre-adoptive parent is bound by the same standards of confidentiality as the Department and its employees.

7.112: Department Obligations to Foster/Pre-adoptive Parents

- (1) Pre-placement. Before a child is placed in a foster/pre-adoptive home, the Department shall provide the prospective foster/pre-adoptive parent with sufficient information about the child to enable the foster/pre-adoptive parent to determine whether to accept placement of the child. The foster/pre-adoptive parent will receive information about the service plan for the child, behavior management guidelines and techniques, the child's medical needs, the child's educational needs, current health and education information and/or records available, legal status and any other special conditions or requirements.
- (2) Post-placement. During the period of a specified child's placement in a foster/pre-adoptive home, the Department shall:
 - (a) provide the foster/pre-adoptive parent with sufficient information about the foster child on a continuous basis to enable the foster/pre-adoptive parent to provide adequate foster/adoptive care to that child and to meet the individual needs of that child;
 - (b) assign a social worker who will be responsible for providing direct service to the foster child and support to the foster/pre-adoptive family;
 - (c) provide the foster/pre-adoptive parent with a copy of the Department's service plan for the foster child, and solicit the foster/pre-adoptive parent's involvement in the implementation and review of the service plan;
 - (d) provide the foster/pre-adoptive parent with a Medical Passport for the foster child, and if not contained in the medical passport, a document(s) that contain the following information: the name and address of the child's medical provider(s), the child's immunization record, the child's known medical problems, the child's medications and any other relevant health information needed to care for the child;
 - (e) provide the foster/pre-adoptive parent with either a copy of that portion of the child's educational records that include the child's current educational provider, the child's grade level performance, the child's current school record, and any other relevant education information needed to care for the child, or a document(s) that contain such information;
 - (f) notify the foster/pre-adoptive parent of all court hearings and case reviews involving the foster child, as far in advance of each hearing as possible;
 - (g) notify the foster/pre-adoptive parent if the Department decides to pursue legal guardianship or adoption for a child placed in the foster/pre-adoptive home, and afford the foster/pre-adoptive parent adequate opportunity to apply to become the legal guardian or adoptive parent for that child;
 - (h) provide the foster/pre-adoptive parent and with any subsidy or benefits to which they are entitled under the Department's regulations, standards or policies; and
 - (i) provide the foster/pre-adoptive parent with notice of a review or hearing held pursuant to M.G.L. c. 119, §§ 26 and 29B and M.G.L. c. 210, § 3. The notice shall include notice of the time and place of the hearing and notice of the foster/pre-adoptive parent's right to be heard at the proceeding.

7.113: Reassessment and License Renewal of Foster/Pre-adoptive Parents and Foster/Pre-adoptive Homes

- (1) The Department shall annually re-assess foster/pre-adoptive parents and foster/pre-adoptive homes whether unrestricted, kinship or other child-specific, in accordance with the procedure set forth in 110 CMR 7.113(1)(a). Every two years a license renewal will be conducted in place of the annual reassessment.
 - (a) The Department shall send re-assessment materials to the foster/pre-adoptive parent 45 working days prior to the re-assessment due date;
 - (b) The Department will thereafter:
 1. interview the foster/pre-adoptive parents and other household members in the foster/pre-adoptive home;
 2. obtain information from any Department social worker who has had a child in his/her caseload placed in the home in the previous year, and include information from any foster child then placed in the home, and thereafter enter a written summary of the interview results in the foster/pre-adoptive parent file;

7.113: continued

3. review the foster/pre-adoptive parent file to examine written correspondence between the Department and the foster/pre-adoptive parent during the preceding year to review the Child Placement Agreements for children in the home in the year preceding the re-assessment, to determine the foster/pre-adoptive parent's compliance with training requirements established by the Department; and determine the nature and extent of the foster/pre-adoptive parent's involvement in the implementation and review of the service plan for children placed in the home during the preceding year;
 4. prepare a written evaluation of the foster/pre-adoptive parent(s) which may include a general description of the foster/pre-adoptive parent's performance in providing foster/pre-adoptive care; identification of the foster/pre-adoptive parent's particular strengths and weaknesses in providing foster/pre-adoptive care; and recommendations for eliminating weaknesses and capitalizing on strengths identified;
 5. request criminal record and Central Registry checks and other background checks as required by Department Background Record Check Policy and 110 CMR 18.00 *et seq.* for all household members, other than foster children;
 6. contact references seen by Department staff as useful to the re-evaluation;
 7. review and update of the foster/pre-adoptive parent professional development plan;
 8. review of the physical standards for foster/pre-adoptive homes, as set forth in 110 CMR 7.105 and Department Family Resource Policy, to ensure the home continues to meet these standards;
 9. notify the foster/pre-adoptive parent, at least 15 working days prior to the re-assessment due date, of any issues that need resolution to continue the foster/pre-adoptive parent license;
 10. develop with the foster/pre-adoptive parent a plan to meet the identified outstanding issues needing resolution and a time frame for completion.
- (c) Within ten working days after completing the re-assessment, the Department shall reach one of the following decisions shall notify the foster/pre-adoptive parents and shall enter a copy of the notification in the foster/pre-adoptive parent file:
1. The foster/pre-adoptive parent and foster/pre-adoptive home license is continued on the same terms, and with the same conditions, as existed prior to the re-assessment. For kinship or child-specific placement this means the child currently in the home remains.
 2. The foster/pre-adoptive parent and foster/pre-adoptive home license is continued on terms, and with conditions, different from those which existed prior to the re-assessment, which new and different terms and conditions shall be set forth in writing. For kinship or child-specific placements this may mean that the home was licensed for a different or additional specific child.
 3. The foster/pre-adoptive parent and/or the foster/pre-adoptive home license will not continue unless specific changes in circumstances or conditions are effected within a specified time period, not to exceed 14 days, and that if such changes are not effected within the time allotted, the child or children currently placed in the foster/pre-adoptive home will be removed from the placement, and the placement will cease to be approved.
 4. For an unrestricted foster/pre-adoptive parent the license continues but the home's status is changed to a child-specific home.
 5. The foster/pre-adoptive parent and/or the foster/pre-adoptive home are not re-approved, and all foster children residing in the home shall be removed.
- (d) In any case in which the Department is delayed in completing the annual re-assessment, the unrestricted foster/pre-adoptive parent(s) and home shall continue to be licensed, until the Department completes the re-assessment and sends notice of its decision to the foster/pre-adoptive parent(s).
- If the foster/pre-adoptive parent(s) appeal the revocation of their license via the fair hearing process, the license shall remain in effect until the fair hearing decision is issued.
- (e) The foster/pre-adoptive parents shall receive a copy of the written evaluation upon request.

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(2) The Department may, six months after a foster/pre-adoptive home is first licensed, conduct a review of the foster/pre-adoptive home whether unrestricted, kinship or child-specific. The review held under 110 CMR 7.113(2) may include, but not be limited to, the procedures set forth in 110 CMR 7.113(1). At the conclusion of the review the Department shall reach one of the decisions set forth in 110 CMR 7.113(1)(d). The Department shall send written notice to the foster/pre-adoptive parent of the outcome of the review.

(3) The Department shall conduct a license renewal study of all foster/pre-adoptive parent(s) and foster/pre-adoptive homes every two years, prior to the expiration date of the existing license, provided, however, that an existing license shall continue in full force and effect until the Department reaches decision as a result of the license renewal study and notifies the foster/pre-adoptive parent(s), in writing, of that decision. The license renewal study shall substitute for the annual re-assessment during the year that the license renewal study is conducted.

License renewal studies shall be conducted in accordance with the procedures set forth in 110 CMR 7.113(1)(a) and (b) and Department Family Resource Policy #2006-01 as well as the following:

- (a) obtain and review a school reference for each school age child living in the foster/pre-adoptive home and for any child participating in pre-school or a child care program;
- (b) when necessary, obtain and review an employer reference for each foster/pre-adoptive parent and head of household whose employment status has changed since the last annual reassessment;
- (c) when necessary, obtain and review a medical reference for each household member.

Within ten working days after completing a license renewal study, the Department shall reach one of the decisions set forth in 110 CMR 7.113(1)(c), and shall notify the foster/pre-adoptive parent(s) of the decision in writing and shall enter a copy of the notification in the foster/pre-adoptive parent(s)' file.

(4) Whenever the Department has revoked or not renewed a license for a licensed foster/pre-adoptive parent(s), as a result of an annual or limited re-assessment, the Department shall remove all children from the foster/pre-adoptive home, unless the Department determines that it is in the child(ren)'s best interest to remain in the foster/pre-adoptive home. If the Department determines that it is in the child(ren)'s best interest to remain in the foster/pre-adoptive home, the home shall become a child specific home and subject to the same terms and conditions as any home approved under 110 CMR 7.108.

(5) The rights of foster/pre-adoptive parent(s) to appeal Department decisions under 110 CMR 7.113 or 7.113A are set forth in 110 CMR 10.06.

7.113A: Limited Reassessments

In addition to the annual reassessment or license study, the Department may perform a limited re-assessment of the foster/pre-adoptive parent and/or foster/pre-adoptive home at other times.

(1) The Department shall conduct a limited reassessment whenever the Department:

- (a) investigates and supports a report of abuse or neglect under G.L. c. 119, § 51B and the foster/pre-adoptive parent or other household member is identified as responsible for abuse or neglect; or
- (b) learns that a foster/pre-adoptive parent has moved to a new residence; or
- (c) learns that corporal punishment has been used on a foster/pre-adoptive child placed in the home; or
- (d) removes a foster/pre-adoptive child from the foster/pre-adoptive home on an emergency basis.

(2) The Department may conduct a limited reassessment whenever the Department;

- (a) removes a foster child from a foster/pre-adoptive home on a non-emergency basis, whether the foster/pre-adoptive home is an unrestricted licensed home or a kinship or child-specific home; or

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- (b) learns of any circumstance which could affect the foster/pre-adoptive parent's provision of, or ability to provide, adequate foster care; or
 - (c) learns of any circumstance which would cause the Department to impose or remove any restrictions or limitations on the identity or characteristics of children to be placed or already placed in the foster/pre-adoptive home; or
 - (d) learns of any circumstance which would cause the Department to increase or decrease the maximum number of children who may be placed in the foster/pre-adoptive home;
 - (e) learns of additional household members or pets/animals;
 - (f) screens out or unsupports a report of child abuse or neglect on the foster/pre-adoptive family or supports a report of child abuse or neglect on a child residing in the home where the individual responsible for the abuse or neglect is not a household member; or
 - (g) learns of any possible violations of Department foster/pre-adoptive parent of home standards or of the Foster/Pre-adoptive Parent Agreement.
- (3) In conducting the limited reassessment the Department will follow the following procedure:
- (a) The Department shall give written notice to the foster/pre-adoptive parent as soon as possible. Such written notice shall include at least the following information:
 - 1. the fact that the Department intends to perform a limited re-assessment of the foster/pre-adoptive parent, the foster/pre-adoptive home, or both;
 - 2. the reason(s) for performing the limited re-assessment; and
 - 3. the steps which the Department intends to take in order to complete the limited re-assessment.

A copy of the written notice shall be entered in the foster/pre-adoptive parent file.
 - (b) Within 30 days after the written notice has been given, the Department shall perform and complete the limited re-assessment of the foster/pre-adoptive parent and/or foster/pre-adoptive home. The limited re-assessment may consist of one or more of the steps described under 110 CMR 7.113(1) and in the Department's Family Resource Policy.
 - (c) The Department shall prepare a written report of findings and conclusions made as a result of the completed limited re-assessment. A copy shall be entered in the foster/pre-adoptive parent file. The foster/pre-adoptive parent may receive a copy upon request.
 - (d) At the conclusion of the limited re-assessment, the Department shall reach one of the decisions in 110 CMR 7.113(4)(c).
 - (e) The Department may combine an annual reassessment or Licensed renewal study with a limited reassessment if the annual reassessment or license renewal study is due within three months of the commencement of the limited reassessment. If the reassessments are combined, all steps in the annual reassessment or license renewal study will be conducted.

7.113B: License Revocation

- (1) Except as provided otherwise in 110 CMR 7.100 *et seq.*, whenever the Department reaches a decision to revoke a license, it shall give written notice to the foster/pre-adoptive parent. The written notice shall include at least the following information:
- (a) notice that the Department will no longer place any foster children in the home;
 - (b) notice that agreement(s) between the Department and the foster/pre-adoptive home is terminated and that the license should be returned to the Department;
 - (c) the reason(s) for the license revocation; and
 - (d) if applicable, notice of the foster/pre-adoptive parent's right to appeal and the procedures for taking such appeal.
- A copy of the written notice shall be entered in the foster/pre-adoptive parent file.
- (2) If the decision to revoke the license is concurrent with a decision to remove one or more children from the foster/pre-adoptive home, the written notice required under 110 CMR 7.00 may be modified as necessary and combined with the written notice of the decision to remove the foster children from the foster/pre-adoptive home as required under 110 CMR 7.116.

7.113C: Closing a Foster/Pre-adoptive Home

Foster/pre-adoptive homes may be closed either at the request of the foster/pre-adoptive parent or as a result of a decision by the Department. The basis and process for decisions by the Department are set forth above in 110 CMR 7.113 through 7.113B. Whenever a foster/pre-adoptive parent requests that their foster/pre-adoptive home be closed they shall do so in writing. Prior to closing the home, the Department will meet with the foster/pre-adoptive parent to discuss the reasons for closing the home, plans to remove any foster child(ren) placed in the home and to establish dates for the removal of the foster child(ren) and the closure of the home. The Department will confirm in writing the decisions agreed upon at that meeting, the reasons for those decisions, and provide a copy to the foster/pre-adoptive parent.

7.113D: Reopening of Former Foster/Pre-adoptive Home

If a foster/pre-adoptive family seeks to resume the provision of foster/pre-adoptive care within six months after their home was closed at their request, the Department shall conduct an annual reassessment or license renewal study, which ever would have been due had they remained open with the Department. After the six months, the Department shall conduct a new license study and they shall be treated as a new applicant.

7.114: Temporary Placement of Foster Children in Care of Persons Other than Foster/Pre-adoptive Parents

(1) 110 CMR 7.114 applies to situations where a foster child who has been placed in a foster/pre-adoptive home is, or will be, placed temporarily in the care of someone other than the foster/pre-adoptive parent. (Examples of such situations are: day, overnight or weekend visits with parents or relatives; work-related day care; and extended trips or appointments for the child unaccompanied by the foster/pre-adoptive parent.) 110 CMR 7.114 does not apply to overnight visits with friends, use of babysitters, *etc.*

(2) The Department shall have the sole and exclusive power to determine whether a foster child may be placed temporarily in the care of someone other than the foster/pre-adoptive parent. Whenever a foster/pre-adoptive parent wishes to place a temporarily in the care of another person, the foster/pre-adoptive parent shall make a request for such placement to the Department in advance of such placement.

(3) After a foster/pre-adoptive parent has made such a request to the Department, if the Department determines that it is not necessary or desirable for the to be placed temporarily in the care requested by the foster/pre-adoptive parent, the Department shall give written notice to the foster/pre-adoptive parent that the foster/pre-adoptive parent's request has been denied.

7.115: Runaway Foster Children

(1) Whenever a foster/pre-adoptive parent knows, or reasonably believes, that a foster child intends to run away from the foster/pre-adoptive home, the foster/pre-adoptive parent shall immediately notify the Department (or the Child-At-Risk Hotline if after hours) of that fact.

(2) When the Department knows that a child who will be placed in a foster/pre-adoptive home has run away from his/her parent's home or from any previous placements in substitute care, the Department shall notify the prospective foster/pre-adoptive parent of that fact. In either case, the Department shall also inform the foster/pre-adoptive parent or prospective foster/pre-adoptive parent of measures which the foster/pre-adoptive parent or prospective foster/pre-adoptive parent may take to prevent the child from running away from the foster/pre-adoptive home, and of the procedures which the foster/pre-adoptive parent or prospective foster/pre-adoptive parent should follow if the child does run away from the foster/pre-adoptive home.

(3) Whenever a foster/pre-adoptive parent learns that a foster child has run away or is missing from the foster/pre-adoptive home, the foster/pre-adoptive parent shall immediately notify the Department, and then the local police. Such notice shall include at least the following information:

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- (a) the name and age of the child who ran away;
 - (b) the time when the child was last seen;
 - (c) the location where the child was last seen;
 - (d) a physical description of the child when last seen, including a description of the clothing worn by the child at that time; and
 - (e) any known or suspected locations where the child might be found, and any known or suspected individuals who might know the whereabouts of the child.
- (4) Whenever the Department learns that a foster child has run away or is missing from the foster/pre-adoptive home, or from any temporary substitute care placement, the Department shall immediately do the following:
- (a) notify the local police department or other appropriate law enforcement agencies that the child has run away or is missing, (or ensure that the foster/pre-adoptive parent(s) have done so) and provide such agencies with all known information which would assist them in locating the child, and the name and telephone number of the Department employee who should be notified if the child is located;
 - (b) notify the child's parent(s), (unless the parents have surrendered the child for adoption or a court of competent jurisdiction has entered a decree dispensing with the need for parental consent to the child's adoption), and notify the foster/pre-adoptive parent(s) that the child has run away or is missing, and provide them with the name and telephone number of the Department employee who should be notified if the child is located;
 - (c) if the child was committed to the Department by court order, notify the juvenile probation office of the court which issued the order; and
 - (d) contact any individuals who might know the whereabouts of the child, attempt to obtain any information such individuals have concerning the whereabouts of the child, and provide such individuals with the name and telephone number of the Department employee who should be notified if the child is located.
- (5) Whenever the Department receives information concerning the possible or suspected current whereabouts of a child who has run away or is missing from a foster/pre-adoptive home, or from any temporary substitute care placement, the Department shall immediately notify the appropriate law enforcement agencies and provide such information to them. If possible, the assigned Department social worker shall also attempt to locate the child by going to the suspected location of the child.
- (6) When a child who has run away or is missing from a foster/pre-adoptive home, or from any temporary substitute care placement, is located by the foster/pre-adoptive parent, or returns to the foster/pre-adoptive home, the foster/pre-adoptive parent shall immediately give notice to the Department. Such notice shall include at least the following information:
- (a) the fact that the child has been located or has returned to the foster/pre-adoptive home;
 - (b) the current location of the child;
 - (c) the current physical and emotional condition of the child, and whether it appears likely that the child requires medical, psychiatric or other treatment; and
 - (d) whether it appears likely that the child will attempt to run away from his or her current location.
- (7) When a child who has run away from a foster/pre-adoptive home, or from any temporary substitute care placement, is located by the Department, the Department shall do the following:
- (a) assure that the child receives any required medical, psychiatric or other treatment as soon as needed;
 - (b) notify the appropriate law enforcement agencies, the child's parent(s) (unless the parent(s) have surrendered the child for adoption or a court of competent jurisdiction has entered a decree dispensing with the need for parental consent to the child's adoption), and foster/pre-adoptive parent(s), and, if appropriate, the juvenile probation office of the court which committed the child to the Department, that the child has been located;
 - (c) interview the child as soon as possible to determine what changes, if any, should be made in the circumstances or conditions of the child's care or placement; and
 - (d) if the child has not returned to the foster/pre-adoptive home, notify the foster/pre-adoptive parent(s) whether the child will be placed back in that foster/pre-adoptive home, and

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1. if so, the date and time when the child will return to the foster/pre-adoptive home; or
2. if not, the reason for the child not being placed back in that foster/pre-adoptive home.

(8) For purposes of appeal under 110 CMR 10.00 *et seq.*, a decision made by the Department not to return a runaway to the foster/pre-adoptive home where the child had been placed at the time he or she ran away shall be treated as a decision to remove the child from the foster/pre-adoptive home.

7.116: Removal of Foster Children from Foster/Pre-adoptive Homes

(1) Whenever the Department receives a request from a foster/pre-adoptive parent to remove a from the foster/pre-adoptive home, the Department shall do the following:

- (a) interview the foster/pre-adoptive parent to determine the reason(s) for the request;
- (b) interview the foster/pre-adoptive parent, the foster child, other household members, and/or any other individual deemed necessary for the purpose of determining whether the situation giving rise to the request might be resolved without removing the child;
- (c) if the situation giving rise to the request appears to be resolvable, provide, or offer to provide, services or assistance available from the Department to facilitate resolution of the situation without removing the child;
- (d) if the situation giving rise to the request is not resolved, or if the foster/pre-adoptive parent still wishes the child removed from the foster/pre-adoptive home after attempts to resolve the situation have been made, the Department shall make arrangements for moving the child to another placement and notify the foster/pre-adoptive parent and the foster child of the actual or estimated date when the child will be removed from the foster/pre-adoptive home;
- (e) as appropriate, notify the child's parents, (unless they have surrendered the child for adoption or a court of competent jurisdiction has issued a decree dispensing with the need for parental consent to the child's adoption); school officials, juvenile probation officers, and/or other individuals interested in the child's whereabouts, of the change in the child's placement; and
- (f) prepare a written report concerning the request for removal of the foster child from the foster/pre-adoptive home and the reason(s) therefore, and enter the written report in the foster/pre-adoptive parent file. No right of appeal shall exist when the child is being removed from the foster/pre-adoptive home at the request of the foster/pre-adoptive parent(s).

(2) Whenever the Department determines that a foster child should be removed from a foster/pre-adoptive home for the purpose of achieving a more suitable placement for permanency, safety or well-being, and not because of a request made by the foster/pre-adoptive parent(s) for removal of the foster child nor because of the occurrence or threat of abuse or neglect of the child in the foster/pre-adoptive home, the Department shall do the following:

- (a) give written notice to the foster/pre-adoptive parent(s) as soon as the determination is made but absent an emergency at least 14 days prior to the intended removal of the foster child(ren). The written notice shall include at least the following:
 1. the fact that the Department intends to remove the foster child from the foster/pre-adoptive home;
 2. the reason(s) for the intended removal;
 3. the actual or estimated date when the foster child will be removed from the foster/pre-adoptive home;
 4. if the reason for the intended removal is to place the child with a prospective guardian or adoptive parent, notice that the foster parent(s) may apply to become the child's guardian(s) or adoptive parent(s) and the procedure for so applying; and
 5. notice of the foster/pre-adoptive parent's right to appeal the decision to remove the foster child from the foster/pre-adoptive home, under the fair hearing or grievance procedure, provided however that no right of appeal exists if the child is to be removed in order to be placed:

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- a. with his or her parent(s);
- b. in an independent living situation;
- c. in a different foster home after the foster home was not licensed or whose license was revoked following a license study, reassessment study, license renewal study or a limited reassessment study.
- d. in a department foster home from an intensive foster care home, where the child is no longer in need of intensive foster care, unless the intensive foster care foster parent is seeking to become a pre-adoptive or guardian placement and has not been denied by the Department.
- e. in one of the following placements, if the current placement is not such a placement, unless the foster parent(s) has applied to be a pre-adoptive or guardian placement for the child and has not been rejected by the Department as a pre-adoptive or guardian placement for the child, or there is a fair hearing pending challenging the denial of the current foster parent as the child's pre-adoptive or guardian placement:
 - i. in a pre-adoptive home;
 - ii. with a legal guardian;
 - iii. in a home where one or more of the child's siblings is residing; or
 - iv. in a kinship home of the foster child if the current foster parent is not a kinship home of the foster child.

6. Notice that if the foster/pre-adoptive parent(s) intend to file for a fair hearing from the decision to remove the child, they must do so within ten days of receipt of the notice in order to prevent the removal of the child(ren) pending the fair hearing.

A copy of the written notice shall be entered in the foster/pre-adoptive parent file.

- (b) make arrangements for moving the child to the new placement;
- (c) if the foster/pre-adoptive parent files an allowable fair hearing claim of appeal of the removal decision within ten working days after receiving the written notice, the foster child shall not be removed until ten working days following the issuance of a decision of the hearing officer adverse to the foster/pre-adoptive parent's claim, or until the child is removed for non-appealable reasons, or until the child is removed in accordance with the provisions of 110 CMR 7.116(1) or (3), or until it is determined by an Area or Regional Director that the foster child's physical, mental, or emotional well-being would be endangered by leaving the child in the foster/pre-adoptive home, whichever occurs first;
- (d) if the foster child is removed from the foster/pre-adoptive home, the Department shall notify, as appropriate, the child's parents, (unless they have surrendered the child for adoption or a court of competent jurisdiction has issued a decree dispensing with the need for parental consent to adoption), school officials, juvenile probation officers, and/or other individuals interested in the child's whereabouts, of the change in the child's placement.

(3) Whenever the Department has received, investigated, and supported a report of abuse or neglect of any foster child and the foster/pre-adoptive parent is named as the person believed to be responsible for the abuse or neglect of the child, the following procedures shall be observed:

- (a) the foster/pre-adoptive home shall be closed to any future placements of children.
- (b) the license shall be changed and, pending a determination under 110 CMR 7.116(3)(b) or (c), the placement will be deemed a child specific placement for any children who remain in the foster/pre-adoptive home.
- (c) As to any foster child(ren) already in the foster/pre-adoptive home, if the Department determines that the foster child's physical, mental or emotional well-being would be endangered by leaving the child in the foster/pre-adoptive home, it shall immediately remove the foster child from the foster/pre-adoptive home and arrange an alternative placement. The foster/pre-adoptive parent shall be given verbal notice as soon as possible after the child is removed, and written notice within five days after the removal. The written notice shall include at least the following information:
 - 1. the reason(s) for the removal;
 - 2. notice of the foster/pre-adoptive parent's right to appeal the removal decision, and the procedures for taking such an appeal;
 - 3. notice that the Department intends to perform a limited re-assessment of the foster/pre-adoptive parent(s) and the foster/pre-adoptive home.

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A copy of the written notice shall be entered in the foster/pre-adoptive parent file. The Department shall then conduct a limited re-assessment of the foster/pre-adoptive parent(s) and foster/pre-adoptive home in accordance with the provisions of 110 CMR 7.113(1).

(d) If the Department determines that the foster child's physical, mental or emotional well-being would not be endangered by leaving the child in the foster/pre-adoptive home, it shall not remove the foster child, and shall proceed to perform a limited re-assessment of the foster/pre-adoptive parent(s) and the foster/pre-adoptive home. If the limited re-assessment is satisfactory, the placement shall become a child-specific placement as to the foster child remaining in the home.

(e) The limited re-assessment performed for purposes of 110 CMR 7.116(3) shall be conducted for the purpose of determining:

1. whether the removal of the foster child should be sustained if the foster child has already been removed; and

2. whether any other foster children in the foster/pre-adoptive home should be removed.

(f) If the limited re-assessment results in a decision to remove one or more foster children from the foster/pre-adoptive home, the Department shall make arrangements for removing any of those children still remaining in the foster/pre-adoptive home and moving them to new placements. If the limited re-evaluation does not result in a decision to remove one or more foster children from the foster/pre-adoptive home, the reason(s) for said determination shall be recorded in writing in the case file and approved in writing by the Hosting Area Director.

(g) Whenever a foster child is removed under 110 CMR 7.1116, the Department shall notify, as appropriate, the child's parents (unless they have surrendered the child for adoption or a court of competent jurisdiction has issued a decree dispensing with the need for parental consent to adoption), school officials, juvenile probation officers, and/or other individuals interested in the child's whereabouts of the change in the child's placement.

(4) Whenever the Department has received, investigated, and supported a report of abuse or neglect of any child and a member of the foster/pre-adoptive household, other than the foster/pre-adoptive parent(s), is named as the person believed to be responsible for the abuse or neglect, the Department shall conduct a limited reassessment in accordance with 110 CMR 7.116(3).

As part of the limited reassessment the Department will determine whether the home will remain open to future placements, whether the home should be restricted to a child-specific home for any children remaining in the home and whether it is in the best interest of the children placed in the home to remain in that home.

(5) Whenever the Department has revoked or not renewed a license for a licensed foster/pre-adoptive parent(s) and foster/pre-adoptive home, as a result of an annual or limited re-assessment, the Department shall remove all children from the foster/pre-adoptive home, unless the Department determines that it is in the child(ren)'s best interest to remain in the foster/pre-adoptive home. If the Department determines that it is in the child(ren)'s best interest to remain in the foster/pre-adoptive home, the home shall become a child specific home and subject to the same terms and conditions as any home approved under 110 CMR 7.108.

When a foster child is removed under this provision, the Department will provide the foster/pre-adoptive parent(s) 14 days notice in advance of the decision to remove the foster child, unless the Area Director has determined that the child's physical, mental or emotional well-being would be endangered by remaining in the foster/pre-adoptive home, in which case the Department will provide less than 14 days notice.

(6) The removal of foster children from a foster/pre-adoptive home following an annual or limited reassessment is governed by 110 CMR 7.113(1)(c).

(7) The rights of foster/pre-adoptive parent(s) to appeal Department decisions issued under 110 CMR 7.116 are set forth in 110 CMR 10.06.

7.118: Foster/Pre-adoptive Parent Appeals

The appeal process for foster/pre-adoptive parents is the Department's fair hearing and grievance process as set forth at 110 CMR 10.00 *et seq.*

7.119: Access to Foster/Pre-adoptive Parent File

Foster/pre-adoptive parents have the right to review and obtain a copy of any and all documents contained in their foster/pre-adoptive parent file, subject to the provisions of 110 CMR 12.00 *et seq.* governing confidentiality and other applicable state and federal laws concerning confidentiality. Foster/pre-adoptive parents should address a request to view their file to the Hosting Area Director.

7.120: Community Residential Care

(1) Community residential care is a form of substitute care which provides planned, temporary care in a licensed or approved residential facility on a 24 hour basis.

(2) Community residential care shall be goal-directed, time limited, community-based, and in the least restrictive setting possible. Community residential care may be the placement of primary choice when a child's behavioral, emotional, or physical needs cannot be met in a less restrictive setting, *i.e.* in their own home, or in a foster/pre-adoptive home setting.

(3) A community residential placement is an interim placement for a child with the long term goal(s) of either the child's return home, movement of the child to a less restrictive setting, or transitioning the child to another permanent placement, *i.e.* adoptive home, guardianship, or an independent living situation.

(4) When the Department determines, in its clinical judgment, that a child's best interests would be served by placement into a community residential care facility, the Department shall select from the facilities available, which have a valid Department Community Residential Care Purchase Agreement, the one which best meets the child's needs, and place the child in the selected residential care facility. The Department may utilize the following kinds of facilities:

- (a) a facility licensed or approved by EEC;
- (b) a facility not subject to the jurisdiction of EEC, which is approved as a special education school by the Department of Elementary and Secondary Education (ESE);
- (c) a facility not included in 110 CMR 7.120(4)(a) or (b) if otherwise approved by the Department; or
- (d) a facility located outside of Massachusetts if the procedures of the Interstate Compact are utilized, and if the facility is licensed or approved by the applicable licensing/regulatory agency of that state.

(5) The Department recognizes that certain children may occasionally require some degree of seclusion or restraint in order to enable staff to effectively implement the child's treatment plan and provide for his/her safety. Issues of seclusion and physical restraint, to the extent they are regulated by EEC or DMH or ESE, shall be governed by EEC's or DMH's or ESE's regulations and requirements. (*See* 102 CMR and 104 CMR and 603 CMR). In addition to and to the extent not inconsistent with EEC's and DMH's and ESE's regulations and requirements, the Department will permit providers of residential or group care to use the least restrictive effective amount of restraint or seclusion which enables staff to effectively implement the child's treatment plan and provide for his/her safety. Examples of permissible restraint or seclusion include:

- (a) physical restraint of child's arms and legs by staff members holding the child;
- (b) use of a "seclusion" or "cool off" or "time out" room, if the child is, at all times therein, accompanied by or in view of a staff member;
- (c) use of high staff: children ratio to create a "staff secure" environment.

Use of greater amounts or types of restraint or seclusion by any provider, or use of any cruel or unusual punishment by any provider, is prohibited by the Department. Examples of such impermissible restraint or seclusion or punishment include:

- (d) use of "seclusion" room for excessive periods of time or without constant surveillance by a staff member;
- (e) food deprivation;
- (f) physical exercises when used solely as a means of punishment;
- (g) use of any type of drug for the purpose of restraining behavior, unless the administration of such drug is on an emergency basis, has been court-approved, or is administered with parental consent; and
- (h) use of any facility (except a mental health facility) which is wholly locked or barred at all times.

7.120: continued

Nothing in 110 CMR 7.000 shall affect or preclude the Department's use of mental health and mental retardation facilities, which are subject to the provisions of M.G.L. c. 123, and which may employ locked and/or barred facilities, and drug therapy, for placement of children who have been adjudicated mentally ill or incompetent and committed to such a facility by court order.

(6) The Department shall conduct periodic evaluations of all community residential care providers under contract with the Department. Such evaluation shall be conducted jointly with the Department or ESE for all 766-approved providers. The Department's evaluation shall include a site visit to the provider. The Department shall maintain records of the evaluations it conducts. A copy of the written evaluation shall be provided to the director of each facility evaluated, and said director shall be afforded the opportunity to attach his/her comments concerning the evaluation.

7.121: Periodic Health Care - Generally

The Department's philosophy regarding health care reflects the principles and standards of Project Good Health. The Project Good Health (PGH) program is a federally-funded, Medicaid-reimbursable program aimed at ensuring that children receive quality, comprehensive health services on a periodic and continual basis. The Department is committed to preventative health care and to the early diagnosis and treatment of children's illnesses. In order to help promote good health maintenance and to minimize the incidence of chronic and disabling diseases among the high risk population it serves, the Department has established 110 CMR 7.121 through 7.127.

For its substitute care population, the Department assumes responsibility for assuring that the children receive medical examinations at the time of placement if needed, routine medical and dental examinations within age-specific time-frames (*i.e.*, within the Department's periodicity schedule*), any required follow-up, and routine and emergency mental health care.

*The periodicity schedule for health care examinations which the Department shall adhere to is as follows:

7.121: continued

Routine medical examinations at the following times:

two - six weeks of age
eight - ten weeks of age
four months of age
six months of age
nine months of age
one year of age
15 months of age
20 months of age
two years of age
30 months of age
three years of age
After age three, annually

Routine dental examinations at the following times:

Starting at age three, routine dental examinations annually.

7.122: Periodic Health Care - Training

Health care training for social work staff and substitute care providers shall be provided by the Department on an ongoing and periodic basis.

7.123: Periodic Health Care - Project Good Health

The Department's health care periodicity schedule is identical to that of PGH, and the Department will adhere to the PGH periodicity. The Department will attempt to utilize PGH providers for medical service delivery, and the Department will work with the Department of Public Welfare to promote participation in the PGH program. When utilization of a PGH provider is not feasible, the Department will promote the utilization of other medical providers who adhere to PGH standards of care.

7.124: Periodic Health Care - Medical Passport

The Department shall implement a program of utilization of a "medical passport" for all children in substitute care. The medical passport shall record pertinent and available medical/dental/mental health and developmental data about the child. Department social workers and medical providers shall each complete relevant portions of the passport. The passport shall be held by the substitute care provider and shall remain with the child for the duration of his/her placement. If a child moves to a new substitute care placement or returns home, the medical passport moves with the child.

7.125: Periodic Health Care - Emergency Treatment at Time of Placement

At the time of placement, children will be provided with emergency medical/dental/mental health care if needed. If such care is necessary the social worker shall arrange for the provision of emergency care with an appropriate health care provider. If appropriate and if time permits, the social worker may delegate all or part of the responsibility for the procurement of emergency medical/dental/mental health treatment to the substitute care provider (*i.e.*, foster/pre-adoptive parents, group care facility, *etc.*). If the child does not have a medicaid card at the time of placement and requires emergency treatment, the social worker shall obtain a temporary Medicaid card to ensure the provision of needed treatment. Following the provision of emergency medical/dental/mental health treatment at time of placement, a record of such treatment shall be entered into the child's case record. When a "Medical Passport" is completed for this child, the social worker, in completing the relevant portions, shall make reference to the emergency treatment provided at placement.

7.126: Periodic Health Care - Routine Treatment After Placement

At time of placement, the Department will determine if a child is in need of routine medical and/or dental examinations by determining the date of the child's most recent routine medical and dental examinations and will assume responsibility for ensuring that such examinations are arranged if such examinations have not occurred within the required periodicity schedule. At time of placement the social worker shall complete an application for Medicaid and shall obtain a temporary Medicaid card if necessary. As soon as practicable after placement, the social worker shall provide the child with a "Medical Passport". If routine medical and dental examinations have occurred within the required periodicity schedule prior to placement, the social worker shall obtain records of these examinations for the medical passport.

If, prior to placement, medical and dental examinations have not occurred within the required periodicity schedule, the social worker shall insure that a medical examination is scheduled within two weeks of substitute care placement and that a dental examination is scheduled as soon as possible. The social worker may delegate all or part of the process of health care procurement to the substitute care providers and/or biological parents, but only if the social worker has clearly delineated those responsibilities to be assumed to the substitute care providers and/or biological parents.

7.127: Periodic Health Care - Responsibilities of Substitute Care Providers

It is the policy of the Department that substitute care providers, at the request of the social worker, will assume responsibility for the provision of health care services. Substitute care providers will:

- (1) Arrange for emergency treatment when necessary.
- (2) Schedule appointments for routine health care and any needed follow-up and will insure that these appointments are kept.
- (3) Hold the child's medical passport and request written documentation from medical providers for inclusion in the passport.
- (4) Provide non-specialized care (*e.g.*, administration of oral medication) as required.
- (5) Arrange for or coordinate the provision of specialized care (*e.g.*, physiotherapy) as required.
- (6) Advise the responsible social worker of changes in the child's health status.
- (7) Access available nutrition programs for eligible children in placement.

7.128: Visitation

The Department will plan and promote regular and frequent visitation between children in substitute care and their parents, and/or siblings consistent with the terms of the service plan. For children who are the subject of a Voluntary Placement Agreement, parents may use the Department's grievance procedure (110 CMR 10.37 through 10.39) to address complaints concerning visitation matters. For all children in the court-ordered custody of the Department, if the Department seeks to terminate visitation between the child and the parents, it will not do so unless the matter is brought before a judge, and the judge makes specific findings demonstrating that parental visits will harm the child or the public welfare, unless a parent(s)'s right to notice of and consent to a child's adoption has been voluntarily or involuntarily dispensed with, whether or not the judgment dispensing with that right is on appeal. *See*, Custody of a Minor (No. 2), 392 Mass. 719, 725-726 (1984).

For all children in the custody of the Department, where a parent(s)'s right to notice of and consent to a child's adoption has been voluntarily or involuntarily dispensed with, or where the judgment to dispense with a parent's right to consent to the child's adoption is on appeal, the Department may continue parental visitation if, in the judgment of the Department, it is in the best interest of the child(ren). *See*, Adoption of Gwendolyn, 29 Mass. App. Ct. 130, 134 n.3 (1990).

7.129: Legal Representation for Injured Children in Substitute Care

- (1) Neither Department social work nor legal staff shall represent any child, injured because of someone's negligence or intentional actions, in personal injury cases; shall not negotiate settlement of any personal injury claim with an insurer; shall not commence suit on behalf of such child; and shall not refer such child's case to any private attorney.
- (2) The Department's legal staff will make reasonable efforts to insure that children who are in substitute care receive legal assistance when they have been injured because of someone's negligence or intentional actions. Department social work staff shall report cases of serious injury of children in substitute care to the Department's General Counsel.
- (3) The Department's legal staff shall check with the child(ren)'s parents, if appropriate, to determine whether the parent(s) will bring suit on behalf of the child(ren). If the parent(s) will not or do not, the Department's legal staff shall, if appropriate, seek the appointment of a Guardian Ad Litem to investigate the matter and thereafter determine whether to retain an attorney to represent the injured child on a contingent fee basis.

7.130: Reimbursement/Stipend to Foster/Pre-adoptive Parents

- (1) Reimbursement for Foster Care Services. Department foster/pre-adoptive parents shall receive reimbursement for providing foster care at rates the Department establishes. The Department shall reimburse all foster/pre-adoptive parents a basic minimum rate for each child in their home based on the age of the child. In addition, the Department may reimburse foster/pre-adoptive parents using a tiered system based on:
 - (a) the special medical, psychological and/or social needs of the child(ren) and the additional expectations on a foster/pre-adoptive family who have such child(ren) placed with them, and
 - (b) specialized training and certification requirements as the Department determines are needed to meet the child's special behavioral, cognitive, emotional, physical and medical needs.
- (2) Quarterly Clothing Allowance. Department foster parents may receive a quarterly clothing allowance for foster children in their care at rates the Department establishes.
- (3) Foster/Pre-adoptive Parent Extraordinary Out-of-pocket Expenses: The Department shall administer a program of reimbursement to foster/pre-adoptive parents for extraordinary out of pocket expenses incurred by foster/pre-adoptive parents as a result of providing foster/pre-adoptive care, except those reimbursed by MassHealth if such expenses are:
 - (a) necessary to enable foster/pre-adoptive parents to provide appropriate foster/pre-adoptive care services (for example, specialized medical or educational training to enable foster/pre-adoptive parents to care for special needs children; or specialized handicap accommodations for handicapped foster children; or transportation and child care stipend to enable foster/pre-adoptive parents to attend skill specific training; or to purchase specialized medical or other equipment such as intercoms, bars and handles, specialized toys, mattresses, etc. meeting the special needs of the foster child; or for participation in special activities necessary for provision of foster care to a special needs foster child, *etc*); and
 - (b) agreed upon in writing in advance of the expenditure.
- (4) Other: Department foster/pre-adoptive parents may from time to time receive other payments, such as a birthday supplement or holiday supplement for the child or a retainer for on-call home status, etc.
- (5) Written Notice: Foster/pre-adoptive parents shall receive written notice of the availability of these reimbursements/ stipends as a part of the Department's mandatory pre-service foster/pre-adoptive parent training.

7.131: Department Certification

In administering federal grants under Titles IV-E and IV-B, which monies aid the Department in providing effective service delivery, the Department will comply with the following Federal Regulations:

1. 45 CFR Part 16 - Department Grant Appeals Process
2. 45 CFR Part 30 - Federal Claims Collection
3. 45 CFR Part 74 - Administration of Grants (except for §§ 74.23 and 74.52)
4. 45 CFR Part 76 – Government Debarment and Suspension
5. 45 CFR Part 80 – Nondiscrimination
6. 45 CFR Part 81 – Hearings under Part 80
7. 45 CFR Part 84 – Nondiscrimination on basis of handicap
8. 45 CFR Part 91 – Nondiscrimination on basis of age
9. 45 CFR Part 93 – New restrictions on lobbying
10. 45 CFR Part 95 - General Administration - Grant Programs (Public Assistance and Medical Assistance)
11. 45 CFR Part 97 – Consolidation of grants to insular areas
12. 45 CFR Part 95, § 95.517 (supersedes § 205.150) - Cost Allocation Plans
13. 45 CFR Part 201, § 201.5 - Grants (except that ACYF shall supply appropriate forms and instructions)
14. 45 CFR Part 201, § 201.6 - Withholding/Reduction of FFP
15. 45 CFR Part 201, § 201.7 - Judicial Review
16. 45 CFR Part 201, § 201.15 - Deferral
17. 45 CFR Part 201, § 201.66 - Repayment of Federal Funds in Installments
18. 45 CFR Part 204, § 204.1 - Submittal of State Plans for Governor's Review
19. 45 CFR Part 205, § 205.5 - Plan Amendments
20. 45 CFR Part 205, § 205.10 - Hearings
21. 45 CFR Part 205, § 205.50 - Safeguarding Information
22. 45 CFR Part 205, § 205.100 - Single State Agency
23. 45 CFR Part 205, § 205.101 - Organization for Administration

7.200: Special Provisions Regarding Pre-adoptive Placements

Comment. It is the primary responsibility of the Department to find families for children, rather than to find children for families.

(1) Foster Parent(s) as Pre-adoptive Placements. Any foster parent(s) may seek to become the pre-adoptive placement for a child for whom the Department's long-term goal is adoption. A foster parent(s) may be approved as the pre-adoptive placement for a particular child if the Department determines, after assessment, that adoption by the foster parent(s) will further the best interests of that child.

(2) Priority. Although all foster pre-adoptive parent(s) who seek to become a pre-adoptive placement will be considered and assessed, priority will be given to those who are interested in the kinds of children currently waiting for and in need of homes. This includes, but is not limited to, the following types of children: school age, special needs, legal risk, siblings, Black, Hispanic, and mixed racial. Special needs includes a wide variety of emotional problems, behavioral disorders, learning disabilities, and other handicapping medical conditions. Applicants interested only in healthy infants will be considered as the need for such homes presents itself.

(3) Department Obligations. Whenever a child is placed with a family who has been approved as a pre-adoptive placement and the child is not yet free for adoption (*i.e.*, the parents have not surrendered the child for adoption, and no court of competent jurisdiction has issued a decree dispensing with the need for the biological parent's consent to adoption, or such a decree has been issued but has been appealed and/or stayed, or), the pre-adoptive family:

- (a) shall be informed, plainly and clearly, that the child placed with them is not yet and may not become free for adoption;
- (b) shall be required to acknowledge their understanding and voluntary assumption of the "legal risk" nature of the placement;

- ### 7.209: Adoption Subsidy

- (1) Definition of Adoption Subsidy. The Department operates two adoption subsidy programs to support the adoption of children with special needs: a federally supported program governed by the provisions of Title IV-E of the Social Security Act, 42 U.S.C. § 673, (hereinafter “Title IV-E adoption subsidy”), and a state funded program created pursuant to M.G.L. c. 18B, § 21, (hereinafter state adoption subsidy”). In both programs, adoption subsidy consists of financial assistance and/or medical assistance through the State’s Division of Medical Assistance and is provided on behalf of a child with special needs after the child has been adopted. Financial assistance is intended to aid in the support of the child with special needs and is paid directly to the adoptive parent(s). Medical assistance is intended to supplement family health insurance for the child with special needs and is paid directly to the vendor according to the current Division of Medical Assistance fee schedule. Financial assistance provided through adoption subsidy may not exceed the amount that would have been authorized during the period had the child been in family foster care.
- (2) Definition of Child with Special Needs. A child is a “child with special needs” if the Department determines that the child meets the following three criteria.
- (a) The child cannot or should not be returned to the home of his parents. Evidence that the child is legally free for adoption meets this criterion.
 - (b) At least one of the following circumstances applies:
 - 1. The child has one or more special needs as a result of a mental, emotional or physical impairment, behavioral disorder, or medical condition that has been diagnosed by a licensed professional who is qualified to make the diagnosis.
 - 2. The child is difficult to place for one or more of the following reasons:
 - a. The child is a member of a sibling group of two to be adopted together and one of the children is eight years of age or older;
 - b. The child is a member of a sibling group of three or more to be adopted together;
 - or

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- c. The child is a member of an ethnic or cultural minority for whom reasonable, but unsuccessful, efforts to place the child in an adoptive home were made and documented.
 - 3. The child's birth and/or family history places the child at risk of having special needs but, due to the child's age, a reliable diagnosis cannot be made.
 - (c) Reasonable efforts have been made to place the child for adoption in the most appropriate home without providing adoption subsidy. The requirement to make such efforts may be waived for any child whose best interests would not be served by a new placement because the child has developed significant emotional or psychological ties with the pre-adoptive parent(s) while in the care of such parent(s), and the pre-adoptive parent(s) cannot adopt the child without adoption subsidy.
- (3) Eligibility Criteria - Title IV-E Adoption Subsidy. In order to be eligible for Title IV-E adoption subsidy, a child must meet the following criteria.
- (a) The child is a child with special needs as defined in 110 CMR 7.209(2).
 - (b) The child is in substitute care and in the custody of the Department, or the child is in the custody of a licensed nonprofit placement agency, as defined in M.G.L. c. 28A, § 9, which has placed the child for adoption.
 - (c) Adoption is the plan for the child.
 - (d) The child resides in the pre-adoptive home.
 - (e) The child is a U.S. citizen or a qualified alien within the meaning of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.
 - (f) If the child is in substitute care and in the custody of the Department, one of the following is established:
 - 1. The child has been eligible for Title IV-E foster care payments; or
 - 2. The costs of the child's foster care have been covered by Title IV-E foster care payments made on behalf of his/her minor parent; or
 - 3. The child is S.S.I. eligible.
 - (g) If the child has been placed for adoption in a pre-adoptive home by a licensed non-profit placement agency, as defined in M.G.L. c. 28A, § 9, one of the following is established:
 - 1. The child is S.S.I. eligible; or
 - 2. The child meets the following criteria.
 - a. At the time the adoption proceedings were initiated, the child met or would have met the AFDC requirements as they existed in July 16, 1996 but for the child's removal from his/her home, either as a result of an adoption surrender or voluntary placement agreement, or a judicial determination to the effect that continuation in the home would be contrary to the child's welfare.
 - b. A court document(s) establishes that the child's removal from the home was the result of a judicial determination to the effect that continuation in the home would be contrary to the child's welfare. Provided however, if the child's removal from his/her home was the result of an adoption surrender or voluntary placement agreement, a court document(s) establishes that there was a judicial determination within 180 days of the initial placement with the agency to the effect that such placement is in the child's best interests.
- (4) Eligibility Criteria - State Adoption Subsidy. In order to be eligible for state adoption subsidy, the child must meet the following criteria.
- (a) The child is a child with special needs as defined in 110 CMR 7.209(2).
 - (b) The child is in substitute care and in the custody of the Department.
 - (c) Adoption is the plan for the child.
 - (d) The child resides in the pre-adoptive home.
- (5) Application for Adoption Subsidy.
- (a) Children with Special Needs in the Custody of the Department. When a child has been legally freed for adoption and placed in a pre-adoptive home, after informing the child's pre-adoptive parents about the adoption subsidy program, the Department social worker shall refer the child to the Subsidy Unit and provide information relevant to a determination of eligibility. The Subsidy Unit shall determine the child's eligibility for Title IV-E or state adoption subsidy, as applicable.

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(b) Children with Special Needs in the Custody of a Licensed Nonprofit Placement Agency, as Defined in M.G.L. c. 28A, § 9. The pre-adoptive parent(s) or the placement agency may request an application for adoption subsidy by contacting the Department's Subsidy Unit. The application must be completed with the information necessary for an eligibility determination pursuant to 110 CMR 7.209(3) and returned to the Subsidy Unit. The Subsidy Unit will determine the child's eligibility for Title IV-E adoption subsidy.

(c) Adopted Children with Special Needs in the Custody of their Parents. The parent(s) of an adopted child with special needs may assert the right to an adoption subsidy in extenuating circumstances as set forth in 110 CMR 7.209(11) and (12). Where such circumstances are alleged, the adoptive parent(s) must write to the Department's Fair Hearing Unit to request a fair hearing and send a copy of the request to the Department's Subsidy Unit. The request for a fair hearing must include the following information: name, address and telephone number of the adoptive parent(s) and child; a brief statement of the reason(s) why the adoptive parent(s) believe that extenuating circumstances exist for entering into an adoption subsidy agreement after the adoption has been finalized; and whether the adoptive parent(s) adopted through the Department or licensed nonprofit placement agency as defined in M.G.L. c. 28A, § 9. A hearing officer shall decide whether extenuating circumstances exist and, if so, whether the child meets the eligibility criteria for adoption subsidy. The Department is under no obligation to provide adoption subsidy after a child has been adopted unless there are extenuating circumstances set forth in 110 CMR 7.209(5) and the child meets the eligibility criteria for Title IV-E or state adoption subsidy.

(6) Adoption Subsidy Agreement. If the Department determines that the child is eligible for a Title IV-E adoption subsidy, the type of assistance and, as applicable, the amount of assistance, will be determined through discussion and negotiation with the pre-adoptive parent(s), taking into consideration the circumstances of the pre-adoptive parent(s) and the needs of the child being adopted. If the Department determines that the child is not eligible for a Title IV-E adoption subsidy but is eligible for a state adoption subsidy, the Department will inform the pre-adoptive parent(s) of the determination, the type of assistance and, as applicable, the amount of assistance to be provided, taking into consideration the circumstances of the pre-adoptive parent(s) and the needs of the child being adopted, and of the right to challenge the denial of the child's Title IV-E eligibility in a fair hearing. Except as provided in 110 CMR 7.209(7), in both subsidy programs, the Department will provide the pre-adoptive parent(s) with an adoption subsidy agreement describing the subsidy program for which the child is eligible, the type of assistance and, if applicable, amount of assistance, and the circumstances under which the adoption subsidy may be terminated. The Department will inform the pre-adoptive parent(s) in writing that the adoption subsidy agreement must be signed and returned to the Department prior to finalization of the child's adoption and before the subsidy may be initiated.

(7) Deferred Subsidy Agreement.

(a) Initial Determination. If the Department determines that a child meets the eligibility criteria set forth in 110 CMR 7.209(3) or (4) and is at risk in the future of having special needs as set forth in 110 CMR 7.209(2)(b)3., the Department will provide a deferred subsidy agreement. In such cases, the Department will inform the pre-adoptive parent(s) that financial and/or medical assistance may be provided at a future date if the parent requests a re-determination of the decision to provide a deferred subsidy as set forth in 110 CMR 7.209(7)(b), but that no such request will be considered for at least one year from the date of the initial deferred subsidy agreement. The Department will also inform the pre-adoptive parent(s) in writing that the deferred subsidy agreement must be signed and returned prior to finalization of the child's adoption to preserve the child's eligibility and of the right to a fair hearing to challenge the Department's decision as provided in 110 CMR 10.06(5)(d). A deferred subsidy agreement shall terminate on the child's 18th birthday.

(b) Re-determination. If an adoptive parent of a child who is the subject of a deferred subsidy agreement submits a request for re-determination to the Subsidy Unit along with documentation from a qualified professional diagnosing the child's special needs, the Department shall determine whether the child meets the criteria sets forth in 110 CMR 7.209(2)(b)1., and, if so, whether there is reasonable cause to believe that the child's mental, emotional or physical impairment, behavioral disorder or medical condition is related to the child's birth or family history prior to adoption. If the Department concludes that the child meets said requirements, the Department will enter into a Title IV-E or state adoption

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subsidy agreement, as applicable, as set forth in 110 CMR 7.209(6). If said requirements are not met, the Department will notify the adoptive parent in writing of the results of the re-determination, including the rationale for its decision, and of the right to challenge the Department's decision to deny an adoption subsidy agreement.

(8) Arrangements Prior to Finalization of Adoption; Initiation of Benefits. Except as provided in 110 CMR 7.209(11) and 7.209(12), only adoptive parents who have completed an adoption subsidy agreement with the Department prior to finalization of the adoption of their child with special needs shall be entitled to receive an adoption subsidy. Adoption subsidy benefits shall begin no earlier than the finalization of the adoption unless the Department determines that an earlier start date is in the best interest of the child.

(9) Re-evaluation Requirement. Adoption subsidy agreements are re-evaluated periodically at the discretion of the Department, or in the case of Title IV-E adoption subsidies, as agreed to by the Department and the adoptive parent(s). At the time of the re-evaluation, the amount of the subsidy may be adjusted based on a change in the circumstances of the adoptive family and/or the child's special needs, or the subsidy may be terminated for the reasons set forth in 110 CMR 7.209(13). A Title IV-E adoption subsidy may be adjusted only after negotiation with, and agreement by, the adoptive parent except the Department may terminate the subsidy after providing written notice of the decision and the right to a fair hearing. In the case of a state adoption subsidy, the Department will notify the adoptive parent(s) in writing of the Department's decision upon re-evaluation and the reasons for it, and of the right to a fair hearing to challenge a decision to reduce or terminate the adoption subsidy.

(10) Denial. If a request for an adoption subsidy is denied, the Department shall notify the pre-adoptive parent(s) in writing of the denial. A statement of reasons shall be included along with notice of the right to request a fair hearing to appeal the decision. Requests for adoption subsidy after finalization of the adoption shall be governed by the provisions set forth in 110 CMR 7.209(11) and (12), as applicable.

(11) Extenuating Circumstances - Title IV-E Adoption Subsidy.

(a) If, after the adoption of a child with special needs as defined herein, an adoptive parent believes that he/she has been wrongly denied access to a Title IV-E adoption subsidy, the adoptive parent(s) has the right to request a fair hearing to establish that:

1. extenuating circumstances exist for entering into an adoption subsidy agreement after the adoption has been finalized; and
2. the child meets the criteria for Title IV-E adoption subsidy. The adoptive parent(s) shall have the burden of proof on both issues. Extenuating circumstances shall be limited to the following:
 - a. relevant facts regarding the child's special needs, birth history or family history, which would have established that the child is a child with special needs as defined in 110 CMR 7.209(2), were known to the Department but not presented to the adoptive parent(s) prior to the finalization of the adoption;
 - b. the Department previously denied a Title IV-E adoption subsidy based on a means test of the adoptive family;
 - c. the Department made an erroneous determination that the child was ineligible for a Title IV-E adoption subsidy;
 - d. the Department or its contracted agency failed to advise the adoptive parent(s) of the availability of an adoption subsidy before the child's adoption; or
 - e. the adoptive parent(s) adopted a child with special needs in Massachusetts through a licensed nonprofit placement agency, as defined in M.G.L. c. 28A, § 9, prior to April 14, 2000, and said agency failed to advise the adoptive parent(s) of the availability of an adoption subsidy or advised the adoptive parent(s) that such subsidies were not available.

(b) If a hearing officer determines that extenuating circumstances exist and the child meets the eligibility criteria for Title IV-E adoption subsidy, the hearing officer may direct the Department to provide Title IV-E adoption subsidy from a date beginning no earlier than the date the adoptive parent notified the Department in writing that an adoption subsidy was wrongly denied or withheld. The type of assistance and, if applicable, the amount of assistance, shall be determined in accordance with 110 CMR 7.209(6) as applicable to Title IV-E adoption subsidies.

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(12) Extenuating Circumstances - State Adoption Subsidy.

(a) If, after the adoption of a child with special needs as defined herein, the adoptive parent(s) believes that he/she has been wrongly denied access to a state adoption subsidy, the adoptive parent(s) has a right to request a fair hearing to establish that:

1. extenuating circumstances exist for entering into an adoption assistance agreement after the adoption has been finalized; and
2. the child is eligible for a state adoption subsidy. The adoptive parent(s) shall have the burden of proof on both issues. Extenuating circumstances shall be limited to the following:
 - a. relevant facts regarding the child's special needs, birth history or family history, which would have established that the child is a child with special needs as defined in 110 CMR 7.209(2), were known to the Department but not presented to the adoptive parent(s) prior to the finalization of the adoption; or
 - b. the Department failed to advise the adoptive parent(s) of the availability of an adoption subsidy before the child's adoption.

(b) If a hearing officer determines that extenuating circumstances exist and that the child meets the eligibility criteria for state adoption subsidy, the hearing officer may direct the Department to provide adoption subsidy from a date beginning no earlier than the date the adoptive parent notified the Department in writing that an adoption subsidy was wrongly denied or withheld. The Department shall determine the type of assistance and, if applicable, the amount of financial assistance in accordance with 110 CMR 7.209(6) as applicable to state adoption subsidies.

(13) Termination of Adoption Subsidy. The Department will terminate an adoption subsidy when any of the following occurs and provide written notice to the adoptive parent(s) of the termination and of the right to a fair hearing to challenge the action:

- (a) the child with special needs turns 18 years of age. In exceptional circumstances, the Department in its discretion may continue a Title IV-E adoption subsidy until the child turns 21 or a state adoption subsidy until the child turns 22 years of age;
- (b) the child's mental, emotional or physical impairment, behavioral disorder or medical condition is corrected or cured provided this condition of termination is contained in the initial adoption subsidy agreement and was accepted by the parent(s);
- (c) the adoptive parent(s) are no longer legally responsible for the support of such child; or
- (d) the child is no longer receiving assistance from the adoptive parent(s).

(14) Responsibilities of Adoptive Parents. Adoptive parent(s) receiving an adoption subsidy shall inform the Department of any change of address and of circumstances which would make the child ineligible for adoption subsidy, and shall cooperate with the Department in providing requested information at the time the adoption subsidy is re-evaluated. If the adoptive parent(s) fails to carry out these responsibilities, the Department may suspend, reduce or terminate the adoption subsidy and take appropriate action to recoup financial assistance incorrectly paid. The Department shall provide written notice of said action and of the right to a fair hearing to challenge the Department's action. If the adoptive parent(s) request a hearing in a timely manner, the adoption subsidy shall continue pending the results of the hearing.

(15) Continuing Eligibility for Adoption Subsidy. If a child with special needs who has been determined eligible by the Department for adoption subsidy and has been adopted, then reenters substitute care and becomes available for adoption again because the rights of the adoptive parents were terminated, voluntarily or involuntarily, or because the child's adoptive parents have died, the child shall be eligible for an adoption subsidy in the event of a subsequent adoption.

7.209A: Nonrecurring Adoption Expenses

If requested, the Department shall make a one time payment to the pre-adoptive parent(s) of a child with special needs, as defined in 110 CMR 7.209(2), to reimburse the family for expenses directly related to said child's adoption, provided the child is adopted through a placement made by the Department or its contracted agency, or a licensed nonprofit placement agency as defined in M.G.L. c. 28A, § 9. In all cases, requests for nonrecurring adoption expenses must be made and agreements for same completed, before the child's adoption is finalized. Payment shall be made after the finalization of the adoption. Nonrecurring adoption expenses include reasonable and necessary adoption fees, court costs, attorneys fees and other costs directly related to the adoption and which are not incurred in violation of law, but shall not include out-of-pocket expenses for which the family may be, or has been, reimbursed by other sources. The Department shall periodically determine the maximum amount to be paid for nonrecurring adoption expenses.

7.210: Post Adoptive Services

Any family who has adopted a child shall be eligible for any service offered by the Department under the same terms and conditions as any other family or individual.

Commentary. Within the last decade the social work profession has come to realize and acknowledge that many of an adoptees' problems occur after legalization. In the traditional adoption, support services ceased on the day of legalization, but we now know that post-legalization services may be important for adoptive families. The Department recognizes that the provision of appropriate and timely services after the adoption legalization may make the difference between a secure permanent placement or a painful adoption disruption. The Department recognizes the difficulty of integrating a new family member into an existing family system. No one should expect the placement to be problem-free. The Department fully recognizes that for those families seeking post-legalization services, this does not in any way indicate failure on their part. In order to better service families who have adopted children a variety of services are available: routine services by a caseworker trained in the field of adoption; the option of being in a parent support group; community services such as school counseling, individual or family psychological counseling or therapy; respite care; *etc.*

7.211: Adoption Records

(1) No records or information of any kind about an adoption which has occurred may be released by any Department employee or any Department agent to any inquiring party outside the Department unless that inquiring party has:

- (a) obtained a written order from a Probate Court (*See* M.G.L. c. 210, § 5D.)
- (b) Received approval from a placement agency for release of non-identifying information under M.G.L. c. 210, § 5D; or
- (c) Obtained a written order from a probate court for all other adoption records which are not subject to release under M.G.L. c. 210, § 5D. *See* M.G.L. c. 210, § 5C and 5D(e).

(2) Whenever an inquiring party contacts any Department employee or any Department agent concerning records or information about an adoption that has occurred, the inquiring party shall be informed that:

- (a) M.G.L. c. 210, § 5D governs the release of certain non-identifying information to adopted persons, biological parents and adoptive parents; and
- (b) The Department will give to the inquiring party a form request for release of adoption records, as established by the Department, and inform the inquiring party as to the types of records which shall be released upon submission of the request form; and

7.211: continued

(c) The Department will give to the inquiring party an information sheet, as established by the Department, which shall inform the inquiring party of the name of the applicable Probate Court, and the procedures by which the inquiring party may seek an order from that court for release of adoption records which are not subject to release by the Department pursuant to M.G.L. c. 210, § 5D.

(3) Upon presentation to the Department of a written Probate Court order the Department shall release such information as is provided for in the court's order, in the manner directed by the court.

7.212: Fair Hearings and Grievances on Adoption-related Matters

(1) Adoption - related matters that may be appealed via the Fair Hearing process are set forth at 110 CMR 10.06(5).

(2) All other adoption-related matters will be reviewed under the Department's grievance process established by 110 CMR 10.37 through 10.39.

7.214: Claims of Paternal Responsibility

The Department shall maintain a system for the filing of claims of paternal responsibility in accordance with M.G.L. c. 210, §§ 3 and 4A. No petition for adoption shall be filed by any Department employee without having searched said records to determine whether a claim of paternal responsibility has been filed, in a case where a child has been born out of wedlock.

7.215: Open Adoption

(1) Availability. In appropriate circumstances the Department may propose, as part of its adoption plan, that some limited contact between a child and his/her biological parents or grandparents or other extended family members occur after the child has been adopted. An open adoption will not be recommended for any child under 12 years of age, except in special circumstances, and only with the approval of the Area or Regional Director.

(2) Criteria. An open adoption may be recommended by the Department to the Court hearing an adoption petition only under the following conditions:

- (a) severance of a relationship between a child and his/her parents or other extended family members will prove harmful to the child; and
- (b) both the adoptive parents and the biological parents consent; and
- (c) the child, if over 12 years of age, consents; and
- (d) the Department believes an open adoption is in the best interests of the child.

(3) Review. The decision of the Department to recommend or not recommend an open adoption plan for a child is not a decision subject to review via the fair hearing process.

Commentary

Parents, both biological and adoptive, should be aware that the terms and conditions of an open adoption agreement, after the adoption has taken place, are not under the control of the Department, and any subsequent disagreements must be resolved by the parties themselves. It takes maturity and commitment by both parties to carry out an open adoption successfully. Thus, open adoption needs to be a mutually consensual plan. Likewise, because social workers and lawyers must be careful that open adoption is not used as a vehicle in coercing an adoption surrender, nor as a quick solution to a problem case, and because open adoption must always be in the child's best interests, in every case where open adoption is proposed by the Department, the court where the legalization is to occur will be apprised of the terms of the proposed open adoption agreement.

7.300: Policy on Guardianship

The Department is committed to establishing permanent placements for all children in its care and custody. Pursuant to this commitment, the Department may sponsor a guardianship for selected children. The children selected will be those who are not likely to return to their parents and who, for whatever reason, are not candidates for adoption.

7.301: Selecting Children to be Considered for Department Sponsored Guardianship

The Department shall consider sponsoring a guardianship for a child in its care or custody if the child meets all the following criteria:

- (1) The child will not be able to return to his/her biological parents. This determination is made by the Department based upon the history of the case and the clinical judgment of Department social work staff.
- (2) In the judgment of the Department, there is no reasonable likelihood that the child will be adopted. This determination may be made by the Department when, for example, the child is unwilling to be adopted, or when in the clinical judgment of the Department social work staff adoption would not be in the child's best interests.
- (3) The child has resided with the potential guardians for at least one year. This requirement may be waived if waiver is determined by the Department to be in the best interests of the child.
- (4) The child is at least 12 years of age. This requirement may be waived if waiver is determined by the Department to be in the best interests of the child (for example, to keep sibling groups together).

7.302: Implementation of Guardianship

The Department shall proceed to implement the guardianships it sponsors as follows:

- (1) The Department determines that the child meets the criteria set forth in 110 CMR 7.301(1) through (3).
- (2) The child's assigned social worker meets with the child and potential guardian. The guardianship plan is presented to them at this time for their consideration and approval.
- (3) If guardianship is acceptable to the child and potential guardian, the social worker will make reasonable and diligent efforts to contact the child's parents. If the parents are contacted, they will be informed of the proposed guardianship proceeding, of their right to contest the guardianship proceeding, and of their right, if indigent, to court-appointed counsel. The parents' consent will then be sought.
- (4) An employee of the legal staff of the Department will prepare the appropriate court papers. If the parents of the child have consented, their consent shall be noted upon the court papers by obtaining their signature. If the parents of the child have not consented to the guardianship in writing, they will be given notice as required by law.
- (5) An employee of the legal staff of the Department will initiate and prosecute all court proceedings necessary to finalize the guardianship. The guardianship plan will be presented to the court for review as part of the proceeding, and said plan shall address the appropriateness of the proposed placement and the suitability of the proposed guardians.

7.303: Guardianship Subsidy

As used in 110 CMR 7.303, the term guardianship, means guardianship of a minor.

7.303: continued

(1) Definition of Guardianship Subsidy. The Department operates two guardianship subsidy programs to support the permanency of children who are in the Department's care or custody: a federally supported program governed by the provisions of Title IV-E of the Social Security Act, 42 U.S.C. § 673, (Title IV-E guardianship subsidy), and a state funded program created pursuant to M.G.L. c. 18B, §§ 2 and 3, (state guardianship subsidy). In both programs, the guardian will receive financial assistance which is intended to aid in the support of the child and is paid directly to the guardians of the child, and the child will receive medical assistance through the MassHealth program which is intended to provide the child with health insurance and is paid directly to the vendor according to the current MassHealth fee schedule. Financial assistance provided through guardianship subsidy may not exceed the amount that would have been authorized during the period had the child been in family foster care.

(2) Eligibility Criteria - Title IV-E Guardianship Subsidy. In order to be eligible for Title IV-E guardianship subsidy, the following criteria must be met:

- (a) The child is in substitute care and in the care or custody of the Department.
- (b) The child was removed from his or her home pursuant to a voluntary placement agreement or as a result of a judicial determination that continuation in the home would be contrary to the welfare of the child.
- (c) Guardianship is the permanent plan for the child.
- (d) The proposed guardian(s) is a kinship/relative foster home licensed by the Department or an agency under contract with the Department which licensure includes:
 - 1. a fingerprint-based criminal records check of the national crime information databases; and
 - 2. a child abuse and neglect check of the proposed guardian(s) and other adults living in the home of the proposed guardian(s) for Massachusetts and any state the proposed guardian(s) or other adults living in the home have lived within the five years prior to the license study.
- (e) The proposed guardian(s) has not been convicted of :
 - 1. a felony for child abuse or neglect, spousal abuse, a crime against a child or a crime involving violence, such as rape, sexual assault or homicide, but not including simple assault and battery; or
 - 2. a felony for physical assault, battery or a drug or alcohol related offense committed in the five years prior to being licensed.
- (f) The child has been residing in the home of the proposed guardian(s) for at least six consecutive months prior to the guardianship.
- (g) The child has been eligible for Title IV-E foster care payments during at least six consecutive months he or she has resided with the proposed guardians prior to the guardianship.
- (h) The Department has determined:
 - 1. Returning home or adoption are not appropriate permanency options for the child;
 - 2. The child demonstrates a strong attachment to the prospective kinship/relative guardian(s);
 - 3. The kinship/relative prospective guardian(s) has a strong commitment to caring permanently for the child; and
 - 4. If the child is 14 years of age or older, the child consents to the kinship/relative guardianship arrangement.
- (i) The guardian(s) and the Department have entered into a guardianship subsidy agreement, signed by both the guardian(s) and Department prior to the guardianship being granted.

(3) Eligibility Criteria - Title IV-E Guardianship Subsidy for Sibling of Title IV-E Child. A child is eligible for a Title IV-E guardianship subsidy if:

- (a) the child is the sibling of a child who:
 - 1. has been deemed eligible for a guardianship subsidy under 110 CMR 7.303(2); or
 - 2. is receiving a Title IV-E guardianship subsidy; and
- (b) the child is placed with the same kinship/relative guardian(s); and
- (c) the kinship/relative guardian(s) agree that the placement is appropriate.

The guardianships need not occur at the same time for the sibling to be Title IV-E eligible.

7.303: continued

Comment: As long as the children are placed in the same kinship guardianship arrangement and one of the siblings is Title IV-E eligible for a guardianship subsidy, the other sibling(s) will be Title IV-E eligible, even if the sibling who is Title IV-E eligible has their guardianship finalized after the non-Title IV-E eligible sibling. The Non-Title IV-E sibling becomes eligible once the Title IV-E eligible sibling's guardianship is finalized and the guardianship agreement is modified.

(4) Eligibility Criteria - State Guardianship Subsidy. In order to be eligible for state guardianship subsidy, the following criteria must be met:

- (a) The child is in substitute care and in the care or custody of the Department.
- (b) Guardianship is the permanent plan for the child.
- (c) The child has resided in the home of the proposed guardian(s) for at least six months, unless a shorter time has been approved by the Director of

Areas.

- (d) The proposed guardian(s) is licensed as a foster home by the Department or an agency under contract with the Department.
- (e) If the child is age 14 or older, he or she consents to the guardianship.
- (f) The guardian(s) and the Department have entered into a guardianship subsidy agreement, signed by both the guardian(s) and the Department prior to the guardianship being granted.

(5) Application for Guardianship Subsidy.

(a) Children in the Custody of the Department. Prior to completing the guardianship petition, the Department will inform the proposed guardian(s) about the guardianship subsidy program. Prior to the guardianship petition being filed in court, the Department social worker shall refer the child to the Subsidy Unit and provide information relevant to a determination of eligibility. The Subsidy Unit shall determine the child's eligibility for Title IV-E or state guardianship subsidy, as applicable.

(b) Children in the Custody of Guardian(s). The guardian(s) of a child whose guardianship was sponsored by the Department may assert the right to a state guardianship subsidy in extenuating circumstances as set forth in 110 CMR 7.303(11) and (12). Where such circumstances are alleged, the guardian(s) must write to the Department's Subsidy Unit. The request must include the following information: name, address and telephone number of the guardian(s) and child; a brief statement of the reason(s) why the guardian(s) believe that extenuating circumstances exist for entering into a guardianship subsidy agreement after the guardianship has been finalized; and the court and date when the Department sponsored guardianship was granted. A subsidy administrator/designee shall decide whether extenuating circumstances exist and, if so, whether the child meets the eligibility criteria for a state guardianship subsidy. The Department is under no obligation to provide guardianship subsidy after a guardianship petition is granted unless there are extenuating circumstances as set forth in 110 CMR 7.303(11) and the child meets the eligibility criteria for a state guardianship subsidy. If the subsidy is denied, the guardian(s) will be provided notice of their right to appeal the denial through the Department's Fair Hearing process.

(6) Guardianship Subsidy Agreement. If the Department determines that the child is eligible for a Title IV-E guardianship subsidy, the type of assistance and, as applicable, the amount of assistance, will be determined through discussion and negotiation with the guardian(s), taking into consideration the circumstances of the guardian(s) and the needs of the child who is the subject of the guardianship. If the Department determines that the child is not eligible for a Title IV-E guardianship subsidy but is eligible for a state guardianship subsidy, the Department will inform the guardian(s) of the determination, the type of assistance and, as applicable, the amount of assistance to be provided, taking into consideration the circumstances of the guardian(s) and the needs of the child, and of the right of the guardian(s) to challenge the denial of the child's Title IV-E eligibility in a fair hearing.

In both subsidy programs, the Department will provide the guardian(s) with a guardianship subsidy agreement describing the subsidy program for which the child is eligible, the type of assistance and, if applicable, amount of assistance, and the circumstances under which the guardianship subsidy may be increased, decreased or terminated, the verification requirements, the additional services and assistance which the child or guardian may be eligible for and the process for applying and the circumstances under which the Department will pay for nonrecurring expenses associated with obtaining the guardianship. If the child is eligible for a

7.303: continued

Title IV-E guardianship subsidy the agreement will remain in effect regardless of the state residence of the kin guardian. The Department will inform the guardian(s) in writing that the guardianship subsidy agreement must be signed and returned to the Department prior to finalization of the child's guardianship and before the subsidy may be initiated.

(7) Arrangements Prior to Finalization of Guardianship; Initiation of Benefits. Except as provided in 110 CMR 7.303(11), only guardian(s) who have completed a guardianship subsidy agreement with the Department prior to finalization of the guardianship of the child are entitled to receive a guardianship subsidy. Guardianship subsidy benefits shall begin no earlier than the finalization of the guardianship unless the Department determines that an earlier state date is in the best interest of the child.

(8) Verification Requirement.

(a) Guardianship subsidy agreements are verified periodically at the discretion of the Department. At the time of the verification, the amount of the subsidy may be adjusted based on a change in the circumstances of the guardianship family and/or the child's needs, or the subsidy may be terminated for the reasons set forth in 110 CMR 7.303 (12). A Title IV-E guardianship subsidy may be adjusted only after negotiation with, and agreement by, the guardian(s) except the Department may terminate the subsidy after providing written notice of the decision and the right to a fair hearing for the reasons set forth in 110 CMR 7.303(12). If the Department modifies the subsidy, the Department will notify that guardian(s) in writing of the Department's decision, the reasons for it, and of the right of the guardian(s) to a fair hearing to challenge a decision to reduce or terminate the guardianship subsidy.

(b) The periodic verification process will include verification that the child is still living with the guardian(s), the guardian(s) continue to be legally responsible for the child, whether the guardian(s) has received third-party payments on behalf of the child, whether the guardian(s) has moved and whether the child remains in school, if of school age. For youth whose subsidy is extended beyond age 18, the verification process will include specific documentation that the youth continues to meet the criteria for an extended subsidy set forth in 110 CMR 7.303(13).

(c) The Department may periodically check the names and other identifying information of recipients of guardianship subsidy with the Title IV-A (the Department of Transitional Assistance) and the Title IV-D (the Department of Revenue/Child Support Enforcement) agencies to assist the Commonwealth with federal reimbursement and to prevent fraud in Commonwealth programs.

(9) Denial. If a request for a guardianship subsidy is denied, the Department shall notify the proposed guardian(s) in writing of the denial. A statement of reasons shall be included along with notice of the right to request a fair hearing to appeal the decision. Requests for guardianship subsidy after finalization of the guardianship shall be governed by the provisions set forth in 110 CMR 7.303(11), as applicable.

(10) Responsibility of Guardian(s). Guardian(s) receiving an adoption subsidy shall inform the Department of any change of address and of circumstances which would make the child ineligible for a guardianship subsidy, and shall cooperate with the Department in providing requested information at the time the guardianship subsidy is verified. If the guardian(s) fails to carry out these responsibilities, the Department may suspend, reduce or terminate the guardianship subsidy and take appropriate action to recoup financial assistance incorrectly paid. The Department shall provide written notice of said action and of the right of the guardian(s) to request a fair hearing to challenge the Department's action. If the guardian(s) requests a hearing in a timely manner, the guardianship subsidy shall continue pending the results of the hearing.

(11) Extenuating Circumstances - State Guardianship Subsidy.

(a) If, after the finalization of a guardianship of a child who had been in the Department care or custody, the guardian(s) believes that he or she has been wrongly denied access to a state guardianship subsidy, the guardian(s) has a right to submit an application, and supporting documentation, for a state funded guardianship subsidy to establish that:

1. extenuating circumstances exist for entering into a state funded guardianship assistance agreement after the guardianship has been finalized. Extenuating circumstances shall be limited to the following:

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- a. the Department failed to submit or process an application for guardianship subsidy prior to the guardianship legalization;
 - b. the Department failed to advise the guardian(s) of the availability of a guardianship subsidy before the child's guardianship is finalized;
 - c. The Department failed to advise the guardian(s) of the requirement that the guardianship subsidy agreement must be signed and entered into prior to the allowance of the guardianship petition; or
 - d. The Department was in the process of finalizing the guardianship subsidy application and a Court finalized the guardianship before the guardianship agreement could be signed by both parties; and
2. the child is eligible for a state guardianship subsidy.
- (b) If the Department's subsidy administrator/designee determines that extenuating circumstances exist and that the child meets the eligibility criteria for state funded guardianship subsidy, the Department will provide guardianship subsidy from a date beginning no earlier than the date the guardian(s) notified the Department in writing that a guardianship subsidy was wrongly denied or withheld. The Department shall determine the type of assistance and, if applicable, the amount of financial assistance in accordance with 110 CMR 7.303(5) and (6) as applicable to state guardianship subsidies.
- (c) If a request for a guardianship subsidy is denied, the Department shall notify the proposed guardian(s) in writing of the denial. A statement of reasons shall be included along with notice of the right to request a fair hearing to appeal the decision.
- (12) Termination of Guardianship Subsidy. The Department will terminate a guardianship subsidy when any of the following occurs and provide written notice to the guardian(s) of the termination and of the right to a fair hearing to challenge the action;
- (a) the child turns 18 years of age, unless prior to age of 18 the guardian requests an extension of the guardianship subsidy and the child meets the criteria for an extension set forth at 110 CMR 7.303(13).
 - (b) the guardian(s) are no longer legally responsible for the child;
 - (c) the child is no longer receiving assistance from the guardian(s); or
 - (d) the child or guardian has died; or
 - (e) the youth over 18 years of age no longer meets the criteria for an extension of the guardianship subsidy; or
 - (f) the youth over 18 years of age has reached the age of 21 for an extended federally supported guardianship subsidy or has reached the age of 22 for a state funded guardianship subsidy.
- (13) Extension of Guardianship Subsidy Over Age 18. For the purpose of 110 CMR 7.303(13), young adult shall mean a person between the ages of 18 and 23.
- (a) State Funded: If requested by the guardian(s), the Department may extend a guardianship subsidy up to the age of 22 for a young adult who is enrolled in a school, vocational program or a college program.
 - (b) Federally Supported: If requested by the guardians, the Department may extend a federally supported guardianship subsidy to a young adult who reaches the age of 18 up to age 21 if one of the following criteria are met:
 1. the young adult has a mental or physical handicap which warrants the continuation of assistance; or
 2. the state has adopted the expanded definition of child pursuant to 42 USC 465(8)(B) and the guardianship subsidy was entered into after the child turned age 16, and the young adult will be:
 - a. completing a secondary school or the equivalent; or
 - b. enrolled in post-secondary or vocational school; or
 - c. participating in a program or activity that promotes or removes barriers to employment; or
 - d. employed 80 hours a month; or
 - e. incapable of any in 110 CMR 7.303(13)(b)2.a. through d. due to a documented medical condition.

7.303: continued

(c) Documentation: The Department will require documentation from the guardian to support a request for an extension of a guardianship subsidy over age 18 and may periodically require the guardian to provide documentation that the youth over 18 continues to meet the criteria for an extended guardianship subsidy.

1. For an extension based on a mental or physical handicap, or based on the young adult being incapable of doing any of the activities outlined in 110 CMR 303(13)(2)(b)1.a. through d., the Department will require documentation of the young adult's mental or physical handicap or condition by a licensed professional qualified to make the diagnosis.
2. For an extension based on the criteria set forth in 110 CMR 7.303(13)(2)(b)a. through d., the Department will require documentation from the school, program or employer verifying the young adult's enrollment, participation or employment including the amount of time the young adult is involved.

(14) Successor Guardian.

(a) When a guardian dies, or is no longer capable of caring for the child who is the subject of a guardianship subsidy, and a successor guardian is appointed by a court of competent jurisdiction, the Department may authorize the guardianship subsidy to be transferred to the successor guardian who resides within the state of Massachusetts. The guardianship subsidy provided to a successor guardian will be a state guardianship subsidy, not a Title IV-E subsidy. Prior to the subsidy being transferred the Department will:

1. Conduct a background check of the successor guardian, which includes both a check of the Criminal Offender Record Information system and the Department's statewide automated child welfare information system to determine whether the successor guardian might impair their ability to assume and carry out the responsibilities of being the child's guardian.
2. Conduct a home visit of the successor guardian and complete a physical standards review of the home.

(b) The determination of whether to transfer the subsidy to a successor guardian is solely with the discretion of the Department is subject to appropriation and it not the subject for a fair hearing.

7.303A: Fair Hearing and Grievances on Guardianship Subsidy Related Matters

(1) Guardianship subsidy related matters that may be appealed via the Fair Hearing process are set forth at 110 CMR 10.06(6).

(2) All other guardianship subsidy related matters will be reviewed under the Department's grievance process established by 110 CMR 10.37 through 10.39.

7.304: Nonrecurring Guardianship Expenses

The Department shall make a one time payment to the proposed kinship/relative guardian(s) of a child in the Department's care or custody, to reimburse the family for expenses directly related to said child's guardianship, provided the child's guardianship is through a placement made by the Department, or an agency under contract with the Department. Payment shall be made after the finalization of the guardianship by submitting a request for nonrecurring guardianship expenses with receipts to the guardianship subsidy unit.

Nonrecurring guardianship expenses include reasonable and necessary guardianship fees, court costs, attorneys fees, travel costs and other costs directly related to the guardianship and which are not incurred in violation of law, but shall not include out-of-pocket expenses for which the family may be, or has been, reimbursed by other sources. The Department will pay up to \$2,000 of Title IV-E guardianship expenses and \$400 of state sponsored guardianship expenses.

NON-TEXT PAGE

7.400: Provision of Education Services to Children in Department Care or Custody

All handicapped children in the Department's care or custody are entitled to a free appropriate education. Whenever special education is necessary for children in its care or custody, the Department will pursue special education services, through the local public schools.

7.401: Special Education Definitions

As used 110 CMR 7.400 through 7.499 only the following terms shall have the following meanings:

(1) Child. Any person aged three through 21 years of age who has not obtained a high school diploma or its equivalent.

(2) Child in Need of Special Education. Any child aged three through 21 years of age who, because of temporary or permanent adjustment difficulties or attributes arising from intellectual, sensory, emotional or physical factors, cerebral dysfunctions, perceptual factors, or other specific learning impairments, or any combination thereof, is unable to progress effectively in a regular educational program.

(3) Educational Advocate. A person assigned by the Department of Education (DOE) to act in educational matters on behalf of a child.

(4) Grandfathered Children. All children placed and funded in institutions by the Department of Public Welfare (DPW) prior to September 1, 1974 (effective date of M.G.L. c. 71B) are considered "grandfathered" and will continue to be funded in those institutions by the Department for so long as they remain in the Department's care or custody. In addition, all formal or informal agreements made before May 1, 1976 (effective date of the Interagency Agreement on the Clarification of Responsibility for Children in the Custody of Human Services Agencies) between a local educational agency (LEA) and DPW regarding placement and funding of children in special education programs shall continue in effect for so long as the child continues in the special education program and remains in the Department's care or custody.

(5) Individualized Education Plan (IEP). A written statement of special educational needs and services, developed for a child in need of special education at a meeting of at least:

- (a) a representative of the local public school district who shall be qualified to provide, or supervise provision of, specifically designed instruction to meet the unique needs of the child,
- (b) the teacher,
- (c) the parents, guardian, custodian, or educational advocate of the child, and
- (d) whenever appropriate, the child.

(6) Local Educational Agency (LEA). The local public school district which is responsible for providing educational services to the child in need of special education.

(7) Prototype. Numerical scale developed by the Department of Education (DOE) which reflects the amount of time that a child in need of special education is separated from children not receiving special education services. Prototypes include:

- 502.1 Regular education with modifications
- 502.2 Regular education with less than 25% time spent outside the regular education classroom.
- 502.3 Regular education with less than 60% time spent outside the regular education classroom.

7.401: continued

- 502.4 More than 60% time spent outside the regular education classroom.
- 502.5 Private school day program.
- 502.6 Private school residential program.
- 502.7 Home or hospital instruction.
- 502.8 Preschool special education program.
- 502.9 Diagnostic program.
- 502.11 Program for children aged 16 through 21.

7.402: Advocacy on Behalf of Children with Special Needs in Department Care or Custody

(1) Children in the Custody of the Department. The child's educational advocate in the special education process shall be:

- (a) An educational advocate appointed by an authorized educational advocacy program established by the Department of Education pursuant to 20 U.S.C. § 1401; or, if no educational advocate is available;
- (b) A foster parent if the Department has delegated this authority to the foster parent via written agreement; or if there are compelling reasons why no such delegation can be made;
- (c) A Department social worker.

Special education advocacy shall in any event be done in conjunction with the child's natural or foster parent(s) whenever possible; however, in the event of a disagreement between the Department and the natural parent(s) concerning an educational program, Department rights supersede parental rights for children in the custody of the Department.

(2) Children in the Care of the Department. For children in the care of the Department, the Department shall not exercise special education parental rights unless there is specific language in the Voluntary Placement Agreement delegating special education parental rights to the Department.

The Department shall only request delegation of special education parental rights for children placed in Department care voluntarily when supported by an assessment which determines that exercise of those parental rights is essential to the provision of social services to the family.

The Department will not enter into voluntary placement agreements with the child's parent(s) solely for the purpose of sharing the costs of any residential school placement with an LEA.

(3) Signature Authority on Cost Shared IEP's and Cost Sharing Agreements. Education plans (IEPs) raising cost sharing issues and cost sharing agreements will be binding upon the Department only if signed by a Department Area Director or his/her designee.

7.403: Referral for Special Education Assessment and Services

(1) Generally. Whenever it appears to a Department social worker that a child is in need of special education services, the worker shall refer the child, in writing, to the child's LEA for assessment and services.

(2) Referral Upon Change in Placement. Whenever educational responsibility for a child in Department care or custody shifts from one LEA to another because of a shift in the child's custody or placement, the Department social worker shall notify both the old LEA and the new LEA, in writing, of the change as soon as the Department becomes aware that a shift in educational responsibility is likely or has occurred.

(3) Referral Upon Placement in a Residential School Facility. Except in emergencies, all children referred for placement in a residential care facility shall be referred for special education assessment and services prior to the child's entry into the residential facility. Where, in an emergency, a child must be placed in a residential facility prior to being referred for special education assessment, a special education referral shall be made within one week following placement.

7.404: Cost Sharing

(1) Public School Special Education Placements. The Department will not fully fund, nor cost share, public school special education placements. However, where the Department places a child in a residential educational facility because no adequate community-based residential program exists for the child, but the LEA has an adequate community-based educational program for the child, the Department shall bear the full cost of both the educational and care/support components of the residential placement. This regulation in no way limits the right of the Department to test the adequacy of the proposed community-based educational program through the due process hearing procedure of the special education statutes and regulations, or to arrange for the provision of the proposed community-based educational program near the child's residential facility.

(2) Private Residential School Special Education Placements. If a child's IEP specifies that a private day school program (prototype 502.5) is necessary to meet the child's special education needs and the Department determines that the child should be placed in community residential care for non-educational reasons, then the Department shall share the cost of the placement with the local educational agency.

Where a child with a 502.5 prototype is placed in a residential school facility, the Department and the LEA will share the cost of the placement equally, if the facility has no Day Rate established by the Massachusetts Rate Setting Commission. Where the Rate Setting Commission has established both Day and Residential Rates for the facility, the LEA shall pay the Day Rate and the Department will pay the difference between the Day Rate and the full Residential Rate. The Department will not enter into a cost sharing agreement at a rate other than that established by the Massachusetts Rate Setting Commission or at a percentage that differs from 50%/50% for placements where no Day Rate is established, unless more than two agencies are involved in sharing the placement cost.

(3) Other Specific Education Placements. If a child's prototype is 502.6, 502.7, 502.8, 502.9, or 502.11, M.G.L. c. 71B requires the responsible LEA to fully fund the placement. Therefore, the Department will not pay for or cost share 502.6 - 502.11 placements. In addition, the Department will not provide substitute care to any child in need of special education whose individualized education plan (IEP) specifies that a residential school program is necessary to meet the educational goals and objectives of the IEP (*i.e.*, the IEP bears a 502.6 prototype).

7.500: Introduction to Interstate Placement Services

110 CMR 7.500 through 7.523 set forth the responsibilities of all persons and agencies involved in the placement of children across state lines and across national borders, consistent with Massachusetts law, including M.G.L. c. 119, Appendix §§ 2 - 1 *et seq.* (the Interstate Compact on the Placement of Children, hereinafter called "the Compact"); M.G.L. c. 119, § 36; M.G.L. c. 18B; M.G.L. c. 28A; and M.G.L. c. 210.

7.501: Interstate Placement Definitions

As used in 110 CMR 7.500 through 7.523 only the following terms shall have the following meanings:

Appropriate Authorities as used in M.G.L. c. 119, Appendix §§ 2 - 1 Article I(b) and Article V(a), and "appropriate public authority" as used in Article III, mean the Compact Administrator for Massachusetts when the child is to be placed in Massachusetts.

Appropriate Officer or Agency as used in M.G.L. c. 119, Appendix, §§ 2 - 1 Article III(c) and §§ 2 through 6, means the Compact Administrator for Massachusetts when the child is to be placed from Massachusetts to another state.

Hospital means an institution for the acutely ill which discharges its patients when they are no longer acutely ill, which does not provide or hold itself out as providing child care in substitution for parental care or foster care, and in which a child is placed for the primary purpose of treating an acute medical problem. Outpatient care does not fall within this definition.

Institution means a residential setting where children are cared for on a 24-hour-a-day basis.

7.501: continued

Institution Caring for the Mentally Ill or Mentally Defective means an institution which provides medical care and treatment, psychiatric care and treatment, corrective, and therapeutic or rehabilitative treatment, for mentally ill or mentally defective or retarded persons. Such an institution is not altered in its character as an institution for the mentally ill or mentally defective merely because it provides child care services to these patients as part of a comprehensive regime of treatment. Outpatient care does not fall within 110 CMR 7.501: Institution Caring for the Mentally Ill or Mentally Defective.

Institution Primarily Educational in Character means an institution which operates one or more programs that can be offered in satisfaction of compulsory school attendance laws, in which the primary purpose of accepting children is to meet their educational needs, and which:

- (a) does not accept responsibility for children during the entire year; and
- (b) does not provide or hold itself out as providing child care constituting foster care or similar nurture sufficient to substitute for parental supervision and control; and
- (c) does not provide any other services to children, except for those customarily regarded as extra-curricular or co-curricular school activities, pupil support services, and those services necessary to make it possible for the children to be maintained on a residential basis in the aforementioned school program or programs.

Placement means the arrangement for the care of a child in a family or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective or epileptic or any institution primarily educational in character, or any hospital or other medical facility.

Proper Authorities as used in M.G.L. c. 119, Appendix § 2 - 1 Article I(c) means the Compact Administrator for Massachusetts when the child is to be placed from Massachusetts to another state.

Receiving Agency means any state; an officer or employee of any state, or an officer or employee of any political subdivision of any state; a court of any state; any person, corporation, association, charitable agency or other entity which receives any child from another state.

Receiving State means the state to which a child is sent, brought or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.

Sending Agency means any state; an officer or employee of any state, or an officer or employee of any political subdivision of any state; a court of any state; any person, corporation, association, charitable agency or other entity which sends, brings or causes to be sent or to be brought any child to another state.

Sending State means the state in which the sending agency is located or resides, or the state from which the sending agency sends the child.

Visit means a stay of less than 30 days to provide the child with a social or cultural experience of short duration, such as a stay in a camp or with a friend or relative who has not assumed legal responsibility for providing child care services. A stay of more than 30 days shall be considered a visit if it begins and ends within the period of a child's vacation from school. A visit may not extend beyond 30 days (or the duration of the school vacation period). A stay without an express or implied termination date is a placement and not a visit.

7.502: Interstate Compact Administrator for Massachusetts

The Department shall conduct all interstate placement activities through the Office of the Deputy Commissioner, Department of Social Services. The "Compact Administrator" for Massachusetts is the Deputy Commissioner of the Department of Social Services, or his/her designee.

7.503: Applicability of the Interstate Compact and M.G.L. c. 119, § 36

- (1) The Interstate Compact shall apply whenever a sending agency from a state which is a party to the Compact sends, brings, or causes to be sent or to be brought into any other state which is a party to the Compact, any child for placement in foster care or residential or group care, or for placement in a relative's home [other than those persons named in 110 CMR 7.503(3)] or for placement preliminary to a possible adoption.
- (2) Placements made to the Commonwealth by sending agencies from non-member states and foreign countries, or made by the Commonwealth to non-member states and foreign countries, are not subject to the Compact but such placements made to the Commonwealth are subject to the provisions of M.G.L. c. 119, § 36 unless the placement is between persons both of whom are persons listed in 110 CMR 7.503(3).
- (3) Neither the Interstate Compact procedures nor the provisions of M.G.L. c. 119, § 36 shall apply when the sending agency is the child's parent, step-parent, grandparent, adult brother or adult sister, adult uncle or adult aunt, or non-agency guardian *and* the receiving agency is likewise any such relative of the child or a non-agency guardian.
- (4) The Interstate Compact shall apply to court orders unless they relate to cases exempted by Article VIII of the Compact.
- (5) The Interstate Compact shall not apply to placements which occurred prior to the date of enactment of the Compact by either the state of the sending agency or the state of the receiving agency; however, the provisions of M.G.L. c. 119, § 36 shall apply if otherwise applicable.
- (6) Neither the Interstate Compact nor the provisions of M.G.L. c. 119, § 36 shall apply to any placement with an institution primarily educational in character, any institution caring for the mentally ill or mentally defective or epileptic, or any hospital or other medical facility.
- (7) Neither the Interstate Compact nor M.G.L. c. 119, § 36 shall apply to a visit.
- (8) The Interstate Compact shall apply to any stay across state borders whenever the sending agency requests a home study or supervision of a child by the receiving state.
- (9) The provisions of M.G.L. c. 119, § 36 shall not apply to a sending agency which is a public agency in another state that is a party to the Interstate Compact.
- (10) Adoptions by residents of Massachusetts who finalize the adoption of out-of-state or out-of-country children in another state or country are not governed by either the Interstate Compact or by M.G.L. c. 119, § 36. This exception applies only to cases where the adoption of the child is completed before the child enters the Commonwealth for the first time.
- (11) Both the Interstate Compact and M.G.L. c. 119, § 36 apply, if otherwise applicable, to adoption by residents of Massachusetts who send, bring or cause to be sent or to be brought a child into the Commonwealth pending the finalization of the adoption in another state or country.
- (12) The Interstate Compact shall not apply when a placement is made pursuant to any other interstate compact to which both the sending state and the receiving state are parties or pursuant to any other agreement between the states which has the force of law.

7.504: Placement of Out-of-state Children in Educational Institutions

- (1) Programs conducted by public or private agencies in which children are placed in family homes incident to their attendance at educational institutions in other states are foster care placements within the meaning of the Interstate Compact, because the home rather than the educational institution provides child care and supervision during the time when the child is not in attendance at the school program.

7.504: continued

- (2) To facilitate the conduct of such a program, the agency administering it may investigate and prepare reports on the Massachusetts homes in question in advance, and may offer such reports to the Compact Administrator of the Commonwealth as part of the information required in connection with an intended placement, provided that any such report must be current to within six months of the date of its submission.
- (3) Any home in which a child is placed or proposed to be placed pursuant to 110 CMR 7.000 shall obtain and maintain such license or approval as a child care or foster home as the laws and regulations of the Commonwealth require. The license or approval must be in full force and effect at the time the sending agency gives notice of the intended placement and at all times during the continuance of the placement. Failure to meet this condition shall be sufficient ground for the Compact Administrator to deny or terminate the placement.
- (4) The operator of a program to which 110 CMR 7.504 applies shall:
 - (a) notify the Compact Administrator of the Commonwealth promptly in writing if the child is returned to his parent's or guardian's home or is sent to another home during the school year.
 - (b) notify the Compact Administrator of the Commonwealth promptly in writing upon the child's return to his parent's or guardian's home at the end of the school year.
- (5) If a child in a program to which 110 CMR 7.000 applies is placed from one home to another the action shall be considered a new placement and shall require the same notifications, furnishing of information and documentation, and receipt of a notice pursuant to Article III(b) of the Compact as an initial placement.
- (6) The special procedures of 110 CMR 7.000 shall be available only for programs in which the parents or guardians retain full custodial rights to control (by the giving or withholding of consent or otherwise) the place of abode and participation in the program of the child. Further, this regulation applies only to programs one purpose of which is to afford children educational opportunities but in which residential schools or other residential institutions are not utilized to provide the educational component of the program.

7.505: Placement of Out-of-state Children in Medical Institutions

- (1) Placement of a child in a medical institution of whatever kind in another state is a placement within the meaning of the Interstate Compact unless the room, board, care and supervision provided at the medical facility are merely incident to medical or psychiatric treatment which the child is receiving, and are to be terminated when the child's medical or psychiatric treatment ends.
- (2) Placement in a home for unwed pregnant mothers is a placement within the meaning of the Interstate Compact if the purpose of the facility is to meet the expectant mother's social and emotional needs as well as to provide room and board during pregnancy. Only if the home's services are primarily medical and are confined to the period of the actual delivery and customary post-delivery stay is the placement outside the Compact.

7.506: Placement of Out-of-state Children in Residential Institutions

- (1) Placement of a child in a residential institution is a placement within the meaning of the Interstate Compact if the institution provides child care or other services which, if provided by a family or individual other than the child's parents, would constitute foster care, with or without payment.

7.506: continued

(2) Where children attend school or other educational programs, but are not housed or cared for on a 24-hour basis by the school or educational program and where a placement within the meaning of the Compact occurs, the placement shall be deemed to be with the person, family, agency or institution which provides the 24-hour a day housing and care during the period of school or other educational attendance.

(3) The type of license, if any, held by an institution may be used as evidence of its character, but whether an institution is either generally exempt from the need to comply with the Interstate Compact procedures or exempt in a particular instance shall be determined by the services the institution actually provides or offers to provide.

7.507: Placement with Parent(s)

(1) No placement under the Interstate Compact occurs nor do the provisions of M.G.L. c. 119, § 36 apply when a court in one state, in connection with the granting of a divorce, awards any form of custody to a parent residing in another state.

(2) If a court enters an order which alters custodial rights which had been previously adjudicated in a divorce, separation or other legal proceeding, and such order places a child with a previously non-custodial parent in a state other than the one in which the child currently resides, there is a placement within the meaning of the Compact.

(3) No placement under the Interstate Compact occurs nor do the provisions of M.G.L. c. 119, § 36 apply when divorced parents agree to a placement of their child with a relative listed in 110 CMR 7.503(3), or when one divorced parent places his/her child with the other non-custodial divorced parent across state lines.

(4) Whenever a state agency has custody of a child or care of a child pursuant to a voluntary placement agreement, and such agency places a child with his/her parent(s) in another state, this constitutes a placement under the Interstate Compact.

(5) Whenever a court in a divorce proceeding awards custody of a child to any third party including a relative listed in 110 CMR 7.503(3) against the wishes of the parents, this constitutes a placement under the Interstate Compact.

7.508: Independent Adoptions

(1) "Independent adoption" is any placement of a child for adoption in the Commonwealth made or facilitated by anyone other than the Department or by anyone other than an adoption or placement agency licensed or approved by the Department of Early Education and Care and any placement of a child from the Commonwealth for adoption in another state made or facilitated by anyone other than a placement agency licensed by the receiving state and anyone other than the Department or an adoption or placement agency licensed or approved by the Department of Early Education and Care.

(2) Independent adoptions are illegal in the Commonwealth. *See* M.G.L. c. 28A, § 11(c). Independent adoptions, for purposes of 110 CMR 7.508, shall include both children placed in the Commonwealth and children placed from the Commonwealth, for purposes of adoption.

7.509: Identified Adoptions

(1) An "identified adoption" means an adoption where the parent executes a written surrender of his/her child directly to a particular person or agency.

(2) Identified adoptions of children brought into the Commonwealth are permitted provided that the placement is made by the Department or by an adoption or placement agency licensed or approved by the Office for Children, and is approved by the Compact Administrator for the Commonwealth.

7.509: continued

(3) Identified adoptions of Massachusetts children in another state are permitted provided that a home study is prepared in accordance with the laws of the receiving state and is submitted for approval to the Compact Administrator for the Commonwealth, prior to the placement.

(4) Any adoption or placement agency licensed or approved by the Office for Child Care Services (including the Department of Children and Families) which agrees to accept a child from another state and to place that child in a particular identified home in the Commonwealth can thereafter refuse to place the child in that particular home based on the results of a completed home study.

(5) The Interstate Compact shall apply to all identified adoptions of children born to mothers who are out-of-state residents, regardless of whether the surrender was executed in the sending state or in Massachusetts, unless the child is surrendered directly to one of the exempt relatives or guardian as enumerated in 110 CMR 7.503(3).

7.510: Guardians

(1) The Interstate Compact procedures shall not apply to a non-agency guardian sending or bringing a child into a receiving state and leaving the child with a non-agency guardian or any of the exempt relatives enumerated in 110 CMR 7.503(3) in the receiving state.

(2) The Interstate Compact and the provisions of M.G.L. c. 119, § 36 shall apply whenever a resident of the Commonwealth is appointed guardian of a child by a court of another state for the purpose of securing an adoption in the Commonwealth.

7.511: Foreign Children

(1) The Interstate Compact procedures do not apply to inter-country placement of children. M.G.L. c. 119, § 36 governs the placement of foreign-born children into the Commonwealth for the purpose of adoption.

(2) The Interstate Compact procedures shall apply to the interstate placement of foreign-born children, whether or not the child was ever physically in the sending state, so long as such sending state caused the child to be sent or brought into another state.

7.512: Moves Across State Borders

(1) Move by Child. An intra-state placement not subject to the Compact becomes an interstate placement subject thereto when the child moves to another state.

Example: The Department has custody or care of a child and places the child with a foster family in Massachusetts. If the foster family and child thereafter move to Vermont, the Interstate Compact procedures must be followed.

(2) Move by Parents. An intra-state placement not subject to the Compact does not become subject to the Compact when the parent(s) move to another state but the child remains in the state where the original placement occurred.

Example: The Department has custody or care of a child and places the child with a foster family in Massachusetts. If the parents who placed the child with the Department thereafter move to Vermont, but the child remains in Massachusetts, the Interstate Compact is not involved.

7.513: Runaway Children

Whenever a child is a runaway and crosses state borders, the provisions of M.G.L. c. 119, App. §§ 1 through 7 shall govern the return or retention of the child.

7.514: Procedural Requirements When Sending Agency is Within the Commonwealth

- (1) Any sending agency which intends to send, bring, or place a Massachusetts child into another state shall give advance written notice of its intention to the Compact Administrator of the Commonwealth and of the receiving state.
- (2) The sending agency shall thereafter furnish the Compact Administrator of the Commonwealth and of the receiving state with all information requested by each Compact Administrator, provided that such information will consist of at least the following:
 - (a) The name, date and place of birth of the child.
 - (b) The identity and address(es) of the parent(s) and legal guardian(s).
 - (c) The name and address of the person, agency or institution to or with which the sending agency proposes to send, bring or place the child.
 - (d) A full statement of the reasons for such proposed action.
 - (e) Social assessment of the child and family (Form ICPC-101).
 - (f) Copy of all court documents relating to custody or adoption of the child, if applicable.
 - (g) A full statement of what the receiving state is being asked to do regarding the child.
 - (h) Copy of Request to Place Child (Form 100A), if applicable.
 - (i) Copy of Report on Placement Status Change of Child (Form ICPC-100B) for all retroactive applications, if applicable.
 - (j) Evidence that surrenders by parent(s) and/or termination of parental rights were accomplished fully in accordance with the laws of Massachusetts, or evidence that the process of terminating such rights has been commenced in accordance with the laws of Massachusetts.
 - (k) A home study of the proposed placement site conducted by a placement agency licensed or approved by the receiving state.
 - (l) In the case of placement for purposes of adoption, a description of each expense incurred or to be incurred by the adoptive parents, the amount of each such expense, the name and address of the payee, and the date of payment.
 - (m) In the case of placement for purposes of adoption, medical background information on the child (if born) and on the natural parents.
 - (n) Evidence of authority of sending agency to place child which may consist of any of the following as appropriate:
 1. Court order;
 2. Executed Voluntary Placement Agreement;
 3. A notarized statement by a parent or legal guardian acting as a sending agency;
 4. Executed surrender form executed in accordance with the requirements of M.G.L. c. 210.
 - (o) Whenever a private child welfare agency is the sending agency, a copy of its current license.
 - (p) If a child is of Indian heritage, verification that the placement is in compliance with the Indian Child Welfare Act.
 - (q) A pre-placement visitation plan which is consistent with good social work practice.
- (3) The Compact Administrator of the sending state shall send copies of the information outlined above to the Compact Administrator in the receiving state.

7.515: Financial Responsibility for the Child

- (1) A sending agency in the Commonwealth shall continue to have financial responsibility for support and maintenance of any Massachusetts child placed out-of-state, during the period of the out-of-state placement (including any subsidized adoption which occurs out-of-state).
- (2) An out-of-state sending agency shall continue to have financial responsibility for support and maintenance of any child placed in the Commonwealth during the period of the placement (including any subsidized adoption which occurs in the Commonwealth).

7.515: continued

- (3) A sending agency in the Commonwealth may contract with any third party to shift financial responsibility for an out-of-state placement to such third party, provided that in the event of default by the third party financial responsibility for the child as between the receiving state and sending agency remains with the sending agency in the Commonwealth.
- (4) A sending agency in the Commonwealth shall not condition a placement with a receiving state upon the latter's assumption of financial responsibility for the child.
- (5) The laws of the receiving state shall govern whether a particular cost is a cost of placement which shall be borne by the sending agency, provided that the rate at which foster care payments shall be paid shall be the rate established by the Commonwealth, regardless of whether it is the sending or receiving state.
- (6) Nothing in 110 CMR 7.00 shall prevent the sending agency from pursuing its right to reimbursement from parties responsible for the support of the child.
- (7) Whenever parent(s) terminate their parental rights and surrender the child to a person or agency in the Commonwealth, such parents by virtue of such surrender shall not retain any jurisdiction over the child but jurisdiction and financial responsibility for the child shall be vested in a state child welfare agency or other financially responsible entity which must be named as the sending agency. Financial responsibility shall include the support and maintenance of the child during the pre-adoption period of the child's placement in the Commonwealth.

7.516: Procedural Requirements When the Commonwealth is the Receiving State

- (1) Whenever the Interstate Compact procedures or the provisions of M.G.L. c. 119, § 36 are applicable, all placements of children across state borders into the Commonwealth shall require the advance approval, in writing, of the Compact Administrator of the Commonwealth.
- (2) The Compact Administrator of the Commonwealth shall approve the placement so long as the proposed placement conforms to the laws of the Commonwealth, and does not appear to be contrary to the interests of the child. The placement need not be the best possible placement to be approved, so long as it is reasonable and satisfactory considering all the relevant circumstances.
- (3) The Compact Administrator shall not approve a placement of a child into the Commonwealth whenever the provisions of the Interstate Compact or the provisions of M.G.L. c. 119, § 36 are applicable, unless the following are submitted in advance to the Compact Administrator, except that 110 CMR 7.516(a) and (b) shall not be required from a public sending agency in a state which is a party to the Interstate Compact:
 - (a) An individual or blanket bond running to the Commonwealth in such penal sum and with such surety or sureties as the Department may approve.
 - (b) A written application containing such information relative to such child as the Department may require and which includes the statement:
 1. that all statements contained in such an application are true;
 2. that any such child becoming a public charge during his minority shall be removed from the state by the sending agency not later than 30 days after notice from the Department;
 3. that such child shall be removed from the state by the sending agency immediately upon his release from any penal or reformatory institution or training school to which he has been committed, within three years of his arrival within the state, for juvenile delinquency or crime;
 4. that such child shall be placed or boarded by the sending agency under such agreement as will secure to him a proper home and surroundings, and as will render his custodian responsible for his proper care, education and training, under adequate supervision and subject to annual visitation by an agent; and

7.516: continued

5. that such reports relative to the child shall be made to the Department as it may require.
 - (c) The name, date and place of birth of the child.
 - (d) The identity and address(es) of the parent(s) and legal guardian(s).
 - (e) The name and address of the person, agency or institution to or with which the sending agency proposes to send, bring or place the child.
 - (f) A full statement of the reasons for such proposed action.
 - (g) Social assessment of the child and family (Form ICPC-101).
 - (h) An opinion letter from a member of the Bar of the sending state that surrenders by parent(s) and/or termination of parental rights were accomplished fully in accordance with the laws of the sending state, or evidence that the process for terminating such rights has been commenced in accordance with the laws of the sending state.
 - (i) Copy of all court documents relating to custody or adoption of the child, if applicable.
 - (j) A full statement of what the Commonwealth is being asked to do regarding the child.
 - (k) Copy of Request to Place Child (Form ICPC 100A), if applicable.
 - (l) Copy of Report on Placement Status Change of Child (Form ICPC 100B), for all retroactive applications.
 - (m) A home study of the proposed placement site in the Commonwealth conducted by a placement agency licensed or approved by the Office for Children.
 - (n) If a child is of Indian heritage, verification that the placement is in compliance with the Indian Child Welfare Act.
 - (o) In any case where parent(s) have terminated their parental rights and have surrendered their child to a person or agency in the Commonwealth, a statement naming as the sending agency, a state child welfare agency or other financially responsible entity, signed and acknowledged by said financially responsible entity as to its financial obligation.
 - (p) In the case of placement for purposes of adoption, a description of each expense incurred or to be incurred by the adoptive parents, the amount of each such expense, the name and address of the payee and the date of payment.
 - (q) In the case of placement for purposes of adoption, medical background information on the child (if born) and on the natural parents.
 - (r) Evidence of authority of sending agency to place child which may consist of any of the following as appropriate:
 1. Court order;
 2. Executed Voluntary Placement Agreement;
 3. A notarized statement by a parent or legal guardian acting as a sending agency;
 4. Executed surrender form executed in accordance with the requirements of the sending state.
 - (s) Whenever a private child welfare agency is the sending agency, a copy of its current license.
 - (t) A pre-placement visitation plan which is consistent with good social work practice.
- (4) The receiving agency shall arrange for the actual placement of the child and shall supervise the placement if requested to do so by the sending agency. The receiving agency may make recommendations regarding the placement, but the sending agency shall make all the decisions, provided that whenever the receiving agency requests the removal of the child out of the Commonwealth, the sending agency shall remove such child.
- (5) The receiving agency shall conduct a home study of the family with whom placement is to be made. Within 30 days of receiving a request for the conduct of such home study, the receiving agency shall prepare such home study and shall make a recommendation on the suitability of the placement to the Compact Administrator of the Commonwealth.

7.516: continued

(6) Notwithstanding any provisions to the contrary, whenever a child is placed into the Commonwealth under the provisions of the Interstate Compact or M.G.L. c. 119, § 36, and such child is emotionally, physically or mentally handicapped so that the need for such placement will reasonably be expected to continue past the child's 18th birthday, the Commonwealth, as the receiving state, shall condition the acceptance of the child into the Commonwealth on the execution of an agreement with the sending agency that the financial responsibility for such individual shall continue with the sending agency so long as the individual remains in the Commonwealth and requires financial assistance, provided, however, that the sending agency shall no longer be financially responsible if the individual is adopted or is discharged from the placement with the concurrence of the Compact Administrator for the Commonwealth.

7.517: Jurisdiction Under the Interstate Compact

(1) The sending agency shall have jurisdiction over the child sufficient to determine all matters relative to the custody, supervision, care, treatment and disposition of the child in the same manner as if the child had remained in the sending agency's state, until the child is adopted, reaches majority age, becomes self-supporting or is discharged from the placement in question with the concurrence of the appropriate authority in the receiving state.

(2) The child's legal residence shall be in the state of the sending agency until one of the events stated in the 110 CMR 7.517(1) occurs.

(3) The sending agency shall have jurisdiction sufficient to effect or cause the return of the child or his/her transfer to another location.

(4) The sending agency shall have the power to secure periodic reports from the receiving state concerning the course of the placement.

(5) Whenever parent(s) terminate their parental rights and surrender their child to a person or agency in the Commonwealth, such parents by virtue of such surrender shall not retain any jurisdiction over the child but jurisdiction and financial responsibility over the child shall be vested in a state child welfare agency or other financially responsible entity which must be named as the sending agency.

(6) The receiving state shall be responsible for providing supervision of the placement, if so requested by the sending agency.

(7) The receiving state shall have jurisdiction over the child sufficient to deal with an act of delinquency or crime committed in the receiving state.

(8) The receiving state shall have jurisdiction over the child sufficient to deal with protecting the child from abuse or neglect committed in the receiving state.

(9) Both the sending state and the receiving state shall have jurisdiction sufficient to punish or subject to penalty anyone violating the terms of the Interstate Compact.

7.518: Law Governing

(1) Whenever a child is placed across state borders, the sending agency shall comply with the applicable laws of the receiving state governing the placement of children therein.

(2) After the child has been placed across state borders the laws of the receiving state shall govern all matters relating to the child, other than all matters in relation to the custody, supervision, care, treatment and disposition of the child which shall be governed by the laws of state of the sending agency retaining jurisdiction over the child.

7.518: continued

- (3) The laws of the receiving state shall apply at a minimum:
 - (a) to a care and protection proceeding brought against the placement in the receiving state;
 - (b) to a determination of whether medical, educational, support or other payments shall be made on behalf of the child;
 - (c) to a determination of the legality of the placement in the receiving state;
 - (d) to a determination of the age of majority.
- (4) In the event that the laws of the sending state and receiving state are in conflict regarding the placement of the child, the laws of the receiving state shall govern.
- (5) Whenever a sending state or a receiving state exercise jurisdiction to punish or subject to penalty anyone for violation of the Interstate Compact, the laws of the state exercising jurisdiction shall apply.

7.519: Enforcement

- (1) Whenever the Compact is applicable anyone sending, bringing or causing to be sent or brought into any receiving state a child in violation of the terms of the Compact shall also be deemed to be in violation of the laws respecting the placement of children of the receiving state and of the state in which the sending agency is located or from which it sends or brings the child. The term anyone in the preceding sentence shall include a court of competent jurisdiction.
- (2) A violation of the terms of the Interstate Compact shall also be a violation of M.G.L. c. 119, § 36; M.G.L. c. 15D, §§ 6(c), 6(e) and 15(a) and M.G.L. c. 210, as applicable, together with such other statutes and regulations of the Commonwealth as are applicable to the placement of children.
- (3) The Department may, in its discretion, refer matters involving violation of the terms of the Interstate Compact or any of the above-listed statutes to any appropriate investigatory or prosecutorial agency or board in the sending state or the receiving state, including but not limited to the Office of the Attorney General, Office of the District Attorney, Executive Office of Health and Human Services, Department of Early Education and Care, Board of Bar Overseers.

7.520: Effect of Violation on Placements

- (1) Failure by any receiving agency or sending agency, including a court, to utilize Interstate Compact procedures whenever the Compact applies renders the placement illegal.
- (2) Such illegal placement shall not permit the sending agency to avoid the financial responsibility for the placement or other requirements of the Compact which would rest with the sending agency had the Compact not been violated.
- (3) Whenever a placement is illegal because the Compact, which was applicable, was either not used or its provisions were violated, such placement shall be brought into compliance with the Compact or the placement shall be terminated.
- (4) Whenever the provisions of M.G.L. c. 15D, §§ 6(c) or 6(e) have been violated the Department of Early Education and Care may petition the Superior Court to enjoin any such violation or to take such other action as equity and justice may require. *See* M.G.L. c. 28A, § 16.

7.521: Termination of Placements

- (1) A placement made pursuant to the Interstate Compact or the provisions of M.G.L. c. 119, § 36 shall terminate only when the child is adopted, reaches majority under the laws of the receiving state, becomes self-supporting, or is discharged from the placement in question with the concurrence of the Compact Administrator in the receiving state.

7.521: continued

- (2) If the placement is in violation of the Interstate Compact or M.G.L. c. 119, § 36, the sending agency may not unilaterally terminate its responsibilities as to such placement.
- (3) If the placement is in violation of the Interstate Compact or M.G.L. c. 119, § 36, such placement may be terminated only upon the conditions set forth at 110 CMR 7.521(1).

7.522: Confidentiality

- (1) A receiving agency of the Commonwealth which has been requested to perform a home study by a sending agency shall release the information contained in the home study to the sending agency upon the same conditions as would apply if the sending agency were a Massachusetts agency with jurisdiction over the child to be placed.
- (2) The laws of the Commonwealth regarding confidentiality shall govern the release of information by the sending agency and the Compact Administrator.
- (3) *See Confidentiality, generally at 110 CMR 12.00 et seq.*

7.523: Administrative Review

Any person aggrieved by any action or inaction of the Department involving the placement of children across state lines shall have the right to a fair hearing on the matter pursuant to 110 CMR 10.00 *et seq.*

REGULATORY AUTHORITY

- 110 CMR 7.000: M.G.L. c. 18B, §§ 3(B) and 15; c. 119, §§ 51B(7) and 51B(8);
- 7.010: M.G.L. c. 18B, § 7;
- 7.020: M.G.L. c. 18B, § 2(A)(6) and c. 119, § 51B(7);
- 7.030: M.G.L. c. 18B, § 2(A)(13) and c. 119, § 51B(7);
- 7.040: M.G.L. c. 18B, §§ 2, 3, 4, 7; and c. 119, § 51B(7);
- 7.050: M.G.L. c. 18B, §§ 2(A)(8) and 2(A)(13);
- 7.060: M.G.L. c. 18B, § 2(A)(10) and c. 119, § 51B(7);
- 7.070: M.G.L. c. 18B, § 2(A)(7) and c. 119, § 51B(7);
- 7.080: M.G.L. c. 18B, § 2(A)(1);
- 7.090: M.G.L. c. 18B, §§ 2(A)(14) and 2(A)(16); c. 119, § 51B(7); and c. 119, § 23G;
- 7.100: M.G.L. c. 18B, § 2; M; c. 119, Appendix; c. 119, §§ 39E through J and c. 119, §§ 51A through F;
- 7.200: M.G.L. c. 18B, § 2(A)(5); c. 18B, § 21 and M.G.L. c. 210;
- 7.300: M.G.L. c. 119, § 23 and c. 18B, § 2(A)(3);
- 7.400: M.G.L. c. 71B;
- 7.500: M.G.L. c. 119, Appendix ("The Interstate Compact"); c. 119, § 36 and c. 28A, § 6(c).