

Table of Contents

| | <u>Page</u> |
|---|-------------|
| 115 CMR 1.00: SCOPE AND AUTHORITY | 3 |
| Section 1.01: Scope of Regulations | 3 |
| Section 1.02: Authority | 3 |
| Section 1.03: Interagency Agreements with Department of Mental Health | 3 |
| Section 1.04: Severability | 4 |
| 115 CMR 2.00: DEFINITIONS | 5 |
| Section 2.01: Definitions | 5 |
| 115 CMR 3.00: ADMINISTRATION | 11 |
| Section 3.01: Establishment of Regions and Area Offices | 11 |
| Section 3.02: Advisory Boards | 11 |
| Section 3.03: Designation of Facilities/State Schools | 17 |
| Section 3.04: Admission to and Discharge from Facilities | 17 |
| Section 3.05: Charges for Care - Department Residential Services and Supports | 17 |
| Section 3.06: Charges for Care - Department Facilities | 20 |
| Section 3.07: Cafe | 22 |
| Section 3.08: Funds Belonging to Residents | 23 |
| Section 3.09: Protection of Human Rights/Human Rights Committees | 27 |
| 115 CMR 4.00: RECORDS | 31 |
| Section 4.01: Enabling Authority | 31 |
| Section 4.02: Scope | 31 |
| Section 4.03: Individual Records | 31 |
| Section 4.04: Additional Requirements Applicable to Some Record Holders | 33 |
| Section 4.05: Confidentiality of Records | 34 |
| Section 4.06: Access to Records and Record Privacy | 34 |
| Section 4.07: Storage and Transfer of Records | 36 |
| 115 CMR 5.00: STANDARDS TO PROMOTE DIGNITY | 39 |
| Section 5.01: Scope and Enabling Authority | 39 |
| Section 5.02: Definitions | 39 |
| Section 5.03: General Principles | 41 |
| Section 5.04: Other Rights of Individuals | 42 |
| Section 5.05: Mistreatment | 43 |
| Section 5.06: Special Sanctions for Violation of Rights of Individuals | 43 |
| Section 5.07: Legal Competency, Guardianship and Conservatorship | 44 |
| Section 5.08: Informed Consent | 45 |
| Section 5.09: Labor | 46 |
| Section 5.10: Possessions (and Funds) | 46 |
| Section 5.11: Crisis Prevention, Response, and Restraint | 48 |
| Section 5.12: Health-related Supports and Protective Equipment | 49 |
| Section 5.13: Transportation Safety Devices | 50 |
| Section 5.14: Positive Behavior Supports (PBS) | 50 |
| Section 5.14A: Level III Interventions | 56 |
| Section 5.15: Medication | 62 |
| Section 5.16: Rights and Responsibilities of Service Providers | 66 |
| 115 CMR 6.00: ELIGIBILITY, INDIVIDUAL SUPPORT PLANNING AND APPEALS | 69 |
| Section 6.01: Scope and Purpose | 69 |
| Section 6.02: Application Procedures | 69 |
| Section 6.03: Eligibility Letter | 71 |

Table of Contents

| | <u>Page</u> |
|--|-------------|
| 115 CMR 6.00: ELIGIBILITY, INDIVIDUAL SUPPORT PLANNING AND APPEALS (continued) | |
| Section 6.04: Adult Eligibility for Intellectual Disability or Developmental Disability Supports | 71 |
| Section 6.05: Special Eligibility | 72 |
| Section 6.06: Eligibility for Children's Supports | 72 |
| Section 6.07: Prioritization for Supports | 73 |
| Section 6.08: Redetermination of Eligibility and Prioritization | 75 |
| Section 6.09: Emergency Provision of Supports | 75 |
| Section 6.20: Introduction to Individual Support Planning | 75 |
| Section 6.21: Participation in Individual Support Planning | 77 |
| Section 6.22: Assessments and Consultations | 79 |
| Section 6.23: Development of Individual Support Plans | 80 |
| Section 6.24: Annual Review of Individual Support Plans | 81 |
| Section 6.25: Modification of Individual Support Plans | 82 |
| Section 6.30: Scope and Purpose | 83 |
| Section 6.31: Subject Matter of an Appeal | 84 |
| Section 6.32: Initiation of an Appeal | 84 |
| Section 6.33: The Appeal Process | 85 |
| Section 6.34: General Provisions | 86 |
| Section 6.63: Transfers: Special Requirements | 86 |
| 115 CMR 7.00: STANDARDS FOR ALL SERVICES AND SUPPORTS | 89 |
| Section 7.01: Scope | 89 |
| Section 7.02: Definitions | 89 |
| Section 7.03: Organization Requirements | 90 |
| Section 7.04: Standards for Services and Supports | 90 |
| Section 7.05: Staffing Standards | 92 |
| Section 7.06: Standards for Safety | 94 |
| Section 7.07: Environmental Standards for All Site-based Services | 95 |
| Section 7.08: Capacity | 97 |
| Section 7.09: Standards for Employment and Day Supports | 98 |
| Section 7.10: Standards for 24-hour Site-based Respite Services | 98 |
| Section 7.11: Standards for Placement Services | 99 |
| 115 CMR 8.00: LICENSURE AND CERTIFICATION OF PROVIDERS | 103 |
| Section 8.01: Scope | 103 |
| Section 8.02: Application for Licensure, Certification or Renewal | 103 |
| Section 8.03: Licensure and Certification Survey | 104 |
| Section 8.04: Licensure | 106 |
| Section 8.05: Certification | 107 |
| Section 8.06: Targeted Review and Self-assessment Process | 107 |
| Section 8.07: Administrative Reconsideration | 108 |
| Section 8.08: Review and Appeal | 109 |
| Section 8.09: Waiver | 109 |
| Section 8.10: Approval to Occupy | 109 |
| Section 8.11: Operation of Unlicensed Services and Supports | 110 |
| Section 8.12: Inspections by the Department | 110 |
| Section 8.13: Suspension, Revocation, and Denial of License or Renewal | 110 |
| Section 8.14: Suspension in Emergencies | 111 |
| Section 8.15: Notification of Legal Proceedings | 111 |
| Section 8.16: Change of Name, Ownership, Location or Services | 111 |

115 CMR 2.00: DEFINITIONS

Section

2.01: Definitions

2.01: Definitions

As used in 115 CMR, the following terms shall have the following meanings:

Adaptive Behavior. The quality of everyday performance in coping with environmental demands (what people do to take care of themselves and to relate to others in daily living).

Adequate. With respect to services or supports, that they are in compliance with the regulations of the Department or of the agency of the Commonwealth with legal responsibility for licensure or regulation.

Adult Supports. A variety of support models designed to support individuals with intellectual disability that have informal and generic supports available to them and who do not need intensive or community living supports, as defined in 115 CMR 2.01, to live in the community. Adult Supports includes supports to assist the individual to develop and acquire work skills, assist the family or caregiver to coordinate informal or generic supports (service coordination), community-based day support, individualized home supports, respite, adult companion and assistive technology. Adult Supports includes the supports identified in the *Adult Supports Waiver for Adults with Intellectual Disability* approved by the Centers for Medicare and Medicaid Services under the Social Security Act, § 1915(c).

Antipsychotic Medication. Medication that is used to treat a thought disorder of psychotic proportions as defined in the *Diagnostic and Statistical Manual of Mental Disorders*, 5th edition, as revised or in subsequent editions and revisions, of the American Psychiatric Association, and which has been designated by medical authorities as belonging to the class of medications categorized as antipsychotic medication.

Appropriate. With respect to a service or support or facility, that it is sufficient to provide the quality and quantity of staff, assistance, intervention, and environment to meet the individual's needs or objectives indicated in his or her Individual Service Plan (ISP). With respect to an intervention strategy, appropriate means designed to achieve the desired goal or objective.

Area of Service. The geographical area determined by the Department to be the locality for the organization, coordination, and provision of services and supports to an individual. The principle consideration is the preference of the individual. Other factors considered in determining an individual's area of service are:

- (a) the individual's needs;
- (b) the availability of appropriate services or supports within a given locality;
- (c) the location of the individual's family and friends; and
- (d) if the individual is younger than 22 years old, the location of the city or town in Massachusetts responsible for providing special education under M.G.L. c. 71B.

Area Office. The locally based office of the Department, and the employees therein, responsible for the organization, coordination, and provision of services or supports to individuals whose area of service falls within that office's geographical scope as designated by the Department.

Arranged by the Department. With respect to services or supports, made available to the individual through referral by the Department to agencies, organizations, or persons other than facilities, services or supports operated, licensed, certified, or contracted by the Department.

2.01: continued

Autism Spectrum Disorder. Has the same meaning as in the *Diagnostic and Statistical Manual of Mental Disorders*, 5th edition.

Available. With respect to a facility, service or support, that the provider has the staff, resources, assistance, and space to meet the needs or objectives indicated in an individual's ISP and has not been designated for another individual with a higher priority of need for services or supports.

Capable of Evacuation. The capability of an individual to exit his or her residence to grade level within 2½ minutes with or without assistance.

Certification. Verification by the Department of the quality of providers' services and supports described at 115 CMR 8.01(3): *Certification* based upon their compliance with certification standards and quality outcomes for individuals set forth at 115 CMR 7.04: *Standards for Services and Supports* or the approval issued by the Department to a licensed provider with respect to certain behavior modification treatments in accordance with 115 CMR 5.14A: *Level III Interventions*.

Chemical Restraint. See 115 CMR 5.02: *Definitions*.

Children's Supports. Family support services provided to individuals younger than 22 years old who reside in their family home, or enhanced or specialized family supports which are available upon referral and assessment by the Department.

Closely Related Developmental Conditions. Genetic, neurodevelopmental or physical disorders that have a significant overlap with intellectual disability, and result in similar support needs. For the purposes of 115 CMR 6.06(1), closely related developmental conditions may include:

- (a) Williams Syndrome;
- (b) Lesch-Nyhan Syndrome;
- (c) Angelman Syndrome;
- (d) *Cri du Chat* Syndrome;
- (e) Down Syndrome;
- (f) Fragile X Syndrome;
- (g) Cerebral Palsy;
- (h) Rett's Syndrome
- (i) *Spina Bifida* (Myelomeningocele type MMC);
- (j) Tuberous Sclerosis;
- (k) Fetal Alcohol Syndrome; or
- (l) any other developmental disorder that the Department determines to be a closely related developmental condition.

Commissioner. The Commissioner of the Department of Developmental Services.

Community. A city, town, district, neighborhood, or other commonly recognized geographical or political area.

Community Developmental Disability Supports. A variety of support models designed to support individuals with Developmental Disability (Autism Spectrum Disorder, Prader-Willi Syndrome, or Smith-Magenis Syndrome) who are living in the community. Community Developmental Disability Supports may include day and employment services, family supports, individualized home supports to an individual residing in his or her home or family home and, based upon an individual's assessed need, support to stabilize the individual in his or her own home, family home or in the home of another. The availability of these services is subject to appropriation, and the types of services may be changed based on further assessment of the needs of such persons.

2.01: continued

Community Living Supports. A variety of support models designed to support individuals with intellectual disability that need a moderate level of support that is less than 24 hours per day living in the community. Community Living Supports may include those supports identified in the Community Living Supports Waiver for Adults with Intellectual Disability approved by the Centers for Medicare and Medicaid Services under the Social Security Act, § 1915(c).

Community Resources. Workplaces, businesses, places of worship, social groups, consultants, health care facilities or professionals, places for recreation or entertainment, and other facilities, professionals, or supports generally available to the population-at-large within a community.

Department. The Department of Developmental Services (DDS).

Designated Representative. A person who has come forward as an advocate for the individual's interests, or whom the individual has, through consent, chosen as a representative, in connection with the development and review of the ISP, who is not otherwise disqualified from taking an appeal therefrom, and who is acknowledged by the Department to be the designated representative for the individual in connection with such service planning, in accordance with 115 CMR 6.20: *Introduction to Individual Support Planning*.

Developmental Disability. For persons who are five years of age or older, a severe, chronic disability that:

- (a) is attributable to a mental or physical impairment resulting from Intellectual Disability, Autism Spectrum Disorder, Smith-Magenis Syndrome or Prader-Willi Syndrome;
- (b) is manifested before the individual attains 22 years of age;
- (c) is likely to continue indefinitely; and
- (d) results in substantial functional limitations.

Emergency Restraint. "Restraint" as that term is used in M.G.L. c. 123B, § 1, and defined at 115 CMR 5.02: *Definitions*.

Facility. (Formerly referred to as a "state school" and referenced in M.G.L. c. 19B, §§ 7 through 10 and 12 as such.) Unless otherwise specified, any of the facilities operated by the Department listed in 115 CMR 3.03: *Designation of Facilities/State Schools*. This definition does not apply within the context of 115 CMR 3.06: *Charges for Care - Department Facilities* governing charges for care or within the context of 115 CMR 2.01: *Community Resources*.

Facility Director. The chief executive officer of a facility, and also is intended to mean the "superintendent" referenced in M.G.L. c. 19B, §§ 8 and 10 and throughout M.G.L. c. 123B.

Family. Parents, foster parents, spouses, siblings, and others who perform the roles and functions of family members in the life of an individual, including persons in a relationship of mutual support with an individual that is exclusive and expected to endure over time.

Family Supports. A variety of supports designed to assist individuals and their families that include services such as respite, family training and leadership development, support to assist the individual to participate in the community, social or recreational activities, and home modifications.

Generic Service. Services, supports, or treatment options generally available to the population-at-large with or without special accommodations for persons with Intellectual Disability or Developmental Disability.

Goals. Long-range outcomes generally expected to be achieved by an individual within five years and stated in measurable terms so that their attainment can be determined. Goals are developed from an evaluation of the individual's present performance, abilities and desires as these relate to what society expects of persons of the same age and culture who do not have disabilities.

2.01: continued

Governing Board. The group of individuals that constitute the governing body of a provider.

Guardian. With respect to persons younger than 18 years old, a natural or adoptive parent, or the individual or agency with legal guardianship of the person; and with respect to persons 18 years of age and older, the individual, organization or agency, if any, that has been appointed legal guardian of the person by a court of competent jurisdiction.

Habilitation. The process by which an individual is assisted to acquire and maintain those life skills necessary to cope more effectively with personal and environmental demands or to improve physical, mental, and social competencies.

Head of the Provider. The person with executive responsibility for the operation of the provider's agency, services, or supports. Where a provider operates at more than one location, "head of the provider" includes the person with responsibility for the operation at a particular location. Where the provider is a facility, the head of the provider is the facility director.

Individual. Except where otherwise specified, a person receiving services or supports provided, purchased, or arranged by the Department.

Individual Support Plan or ISP. A written plan of services or supports for an individual, which is developed, implemented, reviewed, and modified according to the requirements of the Department's regulations on individual support plans.

Individualized Home Supports (Individual Supports). A variety of services and supports that are provided regularly, but that are less than 23 hours per day, and that are determined necessary to prevent institutionalization. This service may include teaching and fostering the acquisition, retention or improvement of skills related to personal finance, health, shopping, use of community resources, community safety, and other social and adaptive skills to live in the community as specified in the Service Plan.

Intellectual Disability. Consistent with the standard contained in the *American Association of Intellectual and Developmental Disabilities: Definition, Classification, and Systems of Supports* (2010), 11th edition, significantly sub-average intellectual functioning existing concurrently with and related to significant limitations in adaptive functioning. Intellectual Disability originates before 18 years of age. A person with Intellectual Disability may be considered to be mentally ill as defined in 104 CMR: *Department of Mental Health*, provided that no person with Intellectual Disability shall be considered to be mentally ill solely by reason of his or her Intellectual Disability. The determination of the presence or absence of Intellectual Disability requires the exercise of clinical judgment.

Intellectual Disability Supports. A variety of support models, including Adult Supports, Community Living Supports or Intensive Supports that are designed to support individuals with Intellectual Disability living in the community. The availability of these supports is subject to appropriation, and the types of services included under these support models may be changed based on further assessment of the needs of such persons.

Intensive Supports. A variety of support models designed to support individuals with Intellectual Disability that need supervision and support provided 24 hours per day seven days per week to an individual living in an out-of-home setting or in their family home, or in the family home less than 24 hours per day. Intensive Supports includes those supports identified in the Intensive Support Waiver for Adults with Intellectual Disability approved by the Centers for Medicare and Medicaid Services under § 1915(c) of the Social Security Act.

Intervention Strategy. Training or teaching procedure, a manipulation or change of environment or the provision of supports designed to teach or assist an individual to achieve a goal or a specific objective. Depending on its content, an intervention strategy may also fall within the definition of a Level III Intervention set forth under 115 CMR 5.14A(2): *Level III Interventions*.

2.01: continued

Knowing Objection. The act of an individual in rejecting a choice, made with a reasonable degree of awareness of the likely consequences of his or her act.

Least Restrictive. Those settings, modes of service, and styles of living or working that are most similar to and most integrated with what is typical and age-appropriate in the community, and which interfere the least with the individual's independence.

Legal Representative or Legally Authorized Representative. With respect to an individual, an attorney representing the individual in connection with a particular matter, a court appointed trustee, conservator, or guardian *ad litem* representing the interests of the individual in connection with particular matters, or the individual's guardian.

Legally Competent or Presumed Competent. For individuals 18 years of age or older, not having been declared by a court to be incapable of making informed decisions with respect to the conduct of one's personal and/or financial affairs.

License. The legal authorization to provide services or supports described in 115 CMR 8.02(1) to persons with Intellectual Disability or Developmental Disability required by M.G.L. c. 19B.

Licensee. The individual, agency, or other legal entity licensed by the Department.

Mechanical Restraint. See 115 CMR 5.02: *Definitions*.

Medication Incidental to Treatment. Sedatives or anti-anxiety medication prescribed by a qualified practitioner for the sole purpose of relaxing or calming an individual so he or she may receive medical treatment.

Minor. A person younger than 18 years old.

Non-self-medicating. Personally using medication in the manner directed by the prescribing practitioner only with assistance or direction by program or facility staff, in accordance with Department standards (*see* Self-medicating).

Objective. Short term outcomes stated in behavioral or otherwise measurable terms, expected to be achieved through the provision of a particular service or support, the implementation of a particular intervention strategy, or a change of modification of the environment.

Physical Restraint. See 115 CMR 5.02: *Definitions*.

Prader-Willi Syndrome. Consistent with the definition of the National Institute of Health, a neurologic condition that typically results from a specific genetic abnormality affecting the regulation of gene expression; for purposes of 115 CMR, the diagnosis of Prader-Willi Syndrome must be supported by a medical diagnosis based upon genetic testing.

PRN. With respect to the prescription and administration of a prescribed medication, "*pro re nata*", meaning "as circumstances arise" or "as needed".

Provided by the Department. Made available to the individual directly through employees of the Department at Department expense.

Provider. The individual, agency or other legal entity with day-to-day responsibility for the operation of services or supports or facilities regulated by the Department by law or contract. In accordance with the foregoing definition, a provision which applies to "providers" applies with equal force to the Department's service, supports, or facilities, unless otherwise specified.

2.01: continued

Purchased by the Department. Made available to an individual through a contract between the Department and a private or other non-Departmental entity.

Region. Depending on the context:

- (a) a grouping of area offices as determined by the Commissioner;
- (b) the geographic area represented by such a grouping; or
- (c) the office established by the Commissioner as appropriate to supervise area offices within a grouping of area offices and to perform administrative or service functions for the geographic area represented by the grouping.

Research. A systematic investigation designed to develop or contribute to generalizable knowledge and involving access to human subjects or private information, with the exceptions set forth in 115 CMR 10.00: *Research*.

Self-medicating. Personally using medication in the manner directed by a health care provider, without assistance or direction by program or facility staff, in accordance with Department standards. A verbal reminder that the time for taking a dose of medication has arrived or providing mechanical assistance under the direction of the individual in order that he or she can self-medicate does not constitute assistance or direction by program staff.

Service Coordinator. The person designated by the Department to arrange, coordinate, or monitor, or to remain informed about, services or supports provided, purchased, or arranged by the Department for a particular individual and to be responsible for the development of an ISP for the individual.

Services. A system of formalized supports, generic or specialized.

Severe Functional Impairments. Functional impairments in at least three specified areas of adaptive functioning, based upon normative expectations of the types of skills normally acquired as the child develops, as measured by standardized assessment or comparable data. The areas of adaptive functioning considered are: self-care, communication (receptive or expressive language), learning, mobility, and self-direction and, for individuals 14 years of age or older, capacity for independent living and economic self-sufficiency.

Significant Limitations in Adaptive Functioning. For purposes of establishing intellectual disability, an overall composite adaptive functioning limitation that is approximately two standard deviations below the mean or approximately two standard deviations below the mean in one of the three domains of the appropriate norming sample determined from the findings of assessment using a comprehensive, standardized measure of adaptive behavior, interpreted by a qualified practitioner. The domains of adaptive functioning that are assessed shall be:

- (a) areas of independent living/practical skills;
- (b) cognitive, communication, and academic/conceptual skills; and
- (c) social competence/social skills.

Significantly Sub-average Intellectual Functioning. An intelligence test score that is indicated by a score of approximately 70 or below as determined from the findings of assessment using valid and comprehensive, individual measures of intelligence that are administered in standardized formats and interpreted by qualified practitioners.

Smith-Magenis Syndrome. Consistent with the definition of the National Institute of Health, a neurodevelopmental disorder characterized by a well-defined pattern of anomalies typically due to a common deletion in chromosome 17 found by genetic testing; for purposes of 115 CMR 2.01, the diagnosis of Smith-Magenis Syndrome must be supported by a medical diagnosis and based upon genetic testing.

2.01: continued

Substantial Functional Limitations:

- (a) for an individual five years of age or older:
 - 1. functional limitations in three or more of the following areas of major life activity:
 - a. self-care;
 - b. receptive and expressive language;
 - c. learning;
 - d. mobility;
 - e. self-direction; and for individuals 14 years of age or older only;
 - f. capacity for independent living;
 - g. economic self-sufficiency; and
 - 2. reflects the individual's need for a combination and sequence of special, interdisciplinary or generic services, supports or other assistance that is of a lifelong or extended duration and is individually planned and coordinated; or
- (b) for an individual younger than five years old, a substantial developmental delay or specific congenital or acquired condition with a high probability that the condition will result in a developmental disability if services are not provided.

Supports. Those resources and strategies that promote the interests and causes of individuals with or without disabilities; that enable them to access resources, information, and relationships inherent in integrated work and living environments; and that result in their enhanced independence, productivity, community integration, and satisfaction.

Vision Statement. A statement of what is important to the individual in his or her life. It describes the individual's preferences on how he or she wishes to live, work, and spend his or her leisure time and it identifies interests, relationships, and activities he or she would like to continue or explore. If the individual is unable to fully express him or herself, the ISP team will assist in the development of the individual's vision statement. The vision statement expresses the individual's vision; it does not create any enforceable rights and is not binding on the department. An individual's vision statement is not subject to appeal under 115 CMR 6.30: *Scope and Purpose*.

REGULATORY AUTHORITY

115 CMR 2.00: M.G.L. c. 19B, § 14; M.G.L. c. 123B, §§ 2, 3 and 8.

NON-TEXT PAGE