

115 CMR: DEPARTMENT OF DEVELOPMENTAL SERVICES

115 CMR 6.00: ELIGIBILITY, INDIVIDUAL SUPPORT PLANNING AND APPEALS

Section

ELIGIBILITY FOR SUPPORTS PROVIDED, PURCHASED OR
ARRANGED BY THE DEPARTMENT OF DEVELOPMENTAL SERVICES

- 6.01: Scope and Purpose
- 6.02: Application Procedures
- 6.03: Eligibility Letter
- 6.04: Adult Eligibility for Intellectual Disability or Developmental Disability Supports
- 6.05: Special Eligibility
- 6.06: Eligibility for Children's Supports
- 6.07: Prioritization for Supports
- 6.08: Redetermination of Eligibility and Prioritization
- 6.09: Emergency Provision of Supports

INDIVIDUAL SUPPORT PLANS

- 6.20: Introduction to Individual Support Planning
- 6.21: Participation in Individual Support Planning
- 6.22: Assessments and Consultations
- 6.23: Development of Individual Support Plans
- 6.24: Annual Review of Individual Support Plans
- 6.25: Modification of Individual Support Plans

APPEALS

- 6.30: Scope and Purpose
- 6.31: Subject Matter of an Appeal
- 6.32: Initiation of an Appeal
- 6.33: The Appeal Process
- 6.34: General Provisions
- 6.63: Transfers: Special Requirements

6.01: Scope and Purpose

(1) Scope.

- (a) 115 CMR 6.01 through 6.09 applies to applicants for supports provided, purchased, or arranged by the Department.
- (b) No person may receive supports provided, purchased, or arranged by the Department (other than emergency supports and information and referral services as noted in 115 CMR 6.09) unless the person is determined eligible for such supports under 115 CMR 6.01 through 6.09.

- (2) Purpose. The purpose of 115 CMR 6.01 through 6.09 is to set forth the standards and procedures under which the Department determines an applicant's eligibility for supports and determines the applicant's priority to receive supports purchased, provided, or arranged by the Department. Unless otherwise specified in 115 CMR, provision of supports provided, purchased or arranged for an individual is subject to appropriation. M.G.L. c. 19B, § 1.

6.02: Application Procedures

(1) Application.

- (a) Who May Apply. Any person may apply for supports provided, purchased, or arranged by the Department either on his or her own behalf or on behalf of another.
- (b) Where Application is Made. An application for supports provided, purchased, or arranged by the Department shall be made by providing a completed application form to any Department Office. Application forms may be obtained from any Department Office or online by accessing the Department through its internet address at www.mass.gov/dds. The regional eligibility team for the Department's geographic region in which the applicant resides shall make the determination of eligibility for supports in all cases.

6.02: continued

(c) Re-application. Individuals who previously have applied for or have been determined to be ineligible for services may re-apply provided that new and relevant information pertaining to the eligibility criteria identified in 115 CMR 6.04 or 6.06 is provided. The Department shall determine whether the newly submitted information is sufficient to warrant a re-determination.

(2) Intake. Following the receipt of an application, the regional eligibility team shall inform the applicant regarding the following:

- (a) the criteria for eligibility for Department supports;
- (b) the procedures for eligibility determination;
- (c) the system of prioritization for receipt of supports based upon need, funding and availability;
- (d) the authority of the Department to charge for supports, including costs associated with a determination of eligibility;
- (e) the authority of the Department to require information about the applicant's and his or her family's needs, income, legal status, and resources before providing, purchasing, or arranging supports;
- (f) the right of the applicant to appeal a determination of ineligibility under 115 CMR 6.30 through 6.34;
- (g) the person's obligation, as a condition of eligibility, to consent to the Department obtaining information from current and previous service providers and other state agencies; and
- (h) Information regarding the eligibility and prioritization process may also be available on the Department's website at www.mass.gov/dds.

(3) Eligibility Determination Process. Eligibility shall be determined by the regional eligibility team based on an analysis of the information submitted in support of the application.

(a) Regional Eligibility Teams. Regional eligibility teams may be composed of any number of members as assigned by the Department. Each team must have at least one member with the following professional credentials: licensed doctoral level psychologist, master's degree in social work, and Department eligibility specialist.

(b) Determination. The Department shall determine whether the applicant:

- 1. is domiciled in Massachusetts; and
- 2. whether the person is a person with intellectual disability or developmental disability as defined in 115 CMR 2.01: *Definitions*.

(c) Process. The eligibility determination process shall include an interview with the applicant and, if feasible, other significant persons in his or her life. The process may include:

- 1. Consideration of psychosocial, neuro-psychological, medical, and educational assessments;
- 2. For people applying for intellectual disability services, intelligence test results.

(d) Clinical Judgment. Only qualified practitioners can administer and interpret psychological tests. The Department regional eligibility team psychologist should consider the psychometric properties of intelligence tests, tests of functional assessments and other assessment instruments, including the standard error of measurement, where appropriate, the regional eligibility team psychologist may consider relevant data in making clinical judgment about the presence or absence of Intellectual Disability, the presence and severity of, or absence of, Autism Spectrum Disorder or the presence or absence of Smith-Magenis Syndrome, Prader-Willi Syndrome, or closely related developmental conditions. The determination of eligibility shall be made pursuant to 115 CMR 6.04 through 6.06;

(e) With respect to applicants who meet the eligibility criteria established in 115 CMR 6.04 through 6.06, the information provided in support of the application will serve as the basis for area office development of a support plan and the determination of the individual's priority to receive supports and will include a determination of the general types of supports that are adequate, most appropriate and least restrictive to meet the applicant's needs and that promote as much as possible his or her independence, productivity, and inclusion in the community.

6.02: continued

(f) Deferral of Eligibility Determination. In cases where the information submitted in support of an application is insufficient for the regional eligibility team to determine eligibility, the regional eligibility team may defer consideration of the application for up to an additional 60 days from the date of a notification provided under 115 CMR 6.02(3)(g), in order to provide the applicant with time to obtain and submit the requested information and documentation which may include new or additional testing, psychosocial, medical, educational or other assessments, or materials and interviews.

(g) Notification. The regional eligibility team shall provide written notice to the applicant, his or her family, or guardian that the application has been deferred and identify the information and documentation that the regional eligibility team requires in order to determine eligibility, and the deadline for submission of requested information and documentation.

(h) In the event that the person, family, or guardian does not submit the requested information and documentation by the deadline provided in the notification of deferral letter, the regional eligibility team shall determine eligibility based upon the information in its possession.

6.03: Eligibility Letter

(1) Distribution. Upon completion of the eligibility determination, the regional eligibility team shall provide written notification of the eligibility determination within 60 days of receipt of a complete application to the applicant, the applicant's guardian, if any, and the area director or his or her designee notifying the applicant and/or his or her guardian of the decision and the basis therefore.

(2) Contents. The letter shall contain the following findings and statements:

- (a) the eligibility status of the applicant;
- (b) if not eligible, the specific reasons for the determination of ineligibility;
- (c) the identification of the applicant's area of service if eligible;
- (d) the names of the regional eligibility team staff that can be contacted for additional information or problem resolution;
- (e) a statement that the applicant has the right to appeal any finding of the eligibility letter, within 30 days of receipt pursuant to 115 CMR 6.30 through 6.32;
- (f) a statement that supports cannot be initiated without the agreement of the applicant or guardian, and the Department; and
- (g) a statement that the applicant or guardian shall have, an opportunity to meet with a regional eligibility team designee for an explanation of the letter and for an opportunity to discuss any of its findings, if requested within 15 days of the receipt of the report.

6.04: Adult Eligibility for Intellectual Disability or Developmental Disability Supports

(1) Persons who are 22 years of age or older are eligible for Intellectual Disability Supports provided, purchased, or arranged by the Department if the person:

- (a) is domiciled in the Commonwealth; and
- (b) is a person with intellectual disability as defined in 115 CMR 2.01: *Definitions*.

(2) Persons who are 22 years of age or older are eligible for Community Developmental Disability Supports provided, purchased or arranged by the department if the person:

- (a) is domiciled in the commonwealth; and
- (b) is a person with Developmental Disability (Autism Spectrum Disorder, Prader-Willi Syndrome or Smith-Magenis Syndrome) as defined in 115 CMR 2.01: *Definitions*; and
- (c) does not have an intellectual disability as defined in 115 CMR 2.01: *Definitions*.

(3) Domicile.

- (a) For purposes of 115 CMR 6.04(1)(a), a person shall be considered to be domiciled in Massachusetts if he or she resides in Massachusetts with the intention to remain here permanently or for an indefinite period.
- (b) There shall be a presumption that the following individuals are not domiciled in Massachusetts:

6.04: continued

1. Persons who reside in a home or other setting subject to licensure or regulation by the Commonwealth, which residence was arranged or is being funded by another State, including any agency or political subdivision thereof and any entity under contract with the other State for such purposes;
 2. Persons who reside in a home or other setting subject to licensure or regulation by the Commonwealth which residence was arranged by a parent, guardian, or family member who is not domiciled in Massachusetts and was not so domiciled at the time of the person's placement;
 3. Persons, other than those covered under 115 CMR 6.04(3)(b)1. or 2. who reside in a residential special education program and whose parent or guardian is not domiciled in Massachusetts.
- (c) In cases that the regional eligibility team determines that a person is not domiciled in Massachusetts, the Department shall deny eligibility based upon domicile and shall so notify the person. The regional eligibility team shall not proceed to determine whether the person is otherwise eligible in accordance with 115 CMR 6.04; 6.05; and 6.06, as applicable.
- (d) In the event that a person prevails in an appeal of a determination that he or she was not a Massachusetts domiciliary, the Department shall reconsider his or her application without regard to 115 CMR 6.08(1).

6.05: Special Eligibility

- (1) Any person identified in the Class Member Identification List as of April 30, 1993, regardless of current place of residence, or any person who, on or after April 30, 1993 has resided at Monson Developmental Center, Fernald Developmental Center, Wrentham Developmental Center, Templeton Developmental Center or Dever Developmental Center during more than 30 consecutive days or for more than 60 days during any 12-month period shall have special eligibility for services provided, purchased, or arranged by the Department.
- (2) A person with special eligibility is entitled to:
- (a) an assessment of eligibility;
 - (b) a designation of area of service;
 - (c) assignment of a service coordinator;
 - (d) an Individual Support Plan and substantial provision of the services or supports recommended in his or her Individual Support Plan for so long as such services or supports are needed and authorized by the individual and his or her guardians; and
 - (e) the least restrictive, most typical, appropriate residential environment, together with the most appropriate treatment, training and support services suited to that person's individual needs.

6.06: Eligibility for Children's Supports

- (1) Persons who are younger than 22 years of age may be eligible for Children's Supports provided, purchased, or arranged by the Department if the person:
- (a) is domiciled in the Commonwealth; and
 - (b) for persons who are five through 22 years of age, either:
 1. have 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 likely to continue indefinitely;
 - c. results in substantial functional limitations; or
 2. have a verified diagnosis of Intellectual Disability or a closely related developmental condition that results in substantial functional limitations, or
 - (c) for persons from birth to age five a substantial developmental delay or specific congenital or acquired condition with a high probability of resulting in a developmental disability if services are not provided.
- (2) Domicile.
- (a) For the purposes of 115 CMR 6.06(1), a person younger than 22 years of age who resides in Massachusetts shall be presumed to be domiciled in Massachusetts if:

6.06: continued

1. One or both of the person's parents are domiciled in Massachusetts, unless the parent having sole legal custody is not domiciled in Massachusetts;
 2. Legal custody of the person has been awarded by a court to a guardian who is domiciled in Massachusetts or to the Commonwealth or any agency or division thereof; or
 3. The person is emancipated and is residing in Massachusetts with the intent to remain in the state permanently or for an indefinite period of time.
- (b) For the purposes of 115 CMR 6.06(1), a person younger than 22 years of age there shall be a presumption that the following individuals are not domiciled in Massachusetts:
1. Persons who reside in a home or other setting subject to licensure or regulation by the Commonwealth, which residence was arranged or is being funded by another State, including any agency or political subdivision thereof and any entity under contract with the other State for such purposes;
 2. Persons who reside in a home or other setting subject to licensure or regulation by the Commonwealth which residence was arranged by a parent, guardian, or family member who is not domiciled in Massachusetts and was not so domiciled at the time of the person's placement;
 3. Persons, other than those covered under 115 CMR 6.04(3)(b)1. or 2., 22 years of age or younger who reside in a residential special education program and whose parent or guardian is not domiciled in Massachusetts.
- (3) Transitioning to Adult Eligibility. An individual may file an application for adult services and supports under 115 CMR 6.04 upon achieving 17.5 years of age or older.

6.07: Prioritization for Supports

(1) Priority Determination.

(a) Except as to individuals who have special eligibility pursuant to 115 CMR 6.05, all supports, including assessments, planning and the development and implementation of Individual Service Plans, are subject to the availability of resources. The area director shall determine priority for supports on the basis of criteria set forth in 115 CMR 6.07.

(b) Assessments.

1. The determination of need for supports shall be based upon an assessment of the individual's functional limitation(s), cognitive impairment, medical needs and behavioral needs as well as generic resources and natural supports available to meet the individual's needs. The Department shall, in its sole discretion, determine which clinical assessments it deems necessary to determine the individual's need for all categories of requested supports as well as the qualifications needed to administer the assessments. The Department shall conduct such assessments in accordance with the standards set forth in 115 CMR 6.22.

2. Assessment(s) shall be completed by the intake and eligibility teams, in consultation with the area offices, upon an individual's application for Department services for those who meet the eligibility requirements. Additional assessments may be requested thereafter upon a significant change in the individual's functioning or in the generic or family resources available to meet the individual's needs.

(c) Notification. The area office will notify the person, his or her family, unless the person knowingly objects, the guardian, if any, or other appropriate person of the person's priority to receive services from the Department, the category and intensity of supports available, and the right to appeal the priority assigned within 30 days of being notified. The notice given under 115 CMR 6.07 shall clearly state the reason for the prioritization decision.

(2) Prioritization for Children's Supports.

(a) The Department seeks to provide certain supports to children, birth to five years of age with developmental delay, or five through 22 years of age with developmental disabilities and their families, to enable the family to stay together and to be contributing members of their communities. These supports are intended to assist, not to replace or substitute for, the child's family. The responsibility to provide a home and parental care and guidance rests with the child's parents or, in the event of their absence or incapacity, with the public agency responsible for ensuring the care and protection of children generally, *i.e.*, the Department of children and families or its successor.

6.07: continued

(b) Priority for the allocation of available Children's Supports provided, purchased or arranged by the Department shall be determined by the area director, based on the severity of the child's, or young adult's and family's needs. Individuals seeking enhanced or specialized services under 115 CMR 6.07(3) must first be assessed by the Department to determine the severity of their need.

(c) The Department shall not provide residential supports to children from birth through 22 years of age and eligible for or receiving residential services from a local educational authority, local school district, or any other public agency. The failure of an individual to apply for or the voluntary refusal of services that may be available from another public agency and for which an individual is otherwise entitled shall not constitute ineligibility to receive those services for the purpose of establishing priority to receive Department services under 115 CMR 6.07.

(d) If the child is eligible but is currently in the care or custody of, committed to, subject to court-ordered supervision of or is eligible for or receiving 24-hour residential services through another public agency, including, but not limited to the department of children and families, department of youth services, department of mental health, department of public health, and state or local education agencies, then the Department will presume that such agency is providing supports which are necessary and sufficient to ensure the appropriateness and adequacy of the child's placement.

(e) Whenever another agency is providing supports or services to the child or family, or a child is eligible to receive supports from another agency, the area office shall consider that agency's involvement in determining the severity of the child's, young adult's, and family's needs and their priority for the Department's supports.

(3) Prioritization for Adult Intellectual Disability Services.

(a) The area director shall determine priority for supports provided, purchased or arranged by the Department to eligible adults 22 years of age or older based upon the severity of the individual's needs.

(b) For individuals with intellectual disability who are determined to need Intellectual Disability Supports (Intensive Supports, Community Living Supports, or Adult Supports) the following priorities shall apply:

1. First Priority. Provision, purchase, or arrangement of supports available through the Department is necessary to protect the health or safety of the individual or others.
2. Second Priority. Provision, purchase, or arrangement of supports available through the Department is necessary to meet one or more of the individual's needs or to achieve one or more of the needs identified in his or her Individual Service Plan.

(4) Prioritization for Adult Community Developmental Disability Supports.

(a) Subject to the availability of resources, the area director shall determine priority for supports provided, purchased or arranged by the Department to eligible adults 22 years of age or older based upon the severity of the individual's needs.

(b) For individuals who are determined to need Community Developmental Disability Supports the following priorities shall apply:

1. First Priority. Provision, purchase, or arrangement of supports available through the Department is necessary to protect the health or safety of the individual or others
2. Second Priority. Provision, purchase, or arrangement of supports available through the Department is necessary to meet one or more of the individual's needs.

(5) If another Massachusetts public agency, including, but not limited to the department of children and families, department of youth services, department of mental health, department of public health, and state or local education agencies is providing services to an eligible individual, the Department may consider that agency's involvement in determining the severity of the individual's need and their priority for Department supports. The failure of an individual to apply for or the voluntary refusal of services that may be available from another public agency and for which an individual is otherwise entitled shall not constitute ineligibility to receive those services for the purpose of establishing priority to receive Department services under 115 CMR 6.07.

6.08: Redetermination of Eligibility and Prioritization

(1) The Department shall have the right to re-determine an individual's eligibility status or priority status after one year has passed since the most recent determination and the individual's circumstances have changed. When such re-determination occurs, the regional eligibility team will notify the person, his or her family, unless the person knowingly objects, the guardian, if any, or other appropriate person of the re-determination, and the right to appeal within 30 days of receiving the re-determination notice. In cases that a re-determination of eligibility will result in the termination of supports to the individual, the filing of an appeal shall operate as a stay of the determination pending the appeal.

(2) The initial determination of eligibility pursuant to 115 CMR 6.04 with respect to individuals previously found eligible as children pursuant to 115 CMR 6.06 shall be considered a new application under 115 CMR 6.04.

6.09: Emergency Provision of Supports

(1) When there is reason to believe that a person has intellectual disability, Autism Spectrum Disorder, Smith-Magenis Syndrome, Prader-Willi Syndrome or, in the case of a person younger than 22 years of age, the person is eligible for Children's Supports if the absence of supports creates a serious or immediate threat to the health or safety of the person or others, a regional or area office of the Department may provide or arrange for supports to such person, subject to the consent of the person or guardian, or may take such other action as it considers appropriate and within its legal and programmatic capacity, without prior determination of eligibility under 115 CMR 6.02 through 6.06.

(2) As soon as practicable, but within 24 hours of the initial provision of emergency supports, the regional director or the area director shall notify:

- (a) the guardian of the person, if any and if ascertainable; and
- (b) family members, friends, or other concerned and relevant persons whether or not named by the person, unless he or she knowingly objects.

(3) Subject to approval of the area director, emergency supports may be provided until such time as eligibility is determined in accordance with 115 CMR 6.02 through 6.08, or until the emergency circumstances end, whichever occurs first.

6.20: Introduction to Individual Support Planning

(1) Scope. 115 CMR 6.20 through 6.25 sets forth the standards and procedures for the development, modification, and review of Individual Support Plans (ISP's). Except as to individuals who have special eligibility pursuant to 115 CMR 6.04, provision of an ISP and of any supports identified therein is subject to the availability of resources.

(2) Principles Governing Individual Support Planning.

(a) The following principles govern the planning and provision of supports by and through the Department:

1. respect for the dignity and rights of each individual;
2. humane and adequate care and treatment;
3. self-determination and freedom of choice to the person's fullest capacity;
4. the opportunity to live and receive services in the least restrictive and most typical setting possible;
5. the opportunity to undergo typical developmental experiences, even though such experiences may entail an element of risk; provided, however, that the person's safety and well-being will not be unreasonably jeopardized; and
6. the opportunity to engage in activities and styles of living which encourage and maintain the integration of the individual in the community through individualized social and physical environments.

6.20: continued

(b) Individual support planning is an on-going process of establishing goals with individuals that may be related to the individual's vision statement and are consistent with the outcomes set forth at 115 CMR 6.23(2) and of identifying supports and strategies that will promote achievement of those goals. Successful support planning requires the greatest possible involvement of the individual, his or her family, guardian, and designated representative, if any, the Department, and providers of supports to the individual. Each participant is expected to have a continuing commitment to learn about the individual and about his or her current goals and circumstances, and to support the individual in particular ways to realize those goals. 115 CMR 6.20 through 6.25, establishes the framework for individual support planning which can be tailored to and by the individual and which is responsive to changing circumstances in the individual's life.

- (3) An Individual Support Plan (ISP) shall be developed with the following individuals:
- (a) All individuals who have special eligibility pursuant to 115 CMR 6.05. An individual who is specially eligible who is not in need of or is refusing any supports may decline an ISP; however, an ISP shall be offered to such individuals on an annual basis;
 - (b) All individuals who receive residential supports provided or funded by the Department; however, for a period of 12 months following an individual's 22nd birthday, an ISP need not be developed if the individual has an Individual Transition Plan developed in accordance with M.G.L. c. 71B which calls for the individual's transition to another residential situation;

6.20: continued

- (c) All individuals who receive day or employment supports provided or funded by the Department;
- (d) All individuals receiving day habilitation or adult day health services funded in whole or in part by the Department; and
- (e) Individuals receiving minimal supports, not otherwise identified in 115 CMR 6.20(3), may or may not receive an ISP at the discretion of the Department.

6.21: Participation in Individual Support Planning

- (1) The ISP must be developed with the fullest possible participation of each of the following persons, collectively referred to as the "team":
 - (a) the individual;
 - (b) members of the individual's family, if authorized;
 - (c) the individual's guardian(s), if any;
 - (d) the individual's service coordinator;
 - (e) representatives of providers of supports to the individual, provided that, at the individual's, guardian's, or family's request, the service coordinator may limit the participation of a provider representative to those portions of the ISP meeting which concern the supports being provided by the provider;
 - (f) the individual's designated representative and others who provide friendship and support to the individual or whom any of the participants consider necessary, unless the individual or guardian knowingly objects to such persons' participation.

- (2) The Department shall provide reasonable assistance and accommodations to enable the individual and other members of the ISP team to participate meaningfully in the development, review, and modification of the ISP.

- (3) The responsibilities of the individual in the ISP process are:
 - (a) To participate in the ISP process as fully as possible;
 - (b) To work with the service coordinator, to the extent possible, to develop his or her vision statement, determine the issues for discussion at the ISP meeting, the format of the meeting, who should be invited to attend, and when and where the meeting should be held;
 - (c) To indicate (by word, action, or any other means) approval or appeal of the ISP;
 - (d) To participate fully in the implementation, modification, and review of the ISP; and
 - (e) To provide ongoing feedback to team members regarding his or her satisfaction with the ISP, its implementation, and the need for modification.

- (4) The individual's family is encouraged to participate in all aspects of the ISP process, provided that the individual or the individual's guardian, if any, does not knowingly object. The responsibilities of the family and guardian in the ISP process are:
 - (a) To participate in the ISP process as fully as possible;
 - (b) To work collaboratively with the individual and other team members to identify the individual's goals, and to develop an ISP which is likely to be effective in assisting the individual to achieve those goals;
 - (c) To approve or appeal the ISP if authorized to do so pursuant to 115 CMR 6.32; and
 - (d) To provide ongoing feedback to the service coordinator and providers regarding their satisfaction with the ISP and the implementation thereof, and regarding the need for modification of the ISP.

- (5) The responsibilities of the service coordinator in the ISP process are:
 - (a) To consult with the individual, and to consult with the individual's guardian(s), if any, for whom an ISP is to be developed within 15 days of the initiation of supports or at least 45 days prior to the projected date of the ISP meeting in order to explain the purpose of the ISP and the ISP meeting, to develop an understanding of the individual's vision statement, goals, satisfaction with services, and current circumstances, and to determine, in conjunction with the individual, and the guardian(s), if any, the issues to be reviewed at the ISP meeting, who should be invited to attend, and when and where the ISP meeting should be held. Service coordinators shall conduct an in-person meeting with the individual and, if possible, with the guardian(s) to:

6.21: continued

1. develop the vision statement for an individual's first ISP;
 2. when significant changes have occurred or are anticipated in the individual's life; or
 3. at the request of the individual or guardian(s).
- (b) To consult with the individual's family, if authorized, and guardian(s), if any, regarding the purpose of the ISP, the process through which the ISP will be developed, the individual's vision statement, goals and current circumstances, the issues to be discussed at the ISP meeting, their role in the development, approval, implementation, and review of the ISP, and scheduling of the ISP meeting;
- (c) Within 15 days of the initiation of supports or at least 45 days prior to the projected date of the ISP meeting, to determine, in conjunction with the individual and other team members what, if any, assessments or professional consultations are necessary for the development, modification, or review of the ISP, and, subject to the availability of resources, to arrange for assessments and consultations which are not the responsibility of any current provider;
- (d) To provide written notice to the individual and other members of the ISP team, of the date, time, place, and purpose of each ISP meeting held pursuant to 115 CMR 6.23 or 6.24 at least 30 days in advance of the meeting;
- (e) To make assessments and consultations available, with appropriate authorization, upon request, to the individual, guardian(s), family, and other team members at least seven days in advance of such meeting;
- (f) To convene and facilitate meetings for the development, modification, and review of the individual's ISP in accordance with the timeframes established in 115 CMR 6.20 through 6.25;
- (g) To ensure that ISP meetings are conducted in accordance with 115 CMR 6.00 and in a manner which promotes meaningful participation by the individual, and to arrange for reasonable assistance and accommodations to enable the individual and other members of the team to participate meaningfully in the development, review, and modification of the ISP;
- (h) To monitor the implementation of the ISP and the adequacy and appropriateness of supports being provided based on the requirements in the ISP;
- (i) To coordinate the provision of supports to the individual in accordance with the ISP; and
- (j) On a semi-annual basis, to review and evaluate the implementation of the ISP and the need for any modifications, as well as the satisfaction of the individual and the individual's family and guardian, if any, with the supports provided. A record of the service coordinator's review shall be maintained in the individual's record.
- (6) The responsibilities of the provider in the ISP process are:
- (a) To complete assessments or professional consultations of the individual that are within the legal or contractual responsibility of the provider and forward them to the individual's service coordinator at least 15 days in advance of the ISP meeting. Assessments shall be based on current, complete and accurate information and focused on the individual's relative strengths, needs, and opportunities for development;
 - (b) To work collaboratively with the individual and other team members to identify the individual's goals, and to participate in the development an ISP which is likely to be effective in assisting the individual to achieve those goals;
 - (c) To develop proposed ISP objectives and support strategies that may relate to the individual's vision statement and are consistent with the individual's assessed needs and to forward them to the individual service coordinator at least 15 days prior to the ISP meeting. Objectives and support strategies shall be individualized, measurable, and include methods for evaluating progress;
 - (d) To implement the ISP by providing the agreed upon supports;
 - (e) To provide reports regarding the implementation of the ISP and provision of services to the service coordinator, individual, guardian(s), if any, and family, if authorized, with such frequency as are requested by the individual or guardian(s), if any, subject to the service coordinator's agreement as to the reasonableness of such request, but at least every six months; and
 - (f) To promptly notify the service coordinator of issues or circumstances which may affect the appropriateness of the current ISP or which may warrant modification of the ISP.

6.22: Assessments and Consultations

- (1) Purpose. The purpose of assessments and consultations is to obtain information that will assist the individual and other team members to establish goals related to one or more outcomes, to identify the individual's capabilities and areas in need of learning and skill development relative to those goals, and to identify the strategies and supports that are the least restrictive and likely to be effective in assisting the individual to attain his or her goals.
- (2) Conduct of Assessments and Consultations.
 - (a) Assessments and consultations shall reflect consideration of the individual's cultural, ethnic, and linguistic background, as well as any need for accommodation based upon disability or other factors.
 - (b) As appropriate and feasible, assessments and consultations regarding particular skills or behaviors shall be conducted in the actual environment in which the individual would typically perform the skill or behavior, or in a similar setting.
 - (c) Assessments and consultations shall be conducted with respect for the dignity, comfort, and convenience of the individual.
- (3) Required Assessments.
 - (a) The following assessments shall be reviewed by the service coordinator on an annual basis and updated as required by 115 CMR 6.24 or as needed to reflect changes in the individual's abilities and circumstances:
 1. an assessment of the general type of supports needed by the individual;
 2. an assessment of the individual's ability to make informed decisions regarding his or her financial and personal affairs; and
 3. an assessment of the individual's financial status and eligibility for services or benefits from other entities such as the Social Security Administration.
 - (b) In the case of individuals residing in facilities or in homes operated, licensed or funded by the Department, the residential provider shall provide or arrange for annual health and dental assessments.
 - (c) Providers of Department funded supports shall conduct annual safety assessments as required by 115 CMR 7.08, and other assessments as required by the provider's contract with the Department.
 - (d) Providers of Department funded supports that advise or assist an individual in the management of his or her funds shall conduct annual reviews of the individual's ability to manage his or her own funds.
- (4) Additional Assessments and Consultations.
 - (a) The service coordinator shall determine, in conjunction with the individual and other team members, whether additional assessments and professional consultations would benefit the individual or assist the team in identifying strengths and limitations related to the individual's ability to live with greater independence and social competence in less restrictive environments. Such assessments may include, but shall not be limited to, an assessment of the individual's daily living skills, communication skills, psychological status, social network, and whether the individual would benefit from assistive technology.
 - (b) Any such assessments and consultations shall be performed by the current provider who has primary responsibility for providing supports encompassing the area to be assessed. Subject to the availability of resources, assessments which are not within the competence or responsibility of any of the current providers shall be arranged by the service coordinator and provided or purchased by the Department.
- (5) If requested, the service coordinator shall meet with the individual, his or her guardian, and the individual's family in advance of the ISP meeting to discuss the assessments and consultations and shall, if feasible and requested, arrange an explanatory meeting with the person who performed the assessment or consultation.

6.23: Development of Individual Support Plans

- (1) ISP Meeting. The service coordinator shall convene and facilitate a meeting with the individual and other members of the ISP team in order to develop a support plan which sets forth the vision statement and goals of the individual; the supports needed by the individual in order to attain those goals, which shall be based on the assessed needs of the individual without regard to the availability of such supports; the availability of needed supports; the party responsible for providing supports; the frequency and duration of supports; and strategies for meeting the support needs of the individual. If the individual refuses to attend the ISP meeting, the team shall consider what, if any, adjustments could be made in the ISP meeting to encourage greater participation by the individual.
- (2) Outcomes. The goals, objectives and any supports or strategies identified in the ISP must be consistent with and promote the following outcomes for individuals:
- (a) Rights and Dignity. The individual's rights are respected, he or she is supported in the responsible exercise of those rights, and other supports are in place to assist, as necessary, in protecting the individual's human and civil rights; the individual's dignity is recognized and affirmed in the individual's home and community and in the manner in which supports are provided.
 - (b) Individual Control. The individual has opportunities to exercise control and choice in his or her life, and has access to education, experiences, and supports to increase his or her self-determination; the individual's opinions and preferences are listened to and treated seriously; the individual's needs and preferences are reflected in his or her activities and routines.
 - (c) Community Membership. The individual has a home which is similar in appearance to surrounding homes, which offers safety, refuge, rest, and satisfaction to the individual, and into which the individual can invite friends, family, neighbors and others to whom he or she wishes to offer hospitality; he or she has many and varied opportunities to participate in and contribute to the life of his or her community through work and through integrated social and recreational activities in culturally typical settings.
 - (d) Relationships. The individual has opportunities and support, as needed, to develop, sustain, and strengthen varied and meaningful relationships with family, friends, neighbors and co-workers.
 - (e) Personal Growth and Accomplishments. The individual has access to the supports necessary to enable him or her to contribute to his or her community, be as self-reliant as possible, develop his or her unique talents and abilities, and achieve his or her personal goals.
 - (f) Personal Well-being (Health, Safety, and Economic Security). The individual receives health care and related services which are sufficient and appropriate to optimize the individual's health and well-being; he or she lives and works in environments that are safe, secure, and are adapted if necessary to meet the individual's needs, and safeguards are in place to respond to emergencies and threats to the individual's health or safety; he or she has sufficient economic resources to meet his or her needs.
- (3) Timing of the ISP Meeting. The service coordinator shall convene a meeting to develop an ISP within 60 days after the individual begins receiving supports which require the development of an ISP pursuant to 115 CMR 6.20(4) and every two years thereafter.
- (4) ISP Components. The ISP meeting shall include but shall not be limited to the following:
- (a) Discussion of the individual's vision statement and goals;
 - (b) Discussion of recent experiences and events that may affect the individual's immediate future, general health, safety, or long-term goals;
 - (c) Discussion of the individual's current circumstances, including his or her home, day or employment, behavioral supports, as well as any supports being provided, in terms of the individual's satisfaction and changes which must occur in order for the individual to achieve his or her goals;
 - (d) Identification of goals which may be related to the individual's vision statement and which address assessed needs of the individual; and
 - (e) Development of a support agreement which sets forth:
 1. specific objectives related to the individual's goals identified pursuant to 115 CMR 6.23(4)(d);

6.23: continued

2. the strategies and supports that are the least restrictive and that will be utilized to assist the individual to attain these goals and objectives, which may include but shall not be limited to instruction in skills related to health and safety, self-care, communication, home living, work, leisure, social interactions, community use, self-direction and functional academics, provision of medical, dental and specialty services such as physical or occupational therapy, psychiatric or psychological services, and legal or advocacy services, and the party responsible for their provision or implementation;
 3. the settings in which the strategies will be implemented and the supports provided;
 4. the expected duration and frequency of the supports;
 5. the criteria to be utilized in evaluating the effectiveness of such supports in achieving the individual's goals;
 6. any unmet support needs and the strategies which will be utilized to address those needs;
 7. the ISP team member(s) responsible for monitoring and reporting on implementation of the support agreement as well as the format and frequency of such monitoring and reporting; and
 8. the date of the next review of the ISP, which can be no later than one year from the date of the ISP meeting.
- (f) Discussion of newly identified changes in an individual's abilities or life circumstances, if any, that require monitoring by the ISP team over the course of the ISP year.
- (5) Distribution, Approval, and Implementation of the ISP.
- (a) Within 45 days following the ISP meeting, the ISP shall be reviewed by the Area or Facility Director or his or her designee, approved or disapproved in part or in whole, and mailed to the individual, family, if authorized, guardian, designated representative, if any, and providers. A notice of appeal rights that are available under 115 CMR 6.30 through 6.34 will be mailed with the ISP. The service coordinator shall notify the individual, his or her family, if authorized, and guardian(s), if any, of their right to have a meeting, upon request, with the service coordinator to explain the ISP within ten days of their receipt of the ISP.
 - (b) If the Area or Facility Director or his or her designee disapproves the ISP, in whole or in part, he or she shall discuss with the service coordinator his or her reasons for disapproval and suggest changes to the ISP. If the suggested changes would be considered modifications of the ISP pursuant to 115 CMR 6.25, the service coordinator shall consult with the individual and other team members regarding the proposed changes to the ISP. The service coordinator may reconvene the ISP meeting for the purpose of revising the ISP in accordance with the recommendations of the Area or Facility Director at the request of the individual or his or her family or guardian or if the service coordinator determines that the ISP meeting must be reconvened in order to develop an appropriate ISP.
 - (c) The individual, his or her guardian(s), if any, and any family members who participated in the development of the ISP will be asked to signify, in writing, their approval or appeal of the ISP. Any participant with a right of appeal under 115 CMR 6.32, will be deemed to agree to the plan unless an appeal is filed within 35 days of mailing of the ISP or of the explanatory meeting held pursuant to 115 CMR 6.23(5)(a).
 - (d) When feasible and with the approval of the Area or Facility Director or designee and all parties having a right of appeal under 115 CMR 6.32, as well as the provider, the ISP or any portion thereof may be implemented prior to completion of the distribution and approval process set forth in 115 CMR 6.23(5).

6.24: Annual Review of Individual Support Plans

- (1) Frequency of Review. The ISP shall be reviewed and updated on an annual basis. The individual or other team members may request more frequent reviews depending on the individual's desires, goals, needs, and circumstances.
- (2) Conduct of the Annual Update.
 - (a) Within one year of the date on which an ISP was developed in accordance with 115 CMR 6.23, the service coordinator shall convene a meeting of the team to review and update the individual's ISP. At the discretion of the service coordinator, a new ISP may be developed in accordance with the provisions of 115 CMR 6.23 rather than updated in accordance with the provisions of 115 CMR 6.24.

6.24: continued

(b) The service coordinator shall obtain and distribute any new or updated assessments, review monitoring reports generated by the Department and the provider(s), and, in consultation with the individual and other team members, make appropriate revisions to the ISP based on a review of the following:

1. the satisfaction of the individual and others, including the individual's family and guardian, if any;
2. progress toward achieving the goals identified in the ISP; and
3. any significant changes in the individual's circumstances or abilities, including:
 - a. changes in the individual's eligibility;
 - b. changes in the individual's physical or mental health, including a review of the appropriateness and effectiveness of current medications and behavior modification procedures;
 - c. changes in the individual's financial resources;
 - d. changes which may affect the individual's priority for a particular support;
 - e. changes in the individual's ability to make informed decisions regarding his or her personal or financial affairs; and
 - f. changes in the availability of needed supports;
4. whether the goals identified in the ISP are consistent with the current desires and needs of the individual and whether the strategies and supports identified in the ISP continue to be the least restrictive, appropriate and available strategies and supports to promote achievement of those goals; and
5. the continued effectiveness and appropriateness of any authorizations given by the individual, his or her guardian, if any, a court, or other authority.

(3) Distribution, Approval and Implementation. The updated ISP shall be distributed, approved and implemented in accordance with the procedures set forth at 115 CMR 6.23(5).

6.25: Modification of Individual Support Plans

(1) The ISP shall be modified when necessary to reflect changes in the individual's goals and needs, to promote a quality of life for the individual which is consistent with the outcomes set forth at 115 CMR 6.23(2), or to provide for the least restrictive, most adequate and appropriate supports consistent with the individual's desires and needs. 115 CMR 6.25 applies to all modifications of ISP's. Changes which are not "modifications" listed at 115 CMR 6.25(2) are not subject to the requirements of 115 CMR 6.25.

(2) Any of the following changes, unless proposed as part of the annual review process set forth at 115 CMR 6.24, shall be considered a modification of the ISP:

- (a) Any change in the goals for the individual identified pursuant to 115 CMR 6.23(4)(e)1.;
- (b) Any change in the strategies, or in the types of supports identified pursuant to 115 CMR 6.23(4)(e)2. that will be utilized to assist the individual to attain the identified goals, or in the duration and frequency of such strategies and supports, as set forth pursuant to 115 CMR 6.23(4)(e)4., or in the strategies, identified pursuant to 115 CMR 6.23(4)(e)6., that will be used to address unmet support needs;
- (c) A change in the priority assigned to the individual's needs pursuant to 115 CMR 6.07 where such change will affect the availability of supports to the individual;
- (d) Initiation of a behavior modification plan or modification of any part of a behavior modification plan involving the use of an aversive or intrusive technique;
- (e) A change in the location of an individual's residence from a Department facility or a home operated by the Department or by a provider of residential supports licensed by the Department to another such facility or home. However, if the change in residence results from requirements for competitive procurement or is necessitated by circumstances such as contract termination, in whole or in part, lease termination, foreclosure, or any unsafe or hazardous condition of the residence, such change shall not be considered a modification within the meaning of 115 CMR 6.25.

(3) Requests for modifications shall be addressed to the service coordinator and may be initiated by:

- (a) the individual;

6.25: continued

- (b) the individual's family, if authorized, and guardian;
- (c) the service coordinator; or
- (d) a current provider(s) of supports to the individual; and
- (e) the individual's designated representative.

(4) A meeting to determine whether a requested modification should be made shall be convened by the service coordinator as soon as possible but within 30 days of the request for the modification.

(a) The following persons shall be invited to attend the modification meeting: the individual, the individual's family, if authorized, guardian, and designated representative, if any, and providers of supports to the individual.

(b) The modification meeting may be held in conjunction with any other meeting pursuant to 115 CMR 6.00 that is being held within 30 days of the request for modification.

(c) At least ten days notice shall be provided to the participants prior to a meeting at which a requested modification is to be considered.

(5) The modification meeting and any timeline related to such meeting may be waived by the service coordinator at his or her discretion with the documented approval of:

- (a) the individual, if not under guardianship; or
- (b) the individual's guardian, if any, if the individual does not object.

(6) In the case of any such waiver, the modification may be implemented subject to the requirements of 115 CMR 6.25(7).

(7) Within ten days after a modification meeting, or after waiver of such meeting, recommended modifications shall be reviewed by the Area or Facility Director or his or her designee, and approved or disapproved. The service coordinator shall notify the team members invited to participate in the modification meeting of the decision on the requested modification and of their right to appeal the modification to the extent provided by 115 CMR 6.63 or 115 CMR 6.30 through 6.34, as applicable, and shall, if applicable, issue a modified ISP.

(8) Where the change in residence would not be considered a modification because it results from requirements for competitive procurement or termination, in whole or in part, of a provider's contract, the service coordinator shall nevertheless convene a meeting of the individual, family, if authorized, guardian, and providers for the purposes of exchanging pertinent information and reviewing the new provider's obligations under the ISP. If possible, such meeting shall take place in advance of the change in residence.

(9) Where modifications are in response to circumstances that pose an emergency involving a serious or immediate threat to the health or safety of the individual or others, the modification may be implemented immediately and the modification meeting may be postponed to a date no later than 30 days after the emergency. On or before the next business day, the service coordinator shall notify all persons eligible to participate in the modification meeting of the emergency modification.

6.30: Scope and Purpose

(1) 115 CMR 6.30 through 6.34 contains the standards and procedures for appeal and redress of certain matters affecting applicants for and recipients of supports provided, purchased, or arranged by the Department.

(2) The provisions of 115 CMR 6.30 through 6.34 shall not apply to, and shall not be used to resolve, disagreements within the Department or between the Department and providers concerning supports to individuals.

(3) The provisions of 115 CMR 6.30 through 6.34 shall not apply to appeals of transfers, which are governed by 115 CMR 6.63.

6.31: Subject Matter of an Appeal

The following issues may be appealed under 115 CMR 6.30 through 6.34:

- (1) Whether the decision of the Department as to the individual's eligibility for supports is consistent with the standards and procedures stated in 115 CMR 6.01 through 6.10;
- (2) Whether the Department's assignment of priority of need is consistent with the standards set forth in 115 CMR 6.07;
- (3) Whether the assessments performed or arranged by the Department or the provider to serve as the basis for the development and review of an individual's ISP were sufficient for that purpose;
- (4) Whether the goals identified in the ISP pursuant to 115 CMR 6.23(4)(e)1., are consistent with and promote the outcomes set forth at 115 CMR 6.23(2).
- (5) Whether the types of supports identified in the ISP are the least restrictive, appropriate and available supports to meet the goals stated in the ISP;
- (6) Whether the use of behavior modification procedures, medication, and limitations of movement are consistent with the requirements of 115 CMR 5.01 through 5.16;
- (7) Whether the recommendation of the ISP team with regard to the individual's ability to make personal and financial decisions is consistent with the available evidence and whether the type of decision making support recommended is consistent with the standards set forth at 115 CMR 5.07;
- (8) Whether the ISP was developed, reviewed, or modified in accordance with the procedures set forth in 115 CMR 6.20 through 6.25; and
- (9) Whether the ISP is being implemented.

6.32: Initiation of an Appeal

- (1) An appeal may be initiated by any of the following individuals:
 - (a) The applicant found ineligible for supports, and his or her family, guardian, and attorney, except that if the individual has a guardian, an appeal may only be filed by the individual and his or her guardian and attorney; or
 - (b) The individual for whom the ISP has been developed, his or her family, guardian, and designated representative, except that if the individual has a guardian, an appeal may only be filed by the individual and his or her guardian and designated representative.
- (2) An appeal is initiated by notifying in writing the Regional Director for the Department Region in which the applicant or individual resides.

6.32: continued

(3) An appeal must be filed within 30 days after receipt of the eligibility decision or ISP which is the subject of the appeal, except that an appeal on the grounds that the ISP is not being implemented may be initiated at any time. A party is presumed to have received the decision or ISP on the fifth day after it is mailed, unless established otherwise.

(4) The applicant or individual who is the subject of the appeal shall be a party, whether or not he or she initiated the appeal.

6.33: The Appeal Process

(1) The Informal Conference.

(a) The Regional Director or designee or, if requested by the appellant, an ombudsperson designated by the Commissioner, shall hold an informal conference within 30 days of notification of the appeal. The official responsible for the conference shall notify the individual, the individual's family, guardian, and designated representative, if any, the Area Director, and the service coordinator of the date of the informal conference.

(b) The purpose of such informal conference shall be to conciliate the issues being appealed and, to the extent that conciliation is not accomplished, to clarify issues for further appeal and determine the parties' agreement, if any, to the material facts of the matter.

(c) Except to the extent that statements of the parties are reduced to an agreed statement of facts, all statements of the parties made during the informal conference shall be considered as offers in compromise, and shall be inadmissible in any subsequent hearing under 115 CMR 6.33(2) or court proceeding.

(2) Fair Hearing.

(a) If the issues being appealed are not resolved at the informal conference, then the appealing party may petition the Commissioner, within 30 days of the conclusion of the informal conference, for a fair hearing.

(b) Within 60 days of the filing of the appeal, the Department shall hold a fair hearing on the appeal in a manner consistent with M.G.L. c. 30A and 115 CMR 6.33(2).

(c) The fair hearing shall be conducted by an impartial hearing officer designated by the Commissioner. The hearing officer may be an employee of the Department, provided, however, that no person shall be designated as a hearing officer in a particular appeal who is subject to the supervision of any facility or office within the region in which the individual is currently served or is proposed to be served.

(d) The individual shall have the right to be represented at the hearing by a person of his or her choosing, at his or her expense. If the individual is unrepresented at the hearing and desires assistance, or if for any other reason the Department determines that appointment of an advocate would be in the individual's best interest, the hearing officer or the Department shall designate an advocate to assist in the appeal.

(e) The individual, other appealing party, and the Department shall have the right to present any evidence relevant to the issues on appeal and shall have the right to call and examine witnesses.

(f) The individual or other appealing party, with appropriate authorization, shall have the right, in accordance with 115 CMR 4.06, to examine all records held by the Department pertaining to the individual, including all records upon which the decisions at issue were made.

(g) The hearing shall not be open to the public, provided that the hearing officer may allow other persons to attend if he or she deems such attendance to be in the best interest of the individual.

(h) Following the hearing, the hearing officer shall prepare and submit to the Commissioner a recommended decision which shall include a summary of the evidence presented, findings of fact, proposed conclusions of law, the recommended decision, and the reasons for the decision.

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

6.33: continued

- (j) Within 45 days after the conclusion of the fair hearing, the Commissioner shall issue a decision which shall be the final decision of the Department on all issues. The decision shall include a summary of the evidence presented, findings of fact, a decision on each of the issues appealed and the reasons for such decision, and a notice of the individual's right to appeal the decision to the Superior Court pursuant to M.G.L. c. 30A.
- (k) The decision shall be mailed to the individual, to all parties, to the Regional Director and to the individual's service coordinator.
- (l) The service coordinator shall arrange to have the decision explained to the individual, to the extent feasible and using an appropriate manner and form of communication.
- (m) Within 30 days of receipt of the decision, the Regional Director shall take action consistent with the findings and decision of the Department.

6.34: General Provisions

- (1) Standard of Proof. The standard of proof on all issues shall be a preponderance of the evidence.
- (2) Burden of Proof. The burden of proof shall be on the appellant except that, with respect to appeals based on the restrictiveness of supports pursuant to 115 CMR 6.31(5), the burden of proof shall be on the party advocating the more restrictive alternative.
- (3) Informal Rules of Adjudicatory Procedure. The procedural rules governing all hearings held pursuant to 115 CMR 6.33 shall be the Informal Rules of the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.02.
- (4) Implementation of ISP Pending Appeal. Unless the parties agree otherwise, those portions of the ISP which are the subject of appeal shall not be implemented until after the informal conference conducted pursuant to 115 CMR 6.33(1), unless earlier implementation is necessary to respond to a serious or immediate threat to the health or safety of the individual or others. Implementation of any portion of a support plan that is the subject of appeal shall not result in prejudice to any party.
- (5) Judicial Review. Any person aggrieved by a final decision of the Department in an adjudicatory proceeding under 115 CMR 6.33(2) shall be entitled to a judicial review of the decision, in accordance with M.G.L. c. 30A, § 14.

6.63: Transfers: Special Requirements

- (1) Any proposed modification to an ISP involving a an individual moving from one home, operated or licensed by the Department, or funded through a residential services contract other than a master services agreement that was negotiated and executed by the Department, to another home, shall be subject to the requirements of 115 CMR 6.63, in addition to the regulatory requirements applicable to the modification of an ISP.
 - (a) Any movement of an individual within a facility or residential location shall not be subject to the requirements of 115 CMR 6.63, provided that any such movement that will result in any modification to the ISP shall be subject to the requirements generally applicable to ISP appeals.
 - (b) The relocation of the home of individuals to a new site due to circumstances such as, lease termination or foreclosure; or the change in the identity of the provider pursuant to a contract award involving no move, shall not be deemed a transfer subject to the requirements of 115 CMR 6.63.
 - (c) The requirements of 115 CMR 6.63 shall not apply:
 - 1. to the change in placement of an individual from any residential program that is approved by the Massachusetts Department of Education as a M.G.L. c. 71 private residential school, that has a special education placement rate regulated by the Division of Purchased Services, and where the residential services were being provided pursuant to an individual education plan or an individual transition plan; or
 - 2. to the change in placement of an individual from a location providing respite care services.

6.63: continued

3. to the change in placement of an individual from a location providing residential services that the Department had begun funding on an interim basis on or before the individual's 22nd birthday.

(2) All parties eligible to participate in the modification meeting pursuant to the Department's regulations on the modification of individual service plans shall be given written notice of the proposed transfer at least 45 days prior to the date of the proposed transfer.

(a) The written notice shall be delivered to the individual and shall also be sent by registered mail to the guardian and other parties;

(b) Where a modification meeting is held to consider the proposed transfer (*i.e.* where the modification meeting has not been waived in accordance with the regulations on the modification of individual service plans), notice of the transfer should ordinarily be sent after the meeting. When time is of the essence, however, (*e.g.*, the availability of a proposed services and supports may be jeopardized by delay) notice may be sent at the same time as notice for the modification meeting.

(c) The written notice shall:

1. include a statement of how the proposed move will result in improved services and supports and quality of life for the individual;
2. specify the location of the proposed home;
3. include a statement that the parties may visit and examine the proposed home at a time and in a manner not disruptive to individuals who may be living in the home;
4. specifically invite the parties to consult with the service coordinator or other designated staff regarding the advantages and disadvantages of the proposed transfer (this consultation may take place as part of the modification meeting);
5. include a request for consent to the proposed transfer (consent to internal moves within a facility or residential location is not required); and
6. include a statement of the rights of the parties established by 115 CMR 6.63, if applicable.

(d) The 45 days time line for the written notice may be shortened to a reasonable period under the circumstances by the service coordinator at his or her discretion in the following situations:

1. upon request of the individual, if not under guardianship and capable in fact of understanding the consequences of shortening the time line;
2. upon request of the individual's family or designated representative, if the individual is not capable in fact, is not under guardianship, and does not object;
3. upon request of the individual's permanent guardian, if any, if the individual does not object;
4. upon initiative by the service coordinator, if the individual is not capable in fact, does not object and has no guardian, designated representative or family.

(3) If any party to the ISP modification, other than a current or proposed provider of services and supports to the individual, files an objection to the proposed transfer in accordance with the provisions of 115 CMR 6.63(3), the transfer shall not occur unless: the party withdraws the objection; the individual, if not under guardianship and capable in fact, consents to such transfer; the guardian consents to such transfer and the individual does not object; or the Department prevails at an adjudicatory proceeding held pursuant to 115 CMR 6.63(4).

(a) Any objection to the proposed transfer must be in writing, must contain a statement of the reasons for the objection, and must be addressed to the Commissioner.

(b) Failure to object within the notice period provided by 115 CMR 6.63(2) shall be deemed to be a consent to the transfer;

(c) An objection shall be deemed to have been filed by the eligible party on the date it is postmarked or otherwise delivered by hand to the Commissioner.

(d) The regulatory procedures for ISP appeals shall not apply to objections to proposed transfers.

(4) If the individual service plan, including any proposed modification, cannot be fully implemented as a result of an objection to a proposed transfer, the Department shall, within 20 days of receiving the objection, file a request for an adjudicatory proceeding with the Division of Administrative Law Appeals established by M.G.L. c. 7, § 4H.

6.63: continued

(a) The adjudicatory proceeding shall be conducted in accordance with the standards and procedures established by M.G.L. c. 123B, § 3, and M.G.L. c. 30A.

(b) During the pendency of the adjudicatory proceeding, the proposed transfer shall not occur.

1. If the Department prevails at the adjudicatory proceeding, it shall further delay implementation of the proposed transfer for 20 calendar days to enable the objecting party to appeal and seek a further stay of the transfer before a judge of the Superior Court in accordance with procedures and standards for such appeals established by M.G.L. c. 123B, § 3, and M.G.L. c. 30A.

2. If the Department does not prevail at said adjudicatory proceeding, it shall not proceed with the proposed transfer unless the administrative hearing officer's decision is reversed on appeal to a judge of the Superior Court in accordance with the procedures and standards for such appeals established by M.G.L. c. 123B, § 3, and M.G.L. c. 30A.

(c) If the case on the proposed transfer is to be heard or has been heard by the Division for Administrative Law Appeals, any issue directly related to and effectively decided by the transfer disposition will have been deemed appropriately heard and considered by the Division of Administrative Law Appeals and any other or further appeals under 115 CMR 6.63 or the regulations on ISP appeals will not be allowed with respect to such issue.

Issues related to the provision of services or supports after a proposed transfer has occurred or has been finally denied pursuant to 115 CMR 6.00 shall not be deemed to have been heard and considered by the Division of Administrative Law Appeals and shall be subject to the appeal provisions of the ISP appeals regulations.

(d) Issues related to the provision of services or supports after a proposed transfer has occurred or has been finally denied pursuant to 115 CMR 6.63 shall not be deemed to have been heard and considered by the Division of Administrative Law Appeals and shall be subject to the appeal provisions of the ISP appeals regulations.

(5) Where the proposed transfer is in response to circumstances that pose an emergency involving a serious or immediate threat to the health or safety of the individual or others, the transfer may be made immediately and the transfer notice shall be given to the individual and the guardian or designated representative or family member by telephone or other available means within eight hours after the transfer and shall be given to all parties identified by 115 CMR 6.63(2) to receive the transfer notice on the next business day after the transfer in accordance with the requirement of 115 CMR 6.63(2)(c).

(a) Where the Department determines that the identity of a provider must be changed pursuant to state contract requirements, and said change in identity makes necessary a relocation of an individual from one home to another home, and the procedures, required by 115 CMR 6.63 have been initiated by the Department by giving notice pursuant to 115 CMR 6.63(2) but have not been completed prior to the effective date of the contractual change, the resulting circumstances may be deemed by the Department to be an emergency under 115 CMR 6.63(5).

(b) With the exception of giving notice immediately after a transfer, the standards and procedures established by M.G.L. c. 123B, § 3, and 115 CMR 6.63 shall be the same for emergency transfers as for non-emergency transfers.

REGULATORY AUTHORITY

115 CMR 6.00: M.G.L. c. 19B, §§ 1, 13, 14 and c. 123B, §§ 2 through 4, 6 and 15.