

115 CMR: DEPARTMENT OF DEVELOPMENTAL SERVICES

115 CMR 8.00: LICENSURE AND CERTIFICATION OF PROVIDERS

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8.01: Scope

- (1) Compliance with 115 CMR 8.00 and the requirements of 115 CMR in general is a prerequisite for licensure and certification.
- (2) Licensure. All public and private providers offering residential supports, individualized home supports, employment supports, day supports, site based respite services, or placement services for individuals with an intellectual disability are subject to licensure by the Department except as provided in 115 CMR 7.01: *Scope*.
- (3) Certification.
 - (a) All public and private providers subject to licensure under 115 CMR 8.01(2), except providers of site based respite services, are subject to certification by the Department, unless the Department accepts the certification by another governmental agency.
 - (b) The Department may accept, in lieu of certification by the Department, certification by a national accreditation organization whose standards, survey process and survey outcomes are determined to be substantially similar to those of the Department.

8.02: Application for Licensure, Certification or Renewal

- (1) Applicants seeking licensure and certification or renewal of licensure and certification shall file an application in writing with the Department in a manner and on a form prescribed by the Department.
- (2) An applicant that does not currently hold any license from the Department,
 - (a) must comply with the pre-occupancy requirements of 115 CMR 8.10, if applicable; and,
 - (b) shall submit to the Department a request for a licensure application prior to initiation of service; and,
 - (c) is subject to an initial review of health, safety and human rights protection by the Department within 60 days after receipt of the licensure application; and,
 - (d) is subject to a full licensure and certification survey under 115 CMR 8.03 by the Department within six months of the initial review.
- (3) Licensed providers that begin to provide new services or reconfigure existing services between surveys must comply with the pre-occupancy requirements set forth in 115 CMR 8.10, if applicable, and will be subject to an initial review of the new services(s) but will not be subject to full survey until the next regularly scheduled renewal survey.
- (4) The applicant must be the organization or person with principal legal responsibility for the administration and conduct of the provider.

8.02: continued

(5) The applicant shall submit, on forms or in a manner determined by the Department and subject to audit or inspection by the Department, such additional information as may be necessary for the Department to determine the qualifications of the applicant and its services for licensure or certification. Such information shall include, but is not limited to, all components of the applicant's services, staffing, financial status and service locations.

(6) An applicant will be considered to be operating with a valid license as long as a current application is on record in the Office of Quality Management of the Department within the prescribed timeframe.

8.03: Licensure and Certification Survey

The Department shall conduct a licensure and certification survey of a provider in accordance with the timelines applicable to the provider's licensure and certification status as determined under 115 CMR 8.04 through 8.06. The Department may survey a provider more frequently if it is determined necessary to ensure compliance with 115 CMR. Only providers maintaining a full two year license are eligible to have the department accept a national accreditation process in *lieu* of the Department's certification survey. Surveys shall be conducted according to the following procedures:

(1) Sample. The Department shall select for survey a sample of the sites where services and supports are provided by the provider and a sample of individuals who are receiving the services and supports from or through the provider.

(a) The Department shall determine the number or percentage of sites and individuals to be reviewed and shall exclude individuals whose circumstances, such as extended vacation or hospitalization, would preclude their participation in the survey.

(b) The sample shall be random and representative of the provider's services and supports subject to licensure and certification.

(c) The Department may expand the selected sample during the survey if, the survey team identifies serious issues in areas such as, but not limited to, medication, money management, health care, safety, human rights, or restrictive interventions, and further information is considered necessary for thorough review.

(2) Notification and Scheduling.

(a) The survey team shall notify the provider, regional and area offices at least 30 days prior to the first day of the survey.

(b) Notification of the specific sites and individuals in the survey sample shall be given to the provider, regional and area offices on the first day of the survey.

(c) Surveys shall ordinarily be made with prior notice to the provider and at reasonable times, giving due regard to the privacy of the individuals served and the interruption that the survey may cause. However, the Department may review any service or support subject to licensure and certification at any time and without prior notice.

(d) Refusal by a provider to permit a survey, with or without prior notice, shall be grounds for termination of contracts or agreements with the Department and may result in the recommendation to terminate or deny licensure and certification. The provider shall make all relevant documents, as determined by the Department, available to the survey team upon request.

(e) Surveys shall be scheduled to facilitate the participation of citizen volunteers.

(3) Survey Team. The Department shall determine the size and composition of the survey team. The size of the survey team shall vary depending on the size of the provider.

(a) The Department shall designate such Department employee(s) as it considers necessary to accomplish the purpose of the survey. The Department may use citizen volunteers and professionals in the field of human services on the survey team.

(b) In assembling the survey team the Department shall consider the language or method of communication of individuals included in the survey sample.

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(c) Team members shall have no conflict of interest with the provider being surveyed and shall adhere to the requirements in the conflict of interest statement established by the Department. A challenge by a provider to the composition of the team based on conflict of interest must be submitted in writing to the Department ten days prior to the first day scheduled for the survey.

(d) Information about individuals gathered during the survey process shall be considered confidential and shall not be disclosed except in accordance with state and federal law. Team members shall execute such documents as the Department determines are necessary to protect against unauthorized disclosure of confidential and private information under state and federal law.

(4) Conduct of the Survey. The Department shall conduct the following activities as part of the licensure and certification survey.

(a) Observation. Team members shall visit and observe the individual at the location where services or supports are provided. Team members will not visit an individual at a competitive employment site unless the individual, provider, and employer agree. Any individuals selected as part of the sample who lives in a home that they own, rent, or lease may refuse a home visit. In addition, personal belongings, clothing, and storage spaces (closets, dressers, trunks, *etc.*) of any individual served shall not be subject to inspection by the Department without permission from the individual.

(b) Discussion. Team members shall speak with individuals, staff, family members and guardians, and other significant people about the services and supports being surveyed. The team member shall interview the service coordinator of each individual in the sample. The team member shall speak with other people such as human rights committee members or clinicians when additional information is needed to complete the survey tool and assess compliance with 115 CMR. Individuals who refuse to be interviewed personally shall not receive a personal interview but shall remain in the sample and the quality of their services and supports shall be evaluated.

(c) Review of Documentation. Prior to and during the survey, team members shall review documents that provide information about the impact of services and supports on the quality of life of individuals served and about the organization and operation of the provider.

1. Team members shall review documentation in an individual's record, including but not limited to the individual's support plans (ISP, progress notes, medication and health information, bank books, financial transaction sheets, behavior plans, incident reports, and informed consents).

2. Team members may review provider policies and procedures that include, but are not limited to, the following safeguards: emergencies (*e.g.* search and safety plans); restraint; money management; restrictive interventions; human rights; medication administration; legal competency and guardianship; fire drill logs.

3. Team members may review other documentation, including, but not limited to staff training, job descriptions, other policies and procedures, membership and minutes of the human rights committee and peer review committee, education and teaching curriculum, mission statement, results of internal evaluations and strategic planning, staff evaluations, and other monitoring reports.

4. Team members shall review the Department logs of complaints, and the decisions, action plans and resolution letters of investigations and administrative reviews for the previous year.

(5) Feedback. The team shall present the findings and results of the survey to the provider and to area and regional staff at a service enhancement meeting. The presentation shall include review of the initial provider report with the findings and decision on the provider's license and certification levels.

(6) Immediate Jeopardy. Immediate jeopardy is defined as any circumstance in which the life, health, or safety of an individual is severely threatened if the situation is not immediately corrected. A team member who observes a situation that places an individual in immediate jeopardy shall immediately notify the provider, the regional director and area director of the circumstances and the need to correct the situation within 48 hours. The provider shall take any and all action necessary to correct the situation. The team member shall confirm that the situation has been corrected.

8.03: continued

(7) Action Required. A team member who identifies a situation that is not immediate jeopardy but requires action in a timely manner shall immediately notify the provider, the regional and area director of the circumstances and the need to correct the situation within 30 days. The team member shall confirm that the situation has been corrected.

(8) In all cases where a condition reportable under 115 CMR 9.00: *Investigations and Reporting Responsibilities*, M.G.L. c. 19C, or other applicable law or regulation is observed, each team member is a mandated reporter and shall follow regulatory and statutory reporting procedures.

(9) Reports.

(a) The initial provider report shall be developed upon completion of the survey and sent to the provider, regional and area directors at least two days in advance of the service enhancement meeting.

(b) Following the service enhancement meeting, the final report shall be issued to the provider and a copy sent to the regional office and area office.

(c) The final provider report is available to the public, provided that any portion of the report containing confidential information concerning an individual is not a public record.

(10) Follow-up. The Department shall follow-up with providers on all issues of immediate jeopardy, action required, and any indicator in a licensure or certification standard that was not met.

8.04: Licensure

(1) The Department shall issue or renew a license to a provider whose services and supports are determined to meet or exceed applicable licensure standards. Providers of residential supports, individualized home supports, respite supports and placement services shall be issued a residential and individualized home supports license. Providers of employment supports and day supports shall be issued an employment and day supports license.

(2) Licenses issued under 115 CMR 8.00 are not assignable and not transferable.

(3) A provider may operate pending the issuance, renewal or the Department's action on a license under the following circumstances:

(a) the provider has timely filed a sufficient application for licensure or renewal and is participating in the licensure survey process under 115 CMR 8.00; or

(b) the services and supports have been surveyed under 115 CMR 8.04 and found to meet the requirements for licensure; or

(c) the provider is participating in the follow-up process including having scheduled a follow-up survey; or

(d) the provider has obtained approval from the Department for a waiver under 115 CMR 8.09 and is in compliance with other requirements of licensure and all conditions or terms of the waiver issued in accordance with 115 CMR 8.09; or

(e) the provider has a pending appeal timely filed in accordance with 115 CMR 8.08.

(4) Upon completion of the survey and receipt and review of all required documentation to the satisfaction of the Department, the Department shall take one of the following actions:

(a) Two-year License. The Department shall issue a two-year license based upon the finding of substantial achievement of the Department's licensure standards and meeting all critical indicators.

(b) Two-year License with Mid-cycle Review. The Department shall issue a two-year license with mid-cycle review based upon a finding of partial achievement of the Department's licensure standards and meeting all critical indicators. Until such time as the provider demonstrates substantial achievement of the Department's licensure standards, the provider shall be prohibited from accepting any new business. Providers receiving a two-year license with mid-cycle review will be evaluated at mid-cycle to assess achievement with the Department's licensure standards. The Department will conduct a full review at the end of the two-year cycle.

8.04: continued

(c) Deferred Licensure. The Department shall defer issuing a license to any provider that attains partial achievement of the licensure standards but fails to meet one or more of the critical indicators. The provider shall be given up to 60 days to correct the critical indicators that were not met. The Department shall issue a two-year license with mid-cycle review if it determines from a follow-up review that all critical indicators have been met.

(d) Recommendation for Revocation or Denial of Licensure. The Office of Quality Management shall issue a recommendation for the revocation or denial of licensure when a provider:

1. receives a two-year license with mid-cycle review for two consecutive years; or
2. fails to attain partial achievement of the licensure standards; or
3. fails to meet all critical indicators by the time of the follow-up review or mid-cycle review.

(5) Upon notification by the Office of Quality Management that revocation or denial of licensure has been recommended for a provider, the regional director may either accept the recommendation not to license the provider or work with the provider to develop a specific corrective action plan for meeting the licensure standards within 60 days of the issuance of the final report.

(6) Where a corrective action plan has been developed by the provider with the regional director, a survey team shall conduct a follow-up review no later than 60 days after the issuance of the corrective action plan. If the Department determines after the follow-up review that there is substantial achievement in meeting the Department's licensure standards, the Department shall issue a two-year license with mid-cycle review. If the Department determines that there is not substantial achievement after the follow-up review, the recommended action to revoke or deny licensure shall stand.

(7) The Department shall publish and may modify from time to time the licensure standards and the criteria and methodology for achieving licensure.

8.05: Certification

(1) The purpose of the certification process is to review the quality of supports for the discrete service or support described in 115 CMR 8.01. The Department shall review a provider's achievement in meeting the certification indicators when it is conducting the licensure review every two years. The Department's bi-annual certification reviews shall alternate between a full certification survey when all certification indicators are reviewed and a review of only the certification indicators that were not met in the previous certification survey.

(2) Upon completion of the survey under 115 CMR 8.03 and the receipt and review of all required documentation to the satisfaction of the Department, the Department shall certify the overall quality of the services and support described in 115 CMR 8.01 if it meets or exceeds applicable certification standards.

(3) The certification shall be valid for the same term as the license issued to the provider for the same service or support under 115 CMR 8.04.

(4) Notwithstanding 115 CMR 8.05(1), any new service shall be subject to a full certification survey by the Department.

(5) The Department shall publish and may modify from time to time the certification standards and the criteria and methodology for achieving certification.

8.06: Targeted Review and Self-assessment Process

(1) A provider with a two-year license is eligible to renew that license through the targeted review and self-assessment process both of which are required. The targeted review is conducted by the Department and the self-assessment is conducted by the provider.

8.06: continued

- (2) In a targeted review, the Department shall conduct a survey in accordance with 115 CMR 8.03(4) to review all critical indicators and the licensure indicators that were not met by the provider in its previous survey and shall conduct a certification review only if a full certification survey is required under 115 CMR 8.05(1).
- (3) In a self-assessment, the provider shall review, using the self-assessment guidelines established by the Department, all licensure indicators. The provider shall also review those certification indicators that were not met in its previous survey unless the Department is conducting a full certification survey pursuant to 115 CMR 8.06(2). Upon completion of the self-assessment, the provider shall submit to the Department its ratings of all indicators reviewed together with a detailed and comprehensive description of the provider's on-going quality assurance system and self-assessment process. The submission must include the evidence used by the provider to justify its rating for each indicator reviewed.
- (4) Where an indicator is rated by both the Department and provider, the Department's rating shall be the determinative rating.
- (5) The Department shall review the adequacy of the provider's quality assurance system and self-assessment. Ratings from the targeted review and self-assessment will be combined to determine in accordance with 115 CMR 8.04 the licensure level for the provider. The provisions of 115 CMR 7.03(5) through (10) shall apply to the targeted review and self-assessment process.
- (6) Providers issued a two-year license through the targeted review and self-assessment process shall be subject to a full licensure and certification survey at their next survey cycle.
- (7) The Department may require a full licensure and certification survey when there has been a change in circumstance since the provider's previous survey. A change in circumstance includes, but is not limited to, change in leadership of the provider, merger or consolidation of the provider with another provider, increase in incidents, restraints, or substantiated investigations, contract performance issues, and the addition of services not reviewed through the previous survey.

8.07: Administrative Reconsideration

- (1) Within ten working days after receipt of the final provider report, the provider may file a written request for an administrative reconsideration with the regional quality enhancement director in all cases except with respect to a decision of non-licensure. Decisions of revocation or denial of licensure are subject to a separate review and appeal through 115 CMR 8.08 and are not subject to administrative reconsideration.
- (2) The basis for a request for administrative reconsideration shall be disagreement with:
 - (a) the facts or the conclusions in the provider report;
 - (b) the timelines for follow-up; and/or
 - (c) correction of the areas needing improvement.
- (3) Administrative reconsideration may not be requested on the basis of provider disagreement with:
 - (a) the content of the survey tool;
 - (b) the composition of the team;
 - (c) the methodology developed for scoring the survey.
- (4) Within 30 days of the receipt of the request for reconsideration, the regional quality enhancement director shall render a written decision that shall state its conclusions and rationale.
- (5) Within ten working days of receipt of the written decision from the regional quality enhancement director, the provider may file a written request for a second level of administrative reconsideration which is available only to challenge the standards applied and/or procedure followed in the first level of administrative reconsideration.

8.07: continued

(6) The second level administrative reconsideration shall be conducted by the director of licensure and certification or designee who shall render a decision within 30 days of receipt of the request. The decision rendered at the second level of administrative reconsideration is final and not subject to further review.

8.08: Review and Appeal

(1) All recommendations to deny a license, deny the renewal of a license or revoke a license are subject to a joint review by the deputy commissioner, the assistant commissioners for quality management and operations, and the general counsel prior to being presented for a decision by the commissioner.

(2) All decisions to deny a license, deny the renewal of a license or revoke a license shall be issued in writing by the commissioner and include the effective date. The decision shall be accompanied by a report that describes the specific areas in which the provider has failed to comply with the licensure requirements of the Department. The provider shall be notified of the right to an adjudicatory hearing to appeal the decision.

(3) A decision to deny a license, deny renewal of a license or revoke a license shall result in the non-issuance or termination of the provider's license to operate the surveyed services and supports.

(4) Within ten days of receipt of the decision to deny a license, deny renewal of a license or to revoke a license, the provider may appeal the decision by filing a written request for a hearing with the commissioner. The appeal shall identify the appellant, clearly and concisely state the facts and regulations that the provider is relying as grounds for the appeal, and be signed by an authorized representative of the provider. An appeal shall be considered waived if an appeal is not filed within ten days and a final agency decision may enter without further notice.

(5) The Department shall file a request for a hearing before the Division of Administrative Law Appeals within 30 days from receipt of the appeal. The hearings shall be held in accordance with the applicable provisions of M.G.L. c. 30A.

(6) The filing of an appeal shall not operate as a stay of the decision; however, the commissioner may stay the decision upon written request from the provider if a stay would not jeopardize the health, safety or welfare of the individuals served by the provider.

8.09: Waiver

(1) Except as otherwise provided in 115 CMR 7.00: *Standards for All Services and Supports* and 8.00, no waiver may be granted by the Department without a petition by the provider and a determination by the Department that:

- (a) the health, safety, or welfare of individuals served and staff will not be adversely affected by granting the waiver; and
- (b) the provider, in petitioning for the waiver, has stated an alternative standard which is found by the Department to result in a comparable quantity and quality of services and supports, and to which the provider agrees to be held accountable to the same degree and manner as any provision of 115 CMR.

(2) Waivers may be granted for the term of the license or for a shorter duration, and may be renewed.

8.10: Approval to Occupy

(1) An approval to occupy from the Department is required for all sites providing services and supports that are subject to licensure by the Department and are owned, rented or leased by the provider.

8.10: continued

- (2) An approval to occupy is required prior to occupancy of:
 - (a) any proposed site for the provision of new services and supports; and
 - (b) any new location for a licensed service or support that is proposed to be opened between licensing surveys.
- (3) The issuance of an approval to occupy shall be based on a site feasibility review and a pre-placement visit conducted by the Department.
- (4) For new services and supports, a full licensure and certification survey shall be conducted by the Department after occupancy.

8.11: Operation of Unlicensed Services and Supports

- (1) When the Department has reason to believe that a provider is operating a service or support without a valid and current license required by 115 CMR 8.00 or without a pending application for licensure with the Department, the Department may, within 30 days of notifying the provider:
 - (a) notify the District Attorney with jurisdiction over the provider that the provider is operating in violation of M.G.L. c. 19B, § 15; and/or
 - (b) petition the Superior Court with jurisdiction over the provider for an order directing the provider to cease its operation or to take such other actions as may be necessary in the interest of the individuals served; and/or
 - (c) arrange for adequate and appropriate alternative services and supports for the individuals served by the unlicensed provider.

8.12: Inspections by the Department

Any employee of the department authorized by the commissioner may visit, inspect, and survey the location where services and supports subject to licensure, certification or regulation by the department are provided to determine whether such services and supports are being delivered or provided in compliance with law and with the regulations established by the department.

8.13: Suspension, Revocation, and Denial of License or Renewal

- (1) In addition to the other provisions in 115 CMR 8.00, the Department may suspend, revoke or deny a license or renewal if it finds any of the following:
 - (a) The provider failed to comply with any applicable regulations;
 - (b) The provider received a recommendation to deny or revoke licensure upon completion of a survey;
 - (c) The provider furnished or made any misleading or false statement or report required under 115 CMR;
 - (d) The provider refused to submit or make available any reports required under 115 CMR;
 - (e) The provider refused to admit at any time for a visit, inspection, or survey, any employee of the Department authorized by the Commissioner to conduct such visits, inspections, or surveys in accordance with 115 CMR;
 - (f) The provider or any of its staff was found after investigation pursuant to 115 CMR 9.00: *Investigations and Reporting Responsibilities* or M.G.L. c. 19C to have committed gross neglect of an individual it serves or served;
 - (g) The provider or any of its staff knowingly or unknowingly permitted grave physical harm or sexual, physical, emotional or financial abuse of an individual to occur, by reason of failure to implement recommendations made by the Department after investigation of previous allegations of abuse, or by reason of reckless disregard for the safety or welfare of any individual.
 - (h) The provider is convicted in a court of competent jurisdiction of any crime which directly or indirectly relates to the provision of services and supports licensed under 115 CMR 8.00.

8.14: Suspension in Emergencies

(1) The Department may temporarily suspend any license without a hearing if the failure of the provider to comply with any applicable regulation or standard appears to have resulted in an emergency situation that could endanger the life, safety, or health of individuals or staff within the service or support, or if it finds that such suspension is otherwise in the public interest.

(2) Immediately upon such suspension, the Department shall notify the individuals served and their families and guardians, if any, and shall immediately provide or arrange for the most adequate and appropriate alternative arrangements available, or take such other action, including but not limited to using Department employees to provide the service or support, as the Department deems adequate to protect the individuals served.

(3) Upon written request of the aggrieved provider to the Commissioner, a hearing shall be held promptly after the license is suspended, in accordance with the applicable requirements of M.G.L. c. 30A.

8.15: Notification of Legal Proceedings

Every provider shall report in writing to the commissioner any legal proceeding within 10 days of initiation of proceedings brought by or against the provider or any person employed by the provider, if such proceeding arises out of circumstances related to the care, treatment, habilitation, supervision, or living environment of persons being served by this provider.

8.16: Change of Name, Ownership, Location, or Services

(1) The provider shall provide prior notification in writing to the Department of any change in its name or in its ownership.

(2) The provider shall notify the Department in writing of any change in its executive director of the services or supports.

(3) The provider shall notify the Department in writing of any changes in the physical location of the service or support, or of any other changes which place the provider out of compliance with any regulation under 115 CMR, within ten days of the change.

(4) The failure of a provider to notify the Department of any change of name, ownership, location, or services and supports shall be grounds for suspension or termination of the license.

REGULATORY AUTHORITY

115 CMR 8.00: M.G.L. c. 19B, §§ 1, 14 and 15 and c. 123B, § 2.