

115 CMR 9.00: INVESTIGATIONS AND REPORTING RESPONSIBILITIES

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9.01: Scope and Purpose

(1) Scope.

- (a) 115 CMR 9.00 applies to all offices of the Department and all programs and services operated, licensed or funded by the Department.
- (b) Any action taken pursuant to 115 CMR 9.00 shall be consistent with bargaining agreements and other provisions of labor law then in effect.

(2) Purpose. 115 CMR 9.00 is promulgated to promote the reporting, review, investigation, and remediation of complaints alleging abuse, neglect, serious risk of harm, or an incident, condition, or occurrence covered by 115 CMR 9.05 that involves an individual. If such allegations are substantiated, 115 CMR 9.00 is intended to provide for swift rectification of any conditions causing or contributing to the matter.

- (a) 115 CMR 9.00 does not provide for an adjudicatory hearing within the meaning of M.G.L. c. 30A, § 1(1). 115 CMR 9.00 is not intended to constitute an administrative remedy under the doctrine of exhaustion of administrative remedies or otherwise.
- (b) Complaints against individuals are not subject to investigation or review under 115 CMR 9.00. Complaints against persons whose act or omission resulted in actual or risk of harm to an individual caused by another individual may be investigated or reviewed under 115 CMR 9.00.

(3) Director of Investigations. There shall be a director of investigations responsible for overseeing the implementation of 115 CMR 9.00. The director shall have the authority to review all documentation received and generated by the investigations division.

9.02: Definitions

For purposes of 115 CMR 9.00 only, the following terms shall have the following meanings:

Abuse means an act or omission of a provider that results in serious physical injury or serious emotional injury to an individual. However, no individual shall be considered to be abused for the sole reason that such individual is being furnished or relies upon treatment in accordance with the tenets and teachings of a church or religious denomination by a duly accredited practitioner thereof; nor for the sole reason that, consistent with the stated or implied wishes of a competent individual or a duly appointed representative of an incapacitated person, he or she is not receiving medical treatment or care.

9.02: continued

Abuse Per Se means an act or omission of a provider that includes or results in the following, regardless of whether a serious physical injury or serious emotional injury is manifested:

- (a) sexual abuse;
- (b) the withholding of an individual's adaptive aids, provided that such withholding is unrelated to safety, care, or treatment. Examples of withholding of adaptive aids include, but are not limited to, prevention of access to and/or removal of the sole means of communication for an individual who is deaf, hard-of-hearing, or has communication deficits, or the prevention of access to and/or removal of the sole apparatus to assist mobility, in the case of an individual with a physical disability;
- (c) a pattern of touching neither required nor appropriate for tending to the safety and welfare of an individual. For purposes of 115 CMR 9.02: Abuse Per Se(c) only, the term "pattern" shall mean "two or more separate instances of touching";
- (d) the intentional, wanton, or reckless application of physical force in a manner that inflicts physical pain or serious emotional injury as determined by an evaluation of the totality of the circumstances. For the purposes of 115 CMR 9.02: Abuse Per Se(d) only, when a person as a result of his or her disability is unable to express or demonstrate a serious emotional injury or a reaction to physical pain, the investigator may use the reasonable person standard solely for the purposes of evaluating whether the intentional, wanton, or reckless application of physical force inflicted physical pain or serious emotional injury. Using the reasonable person standard, the investigator determines whether, by a preponderance of the evidence, given the same set of factual circumstances, a reasonable person would have experienced physical pain or serious emotional injury. The term "reasonable person" shall mean "a person who in similar circumstances would exercise the qualities of attention, knowledge, intelligence and judgment which society requires of its members for the protection of him or herself and the interest of others".

Act means an intentional, reckless, or negligent action regardless of whether the act is performed with intent to harm.

Administrative Review means the process for resolving a complaint by the regional director or his or her designee as described in 115 CMR 9.11.

Assault means to physically strike or attempt to physically strike.

Complainant means any person who files a complaint under 115 CMR 9.00 and/or M.G.L. c. 19C.

Complaint means an allegation communicated to the Department of an incident, condition or other occurrence which meets any of the criteria set forth in 115 CMR 9.05.

Complaint Resolution Team or CRT means a group convened within each area and facility office that consists of Department personnel and citizen members and whose purpose is to review all complaints meeting the criteria set forth in 115 CMR 9.05 and develop action plans and resolution letters.

Day means a business day.

DPPC means the Disabled Persons Protection Commission.

Financial Exploitation means the illegal or improper use of an individual's financial resources in an amount over \$250 for personal profit or gain.

Frivolous means utterly devoid of merit. All complaints filed pursuant to 115 CMR 9.00 are presumptively non-frivolous unless the senior investigator determines the complaint

- (a) involves matters not within the scope of 115 CMR;
- (b) is clearly impossible on its face; or
- (c) asserts similar allegations to a complaint previously filed concerning the same parties and allegedly occurring at approximately the same time, which was proven to be unsubstantiated.

9.02: continued

General Counsel means the person serving as chief legal counsel to the commissioner as set forth in M.G.L. c. 19B, § 5.

Medico-legal Death means:

- (a) a death of any individual if the medical examiner takes jurisdiction;
- (b) death that appears to have resulted from unusual or suspicious circumstances;
- (c) death which may have been caused by violence, including sexual abuse; or
- (d) any other death required by M.G.L. c. 38, § 6 to be reported to the medical examiner.

Omission means a failure, whether intentional or not, to take action to protect an individual or to provide for an individual's daily living necessities including, but not limited to, failing to prevent another person from inflicting upon an individual any activity within the definition of abuse.

Party means:

- (a) the alleged victim and/or his or her guardian or legally authorized representative;
- (b) the person or persons complained of or allegedly responsible for the incident, condition, or occurrence (the alleged abuser(s));
- (c) the human rights committee of the provider agency serving the alleged victim; and,
- (d) the executive director or head of the provider agency serving the alleged victim.

Reportable Condition means an incident, condition or occurrence of abuse, abuse *per se*, assault, sexual abuse, financial exploitation, mistreatment as defined by 115 CMR 5.05: *Standards to Promote Dignity: Mistreatment*, or any incident, condition or occurrence that meets the criteria set forth in 115 CMR 9.05(1) through (3).

Serious Emotional Injury means an injury to the intellectual functioning or emotional state of an individual caused by conduct that includes but is not limited to: coercion; harassment; the inappropriate isolation of an individual from family, friends, or regular activity; and verbal assault such as ridicule, intimidation, yelling or swearing. A serious emotional injury is evidenced by an observable and measurable reduction in the individual's ability to function from the individual's customary range of performance or customary behavior, such as, a state of anxiety, fear, depression, withdrawal, or the development of post-traumatic syndrome. The fact that the reduction in functioning does not extend for a particular period of time does not preclude a finding that a serious emotional injury has occurred; the length of time the reduction lasts must be evaluated in conjunction with the severity of the reduction in determining whether a serious emotional injury has occurred.

Serious Physical Injury means a physical condition that includes, but is not limited to: death; brain damage; permanent disfigurement; any burn excluding sunburn of the first degree; fracture of any bone; subdural hematoma; intramuscular injury; bruising, abrasion, laceration or puncture of the skin; bleeding; impairment of a bodily system, function, limb or organ including human skin; bedsores or similar condition, or harmful symptoms resulting from the use of medication or chemicals improperly dispensed or without informed consent or appropriate authorization; or malnutrition or dehydration.

Serious Risk of Harm means a significant exposure to serious physical or serious emotional injury.

Sexual Abuse occurs when a provider forces, tricks, threatens, coerces, exploits or otherwise engages an individual or permits another person to force, trick, threaten, coerce, exploit, or otherwise engage an individual in an un-assented to sexual activity. Sexual activities may include but are not limited to unwanted or inappropriate touching, kissing, touching of the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes or genitalia; or any un-assented to sex act including but not limited to: sexual intercourse; sexually explicit photographing, including the use, publication or dissemination of nude or sexually explicit photographs or recordings to exploit, manipulate, threaten or coerce; or exposure to sexually explicit material, activity or language. Sexual abuse also includes, but is not limited to, instances in which:

- (a) an individual lacks the capacity to assent to the sexual activity, even if the individual has purportedly assented; or
- (b) due to the nature of his or her disability, fear of retribution or hardship, or the inequality of position and power, the individual was in appropriately engaged in the sexual activity.

115 CMR: DEPARTMENT OF DEVELOPMENTAL SERVICES

9.03: Notice of M.G.L. c. 19C and 115 CMR 9.00 Complaint Process

The regional director or designee, as applicable, shall have responsibility for ensuring the following:

- (1) Notice of M.G.L. c. 19C and 115 CMR 9.00 is included in information posted by every provider or otherwise provided to every individual and his or her guardian, if any;
- (2) Every new resident of a Department-operated facility or a community-based residential program, and his or her guardian, if any, is informed upon admission about M.G.L. c. 19C and 115 CMR 9.00 and the right to file a complaint under M.G.L. c. 19C and 115 CMR 9.00;
- (3) Such notification and blank copies of the forms or other means for filing a complaint, request for reconsideration or appeal under M.G.L. c. 19C and/or 115 CMR 9.00 are posted in a prominent place in plain sight in every unit of every facility, at every regional and area office, and at every site where residential supports, employment supports, day supports and site based respite services are provided; and
- (4) Such notification, forms, and copies of M.G.L. c. 19C and 115 CMR 9.00 are available at the facility, area office and site where residential supports, employment supports, day supports and site based respite services and provided upon request by any person at any time.

9.04: Orientation and Training

- (1) Executive directors of provider agencies, regional directors, area directors and facility directors shall provide to all service coordinators and direct care staff working under their supervision an initial and subsequent periodic orientation on the purpose and principal provisions of M.G.L. c. 19C and 115 CMR 9.00.
- (2) Providers shall provide to all individuals they support an initial and subsequent annual training on when and how to file a complaint or obtain assistance under M.G.L. c. 19C and 115 CMR 9.00. Such training shall include use of alternative means of communication where the individual is hearing or speech impaired or unable to communicate without assistance or an interpreter.
- (3) The Department shall provide initial and periodic training to all investigators in investigatory techniques, confidentiality issues and contemporary modes and principles of service delivery. An investigator shall not conduct investigations until he or she has been trained in accordance with 115 CMR 9.04.
- (4) Only persons hired by the Department as investigators may conduct investigations, with the exception of such individuals as may be designated by the commissioner or designee to conduct an investigation. No person hired by the Department as an investigator shall be permitted to undertake any additional job responsibilities not directly related to conducting investigations or preparing investigation reports and recommendations.

9.05: Scope of Responsibilities of the Department's Investigations Division

- (1) The Department's investigation division shall investigate or otherwise determine the merit or facts of any of the following, in accordance with 115 CMR 9.10:
 - (a) Complaints referred/assigned to it by the DPPC pursuant to M.G.L. c. 19C.
 - (b) Any complaint outside the jurisdiction of the DPPC alleging abuse, abuse *per se*, assault, sexual abuse, or financial exploitation of an individual unless another state agency possesses exclusive legal or regulatory authority to investigate.
 - (c) Notwithstanding any other provision to the contrary, the commissioner or designee may direct an investigation to be conducted upon determination an investigation is warranted, as in the best interest of an individual, the public or the Department.
- (2) The senior investigator shall refer a complaint to the regional director or designee for administrative review and resolution where the complaint alleges an incident, condition, or occurrence that is outside the scope 115 CMR 9.05(1) but presents a serious risk of harm to an individual.

9.05: continued

(3) The senior investigator shall refer a complaint directly to the CRT for review and resolution where the complaint alleges an incident, condition, or occurrence that is outside the scope of 115 CMR 9.05(1) and (2) but raises a concern for the individual's health and welfare and warrants review and response by the CRT.

(4) The following shall be considered to be outside the scope of 115 CMR 9.00:

(a) Allegations about the need for or appropriateness of services for an individual that can be addressed through the service planning process in accordance with 115 CMR 6.00: *Eligibility, Individual Support Planning and Appeals*; and,

(b) Allegations about violations of standards for services and supports set forth in 115 CMR 7.00: *Standards for All Services and Supports* that can be addressed through 115 CMR 8.00: *Licensure and Certification of Providers*.

(5) All persons involved in investigating or reviewing complaints shall perform their role in an impartial and objective manner. Any person who believes that they, or any other person involved in investigating or reviewing a complaint, cannot act on a matter impartially or objectively, in fact or appearance, shall disclose such to supervisory staff authorized to take appropriate action, including reassignment of responsibilities to other appropriate persons.

9.06: Filing of Complaint

(1) Any individual or the human rights committee of any provider may file an oral or written complaint by reporting a matter to DPPC.

(2) A Department or provider employee is mandated to and shall immediately file an oral or written complaint with the DPPC when he or she has reasonable cause to believe that a reportable condition exists or an incident or occurrence has occurred that meets the criteria in 115 CMR 9.05(1) through (3). Failure to file shall be grounds for appropriate disciplinary action, up to and including termination.

(3) A Department or provider employee, if asked to do so by an individual, shall assist the individual in making an oral or written complaint to the DPPC or shall direct the individual to an appropriate staff member who shall assist the individual in making an oral or written complaint.

(4) The filing of a complaint with the DPPC in accordance with applicable DPPC procedures fulfills the reporting requirements of M.G.L. c. 19C and 115 CMR 9.00.

9.07: Protective Services

If the senior investigator concludes at any time during the course of the investigation that immediate action is necessary to protect the safety or welfare of an individual involved in the complaint, he or she shall immediately communicate to the regional director or designee, orally and in writing, the nature of the allegations, and the identity of the alleged victim and the alleged abuser (if applicable).

(1) The regional director or designee shall notify the provider who shall be responsible for taking immediate action;

(2) A provider notified of a complaint alleging intentional physical injury of an individual, including any sexual activity between an individual and an employee or volunteer of a provider shall immediately remove the employee or volunteer from all direct contact responsibilities pending resolution or investigation of the complaint.

9.08: Reporting Suspected Criminal Activity or Criminal Charges

If an investigator determines at any time during the course of an investigation that a crime has been committed, the investigator shall consult with the senior investigator and shall notify DPPC.

9.09: Logging and Disposition of Complaint

- (1) Logging. When a complaint is received from DPPC, the senior investigator shall immediately log the complaint and assign it a log number.
- (2) Determination of Disposition.
 - (a) No later than three days after receipt of the complaint, the senior investigator shall determine and set forth in a written disposition letter, whether the complaint shall be:
 1. dismissed;
 2. resolved without investigation;
 3. referred to the regional director or designee for administrative review;
 4. referred directly to the CRT for review;
 5. designated as requiring investigation but deferred pending investigation by outside authorities;
 6. assigned to an investigator for active investigation; or
 7. referred to another state agency for review.
 - (b) A matter complained of may be resolved through a combination of dispositions.
 - (c) The senior investigator shall send a copy of the disposition letter to the regional director and the area director or facility director, as applicable, and shall note the manner of disposition in the public log.
 - (d) Within three days, the regional director or designee shall send the disposition letter to:
 1. the alleged victim and the guardian (unless the guardian is the alleged abuser) or legally authorized representative;
 2. the chair of the human rights committee of the provider agency serving the alleged victim. A copy of the complaint with the redacted names of the complainant and alleged abuser(s) or person(s) complained of, shall also be sent to the chair of the human rights committee;
 3. the executive director or head of the provider agency named in the complaint.
 - (e) Receipt of a disposition letter is presumed to have occurred within three days of the mailing.
- (3) Dismissal. A complaint shall be dismissed where:
 - (a) it is frivolous;
 - (b) the allegations were previously investigated, previously reviewed through an administrative review, or previously reviewed through a direct referral to the CRT, and no new facts or evidence have been identified; or
 - (c) the allegations are not within the scope of 115 CMR 9.05.The disposition letter of a complaint that has been dismissed shall set forth the reasons for the dismissal.
- (4) Resolved Without Investigation. A complaint may be resolved without investigation where:
 - (a) the allegations involve no dispute as to the facts; or,
 - (b) the allegations may be resolved fairly and efficiently within ten days.
- (5) Referral for Administrative Review. The senior investigator shall refer complaints that meet the criteria set forth in 115 CMR 9.05(2) to the regional director or designee for administrative review and resolution under 115 CMR 9.11.
- (6) Referral to the Complaint Resolution Team (CRT). The senior investigator shall refer complaints that meet the criteria set forth in 115 CMR 9.05(3) directly to the CRT responsible for the area office or facility for review and resolution under 115 CMR 9.12.
- (7) Assignment of Investigator for Investigation. The senior investigator shall assign an investigator to complaints that meet the criteria set forth in 115 CMR 9.05(1) and shall identify the investigator in the disposition letter.
 - (a) Change in Disposition. If, after commencing an investigation, the investigator determines that the complaint requires a disposition other than investigation, he or she shall submit a request for a change in disposition to the senior investigator within seven days of the date of the assignment, together with a memorandum supporting the recommended change in disposition. The senior investigator must determine within three days of receiving the request whether a change in disposition is warranted.

9.09: continued

(b) Change in Disposition - Other Matters. If, after commencing an administrative review or a direct review of a complaint by the CRT, information is discovered that suggests the allegations meet the criteria for investigation in 115 CMR 9.05(1), the complaint shall be immediately returned to the senior investigator who shall review the information within 24 hours, and if necessary, assign the matter for investigation.

(8) Deferral of Investigation. If a complaint is being investigated by law enforcement, the senior investigator may defer the civil investigation under CMR 9.05(1) pending completion of the investigation by law enforcement.

(a) The senior investigator is responsible for overseeing collaboration and communication with other investigating authorities to expedite the investigation process and may disclose relevant documents to investigating authorities consistent with applicable law.

(b) Where an investigation has been deferred pending completion of the investigation by law enforcement, the senior investigator may initiate investigation under 115 CMR 9.05(1), if he or she determines that investigation by the Department will not compromise or duplicate the law enforcement investigation and is authorized by the director of investigations after notice to law enforcement.

(c) The provider shall take appropriate action to address the safety of the alleged victim and not engage in any activity that might compromise the investigation by the Department or law enforcement.

(9) Referral to Another Agency. The Department may refer a complaint and any relevant documents or information, consistent with applicable law to another agency where the facts or allegations in the complaint make review by another agency necessary or appropriate.

(10) 19C Investigations. The Department shall not investigate a complaint that DPPC determines it will investigate pursuant to M.G.L. c. 19C.

9.10: Conduct of Investigations

An investigator shall investigate all complaints in accordance with 115 CMR 9.10 and document the results in an investigation report.

(1) Interviews.

(a) The investigator shall hold a private face-to-face interview to discuss the complaint with the following persons, preferably but not necessarily, in the following order:

1. the alleged victim; however, the investigator may conclude that under the circumstances an interview of the alleged victim would cause further harm and therefore shall not occur; and
2. the alleged abuser(s).

(b) The investigator shall interview the following persons:

1. the complainant, unless the complainant is the alleged victim and the investigator determines that an interview would cause harm to the alleged victim and therefore should not occur;
2. eye witnesses to the allegations in the complaint; and,
3. other persons the investigator considers appropriate.

(c) Prior to an interview, the investigator shall inform the person to be interviewed, of the following:

1. the existence of the complaint, the general nature of the allegations and his or her role as the investigator; provided, however, the investigator shall not inform the person to be interviewed of the identity of the complainant;
2. the person may be represented by one of the following: an attorney, legal advocate, union representative, or competent person of his or her own choice who is 18 years of age or older and who is not otherwise involved in the investigation;
3. the person has an obligation to cooperate in the investigation and that failure to cooperate, where applicable, may result in disciplinary action, including termination, or in departmental action adverse to the provider.

9.10: continued

(d) Whenever a person refuses to be interviewed, the investigator shall record the refusal in the investigation report. If the investigator does not interview the alleged victim for reason(s) other than refusal to be interviewed, the investigator shall record in the investigation report the reason(s) why such interview did not occur, including the basis for any determination that the interview would cause harm.

(2) Review of Pertinent Documents. As part of the investigation, the investigator shall review and shall have the right to obtain copies of all pertinent documents, including, but not limited to:

- (a) medical and clinical records pertaining to an injury;
- (b) incident reports;
- (c) the case record of an individual involved in the complaint;
- (d) restraint forms completed in connection with the complaint under investigation;
- (e) personnel records;
- (f) policies, procedures or guidelines of the Department and the provider involved or employer of the person complained of;
- (g) photographs of any injury or property damage;
- (h) previous related cases investigated or reviewed pursuant to M.G.L. c. 19C or 115 CMR 9.00; and,
- (i) any documents determined by the investigator to be relevant.

Providers shall make all records available to the investigator upon request.

(3) Site Visit. The investigator may visit and inspect the site of the incident, occurrence or condition as a means of gathering additional evidence and gaining a better understanding of the context of the allegations.

(4) Additional Inquiries. The investigator may employ such other investigatory techniques as determined appropriate in his or her professional judgment under the circumstances, including consultation with clinical experts.

(5) Request for Extension. The senior investigator or investigator may submit a request for an extension of a time limit set forth in 115 CMR 9.00 upon a showing of necessity and that the delay will not pose a threat to the safety of the individual involved. A staff investigator shall submit such request to the senior investigator; a senior investigator shall submit such request to the director of investigations or designee. A request for an extension shall be in writing, explain why an extension is needed, and propose a new time limit which does not unreasonably postpone a final resolution of the matter. If approved, the extension request shall be forwarded to the director of investigations by the senior investigator or designee. The senior investigator or designee shall then send a notice of extension to the parties.

(6) DPPC Investigations. The investigations division shall adhere to the regulations and procedures of the DPPC when investigating complaints assigned to it by the DPPC pursuant to M.G.L. c. 19C.

9.11: Administrative Review

An administrative review shall be conducted by the regional director or designee for all complaints referred pursuant to 115 CMR 9.05(2) and the results documented in an administrative review report which will form the basis for the development of a resolution letter by the CRT.

(1) Administrative Review. The regional director or designee may conduct interviews and review documents, including but not limited to, incident reports, restraint reports, and medical reports related to the incident, condition or occurrence reported in the complaint and shall prepare an administrative review report.

(2) Administrative Review Report. After conducting the review, the regional director or his or her designee shall issue a report of his or her findings and provide the report to the CRT coordinator within 15 days.

9.11: continued

(3) Request for Extension. The regional director or designee may submit a request for an extension of a time limit set forth in 115 CMR 9.00 to the deputy commissioner upon a showing of necessity and that the delay will not pose a threat to the safety or security of the individual involved. If approved, the regional director or designee shall send a notice of extension to the parties.

9.12: Complaint Resolution Team

All complaints resolved pursuant to 115 CMR 9.00, excluding complaints that are dismissed, shall be reviewed by a Complaint Resolution Team (CRT) upon receipt of a decision letter, or receipt of an administrative review report, or a direct referral of the complaint to the CRT.

(a) Purpose. All area offices and facilities shall have a CRT. The purpose of the CRT is to review complaints in accordance with 115 CMR 9.05(3) and to develop action plans and resolution letters.

(b) Composition. Each CRT shall consist of the following:

1. Area or facility director or designee;
2. CRT coordinator
3. A minimum of one citizen member; and
4. Additional members and consultants as deemed appropriate by the area or facility director.

(c) CRT Chair. The area or facility director or designee shall act as the chair of the CRT. The chair will be the final authority for CRT decisions.

(d) Meetings. The CRT shall meet regularly to formulate action plans and resolution letters on complaints filed pursuant to 115 CMR 9.00. The meetings shall be conducted in a manner and place that encourage fair and honest discussion and consideration of the complaint, investigation or administrative review report, and the proposed resolution.

(e) Confidentiality. CRT members shall execute non-disclosure agreements and shall abide by applicable statutes and regulations to maintain the confidentiality of all complaints or other information or documents that come before them for review.

(f) CRT Member Training. All candidates for CRT membership shall complete Department authorized training regarding the function and responsibility of the CRT and their role on the CRT. Candidates must complete the training before they can be approved by the Department to serve on the CRT.

(g) Citizen Member Status. Citizen members serving on a CRT shall have special state employee status as defined in M.G.L. c. 268A.

9.13: Issuance of Decision Letter

(1) Time Line for Issuance of Decision Letter.

(a) For complaints concerning individuals, staff, or conditions at a Department operated Intermediate Care Facility for Individuals with Intellectual Disability, the results of all investigations must be reported to the regional director and facility director within five days of the incident, occurrence, or condition, in accordance with the requirements of Title XIX of the Social Security Act.

(b) For a complaint with no dispute to the facts, the decision letter shall be delivered to the regional director or designee within ten days after receipt of the complaint.

(c) For a complaint resolved fairly and efficiently, the decision letter shall be delivered to the regional director or designee within ten days from receipt of the complaint.

(d) For any other complaint, except those deferred to law enforcement, the results of the investigation shall be reported and a decision letter delivered to the regional director or designee within 45 days of the investigator's assignment.

(e) For any complaint deferred to law enforcement, the results of the investigation shall be reported and the decision letter delivered to the regional director or designee within 45 days from the date the investigator begins the civil investigation.

(f) For investigations conducted by the Department under M.G.L. c. 19C and 118 CMR: *Disabled Persons Protection Commission*, the initial responses must be reported to the DPPC within 24 hours of the investigator's assignment if the case has been determined to be an emergency by DPPC, or within ten calendar days of the investigator's assignment for non-emergency cases.

9.13: continued

(2) Preparation of Decision Letter.(a) The Decision Letter for an Investigated Complaint.

1. Upon completion of an investigation, the investigator shall prepare and deliver to the senior investigator an investigation report, which shall, when adopted as the official investigation report, serve as the basis for the decision letter.

a. The investigation report shall describe the investigation and contain the investigator's findings of fact and conclusions.

b. The senior investigator shall review the investigation report for thoroughness, accuracy, and quality.

c. The senior investigator's signature on the investigation report signifies that the report has been adopted as the Department's investigation report.

d. The senior investigator may conclude that an investigation report prepared as part of a DPPC investigation or as part of an investigation by other outside authorities thoroughly and accurately addresses all the issues raised by the allegations and may be adopted as the Department's own official investigation report.

2. The senior investigator shall prepare a decision letter that summarizes the evidence considered by the investigator and the findings of facts and conclusions contained in the official investigation report.

3. The decision letter is separate and apart from any letter or report required by M.G.L. c. 19C to be forwarded to the DPPC.

(b) The Decision Letter for a Complaint Resolved Without Investigation.

1. No Dispute to the Facts. The senior investigator shall prepare a decision letter that summarizes the complaint, the undisputed facts, and the senior investigator's conclusions.

2. Resolved Fairly and Efficiently. The senior investigator shall prepare a decision letter that summarizes the complaint, the circumstances that the senior investigator relied on to determine that the complaint can be resolved fairly and efficiently without an investigation, and the senior investigator's conclusions.

(c) Investigation of a Medico-legal Death. In the case of a medico-legal death, the director of investigations or designee shall submit a copy of the official investigation report and the signed and dated decision letter to the DDS general counsel and the commissioner.

9.14: Issuance and Implementation of Action Plan or Resolution Letter

(1) Complaint Resolution Team Coordinator. The regional director or designee shall designate the CRT coordinator as the person responsible for preparing and overseeing implementation of an action plan or resolution letter.

(2) Assignment to CRT Coordinator. Within three days of receipt of a decision letter, an administrative review report, or a disposition letter to refer the complaint directly to the CRT, the regional director or designee shall assign the matter to the CRT coordinator.

(3) Timeline for Development of Action Plan or Resolution Letter. Within 30 days of an assignment to the CRT coordinator, the CRT shall develop the action plan or resolution letter.

(a) For a complaint that was investigated by the Department or the DPPC or resolved without investigation under 115 CMR 9.09(4), the CRT shall prepare an action plan that shall:

1. state the specific actions to be taken in response to the decision letter, the date(s) for the action(s) to be implemented, and the person(s) responsible for implementation;

2. notify the alleged victim, his or her guardian or legally authorized representative if applicable, and the alleged abuser(s) of their right of appeal under 115 CMR 9.17 or to petition for review under 118 CMR: *Disabled Persons Protection Commission*.

(b) For a complaint addressed through an administrative review, the CRT shall prepare a resolution letter that shall:

1. state the specific action(s) to be taken, if any, in response to the administrative review report, the date(s) for the action(s) to be implemented and the person(s) responsible for implementation;

2. notify the alleged victim, his or her guardian or legally authorized representative if applicable, and the person complained of, of their right to request reconsideration pursuant to 115 CMR 9.14(5).

9.14: continued

(c) For a complaint referred directly to the CRT, the CRT shall prepare a resolution letter that shall:

1. state the specific actions to be taken, if any, to address the complaint, the date(s) for the action(s) to be implemented and the person(s) responsible for implementation;
2. notify the alleged victim, his or her guardian or legally authorized representative if applicable, and the person complained of, of their right to request reconsideration pursuant to 115 CMR 9.14(5).

(4) Distribution of Action Plan and Decision Letter or Resolution Letter.

(a) The CRT coordinator shall within three days of completing the action plan or resolution letter, send to:

1. the parties:
 - a. the decision letter, action plan and notice of right to appeal, as applicable, for a complaint that was investigated or resolved in accordance with 115 CMR 9.09(4); or
 - b. the resolution letter and notice of right to request reconsideration for a complaint addressed through an administrative review or reviewed directly by the CRT.
2. the service coordinator assigned to the individual, the director of investigations, the director of licensure and certification, the regional director, and the area or facility director:
 - a. the decision letter and action plan for a complaint that was investigated or resolved in accordance with 115 CMR 9.09(4); or
 - b. the resolution letter for a complaint addressed through an administrative review or reviewed directly by the CRT.
3. the senior investigator:
 - a. the decision letter and action plan for a complaint that was investigated or resolved in accordance with 115 CMR 9.09(4); or
 - b. the administrative review report and resolution letter for a complaint addressed through an administrative review or the resolution letter for a complaint reviewed directly by the CRT.

(b) Receipt of the decision letter and action plan or resolution letter will be presumed to have occurred within three days of mailing.

(c) The senior investigator shall provide, within ten days of receipt of a written request from the alleged victim, his or her guardian or legally authorized representative, or from the alleged abuser, a copy of the official investigation report with identifying information redacted in accordance with M.G.L. c. 66A and other applicable laws and regulations.

(5) Request for Reconsideration. The alleged victim, his or her guardian or legally authorized representative, or a person complained of, may within five days of receipt of the resolution letter, file a written request for reconsideration with the regional director that specifies how the resolution letter is deficient. The regional director or designee shall consider the deficiencies alleged and issue a reconsideration decision that is final. The regional director or designee shall send the reconsideration decision and a copy of the request for reconsideration to the senior investigator, the CRT coordinator, and the parties within 30 days of receipt of the request for reconsideration.

(6) Implementation of Action Plan or Resolution Letter. Any person or provider required to implement corrective action(s) set forth in the action plan or resolution letter shall provide documentation to the CRT coordinator as soon as the corrective action(s) have been implemented which the CRT coordinator shall report in writing to the regional director, the senior investigator, and the CRT.

(7) Compliance. The regional director or designee shall be responsible for ensuring that action plans and resolution letters are implemented in a timely manner.

(8) Official Completion Date. For all purposes relevant to 115 CMR 9.00, the official completion date of an investigation shall be the date when the action plan is issued.

9.15: Victim/Witness Support

The regional director or designee shall take immediate action as he or she deems warranted to protect the health and safety of any individual, complainant or witness during the pendency of an investigation or review of a complaint in accordance with 115 CMR 9.05(2) and (3). Any action taken shall be documented and the documentation forwarded to the senior investigator for inclusion in the case record.

9.16: Obstruction or Retaliation

(1) Termination of Employment. Any department or provider employee that obstructs an investigation conducted under M.G.L. c. 19C or 115 CMR 9.00, or retaliates against any person for making a complaint, complying with M.G.L. c. 19C or 115 CMR 9.00 or cooperating with an investigation, shall be subject to discipline, up to and including dismissal.

(2) Revocation of Contract, License, or Other Action. Any provider that obstructs an investigation conducted under M.G.L. c. 19C or 115 CMR 9.00, or retaliates against any person for making a complaint, complying with M.G.L. c. 19C or 115 CMR 9.00 or cooperating with an investigation, shall be subject to adverse action including, without limitation, termination of the Department's contract with the provider and revocation of the provider's license.

9.17: Appeal

(1) Scope. 115 CMR 9.17 governs the process for the appeal of a disposition of dismissed under 115 CMR 9.09(2)(a)1. and the appeal of a decision letter and/or action plan issued by the Department.

(2) Grounds for Appeal.

(a) The alleged victim, his or her guardian or legally authorized representative, if any, or the alleged abuser may file an appeal on any of the following grounds:

1. the complaint was improperly dismissed;
2. the investigation was not conducted in accordance with 115 CMR 9.10;
3. the findings and conclusions in the decision letter are not supported by the preponderance of the evidence;
4. the recommendations in the action plan are not supported by the findings or conclusions in the decision letter; or,
5. the action plan does not sufficiently assure the safety, dignity or welfare of the alleged victim or other individual(s) involved in the complaint.

(b) An alleged abuser may not appeal a decision letter or action plan if he or she exercises the right to file a grievance as described in 115 CMR 9.17(4).

(3) Appeal Procedure.

(a) Notice of Appeal.

1. The appellant shall file a notice of appeal with the commissioner within ten days of receipt of a notice of disposition of dismissal or a decision letter and action plan.
2. A notice of appeal shall:
 - a. be in writing; and
 - b. set forth with specificity the ground(s) for appeal available under 115 CMR 9.17(2);
3. A notice of appeal will be denied if filed more than 30 days after receipt of the notice of disposition of dismissal, or the decision letter and action plan.
4. The Department shall notify in writing the alleged victim, his or her guardian or legally authorized representative if applicable, and the alleged abuser(s) that an appeal has been filed.

(b) Action on Notice of Appeal.

1. The commissioner shall issue a written decision that will include a statement of the appeal and the reasons underlying the decision. The commissioner's decision shall:
 - a. affirm the disposition of dismissal, or the decision letter and action plan; or,
 - b. order the amendment of the disposition of dismissal, or the decision letter and/or action plan if the appeal is found to be meritorious; or
 - c. remand the matter to the investigations division for further investigation.

9.17: continued

2. In the case of a remand, the commissioner shall:
 - a. direct that an addendum to the decision letter be issued within 15 days; and,
 - b. if appropriate, direct that an addendum to the action plan be issued; and,
 - c. following receipt of the addendum, issue the decision letter and/or action plan.
 3. Dismiss the appeal when:
 - a. the notice of appeal is deficient.
 - b. the appeal identifies substantially the same appeal as one received and reviewed or is under review by the DPPC and pertains to the same or a substantially similar complaint.
 - c. the appellant has filed a grievance for a hearing as described in 115 CMR 9.17(4).
- (c) The Department shall distribute copies of the appeal decision to the parties, the regional director, the area director or facility director, and the senior investigator.
- (d) All corrective actions in an action plan and any protective services required shall be implemented pending appeal.
- (e) An appeal decision issued by the commissioner shall be the final and conclusive determination on all matters raised or that could be raised on appeal in each case.

(4) Filing of a Grievance. Any employee who is a party aggrieved by the manner of disposition of a complaint, by the decision letter or by the action plan, and who has a right to a hearing under a collective bargaining agreement or civil service law, may grieve the disposition, decision letter or action plan through the collective bargaining or civil service process. Where the employee elects such procedures, they shall be the exclusive procedures for resolving the employee's grievance. The invocation of such procedures shall not alter the Department's responsibility under 115 CMR 9.00 to respond to, investigate, and make decisions concerning complaints and appeals initiated by or concerning individuals it serves.

9.18: Role of Human Rights Committee

- (1) Responsibilities for Individuals Who Require Assistance.
 - (a) The human rights committee shall assist an individual involved in a complaint to ensure that his or her rights are adequately protected. Such assistance may include arrangements for interpreters, representation by an independent attorney or advocate, and assistive and supportive devices and technologies. A list of attorneys or advocates shall be maintained by the human rights committee and made available to an individual upon request.
 - (b) Where an individual is unable to obtain representation or an advocate, the human rights committee may request the assistance of the service coordinator in ascertaining the capability of the individual and seeking an attorney or advocate to represent the individual.
 - (c) The human rights committee shall assist an individual in filing a complaint upon request.
- (2) Party to Complaints or Proceedings. The human rights committee of a provider shall be a party to all complaints involving individuals served by the provider, and shall receive copies of the documents distributed to the parties as provided in 115 CMR 9.00.
- (3) Human Rights Committees shall treat as confidential all information and documents which they receive in their capacity as a party.

9.19: Records, Forms and Notices

- (1) Case Record.
 - (a) Contents of Case Record. The investigations division shall keep a case record for each complaint received by the Department. The case record shall include:
 1. the complaint and the public log number assigned;
 2. the disposition letter;
 3. the names of all persons interviewed and the dates of the interviews;
 4. any recorded or written statements;
 5. a summary of documents reviewed;
 6. a copy of the official investigation report or administrative review report; and any such report shall be admissible in any employee disciplinary hearing related to the investigation;

9.19: continued

7. Copies of notes or memoranda generated by the investigator to the extent such are maintained;
 8. any photographs and any other physical evidence;
 9. the decision letter;
 10. the action plan or resolution letter;
 11. documentation of corrective action or protective services implemented; and
 12. documents relating to any appeal or reconsideration.
- (b) Confidentiality. Any person whose name is contained in the case record shall have access to, and may have a copy of that portion of the record in which his or her name is mentioned, consistent with the Fair Information Practices Act, M.G.L. c. 66A, § 2(i). Access to personal identifying information or protected health information contained in the case record shall comply with the requirements of M.G.L. c. 123B, § 17; 115 CMR 4.05: *Confidentiality of Records* and 4.06: *Access to Records and Record Privacy*; and the Health Insurance Portability and Accountability Act of 1996.
1. Union representatives or legal representatives (in their representative capacity) may obtain a redacted copy of the official investigation report for a scheduled disciplinary, grievance, or an appeal upon presentation of written authorization from the employee for release.
 2. The commissioner or designee may determine that publicity accorded an investigation is so extensive that mere removal of identifying data would be insufficient to protect existing privacy interests, or that disclosure would probably so prejudice the possibility of an effective investigation by law enforcement that such disclosure would not be in the public interest. In such event, the commissioner or designee shall file in the case record a statement of this determination, with a specification of the document(s) to be withheld as an exemption to the definition of public records set forth in M.G.L. c. 4, § 7, cl. 26, the conditions of withholding and a brief statement of reasons. Such withholding shall be governed by the Fair Information Practices Act, M.G.L. c. 66A, § 2(i) and other applicable law.
 3. The identity of a complainant shall not be disclosed by any provider with knowledge of such identity, or by the Department, except to representatives of investigating state agencies (including the Department), the district attorney's office, or other law enforcement agencies as necessary for investigation, review, and monitoring of the actions taken in response to the complaint.
- (c) Custody. The senior investigator shall be the custodian of the case record, provided that the investigator shall have access to the case record while the complaint is under investigation, and the commissioner or designee shall have access to the case record while there is an appeal of the decision letter or action plan pending.

(2) Public Log. Each senior investigator shall, for his or her region, maintain an electronic copy of the public log, of medico-legal deaths, and all complaints filed pursuant to M.G.L. c. 19C and 115 CMR 9.00, in such form as the commissioner may from time to time prescribe.

- (a) The log shall not include personal identifiers, and shall be a public record, available upon request for inspection and copying as provided in M.G.L. c. 66, § 10.
- (b) The log shall identify the manner of disposition of each complaint.
- (c) The log shall include a statement as to whether the complaint was substantiated, and where applicable, whether an appeal or request for reconsideration was filed, and the outcome of the appeal or request for reconsideration.

REGULATORY AUTHORITY

115 CMR 9.00: M.G.L. c. 19B, §§ 1, 12, and 14; M.G.L. c. 123B, § 2 and M.G.L.c. 19C

(PAGES 125 AND 126 ARE RESERVED FOR FUTURE USE.)