

118 CMR 3.00: REPORTERS

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3.01: Scope and Purpose

118 CMR 3.00 establishes the requirements for reporting abuse and/or death of persons with disabilities to the Commission, the penalties for not reporting and the protections afforded to reporters and participants in investigations conducted pursuant to M.G.L. c. 19C.

3.02: Contents of Reports of Abuse

Each oral and written report of abuse and/or death of a person with a disability made to the Commission shall contain information as deemed appropriate and relevant by the Commission.

3.03: Mandated Reporters

(1) A mandated reporter as defined by M.G.L. c. 19C, § 1 shall immediately make to the Commission's Hotline an oral report of suspected abuse when the mandated reporter has reasonable cause to believe that a reportable condition exists.

(2) A mandated reporter is required to report suspected abuse without regard to professional privileges established by statute, code of ethics or court decision. However, no mandate to report exists after a person with a disability invokes a privilege established by law or professional code and thereby requests that a report not be made. The invocation of such a privilege by a person with a disability shall convert a mandated reporter to a non-mandated reporter.

(3) In addition to making an oral report to the Commission's Hotline, a mandated reporter shall also send to the Commission a written report regarding the existence of a reportable condition as prescribed by M.G.L. c. 19C, § 10.

(4) In all events in which the allegation being reported is a death which the mandated reporter has reasonable cause to believe was the result of a reportable condition, the mandated reporter shall file a written report with the Commission, the District Attorney for the county in which the death occurred, and the Office of the Chief Medical Examiner.

(5) If an investigator designated by the Commission has reasonable cause to believe that a person with a disability has died as a result of abuse, the investigator shall immediately report said death to the Commission, the Attorney General, the District Attorney for the county in which such death occurred, and the Office of the Chief Medical Examiner.

(6) It is the personal responsibility of each mandated reporter to ensure that he or she makes a report to the Commission when he or she has reasonable cause to believe that a reportable condition exists based upon the facts known to him or her. However, when more than one mandated reporter is aware of the same situation of suspected abuse, one mandated reporter may report on behalf of all the mandated reporters by making a report which contains the names of all the mandated reporters. If such a report by multiple reporters is received by the Commission, that single report shall satisfy the reporting requirement for all the named mandated reporters. It shall be the responsibility of each of the mandated reporters to ensure that such a report is actually made on his or her behalf in order to satisfy his or her responsibility to report pursuant to M.G.L. c. 19C, § 10.

3.04: Non-mandated Reporters

Any person, who is not a mandated reporter and has reasonable cause to believe that a reportable condition may exist, may make a report to the Commission pursuant to the requirements contained in 118 CMR. Said reporter shall be referred to in 118 CMR as a "non-mandated reporter".

3.05: Reports Involving Deaths of Individuals with Disabilities Whose Caretaker Was a State Agency, an Agency of Any Subdivision of the Commonwealth or a Private Entity Contracting with or Licensed by the Commonwealth

(1) Upon the death of a person with a disability whose caretaker was a state agency, an agency of any subdivision of the Commonwealth or a private entity contracting with or licensed by an agency of the Commonwealth, even if there is no suspicion that the death is the result of abuse, the caretaker agency is required to immediately provide an oral report of said death to the Commission's Hotline, and to local law enforcement officials and to provide within 24 hours a written report to the Commission and to local law enforcement officials.

(2) Each oral and written report of a death made to the Commission shall contain information as deemed appropriate and relevant by the Commission.

3.06: Reporter Immunity

(1) A mandated reporter shall not be liable in any civil or criminal action by reason of having made a report under M.G.L. c. 19C; provided, however, that if said report is a false report, the protections provided by M.G.L. c. 19C, §§ 10 and 11 shall not be available to the mandated reporter.

(2) A non-mandated reporter shall not be liable in any civil or criminal action by reason of having made a report under M.G.L. c. 19C; provided, however, that if said report is a false report, the protections provided by M.G.L. c. 19C, §§ 10 and 11 shall not be available to the non-mandated reporter.

(3) In no event shall a person who abuses a person with a disability be exempt from civil or criminal liability for such abuse by reason of his or her reporting such abuse.

3.07: Penalties for Failure of a Mandated Reporter to Report

(1) Upon completion of an investigation and determination by the Commission that:
(a) a mandated reporter has failed to report either a reportable condition or a death when required; and
(b) the person with a disability has not knowingly invoked a privilege in accordance with M.G.L. c. 19C, § 10.

(2) The Commission may cause a fine of up to \$1,000.00 to be imposed upon a mandated reporter who fails to comply with the requirements of M.G.L. c. 19C, § 10.

3.08: Penalties for Retaliation against Reporters

(1) Any person who is discharged, disciplined or in any manner discriminated against for filing a report with or providing information to the Commission or to any agency conducting an investigation under M.G.L. c. 19C shall have the right to have the Commission review and, at its discretion, further investigate an allegation of retaliation.

(2) Upon the completion of an investigation and a determination by a preponderance of the evidence by the Commission that the alleged retaliation occurred as a result of the complainant's filing a report with or providing information during an investigation conducted pursuant to M.G.L. c. 19C, the Commission, at its discretion, may:

3.08: continued

(a) request from the Attorney General appointment of Commission's counsel as a Special Assistant Attorney General to prosecute such cases, and if so appointed, file an application for a complaint at the state District Court for the judicial district in which the alleged violation of M.G.L. c. 19C, § 11 occurred; or

(b) refer the matter for prosecution to the Attorney General, or the District Attorney for the county where the alleged violation occurred. If the Commission reports a case to the Attorney General or to a District Attorney, consistent with the provisions of M.G.L. c. 19C, § 3, a copy of the Commission's investigation report and all relevant information in the possession of the Commission shall be sent to the Attorney General or to the appropriate District Attorney.

(3) When an individual notifies the Commission of alleged retaliation or provides the Commission with information during the course of an investigation, all information that the individual provides to the Commission, including his or her own identity, shall be maintained as confidential information. The Commission shall not release such information, except as provided in 118 CMR, M.G.L. c. 19C, § 3, c. 66 and c. 66A.

REGULATORY AUTHORITY

118 CMR 3.00: M.G.L. c. 19C, §§ 3(b), 5(4), 10, 11, 13 and 14; c. 66 and c. 66A.