

104 CMR 29.00: APPLICATION FOR DMH SERVICES, REFERRAL, SERVICE PLANNING AND APPEALS

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29.01: Legal Authority, Scope and Purpose

- (1) Legal Authority. 104 CMR 29.00 is promulgated under authority of M.G.L. c. 19, §§1 and 16, and M.G.L. c. 123, § 2.
- (2) Scope. 104 CMR 29.00 applies to the application for and the provision of DMH services in community programs and services that are contracted for or operated by the Department.
- (3) Purpose. 104 CMR 29.00 is issued to provide a framework by which DMH services are provided in the community to adults with serious and long term mental illness and children and adolescents with serious emotional disturbance.

29.02: Definitions

Area Director means the Area Director with responsibility for Department activities in the community where the individual or, in the case of a minor, where his or her legally authorized representative, resides.

Area Medical Director means the senior psychiatrist with clinical oversight of Department activities in the community where the individual or, in the case of a minor, where his or her legally authorized representative, resides.

Case Management means a service operated by the Department, which is performed in accordance with the provisions of 104 CMR 29.00. The scope of Case Management is set forth at 104 CMR 29.05.

Client means an individual whose application for DMH services has been approved and who is enrolled in a DMH service.

DMH means Department of Mental Health.

DMH Community Services means community-based services contracted for or operated by the Department, but which do not include: short term services provided pursuant to 104 CMR 29.04(1)(g), outpatient clinic services, court evaluations, or acute mental health services, such as crisis intervention or emergency screening.

DMH Services means DMH Community Services and/or Case Management.

29.03: General Provisions

- (1) The Department is responsible for providing or arranging for DMH services to adults with serious and long term mental illness and children and adolescents with serious emotional disturbance who are determined to meet clinical criteria and to need DMH services.
- (2) To receive a DMH service an individual must meet the clinical criteria set forth in 104 CMR 29.04(2) and be determined to need a DMH service in accordance with 104 CMR 29.04(3); to receive a DMH community service, the Department must have the available capacity to provide the DMH community service.
- (3) An individual requesting DMH services from the Department shall be informed:
 - (a) that provision of DMH services is contingent upon the availability of services and funding; and of the
 - (b) need to apply and be approved for DMH services;
 - (c) authority of the Department to require necessary and relevant information about the individual's needs and resources, including access to entitlements, insurance and other services;
 - (d) individual's right to participate in DMH services planning activities as set forth in 104 CMR 29.06;
 - (e) authority of the Department or its providers to charge for and, if applicable, adjust charges for services pursuant to 104 CMR 30.04 and for room or room and board pursuant to 104 CMR 30.06;
 - (f) right to appeal:
 1. a denial of an application for DMH services based on clinical criteria or a determination that an individual does not have a need for DMH services in accordance with 104 CMR 29.16(3); and
 2. a DMH services planning activity or implementation decision as included in an individual service plan or individualized action plan in accordance with 104 CMR 29.16(4); and
 - (g) authority of the Department to maintain the name of the individual and other personal information in a confidential record keeping system, including by electronic means.
- (4) All information given to individuals pertaining to the application and DMH services planning activities pursuant to 104 CMR 29.00, including notifications, comprehensive assessment of needs, clinical and other assessments, individual service plans and individualized action plans shall be conveyed or written in language that is easy to understand, and to the extent practicable, in the individual's preferred language.
- (5) Computation of Time. Unless otherwise specified, all computation of days within 104 CMR 29.00 shall be in accordance with the following:
 - (a) when the time period is less than seven days, Saturdays, Sundays, and legal holidays are not counted;
 - (b) when the time period is seven days or longer, the time is counted in calendar days, except when the last day is a Saturday, Sunday, or legal holiday, in which case the final day counted is the next business day;
 - (c) the day on which action or event is initiated is not counted.

29.04: Application for DMH Services; Clinical Criteria and Determination of Need

- (1) Application for DMH Services.
 - (a) An application for DMH services for an individual shall be submitted to the Department office with responsibility for the community where the individual or, in the case of a minor, where his or her legally authorized representative, resides.
 - (b) An application may be submitted by:
 1. An individual or his or her legally authorized representative. An individual may be assisted by another person in completing the application.
 2. A facility or program on behalf of an individual:
 - a. if the individual, or his or her legally authorized representative, after being notified, does not object to the submission of an application; or
 - b. if the facility or program believes an individual lacks the capacity to apply for services and has filed a petition with the Probate and Family Court for guardianship for the individual.

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- (c) An application shall include the following:
 1. a completed application form;
 2. supporting documentation of psychiatric evaluations and clinical records that are available to the individual. The individual or his or her legally authorized representative, may be asked to authorize the Department to obtain additional information which it deems necessary to support the application.
 - (d) The Department may, at its discretion, require a personal interview and/or a clinical evaluation of the individual to gather additional information to support the application.
 - (e) Time frame for actions to be taken on an application shall be:
 1. within 20 days of receipt of the completed application, including any supporting documentation requested by the Department, the Area Director or designee shall determine whether the individual meets clinical criteria set forth in 104 CMR 29.04(2).
 2. within 20 days of an individual being determined to meet clinical criteria for DMH services as set forth in 104 CMR 29.04(2), the Area Director or designee shall determine whether the individual needs DMH services as set forth in 104 CMR 29.04(3).
 3. if within 90 days of receipt of the application, any supporting documentation, personal interviews and/or clinical evaluations have not been received or completed, the Area Director or designee shall make a determination on the application based upon such information as is then available. The Area Director or designee may extend this time period for good cause.
 - (f) The Department may redetermine whether a client continues to meet the criteria for DMH Services pursuant to 104 CMR 29.04(2) and (3) annually or when a client's circumstances have changed.
 - (g) If during the application process the Area Director or designee determines that the individual is in need of short-term services, the Area Director or designee may authorize such services for up to 60 days. During this period, the individual's application shall be considered "pending". Provision of such services does not indicate whether an application will be approved, and shall not be subject to appeal pursuant to 104 CMR 29.16.
- (2) Clinical Criteria for DMH Services.
- (a) To meet the clinical criteria to receive DMH services, an adult must have a mental illness that:
 1. includes a substantial disorder of thought, mood, perception, which grossly impairs judgment, behavior, capacity to recognize reality or the ability to meet the ordinary demands of life; and
 2. is the primary cause of a functional impairment that substantially interferes with or limits the performance of one or more major life activities, and is expected to do so in the succeeding year; and
 3. meets diagnostic criteria specified within the *Diagnostic and Statistical Manual of Mental Disorders*, (4th ed., text revision) American Psychiatric Association, Washington, DC (2000), which indicates that the individual has a serious, long term mental illness that is not based on symptoms primarily caused by:
 - a. developmental disorders usually first diagnosed in infancy, childhood or adolescence, such as mental retardation or pervasive developmental disorders; or
 - b. cognitive disorders, including delirium, dementia or amnesia; or
 - c. mental disorders due to a general medical condition not elsewhere classified; or
 - d. substance-related disorders.
 - (b) To meet the clinical criteria to receive DMH services, a child or adolescent must be younger than 19 years old at the time of application and have a serious emotional disturbance that:
 1. has lasted, or is expected to last, at least one year; and
 2. has resulted in functional impairment that substantially interferes with or limits the child's adolescent's role or functioning in family, school or community activities; and
 3. meets diagnostic criteria specified within the *Diagnostic and Statistical Manual of Mental Disorders*, (4th ed., text revision) American Psychiatric Association, Washington, DC (2000), but is not solely within one or more of the following categories:
 - a. developmental disorders usually first diagnosed in infancy, childhood or adolescence, such as mental retardation or pervasive developmental disorders; or
 - b. cognitive disorders, including delirium, dementia or amnesia; or
 - c. mental disorders due to a general medical condition not elsewhere classified; or
 - d. substance-related disorders.

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(c) Result of Determination Relative to Clinical Criteria.

1. If an individual is found to meet the clinical criteria for DMH services as set forth in 104 CMR 29.04(2), then the Area Director or designee must determine whether the individual needs DMH services as provided in 104 CMR 29.04(3).

2. If an individual does not meet the clinical criteria set forth in 104 CMR 29.04(2), a notice denying the application for DMH services will be sent to the individual and his or her legally authorized representative and, if appropriate, to the facility or program that submitted the application in accordance with 104 CMR 29.04(1)(b)2. The notice shall:

- a. set forth the reasons for the denial;
- b. inform the individual and his or her legally authorized representative of the right to appeal the denial of the application for DMH services based on clinical criteria pursuant to 104 CMR 29.16(3); and
- c. inform the individual and his or her legally authorized representative of other community services that may be available to meet his or her needs.

If after reasonable efforts, neither the individual nor his or her legally authorized representative can be located, the denial shall be noted in the individual's application file and no further action will be required.

(3) Determination of Need for DMH Services. The determination of whether an individual who has been found to meet the clinical criteria for DMH services as set forth in 104 CMR 29.04(2) needs DMH services will be based on the following:

- (a) contact with the applicant and his or her legally authorized representative to review the individual's request for services and his or her current status;
- (b) determination of whether the individual's needs can be met by a DMH service;
- (c) assessment of the individual's current medical entitlements and insurance that allow for provision of appropriate services in the community; and
- (d) assessment of the availability of appropriate services from other public or private entities.

(4) Result of Determination of Need for DMH Services.

(a) If it is determined that the individual needs DMH Services, and that there is existing capacity in an appropriate service, the application will be approved. The Area Director or designee will notify the individual and his or her legally authorized representative, and, if appropriate, the facility or program which submitted the application on the individual's behalf pursuant to 104 CMR 29.04(1)(b)2. The notice shall:

1. state that the application has been approved;
2. identify the DMH services identified as needed; and
3. offer the individual a referral to such appropriate service(s) as are available.

(b) If it is determined that an individual needs DMH services, but there is no capacity in such service(s), the Area Director or designee will so notify the individual and his or her legally authorized representative, and, if appropriate, the facility or program which submitted the application on the individual's behalf pursuant to 104 CMR 29.04(1)(b)2.

1. The Area Director or designee will periodically contact the individual or his or her legally authorized representative regarding the individual's status and continued need for DMH service(s). At such time that the DMH service(s) becomes available, the individual will be offered a referral to such service(s).

2. If the individual or his or her legally authorized representative indicates that the individual no longer needs or wants DMH services, a notice will be sent to the individual and his or her legally authorized representative that the application is considered withdrawn.

3. If after reasonable efforts, neither the individual nor his or her legally authorized representative can be located, the application will be considered withdrawn.

(c) Decisions regarding the available capacity of DMH services are not subject to appeal pursuant to 104 CMR 29.16.

(d) If it is determined that the individual does not need DMH services, the application will be denied and the Area Director or designee will so notify the individual and his or her legally authorized representative, and, if appropriate, the facility or program which submitted the application on the individual's behalf pursuant to 104 CMR 29.04(1)(b)2. The notice shall:

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1. set forth the reasons for the denial;
2. inform the individual and his or her legally authorized representative of the right to appeal the denial of the application for DMH services based on need pursuant to 104 CMR 29.16(4); and
3. inform the individual and his or her legally authorized representative of other community services that may be available to meet his or her needs.

If after reasonable efforts, neither the individual nor his or her legally authorized representative can be located, the denial shall be noted in the individual's application file and no further action will be required.

(e) If an individual whose application was denied because of a determination that the individual does not need DMH services reapplies due to a change in circumstances within six months of such denial, he or she shall be presumed to continue to meet the clinical criteria for DMH services.

29.05: Case Management

- (1) Individuals who are determined to need Case Management shall be referred to the appropriate case management office.
- (2) Case Management shall include:
 - (a) arranging for and completing comprehensive assessments of service needs;
 - (b) convening service planning meetings;
 - (c) developing and reviewing individual service plans;
 - (d) reviewing individualized action plans, when applicable, to ensure compatibility with clients' individual service plans;
 - (e) assisting clients in obtaining other available services from public or private entities as are identified in clients' individual service plans;
 - (f) coordinating services for clients, and/or monitoring the coordination of DMH and non DMH services;
 - (g) providing outreach, as needed;
 - (h) providing intensive support and advocacy, as needed.

29.06: General Provisions for all DMH Services Planning Activities

Planning activities incorporate strengths, preferences and needs of clients, and where appropriate, of their families or caretakers, and include assessments and the development and review of individual service plans and individualized action plans. Clients who receive Case Management will have individual service plans developed in accordance 104 CMR 29.06 and 29.07. Clients who receive DMH community services will have individualized action plans developed in accordance with 104 CMR 29.06 and 29.11.

- (1) DMH Services planning activities are:
 - (a) conducted in the client's preferred language by staff fluent in the language or through competent interpreters;
 - (b) strength-based, person and when appropriate, family, centered;
 - (c) sensitive and responsive to a client's cultural, ethnic, linguistic background, sexual orientation, gender differences, parental status, and other individual needs of the client;
 - (d) based on the results of assessments which are reviewed and modified as the client's needs or circumstances change; and
 - (e) informed by information obtained through interactions with the client, when appropriate the client's family or caretakers, and the client's other service providers with the appropriate authorizations, as well as previous records as available.
- (2) The goals of DMH Services planning activities are to:
 - (a) promote client recovery and resiliency;
 - (b) identify the services that a client needs;
 - (c) facilitate or provide access to those services; and
 - (d) ensure that the provision of services is consistent with the client's needs, strengths and preferences is provided in the least restrictive setting possible, and promotes community participation to the fullest extent possible.

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- (3) All planning activities will be conducted in partnership with clients, their families when appropriate, and their legally authorized representatives. Clients will be:
 - (a) engaged and supported to participate actively in the planning processes to the maximum extent possible;
 - (b) present at all applicable planning and review meetings, unless they are unwilling or unable to attend;
 - (c) encouraged to invite family members or other persons of the client's choice to participate; and
 - (d) encouraged to identify and discuss their goals and preferred services and programs during planning meetings and shall otherwise be supported to participate in a meaningful way in the discussions and decision-making process.

- (4) When clients are unable or unwilling to take part in a meaningful way in planning activities, action is taken to minimize obstacles to such participation. This shall include but not be limited to:
 - (a) developing plans for increasing the ability of clients to participate;
 - (b) modifying the schedule or structure of the meetings or making other accommodations designed to increase client participation;
 - (c) educating clients to facilitate and increase their participation; and
 - (d) continuing to engage clients in ways that assist them to make choices regarding their services to the maximum extent possible.

29.07: Individual Service Plans

- (1) Each client who receives Case Management shall have a written individual service plan developed in accordance with 104 CMR 29.07.

- (2) Comprehensive Assessment of Service Needs. The individual service plan shall be based on a comprehensive assessment of the client's service needs.
 - (a) The case manager shall arrange for and complete a comprehensive assessment of the client's service needs within 20 days of assignment, unless an extension is granted by the Area Director or designee.
 - (b) The comprehensive assessment of service needs shall include review of the documents submitted with the client's application and other records, as needed; a personal interview with the client that will include, but not be limited to, identification of the client's service preferences and recovery goals; an interview with the client's legally authorized representative; and interviews with other persons as agreed upon by the case manager and the client or his or her legally authorized representative, and shall be documented using a Department approved report form.

- (3) Development of Individual Service Plans.
 - (a) General Provisions.
 1. The individual service plan shall identify the strengths and needs of the client, the goals of and for the client, and all services and programs which address the needs of the client, including DMH services and those available from other public and private entities.
 2. Services included on an individual service plan shall be, to the maximum extent possible, consistent with the client's service needs, strengths and preferences, and shall be provided in the least restrictive setting.
 3. The individual service plan shall be developed with the fullest possible coordination with the client's other services including educational services and special education services, where applicable.
 4. The individual service plan shall include specified services, programs, service providers and goals, based on:
 - a. the client's needs and preferences as identified in the comprehensive assessment of service needs report; and
 - b. the availability of specific services. If specified services are not available, the individual service plan shall detail other available services which are, to the maximum extent possible, consistent with the client's needs and preferences and provided in the least restrictive setting.

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5. In developing the individual service plan, the case manager shall try to informally resolve any differences that may occur between service providers. If the case manager is unable to informally resolve any such differences, within five days after identification of the dispute, the Area Director or designee shall be notified of the need for intervention.
- (b) Preparation of the Individual Service Plan.
 1. Within ten days of the completion of the comprehensive assessment of service needs report, the case manager shall convene a meeting of all interested parties to prepare the individual service plan. Persons invited to attend the meeting shall include:
 - a. the client;
 - b. the client's legally authorized representative;
 - c. current and potential service providers;
 - d. other Department staff;
 - e. any other person, including family members, whose participation is requested or consented to by the client or the client's legally authorized representative.
 2. At the individual service plan meeting the parties shall discuss the following as part of the development of the individual service plan:
 - a. the client's goals;
 - b. the preferences of the client and the client's legally authorized representative regarding services;
 - c. the client's needs in the context of his or her assessed strengths;
 - d. recommended services for the client;
 - e. currently available services, including those provided by or available from other agencies or entities;
 - f. potential and present service providers;
 - g. dates, actual or anticipated, for commencement of each service;
 - h. the steps necessary to complete and implement the individual service plan;
 - i. a description of the financial assistance and services from federal, state and local agencies available to the client, including any benefits to which the client may be entitled but is not currently receiving;
 - j. the client's need for a guardian or a financial fiduciary.
- (c) Authorization for DMH services recommended in the individual service plan that have not been previously authorized shall be obtained from the Area Director or designee within five days of the individual service plan meeting.
- (d) After authorization for DMH services that have not been previously authorized is obtained, the individual service plan will be given to the client and his or her legally authorized representative for acceptance or rejection in accordance with 104 CMR 29.08.

29.08: Acceptance or Rejection of the Individual Service Plan

- (1) Once the written individual service plan is complete, it shall be given to the client or his or her legally authorized representative for acceptance or rejection.
 - (a) Upon acceptance by the client or his or her legally authorized representative the individual service plan shall be implemented.
 - (b) If the client or his or her legally authorized representative does not object to the individual service plan within 20 days of receipt, the plan shall be deemed to be accepted.
 - (c) If the client, or his or her legally authorized representative rejects some or all of the services identified in the individual service plan, the case manager shall inform him or her of the right to meet with the case manager within five days of the rejection to discuss the individual service plan and to discuss possible modifications. If agreement regarding any such modifications is not reached and the client or his or her legally authorized representative continues to reject the proposed plan, the client, or his legally authorized representative may appeal the individual service plan pursuant to 104 CMR 29.16.
- (2) The parts of the individual service plan that are accepted by the client or the client's legally authorized representative may be implemented immediately, if appropriate.

29.09: Annual Review of the Individual Service Plan

- (1) No later than 12 months from the date of the last completed or substantially modified individual service plan, the case manager shall initiate a review of the client's individual service plan. The purpose of this review is:

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- (a) to ensure that services continue to be, to the maximum extent possible, consistent with the client's preferences, and provided in the least restrictive setting;
 - (b) to ensure that services continue to be consistent with the client's needs and strengths as identified in the comprehensive assessment of needs;
 - (c) to reassess, if appropriate, the client's need for a guardian, or a financial fiduciary; and
 - (d) to ensure that individualized action plans continue to be compatible with the individual service plan.
- (2) At least 15 days prior to the date of the annual review, the case manager shall contact the following persons to inform them of the proposed meeting to discuss the review of the individual service plan, and to schedule the meeting at a time convenient to all persons:
- (a) the client;
 - (b) the client's legally authorized representative;
 - (c) a representative of each of the client's service providers;
 - (d) other Department staff, as appropriate;
 - (e) any other persons, including family members, whose participation is requested by or consented to by the client or the client's legally authorized representative.
- (3) At the meeting or, if a meeting has been waived, by other means, the case manager shall consider and also inquire of each person:
- (a) whether the client continues to meet the criteria for DMH services pursuant to 104 CMR 29.04(2) and (3);
 - (b) whether the services being provided to the client continue to be consistent with his or her needs and the goals of the individual service plan;
 - (c) whether there has been progress toward attainment of goals and objectives stated in the client's individualized action plans.
- (4) Completion of Individual Service Plan after the Annual Review.
- (a) Within ten days after the annual review meeting, the case manager shall prepare an individual service plan.
 - (b) Once the individual service plan is completed, the case manager shall obtain authorization for DMH community services identified in the individual service plan from the Area Director or designee.
 - (c) Once DMH community services are authorized, the case manager shall give the written individual service plan to the client or his or her legally authorized representative for acceptance or rejection.
 - 1. Upon acceptance by the client or his or her legally authorized representative the individual service plan shall be implemented.
 - 2. If the client or his or her legally authorized representative does not object to the individual service plan within 20 days of the date of receipt, the plan shall be deemed to be accepted.
 - 3. If the client or his or her legally authorized representative rejects some or all of the individual service plan, he or she shall be informed of the right to meet with the case manager within five days of the rejection to discuss the individual service plan and to discuss any changes. He or she shall also be informed of the right to appeal the individual service plan, pursuant to 104 CMR 29.16. The parts of the individual service plan that are accepted by the client or his or her legally authorized representative may be implemented immediately, if appropriate.
- (5) If at the time of the annual review it appears that the client may no longer meet the criteria for DMH services, the client will be referred for redetermination in accordance with the provisions of 104 CMR 29.04. Action on any such redetermination shall be subject to 104 CMR 29.04 and 104 CMR 29.13 or 29.14, as applicable, and shall be subject to appeal pursuant to 104 CMR 29.16.

29.10: Modification of the Individual Service Plan

- (1) Requests for modification of an individual service plan may be initiated by the client, his or her legally authorized representative, the client's DMH community service provider(s), or the client's case manager.
- (2) Modifications shall be made in an individual service plan whenever it is determined at an annual review or at any other time, in accordance with the service planning procedures required by 104 CMR 29.00, that such a change will permit the client to receive more appropriate or less restrictive services consistent with the client's needs or that the client no longer needs a service or services.
- (3) No modification of an individual service plan shall be made without the acceptance of the client or his or her legally authorized representative unless it is determined that the modification is required:
 - (a) to comply with state contracting requirements (*e.g.*, that compliance with state purchase of service regulations or other applicable contracting requirements requires a change in a service provider); or
 - (b) to avoid a serious or immediate threat to the health, mental health or safety of the client or other persons.
- (4) The client or his or her legally authorized representative may reject and appeal a proposed or denied modification pursuant to 104 CMR 29.16. No modification under appeal may be implemented before the appeal is decided without the consent of the client, or his or her legally authorized representative unless it is determined that the modification is required for the reasons stated in 104 CMR 29.10(3)(a) or (b).
- (5) Clients may have additional remedies, including the protections enumerated under the Community Residence Tenancy Law, M.G.L. c. 186, § 17A.
- (6) If the modification involves a substantial change in the client's situation, as determined by the case manager, the modification may follow the procedures outlined in 104 CMR 29.09, and serve as the client's annual review. In such case, the date of the next annual review shall be calculated from the date of acceptance of the modified plan. If the modification is minor, as determined by the case manager, the individual service plan will be reviewed no later than 12 months from the last time the individual service plan was completed or reviewed.

29.11: Individualized Action Plans

- (1) Each client who receives one or more DMH community services shall have a written integrated individualized action plan that is consistent with applicable service standards. The plan shall be developed by the program that provides the service. If a client is receiving more than one DMH community service, the Department will designate the primary DMH community service provider which will be responsible for developing the individualized action plan.
- (2) General Provisions.
 - (a) Individualized action plans are based on assessments, including clinical assessments, conducted or arranged for by the program that provides the community service, as appropriate.
 - (b) Individualized action plans contain measurable goals, objectives, and interventions, with timelines for completion that reflect the formulation resulting from the assessments.
 - (c) Upon acceptance, individualized action plans and reviews are signed by the client or legally authorized representative.
 - (d) Copies of the individualized action plans and reviews are given to the client or legally authorized representative, and to the client's other service providers as authorized by the client.
 - (e) If a client receives Case Management, the case manager is included in the planning activities, and a copy of the client's individualized action plan and modifications thereto are submitted to the case manager. The individualized action plan is compatible with the client's individual service plan.
 - (f) If a client is not receiving Case Management the client's individualized action plan and modifications thereto are provided to the Department upon request.

29.12: Acceptance or Rejection of the Individualized Action Plan

- (1) Once the written individualized action plan is complete, it shall be given to the client or his or her legally authorized representative for acceptance or rejection.
 - (a) Upon acceptance by the client or his or her legally authorized representative, the individualized action plan shall be implemented.
 - (b) If the client or his or her legally authorized representative does not object to the individualized action plan within 20 days of receipt, the plan shall be deemed to be accepted.
 - (c) If the client, or his or her legally authorized representative rejects some or all of the individualized action plan, the program shall inform him or her of the right to meet within five days of the rejection to discuss the individualized action plan and to discuss possible modifications.
 - (d) If agreement regarding any such modifications is not reached and the client or his or her legally authorized representative continues to reject the proposed plan, he or she may appeal the plan pursuant to 104 CMR 29.16.
- (2) The parts of the individualized action plan that are accepted by the client or the client's legally authorized representative may be implemented immediately, if appropriate.

29.13: Review of the Individualized Action Plan

- (1) All individualized action plans are reviewed at three months, six months, and at least annually thereafter as needs change, or upon the request of the client or the client's legally authorized representative.
 - (a) The purpose of this review is:
 1. to evaluate the client's progress and current status in meeting the goals set forth in the individualized action plan; and
 2. to evaluate whether the services, goals, objectives, and interventions continue to be consistent with the client's needs, strengths and preferences and individual service plan, if any, and to modify the individualized action plan as appropriate.
- (2) If an individualized action plan is modified as a result of a review conducted pursuant to 104 CMR 29.13, the modified individualized action plan will be given to the client and his or her legally authorized representative for acceptance or rejection as provided in 104 CMR 29.12.
- (3) If as a result of a review the DMH community service provider recommends that the client no longer receive a DMH community service, the service provider will notify the Area Director or designee for appropriate action.
- (4) If at any time, the DMH community service provider determines that the client has not met his or her responsibility, to the extent of his or her ability, to respect the rights of other clients and staff in the program or residential site of the program, or to conform to reasonable operational rules of the program or residential site of the program, there shall be a review of the client's individualized action plan, and in connection therewith, the program director or designee shall document the situation, including any known precipitating factors; and in conjunction with the client and his or her legally authorized representative, develop a plan to address the situation;
 - (a) If the plan does not resolve the situation, the client may be asked to leave the program or residential site of the program; provided, however, that any modification of an individualized action plan necessitated by such request shall be governed by the provisions of 104 CMR 29.13;
 - (b) No client shall be discriminated against or asked to leave a program due to the exercise of any right set forth in 104 CMR 28.00;
 - (c) The program director shall notify the Department if a client is asked to leave a program or residential site of a program;
 - (d) A client who is asked to leave a program or residential site of a program may request a review of that decision by the Human Rights Committee or by the Area Director or designee;
 - (e) Clients may have additional remedies, including the protections enumerated under the Community Residence Tenancy Law, M.G.L. c. 186, § 17A.

29.14: Discharge from DMH Services

- (1) If upon redetermination in accordance with 104 CMR 29.04, the Area Director or designee determines that the client no longer meets the clinical criteria for DMH services or no longer needs such services, a date will be set for discharge from DMH services. The Area Director or designee shall:
 - (a) notify the client and his or her legally authorized representative of the basis for discharging from DMH services and, the date that DMH services will end;
 - (b) notify the client and his or her legally authorized representative of the right to appeal discharge from DMH services based on clinical criteria pursuant to 104 CMR 29.16(3) or based on need for DMH services pursuant to 104 CMR 29.16(4);
 - (c) modify his or her individual service plan, if applicable, to indicate discharge from DMH services;
 - (d) identify and state on the individual service plan, if applicable, the name and address of the agency or person, if any, responsible for the provision of future services to the individual, or state that no further services are currently needed.
- (2) If an appeal is filed pursuant to 104 CMR 29.16, the client shall not be discharged until the appeal is completed.
- (3) With the consent of the individual or his or her legally authorized representative, the Department will, for 30 days after the date that DMH services end, continue to monitor the individual to determine that he or she is connected to appropriate services, as necessary. At the conclusion of that 30 day period the individual will no longer be a client.

29.15: Requests for Discharge from Services; Disengagement from Services

- (1) If a client, or his or her legally authorized representative requests discharge from DMH services, the request will be referred to the Area Director or designee for review.
 - (a) If the Area Director or designee concurs with the request, the client shall be discharged and shall no longer be a client.
 - (b) If such request is against the advice of the Area Director or designee, the Department shall direct efforts, for a period up to 30 days, to encourage the client or his or her legally authorized representative to continue such services. If, notwithstanding such efforts, the client or his or her legally authorized representative still requests discharge, the client shall be discharged and will no longer be a client. Efforts to encourage continued participation and discharge from services shall be documented in the client's record.
- (2) If a client disengages from DMH services without formal request or notification, the Department shall direct efforts to re-engage the client. The mechanisms and time frame for such re-engagement efforts shall be a clinical decision.
 - (a) When a clinical decision is made that re-engagement efforts have failed and are unlikely to succeed in the foreseeable future, the Area Director or designee shall be notified.
 - (b) If the Area Director or designee concurs, the client shall be discharged and shall no longer be a client. Efforts to reengage the client and discharge from services shall be documented in the client's record.

29.16: Appeals of Denials of DMH Services and Services Planning

- (1) General Provisions.
 - (a) 104 CMR 29.16(3) contains the standards and procedures for appeals of determinations relative to clinical criteria pursuant to 104 CMR 29.04(3).
 - (b) 104 CMR 29.16(4) contains the standards and procedures for appeals of a determination of need pursuant to 104 CMR 29.04(4), of major individual service planning and implementation decisions, and of discharges from DMH services pursuant 104 CMR 29.14.
 - (c) To the maximum extent possible, disagreements should be informally resolved prior to utilizing this appeal mechanism.
 - (d) An appeal may be initiated by any of the following individuals:
 1. an individual whose application for DMH services has been denied, or his or her legally authorized representative;
 2. a client or his or her legally authorized representative;

29.16: continued

3. a person designated by the individual or client to act as his or her representative, if there is no legally authorized representative.

(2) Subject Matter of an Appeal. The following issues may be appealed:

- (a) whether denial of an application for DMH services based on clinical criteria pursuant to 104 CMR 29.04(3) has a reasonable basis;
- (b) whether denial of an application for DMH services as a result of a determination of need pursuant to 104 CMR 29.04(4) has a reasonable basis;
- (c) whether the comprehensive assessment of service needs and the individual service plan, or any modifications thereof, have a reasonable basis and were developed and reviewed and implemented in accordance with the requirements of 104 CMR 29.06 through 29.10;
- (d) whether assessments and the individualized action plan, or any modifications thereof, have a reasonable basis and were developed and reviewed and implemented in accordance with the requirements of 104 CMR 29.06 and 29.11 through 29.13;
- (e) whether discharge from DMH services pursuant to 104 CMR 29.14 has a reasonable basis.

(3) Appeal of Denial of an Application for DMH Services Based on Clinical Criteria. Denial of an individual's application for DMH services based on clinical criteria may be appealed as follows:

- (a) Request for Informal Conference: Within ten days of receipt of the notice of the denial of application based on clinical criteria, the individual or his or her legally authorized representative may request an informal conference with the Area Director or designee. Such informal conference may be waived by agreement between the individual or his or her legally authorized representative and the Area Director or designee, in which case the individual or his or her legally authorized representative may submit a request for reconsideration pursuant to 104 CMR 29.16(3)(c).
- (b) Within ten days of receipt of the request for an informal conference, the Area Director or designee shall hold an informal conference with the individual and his or her legally authorized representative.
 - 1. The individual or his or her legally authorized representative may bring other persons to this conference, if he or she wishes.
 - 2. After such meeting, if the issues are not resolved, the individual or his or her legally authorized representative shall be notified that a written request for reconsideration may be submitted to the Area Medical Director.
- (c) Request for Reconsideration. The individual or his or her legally authorized representative may submit a written notice of request for reconsideration to the Area Medical Director within ten days after conclusion of the informal conference or the agreement to waive such conference.
 - 1. The request for reconsideration must indicate the basis of the request for reconsideration of the denial of the application, and shall include any additional information which might support a reversal of the denial of the application.
 - 2. The Area Medical Director shall render a written decision within 20 days of receipt of the request for reconsideration, unless the time is extended by mutual consent of the Area Medical Director and the person filing the request for reconsideration.
 - 3. If the denial of the application is sustained by the Area Medical Director, a written decision letter shall be sent to the individual and his or her legally authorized representative. The decision letter shall include notice of the right to request a fair hearing pursuant to 104 CMR 29.16(5).
 - 4. If the denial of the application is reversed by the Area Medical Director, a written decision letter shall be sent to the individual and his or her legally authorized representative, and the Area Director or designee shall proceed with a determination of need for DMH services pursuant to 104 CMR 29.04. A decision by the Area Medical Director to reverse the denial of an application is not subject to appeal.

(4) Appeal on all Other Appealable Matters.

- (a) An appeal on matters listed in 104 CMR 29.16(2)(b) through (e) is initiated by submitting a written statement to the Area Director, indicating what is being appealed and the basis for the appeal.

29.16: continued

(b) An appeal must be initiated within 30 days after the occurrence of the action or inaction which forms the basis for the appeal. The Area Director may, however, accept an appeal after 30 days for good cause.

(c) Informal Conference.

1. The Area Director or designee shall hold an informal conference with the client, the client's legally authorized representative, the client's designated representative, the client's case manager, if applicable, the program director, if appropriate, and other invited persons, if appropriate, within 20 days of notification of the appeal for the purpose of resolving the matter being appealed. To the extent that resolution satisfactory to all persons is not achieved, the Area Director or designee shall clarify issues for appeal and shall determine the agreement, if any, of the parties as to the material facts of the case.

2. 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 or court proceedings pursuant to the provisions of 104 CMR 29.16.

3. The Area Director or designee and the appealing party may agree to waive the informal conference in which case the appeal shall be forwarded to the Commissioner as a petition for a fair hearing pursuant to 104 CMR 29.16(5).

(5) Fair Hearing.

(a) An appealing party may petition the Commissioner for a fair hearing:

1. to appeal the Area Medical Director's decision with regard to clinical criteria pursuant to 104 CMR 29.16(3); or

2. if other appealable issues are not resolved at the informal conference pursuant to 104 CMR 29.16(4)(c), or if there is a waiver of such conference.

(b) A petition for fair hearing must be submitted to the Commissioner within 20 days after the Area Medical Director's decision with regard to clinical criteria pursuant to 104 CMR 29.16(3), or the completion or the waiver of the informal conference pursuant to 104 CMR 29.16(4)(c).

1. Within ten days of such petition, the Commissioner or designee shall appoint a hearing officer, who shall schedule a hearing date which is agreeable to both parties. Said fair hearing shall be conducted in a manner consistent with M.G.L. c. 30A and 104 CMR 29.16(5) and shall be governed by the informal fair hearing rules of the standard adjudicatory rules of practice and procedure at 801 CMR 1.02.

2. While the appeal is pending, the parties may agree to implement any part of the individual service plan or individualized action plan, or other matter under appeal without prejudice.

3. The fair hearing shall be conducted by an impartial hearing officer designated by the Commissioner or designee. 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 service area in which the individual applying for services is currently served or is proposed to be served.

4. The appealing party shall have the right to be represented by an individual designated by him or her, at his or her own expense;

5. If a client is unrepresented at the hearing, but requests assistance, or if for any other reason the Commissioner or designee determines it to be in the client's best interest, the Commissioner or designee shall designate a client advocate to assist the client in the appeal.

6. The appealing party and the Department shall have the right to present any evidence relevant to the issues under appeal, and shall have the right to call and examine witnesses.

7. The appealing party shall have the right to examine all records held by the Department pertaining to the individual or client and all records upon which an individual service plan or individualized action plan that is being appealed is based.

8. The fair hearing shall not be open to the public. The appealing party may invite persons of his or her choosing to attend. Invited persons may attend the hearing, as long as they do not disturb the hearing.

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9. Within 20 days of the close of 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.

10. 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.

11. Within 15 days after receipt of the hearing officer's recommended decision, the Commissioner shall issue a decision.

a. The Commissioner's 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.

b. The Commissioner's decision shall be mailed to the appealing party and his or her legally authorized representative.

c. Unless the Commissioner or designee orders a re-hearing pursuant to 104 CMR 29.16(6), the decision of the Commissioner is the final decision of the Department on all issues.

(6) Re-hearing.

(a) Within ten days of receipt of the decision of the Commissioner by the client or his or her legally authorized representative, a party aggrieved by the decision may petition the Commissioner to order a re-hearing on one or more of the following grounds:

1. that new evidence was discovered by the appealing party subsequent to the hearing, and that the new evidence is such that it would be likely to materially affect the issues being appealed;
2. that the hearing was conducted in a manner which was inconsistent with 104 CMR 29.16(5) or was prejudicially unfair to the client or other appealing party;
3. that the decision is based on inappropriate standards or contains other errors of law;
4. that the decision is unsupported by any substantial evidence.

(b) The failure of the Commissioner to grant or deny a petition for re-hearing within ten days of the submission of the petition shall be considered a denial of the petition.

(c) Upon order for a re-hearing by the Commissioner, a hearing shall be conducted and a decision rendered anew, pursuant to 104 CMR 29.16(5).

(7) Standard and Burden of Proof.

(a) The standard of proof on all issues shall be a preponderance of the evidence.

(b) Burden of Proof.

1. The burden of proof on the issue of denial of an application for DMH services shall be on the individual whose application has been denied.

2. The burden of proof on the issues of whether the provisions of 104 CMR 29.06 through 104 CMR 29.11 have been complied with, and whether the comprehensive assessment of service needs, individual service plan, and individualized action plans are reasonable and consistent with the needs of the client shall be on the Department or on the DMH community service provider responsible for developing the individualized action plan.

3. The burden of proof on issues relating to a discharge from DMH Services pursuant to 104 CMR 29.14 shall be on the Department.

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(8) Judicial Review. A client or his or her legally authorized representative aggrieved by a final decision of the Department pursuant to 104 CMR 29.16 may, within 30 days of receipt of the decision or a decision after a re-hearing, seek judicial review of the decision, in accordance with the standards and procedures contained in M.G.L. c. 30A, § 14.

REGULATORY AUTHORITY

104 CMR 29.00: M.G.L. c. 19, §§ 1 and 16; M.G.L. c. 123, § 2.

(PAGES 399 THROUGH 424 ARE RESERVED FOR FUTURE USE).