

105 CMR: DEPARTMENT OF PUBLIC HEALTH

105 CMR 155.000: PATIENT AND RESIDENT ABUSE PREVENTION, REPORTING, INVESTIGATION, PENALTIES AND REGISTRY

Section

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(155.001: Purpose: Reserved)

155.002: Scope

105 CMR 155.000 applies to long term care facilities subject to licensing under M.G.L. c. 111, § 71, hospice programs licensed under M.G.L. c. 111, § 57D or 51, and home health agencies and homemaker agencies. 105 CMR 155.004 through 155.012 are applicable to all individuals working in or employed by a facility, home health agency, homemaker agency or hospice program; 105 CMR 155.013 through 155.015 are applicable only to nurse aides, home health aides and homemakers.

155.003: Definitions

As used in 105 CMR 155.000 the following definitions apply, in addition to those appearing in M.G.L. c. 111, § 72F, unless the context or subject matter clearly requires otherwise:

Abuse. The willful infliction of injury, unreasonable confinement, intimidation, including verbal or mental abuse, or punishment with resulting physical harm, pain, or mental anguish, or assault and battery; provided, however, that verbal or mental abuse shall require a knowing and willful act directed at a specific patient or resident. In determining whether or not abuse has occurred, the following standards shall apply:

(1) A patient or resident has been abused if:

(a) An individual has made or caused physical contact with the patient or resident in question, either through direct bodily contact or through the use of some object or substance;

(b) The physical contact in question resulted in death, physical injury, pain or

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- psychological harm to the patient or resident in question; and
- (c) The physical contact in question cannot be justified under any of the exceptions set forth in 105 CMR 155.003: Abuse(3).
- (2) A patient or resident has been abused if an individual has knowingly and willfully used oral, written, or gestured language with the intent to injure, confine, intimidate, or punish the patient or resident in question.
- (3) Notwithstanding the provisions of 105 CMR 155.003: Abuse(1)(a) through (c) and (2), if an individual has used physical contact with a patient or resident which harms that patient or resident, such contact shall not constitute abuse if:

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- (a) The physical contact with the patient or resident occurs in the course of carrying out a prescribed form of care, treatment or therapy, and both the type of physical contact involved and the amount of force used are necessary in order to carry out that prescribed form of care, treatment or therapy, provided that the patient or resident has not refused such care, treatment or therapy;
 - (b) The physical contact with the patient or resident occurs in the course of providing comfort or assistance to the patient or resident, and both the type of physical contact involved and the amount of force used are necessary in order to provide comfort or assistance to the patient or resident;
 - (c) The physical contact with the patient or resident occurs in the course of attempting to restrain the behavior of the patient or resident in question, and both the type of physical contact involved and the amount of force used are necessary in order to prevent that patient or resident from injuring himself, herself, or any other person; or
 - (d) The patient or resident, in accordance with his or her expressed or implied consent, is being furnished or relies upon treatment by spiritual means through prayer alone in accordance with a religious method of healing in *lieu* of medical treatment.
- (4) Physical contact with a patient or resident which harms that patient or resident, and which occurs for the purpose of retaliating against that patient or resident, shall constitute abuse.

Accused. An employee of a facility, including an individual working under contract, or a volunteer working in a facility, an employee of, including an individual working under contract, or a volunteer working for a home health agency, homemaker agency or hospice program who is the subject of an allegation of abuse, neglect or mistreatment of a patient or resident, or an allegation of misappropriation of patient or resident property.

Adjudicated Finding. The determination of a hearing officer at the conclusion of a hearing as to whether or not a nurse aide, home health aide, or homemaker abused, neglected, or mistreated a patient or resident or misappropriated patient or resident property.

Commissioner. The Commissioner of the Department of Public Health or his or her designee.

Department. The Massachusetts Department of Public Health.

Facility. An entity required to be licensed under M.G.L. c. 111, § 71.

Finding. The Department's determination, at the conclusion of its investigation, that an allegation of patient or resident abuse, neglect, mistreatment or misappropriation of patient or resident property against an accused is valid or not.

Harm. Includes, but is not limited to, death, physical injury, pain or psychological injury. Psychological injury includes, but is not limited to, conduct which coerces or intimidates a patient or resident, or which subjects that patient or resident to scorn, ridicule, humiliation, or produces a noticeable level of mental or emotional distress.

Home Health Aide. An individual hired or employed by a home health agency or a hospice program who provides health services to individuals in their residences.

Home Health Agency. An entity, however organized, whether conducted for profit or not for profit, which is advertised, announced, established or maintained for the purpose of providing health and/or homemaker services to individuals in their residences.

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Homemaker. An individual hired or employed by a home health agency, homemaker agency, or a hospice program, who works under agency or program supervision, and is trained by an agency or program to provide homemaking services, such as meal preparation, cleaning and laundry as well as other essential nutritional and environmental services, in a patient's residence, as needed by the patient.

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Homemaker Agency. Any entity that hires or employs homemakers to provide homemaking services, which are based upon a patient's identified health, infirmity or disability related needs, in a patient's residence.

Hospice Program. An entity required to be licensed under M.G.L. c. 111, § 57D or a hospice service of a hospital licensed under M.G.L. c. 111, § 51.

Hospice Worker. A paid individual hired by or employed by a hospice program to provide hospice services to a patient.

Isolation Technique. Any method of physically segregating a patient or resident from other persons or restricting a patient's or resident's opportunities to interact or communicate with other persons. Emergency or short-term monitored separation from others will not be considered an isolation technique if used for a limited period of time as a therapeutic intervention to reduce agitation until the behavior requiring the intervention is resolved.

Mandatory Reporting Individual. Any person who is paid for caring for a patient or resident, whether on a permanent or temporary basis, who is:

- (1) a physician;
- (2) a medical intern or resident;
- (3) a physician assistant;
- (4) a registered nurse;
- (5) a licensed practical nurse;
- (6) a nurse aide;
- (7) an orderly;
- (8) a home health aide;
- (9) a homemaker;
- (10) a hospice worker;
- (11) an administrator of a facility, home health agency, homemaker agency, or hospice program;
- (12) a responsible person in a rest home;
- (13) a medical examiner;
- (14) a dentist;
- (15) an optometrist;
- (16) an optician;
- (17) a chiropractor;
- (18) a podiatrist;
- (19) a coroner;
- (20) a police officer;
- (21) a speech pathologist;
- (22) an audiologist;
- (23) a social worker;
- (24) a pharmacist;
- (25) a physical therapist;
- (26) an occupational therapist; or
- (27) a health officer.

Misappropriation of Patient or Resident Property. The deliberate misplacement, exploitation or wrongful temporary or permanent use of a patient's or resident's belongings or money without such patient's or resident's consent.

Mistreatment. The use of medications, or treatments, or isolation, or physical or chemical restraints that harm or are likely to harm the patient or resident. In determining whether or not mistreatment has occurred, the following standards shall apply:

- (1) A patient or resident has been mistreated if:
 - (a) An individual used some type of medication, treatment, isolation technique or restraint on the patient or resident;

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- (b) The particular use of the medication, treatment, isolation technique or restraint was either intentional or careless in nature, contrary to the patient or resident's expressed decision to refuse such treatment, or contrary to the patient's or resident's written care plan;
 - (c) The particular use of the medication, treatment, isolation technique or restraint resulted, or was likely to result, in harm to the patient or resident involved, including but not limited to, physical injury, pain, or death, unreasonable restriction of the ability to move around, unreasonable restriction of the ability to communicate with others, or psychological harm; and
 - (d) The particular use of the medication, treatment, isolation technique or restraint cannot be justified under any of the exceptions set forth in 105 CMR 155.003: Mistreatment(2).
- (2) Notwithstanding the provisions of 105 CMR 155.003: Mistreatment(1), the following shall not constitute mistreatment:
- (a) Use of an isolation technique for the purpose of preventing a documented contagious disease from spreading to other persons, as long as this technique is the least restrictive available method of preventing the spread of that disease, and reasonable care is exercised with the use of that technique;
 - (b) Use of a particular medication, isolation technique or restraint in the course of carrying out a prescribed form of treatment or therapy, if such use has been authorized by a physician's order or, when applicable, by a court of competent jurisdiction in accordance with applicable law; or
 - (c) Use of a particular medication, isolation technique, or restraint for the purpose of preventing a patient or resident from engaging in behavior which may injure him or her or injure another person, as long as the particular use in question is the least restrictive available alternative which will be effective in preventing such harm and reasonable care is exercised in connection with that use.

Neglect. Failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness. In determining whether or not neglect has occurred, the following standards shall apply:

- (1) A patient or resident has been neglected if:
 - (a) An individual has failed to provide appropriate care, treatment or service to the patient or resident;
 - (b) The individual's failure to provide the treatment, care or service to the patient or resident is either intentional or the result of carelessness; and
 - (c) As a result of the failure to provide the treatment, care or service, the individual has failed to maintain the health or safety of the patient or resident, as evidenced by harm to the patient or resident, or a deterioration in the patient or resident's physical, mental or emotional condition.
- (2) Notwithstanding the provisions of 105 CMR 155.003: Neglect(1):
 - (a) A patient or resident shall not be considered to be neglected for the reason that such patient or resident, in accordance with his or her expressed or implied consent, is being furnished or relies upon treatment by spiritual means through prayer alone in accordance with a religious method of healing in *lieu* of medical treatment;
 - (b) Neglect of a patient or resident shall not be considered to have been caused by an accused if such accused can demonstrate that such neglect was caused by factors beyond his or her control.

Nonmandatory Reporting Individual. Any person who is not a mandatory reporting individual as defined in 105 CMR 155.003 and who makes a report of suspected patient or resident abuse,

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neglect, mistreatment or misappropriation of patient or resident property to the Department pursuant to M.G.L. c. 111, § 72G and 105 CMR 155.000.

Nurse Aide. Any individual who is not a licensed health professional, but is employed or hired by a facility, and who provides nursing or nursing-related services to residents.

Patient. An individual who receives health, homemaker or hospice services from an individual employed by a home health agency, homemaker agency, or a hospice program.

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Registered or Licensed Professional. Any person engaged in any occupation or profession which is subject to licensure, registration or certification including individuals licensed, registered or certified under M.G.L. c. 112, §§ 2 through 36, 43 through 53, 66 through 81C, 87F through 87KK, 87EEE through 87OOO, 87WWW through 87ZZZ, 89 through 97, 108 through 147, or 163 through 172.

Registry. Nurse aide registry as established in accordance with M.G.L. c. 111, § 72J

Resident. An individual who resides in a long term care facility licensed under M.G.L. c. 111, § 71.

Restraint. Any physical, chemical or mechanical method of restricting a patient's or resident's ability to move all or part of his or her body or communicate with other persons.

Verbal Abuse. Any use of oral, written or gestured language that willfully includes disparaging, derogatory or frightening terms to patients or residents, or within their hearing distance, regardless of their ability to comprehend, or disability.

155.004: Procedure for Reporting Suspected Cases

(A) Any mandatory reporting individual, as defined in 105 CMR 155.003, shall immediately make an oral report of suspected patient or resident abuse, neglect, mistreatment or misappropriation of patient or resident property to his or her supervisor or employer whenever he or she has reasonable cause to believe that any patient or resident has been abused, neglected or mistreated or had property misappropriated. Upon receiving such report, said supervisor or employer shall immediately notify the Department by oral communication, electronically transmitted report or facsimile in accordance with such guidelines as may be established by the Department. Upon receiving a report regarding misappropriation of patient or resident property, with the exception of a controlled substance, said supervisor or employer shall within 48 hours complete an internal investigation into the matter to determine whether the item(s) in question may have been misappropriated as defined in 105 CMR 155.003. If within 48 hours there is reasonable cause to suspect misappropriation said supervisor or employer shall immediately notify the Department by oral communication, electronically transmitted report or facsimile.

(B) Any nonmandatory reporting individual, including, but not limited to, volunteers, may make an oral report of suspected patient or resident abuse, neglect, mistreatment or misappropriation of patient or resident property to his or her supervisor or employer whenever he or she has reasonable cause to believe that any patient or resident has been abused, neglected, or mistreated or had property misappropriated. Upon receiving such report, said supervisor or employer shall immediately notify the Department by oral communication, electronically transmitted report or facsimile.

(C) Any person who makes an oral report of suspected patient or resident abuse, neglect, mistreatment or misappropriation of patient or resident property to the Department pursuant to 105 CMR 155.004(A) or (B) shall also send a written report containing all of the information specified in 105 CMR 155.005 to the Department within 48 hours after making the oral report.

(D) Notwithstanding the provisions of 105 CMR 155.004(A) and (B), any mandatory or non-mandatory reporting individual may make a direct report to the Department of a case of suspected patient or resident abuse, neglect, mistreatment or misappropriation of patient or resident property. In the case of an oral report, such report shall be followed up by a written

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report within 48 hours after making the oral report.

(E) Written Report shall include, without limitation, an electronically transmitted report and facsimile.

155.005: Contents of Reports of Suspected Cases

All reports of suspected patient or resident abuse, neglect, mistreatment or misappropriation of patient or resident property made pursuant to 105 CMR 155.004 shall contain the following information, where applicable:

- (A) The name and gender of the patient or resident who the reporter suspects has been abused, neglected or mistreated or had property misappropriated;
- (B) The age of the patient or resident, if known to the reporter;
- (C) The home address of the patient;
- (D) The name and address of the facility in which the resident resides;
- (E) The name, address, and telephone number of the home health agency, homemaker agency, or hospice program involved;
- (F) The name, address and telephone number of the reporter and where such reporter may be contacted;
- (G) If known to the reporter, the name and position of the accused, and also, if known, any other documented allegations of patient or resident abuse, neglect or mistreatment or misappropriation of patient or resident property by the accused;
- (H) Any information relative to the nature and extent of the alleged abuse, neglect, mistreatment or misappropriation of the patient's or resident's property;
- (I) If known to the reporter, any documented information relative to prior abuse, neglect, or mistreatment of such patient or resident or misappropriation of such patient or resident's property;
- (J) The circumstances under which the reporter became aware of the alleged abuse, neglect, mistreatment or misappropriation of property;
- (K) If known to the reporter, whatever action, if any, was taken to treat or otherwise assist the patient or resident;
- (L) Any other information which the reporter believes might be helpful in establishing the cause of the alleged abuse, neglect, mistreatment or misappropriation of property and the person or persons responsible therefor; and
- (M) Such other information as may be required by the Department.

155.006: Protection of Reporting Individuals and Other Parties

(A) The identity of any mandatory or nonmandatory reporting individual who makes a report of suspected patient or resident abuse, neglect, mistreatment or misappropriation of patient or resident property pursuant to 105 CMR 155.000; or, of any patient or resident whose name appears in a report made pursuant to 105 CMR 155.000; or, of any persons whose right to privacy would be abridged by disclosure of their identities shall be treated as confidential information. Except as otherwise required by law, the identity of any of these individuals shall not be disclosed to any person except duly authorized staff of the Department, the Attorney

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General, or the appropriate registration board, without the prior written consent of the affected individual.

(B) Any person who makes an oral or written report of suspected patient or resident abuse, neglect, mistreatment or misappropriation of property to the Department pursuant to 105 CMR 155.000 shall not be liable in any civil or criminal action as a result of that report if such report was made in good faith.

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(C) No facility, home health agency, homemaker agency, hospice program or individual shall discharge, or in any manner discriminate or retaliate against, or take any other adverse action against any person because that person, in good faith:

- (1) makes, or attempts to make, any report of suspected patient or resident abuse, neglect, mistreatment or misappropriation of patient or resident property to the Department;
- (2) provides, or attempts to provide, the Department with any information, testimonial or otherwise, during the course of any investigation into any case of suspected patient or resident abuse, neglect, mistreatment or misappropriation of patient or resident property; or
- (3) testifies or is about to testify in any proceeding about the abuse, neglect, or mistreatment of patients or residents or the misappropriation of patient or resident property.

(D) A facility, home health agency, homemaker agency or hospice program which discharges, discriminates or retaliates against such a person shall be liable to the person so discharged, discriminated or retaliated against, for treble damages, costs and attorneys' fees.

155.007: Penalty for Failure to Report by Mandatory Reporting Individual

If the Department finds, after investigation, that any mandatory reporting individual, as defined in 105 CMR 155.003, had reasonable cause to believe that a patient or resident may have been abused, neglected or mistreated or had property misappropriated, and that such individual refused or failed to report such suspected case to the Department, the Department shall notify the Attorney General and the appropriate registration board of that finding. Such individual may be subject to disciplinary actions by such registration board and to a fine of up to \$1,000.

155.008: Department Investigation of Suspected Cases

(A) Upon receipt of an oral or written report of suspected patient or resident abuse, neglect, mistreatment or misappropriation of patient or resident property made pursuant to 105 CMR 155.000, the Department shall:

- (1) immediately notify the Attorney General orally, or by electronic transmission or facsimile, of the receipt of said report;
- (2) conduct an investigation into the allegations contained in the report within 24 hours after receipt of the oral report if there is reasonable cause to believe that a patient's or resident's health or safety is in immediate danger from further abuse, neglect or mistreatment;
- (3) conduct an investigation into the allegations contained in the report within seven days after receipt of the written report in all other cases;
- (4) at the conclusion of the investigation, issue a written report containing the findings and recommendations of its investigation.

(B) The Department's investigation into the allegations contained in any report it receives of suspected patient or resident abuse, neglect, mistreatment or misappropriation of patient or resident property made pursuant to 105 CMR 155.000 shall include, but not be limited to, the following:

- (1) a visit to the facility, home health agency, homemaker agency, or hospice program in question, or the residence of the patient involved in the report;
- (2) notifying the administrator of the facility, or the director of the home health agency, homemaker agency, or hospice program at the time of the on-site visit that the Department is investigating a case of suspected patient or resident abuse, neglect, mistreatment or misappropriation of patient or resident property pursuant to 105 CMR 155.000, unless such notification would jeopardize patient or resident health or safety or the Department's ability to conduct a complete and thorough investigation;

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- (3) an attempt to interview the patient or resident who was allegedly abused, neglected, mistreated or had property misappropriated;
- (4) an evaluation and determination of the nature, extent and cause or causes of any injuries sustained by the patient or resident in question;
- (5) an attempt to identify and interview the person or persons accused of the alleged abuse, neglect, mistreatment or misappropriation of the property of the patient or resident in question;
- (6) an attempt to interview all witnesses to the event;

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- (7) an evaluation of the environment in the facility named in the report and a determination of the risk of physical or psychological injury to any other residents in the facility; and
- (8) an evaluation of any and all other pertinent facts.

(C) If the Department has reasonable cause to believe that a patient or resident has died as a result of abuse, neglect or mistreatment, it shall immediately report such death to the Attorney General, the District Attorney for the county in which such death occurred, and the Medical Examiner for said county.

(D) Issuance of the Department's Written Report

- (1) At the conclusion of its investigation, the Department shall issue a written report of its findings and recommendations. The report shall contain no identifying information relating to any patient or resident, reporting individual, or any other person whose right of privacy would be abridged by the disclosure.
- (2) The Department shall send a copy of its report to the following:
 - (a) The Attorney General;
 - (b) The mandatory or nonmandatory reporter of the incident;
 - (c) The facility, home health agency, homemaker agency or hospice program involved; and
 - (d) The accused.

155.009: Availability of Reports; Disclosure of Information

(A) Disclosure of Information while an Investigation is Pending. Upon written request by any person, the Department shall provide the following information about a pending investigation into a report of suspected patient or resident abuse, neglect, mistreatment or misappropriation of property:

- (1) the date on which Department staff visited the facility, home health agency, homemaker agency, hospice program or patient's residence to conduct the investigation;
- (2) the estimated date on which the Department expects to complete its investigation and issue its written report; and
- (3) information about any actions taken by the Department or by the facility, home health agency, homemaker agency or hospice program to protect and ensure the health and safety of patients or residents.

(B) Confidentiality of Reports.

- (1) any oral or written report of suspected patient or resident abuse, neglect, mistreatment or misappropriation of patient or resident property which is made to the Department pursuant to 105 CMR 155.000, or any contents thereof, shall be confidential.
- (2) the written report issued by the Department at the conclusion of its investigation shall be confidential and shall be made available only to those persons and entities listed in 105 CMR 155.008(D)(2), and the following:
 - (a) the patient or resident in question, his or her legal representative, the appropriate professional board of registration or a social worker assigned to the patient's or resident's case, may, upon written request and approval of that request by the commissioner, receive a copy of the Department's report.
 - (b) the report shall not be made available to any other persons unless the person obtains the written, informed consent of the patient or resident in question or the written approval of the commissioner or an order of a court of competent jurisdiction.
- (3) Any and all notes, papers, documents or other investigative materials collected, prepared or compiled by Department staff during the course of its investigation into any case of

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suspected patient or resident abuse, neglect, mistreatment or misappropriation of patient or resident property shall be confidential and shall not be disclosed or otherwise made available to any person except duly authorized staff of the Department and the Attorney General.

155.010: Responsibilities of the Facility, Home Health Agency, Homemaker Agency, and Hospice Program

(A) Each facility, home health agency, homemaker agency and hospice program shall develop and adopt, through an interdisciplinary team, written policies and procedures for preventing patient or resident abuse, neglect, mistreatment and misappropriation; and reporting and responding to suspected cases of patient or resident abuse, neglect, mistreatment or misappropriation of patient or resident property prior to submitting an application for a license. Each facility, home health agency, homemaker agency and hospice program shall implement, and review and revise through an interdisciplinary team as needed but not less than once a year, its written policies and procedures. A facility, home health agency, homemaker agency and hospice program shall ensure that all staff, including temporary staff and volunteers, are trained and determined to be competent as needed for their duties on the policies and procedures developed. At a minimum, these written policies and procedures shall include provisions to meet the requirements of 105 CMR 155.010, and the following areas.

- (1) Screening;
- (2) Training;
- (3) Prevention;
- (4) Identification;
- (5) Investigation;
- (6) Protection; and
- (7) Reporting and Response.

(B) Responsibilities in Regard to Each Suspected Case. In regard to each case of suspected patient or resident abuse, neglect, mistreatment or misappropriation of patient or resident property, each facility, home health agency, homemaker agency and hospice program shall:

- (1) report all such suspected cases to the Department in accordance with the procedures set forth in 105 CMR 155.004 and 155.005;
- (2) immediately begin to conduct its own internal investigation into the allegation, interview all witnesses, and obtain their written statements about the case;
- (3) immediately initiate steps to prevent further potential harm to patients or residents while the investigation is in progress;
- (4) make available to the Department all information which may be relevant to the Department's investigation into such suspected cases; and
- (5) make all reasonable efforts to facilitate the Department's attempts to interview any and all potential witnesses who may have information relevant to the Department's investigation.

(C) Responsibility to Review Harmful Incidents. Each facility, home health agency, homemaker agency, or hospice program shall immediately review any situation or incident in which a patient or resident suffers physical or psychological injury or harm for any reason.

- (1) If said review reveals any reasonable basis for believing that patient or resident abuse, neglect or mistreatment caused, or in any way contributed to, that injury or harm, the facility, home health agency, homemaker agency or hospice program shall immediately report the matter to the Department as a case of suspected abuse, neglect or mistreatment in accordance with the procedures set forth in 105 CMR 155.004 and 155.005.
- (2) In all other cases, in regard to facilities only, the facility shall report the matter to the Department as an "incident seriously affecting the health or safety of patients or residents" in accordance with the requirements of 105 CMR 150.002(G). The Department shall review such "incident reports" and may in its discretion conduct an investigation to determine whether resident abuse, neglect or mistreatment had occurred.
- (3) Whenever a patient or resident has suffered physical or psychological harm as a result of suspected abuse, neglect or mistreatment, a facility, home health agency, homemaker agency, or hospice program shall immediately take any and all protective and/or remedial actions that are reasonably necessary to prevent further harm to that patient or resident and

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all other patients and residents. Such protective and/or remedial action shall not be delayed solely because the Department has not completed its investigation.

(D) Responsibility to Provide Notice.

(1) Each facility shall post, in a conspicuous location on each floor, a notice informing the public of the patient and resident abuse statute, 105 CMR 155.000, and the procedures for reporting to the Department any case of suspected patient or resident abuse, neglect, mistreatment or misappropriation of patient or resident property. The form, content and size of the notice shall be prescribed by the Department.

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(2) Each home health agency, homemaker agency, or hospice program shall post in the respective agencies' offices a notice informing the public and staff of the patient abuse statute, 105 CMR 155.000 and the procedures for reporting to the Department any case of suspected patient abuse, neglect, mistreatment or misappropriation of patient property. The form, content and size of the notice shall be prescribed by the Department. Such agencies shall also inform the patients they serve of the patient abuse statute, 105 CMR 155.00 and of the procedures for reporting to the Department any case of suspected patient abuse, neglect, mistreatment or misappropriation of patient property.

(E) Responsibility to Contact Registry.

(1) All facilities, except rest homes, shall contact the Registry prior to hiring a nurse aide in order to determine whether the prospective employee has met the federal requirements for competency contained in 42 USC § 1396r and has been certified as a nurse aide for employment in a facility.

(2) All facilities shall contact the Registry prior to hiring any employee to ascertain if there is any sanction, finding or adjudicated finding of patient or resident abuse, neglect, mistreatment or misappropriation of patient or resident property against the prospective employee.

(3) All home health agencies, homemaker agencies, and hospice programs shall contact the Registry prior to hiring an individual who will provide direct care to patients or have access to patients or their property to ascertain if there is any sanction, finding or adjudicated finding of patient or resident abuse, neglect, mistreatment or misappropriation of patient or resident property against the prospective employee.

(4) Except as provided in 105 CMR 155.014(A)(2), no facility, home health agency, homemaker agency or hospice program shall hire or employ an individual whose name appears in the Registry with a finding or adjudicated finding of patient or resident abuse, neglect, mistreatment or misappropriation of patient or resident property, or, if a sanction was imposed upon that individual, such individual may not be hired or employed until the terms of such sanction have been fulfilled. Furthermore, no facility, home health agency, homemaker agency or hospice program shall hire or employ an individual if such individual has been found guilty of, or pleaded guilty or *nolo contendere* to, or admitted to sufficient facts to support a guilty finding of patient or resident abuse, neglect, mistreatment or misappropriation of patient or resident property in a court of law.

(F) Provision of Training. Each facility, home health agency, homemaker agency and hospice program shall provide orientation and annual inservice training programs for all staff on patient and resident abuse, neglect, mistreatment, and misappropriation of patient or resident property.

(1) All new employees shall receive orientation before they begin an assignment to care for a patient or resident. Such orientation shall include:

(a) provision of information about the requirements of M.G.L. c. 111, §§ 72F through 72L, and 105 CMR 155.000;

(b) instruction on the obligation to report suspected patient or resident abuse, neglect, mistreatment or misappropriation of patient or resident property, and the reporting procedures as set forth in 105 CMR 155.000; and

(c) close observation of new employees.

(2) Immediately after beginning employment and at least once a year thereafter, all personnel of facilities, and those personnel of home health agencies, homemaker agencies and hospice programs who provide services to patients, shall receive inservice training which shall include, but not be limited to, the following:

(a) provision of information about the requirements of M.G.L. c. 111, §§ 72F through 72L and 105 CMR 155.000;

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- (b) instruction on the obligation to report suspected patient or resident abuse, neglect, mistreatment or misappropriation of patient or resident property, and the reporting procedures as set forth in 105 CMR 155.000;
- (c) instruction in techniques for the management of patients or residents with difficult behavior problems;
- (d) identification of factors which contribute to or escalate patient or resident behavior which is threatening or assaultive;
- (e) assessment of personal responses to patient or resident behavior which is aggressive, threatening or assaultive;

155.010: continued

- (f) identification and reinforcement of positive and adaptive employee and patient or resident coping behavior;
- (g) training in the use of intervention techniques, including verbal responses and safe, non-injurious physical control techniques, as therapeutic tools for threatening or assaultive patients or residents; and
- (h) interdisciplinary program and treatment planning for patients and residents, as appropriate.

(G) Adoption of Preventive Policies. Each facility, home health agency, homemaker agency and hospice program shall adopt and implement preventive administrative, management and personnel policies and practices, including, but not limited to, the following:

- (1) careful interviewing of employee applicants;
- (2) close examination of applicant references prior to hiring;
- (3) in accordance with applicable federal and state laws, obtaining all available criminal offender record information from the criminal history systems board on an applicant under final consideration for a position that involves the provision of direct personal care or treatment to patients or residents.
- (4) cooperation with other facilities, home health agencies, homemaker agencies, and hospice programs in providing information to prospective employers about an employee's competence, including the ability to handle patients or residents with difficult behavioral problems;
- (5) staff support programs;
- (6) development of patient or resident care plans which include approaches to dealing with patients or residents who may exhibit hostile behavior; and
- (7) provision of timely and relevant information to employees regarding patients or residents who are emotionally unstable or have difficult behavior problems, and approaches to be used in caring for them.

155.011: Deficiency Statements and Plans of Correction

(A) If, during its investigation, the Department finds violations of the provisions of 105 CMR 155.000, the Department shall prepare a deficiency statement citing every violation observed, a copy of which shall be sent to the facility, home health agency, homemaker agency, or hospice program in question.

(B) Such facility, home health agency, homemaker agency, or hospice program shall submit to the Department a written plan of correction for each violation cited within ten days of receipt of the deficiency statement. Every plan of correction shall set forth with respect to each deficiency cited the specific corrective steps to be taken, a timetable for such steps, and the date by which compliance with 105 CMR 155.000 will be achieved. The dates given for the correction of the deficiencies shall ensure that compliance is achieved within a reasonable time period. The Department shall review the plan of correction and notify the facility, home health agency, homemaker agency or hospice program of either its acceptance or rejection of the plan of correction. A plan which has been rejected must be amended and re-submitted within five days of receipt of the Department's notice.

155.012: Penalty for Patient or Resident Abuse, Neglect, Mistreatment or Misappropriation of Patient or Resident Property

(A) If the Department finds after investigation that a registered or licensed professional, as defined in 105 CMR 155.003, is responsible for patient or resident abuse, neglect, mistreatment

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or misappropriation of patient or resident property, the Department shall notify the appropriate registration board of that finding. Such registered or licensed professionals may be subject to disciplinary actions by their applicable registration or licensing board.

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(B) If the Department finds after investigation that any entity or individual is responsible for patient or resident abuse, neglect, mistreatment or misappropriation of patient or resident property, the Department shall notify the Attorney General of that finding. The Attorney General may recover a civil penalty of not more than \$2,500 if a person abuses, neglects or mistreats a patient or resident or misappropriates patient or resident property. Any action brought by the Attorney General pursuant to 105 CMR 155.012 shall be exempt from the provisions of M.G.L. c. 231, § 60B. The provisions of 105 CMR 155.012 shall not exclude any actions brought by the Attorney General or a private party pursuant to M.G.L. c. 93A, nor limit any recovery thereunder, or to any action by the Department pursuant to 105 CMR 155.000.

155.013: Procedures for Notice and Hearings for Nurse Aides, Home Health Aides and Homemakers

The provisions of 105 CMR 155.013 pertain only to those accused individuals who are nurse aides, home health aides and homemakers.

(A) Notification. If, following its investigation, the Department makes a finding that a nurse aide, home health aide or homemaker has abused, neglected, or mistreated a patient or resident or misappropriated patient or resident property, it must notify in writing:

- (1) such nurse aide, home health aide or homemaker; and
- (2) the administrator of the facility in which the incident occurred, or the director of the home health agency, homemaker agency, or hospice program that employed such nurse aide, home health aide or homemaker at the time the incident occurred.

(B) Timing of the Notice. The Department must notify the accused nurse aide, home health aide or homemaker in writing within ten business days of the completion of its report of its investigation.

(C) Contents of the Notice. The notice must include the following:

- (1) the nature of the allegation(s);
- (2) the date and time of the occurrence, to the extent known to the Department;
- (3) the fact that such accused has the right to a hearing;
- (4) the Department's intent to report the adjudicated finding to the Registry should the Department prevail at the hearing;
- (5) the fact that such accused has 30 days from the date of the notice to respond and request a hearing, and if he or she fails to do so, the Department will report its findings to the Registry;
- (6) the consequences of waiving the right to a hearing;
- (7) the consequences of an adjudicated finding that the alleged patient or resident abuse, neglect, mistreatment or misappropriation of patient or resident property did occur; and
- (8) the fact that such accused has the right to be represented by an attorney at the individual's own expense.

(D) From the date of the Department's notice to the accused nurse aide, home health aide or homemaker until the completion of the case, the Registry will note that a case against such accused is pending.

(E) Failure to Respond or Waiver of a Hearing. If the accused nurse aide, home health aide or homemaker does not make a written request for a hearing to the Department within 30 days of the date of the Department's notice, it shall be considered a waiver of his or her right to a hearing. In that case, or in the case that such accused waives the right to a hearing in writing, the Department shall report its finding to the Registry as a final finding.

155.014: Hearing Process for Nurse Aides, Home Health Aides and Homemakers

(A) Upon receipt of a request for a hearing from an accused nurse aide, home health aide or homemaker, the Department must complete the hearing within 120 days from the day it receives the request for a hearing.

(B) The hearing shall be conducted pursuant to 801 CMR 1.02, *The Standard Adjudicatory Rules of Practices and Procedures Informal/Fair Hearing Rules*.

155.014: continued

(C) The Department must hold the hearing at a reasonable place and time convenient for such accused individual.

(D) A hearing officer shall not make a finding that such accused individual has neglected a patient or resident if the individual demonstrates that such neglect was caused by factors beyond the control of the individual.

(E) After the adjudication of a case, the hearing officer shall transmit a copy of the decision to the accused nurse aide, home health aide or homemaker and to the Department. The Department shall then send a copy of the hearing officer's decision to the following:

- (1) the administrator of the facility in which the incident occurred, or the director of the home health agency, homemaker agency or hospice program that employed such accused individual;
- (2) if known to the Department, the administrator of the facility that currently employs such accused individual, if different from the facility in which the incident occurred; or the director of the home health agency, homemaker agency or hospice program that currently employs such accused, if different from that individual's place of employment when the incident occurred;
- (3) the Attorney General;
- (4) the registry as defined in 105 CMR 155.003.

(F) If the decision rendered by the hearing officer is adverse to the accused nurse aide, home health aide or homemaker, the hearing officer shall also transmit to such individual a notice informing him or her of the right of appeal. Such appeal shall be made in accordance with the provisions of M.G.L. c. 30A.

(G) In a neglect case, where there has been a sanction imposed or a finding or adjudicated finding against a nurse aide, home health aide, or homemaker where such sanction or finding was placed on the Registry, such individual may, after one year from the date the sanction or finding was placed on the Registry, petition the Department for removal of the sanction or finding from the Registry. In order to remove the sanction or finding from the Registry, the Department must determine that the employment and personal history of the individual does not reflect a pattern of abusive behavior or neglect, and that the neglect involved in the original finding was a single occurrence.

155.015: Alternative Sanctions for Patient or Resident Abuse, Neglect, Mistreatment or Misappropriation of Patient or Resident Property by Nurse Aides, Home Health Aides, and Homemakers

(A) Upon making a finding that a nurse aide, home health aide or homemaker abused, neglected, or mistreated a patient or resident, or misappropriated patient or resident property, the Department may, where appropriate, impose the following sanctions in lieu of an adjudicated finding pursuant to a hearing:

- (1) Suspension. The Department may suspend the right of such individual to work as a nurse aide, home health aide or homemaker for such period of time as the Department shall determine. The terms of the suspension shall be contained in the Registry unless otherwise removed pursuant to 105 CMR 155.014(G).
- (2) Probation. The Department may impose a period of probation on the accused nurse aide, home health aide or homemaker during which time such individual shall undergo additional training or counseling or such other measures as determined by the Department to be necessary to avoid further incidents by the accused. If, during the probationary period, such individual is working in a facility, or employed by a home health agency, homemaker

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agency or hospice program, such facility or agency shall make reports to the Department as to the progress of the individual in fulfilling the requirements for the probation period. The terms of the probation shall be contained in the Registry unless otherwise removed pursuant to 105 CMR 155.014(G).

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(3) Warning Letter. The Department may issue a warning letter to the accused nurse aide, home health aide or homemaker. The warning letter shall indicate that no other penalty will be imposed at the time, but should a subsequent allegation of patient or resident abuse, neglect, mistreatment or misappropriation of patient or resident property be made against such individual, the initial incident will be raised at any hearing of the subsequent incident. No record of the issuance of a warning letter shall be contained in the Registry unless there is a subsequent allegation of patient or Resident abuse, neglect, mistreatment or misappropriation of patient or resident property involving such individual.

(B) By agreeing to the sanctions described in 105 CMR 155.015(A), an accused nurse aide, home health aide or homemaker waives the right to a hearing. If the Department determines that such individual has violated the terms of the suspension or probation, the Department shall report such finding to the Registry as if it had been adjudicated.

155.016: Establishment and Content of the Registry for Nurse Aides, Home Health Aides and Homemakers

(A) The Department shall establish and maintain a registry of all individuals who have met the federal requirements for competency contained in 42 USC § 1396r and have been certified as nurse aides for employment in a facility.

(B) A facility, other than a rest home, must not hire or employ on a paid, unpaid, temporary or permanent basis, any individual working as a nurse aide for more than four months, unless that individual has completed training within 90 days in accordance with 105 CMR 156.100: *Responsibilities of the Facility*, and is listed in the Registry as having demonstrated competency in accordance with 105 CMR 155.016

(C) The Registry shall also contain the following:

(1) specific, documented findings or adjudicated findings of patient or resident abuse, neglect, mistreatment or misappropriation of patient or resident property by nurse aides, home health aides and homemakers. The documentation must include:

- (a) the name, address, telephone number and social security number of such individual;
- (b) the nature of the allegation and the record number identifying the documents on which the Department's conclusion were based; and
- (c) the date of the hearing if such individual chose to have one, and its outcome.

(2) a brief statement by the accused nurse aide, home health aide or homemaker disputing the findings, if such individual chooses to provide such statement;

(3) if the Department imposed any suspension or probationary period on the nurse aide, home health aide or homemaker, the dates for which such suspension or probation is in effect; and

(4) if known to the Department, any guilty findings made against such individual by a court of law, or any guilty pleas, nolo contendere pleas, or admission to facts sufficient to support a guilty finding made in a court of law by such individual accused of patient or resident abuse, neglect, mistreatment, or misappropriation of patient or resident property.

(D) Disclosure of information on the Registry:

(1) the Department must disclose information regarding findings and adjudicated findings of patient or resident abuse, neglect, mistreatment or misappropriation of patient or resident property, other sanctions imposed against any nurse aide, home health aide or homemaker, as well as any information regarding guilty findings, guilty pleas, *nolo contendere* pleas or admitted to sufficient facts to support a guilty finding made by such individual in a court of law.

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(2) when disclosing such information regarding any nurse aide, home health aide or homemaker, the Department shall also disclose any statement made by such individual disputing the findings.

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155.017: Severability

The provisions of 105 CMR 155.000 are severable. If any provision herein is declared unconstitutional or invalid by a court of competent jurisdiction, the validity of the remaining portions shall not be so affected.

REGULATORY AUTHORITY

105 CMR 155.000: M.G.L. c. 111, §§ 72F through 72L.