



*The Commonwealth of Massachusetts*  
*Executive Office of Health and Human Services*  
*Department of Mental Health*  
*25 Staniford Street*  
*Boston, Massachusetts 02114-2575*

**CHARLES D. BAKER**  
*Governor*

**KARYN E. POLITO**  
*Lieutenant Governor*

**MARYLOU SUDDERS**  
*Secretary*

**JOAN MIKULA**  
*Commissioner*

(617) 626-8000  
[www.mass.gov/dmh](http://www.mass.gov/dmh)

**NOTICE OF PUBLIC HEARING**

Notice is hereby given that the Department of Mental Health is proposing regulations under the authority of M.G.L. c. 19, ss. 1, 12, 16, 18, 19 and M.G.L. c. 123 § 36. A public hearing will be held for the purpose of receiving written and oral testimony on its proposed actions. The Department describes the substance of the actions as follows:

**104 CMR 27.00 Licensing and Operational Standards for Mental Health Facilities:** This regulation sets forth the licensing and operational standards by which DMH licenses private psychiatric facilities, and pursuant to which it operates DMH inpatient facilities. The regulation is amended to create and enforce as a condition of licensure that DMH licensed inpatient psychiatric facilities provide services that meet the needs of the Commonwealth, particularly with respect to specialty populations currently underserved and most likely to board in emergency rooms waiting for a placement; and that such facilities have plans to assure adequate staffing to meet the needs of their current operating capacity. The amendments prohibit facilities from refusing to admit patients who meet commitment criteria under M.G.L. c. 123 § 12(b), for which they are licensed, while providing admission for a preferred specialty population, and permitting refusal if the accepting such an admission would cause the facility to operate above its licensed capacity or beyond its capability to care for a specific patient. Provisions are updated regarding DMH action in response to licensing deficiencies, using language consistent with DPH's licensing regulations, which will permit DMH to impose a provisional license, in lieu of license suspension or revocation, on a facility found to be out of compliance with licensing requirements, and charge a renewal fee to have its full license restored.

Further revisions are as follows: Simplifies privacy rules by applying federal HIPAA standards for disclosures for purposes of "treatment, payment and operations"; new language allows for alternative technology, such as telemedicine; clarifies current licensing practice regarding DMH action in response to licensing application, plans of correction, staff training, notices to DMH from licensed facilities; adopts language similar to DPH licensing regulations concerning required notifications to DMH; repeals out-dated section on behavior management; updates language regarding authority of guardians to conform with current Uniform Probate Code in effect; reorganization of sections for clarity.

**104 CMR 28.00 Licensing and Operational Standards for Community Services:** This regulation establishes a comprehensive system of community mental health care and licensed programs that provide residential care and treatment for mental health conditions, by providing licensing and operational standards and procedures for community programs that DMH licenses. The regulation is amended to simplify application of privacy rules by applying federal HIPAA standards for disclosures for purposes of "treatment, payment and healthcare operations." Consistent with the Commissioner's authority under M.G.L. c. 123 § 36 to authorize release of records in a consumer's best interests, these amendments establish the principle that disclosures permitted by

HIPAA for purposes of treatment, payment and healthcare operations, are deemed in the consumer's best interest. Language is amended for accuracy and clarity.

**TIME AND PLACE OF PUBLIC HEARING:**

November 28, 2017 at 2:00 – 4:00 pm

DMH Legal Office

Boston Room

25 Staniford Street

Boston, MA 02114

**METHOD OF COMMENT:** Written comments may be mailed to the Office of the General Counsel, Department of Mental Health, 25 Staniford Street, Boston, MA 02114; or submitted to e-mail address: [DMH-regulations@state.ma.us](mailto:DMH-regulations@state.ma.us) **NO LATER THAN NOVEMBER 28, 2017.** Comment Period ends at 5:00 P.M. on November 28, 2017.

**ACCOMMODATION:** If you plan to attend the public hearing and wish to request the accommodation of a sign language or other interpreter, contact DMH Legal at least 14 days in advance of the hearing date at (617) 626-8236.

**INFORMATION:** Copies of the proposed regulations may be obtained from the Department of Mental Health Legal Office, 25 Staniford Street, Boston, MA 02114, and may also be found on the Department's Internet site at <http://www.mass.gov/eohhs/gov/laws-regs/dmh>.

By Order of the Department of Mental Health  
Joan Mikula, Commissioner  
October 18, 2017