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**DEPARTMENT OF MENTAL HEALTH**  
**DIVISION OF CLINICAL AND PROFESSIONAL SERVICES**  
**LICENSING DIVISION – BULLETIN #17-01**  
**January 10, 2017**

**New Investigation Regulations – 104 CMR 32.00**

Please note that the Department has issued new Investigations regulations (104 CMR 32.00), which were filed with the Secretary of State and became effective on December 30, 2016.

This Bulletin is intended to highlight what has changed and what has remained the same within these regulations.

Although some of the reference numbers have changed, the process for filing complaints, conducting fact-finding activities, issuing decisions and pursuing appeals remains essentially the same as in the previous version of these regulations. (For example, the Requirements for All Fact-Finding Activities were located at 104 CMR 32.04, but now are located at 104 CMR 32.06, with some minor revisions to the language. The reference 104 CMR 32.04 now applies to a summary of the entire Complaint Process.)

**Important Changes:**

A new term, “Responsible Person,” is introduced, defined as:

The individual with responsibility for issuing a decision on a complaint pursuant to 104 CMR 32.04 (3), (4) or (5) or on a request for reconsideration pursuant to 104 CMR 32.04(7). Depending on the nature of the complaint, the Responsible Person may be the Area Director, Director of Program Management for Child/Adolescent Services, Director of Licensing, Senior Manager or the Person in Charge.

This term was introduced to distinguish between the individual who is responsible for making the decision on a complaint, and the Person in Charge, who has other specific obligations under the regulations. The Person in Charge is defined as:

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The person having the day to day responsibility for the management and operation of the applicable Department operated or contracted for or licensed program, facility or office, or the person's designee.

Note that except in the case of full DMH investigations, for licensed inpatient facilities, the Person in Charge is also the Responsible Person who issues the decision.

Clarification that the process is not designed to address complaints that are solely related to consumer conduct.

A complaint that a client created a condition that was dangerous, illegal or inhumane would not be the subject of a fact-finding and decision under these regulations, unless the circumstances suggest that staff actions or omissions contributed to the incident being complained of, in which case it would be staff actions or omissions that would be the focus of the complaint resolution process.

Administrative Resolution is fully described in the amended regulations at 104 CMR 32.04(3).

The regulations set a narrow set of criteria for determining when a complaint can be resolved through this process, which are that the complaint:

1. concerns an allegation of an incident or condition that is not dangerous, illegal or inhumane within the scope of 104 CMR 32.00;
2. makes allegations that are objectively impossible;
3. repeats allegations of fact that have previously been investigated and decided in accordance with 104 CMR 32.00;
4. alleges a violation of regulation, policy or procedure that does not present a health or safety risk to a client or other individual and which may be resolved or corrected without need for additional fact finding;
5. is withdrawn by the client or complainant, provided the complaint does not concern the health or safety of a client or other individual; or
6. presents undisputed facts which allow the Responsible Person to determine that the complaint can best be resolved through the administrative process.

If the Responsible Person has a reasonable basis to believe that a complaint meets one of the above criteria, the complaint may be addressed through the Administrative Resolution process. The process involves the Responsible Person meeting with the client (or the complainant, if different) to:

1. review the specific allegations in the complaint;
2. determine whether there are disagreements concerning the facts underlying the allegations that require further fact-finding; and
3. discuss and, if possible, agree upon actions, if any, that may be taken by the Responsible Person or designee to address the concerns raised by the complaint.

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The Responsible Person then issues a written notice that includes a statement of the grounds for administrative resolution, the actions, if any, that will be taken by the Responsible Person, the right to request reconsideration, and the client's right of appeal in accordance with the regulations - 104 CMR 32.04(7). The regulations also require notice to the Human Rights Officer (who should be included in the meeting with the client or complainant at their request), and provides for referral to fact-finding if it becomes apparent that the criteria for Administrative Resolution are not met.

With the adoption of the Administrative Resolution process, no complaint should be "screened out," or deemed "out of scope," and not responded to.

1) A provision was added for a Commissioner's Investigation:

This permits the Commissioner to initiate a formal investigation into any matter that does not fall within the scope of a complaint, but which, nonetheless, has significant implications for persons who receive mental health services in the Commonwealth.

**Please review the amended regulations which are attached, and which have been posted on the DMH website at: <http://www.mass.gov/eohhs/docs/dmh/regs/reg-104cmr32.pdf>**

Questions regarding these new regulations should be directed to the DMH Licensing Division at 617-626-8117 or [Patricia.Webb@massmail.state.ma.us](mailto:Patricia.Webb@massmail.state.ma.us)