



THE COMMONWEALTH OF MASSACHUSETTS

William Francis Galvin
Secretary of the Commonwealth

Regulation Filing *To be completed by filing agency*

CHAPTER NUMBER: 115 CMR 1.02

CHAPTER TITLE: Authority

AGENCY: Department of Developmental Services

SUMMARY OF REGULATION: *State the general requirements and purposes of this regulation.*
115 CMR 1.02(1) describes the authority of the Department of Developmental Services.

REGULATORY AUTHORITY: M.G.L. c. 19B, §§ 1 and 14

AGENCY CONTACT: Marianne Meacham, General Counsel PHONE: 617 624-7702

ADDRESS: 500 Harrison Avenue, Boston, MA 02118

Compliance with M.G.L. c. 30A

EMERGENCY ADOPTION - *if this regulation is adopted as an emergency, state the nature of the emergency.*

Recent Appeals Court decision invalidated current regulations which limits the Departments ability to determine individuals' eligibility for services; the inability to determine eligibility for services will result in some individuals not receiving needed services or referrals to other agencies.

PRIOR NOTIFICATION AND/OR APPROVAL - *If prior notification to and/or approval of the Governor, Legislature or others was required, list each notification, and/or approval and date, including notice to the Local Government Advisory Commission.*

PUBLIC REVIEW - *M.G.L. c. 30A sections 2 and/or 3 requires notice of the hearing or comment period, including a small business impact statement, be filed with the Secretary of the Commonwealth, published in appropriate newspapers, and sent to persons to whom specific notice must be given at least 21 days prior to such hearing or comment period.*

Date of public hearing or comment period: _____

FISCAL EFFECT * *Estimate the fiscal effect of the public and private sectors.*

For the first and second year: _____

For the first five years: _____

No fiscal effect: _____

SMALL BUSINESS IMPACT - *M.G.L. c. 30A section 5 requires each agency to file an amended small business impact statement with the Secretary of the Commonwealth prior to the adoption of a proposed regulation. If the purpose of this regulation is to set rates for the state, this section does not apply.*

Date amended small business impact statement was filed: _____

CODE OF MASSACHUSETTS REGULATIONS INDEX - *List key subjects that are relevant to this regulation:*
115 CMR 1.02(1) describes the authority of the Department of Developmental Services

PROMULGATION - *State the action taken by this regulation and its effect on existing provisions of the Code of Massachusetts Regulations (CMR) or repeal, replace or amend. List by CMR number.*

The emergency amendment of regulations at 115 CMR 1.02 identifies the Department as the intellectual disability authority in Massachusetts

ATTESTATION * *The regulation described herein and attached hereto is a true copy of the regulation adopted by this agency.* ATTEST:

SIGNATURE: _____ / _____ DATE: 7 A.

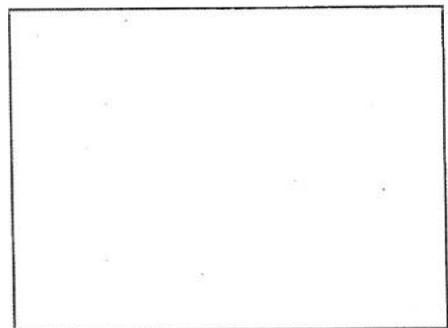
Publication * *To be completed by the Regulations Division*

MASSACHUSETTS REGISTER NUMBER: _____ DATE: _____

EFFECTIVE DATE: _____

CODE OF MASSACHUSETTS REGULATIONS

Remove these •a•es: _____ *Insert these •a•es:* _____



115 CMR 1.00: SCOPE AND AUTHORITY

Section

1.01: Scope of Regulations

1.02: Authority

1.03: Interagency Agreements with Department of Mental Health

1.04: Severability

1.01: Scope of Regulations.

(1) Scope of Title. 115 CMR sets forth the regulations of the Department of Developmental Service, in 115 CMR called the Department. 115 CMR applies to the operation of the Department and to the operation and provision of services and supports by public and private programs and facilities that are subject to the Department's jurisdiction.

(2) Scope of Chapters and Sections. Unless the contrary is specified in a particular chapter or section of 115 CMR, all categories of services and supports, programs and facilities operated, licensed, certified, or contracted by the Department are subject to all chapters and sections of 115 CMR.

1.02: Authority

(1) Dtmartment. The establishment of the Department was authorized by St. 1986, c. 599 as renamed by St. 2008, c. 182. The Authority of the Department derives primarily from the provisions of M.G.L. c. 19B and M.G.L. c. 12313. All regulations adopted pursuant to M.G.L.— chs. 1913 and 123B, and any rights arising from such regulations, are subject to appropriation. The Denartment is the intellectual disability authority in Massachusetts.

(2) Commissioner. The Department is under the exclusive supervision and control of the Commissioner of Developmental Services, in 115 CMR called the Commissioner. The Commissioner is appointed by the Secretary of Health and Human Services subject to the approval of the Governor.

(3) Breadth of Services. The Department's authority to provide services and supports derives from statute and is not restricted by the description of specific types of services or supports in 115 CMR. Nothing in 115 CMR shall be interpreted to prevent the Department from developing and implementing new types or models of services or supports, including but not limited to direct cash assistance or vouchers systems.

1.03: Interagency Agreements with Department of Mental Health

Pursuant to M.G.L. c. 19B, § 18, interagency agreements between the Commissioner of Mental Health and the Commissioner of Developmental Services may be entered into for the coordinated regulation, or for the coordinated or joint management, of certain services or supports that may be required or that should be provided by both the Department of Mental Health and the Department of Developmental Services; provided that no such agreement shall conflict with the Department's primary responsibility for individuals in accordance with M.G.L. chs. 1913 and 123B regardless of whether such persons are also mentally ill, nor shall any such agreement deprive any individual who also has mental illness from equal access to services offered by the Department of Mental Health.

1.04: Severability

If any regulation or section, sub-section, sentence, clause, phrase or portion thereof is found to be invalid by a court of competent jurisdiction for any reason, said portion shall be deemed a separate, distinct, and independent provision, and the validity of the remaining portion, if any, of the affected regulations or of the other regulations shall not be affected.

REGULATORY AUTHORITY

115 CMR 1.00: M.G.L. chs. 198 and 1238.



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Regulation Filing *To be completed by filing agency*

CHAPTER NUMBER: 115 CMR 2.01

CHAPTER TITLE: Definitions

AGENCY: Department of Developmental Services

SUMMARY OF REGULATION: *State the general requirements and purposes of this regulation.*

115 CMR 2.01 defines terminology used throughout the Department of Developmental Services's regulations found at title number **115 CMR**.

REGULATORY AUTHORITY: M.G.L. c. 19B, §§ 1 and 14

AGENCY CONTACT: Marianne Meacham, General Counsel PHONE: 617 624-7702

ADDRESS: 500 Harrison Avenue, Boston, MA 02118

Compliance with M.G.L. c. 30A

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CODE OF MASSACHUSETTS REGULATIONS INDEX - *List key subjects that are relevant to this regulation:*
115 CMR 2.01 defines terminology used throughout Department of Developmental Services regulations.

PROMULGATION - *State the action taken by this regulation and its effect on existing provisions of the Code of Massachusetts Regulations (CMR) or repeal, replace or amend. List by CMR number.*

Amendments to the regulations at 115 CMR 2.01 describe the clinical authorities relied upon by the Department to determine whether an individual has an intellectual disability for purposes of determining eligibility for Department services.

ATTESTATION - *The regulation described herein and attached hereto is a true copy of the regulation adopted by this agency.* ATTEST:

SIGNATURE: Elin M. H DATE: 9/26/12

Publication - *To be completed by the Regulations Division*

MASSACHUSETTS REGISTER NUMBER: _____ DATE- _____

EFFECTIVE DATE: _____

CODE OF MASSACHUSETTS REGULATIONS

Remove these pages: | Insert these pages:



115 CMR: DEPARTMENT OF DEVELOPMENTAL SERVICES

115 CMR 2.00: DEFINITIONS

Section

2.01: Definitions

2.01.1: Definitions

As used in 115 CMR, the following terms shall have the following meanings:

Adaptive Behavior means the quality of everyday performance in coping with environmental demands (what people do to take care of themselves and to relate to others in daily living).

Administrative means, with respect to services or supports, that they are in compliance with the regulations of the Department or of the agency of the Commonwealth with legal responsibility for licensure or regulation.

Antipsychotic Medication means medication that is used to treat a thought disorder of psychotic proportions as defined in the *Magnus-CDC and Statim iccd Manual of Munro's Director*, 4th edition, as revised or in subsequent editions and revisions, of the American Psychiatric Association, and which has been designated by medical authorities as belonging to the class of medications categorized as antipsychotic medication.

Appropriate means, with respect to a service or support or facility, that it is sufficient to provide the quality and quantity of staff, assistance, intervention, and environment to meet the individual's needs or objectives indicated in his or her Individual Service Plan (ISP). With respect to an intervention strategy, "appropriate" means designed to achieve the desired goal or objective.

Area of Service means the geographical area determined by the Department to be the locality for the organization, coordination, and provision of services and supports to an individual. The principle consideration is the preference of the individual. Other factors considered in determining an individual's area of service are:

- (a) the individual's needs;
- (b) the availability of appropriate services or supports within a given locality;
- (c) the location of the individual's family and friends; and
- (d) if the individual is under 22 years of age, the location of the city or town in Massachusetts responsible for providing special education under M.G.L. c. 71B.

Area Office means the locally based office of the Department, and the employees therein, responsible for the organization, coordination, and provision of services or supports to individuals whose area of service falls within that office's geographical scope as designated by the Department.

Arranged by the Department means, with respect to services or supports, made available to the individual through referral by the Department to agencies, organizations, or persons other than facilities, services or supports operated, licensed, certified, or contracted by the Department.

Authorized Psychiatrist means any physician who has been authorized by the head of a provider to order chemical restraint, mechanical restraint, or physical restraint, and to examine individuals in such restraint.

Authorized Staff Person means any member of the staff who is authorized by the head of the provider and trained to order mechanical restraint or physical restraint pursuant to 115 CMR 5.04M1bP.

Available means, with respect to a facility, service or support, that the provider has the staff, resources, assistance, and space to meet the needs or objectives indicated in an individual's ISP and that has not been designated for another individual with a higher priority of need for services or supports.

115 CMR: DEPARTMENT OF DEVELOPMENTAL SERVICES

2.01: continued

Behavior Modification shall have the meaning set forth at 115 CMR 510,

means the capability of an individual to exit his or her residence to grade level within 15 minutes with or without assistance.

Certification means verification by the Department of the quality of providers' services and supports described at 115 CMR 8.01(3)(b) based upon their compliance with certification standards and quality of services for individuals set forth at 115 CMR 7.03 or the approval issued by the Department to a licensed provider with respect to certain behavior modification treatments.

Chemical Restraint (see Emergency Restraint).

Local authority that determines the presence of a condition means the authority that determines the presence of a condition as defined in the standard set forth at page 5 in 115 CMR 1.01 Edition of the Regulations of the Department of Developmental Services.

Closely Related Developmental Conditions means genetic, neurodevelopmental or physical disorders that have a significant overlap with intellectual disability, and result in similar support needs. For the purpose of 115 CMR 6.06(1), closely related developmental conditions may include:

- (a) Williams Syndrome
- (b) Prader-Willi Syndrome
- (c) Lesch-Nyhan Syndrome
- (d) Angelman Syndrome
- (e) Duchenne's Syndrome
- (f) Down Syndrome
- (g) Fragile X Syndrome
- (h) Cerebral Palsy
- (i) Pervasive Developmental Disorders including the following specified autism spectrum disorders: Autistic Disorder, Rett's Syndrome, Childhood Disintegrative Disorder, and Pervasive Developmental Disorder-Not Otherwise Specified (NOS)
- (j) Spina Bifida (Myelomeningocele)
- (k) **Tuberous Sclerosis**
- (l) Fetal Alcohol Syndrome or
- (m) any other developmental disorder that the Department determines to be a closely related developmental condition.

Commissioner means the Commissioner of the Department of Developmental Services,

Community means a city, town, district, neighborhood, or other commonly recognized geographical or political area.

Community Living Supports means a variety of support models designed to support individuals living in the community. Community Living Supports may include state plan **services** including adult foster care or group adult foster care with Department-funded wrap around services or community habilitation supports to individuals residing in their own home, or enhanced family supports consisting of Department-funded staff supports for an individual living in his family home.

Community Resources means workplaces, businesses, places of worship, social groups, consultants, health care facilities or professionals, places for recreation or entertainment, and other facilities, professionals, or supports generally available to the population-at-large within a community.

Community 24-Hour Residential Supports means Department-funded staff supports provided 24 hours per day in a residence that is licensed by the Department,

Competent in Fact means being capable of making informed decisions in specific areas regarding the conduct of one's personal and/or financial affairs

Consent means voluntary approval given by the word, or implied by the action of a person with

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adequate information and sufficient understanding to comprehend the consequences of the decision.

I hereby certify that the Department of Developmental Services (DDS).

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2.01: continued

Designated Representative means a person who *has come* forward as an advocate for the individual's interests, or whom the individual has, through consent, chosen as a representative, in connection with the development and review of the ISP, who is not otherwise disqualified from taking an appeal therefrom, and who is acknowledged by the Department to be the designated representative for the individual in connection with such service planning, in accordance with 115 CMR. 6.31(3) or 6.0(3).

Emergency Restraint means "restraint" as the term is used in M.G.L. c. 12313, § 15, and includes the three categories of emergency restraint, further defined as follows:

- (a) Mechanical Restraint. Mechanical restraint is any limitation of movement achieved by means of a physical device, subject to the following exceptions:
1. Mechanical restraint does not include devices needed to achieve proper body position, balance, or alignment;
 2. Mechanical restraint does not include health-related protections ordered by a physician if absolutely necessary during a *specific medical* or dental procedure or if necessary for the individual's protection during the time that a medical condition exists.
 3. Mechanical restraint does not include a device used to limit movement pursuant to a behavior modification plan reviewed and approved in accordance with 115 CMR 5.10.
- (b) Physical Restraint. Physical restraint is any limitation of movement achieved by means of direct bodily contact between the individual and staff, subject to the following exceptions:
1. Physical restraint does not include comforting or gentle holding of an individual by a staff person for no more than five minutes, provided that if physical force is used to overcome the active resistance of the individual held or to interrupt then-occurring movement by the individual toward a particular destination, or *more* than two staff persons are holding the individual, then the procedure is not a comforting or gentle holding but instead constitutes physical restraint, regardless of the length of time the individual is being held;
 2. Physical restraint does not include physically escorting or guiding the individual to a particular destination, provided that if physical force is used to overcome the *active* resistance of the individual held or to interrupt then-occurring movement by the individual toward a particular destination, then the procedure is not an escort or a guide but instead constitutes physical restraint.
 3. Physical restraint does not include bodily holding as a health-related protection ordered by a physician if necessary during a specific medical or dental procedure or for the individual's protection during the time that a medical condition exists.
 4. Physical restraint does not include a limitation of movement pursuant to a behavior modification plan reviewed and approved in accordance with 115 CMR 5.10.
- (c) Chemical Restraint. Chemical restraint is the non-consensual use of medication, not for treatment, but for the purpose of impairing the individual's freedom of movement, *subject* to the following exceptions:
1. Chemical restraint does not include administrations of medication necessary to prevent immediate grievous bodily harm or death
 - Chemical restraint does not include administrations of medication determined by a licensed physician, who has examined the individual, to be necessary to prevent immediate, substantial, and irreversible deterioration of mental health.
 - Chemical restraint does not include administrations of antipsychotic medication for treatment purposes in accordance with the requirements and procedures for extraordinary treatment that have been established by the Massachusetts Supreme Judicial Court in *Rogers v. Compravol* (1981) and in related cases.

Facility (formerly referred to as a "state school" and referenced in M.G.L. c. 1913, §§ 7 through 10 and 12 as such) means, unless otherwise specified, any of the facilities operated by the Department listed in 115 CMR 3.03. This definition does not apply within the context of 115 CMR 3.06 governing charges for care or within the context of 115 CMR 2.01: Community Care.

Facility Director means the chief executive officer of a facility and also is intended to mean the 'superintendent' referenced in M.G.L. c. 1911, e6 8 and 10 and throughout M.G.L. c. 1238.

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Family means parents, foster parents, spouses, siblings, and others who perform the roles and functions of family members in the life plan individual, including persons in a relationship of mutual support with an individual that is exclusive and expected to endure over time.

Generic Service, means services, supports, or treatment options generally available to the population-at-large with or without special accommodations for persons with intellectual disability

Goals mean long-range outcomes generally expected to be achieved by an individual within five years and stated in measurable terms so that their attainment can be determined. Goals are developed from an evaluation of the individuals present performance, abilities and desires as these relate to what society expects of persons of the same age and Culture who do not have disabilities.

Board means the group of individuals that constitute the governing body of a provider.

Parent means, with respect to persons under the age of 18 years, a natural or adoptive parent, or the individual or ages ay with legal guardianship of the person; and with respect to persons 18 years or age and older, the individual, organization or agency, if any, that has been appointed legal guardian of the person by a court of competent jurisdiction.

Life Skills means the process by which an individual is assisted to acquire and maintain those life skills necessary to cope more effectively with personal and environmental demands or to improve physical, mental, and social competencies.

Head of the provider means the person with executive responsibility for the operation of the provider's agency, services, or supports. Where a provider operates at more than one location, "head of the provider" includes the person with responsibility for the operation at a particular location. Where the provider is a facility, the head of the provider is the facility director.

Physical restraint means any limitation of movement of an individual by bodily contact or mechanical device which falls outside of the definition of restraint (because it meets the criteria of one or the other) as to physical or mechanical restraint set forth at 115 CMR 2.01:11.01:11.01.

Individual means, except where otherwise specified, a person receiving services or supports provided, purchased, or arranged by the Department.

Individual Service Plan (ISP) means a written plan of services or supports for an individual, which is developed, implemented, reviewed, and modified according to the requirements of the Department's regulations on individual service plans.

Intellectual Disability means a condition characterized by significantly below average general intelligence, as measured by a standardized intelligence test, and by deficits in adaptive functioning in at least two of the following areas: communication, self-care, socialization, and work. This definition shall be consistent with the definition of intellectual disability in the Diagnostic and Statistical Manual of Mental Disorders, 4th Edition, as revised (DSM-IV-TR), published by the American Psychiatric Association, 2000, and shall be consistent with the definition of intellectual disability in the International Classification of Diseases, 10th Edition, published by the World Health Organization, 1989.

Behavioral Intervention means a training or teaching procedure, a manipulation or change of environment or the provision of supports designed to teach or assist an individual to achieve a goal or a specific objective. Depending on its content, an intervention strategy may also fall within the definition of a behavior modification intervention set forth under 115 CMR 5.10.

Rejection means the act of an individual in rejecting a choice, made with a reasonable degree of awareness of the likely consequences of his or her act.

Community means those settings, modes of residence, and styles of living or working that are most similar to and most integrated with what is typical and age-appropriate in the community,

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and which interfere the least with the individuals independence.

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2.01. continued

Legal Representative or Legally Authorized Representative means, with respect to an individual, an attorney representing the individual in connection with a particular matter, a court appointed trustee, conservator, or guardian *ad Nem* representing the interests of the individual in connection with particular matters, or the individual's guardian.

Legally Competent or Presumed Competent means, for individuals 18 years of age or older, not having been declared by a court to be incapable of making informed decisions with respect to the conduct of one's personal and/or financial affairs.

Legal Authority means the legal authorization to provide services or support described in 115 CMR 0.02(I) to persons with mental retardation required by section 193.

Licensed means the individual, agency, or other legal entity licensed by the Department.

Limitation of Movement or (L.O.M) means any restriction on the movement of an individual for the protection of that individual or others or in accordance with a behavior modification plan meeting the requirements of 115 CMR 5.10. Limitations of movements can be categorized on the basis of the reason for the limitation. Each category has its own requirements for implementation of the L.O.M. The five categories are:

- (a) Emergency restraint; (See 115 CMR, 101: 5.04);
- (b) Transportation restraint; (See 115 CMR 3.04; 5M5);
- (c) Support needed to achieve proper body position, balance, or alignment: (See 115 CMR 22.22(1)(a));
- (d) Health-related protections; (See 115 CMR 22.22(1)(b), (2)(c));
- (e) Holds implemented in accordance with behavior modification plans; (See 115 CMR 2.30; 5.10);

Mechanical Restraint (See Emergency Restraint)

Minor means a person under the age of 18.

Non-self-medicating means personally using medication in the manner directed by the prescribing practitioner only with assistance or direction by program or facility staff, in accordance with Department standards. (See self-medicating)

Objective means short term outcomes stated in behavioral or otherwise measurable terms, expected to be achieved through the provision of a particular service or support, the implementation of a particular intervention strategy, or a change of modification of the environment.

Physical Restraint (See Emergency Restraint)

Provided by the Department means made available to the individual directly through employees of the Department at Department expense

Provider means the individual, agency or other legal entity with day-to-day responsibility for the operation or services or supports or facilities regulated by the Department by law or contract. In accordance with the foregoing definition, a provision which applies to "providers" applies with equal force to the Department's service, supports, or facilities, unless otherwise specified.

Purchased by the Department means made available to an individual through a contract between the Department and a private or other non-Departmental entity.

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2.01 continued

Reimbursements, depending on the context:

- (a) a grouping of area offices as determined by the Commissioner;
- (b) the geographic area represented by such a grouping; or
- (c) the office established by the Commissioner as appropriate to supervise area offices within a grouping of area offices and to perform administrative or service functions for the geographic area represented by the grouping.

Research means a systematic investigation designed to develop or contribute to generalizable knowledge and involving access to human subjects or private information, with the exceptions set forth in 115 OAR 10.00.

Self-medication means personally using medication in the manner directed by the prescribing practitioner, without assistance or direction by program or facility staff, in accordance with Department standards. A verbal reminder that the time for taking a dose of medication has arrived does not constitute assistance or direction by program staff.

Service Coordinator means the person designated by the Department to arrange, coordinate, or monitor, or to remain informed about, services or supports provided, purchased, or arranged by the Department for a particular individual and to be responsible for the development of an ISP for the individual.

Services means a system of formalized supports, generic or specialized.

Severe Functional Impairments means functional impairments in at least three specified areas of adaptive functioning, titled upon nonnative expectation of the types of skills normally acquired as the child develops, as measured by standardized assessment or comparable data. The areas of adaptive functioning considered are: self-care, communication (receptive or expressive language), learning, mobility, and self-direction and, for individuals age 14 years or older, capacity for independent living and economic self-sufficiency.

Adaptive Functioning means an overall composite adaptive functioning limitation that is approximately two standard deviations below the mean or approximately three dotnains of appropriate norms sample determined from the findings of assessment using a comprehensive, standardized measure of adaptive behavior, interpreted by a qualified practitioner. The domains of adaptive functioning that are assessed shall be:

- (a) areas of independent living/practical skills;
- (b) cognitive, communication, and academic/conceptual skills; and
- (c) social competencies/social skills.

Intellectual Functioning means an intelligence test score that is indicated by a score of 70 or below as determined from the findings of assessment using valid and comprehensive, individual measures of intelligence that are administered in standardized formats and interpreted by qualified practitioners.

Supports means those resources and strategies that promote the interests and causes of individuals with or without disabilities; that enable them to access resources, information, and relationships inherent in integrated work and living environments; and that result in their enhanced independence, productivity, community integration, and satisfaction.

Supports Services mean day supports, day habilitation, individual supports and family supports.

115-1-1
§ 1.0001-1.0002
§ 1.0003-1.0004
§ 1.0005-1.0006
§ 1.0007-1.0008
§ 1.0009-1.0010
§ 1.0011-1.0012
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§ 1.0019-1.0020
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§ 1.0089-1.0090
§ 1.0091-1.0092
§ 1.0093-1.0094
§ 1.0095-1.0096
§ 1.0097-1.0098
§ 1.0099-1.0100

REGULATORY PRIORITY

115 VAR 2.00: M.G.L. c. 1911, § 14; e. 12313, §§ 2, 3, and 8.



THE COMMONWEALTH OF MASSACHUSETTS
William Francis Galvin
Secretary of the Commonwealth

Regulation Filing To *be completed by filing agency*

CHAPTER NUMBER: 115 CMR 6.02

CHAPTER TITLE: Eligibility, Support Planning and Appeals

AGENCY: Department of Developmental Services

SUMMARY OF REGULATION: *State the general requirements and purposes of this regulation.*

115 CMR 6.02 (3) describes the eligibility determination process for services arranged, provided or funded by the Department of Developmental Services.

REGULATORY AUTHORITY: MIGIL. c. 196, §§ 1 and 14

AGENCY CONTACT: Marianne Meacham PHONE: 671 624-7702

ADDRESS: 500 Harrison Avenue, Boston, MA 02118

Compliance with M.G.L. c. 30A

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Date of public hearing or comment period: _____

115 CMR: DEPARTMENT OF DEVELOPMENTAL SERVICES

115 CMR 6.00: ELIGIBILITY, INDIVIDUAL SUPPORT PLANNING AND APPEALS

Section

ELIGIBILITY FOR SUPPORTS PROVIDED, PURCHASED OR
ARRANGED BY THE DEPARTMENT OF DEVELOPMENTAL SERVICES

- 6.01: Scope and Purpose
- 6.02: Application Procedures
- 6.03: Eligibility Letter
- 6.04: General Eligibility
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6.01: Scope and Purpose

(1) Scope.

(a) 115 CMR 6.01 through 6.09 applies to applicants for supports provided, purchased, or arranged by the Department.

(b) No person may receive supports provided, purchased, or arranged by the Department (other than emergency supports and information and referral services as noted in 115 CMR 6.09) unless the person is determined eligible for such supports under 115 CMR 6.01 through 6.09.

(2) Purpose. The purpose of 115 CMR 6.01 through 6.09 is to set forth the standards and procedures under which the Department determines an applicant's eligibility for supports and determines the applicant's priority to receive supports purchased, provided, or arranged by the Department. Unless otherwise specified in 115 CMR, provision of supports provided, purchased or arranged for an individual is subject to appropriation. M.G.L. c. 19B, § 1.

6.02: Application Procedures

(1) Application.

(a) Who May Apply. Any person may apply for supports provided, purchased, or arranged by the Department either on his or her own behalf or on behalf of another.

6.02: continued

(b) Where Application is Made. An application for supports provided, purchased, or arranged by the Department shall be made by providing a completed application form to any Department Office. Application forms may be obtained from any Department Office or Provider or online by accessing the Department through its Internet address at www.mass.gov/dds. The Regional Eligibility Team for the Department's geographic region in which the applicant resides shall make the determination of eligibility for supports in all cases.

(c) Re-application Applications for individuals who previously have applied for or have been determined to be ineligible for services shall be considered to be new applications.

1. A person previously found ineligible for supports may re-apply after one year has elapsed since the determination of ineligibility and if the application is supported by new or additional relevant information not previously submitted to the Department. The Department shall determine whether the newly submitted information is sufficient to warrant a re-determination.
2. The family of a child who experiences the onset of a developmental disability that is distinct from the original delay or disability prompting the initial application may reapply at any time prior to the child reaching age 18.
3. A person who was determined eligible for Department services who has not received any service for three or more years and has been designated as "inactive" in accordance with the Department's case status policy, may re-apply for eligibility.
4. Individuals who were determined eligible for services under 115 CMR 6.06 may apply for adult services under 115 CMR 6.04 upon achieving age 17 1/2 or older.

(2) Intake. Following the receipt of an application, the Regional Eligibility Team shall inform the applicant regarding the following:

- (a) the criteria for eligibility for Department supports;
- (b) the procedures for eligibility determination;
- (c) the system of prioritization for receipt of supports based upon need, funding and availability;
- (d) the authority of the Department to charge for supports, including costs associated with a determination of eligibility;
- (e) the authority of the Department to require information about the applicant's and his or her family's needs, income, legal status, and resources before providing, purchasing, or arranging supports;
- (f) the right of the applicant to appeal a determination of ineligibility under 115 CMR 6.30 through 6.34; and
- (g) the person's obligation, as a condition of eligibility, to consent to the Department obtaining information from current and previous service providers and other state agencies.

(3) Eligibility Determination Process. Eligibility shall be determined by the Regional Eligibility Team based on an analysis of the information submitted in support of the application.

- (a) Regional Eligibility Teams. Regional Eligibility Teams may be composed of any number of members as assigned by the Department. Each team must have at least one member with the following professional credentials: licensed doctoral level psychologist, masters degree in social work, and Department eligibility specialist.
- (b) Determination. The Department shall determine whether the applicant:
 1. is domiciled in Massachusetts; and
 2. whether the person is a person with intellectual disability as defined in 115 CMR 2.01.

The eligibility determination process shall include an interview with the applicant and, if feasible, other significant persons in his or her life and consideration of assessments and psychological test results. Only qualified practitioners can administer and interpret psychological tests. The Department Regional Eligibility Team Psychologist may consider the psychometric properties of intelligence tests, including the standard error of measurement, and other assessment instruments when interpreting test results, and may consider relevant data in making clinical judgment about the presence or absence of intellectual disability. The determination of eligibility shall be made pursuant to 115 CMR 6.04 through 6.06;

6.02: continued

(c) With respect to applicants who meet the eligibility criteria established in 115 CMR 6.04 through 6.06, the information provided in support of the application will serve as the basis for Area Office development of a support plan and the determination of the individual's priority to receive supports and will include a determination of the general types of supports that are adequate, most appropriate and least restrictive to meet the applicant's needs and that promote as much as possible his or her independence, productivity, and inclusion in the community.

6.03: Eligibility Letter(1) Distribution.

(a) Upon completion of the eligibility determination, the Regional Eligibility Team shall prepare and mail a letter to the applicant, the applicant's guardian, if any, and the Area Director or his or her designee notifying the applicant and/or his guardian of the decision and the basis therefore.

L. Denial of Eligibility Based Upon Domicile. In cases that the Regional Eligibility Team determines that a person is not domiciled in Massachusetts, it shall notify the applicant, the applicant's guardian, if any, in writing that the person is not eligible for services based upon domicile. The Regional Eligibility Team shall not proceed to determine whether the person is a person with intellectual disability as defined in 115 CMR 2.00 or an eligible child under 115 CMR 2.00.

2. Determination of Eligibility. In cases that the Regional Eligibility Team determines that a person is domiciled in Massachusetts, it shall notify the applicant, the applicant's guardian, if any, and the Area Director or his or her designee in writing of the eligibility determination based upon criteria at 115 CMR 6.04; 6.05; and 6.06, as applicable.

(2) Contents. The letter shall contain the following findings and statements:

- (a) the eligibility status of the applicant;
- (b) if not eligible, the specific reasons for the determination of ineligibility;
- (c) the identification of the applicant's area of service if eligible;
- (d) the names of the Regional Eligibility Team staff that can be contacted for additional information or problem resolution;
- (e) a statement that the applicant has the right to appeal any finding of the eligibility letter, within 30 days of receipt pursuant to 115 CMR 6.30 through 6.32;
- (f) a statement that supports cannot be initiated without the agreement of the applicant or guardian, and the Department; and
- (g) a statement that the applicant or guardian shall have, an opportunity to meet with a Regional Eligibility Team designee for an explanation of the letter and for an opportunity to discuss any of its findings, if requested within 15 days of the receipt of the report.

(3) Children. For children from infancy to 17 years of age, the Regional Eligibility Team will issue an eligibility letter to the applicant's parents or guardians, within 60 days from the date of its receipt of a complete application form.

(4) Adults. For persons 18 years of age and older, the Regional Eligibility Team will issue an eligibility letter to the applicant, family, or guardian within 60 days from the date of its receipt of a complete application form.

(5) Deferral of Eligibility Determination.

(a) Deferral. In cases that the information submitted in support of an application is insufficient for the Regional Eligibility Team to determine eligibility, the Regional Eligibility Team may defer consideration of the application for up to an additional 60 days in order to provide the applicant with time to obtain and submit the requested information and documentation which may include new or additional testing or assessments.

6.03: continued

(b) Notification. The Regional Eligibility Team shall notify the person, family, or guardian that the application has been deferred, the information and documentation that the Regional Eligibility Team requires in order to determine eligibility, and the deadline for submission of requested information and documentation.

(c) in the event that the person, family, or guardian does not submit the requested information and documentation by the deadline provided in the notification of deferral letter, the Regional Eligibility Team shall determine eligibility based upon the information in its possession.

6.04: General Eligibility

(1) Persons who are 18 years of age or older are eligible for supports provided, purchased, or arranged by the Department if the person:

- (a) is domiciled in the Commonwealth; and
- (b) is a person with intellectual disability as defined in 115 CMR 2.01.

(2) Domicile.

(a) For purposes of 115 CMR 6.04(1)(a), a person shall be considered to be domiciled in Massachusetts if he or she resides in Massachusetts with the intention to remain here permanently or for an indefinite period.

(b) There shall be a presumption that the following individuals are not domiciled in Massachusetts:

- 1. Persons who reside in a home or other setting subject to licensure or regulation by the Commonwealth, which residence was arranged or is being funded by another State, including any agency or political subdivision thereof and any entity under contract with the other State for such purposes;
- 2. Persons who reside in a home or other setting subject to licensure or regulation by the Commonwealth which residence was arranged by a parent, guardian, or family member who is not domiciled in Massachusetts and was not so domiciled at the time of the person's placement;
- 3. Persons, other than those covered under 115 CMR 6.04(2)(b)1. or 2., ages 18 through 21 who reside in a residential special education program and whose parent or guardian is not domiciled in Massachusetts.

(c) in cases that the Regional Eligibility Team determines that a person is not domiciled in Massachusetts, the Department shall deny eligibility based upon domicile and shall so notify the person. The Regional Eligibility Team shall not proceed to determine whether the person is otherwise eligible in accordance with 115 CMR 6.04; 6.05; and 6.06, as applicable.

(d) In the event that a person prevails in an appeal of a determination that he or she was not a Massachusetts domiciliary, the Department shall reconsider his or her application without regard to 115 CMR 6.08(1).

Special Eligibility

(1) Any person identified in the Class Member Identification List as of April 30, 1993, regardless of current place of residence, or any person who, on or after April 30, 1993 has resided at Morison Developmental Center, Fernald Developmental Center, Wrentham Developmental Center, Templeton Developmental Center or Dever Developmental Center during more than 30 consecutive days or for more than 60 days during any 12-month period shall have special eligibility for services provided, purchased, or arranged by the Department.

(2) A person with special eligibility is entitled to:

- (a) an assessment of eligibility;
- (b) a designation of area of service;
- (c) assignment of a service coordinator;
- (d) an Individual Support Plan and substantial provision of the services or supports recommended in his or her Individual Support Plan for so long as such services or supports are needed and authorized by the individual and his or her guardians; and
- (e) the least restrictive, most typical, appropriate residential environment, together with the most appropriate treatment, training and support services suited to that person's individual needs.

6.06: Child Eligibility for Family Supports

- (1) Persons who are younger than 18 years of age may be eligible for family supports provided, purchased, or arranged by the Department if the person:
 - (a) is domiciled in the Commonwealth; and
 - (b) has a verified diagnosis of intellectual disability or a closely related developmental condition, or with respect to persons from birth to age five a developmental delay. For purposes of 115 CMR 6.06(1)(b) developmental delay means a substantial developmental delay or specific congenital or acquired condition with a high probability of resulting in a developmental disability if services are not provided; and
 - (c) demonstrates severe functional impairments as defined in 115 CMR 2.01.
- (2) Domicile.
 - (a) For the purposes of 115 CMR 6.06(1), a person younger than 18 years who resides in Massachusetts shall be presumed to be domiciled in Massachusetts if:
 1. One or both of the person's parents are domiciled in Massachusetts, unless the parent having sole legal custody is not domiciled in Massachusetts;
 2. Legal custody of the person has been awarded by a court to a guardian who is domiciled in Massachusetts or to the Commonwealth or any agency or division thereof;Or
 3. The person is emancipated and is residing in Massachusetts with the intent to remain in the state permanently or for an indefinite period of time.
 - (b) For the purposes of 115 CMR 6.06(1), a person younger than 18 years there shall be a presumption that the following individuals are not domiciled in Massachusetts:
 1. Persons who reside in a home or other setting subject to licensure or regulation by the Commonwealth, which residence was arranged or is being funded by another State, including any agency or political subdivision thereof and any entity under contract with the other State for such purposes;
 2. Persons who reside in a home or other setting subject to licensure or regulation by the Commonwealth which residence was arranged by a parent, guardian, or family member who is not domiciled in Massachusetts and was not so domiciled at the time of the person's placement;
 3. Persons, other than those covered under 115 CMR 6.04(2)(b)1. or 2., ages 18 through 21, who reside in a residential special education program and whose parent or guardian is not domiciled in Massachusetts.
- (3) An individual may file an application for General Eligibility under 115 CMR 6.04 upon achieving age 17 1/4 or older.

6.07: Prioritization for Supports

- (1) Priority Determination.
 - (a) Except as to individuals who have special eligibility pursuant to 115 CMR 6.05, all supports, including assessments, planning and the development and implementation of Individual Service Plans, are subject to the availability of resources. The Area Director shall determine priority for supports on the basis of criteria set forth in 115 CMR 6.07.
 - (b) Assessments.
 1. The determination of need for supports shall be based upon an assessment of the individual's functional limitation(s), cognitive impairment, medical needs and behavioral needs as well as generic resources and natural supports available to meet the individual's needs. The Department shall, in its sole discretion, determine which clinical assessments it deems necessary to determine the individual's need for all categories of requested supports as well as the qualifications needed to administer the assessments. The Department shall conduct such assessments in accordance with the standards set forth in 115 C.M.R. 6.22.
 2. Assessment(s) shall be completed by the Intake and Eligibility Teams, in consultation with the Area Offices, upon an individual's application for Department services for those who meet the eligibility requirements. Additional assessments may be requested thereafter upon a significant change in the individual's functioning or in the generic or family resources available to meet the individual's needs.

6.07: continued

(c) Notification. The Area Office will notify the person, his or her family, unless the person knowingly objects, the guardian, if any, or other appropriate person of the person's priority to receive services from the Department, the category and intensity of supports available, and the right to appeal the priority assigned within 30 days of being notified. The notice given under 115 CMR 6.07 shall clearly state the reason for the prioritization decision.

(2) Prioritization for Supports to Children and Families.

(a) The Department seeks to provide certain supports to the families of children with developmental disabilities to enable the family to stay together and to be contributing members of their communities. These supports are intended to assist, not to replace or substitute for, the child's family. The responsibility to provide a home and parental care and guidance rests with the child's parents or, in the event of their absence or incapacity, with the public agency responsible for ensuring the care and protection of children generally, *i.e.*, the Department of Social Services or its successor.

(b) Priority for the allocation of available supports provided, purchased or arranged by the Department shall be determined by the Area Director, based on the severity of the child's and family's needs. The following priorities will apply to individuals who are younger than 18 years of age and to individuals ages 18 through 21 who are in the care or custody of, committed to, subject to court-ordered supervision of, or eligible for or receiving 24-hour residential services from or through another Massachusetts public agency, including, but not limited to the Department of Children and Families, the Department of Youth Services, the Department of Mental Health, the Department of Public Health, and state or local education agencies; provided, however, that in no case shall the Department provide residential supports to children younger than 18 years of age or to individuals ages 18 through 21 years of age and eligible for or receiving residential services from a local educational authority, local school district, or any other public agency. The failure of an individual to apply for or the voluntary refusal of services that may be available from another public agency and for which an individual is otherwise entitled shall not constitute ineligibility to receive those services for the purpose of establishing priority to receive Department services under 115 CMR 6.07.

1. First Priority. Provision, purchase, or arrangement of supports available through the Department is necessary to meet one or more disability-related needs which, if not met, is likely to result in serious or immediate threat of harm to the child or others and the child is not otherwise eligible for the support(s) required to meet such needs from another public agency;

2. Second Priority. Provision, purchase or arrangement of supports available through the Department is necessary to meet the needs of the child or his or her family and the child is not otherwise eligible for the support(s) required to meet such needs from another public agency;

3. Third Priority. Provision, purchase or arrangement of supports available through the Department will enhance the family's capacity to meet the needs of its members, or will facilitate or promote the inclusion of the child in community life and the child is not otherwise eligible for the support(s) required to meet such needs from another public agency;

(c) Fourth Priority. The child is eligible but is currently in the care or custody of, committed to, subject to court-ordered supervision of or is eligible for or receiving 24-hour residential services through another public agency, including, but not limited to the Department of Social Services, Department of Youth Services, Department of Mental Health, Department of Public Health, and state or local education agencies. If another agency is providing such services to a child who is otherwise eligible for Department supports, the Department will presume that such agency is providing supports which are necessary and sufficient to ensure the appropriateness and adequacy of the child's placement.

(d) Whenever another agency is providing supports or services to the child or family, or a child is eligible to receive supports from another agency, the Area Office shall consider that agency's involvement in determining the severity of the child's and family's needs and their priority for the Department's supports.

6.07: continued

(3) Prioritization for Adult Services.

(a) The Area Director shall determine priority for supports provided, purchased or arranged by the Department to eligible adults age 18 or older based upon the severity of the individual's needs.

(b) Community 24-hour Residential Supports. For individuals who are determined to need 24-hour community residential supports the following priorities shall apply:

1. First Priority. Provision, purchase, or arrangement of supports available through the Department is necessary to protect the health or safety of the individual or others;

2. Second Priority. Provision, purchase, or arrangement of supports available through the Department is necessary to meet one or more of the individual's needs or to achieve one or more of the needs identified in his or her Individual Service Plan.

(c) Community Living Supports. For individuals who are determined to need community living supports the following priorities shall apply:

1. First Priority. Provision, purchase, or arrangement of supports available through the Department is necessary to protect the health or safety of the individual or others;

2. Second Priority. Provision, purchase, or arrangement of supports available through the Department is necessary to meet one or more of the individual's needs or to achieve one or more of the needs identified in his or her Individual Service Plan.

(d) Supportive Services. For individuals who are determined to need supportive services, the following priorities shall apply:

1. First Priority. Provision, purchase, or arrangement of supports available through the Department is necessary to protect the health or safety of the individual or others;

2. Second Priority. Provision, purchase, or arrangement of supports available through the Department is necessary to meet one or more of the individual's needs or to achieve one or more of the needs identified in his or her Individual Service Plan.

(4) If another Massachusetts public agency, including, but not limited to the Department of Children and Families, Department of Youth Services, Department of Mental Health, Department of Public Health, and state or local education agencies is providing services to an eligible individual, the Department may consider that agency's involvement in determining the severity of the individual's need and their priority for Department supports. In no case shall the Department provide residential supports to individuals who are 18 through 21 years of age and who are eligible for or receiving residential services from local educational authority, local school district, or any other public agency. The failure of an individual to apply for or the voluntary refusal of services that may be available from another public agency and for which an individual is otherwise entitled shall not constitute ineligibility to receive those services for the purpose of establishing priority to receive Department services under 115 CMR 6.07.

6.08: Redetermination of Eligibility and Prioritization

(1) The Department shall have the right to re-determine an individual's eligibility status or priority status after one year has passed since the most recent determination and the individual's circumstances have changed. When such re-determination occurs, the Area Office will notify the person, his or her family, unless the person knowingly objects, the guardian, if any, or other appropriate person of the re-determination, and the right to a fair hearing to appeal within 30 days of being notified of the re-determination. When the re-determination will result in the termination of supports to the individual, the filing of an appeal shall operate as a stay of the determination pending the appeal.

(2) The initial determination of General Eligibility pursuant to 115 CMR 6.04 with respect to individuals previously found eligible pursuant to 115 CMR 6.06 shall be considered a new application under 115 CMR 6.04 rather than redetermination within the meaning of 115 CMR 6.08(1).

(3) Redetermination of eligibility shall not apply to individuals previously found eligible for supports who have not received services from the Department for a period of three or more years and who have been designated as "inactive." Individuals may file a new application under 115 CMR 6.04.

609: Emergency Provision of Supports

- (1) When there is reason to believe that a person has intellectual disability or, in the case of a person younger than 18 years of age, is eligible for family supports, and that the absence of supports creates a serious or immediate threat to the health or safety of the person or others, any Regional or Area Office of the Department may provide or arrange for supports to such person, subject to the consent of the person or guardian, or may take such other action as it considers appropriate and within its legal and programmatic capacity, without prior determination of eligibility under 115 CMR 6.02 through 6.06.
- (2) As soon as practicable, but within 24 hours of the initial provision of emergency supports, the Regional Director or the Area Director shall notify:
 - (a) the guardian of the person, if any and if ascertainable; and
 - (b) family members, friends, or other concerned and relevant persons whether or not named by the person, unless he or she knowingly objects.
- (3) Subject to approval of the Area Director, emergency supports may be provided until such time as eligibility is determined in accordance with 115 CMR 6.02 through 6.08, or until the emergency circumstances end, whichever occurs first.