

118 CMR: DISABLED PERSONS PROTECTION COMMISSION

118 CMR 4.00: SCREENING OF REPORTS AND REFERRALS TO OTHER AGENCIES

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4.01: Scope and Purpose

118 CMR 4.00 establishes the procedures and requirements to be followed to determine the nature of the reports received by the Commission and the processing of those reports based upon that determination.

4.02: Screening

- (1) Immediately upon its receipt, a report of abuse of a person with a disability shall be evaluated to determine:
  - (a) whether the Commission has jurisdiction over the complaint;
  - (b) the urgency of the complaint; and
  - (c) the appropriate action to be taken by the Commission.
- (2) If the Commission is unable to make a screening decision based upon the information received from the reporter, the Commission shall immediately seek such further information as is necessary to facilitate the making of such a decision.

4.03: Determination of Jurisdiction

- (1) Based upon the information contained in any report received and any additional information otherwise obtained by the Commission, the Commission shall determine whether it has jurisdiction over the matter reported.
- (2) A jurisdictional determination shall be based upon the following factors:
  - (a) Whether the alleged victim is a person with a disability as defined by M.G.L. c. 19C and 118 CMR.
  - (b) Whether the alleged abuser is a caretaker, as defined by M.G.L. c. 19C and 118 CMR, of the alleged victim.
  - (c) Whether it appears the acts or omissions of the alleged victim's caretaker have resulted in the alleged victim suffering serious physical injury or serious emotional injury, or both, or because of the nature of the caretaker's act or omission it is reasonable to conclude that abuse *per se* may have occurred.

4.04: Determination of Urgency

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(1) The Commission shall determine the urgency of all reports it receives based upon the information which the Commission deems appropriate to collect in all such cases. The urgency of these reports shall be classified:

- (a) Emergency; or
- (b) Non-emergency

(2) Emergencies.

- (a) If the Commission determines that an emergency exists, the Commission shall:
  - 1. immediately refer the case to the appropriate agency pursuant to the requirements of M.G.L. c. 19C, § 4 and 118 CMR 4.05 to ensure immediate action is taken to end the emergency situation; and

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2. subsequently refer the report for investigation, if appropriate.
  - (b) The designated investigator shall conduct and complete an initial response within 24 hours of the investigating agency's receipt of the report of the existence of an emergency and shall submit an Initial Response form as required by 118 CMR 5.02(3)(a)1: *Requirements of Initial Response*.
  - (c) The designated investigator shall subsequently prepare and submit to the Commission an Investigation Report as required by 118 CMR 5.02(3)(a)2: *Requirements of Investigation Report*.
  - (d) In the event that the report concerns a situation involving an immediate danger to the alleged victim, the Commission shall take appropriate steps to end the abusive situation including, but not limited to, calling local police authorities or referring the report pursuant to 118 CMR 4.05 for the provision of protective services before making a screening decision, as set out in 118 CMR 4.03.
- (3) Non-emergencies. If the Commission determines that a non-emergency exists, the Commission shall:
  - (a) note that the report has been designated a non-emergency; and
  - (b) refer the report to the appropriate agency within 24 hours of the day of receipt of the report; or
  - (c) refer the report to the appropriate agency on the next business day if the report is received by the Commission during non-business hours.
- (4) Downgrading Urgency Determination.
  - (a) In cases designated an emergency, the referral agency shall:
    1. investigate the matter as required by M.G.L. c. 19C and 118 CMR;
    2. ensure that the emergency is ended and that the person with a disability is safe from further abuse through the implementation of protective services;
    3. report to the Commission what protective actions have been offered/taken to ensure the safety of the person with a disability and confirm that the emergency situation no longer exists.
  - (b) Based upon all the information received by the Commission, the Commission will determine whether and when the urgency determination originally made should be downgraded.

### 4.05: Referral to Other Agencies

- (1) Reports Regarding Elders, Children, or Patients/Residents of Certain Long-term Care Facilities.
  - (a) Upon receipt of a report alleging abuse of an elderly person (defined as an individual who is 60 years of age or older), the Commission shall immediately refer such report to the Executive Office of Elder Affairs for appropriate action pursuant to M.G.L. c. 19A.
  - (b) Upon receipt of a report alleging abuse of a child (defined as an individual who is younger than 18 years old), the Commission shall immediately refer such report to the Department of Children and Families for appropriate action pursuant to M.G.L. c. 119.
  - (c) Upon receipt of a report alleging abuse of a patient or resident of a long-term care facility as defined in M.G.L. c. 111, § 71 and 118 CMR, the Commission shall immediately refer such report to the Department of Public Health for appropriate action pursuant to M.G.L. c. 111.

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(2) Reports Regarding Individuals Whose Caretaker is a State Agency.

(a) Upon receipt of a report alleging abuse of a person with a disability whose caretaker is a state agency, the Commission, after making the jurisdictional and urgency determinations required by 118 CMR 4.03 and 4.04, shall refer the report for investigation to either an investigator of the Commission, or to the investigation division of the agency within the Executive Office of Health and Human Services that has jurisdiction over the entity providing services or treatment to the person with a disability or that provides or has contracted for or licensed the provision of services or treatment to the person with a disability.

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(b) For purposes of investigation, when a person with a disability has multiple caretaker agencies, the agency which is designated as the referral agency shall be that agency which is deemed by the Commission to be the agency with sufficient contacts with the person with a disability and the circumstances of the alleged abuse so as to allow for the most efficient and expedient investigation of the alleged abuse and the provision of protective services. Unless the Commission intervenes in the case pursuant to 118 CMR 4.09(2)(b) or (c), each referral agency shall collaborate, as needed, with other agencies in the investigation of cases involving such individuals, but shall retain the responsibility for completing the investigation and preparing an investigation and evaluation report.

(c) If the referral agency objects to the Commission's designation of that agency as the appropriate referral agency, the referral agency shall immediately contact the Executive Director of the Commission, or his or her designee, and request an immediate ruling on the designation. The ruling of the Executive Director or designee shall be final.

(3) Reports Regarding Individuals Whose Caretaker Is Not a State Agency.

(a) Upon receipt of a report alleging abuse of a person with a disability whose caretaker is not a state agency, and the person with a disability has a single type of disability, the Commission, after making the determinations required by 118 CMR 4.03 and 4.04, shall refer the report for investigation to either an investigator of the Commission or to the appropriate agency as specified in 118 CMR 4.05(3)(b) and (c) which agency shall appoint an investigator who shall conduct an investigation pursuant to the time requirements of M.G.L. c. 19C, § 5 and 118 CMR 5.01(2). Unless the Commission intervenes in the case pursuant to 118 CMR 4.09(2)(b), each referral agency shall collaborate, as needed, with other agencies in the investigation of cases involving such individuals, but shall retain the responsibility for completing the investigation and preparing an investigation and evaluation report.

(b) The case shall be referred by the Commission as follows:

1. When, as can best be determined from the intake, the alleged victim is a person with a developmental disability or a person with an intellectual disability, as defined by M.G.L. c. 123B, the case shall be referred to and investigated by the Department of Developmental Services or an investigator of the Commission.

2. When, as can best be determined from the intake, the alleged victim has a mental disability which is not the result of a head injury nor is the alleged victim a person with a developmental disability or person with an intellectual disability, the case shall be referred to and investigated by the Department of Mental Health or an investigator of the Commission.

3. When, as can best be determined from the intake, the person who is the subject of the abuse report has a head injury or one or more other physical disabilities and does not have a mental disability, the case shall be referred to and investigated by the Massachusetts Rehabilitation Commission or an investigator of the Commission.

4. When a person with a disability who is the subject of an abuse report has more than one type of disability, the agency which is designated as the referral agency shall be that agency deemed by the Commission to be the agency with sufficient contacts with the person with a disability and the circumstances of the alleged abuse so as to allow for the most efficient and expedient investigation of the alleged abuse and the provision of protective services.

(c) If the referral agency objects to the designation of that agency as the appropriate referral agency, the referral agency shall immediately contact the Executive Director of the

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Commission, or his or her designee, and request an immediate ruling on the designation. The ruling of the Executive Director or designee shall be final.

4.06: Reports Involving Deaths of Individuals with Disabilities

(1) Reports Involving Deaths of Individuals with Disabilities as the Result of Abuse. Upon receipt of a report of death as the result of abuse, the Commission shall process and assign said report for investigation in conformance with the provisions of 118 CMR 4.00.

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(2) Reports Involving Deaths of Individuals with Disabilities Whose Caretaker Was a State Agency, an Agency of Any Subdivision of the Commonwealth or a Private Agency Contracting with or Licensed by the Commonwealth. Upon receipt of a report involving the death of an individual with a disability whose caretaker was a state agency, an agency of any subdivision of the Commonwealth, or a private agency contracting with or licensed by the Commonwealth, the Commission, pursuant to the authority contained in M.G.L. c. 19C, § 13 shall make an initial determination of whether there is reasonable cause to believe that abuse contributed to the death of a person with a disability. If said preliminary investigation concludes that there is reasonable cause to believe that abuse contributed to the death of the person with a disability, the Commission shall authorize further investigation of the death. Said further investigation shall be assigned and conducted pursuant to the provisions of M.G.L. c. 19C and 118 CMR regarding investigations of abuse conducted by and for the Commission. In addition, the Commission shall give notice of the death to the Attorney General, the Office of the Chief Medical Examiner and the District Attorney for the county in which the death occurred.

4.07: Reports Involving Suspected Criminal Activity

Upon the receipt of a report that indicates to the Commission that there is reasonable cause to believe that a person with a disability is the victim of criminal activity, the Commission shall:

- (1) Review and screen the report;
- (2) Refer the matter to the Special Investigations Unit assigned to the Commission for further evaluation, investigation and/or referral, including:
  - (a) Referring the matter to the Attorney General or to the District Attorney for the county in which the criminal activity allegedly occurred in cases involving sexual abuse; assault or battery; or where it is indicated the person with a disability has suffered brain injury, loss or substantial impairment of a bodily function or organ, substantial disfigurement, or a serious bodily injury as a result of a pattern of repetitive actions or inactions by a caretaker; and
  - (b) Referring, as it may determine, any report indicating criminal activity to the Attorney General or to the District Attorney for the county or the local police department in the municipality in which the criminal activity allegedly occurred.

4.08: Reports not within the Jurisdiction of M.G.L. c. 19C

Upon the receipt of a report or a request for assistance which does not fall within the jurisdiction of M.G.L. c. 19C and 118 CMR, the Commission shall make all reasonable efforts to refer the reporter and the matter to an appropriate agency, including, but not limited to, legal services, law enforcement, advocacy, and/or human services agencies.

4.09: Monitoring of Referrals, Concurrent or Joint Investigations, and Agency Deferral

- (1) All adult protective services (APS) investigations which are referred by the Commission to other agencies to be conducted pursuant to M.G.L. c. 19C shall be conducted subject to the Commission's oversight authority and subject to the Commission's authority to conduct its own investigations.
- (2) The Commission shall exercise its authority in this matter as follows:

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- (a) The Commission shall monitor the APS investigation conducted by any referral agency to ensure such an investigation is completed in accordance with M.G.L. c. 19C, § 5 and 118 CMR 5.00: *Investigations*.
- (b) If the Commission determines that the best interests of the person with a disability require that the Commission conduct a staff investigation in place of, concurrent with, or jointly with that of the referral agency, the Commission shall so inform the referral agency and commence such an investigation; and
- (c) If, based upon the circumstances of the case, the Commission determines that the Commission should conduct its staff investigation under M.G.L. c. 19C prior to or in place of that of the referral agency, the Commission shall inform the referral agency to defer its investigation under M.G.L. c. 19C until further notice from the Commission.

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(3) All criminal investigations which are referred by the Commission to its Special Investigations Unit, the Attorney General, the appropriate District Attorney or the local police department in the municipality in which the criminal activity allegedly occurred shall be coordinated with any APS investigation being conducted pursuant to M.G.L. c. 19C and shall be conducted so as to ensure the safety of the victim with a disability.

(4) Where the Commission has agreed to defer or delay the APS investigation being conducted pursuant to M.G.L. c. 19C during the pendency of a criminal investigation, the Commission shall monitor the progress of the criminal investigation and shall determine, after consultation with the Special Investigations Unit and/or the law enforcement agency(ies) conducting the criminal investigation, when or whether the Commission's investigation should be initiated or resumed.

(5) While an investigation conducted by or on behalf of the Commission pursuant to M.G.L. c. 19C and 118 CMR is independent of an investigation conducted by any agency within the Executive Office of Health and Human Services pursuant to the respective statutory and regulatory authority of each such agency, in all cases in which an investigation is being conducted by or on behalf of the Commission (the M.G.L. c. 19C investigation), the referral agency within the Executive Office of Health and Human Services shall take reasonable steps to avoid unnecessary, unwarranted or counterproductive duplication between any investigation or inquiry being conducted by said agency and the investigation being conducted by or on behalf of the Commission by utilizing the M.G.L. c. 19C investigation in *lieu* of an investigation conducted by said agency.

(6) While an investigation conducted by or on behalf of the Commission pursuant to M.G.L. c. 19C and 118 CMR is independent of an investigation conducted by the police, the District Attorney, or the Attorney General, the Commission may establish policies and procedures pertaining to such investigations to avoid unnecessary, unwarranted, or counterproductive duplication of investigatory efforts.

### REGULATORY AUTHORITY

118 CMR 4.00: M.G.L. c. 19C, §§ 3(b), (c), 4, 5(4), 11 and 13.