

THE MASSACHUSETTS DEPARTMENT OF MENTAL HEALTH COMPLAINT PROCESS

**Prepared by the Mental Health Legal Advisors Committee
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The Department of Mental Health (DMH) has a complaint process which applies to all programs and facilities operated by DMH, contracted for by DMH, or licensed by DMH.¹ Individuals may use the process to complain about issues that arise in these settings.

WHO MAY FILE A DMH COMPLAINT?

Any person may file a complaint.² This includes staff at programs and facilities and the clients who receive services. It might also include friends, family, state agency officials, or others. The person filing the complaint is often called the complainant.

SHOULD STAFF PROVIDE ASSISTANCE?

An employee who becomes aware of a client's desire to file a complaint must provide the client with a complaint form and offer to provide assistance in completing and submitting the form.³

The program or facility Human Rights Officer (HRO) should also provide assistance to clients, as necessary.⁴ The HRO should also use their best efforts to refer a client to an attorney or advocate if a client makes such a request or lacks the capacity to do so.⁵

IS THERE A RISK OF RETALIATION?

Persons who file, or assist in the filing of, a DMH complaint should not be retaliated against.^{6,7}

WHAT TYPES OF EVENTS SHOULD A PERSON COMPLAIN ABOUT?

A complaint should definitely be filed in situations that are dangerous, illegal or inhumane. A person might also file a complaint if something happens that he or she is uncomfortable with.

WHAT TYPES OF EVENTS SHOULD DEFINITELY TRIGGER A COMPLAINT?

A complaint should be filed in regards to matters of a serious nature that have significant implications for persons who receive or provide mental health services within Massachusetts.⁸

A complaint should be filed regarding dangerous, illegal, or inhumane conditions or incidents.⁹ (A condition or incident is inhumane if it demeans a client or doesn't give proper regard for human dignity.¹⁰)

In such cases, a client can file a complaint, but staff should as well.¹¹

HOW DOES ONE FILE A DMH COMPLAINT?

Any person who wishes to file a DMH complaint should complete the DMH Complaint Form, available at: <http://www.mass.gov/eohhs/docs/dmh/forms/form-complaint.pdf>.¹²

WITH WHOM DOES ONE FILE THE COMPLAINT?

When completed, the form may be given to the Person in Charge.¹³ The Person in Charge may be the manager, director, or other identified individual within the program or facility.¹⁴

The completed form may also be mailed directly to the DMH Central Office of Investigations at the following address:¹⁵

Department of Mental Health
Central Office of Investigations
25 Staniford Street
Boston, MA 02114

If you have additional questions in regards to filing a DMH Complaint Form, you may call the DMH Director of Investigations at 617-626-8108 or the DMH Central Office of Information and Referral Specialist at 1-800-221-0053.

WHAT HAPPENS AFTER SUBMITTING A DMH COMPLAINT?

After a complaint has been made, the Person in Charge must determine whether the complaint should be handled inside the program or with outside help, which depends on the type and seriousness of the identified incident or condition.¹⁶

HOW DOES DMH CLASSIFY COMPLAINTS IT RECEIVES?

DMH complaints are classified in three different tiers to determine what steps should be taken:

Tier 1 Complaint: A complaint that is deemed to be very serious and may be referred to the Office of Investigations.

Tier 2 Complaint: A complaint that is deemed to be moderately serious and may be addressed inside the program through an Administrative Resolution process.

Tier 3 Complaint: A complaint that is deemed to be moderately serious, but cannot be addressed through the initial Administrative Resolution Process and undergoes a 10-day fact-finding process.

Tier 1

Tier 1 covers the following incidents and conditions:

1. medicolegal death;
2. sexual assault or abuse;
3. physical assault or abuse which results in serious physical harm;
4. attempted suicide which results in serious physical harm;
5. commission of a felony;
6. serious physical injury resulting from restraint or seclusion practices; or
7. an incident that the Person in Charge in his or her discretion believes is sufficiently serious to require additional assistance.¹⁷

These issues must be handled with outside help, and the Person in Charge must forward the complaint to the appropriate entity.¹⁸ A Responsible Person (Director of Licensing, Director of Program Management, Area Director, Chief of Staff, or senior manager) will then be assigned to the complaint and take steps towards resolution.¹⁹

The identified Responsible Person must assign a public log number to the complaint, refer it to the Office of Investigations, and notify all appropriate parties and the HRO of the pending investigation.²⁰

If the incident or condition is not listed on the Tier 1 list, the situation may proceed through an Administrative Resolution process (Tier 2) or be reviewed through a 10-day fact-finding process (Tier 3).²¹ A public log number should still be assigned to the complaint.²²

Tier 2

Tier 2 covers the following incidents and conditions:

1. an allegation of an incident or condition that is not dangerous, illegal, or inhumane;
2. allegations that are objectively impossible;
3. allegations of fact that have previously been investigated and decided;
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. allegations withdrawn by the client or complainant, provided the complaint does not concern the health or safety of the client or other individual; or
6. allegations that present undisputed facts which allow the identified program representative to determine that the complaint can be best resolved through the administrative process.²³

These issues may be handled inside the program through an Administrative Resolution process.²⁴ An identified program representative must make an effort to meet with the client and, if a different person, the complainant.²⁵ The program HRO may also attend the meeting.²⁶ The client or complainant may decline to meet with the program representative.²⁷

This meeting must take place within three (3) business days and is meant to review the complaint, determine whether there are conflicting facts that require more investigation, and discuss any actions that may be taken to resolve the issue.²⁸

If the incident or condition cannot be resolved through the Tier 2 process, the complaint will fall into Tier 3 and undergo a 10-day fact-finding process.²⁹

Tier 3

If the incident or condition is not addressed through Tier 1 or Tier 2, the identified program representative must arrange for a 10-day fact-finding to obtain more information to resolve the issue.³⁰ If the incident or condition is sufficiently complicated, the identified program representative may extend the fact-finding process for up to 10 additional days and document the reasons for any extension.³¹

Note: If during the 10-day fact-finding process the identified program representative finds that the issue can be resolved through the Tier 2 process, he or she may elect to stop the continued inquiry under Tier 3.³²

WHAT IF A COMPLAINT ALLEGES A VIOLATION OF PRIVACY?

If the complaint alleges a violation of the client's rights under the DMH Privacy Handbook, the identified program representative must contact the DMH Director of Privacy and Data Access.³³

WHAT IF A PERSON'S HEALTH, SAFETY OR WELFARE IS AT RISK?

If either the Person in Charge or the Responsible Person finds that immediate action is necessary to protect the health, safety, or welfare of a person, he or she should take action and document the steps taken.³⁴

WHAT DOES THE OFFICE OF INVESTIGATIONS DO?

After a complaint is sent to the Office of Investigations, it is reviewed to determine whether the referral was appropriate.³⁵ If the Office of Investigations determines an investigation is not necessary, other steps will be taken to decide how to resolve the complaint.³⁶ If an investigation is necessary, the Office of Investigations will coordinate with the Responsible Person.³⁷

During an investigation, the client, complainant, and each individual complained of must participate in an interview.³⁸ An investigator should also make a good faith effort to interview witnesses, family members, or others who may have important related information.³⁹ During an interview, a client may have another person or a HRO present.⁴⁰

The investigator will have thirty (30) days (which may be extended for good cause) to conduct the investigation and file written findings of fact with the appropriate Responsible Person.⁴¹

WHO WILL ISSUE A DECISION LETTER?

Tier 1

No later than ten (10) days following the receipt of the investigator's report, the identified program representative should provide the relevant parties with notice of their ability to request reconsideration and the client's right to appeal the decision.⁴² A decision letter may arrive up to forty (40) days after the complaint is sent to the Office of Investigations.

Tier 2

The identified program representative must provide the parties with a written notice that states the grounds for the Administrative Resolution, the actions, if any, that will be taken, the right to request reconsideration, and the client's right to appeal.⁴³

Tier 3

No later than five (5) days following the completion of the 10-day fact-finding process, the identified program representative should provide the client with a written decision.⁴⁴ The written decision should include information related to additional factual findings, conclusions, decisions, and the client's ability to appeal those decisions.⁴⁵

IS THERE A RIGHT TO REQUEST RECONSIDERATION?

Yes. Any party to the complaint has the right to request reconsideration of an issued decision.⁴⁶ However, a party does not need to request reconsideration before filing an appeal.⁴⁷

A request for reconsideration must be submitted in writing to the identified program representative no later than ten (10) days after receiving a decision.⁴⁸

The request must:

- indicate the failure of the investigator to interview an essential witness,
- allege that the decision is not supported by the facts, **or**
- show error in the interpretation of an applicable law or policy.⁴⁹

Unless additional fact-finding is necessary, a final decision must be provided within ten (10) days of receiving the request.

IS THERE A RIGHT TO AN APPEAL?

Yes. A client or authorized legal representative may appeal decisions under Tiers 1, 2, or 3.⁵⁰ An appeal must be in writing and filed within ten (10) days of receiving a decision.⁵¹

An appeal must:

- indicate the failure of the investigator to interview an essential witness,
- allege that the decision is not supported by the facts, **or**
- show error in the interpretation of an applicable law or policy.⁵²

The person responsible for deciding an appeal must provide copies of the appeal to all relevant parties.⁵³ If you do not receive a response or copy of the decision, you may contact the Person in Charge.

Tier 1 Appeal

Following an investigation by the Office of Investigations, a client or authorized legal representative may file an appeal to the following persons:

- Appeal of Area Director decision → to the Deputy Commission for Mental Health Services.⁵⁴
- Appeal of Director of Program Management for Child/Adolescent Services decision → to the Deputy Commissioner for Child and Adolescent Services.⁵⁵
- Appeal of Senior Manager decision → to the Chief of Staff of the Department or designee.⁵⁶
- Appeal of Deputy Commissioner or Chief of Staff decision → to the Commissioner, whose decision is final.⁵⁷
- Appeal of Director of Licensing or senior manager decision → to the Commissioner, whose decision is final.⁵⁸

Tiers 2 and 3 Appeal

Appeal a decision concerning a complaint involving a DMH office or operated or contracted program or facility that falls under Tier 2 or Tier 3 → to:

- the appropriate Area Director,
- Director of Program Management for Child/Adolescent Services, **or**
- applicable senior manager.⁵⁹

Appeal a decision concerning a complaint involving a program or facility licensed, but not contracted for, by DMH → to the appropriate Director of Licensing.⁶⁰

The appeal decision should be issued within thirty (30) days, unless further fact-finding is deemed necessary.⁶¹ With additional fact-finding, a decision should be issued within forty (40) days.⁶²

WHAT IS THE RESULT OF AN APPEAL?

Tier 1

The appeal decision will affirm, modify, or reverse the original decision.⁶³ The appeal decision should outline any corrective actions in writing and be sent to all relevant parties.⁶⁴ All Tier 1 appeal decisions are the final decision of DMH.⁶⁵

Tiers 2 and 3

The appeal decision will affirm, modify, or reverse the original decision.⁶⁶ The appeal decision will be sent to all relevant parties and indicate any corrective actions.⁶⁷ The appeal decision will also notify the client of his or her ability to **further appeal** the decision within ten (10) days.⁶⁸ Any decision of the Deputy Commissioner, Chief of Staff or the Commissioner is final.⁶⁹

For more information you may contact the Mental Health Legal Advisors Committee at (617) 338-2345 and press “4” for the Intake line.

ENDNOTES

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- ¹ 104 CMR 32.01(1)(a).
 - ² 104 CMR 32.04(1).
 - ³ 104 CMR 32.04(1)(b).
 - ⁴ 104 CMR 32.04(1)(c).
 - ⁵ 104 CMR 32.04(1)(d).
 - ⁶ 104 CMR 32.04(1)(e).
 - ⁷ *See* 104 CMR 32.00.
 - ⁸ 104 CMR 32.01(2)(b).
 - ⁹ 104 CMR 32.04(1)(b).
 - ¹⁰ 104 CMR 32.02.
 - ¹¹ 104 CMR 32.04(1)(b).
 - ¹² 104 CMR 32.04.
 - ¹³ 104 CMR 32.04(1).
 - ¹⁴ 104 CMR 32.02
 - ¹⁵ <http://www.mass.gov/eohhs/gov/newsroom/dmh/offices/central-office.html>.
 - ¹⁶ 104 CMR 32.04(2)(a).
 - ¹⁷ 104 CMR 32.04(2)(a).
 - ¹⁸ 104 CMR 32.04(2)(b).
 - ¹⁹ 104 CMR 32.04(2)(b)(1)(a)-(e).
 - ²⁰ 104 CMR 32.04(2)(b)(2)(a)-(c).
 - ²¹ 104 CMR 32.04(2)(c).
 - ²² 104 CMR 32.04(2)(b)(2)(a).
 - ²³ 104 CMR 32.04(3)(a)(1)-(6).
 - ²⁴ 104 CMR 32.04(3).
 - ²⁵ 104 CMR 32.04(3)(b).
 - ²⁶ 104 CMR 32.04(3)(b)(1).
 - ²⁷ 104 CMR 32.04(3)(b).
 - ²⁸ 104 CMR 32.04(3)(b)(1)-(2).
 - ²⁹ 104 CMR 32.04(3)(c).
 - ³⁰ 104 CMR 32.04(4)(a).
 - ³¹ 104 CMR 32.04(4)(a).
 - ³² 104 CMR 32.04(3)(e).

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- 33 104 CMR 32.04(2)(e).
 - 34 104 CMR 32.04(2)(d).
 - 35 104 CMR 32.04(5)(a)(1)(a)-(c).
 - 36 104 CMR 32.04(5)(a)(2).
 - 37 104 CMR 32.04(5)(a)(3).
 - 38 104 CMR 32.06(1)(a).
 - 39 104 CMR 32.06(1)(b).
 - 40 104 CMR 32.06(3).
 - 41 104 CMR 32.04(5)(b)(1)-(3).
 - 42 104 CMR 32.04(5)(c)(2).
 - 43 104 CMR 32.04(3)(d).
 - 44 104 CMR 32.04(4)(c).
 - 45 104 CMR 32.04(4)(e).
 - 46 104 CMR 32.04(7).
 - 47 104 CMR 32.04(7)(a).
 - 48 104 CMR 32.04(7)(a)(1).
 - 49 104 CMR 32.04(7)(a)(2)(a)-(c).
 - 50 104 CMR 32.04(7)(b)(1)(a).
 - 51 104 CMR 32.04(7)(b)(1)(b).
 - 52 104 CMR 32.04(7)(b)(1)(b)(i)-(iii).
 - 53 104 CMR 32.04(7)(b)(1)(b).
 - 54 104 CMR 32.04(7)(b)(3)(a)(i).
 - 55 104 CMR 32.04(7)(b)(3)(a)(ii).
 - 56 104 CMR 32.04(7)(b)(3)(a)(iii).
 - 57 104 CMR 32.04(7)(b)(3)(a)(iv).
 - 58 104 CMR 32.04(7)(b)(3)(b).
 - 59 104 CMR 32.04(7)(b)(2)(a).
 - 60 104 CMR 32.04(7)(b)(2)(b).
 - 61 104 CMR 32.04(7)(b)(1)(e).
 - 62 104 CMR 32.04(7)(b)(1)(e).
 - 63 104 CMR 32.04(7)(b)(3)(c)(i).
 - 64 104 CMR 32.04(7)(b)(3)(c)(ii).
 - 65 104 CMR 32.04(7)(b)(3)(c)(iii).
 - 66 104 CMR 32.04(7)(b)(2)(c)(i).
 - 67 104 CMR 32.04(7)(b)(2)(c)(ii).
 - 68 104 CMR 32.04(7)(b)(2)(c)(iii).
 - 69 104 CMR 32.04(7)(b)(2)(d).