CHAPTER 1

Introduction and Practice Note

Scope Note

This chapter offers a list of definitions that are used in mental health proceedings, and a list of patient rights from both statutes and regulations. Applicable sections of the statutes are offered, along with supporting case decisions.

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§ 1.1 INTRODUCTION

This chapter includes definitions from case law, statutes, and regulations. When used in this book, they are used as defined here. We hope that this will provide counsel with a ready reference for these words and phrases.

While defense counsel should be familiar with the patient rights listed in this chapter, generally actions to enforce these rights are outside the scope of the court-appointed representation. Referrals on these issues should be made to the Mental Health Legal Advisors Committee (see http://www.mhlac.org and http://mhlac.org/wp-content/uploads/2018/10/dmh_complaint_process.pdf) or the Disability Law Center (see http://www.dlc-ma.org).

Other rights may be an integral part of the court-appointed representation. For example, there has never been a court determination regarding the authority of the Department of Mental Health (DMH) to promulgate the regulation that allows facilities to treat transfer refusals as a three-day notice, which allows the facility to file a commitment petition. Petitions filed under these circumstances should be challenged because no three-day notice was submitted and there is not a likelihood of serious harm arising from the failure to retain a patient in a facility. *See Acting Superintendent of Bournewood Hosp. v. Baker*, 431 Mass. 101 (2000); *In the Matter of M.A.*, 2018 Mass. App. Div. 8 (W. Dist.).

§ 1.2 DEFINITIONS AND TERMINOLOGY

§ 1.2.1 Alcohol Use Disorder

"Alcohol use disorder" is the chronic or habitual consumption of alcoholic beverages by a person to the extent that (1) such use substantially injures the person's health or substantially interferes with the person's social or economic functioning, or (2) the person has lost the power of self-control over the use of such beverages. G.L. c. 123, § 35.

§ 1.2.2 Competent to Stand Trial

A criminal defendant is competent to stand trial if the defendant has "sufficient present ability to consult with counsel with a reasonable degree of rational understanding, and a rational as well as factual understanding of the proceedings." *Commonwealth v. Vailes*, 360 Mass. 522, 524 (1971); *see also Commonwealth v. Jones*, 479 Mass. 1 (2018); *Commonwealth v. Chatman*, 473 Mass. 840 (2016).

§ 1.2.3 Conservator

A conservator is "a person who is appointed by the court to administer the property of an adult, including a person appointed under Part 4 of Article V," and includes a limited conservator, temporary conservator, and special conservator. G.L. c. 190B, § 5-101(2).

§ 1.2.4 Designated Forensic Psychiatrist

For purposes of civil commitment, competence to stand trial, and criminal responsibility, a designated psychiatrist is one who meets the requirements of 104 C.M.R. § 33.03, including demonstrating to the DMH assistant commissioner that they are licensed to practice medicine; are certified or eligible for certification by the American Board of Psychiatry and Neurology; and have completed training in conducting evaluations under G.L. c. 123, §§ 12(e), 15–19, and 35. A designated forensic psychiatrist conducts examinations of persons age seventeen and older or any persons before the District or Superior Court pursuant to G.L. c. 123, §§ 12(e), 15–19, and 35, and prepares reports of such examinations. 104 C.M.R. § 33.03.

§ 1.2.5 Designated Forensic Psychologist

For purposes of civil commitment, competence to stand trial, and criminal responsibility, a designated psychologist must meet the requirements of 104 C.M.R. § 33.03, including being licensed as a psychologist and certified as a health service provider under G.L. c. 112, §§ 118 and 121; obtaining 2,000 hours of clinical experience with adult psychiatric patients or 1,000 hours of clinical experience in an inpatient psychiatric hospital; and completing training in conducting evaluations under G.L. c. 123, §§ 12(e), 15–19, and 35. A designated forensic psychologist conducts examinations of persons age seventeen and older or any persons before the District or Superior Court pursuant to G.L. c. 123, §§ 12(e), 15–19, and 35, and prepares reports of such examinations. 104 C.M.R. § 33.03.

§ 1.2.6 Facility

A facility is "a public or private facility for the care and treatment of mentally ill persons, except for the Bridgewater State Hospital." G.L. c. 123, § 1.

§ 1.2.7 Guardian

A guardian is a surrogate decision maker who is appointed by the court to make decisions on behalf of an incapacitated adult, including a person appointed under G.L. c. 190B, § 5-301. Except as limited pursuant to section 5-306(c), a guardian of an incapacitated person shall make decisions regarding the incapacitated person's support, care, education, health and welfare. G.L. c. 190B, § 5-309. G.L. c. 190B, § 5-101(6). *See*, *Guardianship of B.V.G.*, 474 Mass. 315 (2016); *Guardianship of D.C.*, 479 Mass. 516 (2018).

§ 1.2.8 Incapacitated Person

An incapacitated person is

> an individual who, for reasons other than advanced age or minority, has a clinically diagnosed condition that results in an in-

> ability to receive and evaluate information or make or communicate decisions to such an extent that the individual lacks the ability to meet essential requirements for physical health, safety, or self-care, even with appropriate technological assistance.

G.L. c. 190B, § 5-101(9); *see Guardianship of B.V.G.*, 474 Mass. 315 (2016); *Guardianship of D.C.*, 479 Mass. 516 (2018).

§ 1.2.9 Licensed Independent Clinical Social Worker

A licensed independent clinical social worker (LICSW) is an individual who is licensed by the Board of Registration of Social Workers to practice independent clinical social work, and who meets the qualifications set forth in G.L. c. 112, § 131. G.L. c. 112, § 130. An LICSW must have a minimum of a master's degree in social work from a graduate school of social work accredited by the Council on Social Work Education, or a degree from a foreign educational institution which is equivalent, as well as evidence of supervised clinical experience. 258 C.M.R. § 9.03.

§ 1.2.10 Likelihood of Serious Harm

As used in G.L. c. 123, likelihood of serious harm is

> (i) a substantial risk of physical harm to the person himself as manifested by evidence of, threats of, or attempts at, suicide or serious bodily harm;
>
> (ii) a substantial risk of physical harm to other persons as manifested by evidence of homicidal or other violent behavior or evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them; or
>
> (iii) a very substantial risk of physical impairment or injury to the person himself as manifested by evidence that such person's judgment is so affected that he is unable to protect himself in the community and that reasonable provision for his protection is not available in the community.

G.L. c. 123, § 1; *see In the Matter of G.P.*, 473 Mass. 112 (2015).

§ 1.2.11 Mental Illness

For the purpose of involuntary commitment, a mental illness is

> a substantial disorder of thought, mood, perception, orientation, or memory which grossly impairs judgment, behavior, capacity to recognize reality or ability to meet the ordinary demands of

> life, but shall not include intellectual or developmental disabilities, autism spectrum disorder, traumatic brain injury or psychiatric or behavioral disorders or symptoms due to another medical condition as provided in the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-5), 5th edition published by the American Psychiatric Association, or except as provided in 104 CMR 27.18, alcohol and substance use disorders; provided however, that the presence of such conditions co-occurring with a mental illness shall not disqualify a person who otherwise meets the criteria for admission to a mental health facility.

104 C.M.R. § 27.05.

A developmental or intellectual disability is not a mental illness. G.L. c. 123B, § 1.

§ 1.2.12 Mentally Retarded Person

Under the Massachusetts Uniform Probate Code, a "mentally retarded person" is defined as

> an individual who has a substantial limitation in present functioning beginning before age 18, manifested by significantly subaverage intellectual functioning existing concurrently with related limitations in 2 or more of the following applicable adaptive skills areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functioning academics, leisure, and work.

G.L. c. 190B, § 5-101(12).

§ 1.2.13 Not Criminally Responsible

A person is not criminally responsible "if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality [wrongfulness] of his conduct or to conform his conduct to the requirements of law." *Commonwealth v. McHoul*, 352 Mass. 544, 546–47 (1967).

§ 1.2.14 Nursing Facility

For purposes of guardianship proceedings, a nursing facility is

> an institution or a distinct part of an institution which is primarily engaged in providing to residents: (i) skilled nursing care and related services for residents who require medical or nursing care; (ii) rehabilitation services for the rehabilitation of injured, disabled or sick persons; or (iii) on a regular basis, health-related care and services to individuals who because of their mental or physical condition require care and services, above

> the level of room and board, which can be made available to that individual only through institutional facilities that are not primarily a mental health facility or developmentally disabled facility; provided however, that the term nursing facility shall not apply with regard to the placement or transfer of a patient to a facility that is (i) licensed by the department of public health, under section 51 of chapter 111, as a long term acute care hospital or inpatient rehabilitation facility; (ii) licensed by the department of public health, under section 71 of chapter 111, as a rest home; or (iii) licensed or certified as an assisted living residence by the executive office of elder affairs under 651 CMR 12.00 et seq.

G.L. c. 190B, § 5-101(15).

§ 1.2.15 Patient

A patient is any person with whom a licensed mental health professional has established a mental health professional–patient relationship. G.L. c. 123, § 1.

§ 1.2.16 Person with an Intellectual Disability

A person with an intellectual disability is

> a person who has an intellectual disability, characterized by significant limitations in both intellectual functioning and adaptive behavior as expressed in conceptual, social and practical adaptive skills and beginning before age 18, and consistent with the most recent definition provided by the American Association on Intellectual and Developmental Disabilities; provided, that in applying this definition the following shall be considered: (i) limitations in present functioning within the context of community environments typical of the individual's age, peers and culture; (ii) cultural and linguistic diversity and differences in communication, sensory, motor and behavioral factors; (iii) limitations often coexist with strengths within an individual; (iv) an important purpose of describing limitations is to develop a profile of needed supports; and (v) with appropriate personalized supports over a sustained period, the life functioning of a person with an intellectual disability will generally improve; and provided further, that a person who has an intellectual disability may be considered to be mentally ill; provided, however, that no person with an intellectual disability shall be considered to be mentally ill solely by reason of the person's intellectual disability.

G.L. c. 123B, § 1.

§ 1.2.17 Person with a Developmental Disability

A person with a developmental disability is

> (1) an individual 5 years of age or older with a severe, chronic disability that: (i) is attributable to a mental or physical impairment resulting from intellectual disability, autism, Smith-Magenis syndrome or Prader-Willi syndrome; (ii) is manifested before the individual attains age 22; (iii) is likely to continue indefinitely; (iv) results in substantial functional limitations in 3 or more of the following areas of major life activity: (1) self-care; (2) receptive and expressive language; (3) learning; (4) mobility; (5) self-direction; (6) capacity for independent living; and (7) economic self-sufficiency; and (v) reflects the individual's need for a combination and sequence of special, interdisciplinary or generic services, supports or other assistance that is of a lifelong or extended duration and is individually planned and coordinated; or (2) an individual under the age of 5 who has a substantial developmental delay or specific congenital or acquired condition with a high probability that the condition will result in a developmental disability if services are not provided. A person who has a developmental disability may be considered to be mentally ill; provided, however, that no person with a developmental disability shall be considered to be mentally ill solely by reason of the person's developmental disability.

G.L. c. 123B, § 1.

§ 1.2.18 Qualified Physician

As used in G.L. c. 123, a qualified physician is

> a physician who is licensed pursuant to section two of chapter one hundred and twelve who is designated by and who meets qualifications required by the regulations of the department [of mental health]; provided that different qualifications may be established for different purposes of [G.L. c. 123]. A qualified physician need not be an employee of the department or of any facility of the department.

G.L. c. 123, § 1.

§ 1.2.19 Qualified Psychologist

As used in G.L. c. 123, a qualified psychologist is

> a psychologist who is licensed pursuant to sections one hundred and eighteen to one hundred and twenty-nine, inclusive, of

> chapter one hundred and twelve who is designated by and who meets qualifications required by the regulations of the department [of mental health], provided that different qualifications may be established for different purposes of [G.L. c. 123]. A qualified psychologist need not be an employee of the department or of any facility of the department.

G.L. c. 123, § 1.

§ 1.2.20 Qualified Psychiatric Nurse Mental Health Clinical Specialist

As used in G.L. c. 123, a qualified psychiatric nurse mental health clinical specialist is

> a psychiatric nurse mental health clinical specialist authorized to practice as such under regulations promulgated pursuant to the provisions of section eighty B of chapter one hundred and twelve who is designated by and meets qualifications required by the regulations of the department [of mental health], provided that different qualifications may be established for different purposes of [G.L. c. 123]. A qualified psychiatric nurse mental health clinical specialist need not be an employee of the department or of any facility of the department.

G.L. c. 123, § 1.

§ 1.2.21 Restraint

As used in G.L. c. 123, restraint is "bodily physical force, mechanical devices, chemicals, confinement in a place of seclusion other than the placement of an inpatient or resident in his room for the night, or any other means which unreasonably limit freedom of movement." G.L. c. 123, § 1.

Restraints taking place during transport to a psychiatric facility under G.L. c. 123, § 12 or occurring in inpatient psychiatric facilities or Bridgewater State Hospital may only be administered in accordance with G.L. c. 123, § 21. Restraints taking place in facilities that are licensed, contracted for, or operated by the Department of Mental Health must also comply with detailed regulations found at 104 C.M.R. § 27.12.

§ 1.2.22 Social Worker

For the purposes of civil commitment as a person with an alcohol or substance use disorder under G.L. c. 123, § 35, a social worker is an individual licensed pursuant to G.L. c. 112, §§ 131 and 132. A licensed social worker, as distinguished from a licensed independent clinical social worker, may have as little education as a high-school diploma; however, such individuals need 17,500 hours of experience over not less than ten years working under the supervision of a licensed social worker who has at least a

baccalaureate degree from an approved social work program. 248 C.M.R. § 9.05(1)(f), (2).

§ 1.2.23 Substance Use Disorder

For the purposes of civil commitment as a person with a substance use disorder under G.L. c. 123, § 35, the person must engage in

> the chronic or habitual consumption or ingestion of controlled substances or intentional inhalation of toxic vapors by a person to the extent that: (i) such use substantially injures the person's health or substantially interferes with the person's social or economic functioning; or (ii) the person has lost the power of self-control over the use of such controlled substances or toxic vapors.

G.L. c. 123, § 35.

§ 1.2.24 Superintendent

For purposes of civil commitment, a superintendent is "the superintendent or other head of a public or private facility." G.L. c. 123, § 1.

While the titles vary, most public and private facilities refer to their administrative head as the chief operating officer, president, or director. The administrative head of Bridgewater State Hospital is referred to as the medical director. Except where otherwise indicated, "superintendent" will be used to designate the administrative head of a facility, as well as the entity having the authority to petition for a client's commitment or treatment. *See Bayridge Hosp. v. Jackson*, 2010 Mass. App. Div. 12 (Jan. 26, 2010) (medical director of a unit may be considered a superintendent of a facility if responsible for admission, discharge, and treatment of patients in the facility). A petition for civil commitment can only be filed by the superintendent of a facility or the medical director of the Bridgewater State Hospital. G.L. c. 123, § 7.

§ 1.3 RIGHTS OF MENTAL HEALTH PATIENTS

§ 1.3.1 Right to Counsel

Respondents have the right to representation by counsel in G.L. c. 123, §§ 7 and 8 commitment hearings, Section 12(e) hearings for three-day commitments, in emergency hearings under Section 12(b), and substance use disorder commitments under Section 35. In guardianship matters, the respondent has the right to an attorney if the person, or someone acting on their behalf, requests the appointment of counsel (G.L. c. 190B, § 5-106); the petitioner is seeking the authority to administer treatment that requires the court to make a substituted judgment determination (G.L. c. 190B, § 5-306A); or a petitioner has notified the court of its intention to place the incapacitated person in a nursing facility for no longer than sixty days (G.L. c. 190B, § 5-309(g)).

Although the Massachusetts Uniform Probate Code (MUPC) does not mandate the appointment of counsel when longer-term placement in a nursing facility is sought, the liberty interests potentially affected, as well as court guidelines, indicate that counsel should be appointed.

§ 1.3.2 General Civil Rights

General Laws c. 123, § 23 grants the following rights to "all persons regardless of age receiving services from any program or facility, or part thereof, operated by, licensed by or contracting with the department of mental health, including persons who are in state hospitals or community mental health centers or who are in residential programs or inpatient facilities operated by, licensed by or contracting with said department":

> (a) reasonable access to a telephone to make and receive confidential telephone calls and to assistance when desired and necessary to implement such right; provided, that such calls do not constitute a criminal act or represent an unreasonable infringement of another person's right to make and receive telephone calls;
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> (b) to send and receive sealed, unopened, uncensored mail; provided, however, that the superintendent or director or designee of an inpatient facility may direct, for good cause and with documentation of specific facts in such person's record, that a particular person's mail be opened and inspected in front of such person, without it being read by staff, for the sole purpose of preventing the transmission of contraband. Writing materials and postage stamps in reasonable quantities shall be made available for use by such person. Reasonable assistance shall be provided to such person in writing, addressing and posting letters and other documents upon request;
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> (c) to receive visitors of such person's own choosing daily and in private, at reasonable times. Hours during which visitors may be received may be limited only to protect the privacy of other persons and to avoid serious disruptions in the normal functioning of the facility or program and shall be sufficiently flexible as to accommodate individual needs and desires of such person and the visitors of such person.
>
> (d) to a humane psychological and physical environment. Each such person shall be provided living quarters and accommodations which afford privacy and security in resting, sleeping, dressing, bathing and personal hygiene, reading and writing and in toileting. Nothing in this section shall be construed to require individual sleeping quarters.

> (e) to receive at any reasonable time as defined in department regulations, or refuse to receive, visits and telephone calls from a client's attorney or legal advocate, physician, psychologist, clergy member or social worker, even if not during normal visiting hours and regardless of whether such person initiated or requested the visit or telephone call. An attorney or legal advocate working under an attorney's supervision and who represents a client shall have access to the client and, with such client's consent, the client's record, the hospital staff responsible for the client's care and treatment and any meetings concerning treatment planning or discharge planning where the client would be or has the right to be present. Any program or facility, or part thereof, operated by, licensed by or contracting with the department shall ensure reasonable access by attorneys and legal advocates of the Massachusetts Mental Health Protection and Advocacy Project, the Mental Health Legal Advisors Committee, the committee for public counsel services and any other legal service agencies funded by the Massachusetts Legal Assistance Corporation under the provisions of chapter 221A, to provide free legal services. Upon admission, and upon request at any time thereafter, persons shall be provided with the name, address and telephone number of such organizations and shall be provided with reasonable assistance in contacting and receiving visits or telephone calls from attorneys or legal advocates from such organizations; provided, however, that the facility shall designate reasonable times for unsolicited visits and for the dissemination of educational materials to persons by such attorneys or legal advocates. The department shall promulgate rules and regulations further defining such access. Nothing in this paragraph shall be construed to limit the ability of attorneys or legal advocates to access client records or staff as provided by any other state or federal law.
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> (f) reasonable daily access to the outdoors, as whether conditions reasonably permit, at inpatient facilities in a manner consistent with the person's clinical condition and safety as determined by the treating clinician and with the ability of the facility to safely provide access. The department shall promulgate regulations defining what shall constitute reasonable access and regulations implementing sufficient precautions to ensure the safety of staff members charged with accompanying patients outdoors.

The regulations regarding reasonable access to the outdoors ("fresh air") are found at 104 C.M.R. § 27.13(6)(f).

Any of the rights set forth in (a) and (c) may be temporarily suspended (but only for a person in an inpatient facility) if the superintendent or other head of the facility determines that, based on the person's previous exercise of such rights, the exercise of such rights in the immediate future would create a substantial risk of serious harm to the patient or others, and there is no less-restrictive alternative to the temporary suspension of the patient's rights. G.L. c. 123, § 23. The rights set forth at (b), (d), (e), and (f) may not be suspended.

The statute further provides that

> in addition to the rights specified above and any other rights guaranteed by law, a mentally ill person in the care of the department shall have the following legal and civil rights: to wear his own clothes, to keep and use his own personal possessions including toilet articles, to keep and be allowed to spend a reasonable sum of his own money for canteen expenses and small purchases, to have access to individual storage space for his private use, to refuse shock treatment, to refuse lobotomy, and any other rights specified in the regulations of the department; provided, however, that any of these rights may be denied for good cause by the superintendent or his designee and a statement of the reasons for any such denial entered in the treatment record of such person.

G.L. c. 123, § 23; *see also* 104 C.M.R. § 27.13; 104 C.M.R. § 28.00 et seq.; D.M.H. Policy 03-1 on Human Rights. "Unless the contrary is specified in a particular section, the provisions of 104 CMR 27.00 apply to all facilities that are licensed, contracted for, or operated by the Department of Mental Health." 104 C.M.R. § 27.01.

§ 1.3.3 Restraint and Seclusion

Restraints, including seclusion, may only be administered in the following situations and under the following conditions:

> a) in cases of emergency, such as the occurrence of, or serious threat of, extreme violence, personal injury or attempted suicide;
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> b) after written authorization by the superintendent, director of the facility or a physician designated for such purpose who is present at the time of the emergency, however, if the superintendent or designated physician is not present at the time of the emergency, a non-chemical restraint may be administered for one hour, during which the patient must be examined by the superintendent or designated physician;
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> c) if the examination does not occur during the first hour the patient may be restrained for up to one additional hour until the

examination is conducted. The superintendent or designated physician must provide a written report explaining why the examination failed to occur during the first hour;

d) no order for restraint for an individual shall be valid for a period of more than three hours beyond which time it may be renewed upon personal examination by the superintendent, director, authorized physician or, for adults, by a registered nurse or a certified physician assistant; provided, however, that no adult shall be restrained for more than six hours beyond which time an order may be renewed only upon personal examination by a physician. The reasons for the original use of restraint, the reason for its continuation after each renewal, and the reason for its cessation shall be noted upon the restraining form by the superintendent, director or authorized physician or, when applicable, by the registered nurse or certified physician assistant at the time of each occurrence;

e) when a designated physician is not present at the time and site of the emergency, an order for chemical restraint may be issued by a designated physician who has determined, after telephone consultation with a physician, registered nurse or certified physician assistant who is present at the time and site of the emergency and who has personally examined the patient, that such chemical restraint is the least restrictive, most appropriate alternative available; provided, however, that the medication so ordered has been previously authorized as part of the individual's current treatment plan;

f) no person shall be kept in restraint without a person in attendance specially trained to understand, assist and afford therapy to the person in restraint. The person may by [sic] in attendance immediately outside the room in full view of the patient when an individual is being secluded without mechanical restraint; provided, however, that in emergency situations when a person specially trained is not available, an adult, may be kept in restraint unattended for a period not to exceed two hours. In that event, the person kept in restraints must be observed at least every five minutes; provided, further, that the superintendent, director, or designated physician shall attach to the restraint form a written report as to why the specially trained attendant was not available;

g) the maintenance of any adult in restraint for more than eight hours in any twenty-four hour period must be authorized by the superintendent or facility director or the person specifically designated to act in the absence of the superintendent or facility

> director; provided, however, that when such restraint is authorized in the absence of the superintendent of facility director, such authorization must be reviewed by the superintendent or facility director upon his return.

G.L. c. 123, § 21. The statutory sections governing restraint and seclusion apply to Bridgewater State Hospital as well as DMH-licensed and -operated facilities. G.L. c. 123, § 21, ¶ 10. The statute also includes additional requirements (not appearing above) governing restraint of minors. In addition, see the detailed regulations at 104 C.M.R. § 27.12, which apply to DMH-licensed and -operated facilities.

§ 1.3.4 Transfer

> The department may transfer any person from any facility to any other facility which the department determines is suitable for the care and treatment of such person; provided that no transfer to a private facility shall occur except with the approval of the superintendent thereof. At least six days before a transfer from a facility occurs, the superintendent shall give written notice thereof to the person and to the nearest relative, unless said person knowingly objects, or guardian of such person; provided, however, if the transfer must be made immediately because of an emergency, such notice shall be given within twenty-four hours after the transfer. Except in emergency cases, no person who at any time prior to transfer has given notice of his intention to leave a facility under the provisions of section eleven shall be transferred until a final determination has been made as to whether such person should be retained in a facility.

G.L. c. 123, § 3.

Under DMH regulations, where a patient objects to the transfer but has not previously notified the facility of their intention to leave, the regulations permit the facility to treat the transfer refusal as a three-day notice, thereby triggering the facility's ability to file a commitment petition. If the facility elects to proceed in this manner, the person may not be transferred while the commitment hearing is pending. 104 C.M.R. § 27.08(3)(b).

§ 1.3.5 Periodic Review and Notice

All patients in the care of DMH and all patients committed to Bridgewater State Hospital shall be the subject of a periodic review under the supervision of the superintendent of the mental health facility or the medical director of Bridgewater State Hospital. The periodic review shall take place upon admission, once during the first three months after admission, once during the second three months after admission, and annually thereafter. At a minimum, the review shall include the following:

> 1) A thorough clinical examination;

> 2) An evaluation of the legal competency of the person and the need for the appointment or removal of guardian or conservator;
>
> 3) A consideration of all possible alternatives to continued hospitalization or residential care including, but not necessarily limited to, a determination of the person's relationship to the community and to his family, or his employment possibilities, and of available community resources, foster care and convalescent facilities; and
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> 4) In the absence of a guardian or conservator, an evaluation of how much of a patient's funds shall be designated as dependent funds and the formulation of a financial plan for the use of the dependent funds.

G.L. c. 123, § 4.

A licensed physician shall give the patient a physical at least once in every twelve-month period. The patient, their guardian, or, if there is no guardian and the patient does not object, the patient's nearest relative shall be provided written notice prior to any review that occurs after the initial review.

If the mentally ill person is in need of further care and treatment,

> the superintendent or said medical director shall notify him and his guardian, or, if there is no such guardian and the mentally ill person does not knowingly object, his nearest relative, of that fact, and of his right to leave the facility or said hospital if he was not committed under a court order. If said mentally ill person was not committed under a court order and does not choose further treatment as an inpatient, within fourteen days of said notification he shall be discharged or be made the subject of a petition for a court ordered commitment.

G.L. c. 123, § 4.

§ 1.3.6 Interpreter Services

Every hospital or unit of a general hospital that provides acute psychiatric services must provide competent interpreter services to every non-English speaker who is a patient, if an appropriate bilingual clinician is not available. A non-English speaker is defined as "a person who cannot speak or understand, or has difficulty with speaking or understanding, the English language because the speaker primarily or only uses a spoken language other than English." Interpreter services must be performed by a person who is fluent in both English and the language of the non-English speaker and who is knowledgeable of the specialized terms and concepts surrounding treatment. G.L. c. 123, § 23A.

Note that it is the court's responsibility to provide interpreters for court proceedings. The hospital's interpreter or a remote service, such as Language Line or Certified Languages International, is not a substitute for in-court interpreters. The Office of Court Interpreter Services (OCIS) is responsible for coordinating and allocating interpreters to requesting courts in an effort to provide equitable access to justice across the entire Massachusetts court system. Assigned counsel is responsible for securing interpreters for meetings with clients and should not rely on hospital interpreters, friends or family members of the client as that is likely to result in a waiver of confidentiality and privilege.